

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-810/2014

Order Reserved on 18.08.2015

Order Pronounced on: 10.02.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Karan Singh
S/o Late Shri Suraj Mal
R/o 57-A, Street No. 8,
Sangam Vihar, Nazafgarh,
New Delhi-43.

-Applicant

(By Advocate: Shri Narender Pal Bhardwaj)

Versus

1. Union of India
The Govt. of India,
(Through Secretary)
Ministry of Home, CGO Complex,
Lodhi Road, New Delhi.
2. Central Bureau of Investigation (C.B.I.)
Director (Admin),
Headquarter, 5/B, 4th Floor
CGO Complex, Lodhi Road,
New Delhi-03.
3. Joint Director of C.B.I. (Admn.)
CGO Complex, Lodhi Road,
New Delhi-03.
4. Supdt. Of Police (Admn.)
5/B, 4th Floor
CGO Complex, Lodhi Road,
New Delhi-03.

-Respondents

(By Advocate: Shri Rajeev Kumar)

ORDER**Per Sudhir Kumar, Member (A):**

The applicant is aggrieved by the impugned order dated 22.08.2013 passed by the respondents by which he was relieved from his deputation with Respondent No.2, and repatriated back to his parent organization-CISF. He has assailed the impugned order as being against the due procedure of administrative law, jurisprudence on the subject of doctrine of natural justice, equity, and the order being illegal and arbitrary, and liable to be quashed and set aside.

2. On the date of filing of the application on 03.03.2014, the applicant had submitted that the impugned order of repatriation had not been given effect to because he had not joined back in his parent organization till then. He had sought directions upon the respondents to consider him as deemed absorbed in the Respondent No.2-organization, since he had been on deputation with them for more than 7 years, and could have been deemed to have been absorbed. He had further sought directions upon the respondents to pass appropriate orders, absorbing him in the Respondent organization antedated from the date of his joining there on deputation. These prayers had been worded, and Interim Reliefs had been prayed, as follows:-

Reliefs:

- “a) Quash and set aside the impugned order dated 22.08.2013 (Annexure-A) and declare the same as illegal and arbitrary.
- b) Quash and set aside the impugned memorandum dated 12.02.2014 (Annexure-A) and declare the same as illegal and arbitrary.

- c) Hold and declare that the applicant stands deemed, absorbed in the CBI, from the date applicant became eligible for absorption, like other persons.
- d) Direct the Respondents to pass appropriate orders, absorbing the applicant from the date of joining the Central Bureau of Investigation.
- e) Any other order that may be deemed fit and appropriate in the circumstances of the case may also be passed.”

Interim Relief:

- “a) Direct the Respondents not to relieve/repatriate the Applicant from the present post of posting.
- b) stay the operation of impugned order dated 22.08.2013, Annexure-A
- c) Direct the Respondents to allow the applicant join his duty till the pending of the instant OA as he was doing prior to office order No. 257/2013 dated 22.08.2013, letter No. 7005/A-20/K-101/PF/2008/EO.II passed by Respondent;
- d) To issue any other or further order or directions as deemed just and proper by this Hon’ble Tribunal as per facts and circumstances of the case protecting rights and interest of the applicant.”

3. After the notices had been issued in this OA on 06.03.2014, the applicant filed an MA No.1136/2014 and submitted that he was not getting his salary for the last more than 7 months, and since the completion of pleadings itself was taking time, the Tribunal may adjudicate the matter before 06.05.2014, and had once again repeated the prayers for the same reliefs, as mentioned above. Notice had been issued in that MA also, but the learned counsel for respondents objected to those interim prayers, stating that in terms of the Supreme Court judgment in **State of U.P. vs. Sandeep Kumar Balmiki (SCT 2010 (1) SC 842)**, as held in Para-7 of that judgment, “Final Relief could not be

granted at the interim stage”, and he had opposed the MA in which the prayers as in the OA had been repeated.

