

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 630/ 98.

Monday , this the 12th day of October, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

Charanjit Singh,
18-C, 'Milan',
16, Pali Road,
Bandra(W),
Mumbai - 400 050.

... Applicant.

(By Advocate Shri P.A.Prabhakaran)

V/s.

1. Union of India, through
The Director, Central Bureau
of Investigation,
West Block-IV, CGO Complex,
Lodhi Road,
New Delhi - 110 003.
2. Deputy Inspector General of Police,
C.B.I./SCB/Mumbai,
8th Floor, CGO Complex,
Belapur,
New Mumbai.
3. Commissioner of Central Excise,
Mumbai - 1,
Central Excise Building,
115, M.K.Road,
Mumbai - 400 020.
4. The Chairman,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi - 110 001.

... Respondents.

(By Advocate Shri V.S.Masurkar for R-1
and 2 and Shri V.D.Vadhavkar for
Shri M.I.Sethna, for R-3).

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed by the applicant
seeking a direction that Respondent No.3 should forward the
applicant's papers to the 1st Respondent for being considered
for the post of Deputy Superintendent of Police, CBI on
deputation basis and for a direction to first Respondent to

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appoint the applicant to the said post on deputation basis. The respondents have filed reply opposing admission and I.R. We have heard ~~counsel~~ on both sides regarding admission and I.R.

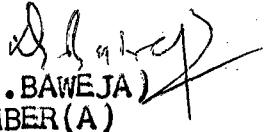
2. The applicant who was ~~allegedly~~ working as Inspector of Central Excise had gone on deputation to C.B.I. It is seen, some time back the C.B.I. repatriated the applicant to the parent department on the basis of some complaints. The applicant ~~while~~ being repatriated in the cadre of Inspector has since been promoted as Superintendent of Central Excise. Now he wants that his fresh application for the post of Deputy Superintendent of Police, CBI should be forwarded by R-3 and secondly the first respondent to be directed to appoint the applicant to the said post, if selected.

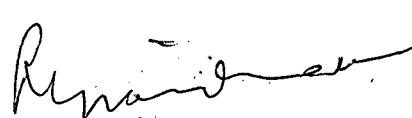
In our view, the applicant has not made out any legal ground on the basis of Rules on the basis of which he wants directions to R-1 and R-3. It is an admitted position that first Respondent had not called for any application for the post of Deputy Superintendent of Police, CBI on deputation basis. The Respondent No.3 has made it clear that unless there is a general advertisement or notification he cannot forward the application on ~~individual~~ basis. Even the first Respondent has now stated that the applicant cannot be appointed to the post asked for by him which is contrary to the Rules.

3. Since, in our view, the applicant has not made out any legal ground or legal basis for going on deputation ^{and} by both borrowing department and the lending department are not willing for his request. Therefore, we do not find any merit in the application. We are not impressed by the argument of the learned counsel for the applicant regarding

alleged arbitrary or discriminatory action on behalf of the Respondents. Since the applicant has no legal right to command the respondents to select him or appointment him on deputation post, we cannot give any directions as asked for by the applicant.

4. In the result, the application is rejected at the admission stage. No costs.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE - CHAIRMAN

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Contempt Petitioner present in person.

2. C.P. No. 5/2007 has been filed by the petitioner on the ground that the respondents had furnished wrong information to the Tribunal and as a result the O.A. No. 630/1998 was dismissed by the Tribunal vide order dated 12.10.1998. We also find from the order that the O.A. was dismissed at the admission stage. There is no wilful non compliance of the Tribunal's order on the part of the respondents.

3. The applicant has submitted that he wants to withdraw the contempt petition and file another application alleging perjury on the part of the respondents.

4. In view of the above, the contempt petition is dismissed.

S. Husain
(MUZAFFAR HUSAIN)
MEMBER (J)

A. K. Agarwal
(A. K. AGARWAL)
VICE-CHAIRMAN.

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27/3/07

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

R.P.No.13/2007, M.P.Nos.322/07 & 323/07
in O.A.630/1998.

Dated this Wednesday the 7th Day of October, 2009.

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

Shri Charanjit Singh,
Residing at: 18-C, Milan,
16, Pali Road, Bandra (W),
Mumbai - 400 050.

.. Petitioner
(Original Applicant).

(By Advocate Shri D.V. Gangal).

