

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1178/92

New Delhi this the 27th Day of July, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. B.S. Hegde, Member (J)

Harjinder Singh,
S/o Late S. Mehar Singh,
aged about 47 years,
R/o: E-81, I.B. Colony,
Patel Dham,
Sardar Patel Marg,
New Delhi.

...Applicant

(By Advocate Sh. B.B. Raval)

Versus

1. Union of India through
the Secretary, Ministry
of Home Affairs,
Government of India,
North Block, New Delhi.

2. The Director,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi.

3. The Director-General,
Indo-Tibetan Border Police,
Government of India,
C.G.O. Complex,
Lodhi Road,
New Delhi.

...Respondents

(Respondents 1 & 2 by Advocate Sh. N.S. Mehta and
respondent No.3 by Advocate Sh. Jog Singh).

ORDER
(Hon'ble Mr. N.V. Krishnan)

The applicant is aggrieved by the order dated 19.4.91 (Annexure A) of the 2nd respondent, relieving him from the Intelligence Bureau Headquarters w.e.f. 2.5.1991, consequent on his repatriation to his parent department and by the order dated 2.9.89 (Annexure B) by which the allotment of the Govt. quarter in his favour was cancelled. His contention is that he has already been absorbed in the Intelligence Bureau (IB), while he was on deputation from the Indo-Tibetan Border Police (ITBP) and that, therefore, he cannot be repatriated to ITBP.

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2. The brief facts of the case giving rise

to these grievances can be stated as follows:-

2.1 While working with the ITBP, the applicant was taken on deputation to the I.B. in September, 1978 as Junior Intelligence Officer (JIO). He continued as such even beyond the normal period of deputation. At this stage, he was informed by the memorandum dated 29.11.84 (Annexure A-1) that as the case for the transfer of his services to the IB as JIO-II/G w.e.f. 1.9.83, as opted for by him, was under consideration, the deputation allowance has been discontinued.

2.2 The second respondent (Director, IB) issued a memorandum dated 10.7.1986 (Annexure A-2), containing the names of JIO-II, who have been approved for absorption in an officiating capacity in the I.B., on their expressing willingness to be so absorbed. The applicant's name is at serial No.1 of this list.

2.3 By the order dated 29.4.1988 (Annexure A-3) the applicant was appointed to the I.B. on transfer of services basis. That order reads as follows:-

"Shri Harjinder Singh, H/C (Dvr.) No.278 of I.T.B.P. presently on deputation as JIO-I(C) in IB is appointed (on transfer of services basis) as JIO-I(G) in IB in an officiating capacity w.e.f. 1.7.86.

2. The lien of Shri Harjinder Singh will continue to be maintained in the I.T.B.P. until he acquires a lien on permanent post in the IB.

3. The seniority of Shri Harjinder Singh will be determined in accordance with the Ministry of Home Affairs (non Department of Personnel and Training) OM No.9/11/55-RPS dated 22.12.1959 as amended from time to time and in terms of DP&T O.M. No.20020/7/80-Estt(D) dated 29.5.86. His confirmation

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alongwith other departmental official would be considered in his turn according to seniority assigned to him subject to fulfilment of other conditions.

4. Necessary approval for the absorption of Shri Harjinder Singh has been accorded by ITBP New Delhi vide their letter No. I.21017/11/86/Estt-B(Vol.II) dated 8.2.88."

2.4 However, shortly thereafter, the second respondent issued a further order dated 28.2.1989 (Annexure A-4) cancelling the appointment of the applicant in the IB made by the Annexure A-3 order dated 29.4.1988. Consequently, the second respondent issued a further order on 1.3.1989 placing the services of the applicant at the disposal of his parent organisation, i.e., the ITBP (Annexure A-5).

2.5 Being aggrieved by these two orders, the applicant filed OA-509/89. Thereupon, the order of repatriation to the ITBP was stayed. Therefore, the I.B. transferred the applicant to Ahmedabad. The applicant had complained in that OA that he was under treatment when the transfer was made. After hearing the parties, the Tribunal disposed of the OA, as also the MPs filed therein, on 11.1.91 directing that the applicant should neither be repatriated nor transferred till 1.5.91 and the respondents were to take a fresh decision regarding his repatriation or absorption.