4. However, on 16.07.2014 the learned counsel for the applicant had drawn attention of the Bench that day to a specific different prayer made in the MA to the effect that his repatriation, if carried out, shall be subject to the outcome of the OA. Learned counsel for the respondents stated that he had no objection to this portion of the prayer being allowed, and in terms of that, MA No.1136/2014 was disposed of accordingly.

5. In filing this case, applicant has relied upon the judgments passed by this Tribunal, and the superior Courts, in the following cases, in his pleadings:-

- “A) **Satender Pal & Others vs. Union of India (OA No.3202/2001)**
- B) **Udai Pal Singh vs. Union of India & Ors. (OA No.1565/2005)**
- C) **Vijaya Kumar Shrotriya vs. State of UP & Ors. (1998) 3 SCC 397.**
- D) **Rameshwar Prasad vs. Managing Director UP, Rajkiya Nirman Nigam Ltd. AIR 1999 SC 3443, JT 1999 (7) SC 44**
- E) **Partha Tapaswi vs. Union of India & Ors. 2003 (1) SLJ 276 CAT**
- F) **S.N. Nagarajan vs. State of Mysore, AIR 1966 SC 1942**
- G) **Y.V. Rangaiah vs. J. Sreenivasa Rao (1983) 3 SCC 284**
- H) **A.A. Calton vs. Director of Education, AIR 1983 SC 1143**
- I) **P. Mahendran & Ors. vs. State of Karnataka & Ors. 1990 AIR SC 405.**

- J) **N.T. Devin Katti and Others vs. Karnataka Public Service Commissioner and Others (1990) 3 SCC 157.**
- K) **Jaga Ram vs. Union of India & Ors. in W.P. (C) No.5091/2010.**
- L) **Veliyasala Trivendrum vs. Union of India**
- M) **R.S. Makashi & Ors. vs. I.M. Menon (1982) 1 SCC 379**
- N) **Wing Commander J. Kumar vs. Union of India (1982) 3 SCR 453**
- O) **Deepak Aggarwal vs. Keshav Kaushik & Ors. (2013) 5 SCC 277**
- P) **T.R. Kapur & Ors. vs. State of Haryana, 1987 AIR SC 415.**

6. The applicant has taken the legal plea that Administrative Law is aimed at regulating Administrative Acts in order to inject total clarity, fairness and accountability in the administrative process, and that it should, therefore, necessarily deal with three aspects, namely:-

- A) The kind of power exercised by the administration,
- B) The limits, the extent as well as the restrictions under which the powers are to be exercised, and
- C) The modality & procedure by which the powers of the administration can be kept within the ambit of limitations.

7. He has further submitted that the administrative discretion exercised by the administrators has always been assessed by the Courts on the touchstones of rationality, legality, and also procedural propriety, and that the Constitutional Courts had to quash certain Government actions on account of transgressions committed from these touchstones in the following cases:-

- “A) **M.J. Sivani vs. State of Karnataka (1995) 6 SCC 289,**

- B) **AIR India Limited vs. Cochin International Airport Limited (2002) 2 SCC 617;**
- C) **Satpal vs. State of Haryana (2000) 5 SCC 170**
- D) **Accountant General vs. S. Doraiswamy (1981) 4 SCC 93,**
- E) **Imtiyaz Ahmad vs. State of U.P. AIR 2012 SC 642,**
- F) **Oryx Fisheries Pvt. Ltd. Vs. Union of India, AIR 2011 SC 2194,**
- G) **Larsen & Tubro Ltd. Vs. Union of India, AIR 2011 SC 2194**

8. The facts of case, however, lie in a brief compass. The applicant was working at the Rashtriya Chemicals & Fertilizers Ltd. (RCFL) Complex, Chembur, Mumbai, with his parent unit of Central Industrial Security Force (CISF, in short). Through letter dated 09.01.2006, he was deputed to work with the Central Bureau of Investigation (CBI, in short), and joined in the office of Superintendent of Police, CBI, at Jammu, with the deputation order clearly stating that deputation to be only for a period of three years. He was relieved from Mumbai through order dated 31.07.2006, and joined his duties with CBI at Jammu on 21.08.2006. After serving on such deputation for about a year, he was also nominated for training in the CBI Academy at Ghaziabad from July to September 2007.

