

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: April 26, 2023*

+ W.P.(C) 14554/2006, CM APPLs. 11423/2006 & 7744/2021

P.V.SATHEESAN

..... Petitioner

Through: Mr. V.K. Biju, AOR and
Ms. Vijay Lakshmi, Advs.

versus

UOI & ORS.

..... Respondents

Through: Mr. Rajesh Kumar, SPP with
Ms. Mishika Pandita, Adv.
Mr. Sandeep Tyagi, Sr. Panel Counsel
with Mr. Shyam Singh Negi, Adv. for
R-5

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this writ petition by the petitioner is to the order dated August 11, 2006 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', in short) in Original Application No.1004/2006 ('OA', in short) whereby, the Tribunal has dismissed the OA filed by the petitioner herein.
2. The challenge in the OA, by the petitioner, was to the order dated January 20, 2006, whereby his request for absorption as

Lower Division Clerk ('LDC', in short) in Central Bureau of Investigation ('CBI', in short) was rejected. In the said OA, the petitioner had sought a direction to the respondents to consider his appointment as LDC in CBI on permanent absorption basis and payment of deputation allowance till the date he continues to be on deputation in CBI.

3. The facts of the case are that the petitioner was appointed as LDC in General Reserve Engineering Force ('GREF', in short) / Border Roads Organization, and was selected on deputation basis in CBI, as LDC vide communication dated September 13, 2002. He was initially posted in Chennai. On October 29, 2004, the petitioner had applied for permanent absorption in CBI. Subsequently, on May 3, 2005, the petitioner was transferred to Delhi.

4. It is the case of the petitioner that, on request, the CBI vide its letter dated March 1, 2005, to GREF, had sought NOC for the petitioner's permanent absorption in CBI. Vide letter dated March 24, 2005, GRPF/parent department issued NOC for his absorption. It appears that on January 1, 2006, while the petitioner was on deputation, a decision was taken by the CBI, not to absorb deputationist LDC / SCS in CBI. Thereafter, vide letter dated March 9, 2006, the GREF did not accede to the request of CBI for further extension of the petitioner's deputation in CBI. Accordingly, the Head Office of the CBI vide Fax dated February 23, 2006 directed SP, CBI, AC-II to repatriate the petitioner to his

parent department by March 26, 2006. It was in this background, the petitioner had approached the Tribunal.

5. The case of the CBI before the Tribunal was that the petitioner cannot claim his absorption in CBI as a matter of right, as the petitioner's parent department had been pressing for the immediate repatriation of the petitioner as it had not granted NOC for further extension, on deputation, in CBI.

6. It was also their case that the absorption has to be accorded in public interest. It was their case that, neither the parent department of the petitioner had issued NOC nor has the Competent Authority in CBI acceded to his request for absorption, hence the petitioner has no claim. The Tribunal has in paragraphs 6 and 7, held as under:

"6. It is undisputed that deputation is not a right and no employee can claim either deputation nor absorption as a matter of right. It is essential that both lending and borrowing departments had to agree for an employee to be accepted on deputation. It is settled law that the deputationist can be reverted to his parent cadre at any, time and he has no right to be absorbed on the deputation post (Rati Lal B. Soni Vs. State of Gujarat. AIR 1990 SC 1132). It has also been held by the Hon'ble Supreme Court in Kunal Nanda Vs. Union of India & Anr. (JT 2000 (6) SC 574) that

"The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance- of either of the departments and there is no vested right in such a person to continue for long on

deputation or get absorbed in the department to which he had gone on deputation."

It is very clear from the material on record that the request of the applicant for extension of deputation beyond 4th year was not acceded to by the parent organisation, namely GREF/Boarder Roads Organisation in public interest. It is amply clear from letter dated 9.3.2006 (Annexure R-2) from Dte. General Boarder Roads to Supdt. Of Police, CBI that as NOC was not issued by the parent organization, the request for extension of deputation could not be acceded to by the CBI who in this case was the Borrowing Organisation. Therefore, it was ordered to repatriate the applicant. A view was also taken by the CBI not to process the absorption matter of the applicant. This is a clear case where neither the parent organization nor the borrowing organization had agreed to deputation/absorption of the applicant.

