

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Contempt Petition No.27/2002
in
Original Application No.590/2001

Dated this Friday the 22nd Day of March, 2002.

Coram : Hon'ble Shri S.L. Jain, Member (J)
Hon'ble Smt. Shanta Shastry, Member (A)

D.E. Vanarase,
CBI Quarters No.214/8413,
Gajanan Maharaj Chowk,
Kannamwar Nagar, Vikhroli,
Mumbai - 400 083.

.. Applicant.

(By Advocate Shri P.A. Prabhakaran)

Versus

Mr.P.C. Sharma, IPS,
Director, Central Bureau
of Investigation, Block No.3,
4th Floor, CGO Complex,
Lodhi Road, New Delhi-110003.

.. Respondents.

Order (Oral)
{ Per : S.L. Jain, Member (J) }

Contempt Petition heard. This Contempt Petition has been filed in view of O.A.590/2001 decided on 15.2.2002. In the said order no time limit has been fixed for compliance of the said order. The applicant has filed this Contempt Petition before this Tribunal on 21.3.2002, the same is premature as when no time limit is fixed, normally as per instructions on the subject, six months time is for the respondents to comply the same. It is an abuse of the process of the Tribunal. Contempt

S.L. Jain -

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Petition stands dismissed as premature with a cost of Rs.300/payable to the Central Administrative Tribunal, Mumbai Bench.

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(Smt. Shanta Shastry)
Member (A)

S. L. Jain

(S.L. Jain)
Member (J):

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dt. 22.3.2002
order/~~judgment~~ despatched
to Applicant/Respondent (s)
on *9.4.2002.*

Plr
16/4.

R.P.No.28/2006 in O.A.590/2001.

Date : 25.01.2007.

Applicant by Shri S.P. Saxena.

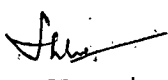
Respondents by Shri V.S. Masurkar.


This Review Petition has been moved by the respondents for seeking review in the Tribunal's order dated 29.9.2006 in O.A.590/2001. It has been alleged in the petition that the applicant has made a false statement before the Tribunal through his Counsel that he will be attaining the age of superannuation of 60 years in CBI by the end of April, 2007. In fact actual date of birth of the applicant is 1st May, 1946 and hence he had already crossed the age of superannuation of 60 years on 30.04.2006.

The learned counsel for applicant has tendered unconditional apology for mentioning wrong date of birth and submitted that this was done by him on the oral information given by the applicant who was present in the Court on the date of final hearing. He further stated that the applicant has already crossed the age of superannuation of 60 years on 30.04.2006 as his date of birth is 01.05.1946. The applicant also tendered unconditional apology for the lapse and stated that he was under grave tension on that date.

Heard learned counsel on both the sides. A grave error of fact apparent into the order on account of wrong statement made by the applicant. We allow the Review Petition and order that the case should be re-heard.

List the case on 07.03.2007.


(Muzaffar Husain)
Member (J)


(A.K. Agarwal)
Vice Chairman.

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Handwritten notes:
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Muzaffar
Agarwal
07/03

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

Dated this *Friday* the 5th day of *December*, 2008

O.A.No.590 of 2001

Shri D.E. Vanarase
(Shri N.K. Rajpurohit)

- Applicant

Versus

Union of India & 2 others
(By Advocate Shri V.S. Masurkar)

- Respondents

Coram:

Hon'ble Shri Jog Singh

- Member (J)

Hon'ble Shri Sudhakar Mishra

- Member (A)

- (a) To be referred to the Reporter or not? *X*
- (b) Whether it needs to be circulated to other Benches of the Tribunal? *✓*
- (c) Library. *✓*

Sudhakar Mishra
(Sudhakar Mishra)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

O.A.590/2001.

Dated this today the 5th Day of December, 2008.

Coram : Hon'ble Shri Jog Singh, Member (J)
Hon'ble Shri Sudhakar Mishra, Member (A).

Shri Dnanaeshwar Eknath Vanarase,
R/o : CBI Quarters No.214,
Room No.8413,
Gajanan Maharaj Chowk,
Kannamwar Nagar, Vikhroli,
Mumbai.

.. Applicant.