9. In the meanwhile, the applicant was appointed as Asstt. Sub-Inspector (Executive), on deputation basis, within the CBI, for the remainder of his period of deputation upto 20.08.2009. He was relieved in the meanwhile, from the office of the Superintendent of Police, CBI, Jammu, on 06.05.2008, and reported at the CBI Headquarters at Delhi

for the remaining period of his deputation, in the higher post now assigned to him. After he had joined CBI Headquarters at Delhi on 12.05.2008 as ASI, and before his three years' deputation was due to expire on 20.08.2009, a request was made by the applicant on 22.06.2009 for sanction of extension of his deputation from CISF to CBI. His request was duly recommended by his immediate superior within the CBI. As a result, even after completion of the period of his three years' deputation on 20.08.2009, the respondents R-2 to R-4 allowed him to be continued to be on deputation with them, and when the revised Pay Rules under the VIth Pay Commission were given effect to from 29.08.2008, through office order dated 07.08.2009, his basic pay also was revised in the appropriate revised Pay Band and Grade Pay.

10. He has also given details of the numerous trainings within CBI attended by him during the period of his original and extended deputation, and various letters of appreciation received by him. When the respondents decided to appoint Pairavi Link Officers (PLO, in short) for keeping track of the trials of different cases pending in different Courts, the applicant was also appointed as a PLO, in respect of 31 cases out of 461 cases then identified to be pending in different Courts. He was also assigned numerous cases for the purpose of investigation, befitting his designation on deputation with the respondents. In between, a "No Objection" had been sought from his parent organization CISF for extension of his tenure, and on the basis of such "No Objection Certificate" (NOC, in short) given by CISF, he was granted extension of

deputation tenure through letter dated 23.04.2012. However, the applicant was not satisfied with the fact that he was not being considered by R-2 to R-4 for further grant of further promotion after taking into account his service as Head Constable/General Duty in CISF, as well as Head Constable, and later ASI, in CBI on deputation basis, and he represented regarding this on 05.04.2011. On 2/3.07.2013, another representation was submitted by him, with a request for extension of his deputation tenure and for his absorption in the CBI. Through letter dated 27.09.2012, the respondents ordered regularization of the extension of his deputation tenure for a further period from 21.08.2011 to 20.08.2013.

11. The applicant has tried to make out a case that after completion of the first three years of his deputation, and on the stoppage of deputation allowance (after the VIth Pay Commission's recommendation having been given effect to in his case), the respondents had continued with his services on deputation, and no orders of his repatriation were issued immediately, exactly on completion of 3 years of his initial deputation, and, therefore, they should have granted him deemed absorption status, as has been done in the case of many similarly placed persons while absorbing them permanently in the CBI. He has also cited from CBI (Administrative) Manual, Appendix-III, containing the Recruitment Rules of CBI. However, on 22.08.2013, the respondents issued the impugned order for repatriation of his services, as already mentioned above, which the applicant has stated to be in violation of the above cited Recruitment

Rules, which, according to him, should have been made applicable, to absorb him permanently in the appropriate cadre of CBI. He has submitted that this Tribunal has in OA No.3202/2001 **Satender Pal & Ors. vs. Union of India**, and in OA No.1565/2005 **Udai Pal Singh vs. Union of India** granted the same reliefs as are being sought by him.

