

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 1398/2000
T.A No.

Date of Decision 14.9.2001

Sh. V. B. S. Nair

..Petitioner

Sh. G. S. Channan

..Advocate for the petitioner(s)

Versus

UOI & Ors.

..Respondent

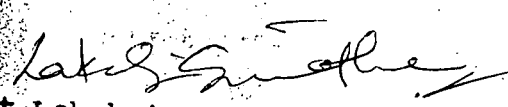
Sh. R. N. Singh, Learned
proxy counsel

..Advocate for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

Central Administrative Tribunal
Principal Bench

O.A. 1398/2000

New Delhi this the 14th day of September, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

V.R.S. Nair, JIO II (M/T),
S/o Shri K.V. Pillai,
1102/31, B.K.S. Marg,
New Delhi-110001. Applicant.

(By Advocate Shri G.S. Chaman)

Versus

1. Union of India, through
Director, Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India, North Block,
Central Sectt, New Delhi.
2. Director General, Border Security Force,
CGO Complex, Lodhi Road,
New Delhi. Respondents.

(By Advocate Shri R.N. Singh, learned proxy counsel)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

In this application, the applicant is aggrieved by the action taken by Respondent 1 in passing the order dated 19.7.2000. By this order, his services as Constable (Driver), who was on deputation to Intelligence Bureau as JIO-II (MT) - Respondent 1, were replaced at the disposal of Director General, Border Security Force (BSF) - Respondent 2.

2. We have heard Shri G.S. Chaman, learned counsel and Shri R.N. Singh, learned proxy counsel for the respondents and perused the documents on record and, in particular, the relevant Rules applicable to the facts of this case which have been annexed by the respondents.

3. The brief relevant facts of the case are that the applicant who was working with Respondent 2, joined

Respondent 1 as Security Assistant (SA) (MT) on deputation on 16.5.1985. Both the learned counsel have submitted that the period of deputation was initially for a period of three years which could have been extended with the consent of the competent authority, that is DOP&T for a further period of maximum two years, that is for a total period of deputation for five years. It is not disputed by the respondents that even till the date of the interim order passed by the Tribunal on 27.7.2000, the applicant had continued serving with them as JIO-II (MT). 23

4. The main claim of the learned counsel for the applicant is that in the circumstances of the case, as the applicant had continued on deputation for a period well over five years, he should be deemed to have been absorbed as JIO-II (MT). This has been stoutly disputed by Shri R.N. Singh, learned proxy counsel, on the ground that the Rules framed by Respondent 1 do not have any provision for absorption of deputationists who have come in the posts of erstwhile SA (MT), now redesignated as JIO-II (MT). Learned counsel for the applicant relies on the judgement of the Hon'ble Supreme Court in Rameshwar Prasad Vs. M.D. Rajkiya Nirman Nigam Ltd. (JT 1997 (7) SC 44). Learned proxy counsel for the respondents has distinguished this case, stating that, as mentioned above, since the Intelligence Bureau - Respondent 1 does not have any rules for absorption, unlike the position in Rajkiya Nirman Nigam Ltd. dealt with in Rameshwar Prasad's case (supra), that case will not be applicable to the facts in the present case. Learned proxy counsel for the respondents has relied on another judgement of the Supreme Court in State of Punjab Vs. Inder Singh & Ors. (1997 (8) SCC 372).

YSL

According to him, following the judgement in Inder Singh's case (supra), merely because the applicant has been continued on deputation wrongly for a total period of 15 or more years, when the same could not have been continued beyond 5 years under the Rules, will not give any right to the applicant for absorption. His contention, therefore, is that unless the borrowing and the lending Departments agree for absorption of the deputationists, it cannot be done. He has also referred to the relevant Rules which have been annexed to support his contention that under the Intelligence Bureau (Motor Transport Cadre) Recruitment Rules, 1984, as amended by Amendment Rules of 1988, the applicant who was only on deputation to Respondent 1, cannot be considered as absorbed in that service. Learned counsel for the applicant has, however, contended that other similarly situated persons, i.e. JIOs-II have been absorbed by the respondents. On the other hand, learned counsel for the respondents has contended that Respondent 1 has absorbed on transfer of service basis other persons in the rank of JIO-I and has, therefore, contended that there is no reason why the applicant should be absorbed.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. We note from the relevant Rules and amendment to the Rules annexed to the reply that the relevant Rules are the Intelligence Bureau (Motor Transport Cadre) Recruitment Rules of 1984, which have been amended from time to time. In the 1984 Rules, we note that in the post of JIO-II, method of recruitment was (i) direct recruitment

not more than 20% and (ii) promotion failing which by deputation not less than 80%. Under column 12 of this Rule, it is further provided that the period of deputation shall not exceed five years which may be curtailed or extended by the borrowing authority. By Notification dated 24.2.1988, the 1984 Recruitment Rules were amended as follows:

"(iii) for the entry in column 11, the following entry shall be substituted, namely:-

(i) Direct recruitment failing which by transfer on deputation - 80%;

(ii) Transfer on deputation/transfer-20%.