(By Advocate Shri N.K. Rajpurohit)

Versus

1. Union of India, through
the Director,
Central Bureau of Investigation,
Block No.3, 4th Floor, CGO Complex,
Lodhi Road, New Delhi-110 003.

2. Shri N.S. Sarawade,
Superintendent of Police,
CBI: ACB: Mumbai, Tanna House,
11, Nathalal Parekh Marg,
Near Sahakar Bhandar,
Colaba, Mumbai - 400 005.

3. The State of Maharashtra,
through the Additional
Chief Secretary (Home)
Mantralaya, Mumbai-400 032.

.. Respondents.

(By Advocate Shri V.S. Masurkar).



O R D E R

{ PER : SHRI SUDHAKAR MISHRA, MEMBER (A) }.

The applicant working on deputation with the Central Bureau of Investigation in the capacity of Inspector of Police has filed this O.A. seeking the following reliefs:-

"A) The Hon'ble Tribunal be pleased to call upon the Respondents to produce the relevant rules in justification of the posting at Bhubaneswar, rules on the constitution of the Screening Committee and proceedings thereof to ensure that the orders of this Hon'ble Tribunal have not been summarily flouted.

B) In the event of failures/dificiency being noticed as in (A) above the Hon'ble Tribunal be pleased to quash and set aside the relevant transfer and Screening proceedings and consequential orders of denial of absorption and repatriation and issue appropriate orders.

C) The Hon'ble Tribunal be pleased to order that the Applicant, be allowed an opportunity to submit his papers for voluntary retirement as Inspector of Police CBI : ACB and granted all dues, benefits and pension etc without any loss of time.

D) The Hon'ble Tribunal be pleased to order that the Respondents shall treat the period from 1.7.1999 to the date of actual order of retirement shall be treated as period on duty for all purposes with full pay and allowances entitled by the Applicant.

E) The Hon'ble Tribunal be pleased to order that the respondent pay the applicant arrears of the pay for the period 1.7.1999 to 26.7.2001 and from 4.8.2001 onwards until the date of reinstatement/voluntary retirement as PI : CBI : ACB, Mumbai.

F) The Hon'ble Tribunal be pleased to order that interest at the rate of 24 per cent shall be recovered from the personal pay of the respondent No.2 and paid

to the applicant by the Respondent No.1".

During the pendency of this O.A. the applicant has attained the age of superannuation.

2. The facts of this case are rather long winding, as as will be revealed from the narration which follows. Brevity in narration of facts makes sense.

3. The applicant joined his service career as a Sailor in the Indian Navy. Upon his discharge from that service, he joined the Police Department of the Government of Maharashtra with effect from 28.7.1977 as an Armed Head Constable. A few years thereafter the applicant opted for and joined on deputation with the Central Bureau of Investigation (herein after CBI) in the rank of Sub-Inspector of Police at Mumbai with effect from 28.2.1986.

3.1 In recognition of his meritorious service with the CBI he was allowed to continue on deputation well beyond the normal tenure of deputation. In fact while working with the CBI he was promoted and posted as Inspector of Police with effect from 24.10.1999. In response to CBI's circular dated 28.3.1995 calling for willingness of the deputationists for permanent absorption in the CBI, the

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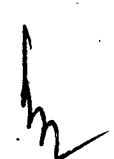
applicant had submitted his willingness but, however, consent to that effect by Government of Maharashtra was not forthcoming. In the meanwhile, he received commendations and decorations for his meritorious service.

4. As per an order dated 30.6.1966 the applicant was repatriated to his parent cadre. Aggrieved against that order he had approached this Tribunal by filing O.A.220/2000. That O.A. was disposed of by the Tribunal, vide its order dated 13.11.2000, with the following directions:-

"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 extraordinary 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".

4.1 Against that order of the Tribunal the respondents had filed a Writ Petition which was dismissed by the



Hon'ble Bombay High Court vide its order dated 30.3.2001, with a direction to the respondents to consider the application for absorption of the applicant in CBI. Pursuant to that order of the Hon'ble High Court the applicant was taken back in the CBI as per order dated 10.5.2001 and was posted at Bhubaneswar where he joined on 01.07.2001.

