

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 509/89 with MP 1206/90, 199
T.A. No. MP 1291/90 & MP 1702/90

DATE OF DECISION 11.01.1991

Shri Harjinder Singh

Petitioner

Shri B.B. Raval

Advocate for the Petitioner(s)

Versus

U.O.I. through the Secretary, Min. of Respondent
Home Affairs & Others

Mrs. Raj Kumari Chopra

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */no*
4. Whether it needs to be circulated to other Benches of the Tribunal? */no*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The grievance of the applicant, who has filed this application under Section 19 of the Administrative Tribunals Act, 1985, relates to his repatriation from the Intelligence Bureau (hereinafter referred to as IB) to the Indian Tibetan Border Police (hereinafter referred to as ITBP).

2. The facts of the case in brief are as follows. The applicant joined Government service in 1962 as a Constable in ITBP. In 1969 he was promoted as Naik in ITBP and was sent on deputation to IB with effect from 5.2.1971 in the equivalent grade as a Junior Intelligence Officer, Grade II and posted as MT In-charge at SIB

Lucknow. In 1973 December, he was transferred to Delhi and on 22.5.1975, he was promoted as Junior Intelligence Officer, Grade -I.

3. In 1978, the applicant was repatriated to ITBP on reversion to his original rank. After a month, he was again taken back on deputation to IB in September, 1978 as Junior Intelligence Officer, Grade-II.

4. On 7.7.1987, the applicant was transferred to Welfare Branch.

5. The applicant was promoted as Junior Intelligence Officer, Grade-I and appointed on transfer of service basis in IB by order dated 28.4.1988 with effect from 1.7.1986. However, on 28.4.1988, the respondents issued another order whereby his appointment on transfer of service basis by order dated 28.4.1988 was cancelled. He was served with another order dated 1.3.1989 whereby his services were sought to be placed at the disposal of the Directorate General, I.T.B.P., New Delhi with immediate effect. The applicant has called in question the aforesaid two orders whereby the respondents have cancelled his appointment on transfer of service basis with effect from 1st July, 1986 and his repatriation to ITBP, which is his parent department.

6. The applicant has stated that he is suffering from tumour in his left thigh for which he is under continuous treatment since 1985 and he is scheduled to go for operation in Ram Manohar Lohia Hospital shortly, as advised by his Doctor. He has stated that he has received numerous commendation certificates and cash rewards for the good work done by him in the IB and he has prayed that he should be retained in the IB on absorption basis. He

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apprehends that he is being repatriated to the ITBP on the ground that he happens to be a sikh by religion.

7. The respondents have stated in their counter-affidavit that in the order dated 29.4.1988, it had been clearly stipulated that the lien of the applicant would continue to be maintained in the ITBP until he acquired a lien on a permanent post in the I.B. In the meanwhile, as a result of appraisal made of his performance and as a result of a verification of his conduct, the respondents did not find the continuance of the applicant in the I.B. desirable and consequently it was decided to repatriate him to the I.T.B.P. They have contended that the applicant has no legal right for absorption in the I.B. They have also stated that after absorption of the applicant with effect from 1.7.1986, he came to adverse notice from security angle.

8. We have carefully gone through the records and have considered the rival contentions. The applicant has not produced before us any rules or administrative instructions under which a deputationist can claim absorption in the department to which he has been deputed. The legal position in this regard has been stated by the Supreme Court in Ratti Lal Soni Vs. State of Gujarat & Others, reported in 1990(1) SCALE 228, according to which, a person who is on deputation can be reverted to his parent cadre at any time and he does not get any right to be absorbed on the deputation post.

