

CENTRAL ADMINISTRATIVE TRIBUNAL. PRINCIPAL BENCH

OA No.779/98 with OA 795/98

New Delhi. this 5th April. 1999

HON'BLE SHRI T.M. BHAT. MEMBER (J)
HON'BLE SHRI S.P. BISWAS. MEMBER(A)

28

OA 779/98

1. Patel Prafulla Bhai
2. Rahesg Kumar Ghai
3. Om Prakash
4. Rajbir Singh
5. Ratan singh
6. Ishwari Prasad
7. Ashok Kumar Sharma
8. Pratap Singh
9. Jamun Singh
10. Kamal Singh
11. J.P.Lakhora
12. James Khalkho
13. Mohd. Shahjanhan
14. Kamlesh Kumar
15. Joginder Singh
16. SatishChand Pandey
17. Preet Singh
18. Naresh Kumar
19. Ashok Kumar Singh
20. Kanta Prasad
21. K.S. John
22. Hans Ram Singh
23. Jagdish Prasad
24. Dhyan Singh
25. Shri Bhagwan
26. P.Kerketta
27. Sher Singh
28. Balbir Singh
29. V.D. Sharma
30. Jeet Singh
31. Rakesh Chander
32. M.Mohanam

(Through MA 765/98 in OA 779/98)

1. Suraj Pal Singh
2. Ram Singh
3. Chander Pal Singh
4. Rambir Sharma
5. Tej Ram Sharma
6. Suman Dev
7. Ram Chandra Tyagi
8. Badri Prasad
9. Subhash Chand Sharma
10. Ashpal Singh
11. Jagdish Prasad
12. Ram Prakash Gautam

OA 795/98

1. Sukhbir Singh
2. Sosan Lugun
3. Sukhbir Singh (s/o R.P.Singh)

28

4. Satbir Singh
5. Krishan Kumar Prasad
6. Digambar Singh
7. G.S.Bist
8. Rambhaji Singh
9. Milap Singh ... Applicants
(All working on deputation as
Constables/Head Constables in CBI)

29

(Mrs. Shyamala Pappu, Sr. Counsel alongwith
Shri K.H.R.Pillai and P.K.Roy, Advocates)

versus

Union of India, through

1. Secretary
Deptt. of Personnel & Training
North Block, New Delhi
2. Director
Central Bureau of Investigation
CGO Complex, New Delhi ... Respondents

(By Shri Rajeev Bansal, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

Since both the OAs contain identical background facts, claims for similar reliefs and involve legal issues of same nature, they are being disposed of by a common order.

2. The applicants seek to challenge A-1, A-2 and A-3 orders/circulars dated 28.7.97, 24.3.98 and 31.3.98 respectively issued by the respondents. By A-1, Central Bureau of Investigation (CBI for short) has issued fresh directions regarding permanent absorption of Head Constables/Constables who had been taken on deputation with them earlier. By A-2, respondents have brought out modifications of its earlier order as in A-1 laying down additional yardsticks for the purpose of consideration of absorption/repatriation of deputationists and by A-3, R-1 have issued

2/

directions that all Head Constables/Constables who had joined CBI upto 31.12.90 and who had not been short-listed for absorption, should be repatriated to their parent offices by 15.4.98. 30

3. It may be mentioned that when this case came initially before the Vacation Bench, this Tribunal provided interim relief on 7.4.98 staying implementation of the impugned order dated 31.3.98 by which the applicants were repatriated. The said order was vacated by a Division Bench of this Tribunal on 23.4.98 for reasons recorded in that order. When the applicants approached the Hon'ble High Court, the latter vide its order dated 4.5.98 indicated that "We find no reasons to interfere with the interlocutory order passed by the Tribunal. We, however, hold that the Tribunal will dispose of the main case expeditiously". This is how these two OAs came up for final hearing on an expedited date. It is the case of the applicants that even after the High Court gave orders upholding CBI Director's decision dated 5.12.96, CBI authorities went ahead on their own almost immediately and issued instructions that all those constables who have been relieved in pursuance of their order dated 5.12.96 may be taken back in the CBI on deputation basis.