Note:- (1) Regular departmental cleaners in the Intelligence Bureau shall be eligible for consideration for appointment as Junior Intelligence Officer Grade-II (Motor Transport) against the direct recruitment quota subject to screening for the purpose of assessing their fitness and also to fulfilment of other conditions laid down for direct recruitment excepting age limit.

Note: (2) All the persons working as Security Assistant (Motor Transport) immediately before coming into force of the Intelligence Bureau (Motor Transport Cadre) Recruitment (Amendment) Rules, 1988 shall be promoted en bloc as Junior Intelligence Officer Grade-II (Motor Transport) irrespective of the number of years of service rendered by them as Security Assistant (Motor Transport) against the upgraded post of security Assistant (Motor Transport) as Junior Intelligence Officer, Gr. II (Motor Transport) one time exception".
(Emphasis added)

It is seen from the aforesaid Note-2 that no distinction has been made among persons working as SAs (MT) on the relevant date, i.e. the date of issue of the Notification on 24.2.1988 between deputationists and Departmental persons. It is provided in this Note that all the persons working as SA (MT) shall be promoted en bloc as JIO-II irrespective of the number of years of service

rendered by them as SA (MT) against the upgraded post of SA (MT) as JIO-II (MT) as a one time exception. At the time of issue of this Notification, the applicant had completed less than three years deputation. It is further relevant to note that Respondent 1 by order dated 7.4.1988 has in pursuance of the aforesaid MHA Notification dated 24.2.1988 promoted as many as 69 SAs (MT) (Deputationists and Departmental) as JIOs-II (MT) w.e.f. 24.2.1988 in the pay scale of Rs.975-1660 in the upgraded posts of SA(MT) to JIO-II (MT) as a one time exception. This order passed by Respondent 1 as far back as 7.4.1988 in terms of the statutory amendment of the Recruitment Rules of 1984 by Notification dated 24.2.1988 is unexceptionable. In view of the statutory provisions contained in the Recruitment Rules of 1984 as amended by the Recruitment Rules of 1988 and the order passed by Respondent 1 themselves dated 7.4.1988, we are unable to agree with either of the learned counsel that there is need for further order of absorption of the applicant in the present case. It is clear from the respondents' own order dated 7.4.1988 that in terms of the amendment Rules of 1988 the applicant who is a deputationist and Departmental SAs (MT) who were holding the posts of S.As (MT) as on that date, were posted in the upgraded posts of SA (MT) to JIO-II (MT) as a one time measure. In view of statutory Recruitment Rules of 1984, as amended by the 1988 Rules, the contention of learned proxy counsel that there is no provision for absorption for deputationists, who were SAs (MT) at the relevant time, cannot be accepted. The reference to deputationists and Departmental SAs (MT) makes it, therefore, clear that as on 24.2.1988 when the Gazette Notification came into effect

with regard to the amendment of 1984 Rules, the applicant has been promoted by Respondent 1 as JIO (MT). It is also seen from the amended Recruitment Rules of 1988 that for promotion to the grade of JIO-I, several categories in the feeder grades are mentioned, including JIO-II (MT)/Civilian Driver in the Intelligence Bureau with a total of five years service as well as other categories of persons mentioned who are eligible for consideration for promotion. It is relevant to note that the respondents have stated that it was only by the letter from Respondent 2 in November, 1999 followed by their letters in May, 2000 and August, 2000 that they have refused to allow the applicant to continue on deputation with Respondent 1. No tangible reasons have been given as to why both the respondents have decided to take up the matter regarding the question of absorption of the applicant who was on deputation so belatedly after nearly 15 years. In the meantime, the aforesaid amendment to the Recruitment Rules of 1984 has also been done by the Rules of 1988. The respondents have also specifically dealt with the cases of deputationists, like the applicant in the statutory Rules as a one time measure. Further, as already mentioned above, in view of the Recruitment Rules, as amended in 1988 followed by the order dated 7.4.1988 issued by Respondent 1, promoting the deputationists as well as Departmental SAs (MT) in their upgraded posts, the applicant has to be treated as an employee of Respondent 1 from that date by operation of the statutory provisions.

7. In the above facts and circumstances of the case, therefore, the application succeeds

and the impugned order dated 19.7.2000 is quashed and set aside. The applicant shall be entitled to consequential benefits in accordance with rules and law. No order as to costs.

(Govindan S. Rampi)
Member (A)

SRD

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)