12. The applicant is aggrieved that the respondents have not considered his request for absorption through a due process, and have not given due weightage to his willingness for absorption in CBI in accordance with his application dated 05.04.2011. He has further sought protection from the fact that it is open to the respondents to take on deputation or transfer suitable persons of the State Police Forces, or Central Armed Police Forces, but the cases of absorption should have been processed six months in advance of the expiry of the deputation period, and only if the official concerned is not willing to be absorbed, he has to be repatriated immediately, on expiry of his deputation period, which principle has not been followed by the respondents in his case, since the applicant had been allowed to continue for 7 years on deputation, and then suddenly relieved. He has submitted that hostile discrimination has been meted out to him, as similarly situated persons, who had earlier come on deputation to CBI, had in the past been so absorbed, while he has been repatriated. In the result, he has prayed for the reliefs as reproduced above.

13. Respondents filed their reply on 28.08.2014, denying that any Rule had been violated in relieving the present applicant from his deputation

post in the CBI, and submitting that the OA is not maintainable, as the Competent Authority has since rejected the claim of the applicant for his absorption in the CBI vide letter dated 22.08.2013 (Annexure A-1), and by letter dated 12.02.2014 (Annexure A-2), which was issued in response to the detailed representation dated 27.01.2014 which the applicant had submitted after his RA No.174/2013 in his earlier OA No. 3095/2013 had been allowed by a Bench on 17.01.2014, in which one of us was a Member.

14. It was further submitted by the respondents that the purely administrative decision of the Competent Authority is not subject to judicial review, as the in-house Committee which considers the cases for claims of absorption in CBI normally consists of experts, and this Tribunal may not interfere readily with such administrative decisions, unless there is a clear violation of some constitutional provisions, or statute, as laid down by the Supreme Court in **Shri Dilip Kumar Garg vs. State of U.P. & Others (2009) 4 SCC 753**. It was further submitted that the impugned decision of the Respondent authorities were in the nature of policy decisions, and as held in the case of **Director General of Posts and others vs. K. Chandrashekhara Rao (2013) 3 SCC 310**, in Para 22 & 26 of the judgment, policy decisions are acts which fall within the domain of the State, and call for no judicial interference. It was further submitted that the Supreme Court had in the case of **Tata Cellular vs. Union of India AIR 1966 SC 11** held that there should be judicial restraint in respect of administrative decisions taken by the competent authorities. It was further submitted that in the case of **S.P.**

Shiv Prasad Pipal vs. Union of India & Ors., AIR 1998 SC 1882, the Supreme Court has held that there may be cases where chances of promotion of some employees may be adversely affected, like in the cases of merger of cadres, or some others may benefit in consequence, but this cannot be a ground for setting aside the merger of cadres, which is essentially a policy decision.

15. It was admitted that the applicant had attended numerous in-house training courses while on deputation with the respondents, and also that he was deputed as a PLO to attend to certain cases in different Courts, but it was submitted that whenever the applicant discharged his duties on holidays, as per the prevalent Rules, he was entitled to cash allowance for having worked on holidays, including Saturdays & Sundays @ two and a half days' salary for every completed month of service, subject to maximum of 30 days once in a calendar year, in terms of DoP&T letter dated 25.04.1994. It was also submitted that officials at the level of the ASI, which the applicant was, are also entitled for Special Incentive Allowance @ 25% of Basic Pay per month in terms of DoP&T letter dated 11.09.2006.

16. It was submitted that no proper request had been received from the applicant for his absorption in CBI, and only a request for extension of his period of deputation for two more years had been received on 23.07.2013, through Annexure R-3. Admitting that from time to time the applicant was sanctioned Awards and Commendation Certificates which

are commonly given in the Respondent Organization-CBI for good work done, it was submitted that the applicant himself had given his willingness only to continue to be on deputation in the CBI. One such request was given by him on 17.02.2009 to continue in CBI for another two years, and CISF authorities had, vide their letter dated 08.07.2009, gave no objection to continue the services of the applicant on deputation up to 20.08.2011. Then, once again, six months prior to the completion of his sanctioned deputation tenure, the applicant had submitted another application on 24.02.2011, requesting to extend his deputation tenure for two more years, i.e., up to 20.08.2013, which request of his was also considered favourably, and a request was in turn made to CISF accordingly on 18.04.2011. Since CISF authorities also once again gave their NOC for extension of the applicant's deputation tenure upto 20.08.2013, subject to necessary concurrence being obtained from DoP&T through letter dated 07.06.2012, DoP&T's approval dated 21.09.2012 had also been obtained for the extension of applicant's deputation for two more years, upto 20.08.2013 till completion of 7th year, the maximum period permissible for a deputationist to remain on deputation.

