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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 257 OF 2001
cuttack this the 6th day of September/02

S. Medodary

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Applicant(s)

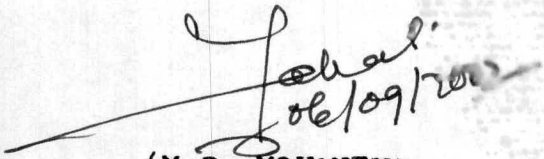
-VERSUS-


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 ? Yes


(M.R. MOHANTY)
MEMBER(JUDICIAL)


(V. SRI KANTAN)
MEMBER(ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 257 OF 2001
Cuttack this the 6th day of September/02

CORAM:

THE HON'BLE MR.V.SRIKANTAN, MEMBER(ADMINISTRATIVE)
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDICIAL)
...

Sri Sribatsh Madodary, aged about 46 years,
Son of Sri Suban Madodary, Vill:Pandumali,
PO: Deuli, P.S. Bhasma, Dist-Sundergarh
at present working as Junior Intelligence Officer,
I/G under Central Bureau of Intelligence,
Baripada under deputation

... Applicant

By the Advocates

Mr.Balaram Rout

-VERSUS-

1. Union of India represented through
Director, Central Bureau of Intelligence,
I.B.Headquarters, North Block, New Delhi
2. Deputy Director, Subsidiary Bureau of
Intelligence, Bidyut Marg, Unit - 5,
At/PO-Bhubaneswar, Dist-Khurda
3. Commissioner-cum-Secretary to Government of
Orissa, Home Department, At/PO-Bhubaneswar,
Dist-Khurda
4. Director General of Police,
State Police Headquarters, PO-Cuttack-2,
Dist-Cuttack
5. Superintendent of Police, Sundargarh,
At/PO/Dist-Sundergarh
6. Asst.Central Intelligence Office,
At/PO-Baripada, Dist-Mayurbhanj

... Respondents

By the Advocates

Mr.A.K.Bose,
Sr.Standing Counsel
(Res. 1, 2 & 6)
Mr.K.C.Mohanty,
Govt.Advocate
(Res. 3 & 4)

.....

O R D E R

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MR.V.SRIKANTAN, MEMBER(ADMINISTRATIVE): In this Application, the applicant has sought for quashing of the order of repatriation to his parent Department which is dated 5.2.2001 and for a direction to Respondents to finalise the proposal for permanent absorption of the applicant in the Intelligence Bureau, within a specified period; and pending adjudication of this case to allow him to join the duties at Baripada on return from leave.

2. The brief facts as mentioned in this application are that ^{the} applicant, a Member of Scheduled Caste community was appointed as Constable in the Orissa State Police w.e.f. 14.9.1980. In 1983, the applicant was deputed to the Central Bureau of Intelligence as Security Assistant vide order dated 7.6.1983 and the applicant was posted to Rourkela, where he joined on 16.9.1983. While on deputation, the applicant has been promoted to the higher posts of JIO II/G and JIO I/G. The case of the applicant is that he gave willingness for permanent absorption in the Intelligence Bureau in response to the circular and the Intelligence Bureau had also approved permanent absorption of the applicant in the rank of JIO II/G with effect from 1.1.1991 and the applicant had also completed all even thereafter, the formalities thereafter. But ~~the~~ the matter is pending and the applicant, in the meanwhile has already been promoted as JIO I/G. It is the case of the applicant that after the proposal for permanent absorption was approved by the Intelligence Bureau, the applicant had appeared at a special written examination conducted by the State Police where he qualified to undergo training

meant for the post of Assistant Sub Inspector of Police. But the applicant preferred to continue in the Intelligence Bureau expecting to be permanently absorbed and therefore, opted not to go for the Assistant Sub Inspector of Police training. Moreover, the applicant has been on deputation to Intelligence Bureau since 1983 and has now completed 19 years and his performance, throughout has been considered to be of high order. He also received commendation letters in this regard. The applicant was also selected and completed the course training meant for JIO I/G on 24.12.1999. The applicant was transferred from Rourkela to Baripada on 11.7.2000. While posted at Baripada, the applicant proceeded on leave on medical ground to Rourkela and when he came to Baripada on 19.5.2001 he was served with the order of his reversion which is dated 5.2.2001. Aggrieved by the order of reversion the applicant filed this Original Application.

