

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 415 of 1997

Friday, this the 30th day of May, 1997.

CORAM

HON'BLE MR P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

S. Vijayan, S/O Padmanabhan,
Superintendent,
Narcotics Control Bureau,
Regional Intelligence Unit,
Trivandrum.

...Applicant

By Advocate Mr M.R. Rajendran Nair.

Vs.

1. Union of India, represented by
the Secretary to Government of India,
Ministry of Finance(Deptt. of Revenue),
New Delhi.
2. The Director General,
Narcotics Control Bureau,
West Block No.1, Wing No.5,
R.K. Puram, New Delhi.
3. The Deputy Director General(Adm),
Narcotics Control Bureau,
West Block No.1, Wing No.5,
R.K. Puram, New Delhi.
4. The Director General of Police, Kerala,
Trivandrum.
5. Shri S.S. Krishnamoorthy, IPS,
Assistant Director, N.C.B. South,
Zonal Unit C-3A, Rajaji Bhavan,
Basant Nagar, Madras.

...Respondents

By Advocate Mr TPM Ibrahim Khan, Sr.CGSC for R 1to3&5

By Advocate Mr C.A. Joy, Government Pleader for R-4.

The application having been heard on 29.4.1997,
the Tribunal delivered the following on 30.5.1997.

O R D E R

HON'BLE SHRI A.M. SIVADAS, JUDICIAL MEMBER

The short question that arises for consideration
in this Original Application is whether the
repatriation of the applicant as per A-1 order dated
17th of March, 1997 is to be quashed.


2. Applicant while working as Inspector of Police in the Kerala Police Service was taken on deputation as Superintendent to Narcotics Control Bureau, Trivandrum on 9.1.1995.

3. In A-2 it is stated that the period of deputation to the Bureau will ordinarily not exceed three years and the continuance on deputation to the Bureau will depend on the suitability and performance.

4. According to applicant, he has been unceremoniously repatriated from the Narcotics Control Bureau to his parent department and it is vitiated by malafides.

5. Applicant says performance of his official duty was made impossible by the non co-operation of the 5th respondent and he submitted a detailed report to the Director General. Annoyed by this, the 5th respondent exerted undue influence over higher authorities and paved way for premature repatriation of the applicant.


6. 5th respondent in the reply statement has stated that the applicant was repatriated not due to his intervention, that the applicant's premature repatriation is his own making, and not the making of the 5th respondent. It is also stated that as the applicant was found not suitable, was prematurely repatriated by the competent authority in the interest of the organisation.



7. The 5th respondent alone is brought in the party array by name. It is not enough to allege malafides. To establish malafides strong and convincing evidence should be there. The presumption is in favour of bona fides of the order unless contradicted by convincing evidence. Though the applicant says that the 5th respondent exerted undue influence over the higher authorities for his premature repatriation, it is not stated who are the the higher authorities on whom the 5th respondent exerted undue influence. It is not known who are the higher authorities over whom, according to applicant, the 5th respondent has exerted undue influence. A-1 order of repatriation is issued by the 3rd respondent. 3rd respondent is an authority superior to 5th respondent. When a party alleges that a subordinate officer has exerted undue influence over higher authorities to the detriment of that party it is for that party to prove the same by strong and convincing evidence. There is no convincing evidence to the effect that the 5th respondent has exerted undue influence over his higher authorities for the purpose of repatriation of the applicant.

8. One of the grounds stated in this application is that the impugned action is violative of the fundamental rights of the applicant guaranteed by Articles 14 and 16 of the Constitution of India. Learned counsel appearing for the applicant did not address any argument on this ground. According to us, it has been so done by the learned counsel for the applicant rightly.

9. As per A-2, ordinarily the period of deputation shall not exceed 3 years. In para-3 of the O.A. it




is stated that the O.M. dated 5.1.94 issued by the Ministry of Personnel, Pension Grievances and Pension, the Government of India has issued consolidated instructions regarding transfer on deputation/foreign service and there is specific provision for premature reversion of deputationist to the parent cadre, in clause-9 of that O.M. which reads as follows:

"Premature reversion of deputationist
to Parent Cadre.

Normally, when an employee is appointed on deputation/foreign service, his services are placed at the disposal of the parent Ministry/Department at the end of the tenure. However, as and when a situation arises for premature reversion to the parent cadre of the deputationist, his services could be so returned after giving advance intimation of reasonable period to the lending Ministry/Department and the employee concerned."

