CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.140/2004:
M.A.No.134/2004:

with

O.A.No.1542/2004:

O.A.No.1557/2004:

O.A.No.1572/2004:
M.A.No.1311/2004:
M.A.No.1312/2004:

O.A.No.1461/2004:
M.A.No.1229/2004:

O.A.No.1465/2004:
M.A.No.1258/2004:

O.A.No.1466/2004:

O.A.No.1470/2004:
M.A.No.1260/2004:

O.A.No.1471/2004:
M.A.No.1259/2004:

O.A.No.1483/2004:
M.A.No.1251/2004:

O.A.No.1485/2004:
M.A.No.1254/2004:

O.A.No.1493/2004:
M.A.No.1261/2004:
M.A.No.1262/2004:

O.A.No.1507/2004
M.A.No.1272/2004:

O.A.No.1510/2004:
M.A.No.1269/2004:

O.A.No.1511/2004:
M.A.No.1270/2004:
M.A.No.1271/2004:

O.A.No.1512/2004:
M.A.No.1268/2004:

O.A.No.1517/2004:
M.A.No.1276/2004:

O.A.No.1527/2004:
M.A.No.1279/2004:

O.A.No.691/2004:

O.A.No.1225/2004:
M.A.No.1028/2004:

O.A.No.1271/2004
M.A.No.1082/2004

O.A.No.1278/2004:
M.A.No.1088/2004:

O.A.No.1292/2004:
M.A.No.1100/2004:

O.A.No.1293/2004:
M.A.No.1101/2004:

O.A.No.1294/2004:
M.A.No.1102/2004:

O.A.No.1309/2004:
M.A.No.1113/2004:

O.A.No.1310/2004:
M.A.No.1114/2004:

O.A.No.1327/2004:
M.A.No.1122/2004:
M.A.No.1123/2004:

O.A.No.1329/2004:
M.A.No.1125/2004:

O.A.No.1351/2004:
M.A.No.1138/2004:

O.A.No.139/2004:
M.A.No.133/2004:

O.A.No.243/2004:
M.A.No.212/2004:

O.A.No.1367/2004:
M.A.No.1145/2004:
M.A.No.1146/2004:

O.A.No.1427/2004:
M.A.No.1203/2004:
M.A.No.1204/2004:
M.A.No.1266/2004:

New Delhi, this the 9th day of July, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K.UPADHYAYA, MEMBER (A)

1. O.A.No.140/2004:
M.A.No.134/2004:

Vidhya Ram & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

2. O.A.No.1542/2004:

Balram Singh ... Applicant
vs.
Union of India & Others ... Respondents

3. O.A.No.1557/2004:

Nagender Kurmi ... Applicant
vs.
Union of India & Others ... Respondents

4. O.A.No.1572/2004:
M.A.No.1311/2004:
M.A.No.1312/2004:

Krishan Kumar & Ors. ... Applicants
vs.
Union of India & Others ... Respondents

5. O.A.No.1461/2004:
M.A.No.1229/2004:

C.K.B.Chandaran & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

6. O.A.No.1465/2004:
M.A.No.1258/2004:

Ashok Kumar & Ors. ... Applicants
vs.
Union of India & Others ... Respondents

7. O.A.No.1466/2004:

C.B.Dixit & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

8. O.A.No.1470/2004:
M.A.No.1260/2004:

Mukhtiyar Singh & others ... Applicants
vs.
Union of India & Others ... Respondents

9. O.A.No.1471/2004:
M.A.No.1259/2004:

Mohd. Rafivulla & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

10. O.A.No.1483/2004:
M.A.No.1251/2004:

Raj Kumar ... Applicant
vs.
Union of India & Others ... Respondents

11. O.A.No.1485/2004:
M.A.No.1254/2004:

Suresh Kumar & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

12. O.A.No.1493/2004:
M.A.No.1261/2004:
M.A.No.1262/2004:

Kalu Ram & Ors. ... Applicants
vs.
Union of India & Others ... Respondents

13. O.A.No.1507/2004
M.A.No.1272/2004:

Kalu Ram & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

14. O.A.No.1510/2004:
M.A.No.1269/2004:

Sidheshwar Prasad Singh & Ors. ... Applicants
vs.
Union of India & Others ... Respondents

15. O.A.No.1511/2004:
M.A.No.1270/2004:
M.A.No.1271/2004:

Balbir Singh & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

16. O.A.No.1512/2004:
M.A.No.1268/2004:

Kishan Kumar and others ... Applicants
vs.
Union of India & Others ... Respondents

17. O.A.No.1517/2004:
M.A.No.1276/2004:

Dharamvir Singh & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

18. O.A.No.1527/2004:
M.A.No.1279/2004:

Mukesh Kumar & Ors. ... Applicants
vs.
Union of India & Others ... Respondents

19. O.A.No.691/2004:

Karam Bir Singh .. Applicant
vs.
Union of India & Others .. Respondents

20. O.A.No.1225/2004:
M.A.No.1028/2004:

Bharat Singh & Ors. ... Applicants
vs.
Union of India & Others ... Respondents

21. O.A.No.1271/2004
M.A.No.1082/2004

Mohan Lal & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

22. **O.A.No.1278/2004:**
M.A.No.1088/2004:

Darshan Singh & Ors. ... Applicants
vs.
Union of India & Others ... Respondents

23. **O.A.No.1292/2004:**
M.A.No.1100/2004:
C.P.No.197/2004:

Narender Singh & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

24. **O.A.No.1293/2004:**
M.A.No.1101/2004:

Ram Naresh Yadav ... Applicant
vs.
Union of India & Others ... Respondents

25. **O.A.No.1294/2004:**
M.A.No.1102/2004:

Ashok Kumar Sangral and others .. Applicants
vs.
Union of India & Others .. Respondents

26. **O.A.No.1309/2004:**
M.A.No.1113/2004:

