

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH.

ORIGINAL APPLICATION NO. . : 220 of 2000.

*Dated this 13th day of November, 2000.*

Shri Dnanaeshwaar Eknath Vanarsey, Applicant.

Shri P. A. Prabhakaran, Advocate for the applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

(i) To be referred to the Reporter or not ? Y

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? N

(iii) Library. Y

B. N. BAHADUR  
MEMBER (A)

sj/os\*

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 230 of 2000.

Date of this Friday, the 10th day of November, 2000.

SPRITI DABHADKAR, Mumbaikar and Associate, Advocate.

Advocate for the  
Applicant.

VERSUS

Union of India & Others, Respondents.

Advocate for  
Respondents.

GORAKH : Hon. the Sprit B. V. Dabhadkar, Member (A).

Hon. the Sprit S. T. Joshi, Member (L).

(i) To be referred to the Registrar or not to be referred to the Registrar or to be referred to the Registrar or not to be referred to the Registrar.

(ii) Whether it is necessary to be circulated to other Benches  
of the Tribunal ?

(iii) Tuntas.

(B. N. DABHADKAR)  
MEMBER (A)

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THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

Original Application No. 220/2000

Dated this \_\_\_\_\_ the 13<sup>th</sup> Day of November, 2000.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)  
And  
Hon'ble Shri S.L. Jain, Member (J)

Shri Dnanaeshwaar Eknath Vanarsey  
Bldg.No. 214/8413  
CBI Quarters/  
Gajanan Maharaj Chowk  
Kannamwar Nagar,  
Vikhroli, Mumbai.

Working in the Office of  
Superintendent of Police  
CBI, ACB, Mumbai,  
having Office at  
Tanna House, 11A Nathalal Parekh Marg,  
Near Sahakar Bhandar,  
Colaba, Mumbai 400 005.

..... Applicant

(Represented by Shri P.A. Prabhakaran, Advocate)

Vs.

1. Union of India through  
The Director  
Central Bureau of Investigation  
Block No. 3, 4th floor,  
C.G.O. Complex,  
Lodhi Road, New Delhi-110 003.

2. Superintendent of Police  
CBI: ACB: Mumbai having office  
at Tanna House,  
11, Nathalal Parekh Marg,  
Near Sahakar Bhandar,  
Colaba, Mumbai 400 005.

3. The State of Maharashtra,  
through the Addl. Chief Secretary,  
Home Department, Mantralaya,  
Mumbai.

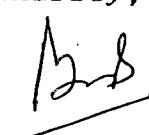
(Represented by Shri V.S. Masurkar, Advocate)

..... Respondents

O R D E R

[Per B.N. Bahadur, M (A)]

This is an Application made by Shri Dnanaeshwaar Eknath Vanarsey, who seeks the following reliefs from the Tribunal:



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"A) The Hon'ble Tribunal be pleased to declare that the amendment brought about in the recruitment/ absorption rules of Inspector of Police in the CBI by Circular dated 17.12.1997 is illegal, irregular and invalid and quash and set aside the same as an act executive act of malafide.

AA) The Hon'ble Tribunal be pleased to direct the respondents that the applicant be absorbed in the Organisation of CBI:ACB on an objective assessment of his tract record and other overall circumstances of his case.

B) The Hon'ble Tribunal may be pleased to further direct the respondents that the period of medical leave applied for by the applicant to the State Authorities be considered by the respondents and granted as per the admissible rules.

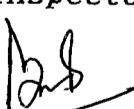
BB) The Respondents 1 and 3 may be directed to produce the files maintained by each of them in respect of the deputation, extension and or absorption of the applicant in the organisation of the respondents 1 and 2 subsequent to the issue of the Circular dated 23.8.1995 (Ex. A-5, page 16-17) for the perusal of the Hon'ble Tribunal and ensure that those have been in conformity with the relevant orders/rules, but now sought to be rescinded unilaterally and arbitrarily.

C) The Hon'ble Tribunal be pleased to direct that the allotment order of the quarters occupied by him be continued in his favour.

