

CENTRAL ADMINISTRATIVE TRIBUNAL
PRICIPAL BENCH: NEW DELHI

Date of decision : 13.12.1991 15

Original Application No. 2041/88

Parbhat Chander Sharma & 54 others : Applicants

V.

Union of India & another : Respondents

Shri SC Gupta, Sr. Counsel with
Shri MK Gupta and Shri LR Goel : For applicants

Mr NS Mehta : For respondents

CORAM:

HON'BLE SHRI AV HARIDASAN, JUDICIAL MEMBER

&

HON'BLE SHRI IK RASGOTRA, ADMINISTRATIVE MEMBER

JUDGEMENT (of the Bench delivered by Hon'ble
Shri AV Haridasan, Judicial Member
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Fifty five Inspectors of the Central Bureau of
Investigation (CBI for short) has filed this application
praying for the following reliefs:

"(i) This Hon'ble Tribunal be graciously pleased to hold that fixing of any quota in favour of deputationists for promotion to the post of Dy.S.P. is patently illegal and untenable.

(ii) (In the alternative, and, without prejudice to the afore-mentioned prayer), this Hon'ble Tribunal be graciously pleased to quash the extent of quota as existing in the present RRs, as the same is discriminatory and arbitrary, and, has no correlation either with numerical proportion or work contribution.

(iii) This Hon'ble Tribunal be graciously pleased to hold that absorption of deputationists in in the CBI is to the prejudice and at the cost of CBI's own directly-recruited officers and, is illegal.

(iv) This Hon'ble Tribunal be graciously pleased to hold that CBI's own directly-recruited officers ought to be permitted to apply for outside posts, at least to the extent to which outsiders are brought into CBI to occupy posts which would otherwise legitimately belong to CBI's own directly-recruited officers."

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The applicants' case as set out in the application can be briefly stated as follows. The CBI came into being as a sequel to the recommendation of the Santhanam Committee. One of the recommendations made by the Committee was that the CBI may take officers from other departments and its own officers should also be spread out to various undertakings of Government Departments for vigilance work. The post of Inspectors in the CBI are required to be filled according to the Recruitment Rules notified on 5.2.1987, 40% by promotion from among the Sub Inspectors of CBI and 50% by deputation/transfer. The categories from which Inspectors can be taken on deputation into the CBI include Inspectors of Railways, Excise and Customs, Income Tax and Central Public Undertakings as also Sub Inspectors of the Central/State Governments/Armed Forces with 5 years of service experience as S.Is. The next higher post in the hierarchy of the CBI is Deputy Superintendents of Police (for short Dy.SP). The recruitment to the post of Dy.SP is regulated by statutory recruitment rules. The rules was first published in the Gazettees of India by notification dated 19.3.1963, it was later amended vide notification dated 26.12.1972 and further amended by notification dated 31.3.1987. According to the recruitment rules amended from time to time, the method of filling the vacancies of Dy.SPs is as follows:

"(a) Promotion - 30 percent, failing which by transfer on deputation, failing both by direct recruitment.

(b) Transfer on deputation/transfer-50 per cent.

(c) Direct recruitment - 20 per cent, in consultation with the Union Public Service Commission".

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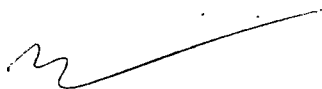
The qualification for promotion is service as Inspector of Police in the CBI with 5 years' regular service in the grade. The qualification for appointment by transfer on deputation/transfer is as follows :-

- "(a) (i) holding analogous posts on a regular basis; or
- (ii) Inspectors of Police with 5 years regular service in the grade or equivalent; and
- (b) possessing experience in investigation of criminal cases."

In note (1) under Column-11 of the Recruitment Rules, it is stated as follows :-

"Deputation Inspectors of Police in the CBI with 5 years experience as Inspector including service as Inspectors in the parent organisation shall also be eligible for appointment as Deputy Superintendents of Police, but their appointment shall be adjusted against the deputation quota."