Rajendra Singh & Ors. ... Applicants
vs.
Union of India & Others ... Respondents

27. **O.A.No.1310/2004:**
M.A.No.1114/2004:

Ram-Chander & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

28. **O.A.No.1327/2004:**
M.A.No.1122/2004:
M.A.No.1123/2004:

Vijay Kumar & Ors. ... Applicants
vs.
Union of India & Others ... Respondents

29. **O.A.No.1329/2004:**
M.A.No.1125/2004:

A.K.Mishra & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

30. **O.A.No.1351/2004:**
M.A.No.1138/2004:

Ram Kumar & Ors. ... Applicants
vs.
Union of India & Others ... Respondents

31. O.A.No.139/2004:
M.A.No.133/2004:

Jai Singh & others ... Applicants
vs.
Union of India & Others .. Respondents

32. O.A.No.243/2004:
M.A.No.212/2004:

Desh Raj & Others .. Applicants
vs.
Union of India & Others .. Respondents

33. O.A.No.1367/2004:
M.A.No.1145/2004:
M.A.No.1146/2004:

Ravinder Singh & Ors. ... Applicants
vs.
Union of India & Others ... Respondents

34. O.A.No.1427/2004:
M.A.No.1203/2004:
M.A.No.1204/2004:
M.A.No.1266/2004:

Bahadur Singh & Ors. .. Applicants
vs.
Union of India & Others .. Respondents

Note: Details of the memo. of parties are in their respective OAs.

Present: Sh. K.C.Mittal, counsel for applicants in OAs-1465/04, 1466/04, 1470/04, 1471/04, 1507/2004, 1510/2004, 1512/2004, 1517/2004 1527/2004, 691/2004, 1225/2004, 1278/2004, 1292/2004, 1293/2004, 1294/2004, 1309/2004 1310/2004, 1329/2004, 139/2004, 140/2004 and 243/2004.
Shri R.K. Shukla and Shri C.K. Shukla, learned counsel for applicants in OAs-1572/2004, 1483/2004, 1485/2004, 1493/2004, 1511/2004, 1327/2004 and 1427/2004.
Shri Rajiv Kumar, learned counsel for applicants in OAs-1461/2004 & 1367/2004
Ms.Varuna Bhandari Gugnani, learned counsel for applicants in OAs-1271/2004 & 1351/2004
Sh. Sachin Chauhan, counsel for applicant in OA-1557/04.

Shri B. Dutta, learned Additional Solicitor General alongwith Ms. Geeta Luthra, Ajesh Luthra and Shri Saurabh Ahuja, learned counsel for respondents in all OAs.

O R D E R

Justice V.S. Aggarwal:-

The Delhi Police Act had been enacted in the year 1978. In exercise of the powers conferred under Section 147 of the said Act, different rules including

the Delhi Police (Appointment and Recruitment) Rules, 1980 and the Delhi Police (General Conditions of Service) Rules, 1980 have been enacted. For proper administration, the Union Territory has been divided into different police Districts. Every police District has number of police stations. There is an officer incharge of the police head in each Police Station.

2. On 18.9.1998, the Additional Commissioner of Police had written to the Joint Secretary, Ministry of Home Affairs requesting that in order to make 17 new Police Stations which had been sanctioned, 500 more Constables would be required from Central Para-Military Force on deputation. The said letter reads:

> "Sir,
>
> It was agreed by the Ministry of Home Affairs that in order to make 17 new Police Stations sanctioned by the Govt. of India to start functioning immediately, 500 Constables from CPMF will be given on deputation till Delhi Police raises its own force to man these Police Stations.
>
> 2. It is, therefore, requested to kindly intimate the names of 500 Constables, who are willing to come on deputation to Delhi Police, at the earliest so that action for completing the formalities regarding their deputation to Delhi Police is completed promptly. A copy of the terms and conditions for deputation in Delhi Police is enclosed for ready reference.
>
> Yours faithfully,
>
> Sd/-
> (S.K. JAIN)
> ADDL. COMMISSIONER OF POLICE:
> HEADQUARTERS: DELHI."

3. There upon, the Joint Secretary, Ministry of Home Affairs had written to different Para-Military Forces like Border Security Force, Central Reserve Police Force, Indo-Tibetten Border Police and Central Industrial Security Force vide letter dated 25.9.1998. It reads:

> "Dear Sir,
>
> Kindly recall my telephonic request sometime back regarding deputation of constables from your force to Delhi Police to operationalise the newly created 17 Police Stations. As the Delhi Police will take some time to raise its own manpower the Para-Military Forces may provide about 500 Constables on deputation to Delhi Police as per the break up given under:
>
> | | |
> |---|---|
> | CRPF | 200 |
> | ITBP | 100 |
> | CISF | 100 |
> | BSF | 100 |
>
> It is requested that nominations of Constables for deputation to Delhi Police may be sent immediately. A copy of the terms and conditions for deputation to Delhi Police is enclosed.
>
> Yours sincerely,
>
> Sd/-
> (O.P. Arya)"

4. On different dates which are basically in the year 1999 followed by 2001, large number of persons serving in different Para-Military Forces were taken on deputation to Delhi Police. We take liberty in reproducing the representative order dated 5.1.1999 whereby certain Constables from Central Reserve Police Force were taken on deputation.

> "In exercise of the powers conferred by the Commissioner of Police, Delhi, the Addl. Commissioner of Police, Estt., Delhi is pleased to take the following Constables on deputation from C.R.P.F. to Delhi Police only for a period of one year w.e.f. the date they resume their duties in Delhi Police, on the usual terms and conditions:-"

5. By virtue of the present application, we propose to dispose of the above said Original Applications. They all pertain to the same controversy of repatriation to their parent department. Some of the applications were filed after the earlier filed applications, became ripe for hearing. It was considered that since common questions were involved, therefore, they should be heard and decided together.