D) Any other relief deemed fit and proper on the facts and in the circumstances of the case

E) The cost the application may be directed to be paid."

2. The facts of the case are that the Applicant who joined the State Police of Maharashtra in 1977, as unarmed Head Constable, was taken by the Respondents on deputation as Sub-Inspector of Police, CBI, Anti-Corruption Bureau, with effect from 28.2.1986. The Deputation was for a period ordinarily not exceeding 5 years. Applicant avers that he continued for more than 5 years, and was thereafter promoted to the Post of Inspector of Police in the CBI. Thus, his deputation was



continued further (Ex.A.4). Applicant then states that a Circular was issued inviting willingness for permanent absorption in CBI, to which the Applicant responded, submitting the letter showing willingness to be absorbed. No reply was received and the Applicant continued with the CBI till he was suddenly repatriated.

3. The Applicant then goes on to make averments as to why he is aggrieved by his repatriation, and how it is unjustifiable. Applicant avers that he had investigated sensational and important cases, and was awarded the Police Medal on 1996 Republic Day. He further avers that he possesses qualifications required as per the Recruitment Rules, pertaining to absorption of Inspectors in CBI. Further in the O.A., the Applicant describes the grounds on which basis he prays for reliefs sought.

4. The Respondents have filed a reply, where they resist the claims of the Applicant, and even take the ground of resjudicata vis-a-vis the O.A. filed before the Maharashtra Administrative Tribunal (MAT). The Respondents then go on to give various details in the case. They admit that the Applicant has formally shown his willingness for absorption as Inspector of Police in the CBI, in response to CBI Circular dated 23.8.1995 (Ex.R7). It is averred that the C.B.I. had revised the procedure of absorption by making a Bachelors Degree or equivalent, and an examination, as essential qualifications for absorption into CBI. It is also averred that through Circular dated 17.12.1997, (R-9) it had also been made clear that Inspectors who came on

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deputation did not have any inherent right to absorption and that the discretion in this regard rested solely with the CBI.

5. The Respondents further state that since the Applicant possessed a qualification upto Matric only, a proposal for the relaxation of educational qualification in his case was sent to Head Office (R.10 and R.11). However, this was rejected by the Competent Authority. It, is further stated that the Govt. of Maharashtra i.e. Applicant's Parent Department had agreed for the continued deputation of Applicant with CBI upto 16.3.1999, and had also stated that if Applicant was not absorbed in CBI till that date, he will need to be reverted. Further details of the case have been provided in the Written Statement.

6. The Learned Counsel for the Applicant, Shri P.A. Prabhakaran, first made the point that the Recruitment Rules were changed arbitrarily and illegally, and that too only for a short period, thus eliminating the present Applicant from consideration for absorption. He contended that even after reversion of the Applicant, others were absorbed on the basis of the old (regular) rules, and made more than a hint by way of an allegation that the change in Rules was made only to oust the Applicant from consideration for absorption. Learned Counsel drew <sup>our</sup> attention to the various communications from the Mumbai Office of Respondents addressed to their Headquarters, to contend that the applicant was recommended by his superiors for absorption, and even a relaxation had been recommended. Various communication annexed by the Applicant referred to in this connection were referred to by learned Counsel to his arguments.



7. It was further argued that not only was the Applicant qualified as per the normal Rules governing recruitment and absorption, but that the Applicant had been awarded a medal and had an unblemished and excellent career throughout. The sudden changes in the Rules was questioned more than once, by Applicant's learned counsel who took support of the following cases.

- (1) *K.S. Panicker V/s. Union of India.*  
[ 1996 (34) ATC 161 ].
- (2) *S.N. Panicker Versus Union of India.*  
[ 1991 (17) ATC 709 ].
- (3) *State of Punjab and Ors vs. Indersingh*  
[ 1998 (SCC) L & S 34 ].
- (4) *Rameshwar Prasad V/s. M.D. U.P. Rajkiya Nirman Nigam Limited & Others.*  
[ 2000 SCC (L&S) 60 ].

