



Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.645/2019

Through video conferencing

Order reserved on 25th March, 2021

Order pronounced on 05th April, 2021

Hon'ble Sri Justice L. Narasimha Reddy, Chairman
Hon'ble Sri A.K. Bishnoi, Member (A)

K Srinivasa Rao, Constable, Group C
Aged about 40 years
s/o Sh. K Balaramaiah
r/o 393, Sector 9, R K Puram, New Delhi

..Applicant

(Sri M K Bhardwaj, Advocate)

Versus

1. Union of India through its Secretary
Department of Personnel & Training,
Ministry of Personnel, Public Grievances &
Pensions, North Block, New Delhi
2. Central Bureau of Investigation
Through its Director
CBI Headquarters, Lodhi Road, New Delhi
3. The Dy. Director (Pers.)
Central Bureau of Investigation
CBI Headquarters, Lodhi Road, New Delhi
4. The Superintendent of Police (HQ),
Central Bureau of Investigation
CBI Headquarters, Lodhi Road, New Delhi
5. The Director General,
Border Security Force
Ministry of Home Affairs
Block No.10, 4th Floor
CGO Complex, Lodhi Road,
New Delhi – 110 003

..Respondents

(Sri Hanu Bhasker, Advocate)

ORDER**Mr. Justice L. Narasimha Reddy:**

The applicant was appointed as Constable in the Border Security Force (BSF) on 13.07.1998. He came on deputation to the Central Bureau of Investigation (CBI) in the year 2011, along with other nineteen Constables. On expiry of initial period of three years on deputation, it was extended from time to time and ultimately, he was absorbed in CBI, through an order dated 11.09.2018, w.e.f. 17.10.2017. On such absorption, the name of the applicant is said to have been struck off from the rolls of the BSF. It is stated that the applicant was accorded permission in January, 2019 to study LLB from Osmania University, Hyderabad. However, his absorption was cancelled, through order dated 22.01.2019 and he was repatriated to the parent organization, i.e., BSF. This O.A. is filed challenging the order dated 22.01.2019.

2. The applicant contends that it was only after his six years of working in the CBI and on being satisfied about his performance, that he was absorbed in the CBI and there was absolutely no basis for issuing the impugned order. He contends that his APARs for the period



subsequent to absorption, were rated as 'outstanding' and he was also issued certificates of commendation.

3. The applicant further contends that once the absorption was by the Ministry of Home Affairs (MHA), the cancellation thereof by the Superintendent of Police, CBI is without jurisdiction. Another grievance of the applicant is that the impugned order was passed in violation of the principles of natural justice.

4. The applicant contends that during his service in CBI, several developments have taken place in the BSF and the repatriation, without taking those aspects into account and without consultation of BSF, is illegal and arbitrary. Various other grounds are also urged.

5. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that CBI reserved to itself, the right to repatriate a person, who is absorbed from other Department, and that in the instant case, the steps were taken during the period of probation. They have further stated that the applicant has no right to be continued on being absorbed.



6. The case was heard on earlier occasion. Learned counsel for respondents submitted that there is some sensitive information about the applicant, which could not be mentioned in the counter affidavit and he circulated the relevant file. We heard Sri M K Bhardwaj, learned counsel for applicant and Sri Hanu Bhasker, learned counsel for respondents, after perusing the records.

7. The applicant was taken on deputation in the CBI in the year 2011. Initially, he was on deputation for a period of three years, and that was extended from time to time, in different spells. Thereafter, he was absorbed in the CBI as Constable, through order dated 11.09.2018. The order of absorption reads:-

“In exercise of the powers conferred by Rule 4 of the Delhi Special Police Establishment (Subordinate Ranks) (Discipline & Appeal) Rule, 1961 and in pursuance of ‘No Objection’ conveyed by BSF/MHA vide MHA UO No. A.35018/53/2018-Pers-Iii-oNew Delhi hereby appoint the following deputationist Constables from BSF as Constable in Special Police Establishment/Central Bureau of Investigation in the substantive capacity on permanent absorption with effect from 17.10.2017 subject to the outcome of High Court Case. WP (C) No. 8138/2017 (Pawan Kumar and Ors V/s. Union of India & Ors.) and other related cases to the subject matter in different Tribunal/Court of law & prescribed declaration/undertaking to the exercised by them.



