CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

1) O.A. NO.1867/2000

2) O.A. NO.1871/2000

3) O.A. NO.1872/2000

4) O.A. NO.1875/2000
M.A. NO.2234/2000

5) O.A. NO.1894/2000

6) O.A. NO.1895/2000

7) O.A. NO.1936/2000

8) O.A. NO.1938/2000

9) O.A. NO.1953/2000

10) O.A. NO.1975/2000
M.A. NO.2364/2000

11) O.A. NO.2027/2000

New Delhi this the 7th day of November, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

1) O.A. NO.1867/2000

Surender Singh S/O Jagmal Singh,
R/O D-1, Bhagwati Garden Extension,
Uttam Nagar, New Delhi. ... Applicant

2) O.A. NO.1871/2000

Arun Kumar S/O Laxman Singh,
R/O 141, Rameshwar Nagar,
Azadpur, Delhi-110033. ... Applicant

3) O.A. NO.1872/2000

Kuldeep Singh S/O S.S.Rathi,
R/O E-2, Gali No.5,
Shahadatpur Extension,
Delhi-110094. ... Applicant

4) O.A. NO.1875/2000
M.A. NO.2234/2000

1. Jai Bhagwan S/O Dhir Singh,
R/O B-5/12, Sector 15, Rohini,
Delhi-110085.

2. Bhanwar Lal S/O Ram Kumar Sharma,
R/O AU-76, Uttari Pitampura,
DDA Janta Flats,
Delhi-110034.

3. Samved Singh S/O Soraj Singh,
R/O C-11/112A, Khajuri,
Delhi-110094. ... Applicants

(9)

5) O.A. NO.1894/2000

Durvesh Kumar S/O Tar Singh,
R/O A-1-32/19 Near Rani Public School,
Sant Nagar, Buradi Road,
Delhi. ... Applicant

6) O.A. NO.1895/2000

Ravinder Singh S/O Vijay Pal Singh,
R/O B-271, Gali No.4, Prem Vihar,
Karawal Nagar, Delhi-110094. ... Applicant

7) O.A. NO.1936/2000

1. Ramesh Chand S/O Gossain,
R/O RZ-482, Kailashpuri Estn.,
New Delhi.

2. Sanjeev Kumar S/O Raj Kishore Awasthi,
R/O WZ-272/4, Shrinagar,
Shakurbasti, Delhi-110034.

3. Subhash Chand S/O Ram Chander Singh,
R/O Vijaynagar Road,
Gali No.8, Barod,
Baghpat (UP).

4. Vikram Singh S/O Hari Singh,
R/O H.No.184, 1st Type,
Police Colony, Shalimar Bagh,
Delhi. ... Applicants

8) O.A. NO.1938/2000

1. Satbir Singh S/O Mauji Ram,
R/O L-15, NPL Kingsway Camp,
Delhi-110009.

2. Surender Kumar S/O T.R.Sharma,
R/O 21, Jia Sarai,
New Delhi.

3. Dalbir S/O Om Prakash,
R/O G-7, Flat No.81,
Sector 16, Rohini,
Delhi-110085.

4. Jitender Kumar S/O Balbir Singh,
R/O C-18, New Police Lines,
Kingsway Camp,
Delhi-110009.

5. Sanjay Kumar S/O Ram Dhan,
R/O V & P.O. Dayalpur,
Delhi-110039. ... Applicants

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9) O.A. NO.1953/2000

Satyabir Singh S/O Gugan Singh,
R/O Barrack No.5, DRP Line,
Mithai Wala Pool,
Delhi-110006. ... Applicant

10) O.A. NO.1975/2000
M.A. NO.2364/2000

1. Vikrant Gaur S/O Amar Nath Gaur,
R/O F-84, Vill. Lado Sarai,
Mehrauli,
New Delhi-110030.

2. Sukhdev Singh S/O Navrang Singh,
R/O House No.575, Vill. Mundka,
Delhi. ... Applicants

11) O.A. NO.2027/2000

Dilbagh Singh S/O Ram Narain,
R/O H.No.222-RZ,
Gopal Nagar, Najafgarh,
Delhi. ... Applicant

-versus-

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block,
New Delhi.