5. Soon after his reinstatement, as per order dated 03.08.2001 the applicant was repatriated to his parent cadre. Thereupon he filed this O.A. challenging the said order of repatriation. The O.A. was disposed of by the Tribunal vide order dated 15.2.2002 quashing and setting aside the order dated 03.08.2001 repatriating the applicant and also quashing the proceedings dated 10.7.2001 of the Screening Committee which had recommended against the absorption of the applicant in the CBI. The Tribunal gave the following further directions in that order dated 15.2.2002:-

"Therefore, we direct the respondents to consider the applicant for absorption in CBI once again ignoring the fact that he has been repatriated on 03.08.2001 to the State Government".

5.1 Against that decision the respondents filed a Writ

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Petition before the Hon'ble Bombay High Court which was disposed of- vide its order dated 29.1.2003-with the following observations:-.

"Both sides agree that the judgment under challenge is required to be set aside. Parties also agree that the Original Application may be remitted back to the Central Administrative Tribunal for hearing afresh in accordance with law.

Accordingly the impugned judgment and order dt.15.2.2002 of the Central Administrative Tribunal passed in Original Application No.590 of 2001 is quashed and set aside. The Tribunal is directed to decide the O.A. Afresh within three months. All contentions of the parties are left open".

5.2 . Pursuant to the Hon'ble High Court's order dated 29.1.2003 this O.A. Was heard afresh and was again disposed of by the Tribunal vide order dated 29.4.2003 giving the following directions:-

"For the reasons discussed above, we partly allow this O.A. and quash and set aside the order dated 3.8.2001 repatriating the applicant to his parent department and direct the respondents to reconsider the case of the applicant for absorption in the light of the above observations and as per the Recruitment Rules applicable to him. Till this exercise is carried out, the applicant shall not be repatriated to the parent department. The O.A. stands disposed of with these directions. No order as to costs".

5.3 The respondents once again challenged the Tribunal's order dated 29.4.2003 before the Hon'ble High Court and this time raised the plea that the Tribunal had considered the matter only with reference to the

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Recruitment Rules and not with the reference to the absorption rules. Essentially on that ground the matter was again remanded back to the Tribunal by the Hon'ble High Court as per its order dated 23.2.2006.

5.4 Thereafter this Tribunal heard the matter afresh and disposed of the O.A. as per its order dated 29.9.2006. After careful and comprehensive consideration of the facts of the case, the travails of the applicant before the judicial forums and the results thereof and on due consideration of the Recruitment Rules and absorption procedures of the CBI, the Tribunal decided in the following manner:-

"19. From the facts of the case, it is clear that the applicant after being taken back in C.B.I. Was posted at Bhubaneswar vide order dt.10.5.2001. Therefore, for considering the question of his absorption, the provisions of circular dt.24/25.11.1999 would certainly be applicable. Thus, the applicant cannot be denied absorption on the ground that he does not possess a bachelors degree.

20. The case of the applicant for absorption in C.B.I. was considered by a screening committee which met on 10.7.2001. as mentioned by both the learned counsel that there are no rules in C.B.I. for absorption. The contention from applicant's side has been that under such circumstances, the provision of Recruitment Rules would prevail. On the other hand, the respondents has contended that such absorption would be governed by the circulars issued by Director, C.B.I. From time to time. No doubt, Recruitment Rules issued in exercise of powers conferred by proviso to Article 309 of the Constitution would take precedence

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over any instructions issued by the Director C.B.I. However, the instructions to the extent they are only supplementary in nature, can be followed. The Recruitment Rules notified on 5.2.1987 for the Group 'C' and Group 'D' posts in C.B.I. Provides that 40% post of Inspector should be filled up by promotion failing which by deputation/transfer and the balance 60% by deputation/transfer. The Rules do not provide for any direct recruitment on the post of Inspector. Further, there is no specific provision in the rules for absorption as such. However, as per Recruitment Rules some posts can be filled up by way of transfer, in addition to promotion and deputation. The transfer includes transfer on a permanent basis which would be facto mean absorption. The Recruitment Rules also provide that the deputation shall ordinarily not exceed 5 years which may be extended on the recommendations of the Board consisting of three Member headed by Joint Director (Administration), C.B.I. The circular dt. 22.2.2001 provides that the willing candidate will be recommended for permanent absorption by a committee in the Head Office duly constituted by Director, C.B.I. Since permanent absorption amounts to transfer in C.B.I. On a permanent basis, such proposal must be considered and recommended by the three Member Board mentioned in the Recruitment Rules. The consideration by a committee of an inferior status or diluted composition would be dehors the rules.

