

2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

(6)

O.A. No. 1459/2000

195

T.A.No.

DATE OF DECISION 16-11-2000

J.P.Verma, IPS

....Petitioner

Sh.Jayant Dass, Sr.Counsel ....Advocate for the  
with Sh.Ajit Puddissery Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh.H.K.Gangwani

....Advocate for the  
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri V.K.Majotra, 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.

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)  
Member

Central Administrative Tribunal  
Principal Bench

7

O.A. 1459/2000

New Delhi this the 16th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).  
Hon'ble Shri V.K. Majotra, Member(A).

J.P. Verma, IPS,  
S/o late Shri P.N. Verma,  
Addl. Director General,  
Central Reserve Police Force,  
West Zone,  
Chandigarh. ... Applicant.

(By Advocates Shri Jayant Dass, Sr. Counsel with Shri  
Ajit Puddissery)

Versus

1. Union of India, through its  
Secretariat,  
Ministry of Home Affairs,  
New Delhi.
2. The Cabinet Secretary,  
Union of India, Rashtrapati Bhawan,  
New Delhi.
3. The Secretary to Govt. of India,  
Department of Personnel,  
North Block, New Delhi.
4. The Director General,  
Central Reserve Police Force,  
CGO Complex,  
New Delhi. ... Respondents.

(By Advocate Shri H.K. Gangwani)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant states that he has filed this application in order to protect himself against the implementation of what he submits is an illegal order about to be passed by Respondent 1 reverting/repatriating him to his parent cadre, that is, <sup>the</sup> State of Orissa for motivated and extraneous reasons, including malice in law.

2. The brief relevant facts of the case are that the applicant belongs to the Indian Police Service (IPS) of

8

(8)

Orissa cadre. By letter of appointment dated 3.6.1998, Respondent 1 appointed him as Additional Director General (ADG), CRPF until further orders. He has submitted that he has been selected and empanelled with the approval of the Appointments Committee of the Cabinet (ACC) in that post in 1998. He has relied on the O.M. dated 6.4.2000 which came into force in supersession of all previous Instructions wherein, according to the learned Sr. Counsel for the applicant, he has a tenure of four years, that is upto 9.6.2002 which is four years from the date he took over charge as ADG, CRPF, North-West Zone. Shri Jayant Dass, learned Sr. Counsel has submitted that while the applicant was holding that post, he was further selected and empanelled by ACC for the post of Director General (DG) of Police in August, 1999. While the applicant was awaiting his appointment as DG, the applicant had heard that he was being reverted to his State Cadre, that is, State of Orissa. Hence, the O.A. was filed on 3.8.2000.

3. By an ad-interim order dated 4.8.2000, an injunction was granted restraining respondents from repatriating the applicant to his parent cadre and that order has been continued till date. The respondents have issued the order of reversion of the applicant by Fax on 4.8.2000, but learned counsel for respondents has submitted that in the light of the interim order passed by the Tribunal, that order has not been given effect to.

4. Shri Jayant Dass, learned Sr. counsel has submitted that in the reply filed by the respondents, they have relied on the letter dated 13.6.2000 from the Secretary-

18

(9)

General of National Human Rights Commission (NHRC). He has submitted that the respondents have taken a stand in the counter reply that they have taken serious note of the letter and thereby treated the conduct of the applicant "unbecoming of an officer of his seniority" which has resulted in the subsequent decision of the respondents to repatriate the applicant to his parent cadre. Shri Dass, learned Sr. Counsel has submitted that in view of the Govt. of India, Ministry of Home Affairs O.M. dated 6.4.2000, the normal deputation tenure of an ADG, which rank the applicant held when he was posted in the Central Government, will be four years. The action of the respondents in repatriating the applicant before the tenure of four years would mean that they have curtailed the normal period of four years tenure, which has apparently been taken, based on the views recorded by the Secretary-General, NHRC in the letter dated 13.6.2000. He has relied on the judgements of the Supreme Court in Debesh Chandra Das Vs. Union of India (1969 (2) SCC 158 at page 165), Menka Gandhi Vs. Union of India (1978(1) SCC 248), K.H. Phadnis Vs. State of Maharashtra (1971(1) SCC 790 at page 793). Learned Sr. Counsel has submitted that the letter dated 13.6.2000, relied upon by the respondents, does not clearly state the position as to which of the senior officers of the ~~respondents~~ said what, which has been made a foundation to repatriate the applicant. He has also submitted that two posts at the level of DG are falling vacant, one on 30.11.2000 being that of DG, BSF, and another on 31.12.2000 of Special Secretary, MHA. He has submitted that as the applicant already stands empanelled for the post of ~~this~~ higher rank of DG, there was no reason to repatriate the applicant at this stage. He has contended that the action of the respondents shows that they have acted on

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10

extraneous considerations in order to accommodate their certain other favourite officers at the Centre. Apart from that, he has also submitted that the letter of the DG, NHRC refers to certain allegations made against the applicant treating it as evidence and this, they could not have done without giving him an opportunity to explain his case. He has, therefore, contended that this amounts to a punishment which has been meted out to the applicant, in violation of the principles of natural justice and on this ground also the impugned repatriation order is liable to be quashed and set aside. He has also contended that the action of the respondents visits the applicant with evil/civil consequences and as per the settled law laid down in the aforesaid judgements of the Supreme Court, the repatriation order should be quashed and set aside as violative of the provisions of Articles 14, 16 and 21 of the Constitution.

