

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.912/98

New Delhi, this the 28th day of January, 1999.

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Mr. N. Sahu, Member(Admnv)

1. Om Datt.
S/o Shri Om Srichand Yadav.
R/o F-166, Nanak Pura.
New Delhi.
2. Fateh Singh.
S/o Shri Sheo Lal.
R/o 106/15, Sector 1.
Pushp Vihar.
New Delhi.Applicant

(By Advocate Shri Anup Banerjee, proxy for
Mr. Imitiaz Ahmed, Counsel)

-Versus-

1. Director.
Intelligence Bureau (MHA).
New Delhi.
2. D.G. Police, Punjab.
Chandigarh.Respondents

(By Advocates Shri S.K. Gupta and Shri Rajinder
Nischal).

O R D E R

By Hon'ble Mr. N. Sahu, Member (A):

The applicants are aggrieved against the order dated 27.4.98 by the Deputy Director, Intelligence Bureau Headquarters placing the services of both the applicants at the disposal of the D.G. (P), Punjab w.e.f. 30.4.98 (A/N) on the ground that the impugned order discriminated the applicants inasmuch as other similarly placed persons were retained and also on the ground that it violated their legitimate expectations of getting absorbed in the IB. It was submitted that these orders would affect their children's education. Subsequently, MA-1516 and MA-1662 of 1998 were filed by the

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applicants. MA-1516/98 was filed because in the course of hearing the Bench brought to the notice of the applicants the order of the Delhi High Court in CWP-1721/97 wherein the High Court held that a deputationist has no vested right either to continue on deputation or claim to be absorbed. If reverted he has to go back to the parent department. The High Court also held that no part of the rules envisage that either during the deputation period or on the expiry of the term right is conferred upon the deputationist of being absorbed. The High Court cited Standing Order 20/96 which is a bar on absorption except in rare and exceptional cases and, therefore, the plea of legitimate expectations has no basis. In reply to the above ruling of the High Court this MA has been filed. As this MA is inextricably linked up with the main relief sought in the OA, they are being disposed of together.

2. In MA-1662/98 the prayer is for an interim order staying the operation of the impugned order dated 27.4.98 and also for an interim order staying the operation of the memo dated 24.7.98 rejecting the request of the applicants to continue their probation till the disposal of the OA. As the OA itself is being disposed of merits, it is not considered necessary to pass a separate order on this MA.

3. The brief background facts are that the applicants, recruited as Constables in the Punjab Police, joined the IB on deputation on 15.1.85 for a

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period of three years. To take the basic facts of one of the applicants. Shri Om Dutt: the IB promoted him J10 (11) on 24.6.88 and J10-1 w.e.f. 7.2.97. The initial three year deputation period was completed in January, 1988 but yet he was continued. On 8.7.92 his deputation tenure was further extended for a period of five years. On 27.4.98 the respondents notified the applicants' names among five others for repatriation to their parent departments. The main grievance of the applicants is that out of the five candidates so notified three have been absorbed by the IB and both the applicants in this OA are aggrieved of being singled out.

4. The further grievance of the applicants is that the lending organisation did not ask for the repatriation and unlike the rules in the CBI, there is no bar on their absorption in IB. Recruitment Rules also provide for absorption on deputation upto 12-1/2% of the strength of their cadre. Since the promotions given in June, 1988 and February, 1997 were against regular vacancies, made under the statutory rules, they have vested rights to hold the same. It is pointed out that in CWP-1721/97 decided by the Hon'ble High Court of Delhi the officials who took the appeal came on deputation as Constables, remained as Constables and were also repatriated as Constables. According to the applicants the repatriation order is discriminatory and violative of the doctrine of promissory estoppel. Their grievance is that after repatriation in the reduced rank of a Constable they have to take orders from their

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erstwhile juniors in the parent cadre. They cited the decision of the Hon'ble Supreme Court in Naryan Yashwant Yadav vs. Union of India (1995 (4) SCC 470). It has been held in that case that during deputation the official should be deemed to be working in the parent department and considered for promotion when his juniors is promoted even on ad hoc basis. The Punjab Police did not give them corresponding promotions. The applicants can be repatriated only as ASIs according to their claim.

5. The respondent No.2, the Punjab Police had stated that it is ready to take both the applicants back in case they are repatriated and would have taken them back even if repatriation was earlier to this. It is clearly stated in para 4.8 that the IB was informed about the B-1 test and that deputationists are allowed to take that test. It is further stated that DG(P) Punjab had never made any promise to keep them on deputation permanently.

