

O.A.No.1932/94

O.A.No.1949/94

New Delhi, this the 16th December, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri S.R. Adige, Member (A)

O.A. 1932/94

1. Shri P.N. Bajaj,  
S/o Shri Gobind Ram Bajaj,  
R/o B-3A/298, Janakpuri,  
New Delhi.
2. Shri D.D. Kathuria,  
s/o Shri Lakhmi Chand Kathurai,  
R/o 1406, Rani Bagh,  
Delhi.

... Applicants

By Advocate: Shri G.R. Matta

Vs.

1. The Chief Secretary to  
the Govt. of National  
Capital Territory of Delhi,  
5, Sham Nath Marg,  
Delhi.
2. The Inspector General of Prisons,  
Central Jail, Tihar,  
New Delhi.

... Respondents

By Advocate: Shri Girish Kathpalia

O.A. NO.1949/94

Shri Ishwar Singh,  
Asstt. Supdt.,  
Central Jail No.2,  
Tihar, New Delhi.

... Applicant

By Advocate: Shri S.C. Jindal

Vs.

1. National Capital Territory  
of Delhi through  
Chief Secretary,  
Govt. of N.C.T. of Delhi,  
5, Shyamnath Marg, New Delhi.

2. Dy. Secretary, Home (General),  
Govt. of N.C.T. of Delhi,  
5, Shyam Nath Marg, New Delhi.
3. Inspector General of Prisons,  
Delhi Central Jail, Tihar,  
New Delhi.
4. Dy. Inspector of General (Prisons),  
Delhi, Central Jail Tihar,  
New Delhi.

... Respondents

By Advocate: Shri Girish Kuthpalia

### JUDGEMENT

Hon'ble Shri J.P. Sharma, Member (J)

Both the applications have almost the same facts and the issue for decision is also the same so these applications are dealt together by a common order.

2. The applicants S/Shri P.N. Bajaj and D.D. Kathuria of O.A. 1932/94 and the applicant Shri Ishwar Singh of O.A. 1949/94 were employed in Delhi Administration as U.D.Cs. Shri P.N. Bajaj was posted in Department of Directorate of Education, Shri D.D. Kathuria in A & R Department and Shri Ishwar Singh in GPF Cell of Delhi Administration. The Delhi Administration Services-II Department issued a letter F.10(2)/84-SII/Part dated 17.4.86 whereby certain persons were interviewed on the basis of ACR dossiers and they were selected on that basis for the post of Asstt. Supdt. (Jail) in the pay scale of Rs. 425-700. Their appointment was to continue till the appointment is made from regular incumbents. The officials so selected would be relieved from the concerned departments and to report for duty to I.G. Prisons on the condition that they will not be entitled for any seniority and other benefits attached to the post.



Alongwith other applicants 21 more persons were also selected by the order dated 19.6.86. The applicants reported for joining in the office of I.G. Prisons and by the order dated 2.7.86 they were appointed as Asstt. Supdt.(Jail), Shri P.N. Bajaj and Shri Ishwar Singh in the office of I.G. Prisons and Shri D.D. Kathuria in the Camp Jail vice Shri Madan Lal relieved.

3. By a subsequent order dated 3.3.87 the applicants were informed that their appointment is purely emergent and adhoc basis and for a period of one year only u.s.f. 19.6.86 or till the posts are filled up by the regular incumbents. It appears that I.G.Prisons, Delhi issued a memo dated 8.12.89 that there has been a proposal under consideration of the Jail Department of Delhi Administration for the absorption of officials/officers who have been working in this department on various posts on deputation basis. If such officers/officials are willing for their absorption in the department they should submit their option in duplicate by 25.12.89 positively. Further the condition was their option shall be considered but merely by furnishing option will not be considered as a right for their absorption as absorption will be based on administrative decision.

4. The grievance of the applicant is that in spite of their options (though denied by the respondents) the applicants have not been absorbed on the posts of Asstt. Supdt. of Jail while six persons have been absorbed who are said to be junior to the applicants.