9. The learned counsel for the applicant does not dispute the legal position mentioned above. The grievance of the applicant is that the respondents have sought to repatriate him from the I.B. to the I.T.B.P. on the alleged ground of unsuitability which amounts to casting a stigma on him. In other words, he is being sent back, treating him as a bad coin. He is also aggrieved as the respondents have not duly considered the special circumstances of his case including his illhealth. Keeping these circumstances in view, the Tribunal had passed an interim order on 14.3.1989 to the effect that the applicant

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shall not be relieved in case he has not already been relieved from his present post. It was made absolute on 17.4.1989. On 16.5.1990, the respondents filed MP 1206/90 praying for vacating the stay granted by the Tribunal. On 18.5.1990, the applicant filed MP 1291/90 praying for directing the respondents not to withhold the pay of the applicant and release the same to him together with interest. On 25.7.1990, the applicant filed MP 1702/90 praying for quashing the impugned notice dated 9.7.1990 whereby the applicant was called upon to show cause why an order of eviction should not be passed in respect of the Government quarter in his possession and for payment of his pay and allowances from April, 1990 onwards. By order dated 31.7.90 on MP 1702/90, the Tribunal directed that the applicant shall not be dispossessed of the Govt. accommodation subject to his liability to pay licence fee etc. in accordance with the rules.

10. The contention of the respondents is that the applicant has been transferred to SIB, Ahmedabad vide order dated 8.3.1990 after more than 11 years stay at Delhi, purely on administrative considerations, that the stay granted by the Tribunal is against his repatriation to his parent department only and not against posting/transfer within the department on administrative grounds, that he was paid pay and allowances for the whole month of March, 1990, that his last pay certificate was sent to SIB, Ahmedabad on 27.3.1990, that future payments are to be made by SIB, Ahmedabad and that the orders regarding grant of D.A. arrears were received after his relief from I.B. Headquarters.

11. The contention of the applicant is that much before the alleged date of transfer, i.e., 23.3.1990, he continued to be on medical leave having been operated for a cancerous tumour in 1989, that the respondents were not within their rights to transfer him and treat him relieved while he was on medical leave, and that the said order of transfer is

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mala fide.

12. The applicant has produced copies of medical prescriptions from Dr. Ram Manohar Lohia Hospital, New Delhi, C.G.H.S., Delhi, G.B. Pant Hospital, Delhi and A.I.I.M.S., Delhi, which indicate that he is undergoing treatment. Even though, he has not substantiated the allegation of mala fides against the respondents, his case appears to be one of genuine hardship and should be treated as such. We, therefore, dispose of the main application and all the MPs with the following orders and directions:-

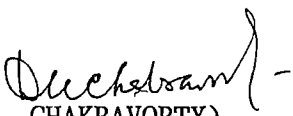
(i) We hold that the purported transfer of the applicant from the Headquarters of the IB to STB, Ahmedabad vide order dated 8.3.1990 has the effect of circumventing the stay order passed by the Tribunal on 14.3.1989 and made absolute thereafter and as such the same is not legally sustainable.


(ii) In the interest of justice and fairplay in administration, the respondents are directed not to repatriate the applicant to his parent department or transfer him outside Delhi for at least upto 1st May, 1991 in view of the medical report given by the Civil Surgeon, Dr. Ram Manohar Lohia Hospital, New Delhi on 10.12.1990 to the effect that he is an "orthopadically handicapped person with a permanent partial disability of 50% (fifty) in relation to(L) Lower limb". The applicant would be entitled to his full pay and allowances during the period from 14.3.1989 to 1.5.1991 or till the respondents take a fresh decision regarding his repatriation or absorption in I.B., whichever is later.

(iii) The applicant shall not be dispossessed from the Govt. accommodation at E-81, Patel Dham, S.P. Marg, New Delhi, subject to his liability to pay licence fee etc. in accordance with the Rules, till 1.5.1991.

(iv) The respondents shall comply with the above directions within a period of three months from the date of receipt of this order.

There will be no order as to costs.


(D.K. CHAKRAVORTY)
ADMINISTRATIVE MEMBER
11-1-1991


(P.K. KARTHA)
VICE-CHAIRMAN(J)