2. Chief Secretary,
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi-110054.

3. Principal Secretary (Finance),
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi-110009.

4. Commissioner of Police,
Police Headquarters,
I.P.Estate,
New Delhi-110002.

5. Commissioner Excise,
Govt. of NCT of Delhi,
L-Block, Vikas Bhawan,
I.P.Estate,
New Delhi-110002. ... Respondents
(in all the OAs)

Applicants by Shri A.K.Behera, Advocate.

Respondents by Mrs. Avnish Ahlawat with Shri Ajesh Luthra and Shri Mohit Madan, Advocates.

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Present group of applications raise similar questions of fact and law and are, therefore, being disposed of by the present common order.

2. Applicants in the present applications are police officials appointed in Delhi Police. They have been sent on deputation to the Excise Department of the Delhi Administration and have been posted in the Excise Intelligence Bureau (EIB). Their initial period of deputation was for a period of one year at the end of which, after individual performance appraisal, their deputation has been extended for a further period of one year. Their total period of deputation is ordinarily for a period of three years. By the impugned decision taken by the Excise Department, respondent No.5 herein, it has been decided to repatriate all deputationists who have completed a period of two years of deputation as on 30th September, 2000. Aforesaid decision is impugned by the applicants in the present OAs.

3. Shri Behera, the learned counsel appearing in support of the applications, has strenuously urged that aforesaid decision not only affects those whose period of deputation expires at the end of September, 2000, but also those whose period of deputation would expire much thereafter. According to him, aforesaid decision has been taken arbitrarily and capriciously without proper application of mind to individual performances of the applicants, and that the same, in

the circumstances, is liable to be quashed and set aside.

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4. Mrs. Avnish Ahlawat, the learned counsel appearing on behalf of the respondents, has, with equal vehemence, submitted that the decision to send back the applicants to their parent department is a conscious policy decision taken by responsible officers in the department; the same is taken for good and valid reasons; and the same is, therefore, not liable to be interfered with by this Tribunal. In support of the aforesaid contention, she has relied upon the averments contained in para 4 of the counter which recites as under:

> "4. That a meeting was held on 17th August, 2000 in the chamber of Finance Minister of NCT of Delhi where issues related to Excise Deptt. were discussed. Principal Secretary (Finance), Managing Director DSIDC, Managing Director DSCSC, Excise Commissioner were present alongwith other officers. It was felt that the excise revenue was showing a negative growth from April to July 2000 as compared with excise revenue collections for the period of April to July 1999. In August 2000, the liquor sale in bottles was also declining as compared to August 1999. This decline in sales was in spite of many policy decisions taken by the government which were supposed to encourage the sales. A few of the policy decisions taken were: reduction in the number of dry days, increasing the number of shops selling liquor, extending the selling hours of liquor vends upto 9 o' clock in the evening besides introducing a secret fund for rewarding informers to generate information regarding illicit liquor trade and smuggling. In this background, it was felt that in view of decline in sales figures of IMFL during the first 5 months of the year 2000, more stringent enforcement was needed. To tone up the enforcement, it was felt that the introduction of fresh blood in the ranks of EIB will improve the enforcement and which may in turn improve revenue collections. Therefore, it was decided that all the officials who have completed their 2 years of deputation on 30th September 2000 will be repatriated and the fresh names will be called from Delhi Police on deputation basis.

It is submitted that if the EIB were manned by regular officials of the Excise Department the alternative of the repatriation would have been a change of posting from one branch to another. In this case, however, officials are on deputation and the posting is a very sensitive one where the officials are expected to discharge their duties with full vigour and wisdom. The decision to repatriate the officials who had completed two years even if they had been granted extension was in the administrative interest. In pursuance of this decision, Additional Commissioner of Police (Estt.) was informed vide this office letter dated 8th September about the intended repatriation of the individuals who had completed two years of deputation in this department. He was also requested to forward to this department the names of eligible and interested officials to fill up the vacancies that would have been created after the repatriation of the individuals.