3. The applicant in the Original Application had also prayed for interim relief which had been rejected by this Tribunal vide its order dated 17.9.2001. Thereafter the applicant had filed a Writ Petition before the Orissa High Court, which was disposed of on 29.1.2001, wherein it was directed that the O.A. be disposed of by this Tribunal as expeditiously as possible; preferably by the end of May, 2002.

4. The applicant contends that as per the State Government guidelines, the maximum period of deputation is six years and as per the Government of India guidelines, the maximum period is three years, subject to relaxation in particular cases. It is the case of the applicant

that since he joined the Intelligence Bureau on deputation on 16.9.1983, as per the State Govt. guidelines, his deputation period expired on 16.9.1989. But he has been allowed to continue in the Intelligence Bureau beyond the period of six years and has completed ~~for~~ about 19 years and it has, therefore, to be held ^{that} by the State Government ^{have} as given [out in] their implied consent for permanent absorption of the applicant in the Intelligence Bureau as the authorities of Intelligence Bureau have also - allowed him to continue for 19 long years, without adhering to the Govt. of India guidelines, which show that they are interested in his permanent absorption, and ~~that~~ he did not think of reverting him, because his permanent absorption was approved way back in 1991. Thus, the reversion order is a violation of the promise of the Intelligence Bureau and the same has been issued without giving the applicant an opportunity to explain his stand; and that the applicant is sought to be penalised for the delay and negligence, if any, on ^{the} ~~his~~ part by the I.B. authorities, who have been unable to take a decision regarding permanent absorption of the applicant for the last 10 - 11 years. Secondly, the applicant is in the scale of Rs.4000-6000/- in the Intelligence Bureau. But on his reversion to his parent Department, he would have to work in the lower scale of Rs.3050-4550/-, which would ultimately affect his pension also. Besides this, he would also be subjected to loss of prestige and humiliation as on his reversion, he has to work as Constable and serve ^{person} under who were his juniors earlier. Moreover, he had

forgone the chances to undergo the training for the post of Assistant Sub Inspector of Police with the hope that he would be absorbed in the Intelligence Bureau. The applicant, has therefore, challenged his reversion to the parent Department on the ground of Doctrine of Promissory Estoppel and the Theory of Reasonable Expectation and also on the ground that his repatriation order is arbitrary, illegal and without application of mind and the same violates the principles of natural justice as no opportunity was given to him before the reversion order was issued.

5. The Respondents have filed their reply stating that the applicant, who is only a deputationist could not be absorbed in the Intelligence Bureau for want of concurrence from the State Police Department in spite of issue of several reminders and ultimately it was decided to repatriate the applicant to his parent Department w.e.f. 28.2.2001 on administrative grounds and the repatriation order was issued on 5.2.2001. The Respondents have denied that the applicant has been absorbed permanently and in this context they have referred to letter dated 1.1.1991 (Annexure-R/1) to show that the absorption of the applicant was subject to the concurrence of the I.G. of Police/D.G. of Police of the State Police and such concurrence had not been received and the State Police authorities were insisting for repatriation of the applicant. It is the further contention of the Respondents that after the applicant was posted to Baripada, he did not show interest in his official work and went on leave frequently and accordingly, it was decided to repatriate him on

administrative grounds. Since the applicant is only a deputationist, the law in regard to deputationist is well settled and the deputationist has, prima facie, neither any right to claim absorption in the borrowing Department nor has any such right accrued because of longer period of service spent on deputation.

6. Heard Shri Balaram Rout, the learned counsel for the applicant, and Shri A.K. Bose, learned Senior Standing Counsel for the Union of India and Shri K.C. Mohanty, the learned Government Advocate appearing on behalf of the State Government of Orissa and perused the documents on record.

