



2024:1500:2556-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: April 02, 2024

+ W.P.(C) 5615/2021

MANOJ KUMAR AND OTHERS

..... Petitioners

Through: Mr. Shankar Raju and
Mr. Nilansh Gaur, Advs.

versus

UNION OF INDIA AND OTHERS

..... Respondents

Through: Mr. Thakur Virender Pratap
Singh Charak, Ms. Shubhra
Parashar and Mr. Pushpender
Singh Charak, Mr. Priyanshu
and Mr. Rishi, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioners with the following prayers:

“In view of the submissions made above, it is most respectfully prayed that this Hon’ble Court may graciously be pleased to issue appropriate writ/direction to:

a) To set aside the Impugned order dated 16.12.2019, denied relaxation on discrimination to the petitioners in mandatory service for permanent absorption as Accountant in CCAS cadre conveyed vide letter dated



*03.02.2020 and also the Impugned common order dated 18.05.2021 at **Annexure P-1 (Colly)**; and*

b) To set aside the Impugned order dated 24/25.10.2019 at Annexure P-1, whereby, on denial of relaxation by MHA, the Director General, SSB, has not approved the claim of the petitioners for consideration for permanent absorption and NOC to the petitioners has been denied; and

c) To direct the MHA to accord relaxation to the petitioners in mandatory service of 18 years as per Clause 21 of OM dated 24.11.2016 and thereafter, issued directions to the DG, SSB to issue NOC and to the CGA to consider the claim of the petitioners after grant of relaxation in screening committee for permanent absorption as Accountant in CGA and Pr. CCA office with all consequential benefits; and

d) Any other or further relief which this Hon'ble Court deems fit, just and proper in the peculiar circumstances of the case in the interest of justice may also please be awarded."

2. In effect, the petitioners, who are three in number have challenged the decision of the Competent Authority i.e., the Ministry of Home Affairs ('MHA', for short), to not to accord approval for relaxation in MHA policy guidelines, i.e., relaxation of condition of having mandatory 18 years of service in seeking permanent absorption to the post of Accountant in Central Civil Accounts Service cadre ('CCAS', for short).

3. It is stated that the petitioners while working as Constables (General Duty) in Sashtra Seema Bal ('SSB', for short) went on deputation as Accountant in Pay and Accounts Office, in the MHA.

4. On July 23, 2015, the Controller General of Accounts ('CGA', for short) on relaxation decided to fill up, as one time measure, 10%



vacancies of Accountant on deputation from Central Armed Police Forces ('CAPF', for short) on permanent absorption basis. As such, on November 24, 2016, the MHA issued guidelines for deputation of CAPF (Personnel), which also stipulated for relaxation under Clause 21 thereof.

5. Thereafter, on August 14, 2019, another relaxation was promulgated by CGA for permanent absorption of deputationist as Accountants with the deadline upto December 31, 2019. It is the case of the petitioners that they had also shown their willingness for permanent absorption as Accountants.

6. However, on October 24, 2019, the SSB on account of non-relaxation in mandatory services, denied approval for their absorption. It is their case that MHA, though granted relaxation in mandatory services to personnel of CAPF, denied the same in the case of the petitioners.

7. Moreover, vide order dated February 18, 2021, 14 deputationists, including those given relaxation, have been permanently absorbed by the respondents. A reference has also been made to the earlier round of litigation being *W.P.(C) 1060/2021*, filed by the petitioners herein, which was disposed of with a direction to the respondents to decide the representation submitted by the petitioners.

8. Mr. Shankar Raju, learned counsel appearing for the petitioners had highlighted the discrimination by stating that the policy decision dated November 24, 2016 is only directive in nature not mandatory and as such, it is not necessary to insist upon the condition of having 18 years of service as deputationist for being absorbed permanently.



9. He had also highlighted the fact that out of 14 personnel/deputationists, who have been permanently absorbed, six are from Ministerial Cadre (04 from CRPF, 01 from ITBP and 01 from SSB), one belongs to Motor Section of SSB and rest of the deputationists are Head Constables (GD). As such, the right of the petitioners, who are also seeking permanent absorption, has been overlooked by the respondents.