It is further submitted that the continuation in the department by the deputationists is not their legal right. It is also submitted that there is no legal stigma involved in the present case of the officials who have put in two years of service. It is an administrative prerogative to repatriate a deputationist back to his parent cadre taking into account his performance. As per GOI Department of Personnel & Training O.M. No.2/29/92-Estt. (Pay-II) dated 5th January 1994 (quoted in Swamy's Manual) deputationist services can be returned to his parent cadre after giving advance intimation of reasonable period to the lending ministry/department and the employee concerned. In the present case, advance intimation of the repatriation of the applicants was already sent to their parent department i.e. Delhi Police on 8.9.2000. Notice of the intended repatriation would have been issued to the applicants immediately upon the completion of procedural formalities for the appointment of their substitutes."

5. We have considered the rival contentions advanced by the learned counsel appearing for the contending parties at some length and we are of the considered view that the present applications do not merit favourable consideration and the same are liable to be dismissed. We have also considered the aforesaid reasons which find place in the counter

which have persuaded the relevant authorities to take the aforesaid decision, and we find that the aforesaid decision is a policy decision which cannot be interfered with by courts. It was found that the excise revenue had been showing a downward trend from April to July, 2000 as compared to the excise revenue collections for the corresponding period in 1999. This, it was felt, was on account of increase in smuggling of liquor from across the border. It was felt that this was due to the adverse functioning of the enforcement branch of the Excise Department. Aforesaid decision, it appears, was taken to ensure an effective supervision over the enforcement branch with a view to minimise the smuggling from across the border. It was also felt that the best indicator of effective prevention of smuggling would be the increase in the sales of bottles of Indian manufactured foreign liquor. In the circumstances, a decision was taken that all officials in the enforcement branch who were going to or had completed two years of deputation on 30th September, 2000 should be repatriated. It was, therefore, felt that introduction of fresh blood in the ranks of EIB would improve the enforcement which in turn would improve the revenue collections. Hence, a decision was taken that all officials who had completed their two years of deputation on 30th September, 2000 should be repatriated and fresh names should be called from Delhi Police for being deputed to the EIB.

6. Apart from the aforesaid decision being a policy decision which, in our view, has been taken for just and good reasons which have been enumerated

hereinabove, we find that the applicants do not possess any right to continue on deputation till their present tenure of deputation has expired. As per Government of India, Department of Personnel & Training O.M. No.2/29/92-Estt.(Pay-II) dated 5th January, 1994, services of a deputationist can be returned to his parent cadre after giving advance intimation of reasonable period to the lending ministry/department and the employee concerned. As far as the lending ministry/department, i.e., Delhi Police, is concerned, an advance intimation has already been sent to them on 8th September, 2000. Before a similar advance intimation could be served on the applicants, they have proceeded to institute the present OAs and have also succeeded in obtaining ad interim orders of restraint in their favour and against the respondents. That the applicants have rushed to the Tribunal with the present applications indicates that they must have been informed of the aforesaid decision by their parent department. They therefore have the requisite notice. This is a reasonable inference which can legitimately be drawn from the aforesaid facts.

7. Shri Behera, the learned counsel, has by his rejoinder pointed out three instances where officials whose two years of deputation has already expired by 30th September, 2000 have been continued on deputation. Based on these instances, he has submitted that the aforesaid decision to repatriate the officials is not being uniformly pursued; there is an element of pick-and-choose and hence the decision is liable to be quashed and struck down on this ground as well. Mrs. Ahlawat, on the other

hand, on taking instructions, has pointed out that the aforesaid three officials do not belong to the executive cadre as the applicants; they belong to the ministerial cadre who have been brought on deputation for streamlining the computerisation of records; their cases are, therefore, distinct and cannot be confused with those of the applicants; even their services will be repatriated after the present job of computerisation is over. In view of the aforesaid, we do not find that the objection of Shri Behera can be sustained.