Versus

1. Union of India, through
the Director,
Central Bureau of Investigation,
West Block-IV, CGO Complex,
Lodi Road,
New Delhi - 110 003.
2. The Deputy Inspector General
of Police, CBI/SCB/Mumbai,
8th Floor, CGO Complex, Belapur,
Navi Mumbai.
3. The Commissioner of Central
Excise, Mumbai-I,
Central Excise Building,
115, M.K. Road, Mumbai-400 020.
4. The Chairman,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi - 110 001. .. Respondents.

(By Advocate Shri V.S. Masurkar).



O R D E R
Per : Shri Sudhakar Mishra, Member (A).

The applicant works as a Superintendent of Central Excise. Through O.A.630/1998 he had sought direction to the CBI authorities to take him on deputation as Dy. Superintendent of Police and had further sought direction to the authorities of his own department to forward his option to go on deputation to the CBI organisation. The O.A. was dismissed at the admission stage per order dated 12.10.1998 of this Tribunal.

2. The applicant has filed Review Petition No.13/2007 seeking recalling of the decision dated 12.10.1998 and rehearing of the matter on merit. M.P.No.322/2007 has been filed seeking condonation of delay in filing of the R.P. The remaining M.P.No.323/2007 has been filed alleging perjury on the part of the respondents and seeking declaration that the respondents had committed perjury by filing false affidavit before the Tribunal and further seeking appropriate proceedings based on such declaration. Learned counsel Shri D.V. Gangal appeared on behalf of the petitioner/applicant and Shri V.S. Masurkar, learned counsel appeared on behalf of the respondents. They were heard.

3. The short facts of the case are that while working

as Inspector of Central Excise the applicant had gone on deputation to the CBI as Inspector of Central Excise and had worked in that capacity for 6 years during the period from March, 1984 to March, 1990. Thereafter, he was repatriated to his parent department. The petitioner was again posted on deputation as Inspector, CBI for a period of one year with effect from May, 1992, but, however, his deputation was prematurely terminated in October, 1992. Thereafter the petitioner went on making efforts for deputation for years on end. In 1998 he succeeded in getting consent of the CBI for taking him on deputation, while his parent department was unwilling to do so. As per letter dated 11.6.1998 issued to him the following was intimated.

"Please refer to your letter F.no. /A/I/98 dt.14.8.97 and 20.4.98 on the above subject.

In response to your letters, Deputy Commissioner (P&V) vide F.No.II/39(a)2/96 dt.3.6.98 has intimated that "forwarding/sponsoring isolated name of one Supdt. Of Central Excise without any open advertisement/circular from CBI will not be proper & would attract contravention of procedure prescribed in this behalf."

Therefore, your name cannot be forwarded to CBI at present."

Thereafter, the applicant had filed the O.A.No.630/1998. It was dismissed on 12.10.1998 with the following observations:-

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down that the proceedings before a Tribunal under the AT Act shall be deemed to be judicial proceedings within the meaning of Section, interalia, 193 of the IPC. The applicability of the Section 193 of the Indian Evidence Act has necessarily to be appreciated with reference to the provisions of Sections 191 and 192 thereof as to giving false affidavit and fabricating false evidence respectively. On careful perusal of the pleadings in the O.A. on behalf of the respondents, we are of the considered opinion that no false evidence was tendered on behalf of the respondents and that the eventual decision on the O.A. was not based on any such alleged false evidence. Therefore, the petition alleging perjury is devoid of merit.

11. In view of the findings as above, the RP and MPs are dismissed. No order as to costs.


(Sudhakar Mishra)
Member (A)


(Jog Singh
Member (J) .

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10.2 The RP also has to be rejected on another consideration. As earlier stated, the Tribunal's order dated 12.10.1998 has been upheld by the Hon'ble Bombay High Court as per its order dated 09.04.1999. The Bombay High Court have held in their judgment thus:-

"This petition takes exception to the order passed by the Central Administrative Tribunal. The Petitioner does not have a right to go on deputation neither he can get direction against his employer to send his papers to the authorities which went to take him on deputation. Whether to send an employee on deputation or not is an absolute discretion of the authority. The Petition is therefore, summarily rejected.

The SLP filed against that decision was dismissed on 25.10.2002 on the ground of delay, the delay in filing the SLP was about 1174 days. Thus, the Tribunal's order dated 12.10.1998 has merged with the order dated 09.04.1999 of the Hon'ble High Court and, therefore, we find ourselves precluded to review the earlier order. In taking this view, we respectfully follow the decision of the Hon'ble Supreme Court of India in the case of State of Maharashtra Vs. Prabhakar Bhikaji Ingle; 1996(3) SCC 463; which has been cited before us on behalf of the respondents.