6. All the applicants are assailing the order repatriating them to their parent department. The order in OA 140/2004 reads:

> "Subject:- Repatriation of deputationists to their parent Department.
>
> It has been decided to repatriate all the police personnel taken on deputation from BSF/ITBP/CRPF/CISF to Delhi Police, on 3rd of February 2004 to accommodate candidates already selected for the post of Constable and awaiting call letters since January, 2003. A list of the deputationists is enclosed.
>
> The deputationists/constables may be informed immediately against their proper receipt that they will be repatriated on 3rd of Feb. 2004 to their parent departments and no further extension will be granted. The acknowledgement in token of having noted the contents of this letter by the individuals may be kept on record.
>
> sd/-
> (D.S.NORAWAT)
> DEPUTY COMMISSIONER OF POLICE
> HDQRS. (ESTT.): DELHI."

7. The said order is being assailed on various grounds, namely, that the order so passed is discriminatory. The applicants are deemed to have been absorbed in Delhi Police as per Rule 17 of the Delhi Police (General Conditions of Service) Rules, 1980. In any case, they cannot be repatriated and

have a right to be considered for permanent absorption. It has also been asserted that large number of vacancies are available and the respondents' plea to the contrary is not correct.

8. Needless to state that in the replies filed, respondents have controverted the assertions made by the applicants. They assert that there has been suppression of facts in some of the matters. Therefore, those applicants should not be heard. The jurisdiction of this Tribunal to hear the applications is also being challenged besides the merits of the matter, contending that applicants have no right or claim in this regard, which we shall take up hereinafter.

9. The first and foremost question, therefore, that arises is:

I). TO EFFECT SUPPRESSION OF FACTS:-

10. On an earlier occasion, OA 139/2004, OA 140/2004 and OA 243/2004 had been considered by this Tribunal. It was noticed by this Tribunal that 42 of the applicants had earlier filed an application in this Tribunal which was dismissed and this fact has been suppressed. Since the other applicants had joined them in verifying the wrong facts, therefore, the entire applications were dismissed. Applicants filed Writ Petition (Civil) Nos.9562-9640 of 2004. The Delhi High Court recorded on 31.5.2004:

15

"All theese petitions being identical in nature and arising out of a common Tribunal order dismissing petitioners' OAs are disposed of by this common order.

Petitioners are on deputation to Delhi Police and have been ordered to be repatriated to their respective parent departments. They challenged this in their respective OAs before the Tribunal on the plea that they had a right of absorption in Delhi Police. The Tribunal, however, instead of dealing with their case on merit rejected their OAs on the ground that 42 of them had suppressed the dismissal of OAs filed by them earlier on the same subject matter.

Petitioners grievance is two fold. Firstly that they had claimed absorption in Delhi Police on several grounds and secondly that even if it was assumed that 42 of them had suppressed some information and had approached Tribunal with unclean hands, the OAs filed by others could not have been dismissed for this.

We find merit in the plea because even if it was accepted that 42 out of these petitioners had approached Tribunal with unclean hands, it could not have constituted a basis for dismissal of OAs filed by other petitioners. Their claim for absorption was required to be considered on merits. It seems that Tribunal had failed to take this in regard and had rejected the OAs of all petitioners on this basis. The Tribunal order, therefore, can't sustain and is set aside. Petitioners OAs 139/04, 140/04 & 243/04 shall revive and be considered afresh by the Tribunal and disposed of on merits by appropriate orders. We are informed that similar matters are coming up before it tomorrow. Parties are, therefore, directed to appear before the Tribunal on 1.6.2004 and seek consideration on their revived OAs also.

Dasti."

11. Keeping in view the said findings, it becomes unnecessary to probe further in this regard.

12. On behalf of the respondents, it was pointed that even the Delhi High Court felt that 47 of them who suppressed the facts had approached the

Tribunal with uncleaned hands, and therefore, their claim should be dismissed. We have no hesitation in rejecting the said argument because the Delhi High Court had only stated that claim on merits should be decided. Keeping in view this important finding which is the penultimate finding, the above said facts recorded, **"even if it was accepted that 42 out of these petitioners had approached Tribunal with unclean hands"**, cannot be highlighted by the respondents.

13. Our attention in this regard by the respondents was drawn, besides above said facts, to OA 1271/2004. Learned counsel for the respondents contended that there is a misstatement on facts of possibly change of the last page of the relevant clause illegally and therefore, the petition must fail.

14. Perusal of the said OA revealed that it was filed on 13.5.2004. The applicants therein challenged the order of 14.5.2004 which has not even passed on that date. It was eloquently explained that when the petition was filed on 13.5.2004, it was returned by this Tribunal and thereafter it was re-filed and this plea of the respondents should not be accepted.

15. We have no hesitation in rejecting the said argument.

16. Rule 5 of the Central Administrative Tribunal (Procedure) Rules, 1987 reads as under:

"5. Presentation and scrutiny of applications.- (1) The Registrar, or the officer authorised by him under rule 4, shall endorse on every application the

date on which it is presented or deemed to have been presented under that rule and shall sign the endorsement.

(2) If, on scrutiny, the application is found to be in order, it shall be duly registered and given a serial number.

(3) If the application, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Registrar may allow the party to satisfy the same in his presence, and if the said defect is not formal in nature, the Registrar may allow the applicant such time to rectify the defect as he may deem fit [where an application is received by registered post, the applicant shall be informed of the defects, if any, and he shall be required to rectify the same within such time as may be stipulated by the Registrar].

[(4)(a) If the applicant fails to rectify the defect within the time allowed under sub-rule (3), the Registrar may, by order and for reasons to be recorded in writing, decline to register the application and place the matter before the Bench for appropriate orders.]"

17. Perusal of the same clearly shows that when there are certain defects in the petition, the same can only be removed. Without the permission of the Tribunal, the relief clause could not be changed or interpolated. Necessary application for amendment must be filed. It has not been done so. In either way if the application was filed even before the impugned order was passed, it must be taken to be without merit and in any case if there is any change which is not permitted in law, the petition necessarily on this aspect has to fail. However, keeping in view the findings which we have already referred to above in the Writ Petition filed, we must delve on the merits of the matter.

