

5
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 146 OF 1999
Cuttack this the 27th day of October, 1999

Sushil Kumar Mohapatra

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes,
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
10.99

22-10-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.146 OF 1999
Cuttack this the 27th day of October, 1999

(2)

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

...

Shri Sushil Kumar Mohapatra
aged about 46 years,
S/o. Sri Harihar Mohapatra
Plot No.1102, Back side Chilli Pokhari
Shiva Nagar, Tankapani Road
Bhubaneswar, District: Khurda

...

Applicant

By the Advocates : M/s.J.Pattnaik
S.K.Padhi
S.Parida
B.K.Sahoo
S.K.Mohapatra

-versus-

1. Union of India represented through the Secretary, Ministry of Personnel, North Block, New Delhi
2. State of Orissa represented through the Secretary, Home Department, Bhubaneswar
3. Director of C.B.I., C.G.O. Complex, Lodhi Road, New Delhi
4. Deputy Director (Admn) C.B.I., C.G.O. Complex Lodhi Road, New Delhi
5. Director General of Police Orissa, Cuttack
6. Superintendent of Police C.B.I., Unit VIII, Bhubaneswar

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Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel
(Central)
Mr.K.C.Mohanty
Govt.Advocate
State of Orissa

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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): In this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing order of repatriation dated 24.2.1998 (Annexure-11) of the C.B.I. authority and for absorption of the applicant in the rank of S.I. in C.B.I. with effect from 12.11.1991 along with consequential benefits, facts are not much in controversy.

2. Applicant, Sushil Kumar Mohapatra, after passing Matriculation joined as Constable of Police under the Government of Orissa on 19.12.1972. He went to C.B.I. on deputation in April, 1974. In 1979, State Government promoted him as A.S.I. and the C.B.I. Department promoted him as Head Constable. On ~~the~~ repatriation he came ^{back} to State Police Service in 1980 and joined as A.S.I. Again on 19.7.1986 he went on deputation to C.B.I. as A.S.I. On 1.10.1987, he was promoted to the rank of S.I. of Police in C.B.I., Bhubaneswar Branch. While continuing as S.I. in C.B.I., the authorities of C.B.I. considered his case for permanent absorption with effect from 12.11.1991 and in letter dated 20.4.1992(Annexure-1) addressed to the Director General of Police, Orissa, sought for concurrence. In response to this, Government of Orissa in letter dated 20.11.1992 (Annexure-2) addressed to Director General of Police with copy to C.B.I. Headquarters, New Delhi, granted No Objection for permanent absorption of the applicant in C.B.I. with effect from 12.11.1991. On the representation of the applicant to the C.B.I. authorities for his promotion to

the rank of Inspector on the ground that his permanent absorption in C.B.I. with effect from 12.11.1991 has been approved by State Government, the C.B.I. authorities promoted him as Inspector in C.B.I. on deputation basis in order dated 12.1.1993(Annexure-3) subject to concurrence of the State Government. In response to this, the Director General of Police, Orissa, in letter dated 26.3.1993(Annexure-4) addressed to the C.B.I. intimated that sanction for permanent absorption of the applicant in C.B.I. with effect from 12.11.1991 had been accorded by the State Government and the same has been conveyed to the C.B.I. in letter dated 30.11.1991 and that his term of deputation has also been sanctioned upto 11.11.1991 and as such no further concurrence was necessary for his promotion to the rank of Inspector in C.B.I. However, no order absorbing the applicant in C.B.I. had been passed. But a letter of request was sent on 23.6.1995 (Annexure-5) to the Director General of Police, Orissa, requesting for formal concurrence for his absorption in C.B.I. from a prospective date on receipt of the No Objection Certificate. In response to this the Director General of Police, in letter dated 19.7.1995(Annexure-6) reiterated that the State Government had already furnished No Objection Certificate in favour of the applicant for his absorption in C.B.I. with effect from 12.11.1991 and that either he may be absorbed permanently with effect from 12.11.1991 or he be repatriated early. Again in letter dated 5.8.1995(Annexure-7) the D.I.G. of Police (Admn), Orissa, intimated the C.B.I. that they have no objection if the applicant is absorbed in C.B.I.