The grievance of the applicant is that as the Inspectors recruited directly to the CBI are qualitatively superior on account of the higher degree of marks required in the personality test as also the advanced training given to them the provision in the Recruitment Rules which enable the deputationist Inspectors to get appointment to the 50% quota for deputation/transfer amounts to violation of Articles-14 and 16 of the Constitution. According to the applicants, it is a case where unequals are not being made equal but being made more than equals. The numerical strength of the Inspectors recruited directly to CBI deserve a higher per centage of promotion to the post of Dy.SP than the 30% provided for in the Recruitment Rules. Therefore, the provisions in the Recruitment Rules which provide for filling 50% of the posts of Dy.SPs. by deputation/transfer is unconscionable. To illustrate the undue advantage conferred on deputationist Inspectors in the



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CBI, instances of SIs of Delhi Police having purely 5 years of service as SIs being deputed as Inspectors in CBI getting appointment as Dy.SPs after 5 years of service in the CBI as Inspectors has been pointed out while Inspectors who were directly recruited to the CBI remained Inspectors for more than 12 years. According to the applicants, the fortituous officiation of such SIs on deputation in CBI as Inspectors could not have legitimately conferred on them a right to be appointed as Dy.SPs towards the 50% quota for deputation/ transfer. Considering the number of Inspectors in the CBI recruited directly to the CBI the 30% quota fixed for promotion is totally insufficient and inequitable. The applicants pray that the provisions of the RRs providing for quota and enabling the deputationist Inspectors to be appointed as Dy.SPs after a 5 years of service as Inspectors in the CBI may be declared unconstitutional. While the CBI is receiving officers on deputation from various sources, it is not permitting the officers of the CBI to apply for deputation post in other departments on the ground that their services are required in the CBI. This also restrict the scope of career advancement of the Inspectors of the CBI. It is in these background that the applicants have filed this application.

2. In the reply statement, the respondents have contended that the fixing of percentages in the RRs was on the basis of principles laid down by the Government of India, taking into account the nature of ^{the} work, the suitability

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of officers and the needs of the Department. As the RRs are being reviewed periodically to suit the requirement of the organisation, according to the respondents, there is no merit in the contention of the applicants that the fixation of 30% quota for promotion and 50% by deputation not being based on numerical strength of the cadre of Inspectors is inequitable. They have contended that though only 30% post of Dy.SPs are to be filled up by promotion from the cadre of Inspectors, as a matter of fact, 76% of the post of Dy.SPs are now occupied by promotees from the cadre of Inspectors and that this would show that the grievance sought to be projected by the applicants is only imaginably and not real. The Note-1 under clause-11 of the RRs ^{for recruitment} ~~to~~ the cadre of Dy.SPs providing for consideration of the deputationist Inspectors in CBI ^{also} ~~provided~~ they have 5 years of service as Inspector including service as Inspector in the parent organisation is sought to be justified on the ground that as the ^{length} ~~of~~ service of Inspectors required for promotion to the cadre of Dy.SP being only 5 years and as Inspectors of Police with 5 years regular service in the grade or equivalent are eligible for consideration for transfer on deputation/transfer, there is no justification for leaving out the deputationist Inspectors in the CBI from consideration. The respondents therefore contend that the applicants have no real grievance which deserves to be redressed.

3. We have carefully gone through the pleadings and documents produced and have heard the arguments of the learned

counsel on either side. The learned counsel for the respondents raised an objection that the application is barred by resjudicata as many of the applicants before us had earlier filed OA-1512/90 for the very same reliefs as they have sought in this application and as the said application was dismissed by this Tribunal by order dated 4.1.1991. The learned counsel for the applicant also conceded that some of the applicants, viz. applicants 3, 4, 6 to 9, 13, 15, 17, 21, 23, 44 and 47 along with some other Inspectors of the CBI had filed OA-1512/90 for almost similar reliefs and that the above application was dismissed by the Tribunal. But the learned counsel contends that the principles of resjudicata will not arise in this case at least as far as those applicants who were not parties to the OA-1512/90 are concerned. In the reply statement, the respondents have not pleaded that the applicants are barred by the principles of resjudicata from agitating the question which had been decided earlier. Going by the chronology of the events, it is seen that OA-1512/90 was filed after this application was filed and even after the reply statement in this application was filed by the respondents OA-1512/90 was disposed of only on 4.1.1991. So the plea of

resjudicata could not have been raised by the respondents in the reply affidavit filed by them. But the respondents could have filed an additional affidavit after the disposal of OA-1512/90 raising the contention that the applicants are not entitled to pursue the application for identical reliefs which were turned down by the Tribunal in its order in

OA-1512/90. This has not been done. Anyway, the facts remain that only 13 out of 55 applicants were parties to OA-1512/90. A copy of the judgement in OA-1512/90 has been made available to us by the learned counsel for the applicant. The reliefs claimed in the above application have been extracted in para-1 of the judgement. They are as follows:

"(i) To declare that promotion of the existing cadre Inspectors(non-deputationists) in CBI is the valid mode of filling all the vacancies in the post of Deputy Superintendent of Police in the CBI;

(ii) to strike down the restraint put on promotion by quota to departmental Inspectors(30%) as illegal and unauthorised;

