

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH



OA 1144/2004

New Delhi, this the 4th day of August, 2005

Hon'ble Mr. Justice M.A. Khan, Vice-Chairman (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

Nathu Ram
Village Pawti, P.O. Prampura
Distt.-Rewari (Haryana)

...Applicant.

(By Advocate Sh. Harvir Singh)

Versus

1. Union of India
Through Secretary,
Ministry of Home Affairs,
Central Sectt., North Block,
New Delhi.
2. Director (Intelligence Bureau)
Ministry of Home Affairs,
Government of India,
East Block-7, Level-7,
R.K. Puram,
New Delhi -
3. Director General
Central Industrial Security Force,
Block No., 5th Floor,
CGO Complex, Lodhi Road,
New Delhi – 110 003.

...Respondents.

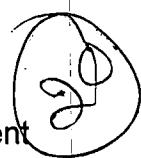
(By Advocate Sh. R.N. Singh)

ORDER

By Mr. S.K. Malhotra, Member (A):-

This OA has been filed by the applicant with the prayer to quash and set aside the order dated 29.4.2004 (Annexure A-1) by which his deputation as Security Assistant at I.B. Headquarters, New Delhi has been terminated and he has been relieved of his post and repatriated to his parent department. He has also prayed that he should be deemed to have been absorbed in I.B.

2. The facts of the case in brief are that the applicant had joined as Constable on 30.9.1988 in C.I.S.F. On 23.4.1999, he joined I.B. as deputationist in the capacity of Security Assistant, for a period of five years. His deputation came to an end on 23.4.2004. By a letter dated 29.4.2004, he has been relieved



of his deputation post and has been directed to report for duty to his parent department (Annexure A-1). The operation of this order was, however, stayed by the Tribunal vide order dated 7.5.2004. The stand taken by the applicant is that since no relieving order was issued immediately after his deputation was over on 23.4.2004, he should be deemed to have been absorbed in I.B. According to him, his willingness for absorption was also sought but since his parent department did not grant No Objection Certificate (NOC), he has been subjected to repatriation. It is alleged that some employees junior to him have been given NOC by C.I.S.F. but the same has been denied in his case. It has been contended that according to the DOP&T's instructions, the case of absorption should be processed six months in advance of the expiry of the deputation period and if the official is not willing to be absorbed, he should be repatriated immediately on the expiry of his deputation. According to him no such process was initiated in his case and he was allowed to continue beyond 23.4.2004 for a period of 6 days, despite non-concurrence by the parent department. As such the applicant should be deemed to be absorbed in I.B. It has further been contended that according to the Recruitment Rules for the post of Security Assistant, mode of recruitment is 75% by direct recruitment and 25% by deputation/transfer. However, as per OM dated 13.1.1992 issued by I.B. based on good service records, officers from other organizations can be absorbed. He is thus eligible to be considered for absorption.

3. The respondents have filed their counter reply in which they have taken the stand that the applicant has no right for absorption in the borrowing department. According to the instructions on the subject, the person who seeks to be absorbed permanently must have the concurrence of his parent department. In fact the absorption depends on the tripartite agreement amongst the lending department, the borrowing department and the consent of the officer concerned. In the instant case, the lending department refused to grant NOC for his permanent absorption. Once the lending department is not willing, the applicant cannot insist that he should be permanently absorbed. According to

the respondents they had approached the lending department vide their letter dated 23.12.2003 (Annexure R-2). However, the parent department i.e. C.I.S.F. authorities vide their letter dated 31.12.2003 (Annexure R-3) regretted to issue NOC due to administrative constraints. As mentioned above, the NOC from the parent department is a pre-requisite condition for absorption. Since this condition was not fulfilled in the present case the respondents are unable to absorb him in I.B.

4. We have heard both the learned counsel for the parties and have also gone through the pleadings available on record.

5. The Learned counsel for the applicant in support of his contention cited a judgement dated 16.1.2003 (Annexure A-2) of this Tribunal in the case of Satender Pal and Others vs. Union of India and Others, in which the impugned order of repatriation was quashed and the respondents were directed to take steps to seek relaxation with regard to the 'No Objection Certificate' with the parent department as per Clause 10 of the DOP&T's OM dated 5.1.1994 for permanent absorption of the applicant. According to him the respondents had filed a Writ Petition in the Hon'ble High Court against this order, which was dismissed. He stated that the facts and circumstances of the present case are similar to the one discussed in the above judgement and as such similar directions asking the respondents to seek relaxation with regard to the 'No Objection Certificate' by the parent department should be issued. Our attention was, however, drawn to the Full Bench judgement of Principal Bench of this Tribunal in OA 1801/2003 and OA 3100/2003 decided on 5.7.2004 [2005 (1) ATJ 409], in which, the judgement in the case of Satender Pal (supra) mentioned above was also considered. The Full Bench had ruled that the applicant had no right to be considered for absorption without the consent of the parent department. The Learned counsel for the applicant, however, stated that this judgement of the Full Bench has since been stayed by the Hon'ble High court. He stated that the applicant who has worked as a deputationist with the I.B. for more than five years had a legitimate expectation of absorption. He also