17. It was denied that any absorption in the CBI in the rank of ASI, in which the applicant was working, had taken place after 24.01.2008, and it was submitted that all those who had been absorbed in CBI while being on deputation were in the ranks of Head Constables and Constables, and, therefore, his case cannot be compared with the cases

of those persons who had been absorbed as Head Constables and Constables. It was submitted that just because he was not repatriated after completion of three years on deputation does not mean that he was deemed to have been absorbed. It was submitted that the respondents had rightly repatriated the applicant on completion of the maximum deputation tenure of 7 years in CBI, and in this connection they had cited the relevant Rules for deputation which are included in Paragraphs 2.3.11, which states as follows:-

"2.3.11 Tenure of Deputation

- (a) The period of deputation shall be subject to a maximum of three years in all cases except for those posts where a longer period of tenure is prescribed in the Recruitment Rules.
- (b) The Administrative Ministry/borrowing organization may grant extension beyond the limit up to one year, after obtaining orders of their Secretary (in the Central Government and Chief Secretary in the State Government), equivalent level officer in other cases where such extension is considered necessary in public interest.
- (c) The borrowing Ministries/Departments/Organisations may extend the period of deputation for the fifth year or for the second year in excess of the period prescribed in the Recruitment Rules where absolutely necessary, subject to the following conditions:
 - (i) While according extension for the fifth year, or the second year in excess of the period prescribed in the Recruitment Rules the directive issued for rigid application of the tenure rules should be taken into consideration and only in rare and exceptional circumstances such extension should be granted.
 - (ii) The extension should be strictly in public interest and with the specified prior approval of the concerned Minister of the borrowing Ministry/Department and in respect of other organization, with the approval of the Minister of Ministry/Department with which they are administratively attached.
 - (iii) Where such extension is granted it would be on the specific understanding that the officer would not be entitled to draw deputation (duty) allowance.

(iv) The extension would be subject to the prior approval of the lending organization, the officer on deputation, and wherever necessary, the UPSC/State Public Service Commission and Appointments Committee of the Cabinet (ACC).

(d) In cases where extension is beyond the fifth year or second year in excess of the period prescribed in the Recruitment Rules, the same would be allowed only after obtaining the approval of the Department of Personnel and Training whether Central Government is the lending organization or the borrowing organization.

(e) For computing the total period of deputation the period of deputation in another ex-cadre post(s) held preceding the current appointment without break in the same or some other organization should also be taken into account.

(f & g) xxxxxxxxxxxx (Not reproduced here)".

(Emphasis supplied)

18. It was submitted that in the past, as per the Recruitment Rules, 1996, of ASIs in CBI, deputation/transfer was one of the methods of recruitment, and the percentage of vacancies to be so filled by absorption of people coming on deputation/transfer was 25% of the total cadre posts. But it was clarified that for deputationists maximum deputation tenure is only of 7 years as per the Rules. It was also submitted that the applicant has actually tried to mislead this Tribunal by filing a forged document including a prayer of his absorption, which request was never received in the Respondent-organization-CBI. Thereafter the cases of **Satender Pal & Ors. vs. Union of India & Ors.**, (supra) and **Uday Pal Singh vs. Union of India** (supra), had been explained, and it was reiterated that only the Head Constables and Constables were so absorbed while being on deputation, whereas the applicant was working

as ASI on deputation, and could not have been so absorbed, and in fact no other similarly situated persons have been absorbed after 24.01.2008.