2.6 After the disposal of the OA, the applicant has been requesting the second respondent to grant him leave on account of his illness in respect of which he has also submitted medical certificates from Dr. Ram Manohar Lohia Hospital. These applications are at Annexure A-9 collectively. Instead of sanctioning his leave on medical grounds, it is alleged that the second respondent has forwarded these applications to the third respondent, i.e., ITBP, for necessary

action vide copies of letters at Annexure A-10 collectively.

2.7 Notwithstanding these circumstances, the 2nd respondent issued the impugned Annexure A order relieving the applicant from the I.B. w.e.f. 2.5.1991 consequent upon his repatriation to the ITBP. The 2nd respondent also cancelled the allotment of the I.B. Pool Quarter No. E-81, Patel Dham, Sardar Patel Marg, New Delhi, and directed the applicant to vacate the quarter vide the order dated 29.8.91 (Annexure B).

3. The applicant has, therefore, prayed for the following reliefs:-

"i) To quash the impugned orders at Annexures 'A' and 'B' as being arbitrary, illegal and malafide and, therefore, ultravires the Fundamental Rights of the applicant guaranteed under Articles 14 and 16 of the Constitution of India.

ii) To direct the Respondents to sanction the leave on medical grounds supported by medical certificates any pay him the pay and allowances from 2.5.1991 with 18% interest till the date of realisation.

iii) Award exemplary cost for this application, with a further request to pass any other order or orders or direction or directions as deemed fit in the light of the facts and circumstances of the case."

4. When the application was heard on admission, an ad-interim order was issued on 30.4.1992, restraining the respondents from dispossessing the applicant of his accommodation, subject to his liability to pay the normal licence fee. This order is still continuing.

5. The respondents have filed a reply, contending that the issues raised in this O.A. have already

been decided by the Tribunal on 11.1.1991 in OA-509/89 filed by the applicant. A copy of the judgement is at Annexure R-1. Hence, it is contended that the prayers made are barred by res judicata. 3X

6. It is further stated that, keeping in view the above judgement of the Tribunal, the applicant has been repatriated to the ITBP, his parent department w.e.f. 2.5.1991. Further, in accordance with the IB (M.H.A.) Allotment of Residence Rules, 1985, the allotment of I.B. Pool accommodation to the applicant has been cancelled from 1.7.1991. The applicant is not on the pay roll of the IB w.e.f. 2.5.1991. He has been paid his full pay and allowances during the period of his leave from 14.3.1989 to 1.5.1991. Hence, applications for leave beyond 2.5.1991 have been sent by the IB to the ITBP, the parent department of the applicant for disposal.

7. During the pendency of the O.A., the applicant filed MP-2403/93 pointing out that, by a letter dated 26.8.93, addressed to the second respondent, the applicant has sought voluntary retirement w.e.f. 26.11.1993, i.e., after three months from the date of that letter or from an earlier date, if the notice period is not insisted upon. He, therefore, requested that he might be permitted to retire voluntarily on the basis of the above notice.

8. In reply to this MP, respondents 1 and 2 submitted that they were not concerned with this letter, as the applicant had already been repatriated to his parent department.

9. Notice of the MP was, therefore, directed to be served on the 3rd respondent, i.e., the ITBP. u

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Though served, no reply was filed by the 3rd respondent. The applicant, therefore, filed MP-142/94 alleging that the second respondent has coerced the 3rd respondent not to file a separate reply, lest it should contradict the reply already filed by the respondents in this case. He, therefore, wanted a direction to be issued to the third respondent to produce the records dealing with this matter.

10. The third respondent has filed a reply dated 19.3.94 to this MP through Sh. Jog Singh, Counsel, denying these allegations. This respondent states that the reply filed earlier was also on his behalf. As the challenge was mainly to the orders issued by the second respondent, the 3rd respondent felt that he was only a proforma party. It is also clarified that the 3rd respondent has since engaged a separate counsel from 23.11.1993.