II) <u>WHETHER THE CENTRAL ADMINISTRATIVE TRIBUNAL HAS THE JURISDICTION TO ENTERTAIN THE APPLICATION:-</u>

18. The question as to whether this Tribunal has the jurisdiction to entertain the applications pertaining to members of the other Armed Forces who are on deputation, the learned counsel for the applicants had drawn our attention to the fact that in an earlier application filed by Sh. Satender Pal and Others (OA No.3202/2001, decided on 11.11.2002), this Tribunal had dismissed the application holding:

> "We have considered these aspects. It is a well known fact that cause of action is bundle of facts, which constitute cause of action. In this case, the question of absorption is involved. For the purpose of absorption it is a well-settled principle that the concurrence of borrowing department, lending department as well as the employee is required, unless the concurrence of all these three parties is there, the employee cannot be absorbed in the borrowing department. In the case the leading department has not given the NOC despite the fact that the borrowing department has written letter for this purpose for granting of NOC by the present department which is a BSF and employees are also that of BSF, so the court cannot assume the jurisdiction to give any direction to the BSF authorities as Section 2 of the AT Act does not empower the court to entertain this petition of member of any Armed Forces seeking a relief against Armed Forces. Besides that since the parent department itself has not given the NOC rather they have categorically refused to give NOC and rather BSF authorities had requested the Respondents to relieve the applicants, so they are repatriated as per Annexure R-6, R-7."

19. The applicants therein had challenged the said order of this Tribunal by filing CWP No.7406/2002. The Delhi High Court had set-aside the said order primarily on the ground that since the order had been passed by the Intelligence Bureau, any challenge to it squarely fell within the jurisdiction of the Tribunal and thereupon it was held:

"We find substance in the plea because petitioners OA was directed against order dated 11.11.2002 (Annexure A to OA) passed by the IB whereby petitioners were to be ordered to be repatriated. The Tribunal was required to examine the validity of this order first because it had taken over the issue of NOC. **Since this order was passed by the IB, any challenge to it squarely fell within the jurisdiction of the Tribunal. Therefore, the** order passed by it washing its hands off cannot sustain and is set aside.

The Tribunal is resultantly directed to revive OA 3202/2001 and consider it afresh and dispose it of by passing appropriate orders under law. Parties to appear before it on 2nd December, 2002. Meanwhile petitioner's present status in IB which was protected by the Tribunal vide interim order dated 28.11.2001 shall not be disturbed till disposal of their OA within four months of first appearance of parties."

20. We know from the decision in the case of L. CHANDRA KUMAR v. UNION OF INDIA AND OTHERS, 1997 SCC (L&S) 577 that the Supreme Court in unambiguous terms held that right to seek judicial review is one of the basic structure of the Constitution and all decisions of the Administrative Tribunal would be subject to the scrutiny before the Division Bench of the High Court within whose jurisdiction the Tribunal concerned fell. Keeping in view the said finding of the Supreme Court, we have not the least hesitation to conclude that the decisions of the High Courts would bind this Tribunal because this Tribunal has all India jurisdiction.

21. However, respondents' learned counsel contended that the question raised about the inherent lack of jurisdiction of this Tribunal, had not been agitated or raised before the Delhi High Court and

consequently, the said decision cannot bind this Tribunal and the question raised by the respondents can still be considered.

22. Our attention was drawn to the decision of the Supreme Court in the case of **STATE OF U.P. & ANR.** v. **SYNTHETICS & CHEMICAL LTD. & ANR.** (1991) 4 SCC 139. The Supreme Court held that even the decisions of the Apex Court which are sub silentio on certain facts and law would not be a binding precedent. The Supreme Court held:

> "41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p.153). In Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. the Court did not feel bound by the earlier decision as it was rendered without any argument, without reference to the crucial words of the rule and without any citation of the authority. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, precedents sub-silentio and without argument are of no moment. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B.Shama Rao v. Union Territory of Pondicherry (AIR 1967 SC 1480) it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles laid down therein. Any declaration or conclusion arrived without

application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restrained in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

23. It is this principle which is being highlighted.

24. The Administrative Tribunals had been set up primarily to deal with the service matters. The Administrative Tribunals Act had been passed and the Administrative Tribunals draw all their powers from the provisions of Administrative Tribunals Act, 1985. The Tribunals are creation of the statute and if the Act does not give the power to the Tribunal, it lacks of inherent jurisdiction to hear the matters in this regard.

25. Section 2 of the Administrative Tribunals Act, 1985 specifically provides that this provision of the Act does not apply to certain officers and persons. It reads as under:

"The provisions of this Act shall not apply to -

(a) any member of the naval, military or air forces or of any other armed forces of the Union;

(b) [omitted]

(c) any officer or servant of the Supreme Court or of any High Court [or courts subordinate thereto];

(d) any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union Territory having a Legislature, of that Legislature."

26. Section 14 of the Act further tells us about the jurisdiction and powers of the Central Administrative Tribunal. It reads:-

> "14. **Jurisdiction, powers and authority of the Central Administrative Tribunal** - (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to-
>
> (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
>
> (b) all service matters concerning-
>
> (i) a member of any All-India Service; or
>
> (ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or
>
> (iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence,
>
> and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;
>
> (c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[**Explanation.**- For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or societies] owned or controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations [or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs."

27. A conjoint reading of Section 2 and Section 14 would show as respondents argued that this Tribunal may have no jurisdiction because the Act does not apply to a member of an Armed Force. Section 14 also opened itself with the words "Save as otherwise

expressly provided in this Act,'. Therefore, the provisions of Section 14 are subject to the provisions of Section 2 of the Act.

