

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(8)

O.A. NO. 964/92

DECIDED ON : September 21, 1992

Const. Birender Singh ... Applicant
Vs.
Union of India & Ors. ... Respondents

CORAM : THE HON'BLE MR. JUSTICE RAM PAL SINGH, V.C. (J)
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri Ashish Kalia, Counsel for the Applicant

Shri Ashok Kashyap, Counsel for the Respondents

J U D G M E N T

Hon'ble Shri P. C. Jain, Member (A) :-

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was a Constable in the Border Security Force came on deputation to the Delhi Police on 13.7.1988 initially for a period of one year which was subsequently extended from time to time. He is aggrieved by his non-absorption in the Delhi Police and the order dated 12.3.1992 (Annexure A-1) by which he has been ordered to be repatriated to his parent department with immediate effect on the grounds that his services were no longer required in Delhi Police. He has prayed for quashing of the aforesaid impugned order on the ground that the same is arbitrary and discriminatory. By an order passed on 7.4.1992, as an interim measure, it was directed by the Tribunal that the status quo as on that date shall be maintained. This interim^{order} has continued since then.

2. The respondents have contested the O.A. by filing a return to which a rejoinder has also been filed by the applicant. As the pleadings in this case were complete,

9

with the consent of the parties, it was decided to dispose of the case finally at the admission stage itself.

Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

3. The main contention put forth on behalf of the applicant is that vacancies of Constables exist in the Delhi Police; that the applicant is eligible for absorption; and that persons junior to the applicant and similarly placed have been absorbed in the Delhi Police. Accordingly, it is contended that the action of the respondents qua the applicant is arbitrary and discriminatory. The case of the respondents is that the applicant's parent department has declined to issue no objection certificate for absorption of the applicant in the Delhi Police. They have denied the allegations of arbitrariness and discrimination.

4. It is well settled that a Government servant on deputation to another department can be reverted to his parent cadre at any time and he does not have any right to be absorbed on the deputation post (Ratilal B. Soni & Ors. vs. State of Gujarat & Ors : 1990 SCC (L&S) 630). As regards the allegation of discrimination, the applicant has failed to bring any material on record to show that a person taken on deputation from the Border Security Force or any other Central Police Organisation in 1988 or thereafter has been absorbed in the Delhi Police even in absence of a no objection certificate. Accordingly, the plea of discrimination has not been substantiated. As regards the plea of arbitrariness, attention may be drawn to Rule 17 of the Delhi Police (General Conditions of Service) Rules, 1980 wherein the Commissioner of Police, Delhi, has been given the powers to sanction permanent absorption in Delhi Police of upper and lower

19

subordinates except Inspectors from other States/Union Territories and Central Police Organisations. The rule specifically provides that such absorption can be sanctioned only with the consent and with the concurrence of the head of the Police Force of the State/Union Territory or the Central Police Organisation concerned. As the consent of the parent department of the applicant is said to have been declined for absorption of the applicant in the Delhi Police, the action of the respondents is in accordance with statutory rules and as such cannot be said to be at all arbitrary. The applicant has failed to place any material on record to show that his parent department has given no objection for his absorption in the Delhi Police. Whether his parent department was justified or not in refusing to give such a consent is not a matter in issue before us. Even otherwise, such an issue will not be within the jurisdiction of the Tribunal as the Border Security Force is one of the armed forces of the Union and the provisions of the Administrative Tribunals Act, 1985 do not apply, as per provisions of Section 2(a) of the Act *ibid*, to any member of the naval, military or air forces or of any other armed forces of the Union. The applicant being a Constable in the Border Security Force comes within this definition.

5. Learned counsel for the applicant contended during the course of oral hearing that the Police Commissioner should be directed to relax the provisions of the rules. We see no justification for acceding to this contention. Even otherwise, we do not consider it appropriate to issue such a direction.

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11

6. In the light of the foregoing discussion, we are of the considered view that the O.A. is devoid of merit and the same is accordingly dismissed at the admission stage itself, leaving the parties to bear their own costs. Needless to state that the interim order also automatically stands vacated.

C. C.
(P. C. Jain) 21/9/92
Member (A)

Ram Pal Singh
(Ram Pal Singh)
Vice Chairman (J)

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