11. This respondent has also filed a reply to MP-2403/93 filed by the applicant seeking voluntary retirement. It is stated that as the letter seeking voluntary retirement has been addressed to respondent No.2, the third respondent is not concerned with the matter.

12. We have heard the learned counsel for the parties. The main issue is whether the applicant has been absorbed in the I.B. as contended by him. If the applicant has been absorbed in the IB, the question is whether the order of absorption can be cancelled subsequently and an order can be issued repatriating him to ITBP, his parent department.

13. In this regard, the first question to be considered is whether these issues have already been decided in OA-509/89, as contended by the learned counsel for the respondents and, therefore, the present application is barred by res judicata.

14. We have seen that judgement (Annexure R-1) Para.5 thereof makes it clear that the applicant called in question the order dated 28.2.1989 (wrongly stated to be 28.4.1988 in the judgement) cancelling the order of appointment dated 28.4.1988 of the applicant on transfer of service basis w.e.f. 1.7.86 and the order dated 1.3.89 placing back his services at the disposal of the ITBP. These two impugned orders are at Annexures A-4 and A-5 of the present O.A.

15. The directions in the Annexure R-1 judgement are as follows:-

"12. The applicant has produced copies of medical prescriptions from Dr. Ram Manohar Lohia Hospital, New Delhi, C.G.H.S., Delhi, G.B. Pant Hospital, Delhi and A.I.I.M.S., Delhi, which indicate that he is undergoing treatment. Even though, he has not substantiated the allegation of mala fides against the respondents, his case appears to be one of genuine hardship and should be treated as such. We, therefore, dispose of the main application and all the MPs with the following orders and directions:-

(i) We hold that the purported transfer of the applicant from the Headquarters of the IB to SIB, Ahmedabad vide order dated 8.3.1990 has the effect of circumventing the stay order passed by the Tribunal on 14.3.1989 and made absolute thereafter and as such the same is not legally sustainable.

(ii) In the interest of justice and fairplay in administration, the respondents are directed not to repatriate the applicant to his parent department or transfer him outside Delhi for at least upto 1st May, 1991 in view of the medical report given by the Civil Surgeon, Dr. Ram Manohar Lohia Hospital, New Delhi on 10.12.1990 to the effect that he is an 'orthopaedically handicapped person

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with a permanent partial disability of 50% (fifty) in relation to (L) Lower Limb." The applicant would be entitled to his full pay and allowances during the period from 14.3.1989 to 1.5.1991 or till the respondents take a fresh decision regarding his repatriation or absorption in I.B., whichever is later. (emphasis ours)

(iii) The applicant shall not be dispossessed from the Govt. accommodation at E-81, Patel Dham, S.P. Marg, New Delhi subject to his liability to pay licence fee etc. in accordance with the Rules, till 1.5.1991.

(iv) The respondents shall comply with the above directions within a period of three months from the date of receipt of this order."

16. It is clear that the Tribunal has not decided on merits the challenge to the two impugned orders, i.e., cancelling the order of absorption and cancelling the allotment of Govt. quarter

17. A careful perusal of that judgement shows that, in so far as the important dispute about absorption in the IB is concerned, no judgement has been rendered either in favour of the applicant or in favour of the respondents. The Tribunal did not hold that there was, indeed, an order of permanent absorption of the applicant by the order dated 29.4.88 and that, therefore, he could not be repatriated. The Tribunal also did not uphold the contention of the respondents that the applicant's absorption in the I.B. has been validly cancelled subsequently and that he has thus rendered himself liable to repatriation.

18. We are, therefore, of the view that the present OA is not barred by res judicata.

19. We attach considerable importance to the direction in para 12(ii) of that judgement (extracted in para 15 supra) which we have emphasized. This

direction makes it clear that the respondents should take a fresh decision regarding his repatriation or absorption in the IB and till then the applicant will be treated to be in the service of the IB and get his pay and allowances from the IB.

