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Central Administrative Tribunal
Principal Bench

O.A. 1225/98

New Delhi, this the 8th day of October, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

Subhash Chandra
S/o Shri Sat Pal Singh,
R/o No. 288, 'M' Block,
Raj Nagar,
Ghaziabad.

Applicant.

By Advocate Shri H.K. Gupta.

Versus

1. Union of India, through
Director, IB (MHA),
North Block, New Delhi.
2. DG, CRPF, Block No. 1,
CGO Complex, Lodhi Road,
New Delhi.

Respondents.

By Advocate Shri N.K. Aggarwal.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by Respondent 1 dated 10.6.1998 repatriating him to his parent department i.e. DG, CRPF, Headquarters and directing him to report for duty there.

2. The applicant joined Respondent 1 i.e. Intelligence Bureau as Security Assistant (Constable) on deputation from Respondent 2 i.e. DG, CRPF, New Delhi on 29.1.1990. He was promoted as Junior Intelligence Officer (JIO II) by Respondent 1 w.e.f. 25.7.1995. According to him, his work has been very satisfactory and Respondent 1 had twice asked his willingness for permanent absorption which he gave in writing latest being on 19.3.1998. The applicant,

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therefore, claims that he had reasonable expectation that he would be absorbed in I.B. when the impugned repatriation order was served on him.

3. The applicant has assailed the impugned order on a number of grounds. He has submitted that the impugned repatriation smacks of vengeance and mala fide intention on the part of Respondent 1 as according to him it relates to an incident which occurred between 10.10.1993 and 10.6.1998 which he has narrated in the O.A. He states that he had already tendered his explanation and regrets for the incident with one Shri Nand Lal, Security Assistant. He has referred to the earlier correspondence of Respondent 1 recommending him suitable for absorption and, therefore, he submits that there was no reason why he should not be absorbed by them. He has submitted that while on deputation he has been promoted as JIO-II by Respondent 1 w.e.f. 25.7.1995. In the circumstances, he has stated that transfer whether on deputation or otherwise from JIO-II to the lower post of Constable without complying with the provisions of Article 311(2) is against the law. He has also stated that during his deputation with Respondent 1, his juniors have been promoted by Respondent 2 - CRPF without considering him. As he has got promotion in IB, he has not made any representation against his non-promotion in his parent department. In the circumstances, he has prayed that a direction may be given that he should be absorbed with Respondent 1. Learned counsel for the applicant had prayed for stay of the impugned order on 23.6.1998 which was, however, not granted by the Tribunal and the respondents were directed to file their reply.

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4. Shri H.K. Gupta, learned counsel for the applicant and Shri N.K. Aggarwal, learned counsel for the respondents, have been heard.

5. The main issue in this case is whether the applicant who was on deputation from Respondent 2 to Respondent 1 as Security Assistant (Constable) since 29.1.1990 has a right to claim absorption with them. The applicant has submitted that he has twice given his willingness for permanent absorption in Intelligence Bureau (IB) in the prescribed proforma but has been served the impugned letter dated 10.6.1998 relieving him from IB and repatriating him with effect from the same date to his parent department i.e. CRPF Headquarters, New Delhi.

6. When the case came up for hearing on 9.9.1998, Shri H.K. Gupta, learned counsel for the applicant, had opposed the grant of any further time to the respondents to file their reply. In the circumstances, we had heard Shri N.K. Aggarwal, learned counsel for the respondents. Both the learned counsel have submitted the list of cases on which they rely upon, which are placed on record.

7. We have carefully considered the submissions made by the learned counsel for the parties and the judgements relied upon by them. It is relevant to point out that along with the list of cases submitted on behalf of the applicant, Shri H.K. Gupta, learned counsel, has also submitted an O.M. dated 13.1.1992 issued by the Ministry of Home Affairs, IB, on the subject of absorption in non-gazetted executive ranks and the instructions/guidelines

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relating thereto. However, neither this O.M. has been referred to in the pleadings nor in the submissions made by the learned counsel for the applicant and hence, we do not consider it necessary to refer to the provisions of the O.M.

8. It is settled law that a person who is on deputation does not have a right to be absorbed in that department and can be repatriated to the parent department especially as in the present case after the period of deputation is over. In **Ratilal B. Soni & Ors. Vs. State of Gujarat and Ors.** (1990 (Supp) SCC 243), the Supreme Court has held as follows:

"The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post. We see no infirmity in the judgment of the High Court and as such we dismiss the appeal. There shall be no order as to costs".