19. The respondents had thereafter pointed out to the first OA filed by the applicant, OA No. 3095/2013, which came to be withdrawn on 06.09.2013 with liberty to approach the appropriate forum as per law. Subsequently, the applicant had filed another OA No.3952/2013, which was also withdrawn, with liberty to seek review of the withdrawal order earlier passed in his OA No. 3095/2013. Accordingly, the applicant first filed an R.A. No. 159/2013, seeking review of the order passed in OA No. 3152/2013. Later on, he realized that he did not want to seek a review of the order passed in OA No.3152/2013, but wanted a review of the order passed in his first OA No. 3095/2013. He then filed another RA No.174/2013, seeking a review of the order dated 06.09.2013. As mentioned above, that RA was allowed on 17.01.2014 by a Bench including one of us, and the order dated 06.09.2013 was recalled. But, the Bench had, thereafter, passed the following order in OA No.3095/2013 also:-

“OA No.3095/2013

8. As has been noticed hereinabove, learned counsel for applicant submitted that the applicant would be satisfied if the respondents are directed to treat the present original application as representation on his behalf and decide the same. It would be unfair to the respondents if they are directed to treat the present original application, which is filed in the format prescribed under Section 19 of the Administrative Tribunals Act, 1985 as representation and glean through it to identify the plea raised by the applicant. Nevertheless, it would be open to the applicant to make a detailed representation to the respondents espousing his claim within two months from the date of receipt of a copy of

this order. If such representation is made by the applicant, the respondents would decide the same within four weeks thereafter under intimation to the applicant.

9. The original application stands disposed of. No costs.”

20. It was submitted by the respondents that since the applicant had in the meanwhile been repatriated after completion of maximum deputation tenure of 7 years, beyond which no further extension was possible, there was nothing wrong or illegal in the impugned order as passed. It was further submitted that since applicant has not joined back his duties at CISF, he was not getting any salary, and in case he had joined CISF after his repatriation from CBI, he would have got his salary on time. It was, therefore, submitted that the applicant is not entitled to any relief as against the answering respondents, and even any of the interim prayers also cannot be granted, as the balance of convenience is not in favour of the applicant. It was prayed that the applicant is not entitled for any relief, as prayed for in the OA, and the OA is devoid of any merits, and deserves to be dismissed.

21. Among the Annexures to the counter reply was Annexure R-3, received by the respondents on 24.07.2013, through which the applicant had requested as follows:-

“To

The Supdt. of Police (Admn),
CBI/EO-II,
New Delhi.

Sub: Request for extension of deputation.

Sir,

Respectfully, it is submitted that I joined CBI on 21.08.2006 on deputation from CISF for initial period of 3 years. On my request, my deputation period was extended which is going to be completed in August, 2013. I wish to work in CBI for future two years.

2. It is requested that competent authority may please be requested to extend my deputation period for further two years and oblige”.

Thanking you,

Yours faithfully,

(Karan Singh)
Asstt. Sub-Inspector of Police
CBI/EO-II/New Delhi”

22. The applicant filed his rejoinder on 13.11.2014, and denied that he had filed any false and forged representations for considering his case for absorption in CBI. It was further denied that the respondents have been able to properly explain as to how they could keep him on deputation for a period of 7 years. It was further submitted that since he had originally joined the Respondent-organization CBI only as a Head Constable and had become an ASI only later, on 17.04.2008, and the respondents had submitted that there was no absorption in the ASI Rank after 24.01.2008, and since he was still a Head Constable as on that date of 24.01.2008, he had faulted the respondents that he was allowed to remain Head Constable on deputation, while the respondents had absorbed other persons who had come on deputation. It was also submitted that since the respondents had continued him for two days more beyond his 7 years’ deputation term, which expired on 20.08.2013, and they had relieved him only through the impugned order dated

22.08.2013 at Annexure A-1, and, therefore, the impugned order was totally arbitrary, discriminatory and malafide.