Sl No.	Name, Rank & D.O.B. Shri	Force Number	Present Place of Posting
1	Balam Singh, Ct.	944553688	Su Delhi
2	Balbir Singh, Ct.	936339542	Head Office
3	Biju John, Ct.	980090150	AC-III New Delhi
4	Biju V. Nair, Ct.	980026720	BS&FC Bangalore
5	Dharmi Chand, Ct.	94005703	ACB Ghaziabad
6	Dilip Kumar Bajpai, Ct.	912543635	IPCC New Delhi
7	G. Nagendram, Ct.	904775345	ACB Delhi
8	Hem Chander Tiwari, Ct.	93154256	AC-II New Delhi
9	Jaidev Sootwal, Ct.	962540466	Head Office
10	Jayaprakash G., Ct.	912543592	SC-I New Delhi
11	Juganta Kumar Das, Ct.	998001939	ACB Guwahati
12	K. Srinivas Rao, Ct.	980091195	Head Office
13	Meer Singh, Ct.	956336905	IPCC New Delhi
14	Naresh Kumar, Ct.	882101170	Head Office
15	Rajendra Singh, Ct.	941063731	SC-II New Delhi
16	S. Chandrashekar Naidu, Ct.	98003732	BS&FC Bangalore
17	Saji P. J. , Ct.	95009413	SU Delhi
18	Shukhamoy Banerjee, Ct.	940030037	ACB Dhanbad
19	Vinod A, Ct.	930093958	SC-I New Delhi
20	Vinod Kumar, Ct.	954551120	AC-I Delhi

8. A perusal of the same discloses that much exercise has gone into it and the absorption took place with the approval of MHA. CBI is under DoPT and this concerned Ministry of Personnel, Public Grievances & Pensions. Any change as to the absorption, ought to have been done with the approval of the same authority. The impugned order, however, reads:

“Please refer to Dte. Genl. BSF’s above mentioned letters on the subject cited above.



In the above context it is intimated the following six constables of BSF, have been found eligible for induction as Constables in CBI on deputation basis for an initial period of 03 (three) years. On induction, they are posted in CBI branches as mentioned against each.

Sl. No.	Regt. No.	Name	BSF Unit	Place of posting on induction in CBI
1	901739546	Satish Kumar	DG's Sectt	CBI, EO-II, New Delhi
2	980091195	K Srinivasa Rao	DIG (HQ) FHQ	CBI, SU, New Delhi
3	011199054	Ranjit G R	STC BSF Bangalore	CBI, ACB, Vishakapatnam
4	940030037	Sukhamoy Banerjee	DG's Sectt.	CBI, ACB, Dhanbad
5	944553268	Balam Singh	25 Bn	CBI, SU, New Delhi
6	980026720	Biju V Nair	STC BSF Bangalore	CBI, BS&FC, Bangalore

While on deputation with the CBI, they will be governed by the Standard terms of deputation as contained in DoPT OM No. 6/8/2009-Estt. (Pay-II) dated 17.06.2010 and as amended from time to time. However, personnel getting higher pay under Central/State ACP Scheme/MACP Scheme are not entitled for deputation (duty) allowance as per existing rules.

Constables in CBI (including those appointed on deputation) are entitled for (i) cash compensation for their attending on holidays including Saturdays/Sundays @ two and half days for every completed months of service subject to a maximum of 30 days once in a calendar year in terms of DP&T letter No. 207/2/91-AVD.II dated 25.4.94 and (ii) Special Incentive Allowance @ 25% of pay per month, in terms of DP&T letter No. 207/1/2003-AVD-II dated 11.9.2006.

It is requested that approval of the competent authority for deputation of the above personnel, initially for a period of 03 (three) years on Standard Terms of Deputation may please be accorded & conveyed to this Bureau and they may be relieved with the directions to report for duty to Supdts. Of Police of concerned CBI branches. It is further requested that after relief of the



personnel from BSF, their LPCs & Service Books may be sent directly to concerned CBI Branches only. Before relief, it may be ensured that no DE/PE is pending or contemplated against them & they are clear from vigilance angle.”

There is no mention of approval being sought from the MHA. The applicant was singled out in the context of cancellation of absorption.

9. Another aspect is that the BSF was not taken into confidence before the applicant was sent back. In case of repatriation on completion of the term of deputation, the employee can straightaway go and report to the parent department. However, once his name was struck off from the rolls of the parent department, i.e., BSF, on being absorbed in the CBI, i.e., the borrowing department, any step could have been initiated only by taking the lending department into confidence.

10. Even where a newly recruited person is put on probation, it can be terminated only after issuing a notice. Though termination of probation does not amount to imposition of penalty, it would certainly visit the concerned employee with some civil consequences. This is particularly so when the applicant was one of the twenty Constables, who were absorbed, through order dated 11.09.2018. From the file, that is circulated to us, we do



not find anything, which related to any security issue. Much of it was unverified information. At the same time, we do not find much relevance in it. The emphasis is only to point out the need to issue notice to the applicant.

11. It is brought to our notice that the applicant is now working in the BSF. The exercise of issuing of notice and passing order on consideration of the same, can be done even when he is working in the BSF. In case the notice is issued and explanation offered by him, is found satisfactory, he can be brought back to the service of CBI.

12. We, therefore, allow the O.A. and set aside the impugned order. It is left open to the respondents to pass a fresh order in accordance with law, after issuing notice to the applicant and consideration of the explanation that may be submitted by the applicant. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(A. K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/sunil/