10. It is his submission that CGA Rules do not provide absorption of Accountant only from Ministerial Cadre and though the petitioners working as Constables (GD) belong to the Non-Ministerial Cadre coupled with the fact that the posts held by the petitioners were analogous and also that they have worked and gained experience of the post of Accountant, the reasons to discriminate are not germane to the object sought to be achieved. In fact, in the notification from the Office of the CCA calling for deputationists as Accountant, there was no such requirement of Ministerial Cadre. As such, the petitioners were eligible to be permanently absorbed.

11. Whereas, it is the case of the respondents and so contended by Mr. Thakur Virender Pratap Singh Charak, learned counsel for the respondents that the petitioners were on deputation with the Office of Principal CCA (Home). They had applied for issuance of NOC for permanent absorption in the Office of the Principal CCA (Home), which was forwarded to the respondents. However, DG, SSB did not grant NOC for their permanent absorption in the deputation department as they had not completed 18 years of service and as the Cadre Controlling / Lending Organisation of the petitioners had not granted



the NOC, their case for permanent absorption was not approved by MHA.

12. He submitted that MHA vide letter dated November 08, 2019 forwarded a letter received from Sr. Accounts Officer (Admn.) regarding absorption of 5 deputationists including the petitioners herein. The DG, SSB, after examining the proposal, accorded 'NOC' in respect of two officials as one had completed 18 years of service and another official being Low Medical Category and completed more than 16 years of service. However, case regarding relaxation of service condition of 18 years in respect of petitioners with recommendation was forwarded to MHA by SSB for consideration in terms of Paragraph 21 of MHA policy guidelines dated November 24, 2016 with further request to convey their concurrence for absorption. The MHA vide letter dated December 16, 2019 intimated that the Competent Authority has not accorded approval for relaxation in MHA policy guidelines. i.e., condition of mandatory 18 years of service in respect of three petitioners.

13. According to him, as per provision contained in Paragraph 18 of MHA policy guidelines dated November 24, 2016, the discretion to accept or reject a request to grant NOC for absorption is exclusively with the parent CAPF or the Cadre Controlling Authority, i.e, MHA. It is his case that policy guidelines dated November 24, 2016, issued by the Ministry are internal guidelines for deputation / absorption of CAPF personnel and as such, should not be violated.

14. Reliance has been placed on the judgment of the Coordinate Bench of this Court in the case of *R Sugumaran & Ors. v. Union of*



India & Ors., W.P.(C) 6892/2021, and connected petitions, decided on July 23, 2021, more particularly on paragraphs 14 and 15, wherein it has been held as under:-

“14. The counsel for the respondents has rightly placed reliance on paragraph 18 of the Policy Guidelines issued by the MHA. The said paragraph is set out below:

“....18. A requisition made by the borrowing Organisation/Department or willingness tendered by a person for absorption, will not automatically confer any right on an individual or the borrowing department to claim absorption as a matter of right. The discretion to accept or reject, a request for absorption will be exclusively with the parent CAPF or the cadre controlling authority, i.e. Ministry of Home Affairs, as the case may be. In the case of Subordinate Officers and Other Ranks, the proposals for absorption shall be decided by the Director General of the CAPF concerned in consultation with Ministry of Home Affairs.”

15. It is clear from the above that the discretion to accept or reject a request for absorption will be exclusively with the parent CAPFs or the Cadre Controlling Authority, i.e. the respondent no.1 MHA. Every organization, including the CAPFs have to determine their own requirements of personnel and in light thereof decide whether they want to give NOCs in respect of their personnel to be absorbed by another organization. Similarly, it is for the borrowing department to decide whether they want to permanently absorb the deputationists working with them or to extend the period of deputation. In the present case, the counsel appearing for CBI has categorically made a statement that they do not wish to absorb the petitioners.”

(emphasis supplied)

15. Similarly, reliance has also been placed on another judgment of



the Coordinate Bench of this Court in the case of ***CT. Jagdish Prasad Jat & Ors. v. Union of India and Ors., W.P. (C) 6838/2021***, decided on July 22, 2021 to contend that it is a settled position of law that absorption cannot be claimed as a matter of right. In this regard, he has relied upon paragraph 7 of the aforesaid judgment, wherein it has been held as under:-

“7. It is a settled principle of law that absorption cannot be claimed as a matter of right. For an absorption to be carried out, there has to be consent of the parent department as well as the department in which the absorption is sought. In this regard, reference may be made to *Kunal Nanda Vs. Union of India* (2000) 5 SCC 362 wherein the Supreme Court has succinctly explained the legal position concerning absorption:

“6. ...It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. 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.”