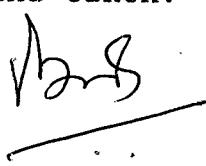
8. The case was argued on behalf of the Respondents by their Learned Counsel, Shri V. S. Masurkar, who first raised the point that the matter was hit by the principles of res judicata, because the Applicant had filed an O.A. in the Maharashtra Administrative Tribunal. It was argued that the State Government of Maharashtra should have been made a party in the case. Learned Counsel then argued the case on merits and took the stand that absorption of a deputationist in the C.B.I. was not



something that could be claimed as a right. It was not incumbent upon the Respondent Department to absorb any deputationist, just because he had opted for absorption, or on the ground that he had put in long years of service as a deputationist. Stressing this point, the Learned Counsel went to the extent of suggesting that absorption was contingent to the continued usefulness of an Officer to the Respondent Organisation. Learned Counsel drew our attention to paras (5) and (6) of the reply to the M.P. filed by Respondents to bring out some facts in his support, like stoppage of the Deputation Allowance from February, 1998 and the fact that the Government of Maharashtra had issued a N.O.C. for extension of the Applicant's deputation only upto 16.03.1999. It was further argued that no officer was absorbed at that time in C.B.I., and that there was no arbitrariness or malice on the part of the Respondents.

9. The Learned Counsel for Respondents did clarify on instructions on the point raised by Counsel for other side that later and more recently some eight persons were regularised on the basis of the old rules. It was further clarified, as mentioned in the written statement, that the normal term of a deputationist in the C.B.I. was ten years and the Applicant had stayed much beyond that. The Learned Counsel, Shri V.S. Masurkar, also rebutted the point regarding malice and argued that all sensitive cases were investigated at very high levels in the Respondent Organisation.

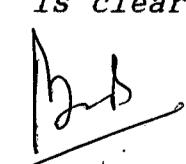
10. The Learned Counsel for Respondents sought the support of the following Case Law in regard to the various arguments and stand taken.



- (1) *D. M. Bharati V/s. L. N. Sud & Others.*  
[ AIR 1991 SC 940 ].
- (2) *Usha Bhugra (Mrs.) V/s. Union of India & Others.*  
[ 1996 (33) ATC 175 ].
- (3) *Parbati Prasad Rath V/s. Union of India & Others.*  
[ 1994 (26) ATC 386 ].
- (4) *Kunal Nanda V/s. Union of India & Another.*  
[ AIR 2000 SC 2076 ].

11. We have gone through all the papers in the case and the case law cited. We have considered the arguments made by the Learned Counsels on both sides. We have also had the benefit of perusal of the file no. A 21021/15/95-AD1 (noting) made available to us by the Respondents.

12. We first come to the position of the Recruitment Rules as has been gleaned by us by reproduction of the rule/assertions made by either side, and in the original file. It is clear that the qualification of graduation does not occur as a essential requirement in the Recruitment Rules, regularly notified. The change has come about only in view of a decision taken later by the C.B.I. which was also circulated (17.12.1997). This is in fact the admitted position. We have in the analysis below, depended, *inter alia*, on the notings made in the file referred to. In fact, after this decision was taken at the administrative level, a proposal has been sent to the Government in the Ministry of Personnel for the change being incorporated in the rules. However, the final decision to implement this change has been made without any approval to the proposal for amendment let alone an amendment. Thus, there is a violation of a well-settled principle of law that the Recruitment Rules, which are statutory in nature, have been changed through an executive decision. This is clearly an action which does violence to the letter and spirit



of the settled law and rules. This principle was well settled in the case of *P. Sadagopan & Others V/s. Food Corporation of India, Zonal Officer (South Zone) & Another* [1997 SCC (L&S) 895]. In view of the ratio decided by the Hon'ble Supreme Court, the action of the Respondent is, therefore, clearly bad in law.