23. It was submitted that in the case of **Rameshwar Prasad vs. Managing Director U.P. Rajkiya Nirman Nigam Ltd. AIR 1999 SC 3443, JT 1999 (7) SC 44**, it was held that no deputationist should ordinarily be permitted to remain on deputation for a period exceeding 5 years, and if the applicant was not to be absorbed, he ought to have been repatriated when he had completed 5 years of service on deputation. The applicant had further cited the same judgment to state that the power of absorption is, no doubt, is discretionary but is coupled with the duty not to act arbitrarily, or at whim or caprice of any individual. It was submitted that this judgment had been followed by the Tribunal in **Satender Pal vs. Union of India** in OA No.3202/2001 decided on 16.01.2003.

24. It was reiterated in the rejoinder that the applicant had a right to be considered for absorption, and the respondents should have taken into account the Commendation Certificates, letters and awards granted to him, and then considered his case for absorption. It was submitted that the Recruitment Rules for ASIs in CBI, which were in force prior to 05.07.2013, provided for 25% of the posts to be filled by deputation/absorption, and that when there were clear vacancies of ASIs available, 1/4th of those vacancies should have been made available to be filled by absorption.

25. It was submitted that the respondents have virtually admitted that the applicant was never considered for absorption, while his juniors in the ranks of Head Constables and Constables had been considered and absorbed. It was, therefore, prayed that the OA be allowed, along with exemplary costs, more so because through order dated 16.07.2014 in MA No.1136/2014, it was ordered by this Tribunal that repatriation of the applicant to his parent department shall be subject to final outcome of the OA.

26. Heard. The case was argued at length along the lines of the pleadings. Learned counsel for the applicant had produced on 27.04.2015 a letter dated 10.04.2015 issued by the Respondent-CBI confirming that the case of the applicant's repatriation will await the final outcome of the OA, and necessary action will be taken accordingly. He also submitted that in the meanwhile through order dated 17.04.2015, his parent organization-CISF had, issued a Memorandum and Articles of Charges against him in respect of his continued absence from work, and not joining back his duties after his repatriation.

27. During arguments, learned counsel for the applicant had also submitted a copy of the cited case **Rameshwar Prasad vs. Managing Director UP, Rajkiya Nirman Nigam Ltd.** (supra), in which the Supreme Court had, in the specific context of Rule 5 of the U.P. Absorption of Government Servants in Public Undertaking Rules, 1984, ordered that since the petitioner therein had been allowed to continue for

more than the specifically prescribed maximum period of 5 years of deputation under those Rules, and no order of repatriation had been passed on completion of such period, he was deemed to have been absorbed.

28. We have given our anxious consideration to the facts of the instant case. In spite of the voluminous OA, and the numerous case laws cited by the applicant in his OA, as well as during arguments of his learned counsel, one fact is clear that in his case the respondents have adhered to their Regulations regarding the maximum tenure of deputation as specifically prescribed in Para-2.3.11 (d) of the relevant Rules, as already reproduced above, and when the applicant had also only prayed for extension of his deputation beyond the 5th year only in terms of the procedure as prescribed in the relevant Rules, and they had obtained approval not only from the parent body of the applicant, i.e., CISF, but also from the DoP&T, as prescribed under the Rules, therefore, we find no infirmity in the respondents having allowed the applicant to continue to be on deputation with them for the maximum permissible period of 7 years, as per Rules 2.3.11 (d), already reproduced above. When the applicable Rule itself was different, the ratio of the Supreme Court's judgment in the case of **Rameshwar Prasad** (supra), delivered in the context of another set of Rules of U.P. Govt., would not enure any benefit to the present applicant.