2
4. Orders at Annexure A-11 (colly) issued in August, 1997 provide re-engagement and taking back of those officials already repatriated. In view of this change in policy by the same respondents.

applicants find that their grievances stand unsettled and have decided to approach this Tribunal to quash the discriminatory method of repatriation. Applicants would also argue that vacancies which have arisen in the roster points for absorption are those which occurred prior to 1990 when the last DPC for absorption was held. As per law declared by the Hon'ble Supreme Court, vacancies which have arisen in a particular year should be filled up by following the rules and procedures obtaining in those years when the vacancies arose. The changed criteria and the qualifications now introduced by circular dated 28.7.97 cannot legally be applied for the vacancies of earlier years. Applicants claim that they have worked for more than 10 years to the entire satisfaction of their superiors, that they have got good ACRs and many of them have already got recommendations from the SPs/DIGs/Joint Directors, and that they are eminently suitable for absorption. It has been further contended by the applicants that changing the policy once again and laying down fresh qualifications giving retrospective effect and disqualifying the applicants on the ground of lack of competence, proficiency etc. without giving them time to acquire the same is an act of malafide on the part of respondents.

5. The applicants challenge the order dated 28.7.97 on grounds of the same being against the provisions of the Recruitment Rules. It is their

grievance that the order dated 24.3.98 laying down different qualifications for two different categories of Constables: (i) by way of deputation and (ii) by direct recruitment in the CBI, is arbitrary and irrational. 32

6. Mrs. Shyamala Pappu, learned senior counsel for the applicants cited the judgements of the Supreme Court in the case of State of Punjab & Ors. Vs. Ram Lubaya Bagga etc. JT 1998 (2) SC 136 and M.P. Oil Extraction Vs. State of M.P. 1997 (7) SCC 592 in support of her submissions that subsequent modifications of original order dated 5.12.96 are arbitrary and discriminatory in nature. She cited judgements of the apex court in the cases of R. Bhat & Ors. Vs. UOI. WP(C) No. 1188/89 decided on 10.4.94. S. Santhanam Vs. State of Karnataka & Ors. JT 1995(2) SC 642 and orders of this Tribunal in the case of Ms. S. Markanda in OA 816/97 decided on 10.3.89, as upheld by the Supreme Court, to advance her contentions that deputationists cannot be repatriated after long years and should be absorbed. She has also cited, in five separate volumes, fairly a large number of case laws viz. (State of Mysore & Anr. Vs. H. Srinivasa Murthy 1976 (1) SCC 817, K. Narayanan & Ors. State of Karnataka & Ors. 1994 SCC (L&S) 392. Bhim Singh Vs. State of Haryana 1981 SCC (L&S) 437. Dev Dutta & Ors. Vs. State of M.P. & Ors. 1991 (supp) 2 SCC 553 and K. Madhavan & Ors. Vs. 1987 SCC 2291) in support of her contentions in respect of absorption in the borrowing

organisation when taken on deputation by "transfer" basis. Similarly, she has come out with judicial pronouncements in the cases of UOI V. Godfrey Philips India Ltd. 1985 (4) SCC 369 and National Building Construction Corpn. Vs. S.Raghunathan & Ors. 1998 (4) SC SCALE to substantiate her claim that the applicants have been assured of absorption by obtaining their consents and therefore they cannot be repatriated. The principles of promissory estoppel come in the way of respondents, if repatriation is resorted to at this stage. It is also the case of the applicants that after deputation of 5 years, when they have been selected and short-listed, their appointments "by transfer" can no more be considered as being on deputation. To buttress her views, the learned senior counsel by way of interpretation of the word "transfer/transfer on deputation" etc. cited again as many as 6 case-laws (Rani Chowdhary V. Lt.Col.Surjit Chowdhary (1982) 2 SCC 596, Sonia Bhatia Vs. State of UP 1981(3) SCC 239, Hira Lal Ratan Lal etc. vs. State of UP (1973) 1 SCC 216, Hira Lal Ratan Lal Vs. STO. S-III AIR 1973 SC 1034, Sulochana Amma Vs. Narayanan Nair AIR 1994 SC 152 and Dhattatraya Govind Mahajan & Ors. V. State of Maharashtra (1977)2 SCC 548) to bring into sharp focus that the applicants' cases do not fall within the orders dated 30.3.98. She drew our attention to the relevant portion of the order which is extracted below:

2
11

33

"All Head Constables/Constables who have joined CBI on deputation or on or before 31.12.90 and have not been short-listed for absorption are relieved"

34

7. As per Mrs. S. Pappu, applicants's cases would not fall within the aforeosaid order because (i) they have not joined CBI on deputation but it is a case of "transfer on deputation" and (ii) they have been short-listed for absorption. List of persons so short-listed containing the names of applicants have been made available also in Vol. II of the written submissions, submitted by the learned senior counsel. We would, however, mention that all these case laws or judicial pronouncements brought out by the learned senior counsel are intended to support cases of applicants' plea for absorption. The basic issue, however, now stands well settled by the High Court ^{of Delhi} in its order dated 30.5.97 when the Union of India approached the High Court against the orders of this Tribunal in OAs 40, 288 and 488/97 decided on 21.3.97. The High Court vide its orders in Cws 1721, 1888 and 1895/97 dated 30.5.97 held that deputationists do not have a legal right for absorption and cannot challenge the orders of repatriation. The High Court also held that "assuming that the respondents (applicants herein) because of the past practice which was in vogue were having even a legitimate expectation that before repatriation they will be duly considered for being absorbed, which case was even not set up by them, but such a legitimate expectation also cannot give rise to any enforceable right seeking direction against the