Thereafter on 9.5.1997, through a Fax Message (Annexure-8), the Administrative Officer of C.B.I. Headquarters intimated S.P., C.B.I., Bhubaneswar that the matter regarding absorption of the applicant in C.B.I. was under consideration and the same would be communicated as soon as a decision is taken by the competent authority. This message was issued in response to Fax Message dated 1.5.1997 received from S.P., C.B.I., Bhubaneswar. Prior to this, D.I.G. C.B.I., Calcutta Region in letter dated 24.1.1997 (Annexure-10) recommended the case of the applicant for absorption in C.B.I. Still in the impugned letter dated 24.2.1998 (Annexure-11), the applicant was ordered to be repatriated to the State Government on the ground that earlier proposal for his absorption was not forthcoming and he had already completed his maximum tenure on deputation in C.B.I. The applicant represented to the C.B.I. authorities on 1.5.1998 for his permanent absorption as Inspector of C.B.I., but without any response.

On 16.6.1998 the applicant preferred Original Application 302/98 before this Bench challenging the order of repatriation and praying for his absorption as S.I. in C.B.I. with effect from 12.11.1991. By then he was already relieved from C.B.I. on 15.6.1998. This Original Application was strongly opposed by the C.B.I. authorities. By judgment dated 1.9.1998, this Bench disposed of the Original Application 302/98 with certain observation and direction to Director, C.B.I., New Delhi (Res.3) to consider the case of the applicant for his absorption in

10
 C.B.I. as S.I. pursuant to the decision taken by the Junior Member with effect from 12.11.1991. This order of the Bench has been challenged by the C.B.I. authorities before the High Court of Orissa in O.J.C. No.16704/98. By order dated 7.12.1998, the High Court directed the Director of C.B.I., New Delhi to consider the case of the applicant for absorption in C.B.I. as Sub-Inspector within four weeks and that final decision should not be given effect to without leave of the Court. There was further direction that final decision should be placed for consideration of the High Court in a sealed cover. The Director, C.B.I. passed the order negativing the claim of the applicant on the ground that the applicant is not a Graduate (Annexure-14). On the basis of this order of the C.B.I. authority, the O.J.C. was disposed of on the ground that it had become infructuous and at the same time the High Court observed that it is open for the applicant to put forth his redress before the appropriate forum in accordance with law.

Hence this application.

3. It has been urged in this application that the Director, C.B.I., while negativing the claim of the applicant relied upon the provisions of C.B.I. (Class III and Class IV Posts) Recruitment Rules, 1967 (Annexure-15). These rules have been in existence since 1967. Yet the case of the applicant, who is a Matriculate was considered for absorption in the rank of S.I. in the year 1991 without any bar as to his non-Graduation as required under the rules. This apart, according to applicant, there are several instances where persons, who have been absorbed as Sub-Inspectors and promoted as Inspectors even though they are

non-Graduates as would be evident from the seniority lists appended under Annexure-16 series. The applicant had already served in C.B.I. for more than 19 years and in the last phase he served continuously for about 12 years. Hence the decision to repatriate him to the parent cadre where his substantial rank is A.S.I. is harsh. The order of repatriation is also arbitrary and whimsical and is violative of Article 14 of the Constitution.

In the counter, the stand of the C.B.I. authorities is that before receipt of the No Objection Certificate from the State Government, the applicant was given promotion to the rank of Inspector at his request and as such he himself superceded his earlier request for permanent absorption in C.B.I. in the rank of S.I. On his promotion as Inspector, the applicant represented for his absorption in the rank of Inspector on 13.1.1993. Hence the State Police Headquarters was requested to issue No Objection Certificate for permanent absorption of the applicant in the rank of Inspector. However, the State Police did not issue any such N.O.C. On the other hand they requested in letter dated 27.9.1994 for repatriation of the applicant to his parent cadre on the ground that he had already completed the prescribed period of deputation. Then on 20.6.1995, the C.B.I. once again moved the State Police to issue No Objection Certificate for considering the case of the applicant for absorption stating that the applicant would be formally absorbed in C.B.I. in the rank of Inspector from a prospective date. But the State Police did not issue any such N.O.C. Further the applicant's case for absorption in the rank of Inspector could not

have been allowed in view of the eligibility criteria as laid down in circular dated 17.12.1997(Annexure-9) wherein the minimum educational qualification for the post of C.I. is Graduation. Moreover, an employee on deputation has no vested right to be considered for absorbtion as per the settled position enunciated by the Supreme Court.