13. We have also noted that the position becomes worse because not long after the repatriation of the Applicant, the Respondents' have again reverted to regular rules and ordered absorptions, admittedly. The Learned Counsel for the Applicant, Shri P.A. Prabhakaran, while arguing the case, had asserted that subsequent to the repatriation of the Applicant, some other persons have been absorbed by the C.B.I. in terms of the regular Recruitment Rules. This position was confirmed by the Learned Counsel for Respondents, on instructions. This indeed is a glaring situation and renders the action of the Respondents to <sup>be considered</sup> as malice in law.

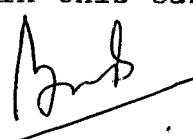
14. An argument was made by the Learned Counsel for Respondents to the effect that absorption was not a matter of right for any deputationist, and that the applicant could not assert his claim, and it was the Respondents' right to repatriate the Applicant to his parent cadre. It is well and truly a fact that absorption is not a right in itself. However, it is a fact as is clear also from the file of the Respondents that the case of the Applicant's absorption was under the consideration of the Respondents for a long period. During this period he was continued on deputation. Importantly, he has been denied the absorption on a specific ground taken i.e. his not being

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eligible in view of his not having bachelor's degree, etc. We will therefore be justified in examining of the Respondents' action with reference to the ratio decidendi in the case of S. N. Panicker V/s., U.O.I. (1991 (17) ATC 709). The Headnote of the case reads as follows :

"Deputation - Repatriation - Held on facts, cannot be ordered without proper justification - Applicant taken on deputation - His request for absorption also under consideration - During this period, Union Public Service Commission not agreeing for the extension of deputation and therefore repatriated - Held, refusal of U.P.S.C. not a valid ground for repatriation - Government also directed to consider applicant's case for absorption favourably in view of the fact that he had already worked on deputation post for five years and there was a provision in the recruitment rules for their relaxation - Tambaku Vikas Nidesalaya (Directorate of Tobacco Development) Recruitment to Groups 'A' and 'B' Rules, 1968, Rule 6 - Service rules - Relaxation of - Constitution of India, Article 309."

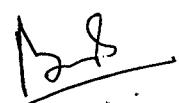
The ratio of the above case would certainly be applicable to the case before us, specially because the applicant is clearly eligible for absorption in terms of the Recruitment Rules. The executive action of changing the Recruitment Rules and that too, for an intervening period has already been determined to be bad in law in view of the law settled by the Supreme Court. Thus, even though absorption cannot be claimed as a matter of right it is open for a Tribunal to examine the facts of the case before us, in view of the law settled by the Supreme Court in the case discussed above. We also find <sup>as AmB</sup> relevant another case cited by the Learned Counsel for the applicant, viz. the case of Harjinder Singh V/s. Union of India (1991 (16) ATC 921] decided by Principal Bench of the Tribunal. The Headnote of the Judgement in this case reads as under :



"Deputation - Permanent absorption on deputation post - Held, cannot be claimed as a right - However, on facts held that applicant's repatriation to his parent department due to his prolonged illness was not justified - Government restrained from repatriating applicant for a specified period - His transfer to another station within the borrowing department also not found justified - Transfer."

It is in this position of the settled law that we have gone into the merits of the case, and found that the Recruitment Rules were changed arbitrarily and against the principles of law, which forbid any change or relaxation in the Recruitment Rules by executive action. This is what has happened in this case. The Respondents have thereafter reverted to the correct position and is evidently following the correct position now, as we are informed during argument. However, this action has clearly caused great injustice to the Applicant before us.

15. Let us now consider the case law cited by the Respondents. In the case of Kunal Nanda [AIR 2000 SC 2076], the Assistant Sub-Inspector of C.R.P.F, who had been sent on deputation to the C.B.I. was held to have made a false representation that he was a graduate, and it was held that such representation was by itself sufficient to deny him absorption and even continuance in the C.B.I. It was thus held that the plea that he is a Service Candidate and therefore need not be a graduate was not tenable. The main ground was that of false declaration, and hence this was held as sufficient ground to dismiss his appeal. Thus the ratio of this case would not be applicable to the present case before us. The case of Usha Bhugra [1996 (33) ATC 175] cannot be said to hold any ground either in view of the Supreme Court judgements on the issue cited by us above. In the case of Parvathi Rath cited by the Learned Counsel for the Respondents (1994 23 ATC 386) we find that the facts are not such as would make the judgement relevant to the present case.