2
12

appellants (respondents herein) for consideration for absorption. when a policy decision has since been taken as conveyed through the impugned standing order" dated 5.12.96. 25

8. In the light of the law laid down on the subject of absorption/repatiation. learned senior counsel for the applicants in the course of oral submissions limited her reliefs only to the extent of considering the applicants' cases in the background of the order dated 28.7.97. In view of this changed position. we are not required to go into the applicability or otherwise of the long list of citations advanced by the learned senior counsel for the applicants.

9. While opposing the claims of the applicants. Shri Rajeev Bansal. counsel for the respondents argued that CBI circular dated 28.7.97 only prescribes certain guidelines for considering absorption of Head Constables/Constables under the respondents. CBI being the borrowing authority in this case has a right to frame policy guidelines in the interest of the organisation and in this process no statutory rules have been violated by CBI authorities.

10. It has also been submitted by the respondents that the order dated 31.3.98 is not intended to cause any harm to any one of the applicants since none of the enforceable right of the applicants has been infringed upon pursuant to that order. This

2
/

order of repatriation was issued after considering the candidature of all the cases sent to the Head Office for absorption in accordance with the guidelines laid down by Hqrs. of CBI as per OM dated 27.8.97. Learned counsel cited the judgement of the apex court in the case of Rati Lal B. Soni Vs. State of Gujarat AIR 1990 SC 1132 to say that persons on deputation cannot claim absorption or challenge the order of repatriation. 36

11. Realising the position of law on the subject of absorption/repatriation, learned senior counsel for the applicants then made strenuous efforts to build up a case for applicants only on the basis of discrimination by submitting that by change of policy, deputationists like the applicants herein working on the day of the said policy cannot be denied consideration for retention with CBI at par with others, particularly when similarly placed deputationists have been considered and actually absorbed by the CBI.

12. Based on facts and circumstances of these cases and records made available to us, we are required to adjudicate if by means of subsequent modifications of the main policy of 5.12.96, there has been ~~any~~ infringement upon the rights of the applicants for consideration in terms of equality with others, as aforesaid. Developments that took place after 30.5.97 when the Delhi High Court gave

24/11

its order on the issue of absorption/repatriation of deputationists, are worth-mentioning. They are as follows:

37

- (i) A few officials who joined CBI on deputation basis even before 30.12.90 have not been repatriated till now. Cases of V.K.Gantham, M.Chakko, Jagat Ram and Zamal Khan have been cited as examples;
- (ii) Several Head Constables/Constables, about 41 in number, who were repatriated in February, 1997, were taken back in August, 1997, absorbed in March, 1998 and orders issued accordingly in December, 1998 by CBI authorities.
- (iii) 23 CRPF Head Constables/Constables repatriated immediately after 5.12.96 were called back vide Annexure A-IX order dated 31.7.97; similarly 3 ITBP Constables repatriated have been called back on 5.8.97 by Annexure A-E order for the purpose of absorption;
- (iv) Even some of the applicants, about 20 in number, who were respondents in the case before Delhi High Court have been absorbed, even though they lost their cases vide High Court's order dated 30.5.97;
- (v) Order of the respondents dated 31.3.98 does not indicate that the applicants' cases were reconsidered in the light of the new guidelines dated 27.8.97 and rejected. Although the counter-reply dated 18.9.98 mentions in para 6 that "the candidature of the applicants for absorption has been duly considered by the respondents", it does not indicate if the cases were reconsidered in the light of the new guidelines and rejected pursuant to that.

13. Looking at the details in sub-paras (ii) to (iv) under para 12, we are reminded of the orders of the apex court in Prem Devi V. Delhi Admn. 1989 Supp (2) SCC 330 wherein their Lordships directed that other employees identically placed should be

2/1

given the same benefit which would avoid unnecessary litigation. The same situation prevails herein.

