

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1652/2002

New Delhi this the 30th day of January, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI SHANKAR PRASAD, MEMBER (A)

Shri S.Selvakumar
S/o Shri G.Sridharan
R/o E-85/1, Mohammadpur
New Delhi-110066. Applicant

(By Shri H.K.Gupta, Advocate)

-versus-

1. Union of India
Through Its Secretary
Ministry of Home Affairs
Central Sectt.
North Block, New Delhi.
2. Director
Intelligence Bureau (MHA)
Central Sectt. North Block
New Delhi.
3. Director General, ITBP
Ministry of Home Affairs
Block-2, CGO Complex
Lodhi Road
New Delhi. Respondents

(By Shri S.K.Gupta, Advocate)

O R D E R

Justice V.S.Aggarwal:-

Shri S.Selvakumar, the applicant had been appointed as a Constable in the Indo Tibetan Border Police (ITBP) on 21.1.1988. He was selected and appointed as Security Assistant (Constable) on deputation basis on 21.1.1997 in the Intelligence Bureau. He had continued to work on deputation.

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By virtue of the present application, he seeks to impugn the order whereby he had been repatriated from the Intelligence Bureau to his parent department, Indo Tibetan Border Police and for declaring that the applicant stands absorbed in the Intelligence Bureau on completion of five years of service on deputation.

2. The applicant asserts that as per the Department of Personnel and Training (for short, the DOP&T) instructions, the maximum period of deputation is three years which can be extended by the competent authority upto the total period of five years. After the applicant completed three years, he was never repatriated to his parent department and he was allowed to continue. He contends that once he had ~~been~~ continued for a period of more than five years, he must be deemed to have been permanently absorbed in the Intelligence Bureau. Hence the present application.

3. The application has been contested. An objection has been taken that the provisions of the Administrative Tribunals Act, 1985 do not apply to any member of the naval, military or air forces or of any other armed forces of the Union and, therefore, this Tribunal has no jurisdiction to entertain the present application. It was further

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contended that the applicant was inducted in the Intelligence Bureau on deputation basis in January 1997. As per the policy for absorption formulated by the Ministry of Home Affairs vide Office Memorandum dated 13.1.1992, the following conditions must be fulfilled:-

"(i) the officer should have rendered not less than five years service in the IB on the date on which he is considered for absorption.

(ii) The absorption is to be considered in the rank in which the officer is officiating.

(iii) The officer should have good record of service and aptitude for Intelligence work. He should have at least 10 years left for retirement lest his absorption may remain a pension liability on the Central Government. On absorption, he should be prepared to serve anywhere in India.

(iv) The cases of absorption should be processed six months in advance of the expiry of the deputation period subject to the concurrence of his parent department and willingness of the officer for such absorption. If the officer is not willing to be absorbed, he should be repatriated immediately on expiry of his deputation period.

(v) the number of absorbees should not exceed 12 1/2% of direct recruitment quota in any rank;

(vi) On receipt of the recommendations for absorption, a Screening Committee at IB Hqrs. will scrutinise and assess the suitability of the deputationist officer for absorption on the basis of his ACRs and make recommendations about his fitness or otherwise for absorption for approval of the competent authority. The absorption will be in an officiating capacity."

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It has also been asserted that the Indo Tibetan Border Police had refused to give No Objection Certificate for permanent absorption of the applicant.

4. As is apparent from the nature of the pleadings, the only question that comes up for consideration is as to whether the applicant after having completed 5 years on deputation and having not been repatriated, must be deemed to have been absorbed in the borrowing department, namely the Intelligence Bureau or not? To appreciate the said controversy, we take liberty in referring to certain facts which are not in dispute. Admittedly, the applicant had been sent on deputation on 21.1.1997. After completion of 5 years, the applicant had made a number of representations. Annexure A-7 is one such representation for being considered for permanent absorption in the Intelligence Bureau which reads as under:-

"On deputation from ITBP I joined IB on 21.1.1997 and completing 5 years of service in IB. My case has also been considered and recommended by IB for permanent absorption along with others who were on deputation.