7. In view of the above discussion, as we find no illegality or infirmity in the impugned order dated 20.1.2006, it does not call for any interference. Accordingly, the OA is dismissed. No costs."

7. The submission of the learned counsel for the petitioner before us is primarily that the petitioner has joined the CBI on December 10, 2002 on deputation basis and subsequently, as requested by the CBI, the parent department GREF, gave NOC for the absorption of the petitioner. However, after taking consent / NOC, the CBI denied the permanent absorption of the petitioner.

8. According to him, the petitioner has put in more than 20 years of service in CBI and in fact he is superannuating on April 30, 2023. The learned counsel for the petitioner submitted that

during his service in CBI, his work has been appreciated by the CBI by conferring “CBI Day Award”, “ATI UTKRISHT SEWA PATAK, 2016” and Commendation Certificates in 2006, 2015, 2016, 2017.

9. In the given background, if the petitioner is compelled to be repatriated then his entire family would be put to irreparable loss and injury especially the treatment of his younger daughter at AIIMS, New Delhi. He submitted that, it is a clear case of legitimate expectation, when NOC has been given by the parent department for absorption in CBI. It would be inequitable for the respondents to repatriate the petitioner to GREF, at this point of time, when the petitioner is on the verge of retirement after putting more than 20 years of service which is more than his tenure in GREF.

10. In support of his submissions, learned counsel for the petitioner has relied upon the following judgments:

- (i) *Swapna Roy (Smt.) v. State of West Bengal & Ors., 1997 (1) SLR*
- (ii) *B.L. Mandawat and Ors. v. Union of India & Ors., 1993 Supp (4) SCC10;*
- (iii) *Rameshwar Prasad v. Managing Director, U.P. Rajkiya Nirman Nigam Limited & Ors., (1999) 8 SCC 381; and*
- (iv) *Umapati Choudhary v. State of Bihar & Anr., (1999) 4 SCC 659.*

11. On the other hand, Mr. Rajesh Kumar, learned SPP appearing for the CBI submitted that the petitioner cannot claim

absorption as a matter of right, when a decision has been taken by the CBI not to absorb deputationist LDC / SCS. He also submitted that, since 2005, no absorption of deputationist LDC / SCS has been effected.

12. He has relied upon the judgment of the Supreme Court in the case of *Kunal Nanda v. Union of India & Anr., (2000) 5 SCC 362*, wherein the petitioner, who had come on deputation from CRPF and sought his absorption in CBI, which request was rejected and the petitioner therein was repatriated. The decision was upheld by the Supreme Court. He stated, similar should be the outcome in this case as well.

13. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the petitioner is entitled for absorption in CBI. The law in this regard is well settled and in fact as has been noted by the Tribunal, a deputationist has no right to seek absorption. No doubt, the GREF had given the NOC for absorption of the petitioner in CBI in the year 2005, it appears that a decision has been taken by the CBI not to absorb deputationist LDC / SCS. The proposal with respect to absorption of the petitioner could not be taken forward. But, it is a fact that he continued in CBI even thereafter. No doubt, the order of repatriation of the petitioner was passed by the CBI but that was before the petitioner had approached the Tribunal. After the dismissal of OA, the petitioner had approached this Court and this Court vide order dated September 14, 2006 had directed that, if the petitioner has not been relieved, *status quo* as on that date be

maintained. The said interim order was made absolute on October 21, 2008 and it is a conceded case of the petitioner that he continues to work in CBI as of today.

14. It is highlighted by the learned counsel for the petitioner that the petitioner has been awarded Commendation Certificates and Awards for his service in the CBI. That apart, the petitioner is retiring on attaining the age of superannuation on April 30, 2023, i.e., only few days from today.