20. We notice from the record submitted by the respondents in the sealed cover that the committee which considered the proposal for absorption of Inspectors in C.B.I. Was headed by a Dy. Director , C.B.I., while as per Recruitment Rules even deputation for a period exceeding five years has to be recommended by a committee headed by a Joint Director. We are of the considered opinion that a committee headed by a lower functionary is not competent to make recommendation for permanent absorption. In addition, the condition prescribed for permanent absorption have to be more stringent than those for deputation. Illustratively, if the norm for taking a person on deputation is 'very good' then for the purpose of permanent absorption it cannot be kept as 'good', though there will be no objection if it is kept as 'outstanding'.

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21. As mentioned in the judgment dt. 30.3.2001 of the Hon'ble High Court, in this case, the absorption can be denied only on justifiable grounds. The respondents are expected to take care of the legal infirmities pointed out in the order dt. 30.3.2001 of the Hon'ble High Court. It was specifically held that in the circumstances of the case justifiable reasons for repatriation are needed. Such direction in our view still holds good and grounds justifying the repatriation of applicant are required to be clearly spelled out. It is also observed that Recruitment Rules provide for a deputation period upto 10 years only. Various circulars issued by the C.B.I. On the subject of absorption also mentions that the Inspectors who have completed maximum deputation period of 10 years should be repatriated. The applicant had come on deputation to C.B.I. w.e.f. 28.2.1996 and the first order of his repatriation was issued only on 30.6.1999. Since the applicant was given a promotion in the C.B.I. And was also a recipient of Police Medal absorption in C.B.I. Was his logical expectation. In conspectus of such facts we are of considered opinion that a speaking order giving reasons for denying the absorption to the applicant was essential.

22. We hold that the order of repatriation dt.3.8.2001 which does not mention any justifiable ground for repatriation is legally unsustainable; the same is therefore quashed and set aside and the respondents are directed to consider the case of the applicant for absorption in view of our observations made above. Regarding back wages, relying on the ratio laid down by the Apex Court in the case of Paluru Ramkrishnaiah and others v. Union of India & another { 1990 (2) SLJ 136}, we hold that the applicant will not be entitled for any back wages for the intervening period.

23. At the conclusion of the arguments, it was mentioned by the learned counsel for the applicant that the applicant is without any post since 3.8.2001 and would also be attaining the age of superannuation of 60 years in C.B.I. by the end of April, 2007. Moreover, the age of superannuation in State is only 58 years. In view of this, the applicant would be willing to take voluntary retirement from the C.B.I.

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With immediate effect. The respondents are directed to consider any such application also, if made by the applicant within a period fifteen days, while considering the issue relating absorption of the applicant in C.B.I."

6. Ordinarily the matter should either have attained finality with that order; unless, either of the parties hereto had carried the matter before higher judicial forums. But there was grave error of fact in considering the date of superannuation of the applicant as 30.4.2007 because he had actually attained the age of superannuation exactly a year before i.e. on 30.4.2006.

7. The respondents filed a Review Petition numbered as Review Petition No.28/2000 pointing out the error of fact alleging that it was a false statement. The respondents sought review of the order dated 29.9.2006 and also dismissal of the O.A. On behalf of the applicant unconditional apology was tendered for mentioning wrong date of birth. The applicant who was himself present in the Court also had tendered unconditional apology for the lapse and had submitted that the long continued service litigation had caused memory lapse. Having heard both sides this Tribunal acknowledged the grave error of fact as being apparent

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from the order on account of wrong statement made by the applicant. The Review Petition was allowed and it was ordered that the case be reheard.