2. It is humbly prayed that my case may kindly be considered sympathetically on compassionate grounds as my wife is under treatment for mental disease and there is nobody else to look after her and our 3-year old daughter."

The matter in question had been examined by the department and No Objection Certificate was claimed

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from the Indo Tibetan Border Police. The said department had refused to give the No Objection Certificate. The letter of 7.12.2001 (Annexure R-5) in this regard reads:-

"Sir,

I am directed to refer to your letter No.25/Estt/G/2000(4)-13893 dated 19.11.2001 and of even No.13784 dated 9.11.2001 regarding NOC for permanent absorption in r/o No.717010205 SI/CM Harish Kr.Sharma No.859930016 SI/CM Dinesh Ch.Joshi and No.880160344 Ct.S.Selvakumar respectively.

2. The above individuals are on deputation with IB since 1993, 1994 & 1997 respectively without concurrence for extension beyond the initial 3 years period from ITBP i.e. parent department. At this stage, it will not be possible to give NOC for permanent absorption and they may be repatriated immediately."

The request had been repeated but the Indo Tibetan Boarder Police had refused to give No Objection Certificate once again by the subsequent letter addressed to the Intelligence Bureau. The instructions for permanent absorption in the Intelligence Bureau issued by the Ministry of Home Affairs dated 13.1.1992 prescribe the procedure that a person who has to be absorbed should have rendered not less than 5 years' service and he should have a good record of service and he should have at least 10 years' service left for retirement. The learned counsel for the applicant strongly relied upon a decision of the Supreme Court in the case of **Rameshwar Prasad v. Managing Director U.P.Rajkiya Nirman Nigam Limited & Ors.**,

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JT 1999 (7) SC 44. In the cited case, Shri Rameshwar Prasad who was an appellant in the Supreme Court had been appointed as Civil Engineer in the U.P. Small Industries Corporation Limited, Kanpur. He was on deputation with the respondents ~~in the Supreme Court~~. He continued to work on deputation for more than 5 years. He had shown his willingness to be absorbed therein. The question for consideration before the Supreme Court was as to whether he should be taken to have been permanently absorbed after the period of five years or not. The Supreme Court has reproduced the relevant instructions/rules for absorption of Government servants in Public Undertakings which read as under:-

"4. Time limit for deputation: No Government servant shall ordinarily be permitted to remain on deputation for a period exceeding five years.

Absorption in Undertaking: (1) A Government servant may be permitted to be absorbed in the service of the undertaking in which he is on deputation, if he applies to the Government for his absorption in the Undertaking before the expiry of three years from the date of commencement of his deputation or before the date on which he attains the age of 53 years, whichever be earlier, and the Undertaking concerned also moves the Government for his absorption within such period, and the Government agrees to such absorption in public interest."

Thereupon, the Supreme Court agreed with the proposition that an employee who is on deputation

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has no right to be absorbed in the service where he is working on deputation and held:-

"14. We agree with the learned Counsel for the Respondent No.1 and make it clear that an employee who is on deputation has no right to be absorbed in the service where he is working on deputation. However, in some cases, it may depend upon statutory rules to the contrary. If rules provide for absorption of employees on deputation then such employee has a right to be considered for absorption in accordance with the said rules. As quoted above, Rule 16(3) of the Recruitment Rules of the Nigam and Rule 5 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 provides for absorption of an employee who are on deputation".