informed that the applicant had since submitted another representation to DG, CISF for grant of NOC for his absorption in I.B. This representation has been favourably considered by I.B. and have forwarded the same to the CISF seeking their no objection. In these circumstances, he pleaded that the Tribunal should direct the respondents to make efforts for procuring NOC from his parent department. In this connection, he cited the judgement of the Hon'ble Supreme Court in the case of Mahesh Kumar K. Parmar and Others vs. S.I.G. of Police and Others [(2002) 9 SCC 485], in which the Hon'ble Supreme Court had observed that the State Government may consider the case of the petitioners for absorption on transfer, in accordance with rules, if they are found otherwise eligible. It was further observed that the administration would be better served on account of experience the petitioners have already got in the Bureau by serving for eight years. He requested that similar directions could be issued by the Tribunal in the present case also.

6. The above contentions made by the learned counsel for the applicant were vehemently opposed by the learned counsel for the respondents. He stated that the applicant in this OA has prayed for setting aside the order dated 29.4.2004, declaring it as illegal and arbitrary. He stated that neither the applicant nor his learned counsel has been able to point out as to which statutory rule or instructions have been violated by the respondent Department by issuing the order dated 29.4.2004. He stated that for absorption of the employee, all the three constituents i.e. the lending department, the borrowing department and the officer concerned should give their concurrence. Even if one of these parties is not willing to give consent, the absorption cannot be effected. He stated that the judgement of the Hon'ble Supreme Court in the case of Mahesh Kumar (supra) cited by the learned counsel for the applicant is not at all applicable in the instant case. In that case, the Hon'ble Supreme Court had specifically held that long continuance in borrowing department after expiry of deputation period, confer no enforceable right on such deputationist for permanent absorption in the borrowing department. Hence no mandamus could be issued for permanently



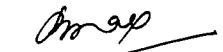
absorbing them. The observations made by the Hon'ble Supreme Court in that judgement suggesting the Government to consider particular cases of Head Constable of Gujarat Police, were in the peculiar facts and circumstances of the case, which are not relevant in the instant case. In the present case under consideration, the deputation period of the applicant for 5 years expired on 23.4.2004 and he was repatriated by order dated 29.4.2004, i.e., six days after his period of deputation expired. This does not give him a legal right for deemed absorption, as claimed by him, especially when his parent Department is not willing to issue a NOC. He also mentioned that the decision taken by the Tribunal in the case of Satender Pal (Supra) was based on peculiar facts and circumstances of the case and that judgement does not lay down any principle of law which could have a universal application. In support of his arguments, he, however, cited the Full Bench judgement dated 30.1.2003 of the Principal Bench of the Tribunal in the case of Sh. S. Selvakumar vs. Union of India and Others, in OA No.1652/2002 (Annexure R-10). After discussing the relevant rules and instructions on the subject, the Tribunal in this judgement had also referred to the decision of the Hon'ble Supreme Court in the case of Ratilal B. Soni and Others vs. State of Gujarat and Others [1990 (Supp.) SCC 243], in which it was held that the persons on deputation could be reverted to his parent cadre at any time and they do not get any right to be absorbed on deputation post. It was further held that the instructions on the subject clearly stipulate that the concerned person who seeks to be absorbed permanently must have the concurrence of his parent department. It was observed that when a person is to be absorbed, there has to be a tripartite agreement among the lending department, the borrowing department and the consent of the concerned person. In case the lending department refuses to grant NOC for permanent absorption, the applicant cannot insist that he should be permanently absorbed as such. In this connection our attention was also drawn to another judgement of the Hon'ble Supreme Court in the case of Kunal Nanda vs. Union of India and Anr. [JT 2000 (6) SC 574], in which it was held that unless the claim of the deputationist for permanent



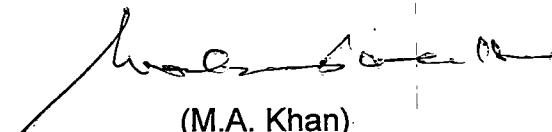
absorption in the department where he works on deputation is based on any statutory rule/ regulation or order having the force of law , the deputationist cannot assert and succeed in any such claim for absorption.

7. After considering the relevant provisions and instructions on the subject and also the ruling given by the Hon'ble Supreme Court in the case of Mahesh Kumar (supra) and the Full Bench Judgement in case of Selvakumar (supra), we are of the considered opinion that the applicant has no enforceable legal right for permanent absorption in the respondents department. Since the lending department i.e. CISF in the present case have already refused to grant NOC for his permanent absorption, we feel that no useful purpose will be served by directing the respondents to make another effort to persuade the leanding department to give their concurrence. We do not find any illegality in the order dated 29.4.2004, issued by the respondents, repatriating the applicant to his parent Department and there is no justifiable reason for our intervention.

8. In view of the foregoing, the OA turns out to be devoid of any merit and the same is accordingly dismissed. Needless to say that the interim order dated 7.5.2004 passed by this Tribunal, staying the operation of the impugned order dated 29.4.2004 get automatically vacated. No costs.



(S.K. Malhotra)
Member (A)



(M.A. Khan)
Vice-Chairman (J)

/gkk/