8. Thereafter the case was heard on 03.10.2008. The learned counsel on either side have reiterated all those submissions made by them before this Tribunal which were duly considered while passing the order dated 29.9.2006. As we see it, the issues for our consideration at this point of time are the following:-

The applicant having been repatriated as per order dated 03.08.2001 and in the meantime having attained the age of superannuation does his prayer for absorption in the C.B.I. survive for consideration? Can the CBI absorb someone who was already attained the age of superannuation? What treatment should be given to the period from 03.08.2001 till the eventual date of superannuation?

9. Before dealing with the issues we are constrained and pained to make the following observation. That the applicant's date of birth was 01.05.1946, it is not a

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fact which was in the special knowledge of the applicant. Before joining as Head Constable with the Police Department of Government of Maharashtra, the applicant had furnished his date of birth. It was duly noted and recorded by the Police Department of the Government of Maharashtra (page 30 of RP.28/2006). The date of birth forms a part of the service book, a copy of which has also been furnished before this Tribunal. Both the respondents all along had access to the service book. Therefore, while it was certainly a grave error on the part of the applicant to have represented earlier that his date of superannuation was 30.4.2007, it cannot be overlooked that the respondents have also failed to assist this Tribunal by pointing out that the applicant's date of superannuation is 30.4.2006. After the latest order of remand by the Hon'ble High Court, the matter was first heard on 18.4.2006 and on many dates thereafter till the eventual order dated 29.9.2006. While the Writ Petitions No.9095/2003 and 9158/2003 against the order dated 29.4.2003 were considered by the Hon'ble High Court in February, 2006 it was not pointed out to the Hon'ble High Court that the applicant's superannuation was

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imminent. In this background acquiescence to the respondents' plea that the OA be dismissed, would be like missing the woods for the trees.

10. During his active service career of about 24 years in the Police Department between the years 1977 and 2001, the applicant had served under the Government of Maharashtra in the initial years as a Head Constable only for a period of about 9 years, whereas he had active service in the CBI for the period exceeding 15 years. He has been retained in the CBI much beyond the usual and even extended the period of deputation. He has been promoted therein to the responsible post of Police Inspector. He has been decorated and has earned commendation for his meritorious service. Sometime in between the CBI wanted him to be absorbed in its ranks. During the pendency of this O.A. seeking, inter alia, absorption in CBI the applicant has crossed the age of superannuation.

10.1' What should be the just decision in such a case? In ordering the applicant to revert back to the Government of Maharashtra for the sheer purpose of taking retirement whereby he would be losing out the benefits of

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exalted rank and pay enjoyed in the CBI, for the purpose of calculation of his pensionary benefits? Or, justice would lie in ordering that the applicant should take retirement from the CBI where he has worked for substantive part of his active service life and has rendered meritorious service? We would certainly opt for the latter. But, then, a prelude to that direction would be dealing with the question of absorption of the applicant in the CBI ranks.

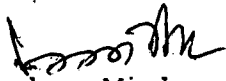
10.2 From the recounted historical background of this case it can be seen that this Tribunal and also the Hon'ble High Court have time and again goaded the respondents to consider the case of absorption of the applicant in CBI. As per the latest order dated 29.9.2006 of this Tribunal, comprehensive discussion was made taking all relevant factors into consideration and absorption was directed to be considered. But now is the stage where repetition of the same direction would be hollow.

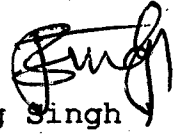
10.3 This Tribunal has already given the finding in its order dated 29.9.2006 that the applicant fulfills the conditions for absorption. It is a matter of record that

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the applicant has rendered meritorious service. It is also a matter of fact that the applicant has since attained the age of superannuation. Therefore, at this stage we direct the respondents to consider and absorb the applicant into the CBI with effect from 03.08.2001. Consequent upon absorption the applicant shall not be entitled to any back wages for the period from 03.08.2001 till the date of his superannuation except notional benefits. However, the entire period till his superannuation shall be counted towards continuity of service for the purpose of calculating his pension and other retiral benefits. The applicant shall be entitled to consequential arrears of pension.

11. The O.A. is disposed of in terms of the above directions. No order as to costs.


(Sudhakar Mishra)
Member (A)


(Jog Singh)
Member (J).

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