

8

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
O.A. No. 440/98

New Delhi: this the 2nd JUNE, 1998.
HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Mahavir Singh,
S/o Shri Ram Dhan,
ASI/CBI/ACU.VIII.AC.III,
Central Bureau of Investigation,
Govt. of India,
Block 3,
CGO Complex,
Lodi Road,
New Delhi

.....Applicant.

(By Advocate: Shri D.K. Gang)

Versus

1. Union of India
through the Secretary,
Department of Personnel and Training,
North Block,
Central Secretariat,
New Delhi.
2. The Director,
CBI,
Block 3,
CGO Complex,
Lodi Road,
New Delhi
3. Administrative Officer(E/CBI)
CBI,
Block 3,
CGO Complex,
Lodi Road,
New Delhi

.....Respondents.

(By Advocate: Shri KCD Gangwani)

JUDGMENT

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns respondents' orders
(Annexure-8)
dated 19.2.98 and seeks a direction to respondents
to absorb him as ASI in CBI under the CBI (Group
C & D Executive Posts) Recruitment Rules, 1987
as has been done in the case of some of his colleagues

2. Applicant who belongs to U.P. Police and
was posted in Bijnor Distt. U.P. came on deputation
to CBI as Head Constable on 5.9.89 for a period

of 3 years with prior approval of DG Police Up (Annexure-H). During this period he was promoted as ASI in CBI. Before completion of the 3 years period applicant's willingness to continue in CBI was sought for vide letter dated 28.5.92 (Annexure-I) and applicant submitted his willingness to continue for a further period of 2 years beyond 5.9.92 vide letter dated 9.6.92 (Annexure-J) and upon CBI's request to DG Police Up to consent to applicant's retention for a further period of two years beyond 5.9.92 vide letter dated 26.10.92 (Annexure-K), DG Police Up also gave his consent on 28.11.92. Meanwhile CBI invited applications for permanent absorption/ substantive appointment from all those ASIs who were on deputation from deptt., States in response to which applicant applied on 13.10.93 (Annexure-L) in which he declared his willingness to abide by all the terms and conditions which would be applicable to him in case he was absorbed in CBI (Annexure-N). DIG CBI recommended applicant's case for absorption vide letter dated 13.11.93 (Annexure-O), and by letter dated 18.2.94 (Annexure-Q) applicant's integrity certificate and pay fixation chart were also sent.

3. A DPC Selection Board was constituted to consider the cases of all those persons who were on deputation and who had requested for their permanent absorption in CBI. Admittedly applicant was found fit for absorption in CBI by that Selection Board, after which CBI wrote to DG Police Up on 24.1.95 (Annexure-R) for its approval for applicant's absorption in CBI, which was followed up by reminders on 21.3.95; 28.3.95 and 7.4.95.

Eventually the DG Police UP communicated his approval vide letter dated 10.4.95 (Annexure-V) but mentioned therein that concurrence of the UP State Govt. would also be required and the matter of applicant's absorption in CBI. Thereupon CBI sent several letters/reminders to UP State Govt. to send clearance/approval for applicant's absorption, the last being letter dated 23.6.97 (Annexure-W). Eventually UP State Govt. communicated its concurrence on 11.10.97 (Annexure-X).

4. Meanwhile as U.P. State Govt.'s concurrence was not received, CBI by letter dated 8.10.97 (Annexure-RII) ordered repatriation of applicant to his parent organisation by the end of the academic year. On 19.2.98 the impugned order was issued directing applicant's repatriation w.e.f. 27.2.98. Meanwhile a request was made by Supdt. of Police, CBI in letter dated 2.3.98 (Annexure-A3) for deferment of applicant's repatriation till 30.4.98 as he was assisting in investigation of several important cases. On 7.4.98 respondents issued orders (copy attached to affidavit dated 21.4.98) repatriating applicant to his parent department i.e. U.P. Police and subsequently by order dated 22.4.98 (copy taken on record) CBI has sanctioned applicant 47 days' earned leave w.e.f. 13.4.98 to 29.5.98 in continuation of their order dated 7.4.98 with the direction that on expiry of the leave applicant will report to Supdt. of Police, Bijnor, Distt. U.P.

5. We have heard applicant's counsel Shri Garg and respondents' counsel Shri KCD Gangwani.

6. Shri Gangwani has emphasised, and we fully agree with him that deputationists do not have any inherent right of absorption and the discretion to absorb rests solely with the CBI. In the present case, we however, notice that respondents themselves were keen to absorb applicant and he possesses all the necessary qualifications and has cleared all the necessary tests conducted by respondents for absorption. In fact, respondents themselves were pressing applicant's parent organisation hard for their 'no objection' to applicant's absorption, and it is only because of the delay of the U.P. State Govt. in communicating their 'no objection' (which was eventually issued on 11.10.97) that respondents issued their letter dated 8.10.97 directing applicant to be repatriated at the end of that academic year. During hearing we repeatedly asked Shri Gangwani whether there were any reasons other than the late receipt of U.P. State Govt's 'no objection', which led CBI to decide to repatriate applicant back to his parent organisation. Shri Gangwani stated that to the best of his knowledge there were no other reasons.

7. In the present case we notice that applicant is himself keen on absorption in CBI, is fully qualified for such absorption, and has cleared the necessary tests for such absorption. CBI themselves were keen for his absorption as evidenced by the service of letter sent by them

to DG Police & U.P. State Govt. to communicate 'no objection' to applicant's absorption. That being the position merely because of the delay by the U.P. State Govt. in communicating their 'no objection' over which neither applicant nor respondents had any control, we do not consider it fair or just that applicant should be denied consideration for absorption in CBI.

8. Respondents in their short reply have referred to para 3 of their Circular dated 3.12.97 which lays down that ASIs who have completed deputation period of 5 years and are not considered suitable for absorption (emphasis supplied) should be repatriated in a phased manner and they have invoked this circular to support their action, but this circular may not be applicable in applicants' case as it is not a case when he was not considered suitable for absorption. In this connection, we notice from respondents' reply that they themselves are willing to consider applicant's retention up to 30.4.98.

9. In the result the impugned order dated 19.2.98 is quashed and set aside. Respondents are directed to consider applicant's case for permanent absorption in CBI in the light of the facts and circumstances noticed above and pass a detailed, speaking and reasoned order in accordance with rules and instructions within one month from the date of receipt of a copy of this judgment.

10. The OA is disposed of in terms of para 9

(B)

- 6 -

above. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER(J)

Adige
(S. R. ADIGE)
VICE CHAIRMAN(A)

/ug/