7. It is the contention of the applicant that he has been absorbed in the Intelligence Bureau vide letter dated 11.1.1991 ~~and~~ as it appears, there is nothing in this letter to show that the same is subject to concurrence by the parent Department, viz. IGP/DGP, Orissa. The Respondents have, however, produced the Memorandum dated 9.1.1991 issued by the Headquarters of Intelligence Bureau wherein, under the terms and conditions for absorption (Para-3.1) it has been clearly mentioned that by the concurrence of IGP/DGP of the State to which they belong may be obtained for such absorption in the Intelligence Bureau. It is also seen from the letter dated 15.3.1996 (Annexure-A/4) produced by the applicant that his case for permanent absorption was still pending with the Orissa Police under the Govt. of Orissa. It is, thus, ^{clear} believed that the applicant was aware that he had not

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been permanently absorbed in the Intelligence Bureau. At our instance, the Respondents also produced the pay particulars of the applicant in the various posts held by him in the Intelligence Bureau. It is seen from these pay particulars that the applicant continued to draw his State scale of pay in the various posts held by him in the Intelligence Bureau, along with the Deputation Allowance etc. and that the applicant also availed of the facility of leave encashment which is not available to the employees of the Central Government. Accordingly it is clear that the applicant was not permanently absorbed in the Intelligence Bureau on the date of his repatriation.

8. The counsel for the applicant, relying on the Supreme Court judgment in the case of State of Punjab vs. Inder Singh (AIR 1998 SC 7) argued that this judgment being in favour of the applicant has to ^{be treated} come as the law of the land. He also referred to the Supreme Court decision in the case of Director of Settlements, A.P. v. M.R. Apparao (AIR 2002 SC 1598) to support his contention that though a judgment may not be Obiter Dictum and not binding, but the same has a considerable weight. In the case of State of Punjab v. Inder Singh, there were, however, 18 Respondents. They were all enrolled as Constables in the Police Department and later on deputed to the C.I.D. of Punjab Police and in course of deputation they earned promotions on ad hoc basis and some of the Respondents also reached the rank of ad hoc Sub Inspectors. When they were sought to be repatriated to their Parent Department,

they were to go back as Constables/Head Constables.

The Respondents having worked in the C.I.D. did not like their prospects for going back as Constables and therefore, approached the High Court of Punjab & Haryana, by filing Writ Petitions. The High Court, however, did not say that the order of repatriation of the Respondents being illegal could not be set aside as such, but issued directions that the cases of the Respondents in the Parent Department to be considered for promotion on the relevant dates when persons who were since junior to them were promoted at the different levels and, if necessary, by giving relaxation of Rules in some of the cases. Two directions were given, viz., (i) if the Respondents sought voluntary retirement from the posts they were holding in C.I.D., the order of repatriation would not come in their way and the cases of voluntary retirement to be considered on the basis of the posts they were holding in the C.I.D. and (ii) to declare the seniority of the Respondents in the parent Department by giving them the benefit of service they rendered in the C.I.D. and consequently to be considered for promotion with effect from the date the persons junior to them were promoted. These orders of the High Court was challenged by the State of Punjab before the Supreme Court. In Para-21 of the judgment, the Supreme Court ^{observed} (stated) as under :

" ... The conduct of the appellants now suddenly asking the respondents to go back to their parent Departments when they have put in best years of their lives in CID would appear to be rather unjust".

Relying on this statement, the counsel for the applicant argued that the order of repatriation in

respect of the applicant is also unjust as he has been on deputation with the Intelligence Bureau for about 19 years. On going through the above Supreme Court judgment, it is seen that the Supreme Court, despite making this ^{deputation} statement, did not finally provide any relief beyond what had been given by the High Court and had stated that considering the whole aspects of the matter, we affirm the order of the High Court to the extent that options be given to ~~all~~ all those Respondents who ^{have} were put in 20 years ^{of} qualifying service to seek voluntary retirement from the CID in the rank they were holding and they were deemed to have been worked in the CID up to the date of the judgment. They did not in any way come in the way of the orders passed by the High Court, which had directed that those of the Respondents who had ^{not} (been) put in 20 years of qualifying service would have to be reverted back to their parent Department. Thus, this decision of the Supreme Court in the case of State of Punjab vs. Inder Singh (Supra) does not ^{in any} support the case of the applicant; on the contrary it upholds the stand of the Respondents (Department) in repatriating the applicants. It is also seen that in this very same case the Supreme Court had also discussed the concept of deputation at Para-19 of the said judgment, which reads as under:

" Concept of "deputation" is well understood in service law and has a recognised meaning. 'Deputation' has a different annotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a

temporary basis. After the expiry of period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be".