As per clause-9 of the said O.M., advance intimation of a reasonable period to the lending Ministry/Department and the employee concerned should be given. R-3 is the order repatriating the applicant with effect from the afternoon of 31st of March, 1997 issued by the 3rd respondent. It is addressed to the 4th respondent, Director General of Police, Kerala. From the same it is seen that copy was marked to the applicant. R-4 dated 19.3.97 says that the applicant




shall be relieved from the Narcotics Control Bureau, Trivandrum with effect from the afternoon of 31.3.1997 and should report to the Office of the Director General of Police, Police Headquarters, Thiruvananthapuram. From the same also it is seen that copy was marked to the applicant.

10. Applicant in rejoinder has admitted that on the morning of 20th of March 1997, the applicant's office at Trivandrum was informed over phone by Police Headquarters that they received a communication by Fax on 17th of March, 97 intimating the applicant's premature repatriation to parent department, and the applicant obtained a copy of the above communication from Police Headquarters, Trivandrum. So, it is admitted by the applicant that he has been given advance intimation of a reasonable period relating to his repatriation to his parent department.

11. According to applicant, he is being repatriated only to provide an escape route to some officers of Narcotics Control Bureau of Madras Zone. There is no evidence to this effect. The mere allegation that his repatriation is only to shield some officers of Narcotics Control Bureau, Madras Zone is not sufficient.

12. Learned counsel appearing for the applicant argued that the repatriation of the applicant is not after having found him unsuitable for his continuance in the Narcotics Control Bureau, but his continuance on deputation to the Bureau will depend on the suitability and performance. So, it is to be looked into whether the 3rd respondent has issued A-1 order repatriating the applicant to his parent department




having found him not suitable to continue in the Narcotics Control Bureau. If the answer is in the affirmative, the O.A. is only to be dismissed. If the answer is in the negative, it will spell out malafides. There cannot be any doubt that government servant on deputation can be repatriated to his parent department at any time. The question to be considered whether it is vitiated by malafides.

13. According to the applicant, the premature repatriation has resulted in humiliation to him. The order of repatriation simplicitor will not amount to any humiliation and cannot be characterised as humiliation. The question to be considered is whether A-1 order is a genuine one as per which the applicant is repatriated from the post of Superintendent, Narcotics Control Bureau to his parent department without an aspersion against his character or integrity, or amounts to a measure of punishment. The repatriation by itself will not be a stigma. If in the nature of punishment, as argued by the learned counsel for the applicant, interference is warranted.

14. Respondents 1 to 3 in the reply statement has stated that the applicant has been repatriated prematurely as he was found unsuitable for the organisation and not with any malafide intention. The reasons stated by the respondents 1 to 3 for finding the applicant unsuitable are also narrated in the reply statement. The reasons stated are that after completing the investigation pertaining to seizure of 2.530 kgs. of Heroin in Tuticorin on 9.10.96, CC No.19/97 was filed by the South Zonal Unit,


Chennai on 3.1.97 before the Special Court for NDPS Act Cases at Madurai against one accused by name Raja. The applicant mooted a proposal to pray for stay of all further proceedings in CC No.19/97 before the Special Court at Madurai alongwith a legal opinion dated 20.1.97 obtained from Public Prosecutor, Trivandrum. On consideration of his request, the Director, Zonal Unit, Chennai sought the opinion of Shri P.N. Prakash, Addl. Public Prosecutor, Narcotics Control Bureau, Chennai by a requisition dated 20.1.97 wherein he has stated that it would not be legally correct to obtain stay of further proceedings in CC.19/97. After receiving his opinion, Director, Narcotics Control Bureau, Chennai communicated the same to the applicant. The applicant thereafter sent the letter dated 27.1.97 (R-1) to P.N. Prakash. A bare reading of the letter would easily cause annoyance even to a third person. On receipt of the said letter P.N.Prakash made the report dated 7.2.97 (R-2) wherein he had taken very serious exception to the contents of the letter addressed by the applicant and he had further called upon the department to take disciplinary action against the applicant. Pursuant to the report of P.N.Prakash, the Director, Narcotics Control Bureau, South Zonal Unit, Chennai felt that it would not be any further desirable to have the applicant in the services of a prime intelligence agency like Narcotics Control Bureau and therefore, he recommended to the Headquarters to repatriate the applicant forthwith.