28. However, as already pointed above and held in the case of **L. Chandra Kumar (supra)** that once the orders of this Tribunal are subject to judicial review, the decisions of the High Court would bind this Tribunal. It cannot be stated that the order of the High Court was sub silentio because this Tribunal had invoked Section 2 and dismissed the application. But the Delhi High Court in its wisdom has held that once the order passed by the concerned officer is within the purview and jurisdiction of this Tribunal, this Tribunal has the jurisdiction to entertain the application like true soldier bows his head to the said decision.

29. Respondents relied upon the decision of the Supreme Court by the respondents in the case of MAJOR M.R. PENGHAL v. UNION OF INDIA AND OTHERS, JT 1998 (5) SC 624. The said case pertains to Postal Department. The person was working on deputation with the Army. A temporary commission was given. The question for consideration before the Apex Court was as to whether the Central Administrative Tribunal will have jurisdiction to entertain the application or not. The Supreme Court held that the said person could not be treated as Army personnel and concluded:

> "9. As stated above, although the appellant was selected by the Postal Department for appointment to the post of clerk, but he could not be given any appointment due to want of vacancy in the

unit of his choice. Under such circumstances, the appellant was offered an appointment to work as a clerk in the Army Postal Service on the condition that he would remain a civilian employee on deputation in the Army. The appellant accepted the aforesaid offer and agreed to the conditions that he would revert to the civil appointment in Posts and Telegraphs Department on his release from the Indian Army Postal Service. With these conditions, the appellant continued to serve in the Army as a permanent employee of the Posts and Telegraphs Department on deputation and was promoted up to the rank of a Major in the Indian Army. However, the appellant was only given a temporary commission and he worked as such till the date when his relinquishment was ordered. The aforesaid facts clearly demonstrate that the appellant has a lien with the Posts and Telegraphs Department working on deputation in the Indian Army Postal Service and at no point of time the appellant became a full-fledged army personnel. Since the appellant was not a member of the Armed Forces and continued to work as a civilian on deputation to the Army Postal Service, his case was covered under Section 14(1)(a) of the Administrative Tribunals Act. In that view of the matter, the High Court was right in rejecting the writ petition filed by the appellant, whereas the Central Administrative Tribunal erroneously accepted the claim of the appellant that he is an army personnel. We, therefore, uphold the judgment and order of the High Court dismissing the writ petition filed by the appellant. Since the appellant while holding civil post was working in the Army Postal Service on deputation, the Central Administrative Tribunal had jurisdiction to entertain and decide the original application filed by the appellant. We accordingly set aside the order dated 31-1-1997 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, and remand the case to it to decide expeditiously Original Application No.1647 of 1996 of the appellant, on merits."

30. However, provisions of Section 2 had not been considered and, therefore, the decision of the Supreme Court in the facts of the case cannot be held to be the question in controversy. We, therefore, hold keeping in view the ratio deci dendi of the Delhi

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High Court that we have no option but to conclude that this Tribunal necessarily must have a jurisdiction to entertain the application.

III) **WHETHER THE APPLICANTS ARE BEING DISCRIMINATED:**

31. Learned counsel for the applicants urged that in the past, some of the other persons who had been taken on deputation with Delhi Police had been absorbed while the applicants are being discriminated. He referred to us para 5.17 in OA 140/2004 wherein names of such persons have been given who had been absorbed on 22.11.2000.

32. The question for consideration is as to whether in the facts of the case it can be termed to be discrimination or not. Learned counsel relied upon the decision of the Supreme Court in the case of **STATE OF MYSORE AND ANOTHER** v. **H. SRINIVASMURTHY**, AIR 1976 SC 1104. Perusal of the said judgement reveals that question for consideration before the Supreme Court was if the person was on deputation and absorbed and if it was to be so done from the date he came on deputation. The Supreme Court held:

> "17. On the other hand, it is an undisputed fact that six other employees, who were similarly situated, were absorbed from the dates on which they initially joined duty, after deputation to the Polytechnics. It is not the case of the appellant that this principle whereby the absorption in the Department of Technical Education was related back to the date on which a person initially came on deputation, was ever departed from, excepting in the case of the respondent. This being the case, the High Court was right in holding that the State Government had evolved a principle "that if a person was deputed to the Department of Technical Education from

another department and he stayed on in that other department for a reasonable long time his absorption in that department should be made to relate back to the date on which he was initially sent." There was no justification whatever to depart from this principle of policy in the case of the respondent, who was, in all material respects, in the same situation as K. N. Chetty. Very rightly, the High Court has held that his "impermissible reversion" for a short while in 1955 to the parent department was no ground to hold that he was not similarly situated as K. Narayanaswamy Chetty. This so-called reversion to the parent Department for a short period in 1955-56 could not by any reckoning be treated as a break in his service, this period having been treated as leave. Nor did it amount to reduction in rank. In any case, this reversion was not ordered owing to any fault of the respondent. It is not the appellants' case that the respondent's work in the Department of Technical Education was found unsatisfactory or that he was not otherwise suitable or qualified to hold the post of Tailoring Instructor in that Department. That he was suitable to be absorbed in that post, is manifest from the recommendation of the Public Service Commission and is implicit in the impugned order, itself."

33. That is not the controversy before us. Therefore, the cited decision must be held to be distinguishable.

34. This question had been considered by the Tribunal in the case of ARJUN SINGH NEGI v. UNION OF INDIA & ORS., O.A.No.466/2003, decided on 28.2.2003. Therein also it was agitated that two other persons have been absorbed permanently. It was held that it is always in individual cases that has to be looked into on its own merits. In fact, the Supreme Court in the case of THE STATE OF HARYANA & ORS. v. RAM KUMAR MANN, JT 1997 (3) SC 450 had commented upon the doctrine of discrimination. The Supreme Court held that Government in its own reasons can give permission in similar cases to some of the employees to withdraw their resignations. The doctrine

of discrimination is founded upon existence of an enforceable right. Article 14 would apply only when invidious discrimination is meeted out to equals.