This being the position, the observation of the Supreme Court ^{referred to earlier} cannot be held to be an Obiter Dictum ^{have any weight} as ^{chiefly for counsel} contended by the counsel for the applicant and to rely on the Supreme Court judgment in the case of Director of Settlements, A.P. vs. M.R. Apparao (Supra). The Respondents have also brought to our notice the Supreme Court judgment in the case of Kunal Nanda vs. Union of India & Ors. (2000) 5 Supreme Court Cases 362 and the orders passed in Original Application Nos. 392/99 and 181/2000 on 3.4.2001, by the Guwahati Bench of this Tribunal.

In Kunal Nanda case the Supreme Court held that a deputationist cannot assert and succeed in his claim for permanent absorption in the department where he works on deputation, unless his claim is based upon a statutory rule, regulation or order having the force of law and a deputationist can always and at any time be repatriated to his parent department at the instance of either borrowing department or parent department. There is no vested right in such a person to continue for long on deputation or get absorbed in borrowing department.

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The Guwahati Bench of the Tribunal in their orders held that as a matter of law, legally, a deputationist has no right to continue or claim absorption in the borrowing department unless his absorption is covered by any statutory rules. A deputationist is liable to be repatriated to his parent department on the expiry of the deputation period. Long and uninterrupted continuance of the deputation period cannot be a ground for resisting repatriation.

9. The further argument advanced by the counsel for the applicant was that the applicant had been on deputation for about 19 years and when the authorities in the Intelligence Bureau were not happy with him, they have repatriated him and in such a situation, some warning should have been given to him and it was also open to the I.B. authorities to have taken administrative action against him, instead of repatriating him, after he had served them loyally for 19 years. Viewed in this light, it is argued that repatriation of the applicant is in the nature of punishment and the repatriation has been done to achieve an ulterior motive and this Tribunal, accordingly is required to open the veil and see the true motive behind of the repatriation. We are not convinced with this argument of the counsel for the applicant. No doubt the services of the applicant while posted at Rourkela had been appreciated by the I.B. authorities. But when they were not happy with his performance at Baripada and the applicant ^{however} not having been absorbed ^{and} as such being only a deputationist ^{under C} should be repatriated at any time ^{by} the I.B. authorities ^{if they} were

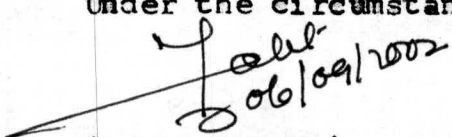
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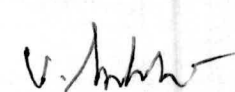
not satisfied with his performance. In such a situation, it is not open to this Tribunal to lift the veil and see the motive behind his repatriation, especially when it pertains to an Institution like Intelligence Bureau, which may have its own reasons for repatriating the applicant.

10. The counsel for the applicant thereafter advanced another argument stating that the applicant had a legitimate expectation that he would be absorbed in the Intelligence Bureau and that the Respondents had all the times given the hope that he would be absorbed in the I.B. and it was because of that he had not gone back to his parent department and consequently his juniors in the parent department have already been promoted and if he is now repatriated he would draw less pay which would affect his pension and also he would suffer from loss of prestige. This argument is ^{also} not accepted. ~~As~~ the applicant has no right unless he is absorbed permanently, he had taken a conscious decision to stay with the Intelligence Bureau on deputation. So far as the pension aspect is concerned, as pointed out by the Punjab and Haryana High Court in the case of State of Punjab vs. Inder Singh (Supra) it was open for the applicant to have sought voluntary retirement, so that he could earn pension on the basis of the pay drawn in the Intelligence Bureau. In fact it is seen that the applicant had sought this alternative and submitted a letter seeking voluntary retirement which he had subsequently withdrawn. ^{pay} Finally, the counsel for the applicant argued that the repatriation of the applicant to the State Police Department without any show cause having been issued to

to him to explain his stand was against the principles of natural justice. This argument has no basis since the applicant was a deputationist and has no right to continue on deputation and the borrowing department is at liberty to repatriate him whenever it chooses to do so and such action has already been upheld by the various Courts.

11. For the reasons discussed above, we do not find any merit in this application which is accordingly dismissed. Under the circumstances, no order as to costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(V. SRIKANTAN)
MEMBER (ADMINISTRATIVE)

Biv/