15. According to Respondents 1 to 3, instead of taking severe action against the applicant the department decided to relieve him immediately from



the services of Narcotics Control Bureau as mark of lenience. Learned counsel appearing for the applicant argued that the department dares not to take disciplinary action against the applicant and the act of repatriation is due to weakness and lack of moral courage on the part of the department. Taking a lenient view cannot be characterised as lack of moral courage or weakness or not daring to take action. It could well be taken as an act of indulgence or grace.

16. The confidential communication to 3rd respondent by the Director, Narcotics Control Bureau, South Zonal Unit, Chennai was made available to us by Respondents 1 to 3 for perusal. On careful scrutiny of the same we are convinced that the Director, Narcotics Control Bureau, South Zonal Unit, Chennai was fully justified in coming to the conclusion that continuance of the applicant in the Narcotics Control Bureau is not desirable. 3rd respondent who has issued A-1 order repatriating the applicant from the Narcotics Control Bureau to his parent department is fully justified in acting on the confidential communication made by the Director, Narcotics Control Bureau, South Zonal Unit, Chennai. Men are like steel. When they lose their temper, they lose their worth. From the confidential communication addressed to 3rd respondent by the Director, Narcotics Control Bureau, South Zonal Unit, Chennai, it could be well said that the applicant has lost his temper, which means he is not worthy of being continued in the Narcotics Control Bureau. The only power to which a man should aspire is that which he exercises over himself. From the confidential communication addressed by the Director, Narcotics



Control Bureau, South Zonal Unit, Chennai and from the other materials available it is quite evident that the applicant is totally lacking the same. The applicant has not alleged any iota of malafides against the Director, Narcotics Control Bureau, Chennai.

17. Learned counsel appearing for the applicant argued that A-1 order is subject to judicial review. No doubt, it is subject to judicial review.

18. In Chief Constable of the North Wales Police Vs. Evans (1982) 3 All ER 141 at 154 Lord Brightman said:

"...Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.


Judicial Review is concerned, not with the decision, but with the decision making process. Unless that restriction on the power of the Court is observed, the Court will, in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

19. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality,

(ii) Irrationality, namely, Wednesbury unreasonableness, and

(iii) Procedural impropriety.




20. Illegality: This means the decision maker must understand correctly the law. There is no material to arrive at a conclusion that illegality has been committed by the 3rd respondent in issuing A-1 order.

21. What is this charming principle of Wednesbury unreasonableness? As expressed in R vs. Askew (1768) 4 Burr.2186, Lord Mansfield considered thus:

"It is true, that the judgment and discretion of determining upon this skill, ability, learning and sufficiency to exercise and practice this profession is trusted to the College of Physicians; and this Court will not take it from them, nor interrupt them in the due and proper exercise of it. But their conduct in the exercise of this trust thus committed to them ought to be fair, candid and unprejudiced; not arbitrary, capricious, or biased, much less, warped by resentment, or personal dislike."

As already stated there is no malafides attributed against the Director, Narcotics Control Bureau, South Zonal Unit, Chennai who in the confidential communication recommended repatriation of the applicant to his parent department. In the O.A. apart from saying that the 5th respondent has exerted undue influence over his superior officers nothing is specifically stated that any undue influence was exerted by the 5th respondent over the 3rd respondent who issued the order of repatriation. As already




stated the 3rd respondent is not in the party array of respondents by name.

22. With regard to the procedural impropriety, it is already stated that advance intimation of a reasonable period to the applicant's repatriation was given by the department.

23. Learned counsel appearing for the applicant argued that the legitimate expectation of the applicant has been affected by A-1 order of repatriation. In Union of India Vs. Hindustan Development Corporation, A.I.R.(1994) SC 988. The Apex Court has observed that:

"The doctrine does not give scope to claim relief straight away from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore, even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures



the circumstances in which that expectation may be denied or restricted."


So, overriding public interest is a strong ground for denying legitimate expectation. Learned counsel for the respondents 1 to 3 apart from making available confidential correspondence made by the Director, Narcotics Control Bureau, South Zonal Unit, Chennai to the 3rd respondent also made available copies of certain correspondence made by the applicant to his superior officers. He has also made available for our perusal the file No.146/NCB/TVM/CEN-96 of the Narcotics Control Bureau, Trivandrum. On careful scrutiny of these documents, we are convinced that there is overriding public interest which is a strong ground for denying legitimate expectation.