35. In the present case before us, as is patent from the impugned order, all persons taken on deputation are being repatriated. We have already reproduced above the said order. Once a common decision has been taken, it cannot be stated that the applicants are being discriminated merely because some other persons in the year 2000 were absorbed. Equality has to be seen among the equals. Once all persons on deputation are being repatriated from whatever Force, we have no hesitation in concluding that the applicants cannot state that they are being discriminated. Resultantly, we reject this argument.

IV. **IF THE APPLICANTS ARE DEEMED TO BE ABSORBED IN DELHI POLICE:**

36. The arguments advanced have been that some of the applicants had been working for more than 5 years on deputation. The Rules provide for absorption and, therefore, it is contended that the applicants must be deemed to have been absorbed.

37. After the arguments had been concluded, the respondents pointed to us the decision of the Full Bench of this Tribunal in the matter of **NET RAM CHOURSIYA** v. **UNION OF INDIA & OTHERS**, O.A.No.1801/2003, rendered on 5.7.2004. In the cited case, those applicants were working as Constables in Border Security Force. They had joined the

Intelligence Bureau during the year 1996 as Security Assistant (General) initially for a period of five years but continued on deputation. They were not absorbed and were repatriated to their parent organisation. The following question had been posed for the decision of the Full Bench:

> "1. Whether the applicant can be deemed to have been absorbed in I.B. under the respondents irrespective of the instructions on the subject?
>
> 2. Whether the applicant has a right to be considered for absorption in I.B.without the consent of his parent department?
>
> 3. Generally."

38. The Full Bench considered various precedents and answered the same:

> "(1) Applicants cannot be deemed to have been absorbed in IB under the respondents irrespective of the instructions on the subject.
>
> (2) The applicants have no right to be considered for absorption in IB without the consent of the parent department in terms of instructions contained in IB OM dated 13.1.1992.
>
> (3) Does not arise."

39. Keeping in view the decision of the Larger Bench, in its broad principle, the argument advanced that after the applicants had worked for more than 5 years and therefore, they are deemed to be absorbed, must fail.

40. There is another way of looking at the same matter. The question of deemed absorption does not arise because there is precious little on the record to indicate that the consent of the parent department has been obtained.

41. It was urged that under the Delhi Police Act, Rules have been framed and, therefore, in accordance with the Delhi Police (General Conditions of Service) Rules, 1980, there could be permanent absorption of the applicants in Delhi Police.

42. The said argument shall be considered hereinafter wherein it is contended that the said persons have right of consideration for being absorbed in Delhi Police. Perusal of Rule 17 of Delhi Police (General Conditions of Service) Rules, 1980 clearly shows that it does not contemplate the deemed absorption. Resultantly, the said argument must fail.

43. Pertaining to the same argument, reference has been made to the decision of **RAMESHWAR PRASAD** v. **MANAGING DIRECTOR, U.P. RAJKIYA NIRMAN NIGAM LIMITED & ORS.**, JT 1999 (7) SC 44 which will be in-appropriate. We shall deal with the said decision hereinafter again but paras 14 and 15 of the decision in the case of **Rameshwar Prasad (supra)** are being reproduced below for the sake of facility:

> "14. We agree with the learned Counsel for the Respondent No.1 and make it clear that an employee who is on deputation has no right to be absorbed in the service where he is working on deputation. However, in some cases it may depend upon statutory rules to the contrary. If rules provide for absorption of employees on deputation then such employee has a right to be considered for absorption in accordance with the said rules. As quoted above, Rule 16(3) of the Recruitment Rules of the Nigam and Rule 5 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 Provides for absorption of an employee who are on deputation.

> 15. In the present case, considering the facts, it is apparent that action of respondent No.1 in not passing the order for repatriation or absorption qua the respondent was unjustified and arbitrary. On the basis of Rule 16(3) of the Recruitment Rules, appellant was appointed on deputation in May 1985. He was relieved from his parent department on 18th November, 1985 and joined Nigam on 19th November, 1985. Under Rule 5 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984, he was required to file an application for his absorption in employment of Nigam. Thereafter on the basis of letter dated 22.12.1987 written by the G.M. (HQ) and on the basis of the letter dated 30.12.1987 written by the G.M. (NEZ), he opted for continuation and absorption in service of Nigam by letter dated 31st December 1987. The General Manager (N.E.Z.) by letter dated 17th September, 1988 wrote to the GM (HQ) that appellant's service record was excellent; he was useful in service and as he was about to complete 3 years on deputation, appropriate order of absorption be passed. Nothing was heard from the General Manager. Further on 19-11-1990, as soon as the appellant completed 5 years of deputation, his deputation allowance was stopped with effect from that date. The appellant continued in service without any break. As per Rule 4 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 which was admittedly applicable, provides that no government servant shall ordinarily be permitted to remain on deputation, for a period exceeding 5 years. If the appellant was not to be absorbed, he ought to have been repatriated in the year 1990 when he had completed 5 years of service on deputation. By not doing so, the appellant is seriously prejudiced. The delay or inadvertent inaction on the part of the Officers of the Nigam in not passing appropriate order would not affect the appellant's right to be absorbed."

Perusal of the findings as well as the rules applicable to the respondents before the Supreme Court clearly show that there was a time limit for deputation prescribed. Rule 4 clearly provided that "No Government servant shall ordinarily be permitted to remain on deputation for a period exceeding five years". Thereafter, the subsequent rule provided for

absorption of such persons. In the matter before the Supreme Court, the persons were continuing to work and in face of the rules referred to above particularly Sub-rule (1) to Rule 5 of the Uttar Pradesh Absorption of Government Servants in Public Undertakings Rules, 1984, it was held that the concerned person stand absorbed in the service of Nigam.

44. That is not the position before us. There is no such rule corresponding to Rule 4 of the Rules applicable in the matter before the Supreme Court. In face of the aforesaid, the plea that applicants are deemed to have been absorbed particularly in those cases where they have worked for 5 years or more, must fail.