Ultimately it was held that the respondents cannot act arbitrarily by picking and choosing the deputationists for absorption and taking note of the relevant rules of absorption, the findings were:-

"17. In our view, it is true that whether the deputationists should be absorbed in service nor not is a policy matter, but at the same time, once the policy is accepted and the rules are framed for such absorption, before rejecting the application, there must be justifiable reasons. Respondent No.1 cannot act arbitrarily by picking and choosing the deputationists for absorption. The power of absorption, no doubt, is discretionary but is coupled with the duty not to act arbitrarily, or at whim or caprice of any individual. In the present case, as stated earlier, the General Manager (N.E.Z) specifically pointed out as early as in 1988 that appellant's service record was excellant; he was useful in service and appropriate order of his absorption may be passed. There is nothing on record to the contrary to indicate that for any reason whatsoever, he was not required or fit to

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be absorbed or the power under Rule 5(1) of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 was not required to be exercised in his favour. Interim order dated 17.7.1991 passed by the High Court could not be applicable in case of appellant because his case was considered for absorption in the year 1988. Further on completion of five years on 19.11.1990 he could not have ordinarily been continued on deputation in the service of Nigam. It is apparent that he was absorbed from 19.11.90 because from that date his deputation allowance was also discontinued. If he was to be continued on deputation, there was no reason for payment of deputation allowance. So on the basis of statutory rules as well as the policy, appellant stand absorbed in the service of Nigam."

5. The proposition of law is well-settled that a judgement would be a binding precedent only if it lays down a particular principle of law. It is always the ratio deci dendi of the judgement which binds. If the facts are not similar, in that event, the decision will not be a binding precedent.

6. In the case of Rameshwar Prasad (supra), the Supreme Court was considering the question whether a person of one Public Undertaking going to another Public Undertaking on deputation where there were separate recruitment rules which have been reproduced above has a right to be absorbed after five years. It was held in the peculiar facts, therefore, that he must be deemed to have been absorbed particularly keeping in view the arbitrariness. That is not so in the present case. The case of Rameshwar Prasad (supra) is, therefore, clearly distinguishable.

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7. We take liberty in referring to a decision of the Supreme Court in the case of **Ratilal B.Soni and Ors. v. State of Gujarat and Ors.**, 1990(Supp) SCC 243. Therein the same principle has been again agitated and the Supreme Court held that the persons on deputation could be reverted to their parent cadre at any time and they do not get any right to be absorbed on deputation post. The same question had been considered by a Bench of this Tribunal in the case of **Shri Sachinder Kumar vs. Union of India and Anr.** in OA No.977/2002 decided on 11.4.2002. Therein also the person concerned was working in the Border Security Force and wanted that he should be deemed to have been absorbed in the Intelligence Bureau. While rejecting such a contention, it was held:-

" Applicant who had initially joined the Border Security Force, by an order passed on 28.2.1997 had been sent on deputation to the Intelligence Bureau, New Delhi. By the impugned order passed on 20.11.2001 at Annexure A-1, applicant has been repatriated to his parent department. Aforesaid order of repatriation is sought to be impugned by the applicant in the present OA. It is pertinent to note that though the Intelligence Bureau, respondent No.2 herein being the borrowing department by its communication of 20.6.2001 at Annexure A-3 had sought consent of the aforesaid parent department for applicant's absorption, no consent thereon has been issued. In the circumstances, we do not find that the aforesaid order of repatriation at Annexure A-1 can be successfully assailed. Present OA, in the circumstances, we find is devoid of merit and the same is accordingly dismissed in limine."

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Identical is the position herein. The applicant indeed has no right to claim that he must be absorbed, the moment he has completed 5 years on deputation.

8. In fact, the instructions upon which the applicant relies and which have been reproduced above, even put an end to his challenge. The instructions clearly reveal that the concerned person who seeks to be absorbed permanently must have the concurrence of his parent department. It is well-known that when a person has to be absorbed permanently, there has to be a tripartite agreement, namely the lending department, the ~~borrowing~~ parent department and the consent of the concerned person. Herein the lending department, as referred to above, has refused to grant the No Objection Certificate to the permanent absorption of the applicant. The instructions are clear and unambiguous. Once the lending department is not willing, indeed, the applicant cannot insist that he should be permanently absorbed as such.

9. Resultantly, the application being without merit must fail and is accordingly dismissed. No costs.

Shankar Prasad

(Shankar Prasad)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

/sns/