5. In the rejoinder while reiterating the relevant facts as averred in the Original Application, the applicant has quoted the relevant portion of the judgment in O.J.C. No.16704/98. He has also annexed counter of the C.B.I. filed in O.A.302/98 along with relevant Annexures filed therein by the C.B.I. authorities in that O.A. (Annexure-17).

6. Respondents (C.B.I.) files Misc.Application No.475/99 raising a preliminary objection as to the maintainability of this Original Application.

7. We have heard Shri J.Pattnaik, learned senior counsel and Shri S.K.Padhi, learned counsel on behalf of the applicant and Shri A.K.Bose, learned Sr.Standing Counsel appearing for the C.B.I. During hearing learned counsel for the applicant filed order sheet in O.J.C. 16704/98 which has also been perused. Also perused the Original Application as well as O.A.302/98.

8. In regard to preliminary objection the contention of the learned Sr.Standing Counsel is that after receipt of the decision of the Director, C.B.I. (Annexure-14), the same was placed before the High Court for consideration. The High Court observed that the

judgment of the Tribunal has been implemented and accordingly disposed of the Writ Petition having become infructuous. Further the High Court did not observe that the decisions arrived at Annexure-1⁴ were illegal or unsustainable when it was placed before the High Court for consideration in view of the interim order dated 7.12.1998. Had the present applicant satisfied that the Director, C.B.I. did not decide the issue as per the observation and direction of this Tribunal, it was opened for him to agitate the matter before the High Court and as such the present application, practically challenging the decision of the C.B.I. is hit under the provision of Constructive Resjudicata. But the fact remains that the High Court while disposing of the O.J.C. 16704/98 as infructuous clearly observed that it is opened to this applicant to put forth his redress before the appropriate authority in accordance with law. Judgment of this Tribunal has not been set aside by the High Court. The Writ Petition filed by the C.B.I. authorities against the applicant having been disposed of as infructuous, there was no scope for the applicant as respondent in the Writ Petition to further agitate before the High Court in the matter of absorption. We are, therefore, not inclined to agree with the learned Sr. Standing Counsel appearing for the C.B.I. that this application is not maintainable; moreso, when this application has been filed after the C.B.I. had taken a final decision as per the direction of this Tribunal in the matter of his absorption as S.I. in C.B.I. with effect from 12.11.1991.

4. Facts not in controversy have already been

14
stated. On the direction of this Tribunal, the C.B.I. had taken a final decision in disqualifying the applicant for absorption on the ground that he is only a Matrigulate and not a Graduate as required under the recruitment rules. The relevant recruitment rules of 1967 (Annexure-15) as well as the recruitment rules 1987 (Annexure-B) provide that in order to be recruited as S.I., C.B.I. and C.I., C.B.I., the minimum educational qualification is Graduation. However, the recruitment rules of 1967 do not lay down such educational qualification in case of deputationists for promotion as S.I. Their promotion is determined with reference to length of service in that cadre. Yet in letter dated 20.4.1992 (Annexure-1), the C.B.I. authorities intimated the Director General of Police, Orissa that the case of the applicant for permanent absorption in C.B.I. as S.I. with effect from 12.11.1991 has been approved and sought concurrence for issuing formal order (emphasis ours). The State Government responded to this letter and in letter dated 20.11.1992 (Annexure-2) stated that they have no objection for his permanent absorption as S.I. in C.B.I. with effect from 12.11.1991. It is, therefore, clear that the C.B.I. authorities had not attached much importance to this requirement of educational qualification in case of absorption of a deputationist. Moreover, as would be evident from Annexure-16 series, even under Graduates including failed Matriculates have been promoted as C.I. Annexure-16 series are seniority lists dated 27.7.1992, 25.11.1994, and 7.8.1995, in respect of Inspectors of C.B.I. In the seniority list dated 27.7.1992, Prithivi Raj Singh under Sl.No.7,