15. From the facts as noted above, it is seen that the petitioner has worked for 12 years in GREF as against 20 years of service in the CBI. So, in that sense, it is inequitable for this Court to deny the absorption of the petitioner in CBI.

16. Insofar as the judgment relied upon by Mr. Rajesh Kumar in the case of ***Kunal Nanda (supra)*** is concerned, the same shall not be applicable to the facts of this case, inasmuch as the CBI (in that case) has rejected the prayer of the petitioner for absorption in CBI on the ground of unreliability as is observed by the Supreme Court in the following manner:

“Heard the learned counsel for the appellant and Shri R.N. Trivedi, learned Additional Solicitor General. The least said about the conduct of the appellant is better for him. The appellant, indisputably, is only a deputationist so far as CBI is concerned and his parent department is only CRPF and his substantive position and appointment is only in that department and ordinarily a deputation, as per governing rules, cannot last for a period more than five years. The frivolous claim that a person like him need not be a graduate for absorption and appointment in CBI, apart, the

appellant appears to have rendered himself unreliable by making, to put it in most mild terms, an incorrect representation of his basic educational qualification to be a graduate while factually it is not so, and this one ground, strongly urged is enough to non-suit him. This itself will be sufficient to dis-entitle him to even continue in the CBI any longer. The Screening Committee which appears to have initially recommended for absorption also seem to have proceeded on the basis of the erroneous representation of the appellant of his basic educational qualification and the copy of the proceedings made available disclose this serious lapse and consequently no advantage can be claimed on the basis of the recommendation, made on a mistaken view of the facts more so, when such mistake was the making of the appellant himself. This assertion of the respondent- CBI Department was specific and reiterated in unmistakable terms from the beginning before the Tribunal (vide para 4 (h) and 5 of the reply) and thereafter before the High Court in the counter filed (vide para 3 (e) and finally before this Court also (vide para 5 (c) of the counter filed on behalf of the respondent). Throughout, the response of the appellant to those assertions at various stages was evasive and nebulous and neither direct nor specific in refutation of facts in particular. Being an appeal under Act 136 of the Constitution of India, this Court will be justified in even rejecting this appeal, on this ground alone.”

(emphasis supplied)

17. It is not such a case here. There is no issue of integrity raised by the CBI against the petitioner herein. Rather, we find the petitioner has been issued Commendation Certificates and Awards, for his work. In that sense, but for the decision not to

absorb deputationist LDC / SCS, the CBI would have absorbed the petitioner, given his credentials.

18. In view of our above discussion in the facts of this case, the petitioner, who had asked for his absorption and for which purpose, the CBI has sought NOC from his parent department and the parent department has given the NOC, the petitioner should be absorbed in the CBI. Accordingly, this Court set aside the impugned order dated August 11, 2006 passed by the Tribunal in OA No.1004/2006.

19. The question now is, from which date the petitioner should be absorbed. No doubt, on a perusal of the prayers made in the OA filed in the year 2006, the petitioner had only sought his absorption in the CBI without mentioning a date. This is because if the Tribunal had granted absorption, it would have been from that year. But that did not happen as the Tribunal has rejected the OA. Thereafter, the matter remained pending in this Court.

20. As noted above, only few days of service are remaining before the petitioner superannuates. Any direction of absorption from today shall be to the prejudice of the petitioner as the same may not entail the benefits of past service. It shall have the effect of petitioner getting retired without availing any benefits which otherwise, he is / was entitled to in his parent department or for that matter in the CBI had he been absorbed at that relevant point of time. Further, as the petitioner is retiring, no third party rights shall be affected.

21. We are of the view, the petitioner shall be absorbed from the date when NOC was given by the petitioner's parent department, i.e., GREF, with all consequential benefits that would flow pursuant to his absorption in CBI from that date. The order shall be complied within a period of eight weeks from today.

22. The writ petition is disposed of.

CM APPLs. 11423/2006 & 7744/2021

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

APRIL 26, 2023/aky

