

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD Bench, ALLAHABAD.

Allotted this the 30th day of October, 2002.

Original Application No. 1186 of 1996.

Hon'ble Mr. Sarveswar Jha, Member- A.
Hon'ble Mrs. Meera Chhibber, Member- J.

Man Pal Singh S/o Durgar Singh
R/o Village and Post- Chirauni, Distt. Bulandshahr.

.....Applicant

By Advocates : Sri A.V. Srivastava
Sri A. Kumar
Sri Sanjay Sharma

V E R S U S

1. Union of India through Joint Director (B),
I.B. Headquarters, Block VIII, R.K. Puram, New Delhi.
2. Assistant Director, Subsidiary Intelligence Bureau,
W/o Home Affairs, Government of India,
113-D, Saket, New Delhi.
3. Director General of Police, U.P. Lucknow.

.....Respondents

By Advocate : Sri Ashok Mahilley

O R D E R

(By Hon'ble Mr. Sarveswar Jha, Member- A.)

The applicant has approached this Tribunal with this O.A against the orders of respondent No. 1 dated 13.06.1996 and respondent No. 2 dated 30.08.1996 (annexure-1 and 2 respectively). The reliefs sought by the applicant, which are given in detail in para 8 of the O.A, include a direction being issued, setting aside the said orders (placed at annexure- 1 and 2 to the O.A). As the applicant has since joined the State Government on having ^{been} repatriated to his parent cadre vide said order dated 13.06.1996, the relevance of the other reliefs does not appear to be quite significant.

1. During the course of argument it transpired that the applicant had not been given the benefit of promotions which

were due to him while he was away on deputation to the Government of India in the Subsidiary Intelligence Bureau, Ministry of Home Affairs. The learned counsel for the applicant has cited the case of one Sri Vishwanath Rai Vs. Central Intelligence Officers and Others decided by the Hon'ble High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 15909/1983 to support his prayers. In the operative portion of the said order of the Hon'ble High Court, the respondents (The Superintendent of Police, Kheeri at Lakhimpur and The State of U.P.) were directed to pay the petitioner the pay and allowances of the post, which is equivalent to the post of Assistant Central Intelligence Officer Grade II of the Subsidiary Intelligence Bureau of the Central Government, from November, 1993 till the date of retirement with six percent simple interest per annum.

3. In the present case, the petitioner, who was initially selected and appointed as a Constable in Civil Police of the U.P. Government in the month of December, 1979 and continued on the post in Civil Police of the U.P. Government till 1987, was deputed to subsidiary Intelligence Bureau, as on deputation, for a period of three years. The petitioner joined Subsidiary Intelligence Bureau at Lucknow on 17.09.1987 from where he was sent to Aligarh. He seems to have worked as on deputation at Narora for some time. While serving in the Subsidiary Intelligence Bureau, the petitioner was promoted as Junior Intelligence Officer (II) vide an order dated 09.12.1988 alongwith others who had been similarly sent on deputation to the Subsidiary Intelligence Bureau. He continued to be with ^{the} Intelligence Bureau till 13.06.1996 when he was served with an order dated 13.06.1996 repatriating him to his parent department with immediate effect. The grievance of the petitioner is that ^{the} others, who had been brought on deputation to the Intelligence Bureau in similar manner and who had been similarly promoted,

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were still working, whereas he has been repatriated to his parent department for no valid reasons. In fact, he has submitted that his work has been appreciated by the organisation and he has submitted a list of appreciation letters issued to him in this regard. The applicant has further submitted that it has been done arbitrarily without even ascertaining his consent. His submission is that he should have been afforded a reasonable opportunity to explain his position before he was repatriated. It is further submitted that some of the officers junior to him in the parent cadre are still continuing with the Intelligence Bureau. He has further submitted that his colleagues, who had not gone ^{on} deputation, have in the meantime been promoted with ^{the} ~~the~~ ^{Civil} Police ~~at~~ to the level of Sub-Inspector, whereas he has been asked to report ^{to the} ~~to~~ Senior Superintendent of Police, Agra and would be posted as a Constable (Civil). He has given ^a ~~the~~ few names of his junior colleagues who have been promoted to the post of Sub-Inspector in Civil Police.