38

14. We also find that the applicants were short-listed vide orders dated 22.2.96 for the purpose of assessing their suitability for absorption. Final order of absorption was to be preceded by obtaining "No Objection Certificates" from the respective departments concerned which also came in the case of almost all the applicants herein. Under the new guidelines dated 28.7.97, cases of absorptions are required to be scrutinised through a 3-tier process. Respondents have not cancelled 22.6.96 order, what to speak of indicating reasons for cancelling the same, though they could have done it legally. It is also not clear if the respondents have re-examined applicants' cases in the light of new guidelines and rejected their claims accordingly. Since the aforesaid guidelines were not put on Notice Board for the purpose of information of one and all like the applicants herein, their cases were required to be sent departmentally to SsP (i.e. first level of scrutiny) for the purpose of reconsideration in respect of their suitability. It was necessary to do so because (i) applicants' names were already in the process of absorption when the original policy decision was taken on 5.12.96 and (ii) on reconsideration, a large number of similarly placed

2
p

officials have been recalled and taken back for the purpose of absorption even after the orders of the High Court on 30.5.97. (B9)

15. We are constrained to indicate that A-II guidelines dated 24.3.98, particularly ^{those in} para 1, smacks of pick and choose and back-door entries in the background of the standing order No. 28/96 dated 5.12.96 which mentions "No request for absorption, whatsoever, will be entertained".

16. We may also add that similarly placed officials working in the CBI had also approached the Hyderabad Bench of the Tribunal in OA 410/98. The claim of the applicants therein was rejected by that Bench vide its order dated 31.3.98 on the ground that the applicants have no right to "cling" to the borrowing department. Petitioners therein went in appeal to the High Court of Andhra Pradesh who, in turn, vide order dated 25.6.98 in WP No. 133090/98, upheld the Tribunal's view and rejected applicants' claim therein on the ground that "Mr. Valluru could not also point out any discrimination practised by CBI in either recruitment or absorption as two others alongwith the petitioners, who are also similarly situated as petitioners and who are the deputationists, were interviewed and they were absorbed in the service of CBI for the reason that the said two deputationists possess a pass in SSC." 2

40

17. We find that those petitioners before the High Court of AP who were CRPF officials on deputation with CBI have now approached the apex court mainly on grounds of discrimination. Those petitioners did not relinquish their charges and after hearing SLP No.13048/98 on 7.9.98. the Supreme Court ordered as under:

"Pending further orders. status quo as of today shall be maintained"

Thus. those deputationists based at Hyderabad, though ordered to be relieved, continue with CBI as an interim measure only.

18. In the background of the circumstances. and position of law on the subject. we are in respectful agreement with the views of the Hon'ble High Courts of Delhi and A.P. Applicants have no vested legal rights in respect of their claims for absorption nor they can legally challenge the orders of repatriation. It is seen that the applicants' main plank of present attack is on the basis of discrimination. Mere fact that respondent authority has issued a particular order in the case of another person or persons similarly situated can never be a ground for issuing a writ in favour of the petitioners on the plea of discrimination. In other words. High court/ Tribunal cannot ignore law and well accepted norms governing writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been

2
11

AI

taken. the same must be repeated for others irrespective of the fact that whether such an order or action is contrary to law or otherwise. If one has no legal right, he/she cannot complaint of any discrimination on the premise that something was given undeservedly to similarly placed persons, unless the wrong done has been challenged (see Chandigarh Admn. & Anr. V. Jagjit Singh & Anr. etc. JT 1985 (1) 445). And it is this very "wrong" i.e. discriminatory treatments that have now been challenged in these two OAs by citing evidences and details as mentioned in paras 11 to 15. While we reiterate the orders of High Courts of Delhi and A.P. in respect of applicants' main claim for absorption, but in the background of series of subsequent developments as detailed, in particular, in paras 11 to 14, applicants' claims for reconsideration cannot be denied on principles of natural justice. In respect of our stand on reconsideration, we get a direct support from the judgement of the Supreme Court in the case of Managing Director. APSRTC Vs. S.P. Satyanarayana, 1998 SCC (L&S) 1710 decided on 7.8.98.

19. In the result, we allow these OAs partly with the following directions:

- 2/3
- (i) Applicants shall be allowed to join back and continue with the respondents (CBI) only upto the date their cases are reconsidered at a very high level, particularly by R-1, in the light of the guidelines enunciated by the respondents' order dated 27.8.97:

42

(ii) Applicants shall stand repatriated or allowed to continue with CBI at par with others, depending on the decision to be taken by R-1. This shall be done within a period of three months from the date of receipt of a certified copy of this order.

(iii) Whatever may be the decision of Director/CBI, the same shall be communicated to applicants individually at the appropriate level within the time limit as aforementioned.

(iv) The intervening period i.e. date from which they were released on repatriation till the date decision is taken will be treated as leave of the kind due to them and salary paid accordingly. No action shall be taken in respect of those against whom warrants of arrests have been issued or eviction proceedings for not vacating Government quarters allotted to them have been initiated.

(v) There shall be no order as to costs.

Member (A)

Member (J)

/gtv/-