6. Respondent No.1 stated that the applicants applied for absorption in IB only in September, 1997 after they were served with notice dated 5.9.97. Their cases were examined by the competent authority and they were found unsuitable for absorption. Administrative constraints were also cited. The applicants were under notice to be in readiness to move back to their parent department as deputationists are taken on definite terms and conditions for a specified period which can be extended or curtailed. Their absorption depends on

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their suitability and the needs of the borrowing department and it has no relevance to the status of the deputationists in his parent department. The applicants were given advance notice for the repatriation to enable them to prepare for moving out of the IB Headquarters w.e.f. 13.4.98 which was the end of the academic session so that their children might not face any admission problems in the new place of posting. Further the respondents cited the decision of this Bench in its judgement dated 8.4.97 in OA-2465/95 upholding the repatriation to their parent cadre as long as the decision is not vitiated by extraneous considerations. The respondents also cited the decisions of the Hon'ble Supreme Court in Rati Lal Soni vs. State of Guirar (1991 (15) ATC 857) in which it has been held that a deputationist can be reverted to his parent cadre at any time and does not get any right to be absorbed in the deputation post.

7. The right of respondent No.1 to repatriate the applicants cannot be questioned. The applicant does not have any right to continue on deputation or to get absorbed in the cadre of the borrowing department. The decision of the borrowing department to extend or reduce the period of deputation is an administrative decision on the needs of the service and cannot be questioned as long as such a decision is taken bonafide in the administrative interest. Thus we uphold the right of respondents to repatriate the applicants. This Tribunal cannot also question the right of the

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borrowing department to select such of those deputationists for absorption as are considered suitable by them. There is no material before us to hold that such a selection is not based on merit and vitiated by extraneous considerations.

8. The applicant in MA-1516/98 prayed for reliefs granted by the Hon'ble Supreme Court in the case of Narayan Yashwant Yadav vs. Union of India & Others (1995 (4) SCC 470). His prayer was that he should ^{be} deemed to be working in the parent department and considered for promotion when his junior is promoted even on ad hoc basis. This was not done by the Punjab Police. His prayer is that he can be repatriated only as ASI. A mention of notice on this MA was made on 18.8.98 and the respondents are also heard on these MAs. R-2 only mentioned that the applicants did not take the B-1 test. The Hon'ble Supreme Court in Gore's case was considering the case of a deputationist's entitlement to promotion in parent department. In that case the applicant was promoted in the borrowing department with the concurrence of the Public Service Commission and the parent department. Juniors were promoted in the parent department on ad hoc basis. After his repatriation the applicant was promoted prospectively in the parent department on ad hoc basis. The juniors meanwhile, following Narender Chadha's case (1986 (2) SCC 157 were deemed to be appointed from the date of their ad hoc promotion. The applicant, however, was appointed substantively only from the date of his repatriation. The Hon'ble Supreme Court

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held that in such circumstances the applicant should have been deemed to be working in the department during the period of his deputation and should have been confirmed from the date of confirmation of his junior. The Supreme Court further held that the applicant was entitled to even further promotion when such promotion was granted to his junior. We have come across another case of Block Development Officers Association vs. State of Madhya Pradesh (1996 (7) SCC 260) ^{in which} the appellants were employees of the Panchayat and Social Welfare Department of the State of Madhya Pradesh and were sent on deputation as BDOs to the Panchayat and Rural Development department. The reversion of such BDOs to their parent department on commencement of the 1988 recruitment rules was upheld. They alleged that during the period of their deputation persons junior to them in their parent department had been promoted to higher cadres without considering their cases. The Supreme Court directed that appellants be considered for promotion from the dates their juniors were promoted.

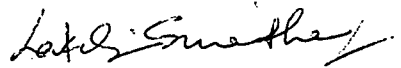
9. Following the above decisions of the Supreme Court we direct that respondent No.2. after allowing the applicants to join after repatriation should consider them for promotion from the date their juniors were promoted and if the applicants did not undergo training essential for their promotion or did not fulfil other eligibility conditions for such promotion, they shall be given necessary training or asked to fulfil such other requirements for promotion

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within a time frame by a communication within four weeks from the date of their joining report and after they became eligible shall be considered for promotion in accordance with the rules by the competent authority from the date their juniors were promoted. It would be in the interest of respondent No.2 to ensure that applicants who rendered service from January, 1985 to April, 1998 for over 13 years cannot obviously continue as Constables permanently when their juniors got promotion and when they themselves were promoted twice in the IB. The respondent No.2 shall keep this in mind that the IB is also a sister Police Organisation and the experience of the applicants in that Organisation cannot be written off as inconsequential and must have adequate and appropriate reflection in their own service career in the parent department. The minimum that respondent No.2 shall do to ensure that after the applicants acquire or conform to necessary eligibility conditions within a reasonable time frame after due notice, their promotion is considered by the competent authority in ^{accordance} ~~accordance~~ with the procedure laid down for this purpose.

10. The O.A. is disposed of as above. No costs.


(N. Sahu)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

'Sanju'