V. <u>IF THE APPLICANTS HAVE RIGHT TO BE CONSIDERED FOR BEING ABSORBED IN DELHI POLICE:</u>

45. Rule 5 of the Delhi Police (Appointment & Recruitment) Rules, 1980 deals with recruitment to the Delhi Police and Clause (h) of the same reads as under:

> "(h) Notwithstanding anything contained in these Rules, where the administrator/Commissioner of Police is of opinion that it is necessary or expedient in the interest of work so to do, he may make appointments to all non-gazetted categories of both executive and ministerial cadres of Delhi Police on deputation basis by drawing suitable persons from any other State(s) or Union territory or Central Police Organisation or any other force. Where such appointments are made by the Commissioner of Police, the same shall be reported to the administrator forthwith. Such appointments on deputation basis shall also be subject to orders issued by the

Govt. of India/Delhi Administration from time to time governing the deputation of government servants."

It permits taking persons from Central Police Organisations or any other force on deputation to Delhi Police. Rule 17 of Delhi Police (General Conditions of Service) Rules, 1980, which has strongly been relied upon, permits the Commissioner of Police, to sanction permanent absorption in Delhi Police of upper and lower subordinates with the consent and concurrence of the Head of the Police force of the State/Union territory, or the Central Police Organisation. The said Rule reads:

> "17. **Permanent absorption of upper and lower subordinates in other police forces and vice-versa.-** The Commissioner of Police, Delhi may sanction permanent absorption in Delhi Police of upper and lower subordinates, except Inspectors from other States/Union territories and Central Police Organisations, with their consent and with the concurrence of the Head of the Police force of the State/Union territory, or the Central Police Organisation concerned. Similarly the Commissioner of Police, may sanction permanent transfer of upper and lower subordinates of Delhi Police, except inspectors with their consent for permanent absorption in Police forces of other States/Union territories or Central Police Organisation, subject to the concurrence of the Head of the Police force concerned. In the case of such permanent transfer of an Inspector of Delhi Police to any other state or vice-versa, the Commissioner of Police, shall obtain the prior sanction of the Administrator."

46. There was some controversy raised before us as to if the applicants were taken on deputation under Rule 5(h) of Delhi Police (Appointment & Recruitment) Rules, 1980 or not. The plea of the respondents to that effect must fail.

47. This is the only enabling provision which permits certain persons of the Central Police Organisation or State Police to come on deputation and serve in Delhi Police. We have no hesitation, therefore, in rejecting the contention of the respondents to that effect.

48. Learned counsel for the applicants, however, wanted to take his plea further that this is an appointment to Delhi Police. He relied upon the decision of the Supreme Court in the case of **SI ROOPLAL AND ANOTHER** v. **LT. GOVERNOR THROUGH CHIEF SECRETARY, DELHI AND OTHERS**, AIR 2000 SC 594. The question before the Supreme Court was totally different. Before the Supreme Court, the controversy was as to if they were entitled to the benefit of the service in the parent department on absorption in Delhi Police or not. Therefore, the decision of the Supreme Court in the case of **SI Rooplal (supra)** is distinguishable.

49. The applicants have been deputed on transfer, i.e., by way of deputation to serve in Delhi Police. The expression "he may make appointments" does not imply that it is an appointment made regularly in Delhi Police. Perusal of the Rule 5(h) clearly shows that appointment is on deputation, therefore, the expression 'appointment' in the context must mean only conferment of power to act in Delhi Police as Constables or otherwise when they come on deputation.

50. Once the appointment is on deputation, it carries all the rights of deputationists rather than a regular employee.

51. So far as the Rule 17 of Delhi Police (General Conditions of Service) Rules, 1980 is concerned, it does not confer any power or a right to a person on deputation to be absorbed. It depends on the sanction of the Commissioner of Police. Certain other conditions which we have referred to above need not be repeated. This question pertaining to interpretation of Rule 17, had been a subject matter of controversy in this Tribunal. It was held that there is no such right in favour of the deputationists in this regard. Those persons challenged the decision of this Tribunal in OA 2547/92 decided on 29.8.1997 and the Delhi High Court upheld the same holding that orders that have been passed in administrative exigency cannot be followed. The Delhi High Court reproduced the findings of this Tribunal and agreed with the same in Civil Writ No.5220/1997 decided on 7.2.2001 entitled **CONSTABLE NAFE SINGH** v. **UNION OF INDIA & OTHERS**. The order reads:

> "..... Paragraph 7 of the impugned Order is reproduced as below:
>
> "Rule 17 of the Service Conditions Rules does not recognise any right in favour of a deputationist for absorption. It only gives discretion to the Commissioner of Police to sanction permanent absorption of certain upper and lower subordinates in Delhi Police from other States/Union territories and Central Police Organisations, with their consent and subject to the concurrence of the Head of the Police force concerned. Accordingly the cut off date for absorption cannot be fixed on which a deputationist becomes eligible for absorption, but it would be a date on which absorption is decided to be made.

> In the present case, this Tribunal had earlier directed in common judgment passed in O.A.No.1421/91 and similar other applications that if the applicant made a representation, it would be considered by the respondents and if the applicant was found to possess the requisite qualifications under the Rules on the date of the impugned order of repatriation, that is, on 23.1.1991, he may be absorbed if otherwise found eligible for absorption. Admittedly, on 23.1.1991, the applicant had crossed the age of 40 years and, therefore, if he was not absorbed, he has no reasonable or valid ground to challenge the order of his repatriation. We may also point out a decision of the Supreme Court in State of Madhya Pradesh and others vs. Ashok Deshmukh and another, 1988 (3) SLR 336, which says that in the absence of bias and mala fides, an order of repatriation made in administrative exigencies cannot be challenged. We, therefore, find no merit in this O.A. Accordingly it deserves to be dismissed."
>
> We are in agreement with the above findings of the Tribunal as it is settled law that a deputationist has no legal and vested right to resist repatriation to his parent department. The petitioner was repatriated as far back as on August 8, 1992 and he continued to agitate this question before the Tribunal as well as before this Court. We do not find any ground to take a contrary view than the view as expressed by the Tribunal in the present case. The petition is, therefore, devoid of merit and the same is dismissed accordingly."

