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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA No. 36/1997

Date of order: 3-2-97

1. Madan Lal Fareek, Constable, Office of the S.F.(SFE), Tilak Marg, 'C' Scheme, Jaipur.
2. Nacir Ahmed, Constable, Office of S.P. (SFE), Tilak Marg, 'C' Scheme, Jaipur.

.. Applicants

Versus

1. The Union of India through Secretary, Department of Personnel and Training, North Block, New Delhi.
2. The Director, Central Bureau of Investigation, Block No.3, CGO Complex, New Delhi.

.. Respondents

Mr. F.N.Mathur, counsel for the applicants

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. O.P.Sharma, Administrative Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri Madan Lal Fareek and Shri Nacir Ahmed, both working as Constables in the office of SP (SFE), Jaipur have prayed that the order dated 5-12-96 (Ann.A-I) issued by the Director, CBI be quashed and the respondents may be directed to follow the recruitment rules regarding absorption of Constables in the CBI. There is still a further prayer that the eligible candidates including the applicants be considered for absorption against 70% quota and only those who <sup>are</sup> found unsuitable by the DEC be repatriated to their parent organisations.

2. The order Ann.A-I dated 5-12-96 reads as follow:

" CENTRAL BUREAU OF INVESTIGATION

BY FAX

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STANDING ORDER NO. 28/96

A number of recommendations have been received for absorption of Constables/Head Constables and other ranks in CBI. It has been creating a lot of problems for us for getting approval from DOP&T. It has also led to some court cases. Now as a matter of policy we have decided not to absorb any person unless he is totally indispensable to the working of CBI. The Branches will take action to select substitute from the respective State Police Force or CPOs and recommend to this office. More than 100 Constables are ready to come on deputation to CBI. The oldest deputationist should be relieved first after selecting his substitute. No request for absorption, whatsoever, will be entertained. I would like to have a compliance of this order within the next 2 weeks time.

This supercedes all previous instructions in this regard.

sd/-

(JOGINDER SINGH)

DIRECTOR/CBI

5.12.96

All Supdts. of Police, CBI

All DIsG/CBI

All JDs/CBI"

3. The case of the applicants is that the Recruitment Rules (Ann.AII) for appointment/recruitment of Constables in the CBI provide that the posts of Constables are to be filled up to the extent of 30% by direct recruitment and 70% by transfer on deputation/transfer, failing which by direct recruitment. The applicants have stated that the rules also provide that the period of deputation shall ordinarily not exceed 5 years. The practice in the CBI has been to take Constables from the Central or State Police Forces on deputation first and after their putting in 3 years service in the CBI, they are treated as eligible for permanent absorption against the 70% quota. For this purpose the eligible candidates have to be selected by a DFC. The respondents, without

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considering all the eligible candidates, picked up 3 deputationists and ordered their absorption in 1996. There are 347 eligible deputationist Constables who have opted for permanent absorption and their names have been recommended as suitable for absorption by their higher authorities. There are also a substantial number of vacancies in the 70% quota of recruitment to be filled up by transfer on deputation/transfer. The vacancies for deputationists have practically remained unfilled after 1990. Out of 347 Constables, 285 are those whose deputation periods have exceeded 5 years. The applicants joined CBI in April, 1986 and July, 1990 respectively and their deputation periods have exceeded 5 years. Vide Ann.AIII dated 19-5-95 the CBI Headquarters asked the Branch Officers to obtain written consent of the candidates for absorption alongwith an undertaking regarding their acceptance of seniority in accordance with Government of India instructions dated 29.05.86. The applicants alongwith certain others have given their written undertaking as asked for. There are, however, powerful forces working in the administration against the absorption of deputationists and misrepresentation has been made by them regarding the factual position. By a note at Ann.A-IV the Department of Personnel and Training have readily agreed to regularisation of overstay of deputationists as per the recruitment rules. The deputationists were retained beyond the period of 5 years because of the continuity required in investigation work, etc. and also because there is poor response from the state police officials to join CBI on deputation. However, there has now been a change in the stand of the CBI regarding absorption and accordingly order Ann.A-I dated 5-12-96, as above, was issued.

4. Further, according to the applicants, the correct position has not been brought to the notice of the Director, CBI as laid down in the Recruitment Rules which provide for a 70% quota for deputationists. This process of absorption, initiated by the CBI was dropped without completion thereof for the reasons best known to respondent No.2, the Director, CBI. The applicants, in expectation of absorption in the CBI, did not take promotion examinations in their respective cadres from which they have come on deputation and have lost their chances of promotion. The refusal of the CBI to consider the

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deputationists for absorption against 70% quota provided in the statutory rules is arbitrary and violative of Articles 14 and 16 of the Constitution. The applicants acted on the promise given by respondents regarding absorption and having acted on their promise they have now placed themselves at a disadvantage. The respondents are, therefore, now estopped from going back on their promise.