9. In another case, **State of Punjab & Ors. Vs. Inder Singh & Ors.** (1997 (8) SCC 372), the Apex Court after referring to the judgement in **Ratilal B. Soni's case** (supra) held as follows:

.....He went on deputation as Circle Inspector in the State Service and was later reverted back to his parent cadre at any time and he did not get any right to be absorbed on the deputation post. In Puranjit Singh Vs. Union Territory of Chandigarh (1994 Supp (3) SCC

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471) it was held that when a deputationist was repatriated, he could not claim promotions in the parent department on the basis of officiation in a higher post in the borrowing organisation.

"The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre and outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation. The law on deputation and repatriation is quite settled as we have also seen in various judgements which we have referred to above. There is no escape for the respondents now to go

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back to their parent departments and working there as Constables or Head Constables as the case may be".

(Emphasis added)

10. The aforesaid judgements of the Supreme Court have laid down the law on the rights of deputationists. Applying the principles laid down in these judgements, we are unable to hold that the applicant has a right for absorption in I.B. as claimed or that the impugned order to repatriate him to his parent department is illegal. (See also the judgement of the Supreme Court in **State of M.P. Vs. Ashok Deshmukh** (1988 SCC (3) 503).

11. The judgements relied upon by the respondents, referred to above, have also been relied by the Tribunal in **B.L. Gautam & Ors. Vs. Union of India & Ors.** (O.A. 1253/97 with connected cases). In this case, the Tribunal had held that the applicants have no right to continue in Army Postal Service (APS) or to be absorbed there and the applications were accordingly dismissed on 19.8.1997. On appeal filed by the applicants, the ^{Delhi} High Court in CWP 3434/97 by order dated 26.8.1997 held that there is no ground made out to entertain the petition for challenging the order passed by the Tribunal, in which it has been held as follows:

"the applicants were merely on deputation from the Department of Posts to the APS even though they might have been in that position for a considerable length of time but have not been absorbed in APS. As a deputationist, therefore,

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the applicants have no vested right to continue in the borrowing department or to be absorbed there and so long their lien continues with the respondents they could be repatriated. (See judgements of the Supreme Court in State of MP Vs. Ashok Deshmukh and Ors. (1988 SCC (3) - 503), Rati Lal B. Soni Vs. State of Gujarat (AIR 1990 SC 1132), and the decision of the Delhi High Court in Union of India Vs. Mathura Dutt in CWS 17721, 1889 and 1895/97 decided on 30.5.1997).

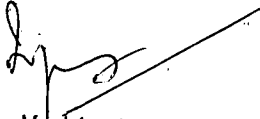
12. The allegations of vengeance and mala fide made by the applicant are general in nature and it is again settled law that such allegations are more easily made but not proved as in the present case. (See Royappa Vs. State of Tamil Nadu AIR 1974 SC 555).
We do not find any substance in these allegations so as to render the impugned repatriation order illegal.


13. In another recent judgement of the Tribunal in Raj Bir Singh Vs. UOI & Ors. (O.A. 985/98 with O.A. 746/98), which was decided in July, 1998 on a similar issue, the Tribunal has rejected the case of Shri Fauzdar (OA 746/98) who was claiming a right for absorption as a deputationist in C.B.I. In this case, it was also urged that because of the action of the respondents in taking the options and recommending the case of the applicant, they cannot refuse to absorb him as they are estopped by their own conduct and on the basis of "legitimate expectation". These arguments were not accepted by the Tribunal. This judgement has also followed the judgements of the Supreme Court, referred to above as well as the judgement

of the Delhi High Court in Union of India Vs. Mathura Dutt (CWP 1771/97). We find that the facts in the present case are fully covered and indistinguishable from the facts of the cases dealt with by the Supreme Court, Delhi High Court and the Tribunal, referred to above.

14. On the other hand, we find that the judgements relied upon by the applicant, for example, K.H. Phadnis Vs. State of Maharashtra (AIR 1971 SC 998) that the Government has a right to revert from a temporary post to a substantive post but the matter has to be reviewed as one of substance and all the relevant factors to be considered, including whether the order amounts to reduction in rank by way of punishment, is not directly applicable to the facts in the present case. The applicant has also referred to the judgement of the Supreme Court in Ratilal B. Soni's case (supra) and has submitted that there are exceptions to the law laid down there, by the doctrine of promissory estoppel, whether it amounts to reduction in rank, that the order is arbitrary and discriminatory and whether the order has been passed without giving an opportunity to the applicant. In the light of the facts and circumstances of the case, we are of the considered view that these submissions have already been dealt with in detail in the aforesaid judgements of the Supreme Court, Delhi High Court and the Tribunal and rejected, which are fully binding on us. Consequently, the other cases relied upon by the applicant which are also not directly on the rights of deputationists for absorption which is the main issue before us, are not relevant to the facts of the present case.

15. In the result, we find no merit in this application to justify any interference in the matter. O.A. is accordingly dismissed. No order as to costs.


(K. Muthukumar)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'