15
 though Intermediate was absorbed as A.S.I., C.B.I. on 18.1.1969 and promoted to C.I. on 4.12.1979. Similarly, Kashmira Singh and Rameswar Singh at Sl. Nos. 116 and 117 respectively of that seniority list though Matriculates, were promoted as C.I. in February, 1988 and June, 1988 respectively. In the seniority list dated 25.11.1994, official placed at Sl. 10 is a Pre-University candidate. Yet he was absorbed in C.B.I. as Inspector on 16.7.1985. In case of the officer under Sl. No. 79, he has passed only Class VIII. Yet he was absorbed as Inspector on 6.7.1993 on his joining C.B.I. on 1.3.1989. Sl. Nos. 182 and 183 of this seniority list are not Matriculates even. Yet they were absorbed in C.B.I. as S.I. in the A.S.I. in C.B.I. in the year 1989 and 1983 respectively. In the seniority list dated 7.8.1995, N. K. Sengupta placed at Sl. 86 is his only Pre-University, but was appointed as S.I. on 14.2.1992. Similarly Anil Kumar Sharma placed at Sl. No. 153, a Matriculate was also appointed as S.I. on 6.9.1993, so also the cases of officers under Sl. Nos. 156, 157 and 158, who were appointed as S.I. in the year 1993. Thus it is clear even after 1987, officers, who were not Graduates and some of whom even non-Matriculates have been appointed as C.I. and/or S.I. and some of them, ^{even} after absorption in the C.B.I. Hence this being the position, decision of the Director, C.B.I. on the direction of this Tribunal that the applicant being a non-Graduate cannot be absorbed as S.I. cannot be substantiated under law as being discriminatory.

We also do not see any force in the objection raised by the C.B.I. that the applicant by

representing for his promotion to the rank of C.I. has forgone his claim for absorption as S.I. It is not the case of the C.B.I. that after receiving such representation they had intimated to the applicant that in case he was promoted to the rank of C.I., he would be forgoing his earlier request for absorption as S.I. On the other hand in his representation (Annexure-B/1) he made it clear that since his representation for permanent absorption had been approved by the C.B.I. Headquarters with effect from 12.11.1991 and formal concurrence of the State Government was awaited and since he had been working as S.I. on deputation from 1987 onwards and was going to complete five years in October, 1992, he requested for consideration of his case for promotion to the cadre of C.I. Even in letter dated 20.4.1992 addressed to D.G. Police under Annexure-A/1, the C.B.I. had sought concurrence of the State Government for issuing a formal order (emphasis ours) for absorption of the applicant as S.I. with effect from 12.11.1991. The State Government in reply dated 20.11.1992 clearly indicated that they have no objection for permanent absorption of the applicant in C.B.I. as S.I. with effect from 12.11.1991. Even in their order No.40/93 dated 12.1.1993 promoting the applicant as C.I., the C.B.I. authorities have not indicated that their earlier proposal for absorption of the applicant as S.I. with effect from 12.11.1991 stands modified or cancelled. It is not the case of the C.B.I. that they are not in receipt of letter dated 20.11.1992 (Annexure-2) of the State Government concurring the proposal for permanent absorption of the

applicant as S.I. by the time they passed order No.40/93 dated 12.1.1993 promoting the applicant as C.I. Nothing prevented the C.B.I. authorities after receipt of the order dated 20.11.1992 from the State Government and before passing the promotion order No.40/93 dated 12.1.1993 to issue formal order of absorption of the applicant as S.I. with effect from 12.11.1991 as indicated in letter dated 20.4.1992 (Annexure-1). For the reasons best known this has not been done. Hence it is too late for the respondents to take such stand that the applicant by virtue of his request for promotion to the rank of C.I. had forgone his earlier claim for absorption as S.I.

In letter dated 24.2.1998 (Annexure-11) the C.B.I. Headquarters stated that since the earlier proposal for absorption of the applicant was not forthcoming and since he had already completed his maximum tenure of deputation, he might be repatriated to his parent department. Thus their earlier version for not absorbing the applicant in the rank of S.I. is that the earlier proposal for absorption was not forthcoming and not that the applicant is a non-Graduate. As would be evident from earlier discussion on the facts not disputed, it was the C.B.I. Headquarters at New Delhi, who earlier moved the State Government in letter dated 20.4.1992 (Annexure-1) requesting for concurrence in order to issue formal orders for permanent absorption of the applicant in C.B.I. as S.I. with effect from 12.11.1991 and the State Government in letter dated 20.11.1992 (Annexure-2) responded the same by giving concurrence for permanent absorption of the applicant.