5. Although in the counter reply filed by the respondents, they have not raised any preliminary objections, Shri H.K. Gangwani, learned counsel had taken a number of preliminary objections during the time of hearing. Learned counsel for respondents had submitted that the application is not maintainable as there is no impugned order and it was premature, based on apprehensions and not on facts. He has, therefore, submitted that under Sections 19<sup>13</sup> and 20 of the Administrative Tribunals Act, 1985, without even making a representation to the respondents or getting an order which is impugned in the application, the same is not maintainable. Shri H.K. Gangwani, learned counsel had also submitted that the application seeks multiple remedies and, therefore, is contrary to the provisions of Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. He  
P.S.

11

has also submitted that the interim order passed by the Tribunal could not have been granted because it is the same as the final order prayed for by the applicant in the O.A. and for these reasons he has prayed that the O.A. may be dismissed. Learned counsel for respondents has submitted that the assumption of the applicant that his tenure on deputation to the Centre is four years is erroneous as he has no right to continue on a deputation post and the Central Government can repatriate him any time. He has submitted that on his reversion to his parent cadre in the State Government, he will get the same rank and scale of pay. He has also submitted that the applicant's name in the panel for DG will remain, even if he is reverted and he will be duly considered for posting ~~at~~ DG level at the Centre in due course.

6. Learned counsel for both the parties have submitted written submissions which are placed on record. Shri Jayant Dass, learned counsel has also been heard in rejoinder. He has controverted the preliminary objections and other submissions of the learned counsel for the respondents.

7. Taking into account the particular facts and circumstances of the case, we are unable to agree with the contentions of the learned counsel for the respondents on any of the preliminary objections taken by him. Section 20 of the Administrative Tribunals Act, 1985 provides that the Tribunal shall not "ordinarily" admit an application unless the applicant has exhausted other remedies. This O.A. is not admitted and is being disposed of at the admission stage. It is also a fact that on 4.8.2000 when the Tribunal

13

granted the interim order restraining the respondents from repatriating the applicant to his parent cadre on the same day the respondents have passed such an order which has, however, not been given effect to. Therefore, we consider that in the facts and circumstances of the case, there is no bar to the adjudication of this application under Sections 19 and 20 of the Administrative Tribunals Act. Similarly, considering the nature of the reliefs prayed for by the applicant, as they are consequential there is no infirmity on the ground also under Rule 10 of the CAT (Procedure) Rules, 1987 read with the Administrative Tribunals Act.

(2)

8. The applicant has submitted in Paragraph 1 of the O.A. that he has filed the application to protect himself against the implementation of the order about to be issued by Respondent 1 which he has submitted ~~is~~ based on facts which are incorrect, non-existent, motivated by extraneous considerations, including malice in law. From the reply filed by the respondents, it is seen that they had sponsored the applicant's name for consideration for the post of DG (Investigation) to NHRC. The relevant portion of the letter from Secretary General, NHRC dated 13.6.2000 reads as follows:

"The Chairperson has directed me to place on record the fact that when we (I and Shri D.R. Karthikeyan) contacted Shri M.K. Shukla and Shri J.P. Verma (applicant), we were surprised to find that both the officers were only keen to find out about the perquisites attached to the office of the Director General (Investigations), NHRC - one officer wanted to know whether he can travel as he likes or whether he will have to seek permission from the Chairperson; another officer indicated the number of constables/orderlies a DG (Police) is entitled to and wanted to know whether he will be provided the same number. (The obvious answer was no). Both the officers expressed their disinclination to come and meet the Chairperson after being told about the availability or otherwise of the kind of perks they were looking for in the Commission. The Chairperson, NHRC was apprised of this matter and he has directed that the matter be brought to the

12

notice of the Home Ministry to highlight the lopsided priorities of these very senior officers who are waiting 'to serve' the nation in the rank of Directors General of Police".