The six persons absorbed are S/Shri S.S. Dahaiya, S.S. Nagi, Ramesh Sagar, A.S. Rana, I.P. Dhawan, and Shri H.L. Khanna (since expired). It is said that the officers from S.No.3 to 6 above are junior to the applicants. This order of absorption was passed on 31.7.92. However, earlier to this the respondents have passed the order on 30.6.92 whereby Shri P.N. Bajaj and Shri Ishwar Singh were repatriated to their parent department i.e. Delhi Administration w.e.f. 1.7.92. Shri D.D. Kathurda has also made a request on 29.5.92 that he be repatriated to the Delhi Administration. It appears that the terms of deputation of these applicants were extended upto 30.9.74 and by the order dated 26.7.94 Chief Secretary, Delhi Administration giving approval of extension of adhoc appointment directed that this extension upto 30.9.94 is final and no further extension will be granted to these Asstt. Supdts. as they have already ever stayed. In the same order the I.G. Prisons, Central Jail was also requested to send the proposal for appointment of Asstt. Supdts. as already discussed on 19.7.94 in the Chamber of Home Secretary. Aggrieved by this aforesaid order of 26.7.94, the present applicants have filed this application /as said above, and a prayer was made to grant interim relief that the repatriation of the applicants to Delhi Administration be stayed but the ex parte interim relief was not granted for the reasons given in the order dated 26.9.94. .

5. The applicants in both the O.Ss have prayed that a direction be issued to the respondents to absorb the applicants as Asstt. Supdt. (Jail) cadre in the

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scale of Rs. 1400-2300 from the date any officer junior to them was so absorbed and on the same terms and conditions contained in the order dated 31.7.92 with all consequential benefits.

6. The respondents contested the applications by filing the counter separately in both the O.As. but taking almost the same plea. It is stated that the application is hopelessly barred by time as the order of repatriation in the case of the applicants had already been passed on 30.6.92 and subsequently the applicants have accepted the extension of the term of their deputation which continued upto 30.9.94. The applicants, therefore, cannot now challenge the order of repatriation dated 30.6.92. In fact the applicants in this application for the reasons best known to them have also not challenged this order for repatriation dated 30.6.92. We have considered this aspect and we find that the applicants were ordered to be repatriated by the Chief Secretary, Delhi Administration to their parent department in Delhi Administration on 30.6.92. Even if a time of representation is set apart for the applicants then they should have filed applications in the year 1993 itself but the present application has been filed in September, 1994 i.e. 2 years and 3 months thereafter. There is no explanation of delay on the part of the applicants in both the O.As. Under section 21 of the A.T. Act, 1985, the application u/s 19 should have been filed within one year from the date of the order and in case a representation is made waiting for the result

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of the representation for period of six months and thereafter within one year to file the application. The law has been laid down in the case of S.S. Rathore Vs. State of M.P. AIR 1990 S.C. 10. Thus, both the present applications are barred by time.

7. We have, however, heard the learned counsel for the parties on merits also. A perusal of the Recruitment Rules shows that the post of Asstt. Supdt.(Jail) is a group 'C' post and 25% of the vacancies are to be filled by promotion of Head Warders having 5 years service in the grade and 75% by direct recruitment failing which by transfer on deputation. For transfer on deputation, the officials holding analogous or similar posts in the prison departments of other States and the period of deputation shall be 3 years. Thus, the Recruitment Rules show that the applicants who were working as UDCs were not even eligible for being posted as Asstt. Supdt.(Jail) by transfer on deputation. They were also not in the scale of Rs. 425-700 but they were in the scale of Rs. 330-560. Thus, we find that the applicants could not be considered either on the basis of transfer on deputation and that they have not been selected by direct recruitment.

8. Since there was a dearth of eligible persons as one time exception as written also in the order dated 19.6.86 certain persons were interviewed on the basis of ACR dossiers and they were appointed to

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the post only as a step gap arrangement without any benefit of seniority and other benefits attached to the post.

By a subsequent order dated 3.3.87 their period was extended only for one year. However, it appears that I.G. Prisons has taken some decision in 1989 either on the basis of performance of the deputed staff or otherwise issued a memo on 8.12.89 for absorption of certain officials/officers working in the Jail Department on deputation basis for absorption on the

cadre posts in the Jail department itself. All the 3 applicants, <sup>Ishawar Singh applicant</sup> earlier to issue of this order and both the other applicants Shri P.N. Bajaj and Shri D.D.