(iii) to strike down the provisions for deputation/transfer and direct recruitment as laid down in the SPE(Executive staff) Recruitment Rules, 1963, to fill the vacancies in the post of Dy.SP in the CBI as illegal and unconstitutional;

(iv) to direct the respondents to consider all eligible cadre Inspectors of the CBI including the applicants for every promotion vacancy in the CBI without application of the quota rule;

(v) to pass an order prohibiting respondent Nos.1 to 3 from appointing respondent Nos. 4 to 26 or any other person to the post of Dy.SP in the CBI on deputation/transfer and in case orders of appointment/promotion are issued, not to give effect or implement the said orders;

(vi) to pass an order restraining respondent Nos. 4 to 26 and other persons from joining CBI service on deputation/transfer in the post of Dy.SP in case appointment orders to this effect are received by them;

(vii) to pass an order restraining respondent Nos. 1 and 2 from absorbing the deputationists in the CBI cadre; and

(viii) to promote the applicants and their colleagues on the basis of seniority-cum-merit to all the available vacancies in the post of Dy.SP in the CBI."

It is evident that all the prayers in this application other than the prayer No.4 were there in OA-1512/90. After consideration of the pleadings and documents, this Tribunal had held that the applicants in OA-1512/90 were not entitled to the



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reliefs sought in that application. So even if the principles of resjudicata may not apply in the strict sense, since the Bench has considered the validity of the RRs providing for quota for deputation/transfer and has held the same to be valid, Unless the applicants in this case succeed in persuading us not to agree with the conclusions reached in the judgement in OA-1512/90, the judgement in OA-1512/90 will have to be followed to the extent of the issues decided there. The learned counsel for the applicant fairly conceded that unless he is successful in persuading us to disagree with the conclusions reached in OA-1512/90, the judgement in that case will have to be followed, ^{respect} in/of issues which are common in this case and OA-1512/90 and were decided.

4. The learned counsel for the applicant invited our attention to the note 1 below Col;11 in the RRs dated 31.3.1987 at Annexure-C which has brought in the deputation Inspector of Police in the CBI with 5 years of service as Inspector including service as Inspector in the parent organisation within the category of persons eligible for the 50% quota provided for transfer on deputation/transfer. This according to the learned counsel for the applicant amounts to giving undue advantage to the deputationist Inspectors just for the fortuitous circumstance that they happened to work in the CBI on deputation. The learned counsel invited our attention to the averments in the application to illustrate as to how a person who had been appointed as Sub Inspector in the Delhi Police could become a Dy.SP in the CBI if he had immediately after 5 years of

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service as SI been working as Inspector on deputation in the CBI while Inspectors who were originally recruited to the CBI would not have been promoted as Dy.SPs even after 12 years of their service as Inspector of Police. The learned counsel argued that this is a clear instance of discrimination violative of Articles 14 and 16 of the Constitution and this provision in the RRs which enable the deputationist Inspectors to be promoted towards the 50% quota to be filled by deputation/transfer should be declared unconstitutional. We are not in a position to agree with the learned counsel for the applicant when he says that there is a discrimination violative of the equality clauses contained in Articles 14 and 16 of the Constitution in bringing ⁱⁿ the deputationist Inspectors also within the category of eligible officers to be considered for appointment by transfer on deputation/transfer in the 50% quota in the post of Dy.SPs. On a careful scrutiny of the provisions of the RRs, we are of the view that if the deputationist Inspectors were ^{not} ~~allowed~~ to be considered for transfer on deputation/transfer towards the 50% vacancies that would have infringed the ^{equality} ~~equality~~ clause contained in Articles 14 and 16 of the Constitution because had they not been on deputation and had they been Inspectors of Police elsewhere they would have been eligible for consideration. The length of service ^{as Inspector} ~~for promotion~~ to the post of Dy.SP in the 30% quota for promotion is 5 years. Similarly, for transfer on deputation/transfer, the length of service in the