This provides the answer to the argument so much thought of by the learned counsel.

52. In fact, the Supreme Court in the case of **STATE OF PUNJAB AND OTHERS** v. **INDER SINGH AND OTHERS**, (1997) 8 SCC 372, held that a person on deputation cannot claim permanent absorption on deputation post.

53. Learned counsel for the applicants in fact urged vehemently that once the rules provide that a person on deputation can be taken and permanently

absorbed. therefore, they have right to be considered and once that right is defeated and is not being given, the Articles 14 and 16 of the Constitution are violated. Our attention in this regard was drawn towards the decision of the Supreme Court in the case of C. MUNIYAPPA NAIDU v. STATE OF KARNATAKA AND OTHERS, AIR 1976 SC 2377. Therein also, the deputationist Senior Health Inspectors were claiming a similar right of permanent absorption and the Supreme Court held that such a right did not exist. It was held that there was no scope under the Cadre and Recruitment Regulations for their absorption and it was impermissible to do so. This shows that the cited decision was confined to the peculiar facts that were before the Supreme Court and is distinguishable.

54. In the case of STATE OF ANDHRA PRADESH AND ANOTHER v. SADANANDAM AND OTHERS, AIR 1989 SC 2060, the Supreme Court held:

> "16. We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old Rule and for personnel belonging to other zones being transferred on promotion to offices in other zones. In drawing such conclusion, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive. As already stated, the question of filling up of posts by persons belonging to other local categories or zones is a matter of administrative necessity and exigency. When the Rules provide for such transfers being effected and when the transfers are not assailed on the ground of arbitrariness or discrimination, the

policy of transfer adopted by the Government cannot be struck down by Tribunals or Court of Law."

It is obvious that Supreme Court held that if there is a policy framed, it should be adhered to. But as would be noticed hereinafter, the policy is subject to change and in the present case, the policy adopted has been not to absorb any of the deputationists. Resultantly, even the cited case will have no application to the facts of the present case.

55. Our attention in this regard was drawn to the letter written from the Office of Commissioner of Police in the year 2000 referring to the fact that there is a policy that after one year, a person who has served on deputation, can be considered.

56. Our attention was further drawn towards Page 6 of the counter reply in OA 1293/2004 that there were certain guidelines in this regard.

57. On record, no such guidelines have been produced. But the policy decision or guidelines in this regard can always be adjudicated on basis of the material placed before us. As would be noticed, the respondents have taken a decision not to absorb any of the deputationists. The reason given is that more than 500 Constables have been recruited and, therefore, the deputationists must be reverted back. It is obvious that there is a change in the policy and what has been referred to above on behalf of the applicants will cut a little ice in the backdrop of these facts.

58. In that event, learned counsel for the applicants has drawn our attention to vacancy positions to demonstrate that sufficient number of posts of Constables are still available. Even if the new Constables recruited or absorbed, still there would be sufficient vacancies.

59. This is a policy decision. The applicants had been taken on deputation as per the requirement. We have already referred to above that the applicants have no right to be absorbed. If the respondents do not intend to absorb them permanently, they cannot insist in this regard. In this view of the matter, availability of the posts will not confer a right on the applicants.

60. In fact, most of the present applicants had earlier also filed Petitions in the Delhi High Court. Writ Petitions No.9100-9226/2003 came up before the Delhi High Court on 27.1.2004. The Delhi High Court dismissed the Petitions holding that:

> "We have heard the counsel for the petitioners. We do not find any force in the submission of counsel for the petitioner. The petitioners are recruited personnel of CISF, ITBP and CRPF. Their period of deputation to the Delhi Police was for one year. Even though it was contended before us that Ministry of Home Affairs has settled the terms for deputation for three years but Delhi Police has taken the petitioners on deputation for a period of one year, therefore, **they cannot claim that they are entitled for deputation to a period of three years. Even otherwise if certain posts are to be filled in Delhi Police whether for the purpose of new recruitment or in terms of the affidavit which has been filed in Public Interest Litigation in other writ petition that itself cannot give right to the**

petitioners for appointment to such posts or for further continuation of deputation or moreover these opportunities of employment should be given to other persons who are unemployed and are seeking employment as Constable in Delhi Police. **The petitioners who have already been working with the respective paramilitary organisations have no vested right for appointment or continuation of their deputation if respondent do not desire the same.** However, Mr. Bhushan has contended that children of some of the petitioners are studying if the transfer order is given effect from 3.2.2004, it would entail hardship to the children who are studying in schools. Mr. D.S. Norawat, DCP (Headquarter) Delhi Police is present in the Court. He says that they will not implement the transfer order till 30.4.2004."

(Emphasis added)

This answers the arguments of the applicants. Because as far back as January, 2004, their claim had been rejected, keeping in view the hardship, they were granted stay to implement the transfer order till 30.4.2004. We were informed that thereafter the General Elections were placed. It was followed by the impugned orders. A fresh bunch of petitions have been filed. Totality of their facts indicate that there is no merit therein.

61. For the reasons given above, the aforesaid Original Applications must be held to be without merit. They fail and are dismissed.

(R.K. Upadhyaya)
Member (A)

Chairman
9.7.2004

/NSN/

9.7.2004

At this stage, learned counsel for the applicants request that some time may be granted to challenge this order. We allow the applicants time upto 19.7.2004. The interim order passed in individual cases would continue till 19.7.2004.

Issue DASTI order.

(R.K. Upadhyaya)
Member (A)

(V.S. Aggarwal)
Chairman