10.3 As regards petition alleging perjury, such an allegation can be taken note of by the Tribunal on the strength of the provisions of Section 30 of the AT Act read with Section 193 of the IPC. Section 30 of the AT Act lays

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litigation foisted on the respondents by the applicant.

9.2 As to the petition alleging perjury, Shri Masurkar has submitted that since the eventual decision of the Tribunal was not based on allegation as to the complaint against the petitioner, there is no question of any false statement having been made before the Tribunal which influenced the decision to the detriment of the applicant. Hence that petition should be dismissed.

10. We have carefully considered the facts on record and the submissions made before us. It is absolutely clear from the order dated 12.10.1998 that the decision therein was not even remotely hinged upon the reference in that order to some complaint against the applicant. Whatever information has been received by the applicant taking recourse to the provisions of the RTI Act, that has absolutely no bearing on the vires of the order dated 12.10.1998. Therefore, we do not find any merit in the Review Petition.

10.1 The RP is also barred by limitation. The applicant has not at explained the reasons for delayed filing of the petition. The explanation as to the time consumed in getting information under the RTI Act is contextually redundant. Therefore, on the ground of limitation the RP is also not maintainable.

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In our view, the applicant has not made out any legal ground on the basis of Rules on the basis of which he wants directions to R-1 and R-3. It is an admitted position that first Respondent had not called for any application for the post of Deputy Superintendent of Police, CBI on deputation basis. The Respondent No.3 has made it clear that unless there is a general advertisement or notification he cannot forward the application on individual basis. Even the first Respondent has now stated that the applicant cannot be appointed to the post asked for by him which is contrary to the Rules.

3. Since, in our view, the applicant has not made out any legal ground or legal basis for going on deputation and both borrowing department and the lending department are not willing for his request. Therefore, we do not find any merit in the application. We are not impressed by the argument of the learned counsel for the applicant regarding alleged arbitrary or discriminatory action on behalf of the Respondents. Since the applicant has no legal right to command the respondents to select him or appointment him on deputation post, we cannot give any directions as asked for by the applicant."

4. The applicant's deputation to CBI was initially for 3 years which was extended for a further period of 3 years. Further extension was not given apparently because CBI had received some complaints against him. This was intimated to the applicant through a letter dated 29.5.1991, a copy which is borne on record of the O.A. as A-11, which is furnished by the applicant himself. In the order dated 12.10.1998 there is a passing reference to the contents of the letter, without mentioning the letter

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itself. But, as is seen from the operative part of the order, the decision was not at all based on the said reference to the CBI's letter dated 29.5.1991.

5. After promulgation of the Right to Information Act, 2005, the applicant took recourse to the provisions of that Act for ascertaining as to whether there was any complaint against him before the CBI. As per him he has received reply to the effect that there was no such complaint. Armed with such reply, the applicant has filed the R.P. and MPs presently under consideration.

6. The learned counsel Shri Gangal has submitted that the decision dated 12.10.1998 of this Tribunal was based on false affidavit filed by the respondents as is now revealed through the replies received by the applicant through inquiries under the RTI Act. As such the order dated 12.10.1998 is clearly erroneous and such error being apparent on the face of record it should be suitably remedied. It has been submitted that the order should be recalled and the matter should be heard afresh.

7. The delay in filing the RP has been explained as being due to the receipt of the relevant information by the applicant much later than the order of the Tribunal and on that ground the delay has been sought to be condoned.

8. As to the petition alleging perjury, the learned

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counsel has contended that false affidavit having been filed by the respondents and such false affidavit having become the basis for the OA being rejected, the respondents have committed perjury. The act of perjury should be taken cognizance of and suitable, proceedings against the respondents be accordingly initiated.

9. On behalf of the respondents, the learned counsel Shri Masurkar has submitted that even if for arguments sake the time consumed by the applicant for obtaining information under the RTI Act is excluded, he still had to account for years of delay in filing of the RP, which has not been done. A person who has been sleeping on his rights, which is in this case there was not any, he cannot wake up much belatedly to claim attention of judicial forum. Since the applicant has not explained his inability to file RP within the limitation provided under the CAT (Procedure) Rules, the delay in filing of the petition should not be condoned.

9.1 On the merits of the RP Shri Masurkar has submitted that it is clear from the extant order dated 12.10.1998 of the Tribunal that the O.A. was rejected because of the applicant's failure to establish that any of his right was violated by not selecting him to go on deputation. Therefore, the RP is nothing but unnecessary

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