(B)

The respondents have concluded from the above communication received by them from Secretary-General, NHRC that the applicant's behaviour is unbecoming of an officer of his seniority. They have also stated that the above referred two officers were ostensibly more worried about their perks and orderlies rather than the job content of the post. Therefore, in the light of the conduct of these officers in dealing with their posting to NHRC and observations of the Chairperson, they took a very serious view of the conduct of these two officers and approved their repatriation to their parent cadres. After reading the letter from the Secretary-General, NHRC dated 13.6.2000, we find merit in the submissions made by Shri Jayant Dass, learned Sr. counsel that it is not at all clear as to which of the officers, namely, Shri M.K. Shukla or the applicant, [REDACTED] is alleged to have sought the clarifications regarding the perquisites attached to the office of the DG (Investigations), NHRC, i.e. whether they could travel as they wished or whether they will have to seek permission from the Chairperson and the number of constables/orderlies they were entitled to and so on. Shri Dass, learned Sr. counsel has also submitted that the applicant, in any case was not communicated any information from the NHRC to meet the Chairperson and if such a communication had been given to him, the applicant would have been more than happy to meet a high dignitary like the Chairperson. We find force in these submissions. These are questions of facts which the applicant could have been confronted with and an explanation sought by the respondents which has not been done. The conclusions of the respondents that the aforesaid

19

communication from Secretary-General, NHRC points to conduct of the applicant which is unbecoming of a senior officer and, therefore, he should be repatriated to his parent cadre could not have been done without complying with the principles of natural justice and giving him an opportunity of putting forward his case. This has admittedly not been done by the respondents.

9. The vehement contention of Shri H.K. Gangwani, learned counsel that since the applicant had been sent to the Centre only on deputation basis and, therefore, he had no right to continue in the post also needs further examination in the light of the DOP&T O.M. dated 6.4.2000. This O.M. has been relied upon by both the parties. The earlier instructions on the subject of Deputation of IPS officers to posts in various organisations of the Centre, referred to in the O.M. dated 6.4.2000, namely, the MHA letter dated 2.4.1984 and subsequent amendments have been superseded by the O.M. dated 6.4.2000. In view of this, we find merit in the submissions made by Shri Jayant Dass, learned Sr. Counsel that even if the applicant had not come to the Centre as Addl. DG, CRPF initially on deputation on any fixed tenure period, in view of the provisions of O.M. dated 6.4.2000 it would be for a period of four years, as he was holding the post of ADG. Apart from that, as mentioned above, the decision to repatriate the applicant has been taken by the respondents based on their conclusion that the applicant had conducted himself in an unbecoming manner for a senior officer, which is in turn based on the letter from the Secretary-General, NHRC. As mentioned above, it is not evident as to which of the two officers, namely, Shri M.K. Shukla or the applicant asked which of the questions reported in that letter and further as clarified by the learned counsel for the applicant, the applicant did in fact

(5)

enquire into the nature and contents of the job as DG (Investigation), NHRC, which by itself cannot be held against the applicant. The contention of Shri H.K. Gangwani, learned counsel that even if the applicant is repatriated to the State Government, he will continue to remain in the panel of DG and will be considered as and when the vacancy arises cannot also be accepted as there is no cogent or sufficient reasons given by the respondents to repatriate him to the State Government, in accordance with law. As the respondents have alleged conduct on the part of the applicant which amounts to misconduct, they could have only passed the punishment order in accordance with the relevant Rules and following the principles of natural justice.

10. Shri Dass, learned Sr. counsel has submitted that Paragraph 10 of the O.M. dated 6.4.2000 relied upon by the respondents to pass the repatriation order, should be declared ab initio void. He has contended that this para confers arbitrary and unbridled powers on the Central Government to revert the officers to their parent cadre at any time without assigning any reasons and is, therefore, bad in law. Shri H.K. Gangwani, learned counsel has submitted that no aspersions have been cast on the applicant in the order repatriating him to his parent Department. Further, he has submitted that the settled law is that a deputationist does not have any right to continue on deputation for any particular period, in this case four years, and he has relied on *Ratilal Soni Vs. State of Gujarat* (AIR 1990 SC 1132). In the light of the judgements of the Apex Court relied upon by the learned Sr. Counsel for the applicant, it is also settled law that in such circumstances, as in the present case, the principles of natural justice shall equally apply and have to be complied

26

with before any order which has civil or criminal consequences can be passed against the affected party. In the facts and circumstances of the case, the respondents have violated the principles of natural justice, as they have not given the applicant any opportunity to be heard on the allegations made against him on which they have taken a very serious view. Having regard to the principles of law enunciated by the Supreme Court, the exercise of powers under the impugned paragraph 10 of the O.M. dated 6.4.2000 will have to be read subject to the principles of natural justice. In this view of the matter, although it is true that a deputationist does not have any right to continue on the deputation post, the exercise of the power by the Central Government to revert him to his parent <sup>Cadre P</sup> Department in the circumstances like the present case, will also be subject to other legal provisions, including the principles of natural justice. In the circumstances, the prayer to declare Para 10 of the O.M. dated 6.4.2000 as ab initio void is rejected.

11. In the result, for the reasons given above, the O.A. succeeds and is allowed with the following directions:

(1) The interim order dated 4.8.2000 is made absolute with consequential benefits;

(2) The applicant shall be entitled for consideration for promotion as DG in the Centre, in accordance with his panel position against the vacant posts in future, in accordance with the relevant Rules and instructions;

Parties to bear their own costs.

V.K. Majotra  
(V.K. Majotra)  
Member(A)

Lakshmi Swaminathan  
(Smt. Lakshmi Swaminathan)  
Member(J)