4. Sri Ashok Mohiley, the learned counsel for the respondents, inviting attention to their detailed counter reply, has admitted that the petitioner had been on deputation in Subsidiary Intelligence Bureau for the period mentioned by the applicant and also that he was promoted as Junior Intelligence Officer Grade II in the Intelligence Bureau as per their recruitment rules which provide that a specific percentage of vacancies has been earmarked against deputation quota. They have also admitted that, keeping in view the service record and ~~aptitude~~ ^{aptitude} for intelligence work, some deputationists ^{are} ~~are~~ also considered for absorption in the Intelligence Bureau. The applicant was promoted in the Intelligence Bureau as a Junior Intelligence Officer Grade II not on regular basis; therefore, on repatriation from the Intelligence Bureau, he would have reverted to his substantive rank held in his parent department.

Accordingly, the respondents ^{have} mentioned that the applicant ~~was~~ ^{is} not entitled to get any benefit ~~of~~ repatriation to his parent department on account of appointment to higher post in ^{the} Intelligence Bureau. They have also refuted the claim of the applicant that he was due for promotion in next higher rank. They have ascertained that the respondents are vested with the authority to curtail or extend the tenure of deputationist. It is further stated that it was the lack--lustre performance of the petitioner which necessitated the respondents to terminate the contract (deputation) by ordering his repatriation to his parent department. It appears that the absence of the applicant from duty without proper sanction was also seen as a factor ^{to have created} this impression. The complaint against him is that he did not submit medical certificates issued by authorised Medical Attendants in support of his illness immediately after falling sick with the result that the controlling officer would not refer his case for second medical opinion in order to establish whether the petitioner was actually sick. In this light his representation dated 02.07.1996 requesting for retention in the Intelligence Bureau on humanitarian ground was examined and rejected by the competent authority. They do admit that appreciation letters and commendation certificates are granted to officers for their good work so as to boost ~~up~~ their morale and to encourage them to show better performance in future and that there is nothing unusual about it and that there was no extra ordinary achievement or success on the part of the petitioner, as has been claimed by him. They do not accept the allegation of the applicant that he was arbitrarily picked up for repatriation. They reverted him on completion of his tenure on deputation prescribed in the recruitment rules. They have also submitted that repatriation done as per rules should not be construed as reduction in rank or penalty and that there was absolutely no need to follow the procedure

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prescribed in article 311 (2) of the Constitution of India before ordering his repatriation. They have mentioned that there had been no violation of principles of natural justice. Accordingly, they have submitted that the applicant is not entitled to any relief as prayed by him in para 8.1 to 8.4 of the O.A.

5. The Suppl. affidavits and Suppl. counter affidavits have been filed by the applicant and respondents respectively reiterating some of the points already mentioned above and they may not be repeated.

6. After considering the above submissions by both sides, it appears that the reliefs which have been sought by the applicant in paras 8 and 9 of the O.A. ^{are not} ~~have seems to be~~ relevant at this stage. The applicant cannot go back to the Subsidiary Intelligence Bureau in continuance ^{of} his previous deputation. The question of retaining ^{him} in the said organisation is also, therefore, not relevant. However, during the course of arguments it came to light that the applicant has been ^{made} ~~not~~ to join against the post of Constable as his substantive post from which he had proceeded on deputation to the Subsidiary Intelligence Bureau, Government of India in the year 1987. He has not been given ^{the} benefit of the promotion which his colleagues of the same seniority or lower seniority ^{in the parent cadre} have been granted while he was away on deputation to the Subsidiary Intelligence Bureau. While it is for the respondents to mention that the applicant would not be entitled to the benefit of the promotions, which he had been given while on deputation, on his repatriation to his parent cadre/ department, it would be quite relevant and important for the parent department to ensure that the applicant is considered for the promotions which his colleagues of parent department ^{having comparable} seniority have been granted while the applicant was on deputation. It is a practice in