16. We have also considered the case of D.M. Bharati also quoted for support by Learned Counsel for the Respondents. The principle decided here is that the promotion secured by a deputationist in the Organisation to which he is deputed cannot confer a right on him in his parent department. We accept this position. If it was held that the applicant is to be repatriated, and repatriated according to rules, to his parent department, then it could not have been claimed that his promotion protects him to the claim of retention of his rank. Here in this case also if the applicant was reverted as per rules, then his being assigned a lower rank with the Government of Maharashtra in terms of State Government rules could not be faulted, but this is not the relevant point here. Hence, this judgement of the Hon'ble Supreme Court does not help the case of the Respondents. While on this subject we must mention the point made by Respondent about the Applicant going to Maharashtra Administrative Tribunal. That was for a separate cause which concerned the State Government, and we can not, and will not, go into that aspect. Suffice it to say that, on consideration of the facts in this regard, and from a perusal of the papers and arguments before us, we are not convinced that because of this, the applicant is hit by the principles of res judicata.

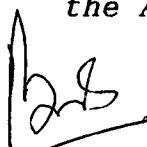
17. We have also seen the judgement of the Hon'ble Supreme Court in the matter of State of Punjab v/s. Inder Singh and Others (1997 (8) SCC 372). The principle settled here is that repatriation from deputation cannot be resisted at the end of the period of deputation, and further that it cannot be resisted on the grounds that the deputationist has continued on deputation for a long time or that he will have to revert to a lower post.

The case of the Applicant is not based on such limited issues, as already explained. Here, to repeat, the rejection of absorption has come on illegal grounds and hence the judgements of Hon'ble Supreme Court in the case of Panicker and Harjinder Singh will hold clear applicability. Even so, we must mention here that even in the case of State of Punjab and Others V/s. Indersingh cited above, the Supreme Court had expressed displeasure over continuing the Respondents on deputation for a long period, thus creating a false hope that they would continue there till retirement. Certain benefits were ordered in the facts of that case. However, we shall not go into this, as here the applicability of the case of Panicker and Harjinder Singh as decided by Hon'ble Supreme Court has importantly been held to be of relevance to the Applicant's case.

18. In view of the above discussions, it is amply clear that the reasons for which the case of the Applicant for absorption has been rejected are violative of the recruitment rules and the law settled. The decision for change in requirement/s for absorption are arbitrary and bad in law. On this count, the reversion of the Applicant to his parent cadre is also held to be bad in law.

19. In view of the discussions made above, we allow this Original Application in terms of the following orders :

(a) The orders repatriating the Applicant from deputation in C.B.I. to his parent cadre are hereby quashed and set aside. The Respondents are hereby directed to take back the Applicant in their Organisation forthwith, on receipt



of a copy of this order (in no case later than within fifteen days). The period from the date of his release till the date of his being taken back in C.B.I. as directed above, shall be treated as leave/medical leave due and admissible as per rules. In case the grant of extra-ordinary leave becomes necessary, it shall be without break in service.

(b) The Respondents are directed to consider the case of the Applicant for permanent absorption on merits and in accordance with the Rules, keeping in view the observations/discussions made above by us. The decision in this regard shall be taken within a period of four months from the date of receipt of a copy of this order. If the applicant is aggrieved by the decision taken, he shall be at liberty to take recourse to redress his grievance, as per law.

(c) The prayer regarding the quarters occupied by Applicant, a multiple relief, has not been pressed/argued on either side and hence left open for both sides.

(d) There will be no orders as to costs.

*JAIN*  
(S.L. JAIN)  
MEMBER (J)

*B. N. BAHADUR*  
(B. N. BAHADUR)  
MEMBER (A)

sj/os\*