cadre of Inspectors prescribed is only 5 years. Therefore, the note which is only a clarification to say that those deputationist Inspectors who had 5 years' service including the service rendered in the CBI would also be eligible for consideration does not in any way offend the provisions of Articles-14 and 16 of the Constitution. The fact that an S.I. of Police who joined in the Delhi Police has become a Dy.S.P. after 10 years for the reason that he had been a deputationist to the CBI immediately after 5 years of his service as S.I. that Inspectors of Police directly recruited to the CBI remained Inspectors for more than 12 years and that if the S.I. of Police who was recruited to the Delhi Police had continued in that Department without opting for the deputation, he would have become Inspector of Police only after 10 years are all chances and accidents in service. For that reason, it cannot be said that the note below Column-11 of the Recruitment Rules at Annexure-C bringing in the deputation Inspectors having 5 years of service as Inspectors within the category of persons eligible for consideration for appointment transfer on deputation/transfer towards the 50% vacancy is invalid. Further, the Recruitment Rules provide at Column-13 that while selecting officers for appointment on transfer on deputation/transfer and while making direct recruitment, consultation with the U.P.S.C. is necessary. The provisions in the Recruitment Rules including the note were made by the Government after due consideration and consultation taking into account the needs and requirements of

the service, the nature of the work and the sources from which officers can be best drawn. It is not proper to consider that the Government does not know its need and requirements. The Supreme Court has in *Bishan Sarup Gupta V. Union of India*, 1974 SCC(L&S) 506 observed as follows:

"When considering this point, it must be clearly understood that this Court is not concerned with Government's policy in recruiting officers to any service. Government runs the service and it is presumed that it knows that is best in the public interest. Government knows the calibre of candidates available and it is for the Government to determine how a particular service is to be manned - whether by direct recruits or by promotees or by both and, if by both, what should be the ratio between the two sources having regard to the age factor, experience and other exigencies of service. Commissions and Committees appointed by the Government may indeed give useful advice but ultimately it is for the Government to decide for itself."

Following the above observation of their Lordships of the Supreme Court, this Bench of the Tribunal in OA-1512/90 held that the challenge of the applicants therein to the RRs providing for quota for transfer on deputation/transfer cannot lie and that the provisions in the RRs for such quota are perfectly in order. We do not find any reason to disagree with the above well considered decision of the Bench on this question. Further, the grievance of the applicants does not at all appear to be genuine or well founded. The main grievance projected by them in their application is that the deputationist Inspectors are being made eligible for appointment towards the 50% quota reserved for transfer on deputation/transfer. Whether the deputationist Inspectors are made eligible or not the applicants being persons belonging to the feeder category to the post of Dy.SPs in the same department can have no right to be considered for appointment on transfer/

transfer. Therefore, we do not understand how the applicants are aggrieved by the deputationist Inspectors being made eligible for consideration. The prayer No.1 in the application is actually misconceived because there is no quota for promotion to the post of Dy.SP fixed for deputationists. We are of the view that the applicants have no legitimate grievance in regard to the quota for promotion and also in regard to the deputationist Inspectors being made eligible for consideration for appointment to the post of Dy.SPs towards the 50% quota for transfer on deputation/transfer.

5. The grievance of the applicant that the absorption of deputationists in the CBI would go prejudicial to the officers directly recruited to the CBI also has no basis because it is the prerogative of the Government to make rules regarding the ^{composition} of its service. The rules are framed taking into account of the public interest. If the rules which are made in public interest are against the personal interest of the individual officers, that will ^{not} be a ground for challenging those rules unless malafides or arbitrariness are manifest.

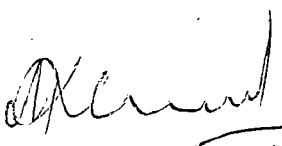
6. As the last relief, the applicants have prayed that it may be held that CBI's own directly-recruited officers ought to be permitted to apply for outside posts, at least to the extent to which outsiders are brought into CBI to occupy posts which would otherwise legitimately belong to CBI's own directly recruited officers. Officers belonging

to one Department are permitted to apply for outside posting for advancement in career. But while granting such permission, the lending department would take into account ^{of} the question whether the department can afford to dispense with the services of the officer concerned. As utmost importance should be given to public interest, it is not possible to lay down that to the extent the officers of other departments are permitted to occupy the posts in the CBI officers, officers of the CBI should be permitted to apply for and go on outside postings. These are matters of routine administration in the department in which judicial intervention is not warranted.

7. Giving the various contentions of the parties our anxious consideration, we are convinced that the applicants have no legitimate grievance to be redressed and that they are not entitled to the reliefs prayed for. Before parting with this case, taking note of the submission of the learned Central Government Standing Counsel that considering the fact that about 76% of the posts of Dy.SPs are being occupied by the promotees though the quota prescribed for promotion is only 30%, the Government is considering the question of revision of the quota and that appropriate decision would be taken without delay, we hope that the Inspectors like the applicants ^{will} have no more reason to be dissatisfied. In the result, the application is dismissed without any order as to costs.


(IK RASOTRA)
ADMVE. MEMBER

trs


(AV HARIDASAN) 53/21
JUDICIAL MEMBER