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most of the services under the Central Government that officers ~~were~~ taken on deputation under the Government of India from other services including those serving under the State Government are granted the benefit of promotions which ~~took~~ place in their respective parent cadres upto certain levels. The learned counsel for the applicant ~~prayed~~ that the applicant may be allowed to join the post to which his juniors have been promoted while he was on deputation to the Subsidiary Intelligence Bureau, M/o Home Affairs, Government of India. He has further prayed that some of his juniors have already been promoted to the rank of Sub Inspector of Police in Civil Police of State of U.P. He, therefore, is entitled to be appointed to the said post, which is also equivalent to the post of Junior Intelligence Officer Gr.II. With regard to this prayer, we are of the opinion ^{that} the officers serving on deputation under the Government of India are considered alongwith others for promotion in their respective parent cadre/department and benefit of such promotions are granted to such officers while on deputation, if they are selected for ~~and~~ ^B promoted to higher posts in their parent cadres/departments, up to certain levels. There are also instances where officers are considered for promotion in the parent cadre/ departments, but actually ^B ~~the~~ benefits of ~~other~~ ^B promotions are given to them only on return from deputation. None of ^{the} two dispensations as mentioned above, seems to have been made available to the applicant in this case. Instead, he has been made to join against the post of Constable. It appears quite ridiculous ⁱⁿ that an employee after having served as a Junior Intelligence Officer Gr.II (equivalent to Sub Inspector of Police in the State) is made to join the post of Constable when his colleagues and juniors have already been promoted to the said post, i.e., the post of Sub Inspector of Police. That being the case, it would be unjust to make the applicant join the post of constable on repatriation from Junior Intelligence Officer.

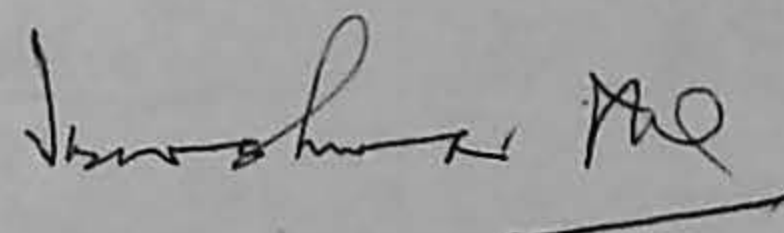
Sanjiv Kumar

Grade II in the Subsidiary Intelligence Bureau, M/o Home Affairs, Government of India.

7. After considering ^{the} totality of the submissions made by both the sides and after taking into account the rules and practices followed in the Government of India as well as in the State Governments in matters of promotions made during the period of deputation and the actual benefit thereof accruing ^{to} the officers of the various services and also keeping in view the principles of natural justice as well as the principles which have been laid-down in the Civil Misc. Writ Petition No. 15909/1983 decided by the Hon'ble High Court of Judicature at Allahabad in case of Viswanath Rai Vs. Central Intelligence Officers, M/o Home Affairs, Government of India and ~~others~~, we are of the view that the interest of justice would be met if the applicant ^{direction is issued to respondent no 3 that} be considered for promotion ^{from same date when the same} have been granted to his juniors while he was away on deputation to the Subsidiary Intelligence Bureau from 1987 to 1996 and ^{if found fit by DPC to} granted the benefits of such promotions if finally given to him after following the due processes of such promotions w.e.f the date/dates ^{from which} his junior/juniors have been granted. The respondents are directed to ensure that the action in this regard ^{is} completed within ^a period of six months from the date of receipt ^{of} a copy of this order.

8. With the above direction this O.A stands disposed off with no order as to costs.


Member- J.


Member- A.

/Anand/