

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO.2547/92

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NEW DELHI, THIS THE 29th DAY OF AUGUST, 1997.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.S.P.BISWAS, MEMBER(A)

Constable Nafe Singh
11256/DAP,
Police Complex, Pritampura
Delhi-110034.

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Applicant

(Applicant in person with
Advocate Sh.B.S.Mor) vs

Union of India through

1. The Commissioner of Police,
Police Headquarters,
MSO Building,
New Delhi-110002

2. The Deputy Commissioner of Police,
X Bn, DAP, Pritampura,
Delhi-110034

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Respondents

(By Advocate Shri Girish Kathpalia)

ORDER

JUSTICE K.M.AGARWAL:

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has made a prayer for directing the respondents to absorb him permanently as Constable in Delhi Police, after quashing the impugned order of repatriation dated 8.8.1992 (Annexure A-1) to the extent of his repatriation.

2. Briefly stated, the applicant was a Constable on deputation from B.S.F. since 30.11.1986. In 1991, he was repatriated to his parent department by the respondents. The order of repatriation was challenged by the applicant in OA No.1421/91. Similar other Constables had also challenged similar orders of repatriation against them by filing separate OAs in the Tribunal. All these OAs were disposed of by a common order made on 15.7.1992 in OA No.2572/91, Suraj Bhan Vs. Union of India, by a Division Bench of this Tribunal at New

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Delhi. The applications were disposed of with the following directions: -

- " (i) The applicants may send representations to the respondents within three weeks from the date of receipt of this order together with the documents which may substantiate their claim that they possess matriculation or equivalent or higher qualification.
- (ii) In case the applicants make such a representation, the Respondents shall consider the same and if the applicants possess the requisite qualifications prescribed under the rules and if they are otherwise found eligible in all respects for absorption as on the date of the passing of the impugned order of repatriation to their parent departments, the Respondents shall pass appropriate orders within four weeks after the receipt of the representations;
- (iii) Till appropriate orders are passed on such representations, the Respondents are restrained from repatriating the applicants to their parent departments. The interim orders already passed will continue till then"

It appears that the applicant made a representation, as directed by the Tribunal along with a document to show that he was a Matriculate. He also submitted a 'No Objection Certificate' from his parent department against his permanent absorption in Delhi Police, as also his willingness to be absorbed in Delhi Police. However, by the impugned order, the representation of the applicant was rejected and he was directed to be repatriated to his parent department. The order

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of repatriation appears to have been implemented. Being aggrieved by the order of repatriation, and rejection of his representation for permanent absorption, the applicant has filed the instant application for aforesaid reliefs.

3. At the time of hearing though the applicant was present, his counsel was absent. He, therefore, filed his arguments in writing subsequently, which we have considered and taken into account while writing this judgement.

4. As held by the Supreme Court in **Ratilal B. Soni v. State of Gujarat**, AIR 1990 SC 1132, a deputationist has no right to claim permanent absorption of his services in the borrowing department. However, it appears that earlier this Tribunal entertained the applicant's application against the first order of repatriation on the basis of the fact that a decision to absorb Constables on deputation was taken by the respondents, but that decision was not uniformly implemented in regard to all similarly situated Constables. Accordingly, the aforesaid directions were made by the Tribunal in OA No.1421/91 and other similar applications. In clause (ii) of the directions made by the Tribunal in the earlier case, it was very clear that the respondents were only to consider the representations of the applicant and similar other candidates and if found to possess the requisite qualifications and "otherwise found eligible in all respects for absorption as on the date of the passing of the impugned order of repatriation" i.e., the first order of repatriation dated 23.1.1991 (emphasis supplied). As pointed out by the respondents in para 6 of their reply, the applicant

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was above 40 years of age on the date of the first order of repatriation dated 23.1.1991, his date of birth being 10.1.1951, he was not found fit for absorption and accordingly by the impugned second order of repatriation dated 8.8.1992, his services were returned to his parent department.

5. As earlier pointed out, the direction made by this Tribunal in applicant's earlier O.A. was only for consideration of the representation. The respondents complied with that direction by considering the representation of the applicant. Representation was rejected. Now the question is whether the representation was arbitrarily or on fanciful grounds rejected? We do not find that it was rejected on invalid grounds.

6. In his written arguments, the learned counsel for the applicant has stated that following point is in controversy:

"What should be cut-of-date for determining the age of the candidate for absorption and whether the applicant should be made the victim of the inaction (either deliberate or otherwise) of the authorities not to deal with his case for 10 long months and can be given the benefit of their wrongs?".

He has further referred to Rule 17 of the Delhi Police (General Conditions of Service) Rules, 1980, (in short, Service Conditions Rules) in support of his case. Rule 17 reads as follows:

"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

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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 Organisations, 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".

In paragraph 3 of his written arguments he has admitted that the following conditions are required to be fulfilled for the purpose of absorption in Delhi Police:

- "(i) The educational qualifications -
Matric or above
- (ii) Below 40 years of age.
- (iii) Completion of two years of service
on deputation satisfactorily."

7. 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.

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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.

8. In the result, this O.A fails and it is hereby dismissed, but without any order as to costs.

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(K.M.AGARWAL)
CHAIRMAN

S.P.Biswas

(S.P.BISWAS)
MEMBER (A)