(emphasis supplied)

16. On the basis of the aforesaid submissions, he seeks dismissal of the present petition.



17. Having heard the learned counsel for the parties, at the outset, it is stated that the absorption of the CAPF Personnel/deputationists is regulated and governed by the policy decision dated November 24, 2016.

18. In fact, the relevant Clauses 17, 18 and 21 thereof, on which reliance has been placed by both the parties, are reproduced as under:-

“17. A CAPF personnel proposed to be absorbed by the borrowing Organisation/ Department should have a minimum of 18 years of service on the date, on which the absorption is proposed by the borrowing Organisation/ Department. Also, the person proposed to be absorbed should already be on deputation with the said Organisation. This condition of 18 years shall be read as 15 years in case of low medical category personnel.

18. A requisition made by the borrowing Organisation/Department or willingness tendered by a person for absorption, will not automatically confer any right on an individual or the borrowing department to claim absorption as a matter of right. The discretion to accept or reject, a request for absorption will be exclusively with the parent CAPF or the cadre controlling authority, i.e. Ministry of Home Affairs, as the case may be. In the case of Subordinate Officers and Other Ranks, the proposals for absorption shall be decided by the Director General of the CAPF concerned in consultation with Ministry o Home Affairs.

xxx

xxx

xxx

21. Where the Central Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, relax any of the provisions of this Policy with respect to any individual, class or category of individuals.”



19. There is no dispute that the minimum eligibility condition requirement is that personnel on deputation must put in 18 years of service on the date on which the absorption is proposed by the borrower organisation / department. There is also no dispute that none of the petitioners had put in 18 years of service on the date when the absorption was proposed by the borrowing organization / department. So, resultantly, the petitioners were not eligible for absorption.

20. Insofar as the plea of discrimination with the two officials accorded 'NOC' is concerned, it is stated that for personnel belonging to Low Medical Category, the eligibility requirement is that personnel should have put in 16 years of service. So, in that sense, as the person who had been absorbed was having 16 years of service and had Low Medical Category, he was eligible under the policy guidelines for being permanently absorbed, qua the other official, as he had already completed 18 years of service, he was as it is eligible.

21. Suffice to state, it is irrelevant as to whether a personnel seeking absorption belongs to a Ministerial Cadre or not. In fact, it is not the case of the respondents that the case of the petitioners has been rejected as they do not belong to Ministerial Cadre. Their only case is, as the petitioners have not put in 18 years of total service, they cannot be permanently absorbed.

22. We find justification in the stand taken by the respondents when the policy guidelines under consideration clearly stipulated that a personnel proposed to be absorbed by the borrowing organization / department should have a minimum of 18 years of service on the date,



on which the absorption is proposed by the borrowing organization / department. As such, any deviation from the guidelines, particularly with regard to the stipulation of having 18 years of service, in that sense, is not allowed. Any deviation, even if had taken place in the past, would also not enure to the benefit of the petitioners as there cannot be negative equality in favour of the petitioners. Therefore, the guidelines under consideration being clear enough are required to be followed.

23. No doubt, discretion has been vested with the Competent Authority to relax any of the provisions of the policy with respect to individual class or category of individuals but no such case has been put forward by the petitioners to say that for certain reasons the relaxation was required to be exercised in their favour.

24. It is also a settled law that the absorption is not a matter of right. It is basically a tripartite agreement between the borrowing authority, the lending authority and the officer concerned [*Ref: CT. Jagdish Prasad Jat & Ors. (supra)*]. In view of the fact that neither the lending authority nor the borrowing authority have concurred for their absorption as the petitioners were not meeting the eligibility criteria, their case was rightly rejected.

25. In view of our conclusion above, we do not see any merit in the petition, the same is dismissed. No Costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

APRIL 02, 2024/aky