29. The applicant has also pointed out that the respondents had exceeded the period of 7 years also by two days, inasmuch as his 7 years' deputation expired on 20.08.2013, and the impugned order Annexure A-1 was passed on 22.08.2013. But, under the general principles of Administrative Law, it cannot be held by us that this delay of two days' period, beyond the maximum permissible deputation period of 7 years, would enure any precipitate advantage like deemed or automatic absorption in favour of the applicant, as this delay of two days could have been due to any administrative delays, which are very much recognized and permissible under the basic principles of Administrative Law, and what cannot be done lawfully directly, cannot be done or achieved indirectly, just on account of an administrative delay.

30. We have gone through all the case laws cited and produced by the applicant along with his OA. Through none of the averments made in the O.A., and nor through his rejoinder, the applicant has been able to controvert the submission of the respondents that there has been no absorption in CBI at the level of ASIs after 24.01.2008, and all absorptions of deputationists in the CBI after that had only been at the level of Head Constables and Constables. We find that the case of the applicant would be fully covered by the basic tenet of law that while the deputationist has a right to be considered for the purpose of absorption, but he does not have any right to be necessarily absorbed in the organization to which he gone on deputation, and the right is only for consideration of his case.

31. Also, as is apparent from Annexure R-3 filed by the respondents, even as late as on 24.07.2013, as reproduced in Para-21 above, the applicant had only sought extension of the period of his deputation for a further period beyond the then period of his deputation, which was going to be completed in August, 2013. Since such extension was not permissible beyond 7 years, as per the Rule 2.3.11 (d), as reproduced above, the respondents could not have acceded to this prayer made by the applicant in July 2013.

32. After his RA had been allowed, through Annexure A-3 the applicant made a 64 page representation requesting the respondents to absorb him as ASI in CBI permanently from the date of absorption of his colleagues. But the Annexure A-33 dated 23.05.2013 produced by him at page-160 of the paper book of his OA does not have any receipt stamp of the Respondent-organization, though it was addressed to the Director, Central Bureau of Investigation, and stated as follows:-

“The Director,
Central Bureau of Investigation,
New Delhi.

Dated: 23.05.2013

Through Proper Channel

Sub:- Application for absorption in CBI.

Sir,

It is respectfully submitted that I am working in CBI, New Delhi on deputation from CISF 21.08.2006. Presently, I am posted in EO-II Zone since 12.05.2008 as ASI. I have been working as PLO in Tis Hazari Court.

I am willing to be absorbed in CBI. My colleague namely Mahipal Singh and S. Govind Raju have already been absorbed in the year 2012.

It is, therefore, prayed that I may kindly be absorbed in CBI.

Thanking you,

(Karan Singh)
ASI/EO-II/CBI
New Delhi”

33. If this indeed was the prayer of the applicant as on 23.05.2013, firstly he should have made sure that his request had been properly received by the Office of the Respondents, through a seal and signature, which seal and signatures are not apparent at Annexure-33. Secondly, within two months thereafter, on 24.07.2013, he could not have given another representation through Annexure R-3, without making any reference whatsoever to his two months old representation dated 23.05.2013 (Annexure A-33), as if he had forgotten about having given that earlier representation. Since the applicant has failed to deny in his rejoinder, the Annexure R-3 filed by the respondents along with their counter reply, and had not mentioned in that about his having submitted his representation dated 23.05.2013 (Annexure A-33) just two months back, praying for being absorbed in the CBI, and he has not been able to show any proof of the said Annexure A-33 dated 23.05.2013 having been even received by the respondents, we find merit in the contention of the respondents that the applicant actually never prayed for absorption with the Respondent-CBI, and, as late as till 24.07.2013, he had only prayed

for extension of his deputation period through Annexure R-3 and not absorption.

34. However, we refrain from holding that Annexure A-33 is a forgery, and filing the same in the OA amounts to a perjury, as that would invite precipitate adverse circumstances visiting the applicant with criminal consequences, which are not warranted in the circumstances of the case. However, since we have found that the respondents have acted fully within the four corners of the law, and the Rules as prescribed, and that the actions of the respondents do not call for any interference in the nature of judicial review, the O.A. is liable to be rejected.

35. The OA is, therefore, dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.