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8. Shri Behera has placed reliance on a decision of the Supreme Court in the case of **Kumari Shrilekha Vidyarthi & Ors. v. State of U.P. & Ors.**, (1991) 1 SCC 212, in support of his proposition that the services of the applicants cannot be repatriated at one stroke as has been done in the instant case without considering the merits of each individual applicant. The Supreme Court in the aforesaid decision was considering an order which sought to terminate the services of all the existing government counsel in all the districts of U.P. The aforesaid order insofar as is relevant reads as under :

> "Subject : Renewal of tenure of all the existing Government Counsel, calling of new panels for new appointment.
>
> I have been directed to inform you on the subject mentioned above that the administration has taken a decision to extend the tenure of all the Government Counsel, who are presently working, till February 28, 1990 only and to immediately receive new panels from the District Magistrates for new appointments in their places.
>
> 2. I, therefore, have been directed to state that all the government Counsel, presently engaged for the work of Civil/ Revenue/Criminal (including Anti-Dacoity) and

Urban Ceiling may be permitted to work till February 28, 1990 only and for appointments in their place, administration may send the new panels, after preparing the same in following manner :

xxxxx xxxxx"

On the aforesaid facts, the Supreme Court has gone on to observe as under :

"41. The impugned circular itself does not indicate the compelling reason, if any, for the drastic step of replacing all the Government Counsel in every branch at the district level throughout the State of U.P., irrespective of the fact whether the tenure of the incumbent had expired or not. The learned Additional Advocate General stated that the circular was issued because the existing panels were made in 1985, 1986 and 1987 and were considered to be not too proximate in point of time in the year 1990 for being continued. The reason, if any, for considering such en bloc change necessary has not been disclosed either in the circular or at the hearing in addition to what is said in para 29 of the counter-affidavit of A.K.Singh, which is referred to later. On behalf of the petitioners/appellants, it was alleged that the en masse change at the district level throughout the State of U.P. was made only for political reasons on account of the recent change in the State Government. We deem it unnecessary to go into this question for want of any specific material either way. Moreover, the arbitrariness, if any, of such an act, would be equally applicable irrespective of the change in the government, which, if at all, would only strengthen the argument in case arbitrariness is proved otherwise. The only reason given in the counter-affidavit of A.K. Singh, Joint Sercetary and Joint Legal Remembrancer, government of U.P., is in para 29 thereof which reads as under :

> "That the contents of para 38 of the writ petition are not admitted. It is denied that the government took the present decision with a political motive and in an arbitrary manner. It is also submitted that the decision to terminate the professional engagement has been taken in order to streamline the conduct of the government cases and effective prosecution thereof."

42. It is difficult to appreciate this as a reasonable basis for the drastic and sweeping action throughout the State, particularly when the provisions in the Legal

9. In our judgment, aforesaid decision can have no application to the facts arising in the present cases. Aforesaid decision related to a decision to disengage government counsel which had the effect of terminating their employment as such. That is not the case of the present applicants. All that has been sought to be done is to send them back to their parent department. As far as government counsel are concerned they cannot be equated with government servants. As far as applicants are concerned, they are civil servants and they are bound by the rules which govern their service conditions. As far as their deputation is concerned, they, as per the aforesaid circular of the DOP&T, can be repatriated even before the expiry of their tenure after giving reasonable notice. As far as the services of government counsel are concerned, these are individual services rendered by counsel. Their performances are individually judged. As far as the applicants are concerned, they are deputationists and hence a blanket order can legitimately be passed which could not have been passed in case of lawyers. Their services are liable to be repatriated even though their services may have been found by the officials of the government to be meritorious. As already stated the impugned decision is a conscious policy decision taken by and at the behest of high officials. It is a government decision and a policy decision. The same, therefore, cannot be lightly interfered with by the Tribunal. Moreover, the said decision has been taken for good and cogent reasons. The same, therefore, cannot be ~~rightly~~ faulted.

10. For the foregoing reasons, we find that the present applications are devoid of merit. The same are, in the circumstances, dismissed. There shall be no order as to costs.

(S.A.T.Rizvi)
Member (A)

(Ashok Agarwal)
Chairman

/as/

Attested
[illegible]
C.O.C.