20. Obviously, the impugned Annexure 'A' order dated 19.4.91 relieving the applicant from the IB is not based on any fresh decision taken regarding his repatriation by the second respondent, after the Annexure R-1 judgement was delivered. No such fresh order has been produced for our perusal. It is evident that the relief is ordered in pursuance of the earlier order of repatriation issued on 1.3.89 (Annexure A.5). That cannot be done in view of the direction in para 12(ii) of the Annexure R-1 judgement. For that reason alone, the impugned Annexure A order is liable to be set aside and consequently, the impugned Annexure B order would become untenable.

21. To remove any doubts in the matter, we make it clear that, in the first instance, the second respondent has to consider afresh whether the applicant should be absorbed in the IB or not, as directed in the Annexure R-1 judgement. While considering this question, the respondents should necessarily consider the effect of their memoranda dated 29.11.84 (Annexure A-1), 10.7.86 (Annexure A-2), and 29.4.88 (Annexure A-3), on which the applicant strongly relies for contending that he has been absorbed permanently in the I.B. Attention also needs to be paid to the letter of the I.T.B.P. dated 8.3.1988 referred to in the Annexure A-3 order. A copy has been filed by the third respondent with his reply dated 18.3.1994

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to MP-2403/93. In that letter, the ITBP had informed the IB that it had no objection to "the permanent absorption" of the applicant in the IB. The second respondent should also consider OM No.28/Estt.(G)/90(1)-141 dated 13.1.1992 of the IB relating to absorption in non-gazetted executive ranks. This was brought to our notice by the learned counsel for the applicant and it is kept on record. This memorandum consolidates the earlier instructions. It has been made clear in para 7 of this Memorandum that once an officer is absorbed, he will not be de-absorbed under any circumstance. It is after considering all these materials that the respondents should take a fresh decision about the absorption of the applicant in the IB. If it is decided not to absorb the applicant, the second respondent should further decide whether he should repatriated.

22. We are, therefore, of the view that the applicant would continue to be with the IB until the second respondent takes a fresh decision as stated in the preceding para. Therefore, it is for the second respondent to deal with all the applications that have been preferred by the applicant for grant of leave.

23. The question arises as to what should be done about the application dated 26.8.1993 addressed by the applicant to the second respondent, seeking voluntary retirement from 26.11.93 or from an earlier date, a copy of which is annexed to MP-2403/93. As that date is long past and as the applicant still continues to be in service of the IB, retirement from 26.11.93 or an earlier date, cannot arise. That MP has become infructuous and hence, it is dismissed.

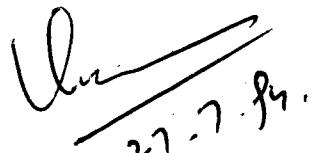
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24. We make it clear that this will not prevent either the applicant or the second respondent from pursuing this matter, if they think that perhaps, the litigation can be ended on the basis of a voluntary retirement of the applicant from the IB, contemporaneously with his absorption in the IB. In fact, we would commend such an approach.

25. For the foregoing reasons, we dispose of this OA with the following directions and orders:-

- i) The impugned Annexure A order dated 19.4.91 of the second respondent, relieving the applicant from the IB is quashed and it is declared that the applicant is continuing in service with the IB.
- ii) The second respondent is directed to take a fresh decision, within two months from the date of receipt of this order, about the absorption of the applicant in the IB or his repatriation to the ITBP as directed in para 12 (ii) of the judgement in OA-509/89 dated 11.1.89, keeping in view the observations made in this behalf in para 21 supra.
- iii) The second respondent is further directed to dispose of within the same period all the applications for leave that have been submitted by the applicant and pass orders thereon in accordance with law.

26. In the circumstances, there will be no order as to costs.


27.7.94.


(B.S. Hegde)
Member (J)
27.7.94.

(N.V. Krishnan)
Vice-Chairman
27.7.94.

'Sanju'