



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

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Date of decision: January 30, 2024

+ W.P.(C) 5718/2020

(8) **RAKESH KUMAR OJHA AND ANR** Petitioners
Through: Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Prasanta Varma, SCGC for UOI
with Mr. Pankaj Kumar, Ms. Pratima
Rani Varma, Mr. Rajesh Kumar Pala,
Ms. Pragya Verma, Advocates for R-
2 & 3 with Dy. JAG Kamlesh Rani
(ITBPF)
Mr. Rajesh Kumar, SPP with Ms.
Mishika Pandita, Advocate for CBI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

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

“In view of the above, it is therefore most respectfully prayed that this Hon’ble Court may be pleased to:

i. To issue a writ of certiorari quashing of the order dated 05.11.2019 whereby the Petitioners request for NOC for Permanent absorption in CBI has been arbitrarily denied by the Directorate General ITBP;

ii. To issue a writ of Certiorari quashing of the letter



dated 21.02.2020 and 29.02.2020, whereby the Petitioners have been relieved from CBI and have been repatriated to the ITBP despite of them being shortlisted and eligible for permanent Absorption in ITBP;

iii.To issue a writ of mandamus directing the Respondent MHA to grant NOC to the Petitioners to thereby approve their permanent absorption in Central Bureau of Investigation with appropriate seniority and all consequential benefits; AND

iv.Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case."

2. The case set up by the petitioners is for grant of NOC by the ITBP i.e. respondent no.2 for their absorption in the Central Bureau of Investigation (CBI in short) respondent no.4.
3. The facts are not disputed in as much as the petitioners who were appointed as Constables/GD in ITBP had on September 03, 2012 went on deputation to the CBI for a period of three years.
4. The petitioners continued to work in CBI on the basis of extensions granted to them till October 10, 2018 i.e. till the 6th year of deputation.
5. On July 20, 2017, the respondents issued notice, whereby information was sought from the eligible personnel on deputation with CBI to be considered for permanent absorption in CBI. It is the case of the petitioners that they being eligible for absorption had applied for the absorption as Constables and pursuant thereto, they were called for Personal Assessment before the Committee constituted by the Director, CBI.
6. Pursuant to the assessment by the Committee, the respondents issued a letter dated October 18, 2017 which contained the name of the petitioners



to be absorbed in CBI. The CBI issued letter dated November 22, 2017 demanding the Medical Category Certificate of the petitioners for immediate transmission to the parent cadre of the petitioners.

7. It is noted that, on July 04, 2019, an order was issued by CBI approving the names of the personnel for absorption in CBI, wherein the name of the petitioners were not mentioned, though the names of other similarly placed Constables who had come on deputation in CBI from ITBP were depicted.

8. On September 16, 2019, the CBI issued another letter enclosing the requisite Medical Category Certificates of the petitioners for the purpose of grant of NOC from the ITBP for absorption in CBI.

9. It is also noted that, on October 04, 2019, ITBP held the petitioners to be eligible for permanent absorption in CBI subject to approval/ concurrence from the DG, in consultation with MHA. It transpires that vide letter dated November 05, 2019, the Competent Authority denied the NOC for absorption of the petitioners.

10. Accordingly, CBI issued letter dated November 28, 2019, repatriating the petitioners to their parent organisation. In fact orders dated February 21, 2020 and February 29, 2020 were issued relieving the petitioners from duties with a further direction to report to their parent organisation.

11. It is at this stage, that the petitioners had approached this Court by way of this writ petition.

12. When the matter was listed on August 27, 2020, finding no ground for stay, this Court rejected the application.

13. Mr. Chhibber submits that the stay was primarily seeking stay of repatriation of the petitioners to ITBP.



14. We have been informed by Mr. Chhibber that on the rejection of stay in the year 2020 the petitioners have joined their parent organisation.

15. Mr. Chhibber would further submit that the denial of NOC by the ITBP is arbitrary in as much as eight Constables who had come on deputation and had also over stayed in CBI while on deputation have been granted NOC, which has been denied to the petitioners herein, on the ground of over staying the deputation.

16. The ground is not sustainable, as it is the CBI which did not relieve the petitioners for joining their parent organisation ITBP.

17. At this stage, Mr. Kumar who appears for CBI has drawn our attention to the short affidavit filed by the CBI. Paragraph 6 thereof reads as under:-

“6. That, presently the CBI does not intend to absorb the Petitioners, as the tasks being performed by them have been effectively taken over by their replacements. The Petitioners have already completed their tenure of deputation in CBI and have been relieved. The Petitioners have now to join their parent department.”

18. The affidavit states that the petitioners cannot be absorbed as the CBI has taken replacements. There is no dispute nor can it be contested that absorption necessarily entails concurrence of the lending and also the borrowing departments.

19. In this case, the CBI being the borrowing department having expressed itself by way of an affidavit that they have taken replacements which means, they cannot absorb the petitioners, the prayer as sought by the petitioners in this petition for grant of NOC by ITBP, does not survive for consideration.



20. That apart, the petitioners having joined back the ITBP on repatriation in the year 2020 and four years have gone by since then, this petition needs to be rejected on this ground as well.

21. The petition is dismissed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 30, 2024/So..