28
Hence, the ground mentioned in letter dated 24.2.1998
stating
for repatriation/that earlier proposal for absorption is
not forthcoming is meaningless. This ground being not
tenable on the admitted facts, the proposal regarding
repatriation on this ground cannot be sustained.

In this connection, we find it worthwhile
to refer to the decision of the Supreme Court in the case
of **Umapati Chaudhury vs. State of Bihar**, reported in AIR
1999 SC 1948. In this reported case the appellant, a
Lecturer in Post Graduate Department of the University
with his consent was deputed as Controller of
Examinations to the newly created Bihar Sanskrit
Education Board. In Notification dated 17.9.1982 the
appellant was authorised to discharge the duties and
responsibilities of the Controller of Examinations of
the Board. Appreciating the efficiency of the applicant,
the Board took decision to confirm his as Controller of
Examination and wrote to the State Government seeking
concurrence. Thereafter consent was obtained and the
appellant was appointed as Controller of Examination of
that Board. Thereafter some of the employees of the
University challenged the deputation of the appellant
in a Writ Petition. Pursuant to the decision of the High
Court of Patna, service of the applicant was terminated
in anticipation of the approval of the Government. This
was approved by the State Government subsequently. These
orders were challenged before the Supreme Court. The
Supreme Court did not agree with the decision of the
Patna High Court on the admitted facts stated above and
directed that the appellant should be treated a
permanent employee of the Board, because the proposal of

19
the Board to confirm the appellant was approved by the State Government.

In the instant case before us, also the proposal was initiated by the C.B.I. for permanent absorption of the applicant as S.I. with effect from 12.11.1991 and the State Government had given clearance by saying that they have no objection. On the basis of the decision of the Supreme Court (Supra) the C.B.I. ~~now~~ cannot go back from absorbing the applicant as S.I.

10 We also feel that Doctrine of Legitimate Expectation supports the case of the applicant. The applicant has been working in C.B.I. for about 19 years and continuously for about 12 years. At his request for permanent absorption, the C.B.I. had approved for his absorption as S.I. with effect from 12.11.1991 and sought formal concurrence from the State Government. The State Government responded the same by declaring that they have no objection. It has been held by the Supreme Court in the case of **National Buildings Construction Corporation vs. S.Raghunathan** reported in 1999(1) All India Services Law Journal 246 (Para-18) that "Doctrine of Legitimate Expectation" has its genesis in the field of administrative law. The relevant portion of para-18 of the said decision runs as follows

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"The doctrine of "Legitimate Expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of

20
 "Legitimate Expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "Legitimate Expectation" have been held to require reliance on presentations and resulting detriment to the claimant in the same way as claims based on promissory estoppel".

The applicant before us undoubtedly had "Legitimate Expectation" to be absorbed as S.I. when the C.B.I. authorities had taken a decision to absorb him with effect from 12.11.1991 and sought for concurrence of the State Government in order to issue a formal order to that effect.

10. In view of our discussion above, we hold that the decision of the Director, C.B.I. pursuant to the direction of this Tribunal not to absorb the applicant as S.I. as he is a non-Graduate cannot be sustained under law. The impugned order dated 24.2.1998 (Annexure-11) directing repatriation of the applicant is quashed. The C.B.I. authorities are directed to permanently absorb the applicant as S.I. with effect from 12.11.1991 with consequential benefits within a period of 60(Sixty) days from the date of receipt of this order. We make it clear that the applicant, ~~in case of~~ his absorption as S.I. would not claim any equity for his continuance as Inspector after the date of his absorption as S.I. Application, in the result, is allowed, but without any order as to costs. M.A 4751926
 27-10-88

Registry is directed to communicate copies of this order forthwith to the concerned parties. We expect the learned Sr. Standing Counsel shall communicate copies of this order to the CBI authorities forthwith.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN

27-10-88
 (G. NARASIMHAM)
 MEMBER (JUDICIAL)