5. During the arguments, the learned counsel for the applicant drew our attention to an interim order passed by the Principal Bench of the Tribunal whereby the matter was listed on 2-1-97 for consideration of the prayer for interim relief. An interim direction was also issued, as seen from this order, to the effect that the respondents shall maintain status-quo as of today. However, the date on which this order was issued is not quite clear from the photo copy of the order produced before us. It is also not known from the order what exactly was the matter involved. A photo copy of another order dated 7-1-97 issued by the Principal Bench was placed before us for our perusal which was passed in an another OA, whereby the respondents have been asked to file a short reply on interim relief and the matter had been listed on 14-1-97 for consideration of the prayer of interim relief.

6. The learned counsel for the applicants, relying upon these orders, argued that the Principal Bench has already decided to grant interim relief to the applicants before them in a matter of identical ~~inasmuch as~~ nature <sup>in</sup> as much <sub>h</sub> as in those OAs also the order Ann.AI issued by the Director, CBI has been challenged. He added that since the recruitment rules categorically provide that 70% of the posts of Constables in the CBI are to be filled up by transfer on deputation/transfer, the respondents are duty bound to consider the Constables coming on deputation to CBI for absorption on the basis of their suitability. He also drew our attention to Ann.AIII and Ann.AIV being communications from the CBI regarding absorption of the persons coming on deputation in the CBI and also a communication dated 26-9-96 from the Department of Personnel and Training to the CBI giving certain instructions regarding absorption of deputationists for the operational requirements of the CBI, on the basis of merits of the individuals justifying their absorption. He

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also drew our attention to the prayer for interim relief in the OA to the effect that the operation of order Ann.AI may be stayed and the repatriation of the applicants to their parent organisation may be stayed till a decision is taken on this application. He forcefully argued that interim stay as prayed for deserves to be granted in this case.

7. We have heard the learned counsel for the applicant and have perused the material on record.

8. The rules at Ann.AII dated 5-2-1987 do provide that Constables shall be appointed in the CBI to the extent of 30% by direct recruitment and 70% by transfer or deputation/transfer, failing which these posts would be filled up by direct recruitment. Even after a careful perusal of these rules, we do not find any provision therein regarding absorption of the Constables in the CBI, who come on deputation from other organisations. No other statutory rules were shown to us which provided that the Constables coming on deputation to CBI are entitled to absorption on completion of a specified tenure on deputation such as 5 years, on their having been found eligible etc. We also do not find any document showing any assurance given to the applicants that on completion of a certain period of deputation and on their being found suitable they would be absorbed in the CBI. We have perused the internal communications within the CBI as also the communication sent by the Department of Personnel and Training to the CBI but these also do not state that persons coming on deputation to the CBI must necessarily be absorbed in the CBI. Since 70% recruitment of Constables to the CBI is by transfer on deputation/transfer, an implication is that on completion of the period of transfer or the period of deputation, the organisation is free to send back these employees to their parent organisations. Of course, if some persons have been absorbed in the CBI, it does not confer any statutory or other similar right on the applicants also to be absorbed in the CBI. The interim directions issued by the Principal Bench do not show what precisely were the facts of those OAs. Even assuming that the order Ann.AI dated 5-12-1996 was challenged there also, we, sitting in this Bench of the Tribunal, are entitled to examine the issue on merits and to decide whether an interim direction should be issued or not. An interim direction issued by a coordinate Bench is not binding us, when even the facts

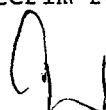
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relating to grant of interim direction have <sup>not</sup> been discussed therein. We are of the view that no right has been created by any statutory rule in favour of the applicants for absorption in the CBI nor is there any written assurance given to the applicants that they would necessarily be absorbed in the CBI. If any undertaking have been obtained from them, it did not mean that they would necessarily be absorbed on that undertaking. It is not understood how bringing the applicants on deputation to CBI or obtaining a written undertaking from them regarding conditions relating to their absorption would act as estoppel against the respondents in the matter of applicants' repatriation. If they lost any chances of promotion in their parent organisation, apparently it was not due to any assurance given regarding their absorption in the CBI. In the absence of any statutory rules the CBI is free to decide whether any of the Constables coming on transfer on deputation/transfer should or should not be absorbed in the CBI.

9. In the circumstances, we see nothing in the communication Ann.A-I which is violative of any statutory rules or any written assurance or undertaking given to the applicants or of Articles 14 and 16 of the Constitution. We, therefore, dismiss this application at the stage of admission. The prayer for interim relief is also rejected.

  
(O.P.Sharma)

Administrative Member

  
(Gopal Krishna)

Vice Chairman