24. In para VIII of the letter dated 18th of December, 1996 by the applicant to the Assistant Director, Narcotics Control Bureau, Chennai, it is clearly stated thus:

"If you feel that I am unfit for this organisation, you are at liberty to take steps for my repatriation."

So, it is very evident that the applicant is quite aware of the position as to his suitability to continue in the Narcotics Control Bureau.

25. Public interest will always override private interest. From the materials made available before us it could be seen that the continuance of the applicant in the Narcotics Control Bureau is not desirable, which means that he is no longer suitable




to continue in the organisation. In Council of Civil Service Unions V. Minister for the Civil Service, (1984) 3 All E.R. 935, the claim of legitimate expectation was not upheld by the Court on consideration of national security.

26. The activity of the Narcotics Control Bureau is in a very sensitive area. Continuance of any person unsuitable in the Narcotics Control Bureau, no doubt, will very badly affect functioning of the Bureau. Drug menace is very much rampant in the country. Drug peddlers are to be kept under tight clutches. That being so, the Narcotics Control Bureau, no doubt, could only have personnel who are suitable to continue in the Bureau.

27. Hence, the arguments advanced by the learned counsel for the applicant on the ground of legitimate expectation cannot be accepted.

28. In the O.A. it is stated that the applicant's name was recommended for award of President's Medal for his meritorious service. The same is admitted by respondents 1 to 3 in their reply statement. There is no case for the applicant that he was awarded President's Police Medal for meritorious service. The only contention is that he was recommended for President's Police Medal for meritorious service. It is admitted by the applicant in the rejoinder that 'only an exemplary track record will make one eligible for President's Gold Medal'. So, it is the admitted case of the applicant that a mere recommendation for President's Police Medal for meritorious service is not sufficient for awarding medal, but in order to be eligible for the same, one should have exemplary




track record. It is for the President to decide whether one rightly deserves the President's Police Medal for meritorious service. As there is nothing to show that President's Police Medal for meritorious service was awarded to the applicant, the mere fact that his name was recommended for meritorious service by itself does not take us any where. Even if, one was awarded President's Police Medal for meritorious service, that does not mean that he will continue to be meritorious even after receipt of the medal.

29. In Ground-F of the O.A. it is stated thus:

"By the premature repatriation and curtailment of the period of deputation applicant is being humiliated. The indication is that there will not be place for honest and straight forward officers."

30. It is for others to recognise one as an honest and straight forward officer. It is not for oneself to claim the same. The implication is that the applicant is the only honest and straight forward officer and all others are otherwise. It is very difficult to accept such a generalisation.

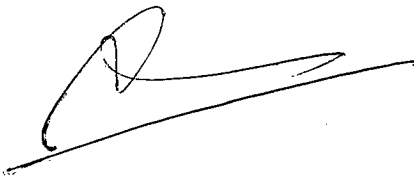
31. For the reasons stated above, we do not find any ground, much less any good ground, to quash A-1 and direct the respondents to allow the applicant to continue in the Narcotics Control Bureau till the expiry of the normal period of three years' deputation




from 9.1.1995.

32. Accordingly, the Original Application is dismissed. No costs.

Dated the 30th day of May, 1997.



A.M. SIVADAS
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

LIST OF ANNEXURES

1. Annexure A-1 : True copy of the Letter No.II/14(8)/94-Estt.(T), dated 17-3-1997 issued by the 3rd respondent to the 4th respondent.
2. Annexure A-2 : True copy of the Letter No.II/14(8)/94-Estt. dated 26-10-1994 issued by the 3rd respondent to the 4th respondent.
3. Annexure R-1 : True copy of the letter dt.27-1-97 written by the applicant to Shri.PN Prakash, Addl. Special Public Prosecutor, Chennai.
4. Annexure R-2: True copy of the report dt.7-2-97 of Shri.PN Prakash, Addl. Special Public Prosecutor, Chennai.
5. Annexure R-3 : True copy of NCB Headquarters letter No.II/14(8)/94-Estt.(T)/2084, dt.17-3-97 addressed to Respondent No.4 and the applicant.
6. Annexure R-4 : True copy of Office Order of NCB Hqrs. No.II/14(8)/94-Estt.(T)/3054, dt.19-3-97 distributed to the applicant and to the Respondent No.4 among others.

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