Kathuria subsequently gave in writing that they do not want to <sup>be</sup> absorbed in the Jail department and requested for repatriation to the parent department in the Delhi Administration. The applicants therefore cannot as of right say that they have been discriminated as six persons have been absorbed who also came by way of appointment on deputation along with them because all the six persons have given categorically their option of absorption as Asstt. Supdt. in the Jail department. Secondly we find that the memo dated 8.12.89 clearly shows that merely furnishing of option would not amount to that the persons giving an option shall be absorbed on the post in Jail department. It is stated that there will be administrative decision with regard to those persons who opted for absorption. The respondents have taken their decision and also considered the subsequent representations made by the applicants and they were not retained in the Jail department and the order of absorption was not passed in their favour. Thus, the case of the applicant

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does not suffer from an arbitrary or unjustified act on the part of the administration. Firstly the parent department as well as the Jail department has to consider the absorption of those who have come on deputation. When it has been agreed that the applicants be repatriated and they have also at one point of time expressed their written submission for repatriation to the parent department i.e. Delhi Administration, they cannot claim in any manner whatsoever equal treatment with those who have given categorical unambiguous option for absorption in Jail Department.

9. The applicants also legally have no right. A similar case came before the Hon'ble Supreme Court in the case of Ratilal B. Soni V. State of Gujarat reported in AIR 1990 S.C. 1132. There the Hon'ble Supreme Court considered the case of an employee who had come on deputation. It is held by the Hon'ble Supreme Court that the employee on deputation do not get any right to be absorbed on deputation post and he can be reverted at any time. The relevant facts of the case are reported in para 2 which are quoted below:

"The appellants were originally appointed as Talatis in the Revenue Department of the State of Gujarat. Under the Gujarat Panchayat Act (hereinafter called 'the Act') which came into force with effect from April 1, 1963, Panchayat Service was constituted and under the Act all the posts of Talatis alongwith the incumbents stood transferred to the Panchayat Service. In that date there was a cadre of Circle Inspectors in the State Service which was bifurcated and 50% of the posts continued in the State Service and the remaining 50% were transferred to the Panchayat Service. The appellants were sent on deputation as Circle Inspectors in the State Cadre. In January 1986 qualified officials became available for promotion to the post of Circle Inspectors in the State cadre and as such the appellants were reverted to their parent cadre of Talatis in the Panchayat service. The appellants challenged the reversion by way of writ petition in the



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Gujarat High Court primarily on the ground that their options for absorption in the State service were pending with the State Government which the State was bound to decide in their favour. The High Court dismissed the writ petition holding that there was nothing on the record to show that the appellants gave any option to be absorbed in the State cadre. The High Court also found that they, being on deputation, have no legal right to be absorbed in the State Service. This appeal by special leave is against the judgement of the High Court."

10. The learned counsel for the applicants also argued that the respondents be directed to dispose of the representation of the applicants. Firstly, the order of repatriation is dated 30.6.92 and secondly the applicants have already been repatriated and joined their parent department i.e. Delhi Administration. Thirdly the applicants cannot be inducted into the service of Asstt. Supdt. as there is no provision under the recruitment rules to appoint UDCs on the basis of direct recruitment. It was only one time exception that Delhi Administration as a stop gap arrangement on the basis of ACR selected about 34 persons to discharge the duties of Asstt. Supdt. and were paid in the same grade with condition that they will not get any benefit of seniority or other benefits of the service. Subsequently on a decision arrived at between I.G. Prisons and Delhi Administration in 1989 a choice was given though dehors the rules for absorbing the officers/officials on deputation leaving the matter entirely on the discretion of the administration. After that the order was passed on 30.6.92 and six persons were absorbed while the applicants were ordered to be repatriated. They have accepted their deputation after that on adhoc basis till 30.9.94. The matter is

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now totally closed and there is no question of further representation. Both the applications are therefore devoid of merit and are dismissed leaving the parties to bear their own cost.

(S.R. ADIGE)  
Member(A)

(J.P. SHARMA)  
Member(B)

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Attested

K. S. S. S.  
16/12/94  
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