

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3404/2014

Reserved on: 22.03.2016
Pronounced on: 23.03.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Murlidhar Sharma, Aged 44 years
S/o Late Shri Radhey Shyam Sharma
Working as Deputationist Constable/ GD
Subsidiary Intelligence Bureau, Govt. of India
Jaipur,
Permanent Residence of Ward No.17, Surajgarh,
Distt. Jhunjhunu (Rajasthan) ... Applicant

(Through Shri Yogesh Sharma, Advocate)

Versus

1. Union of India through the Secretary,
Ministry of Home Affairs,
Govt. of India, North Block,
New Delhi
2. The Joint Director,
Intelligence Bureau
Ministry of Home Affairs,
Govt. of India,
New Delhi
3. The Assistant Director (A)
Subsidiary Intelligence Bureau
Ministry of Home Affairs,
Jaipur (Rajasthan)
4. Deputy Inspector General / Estt.
Directorate General CRPF
CGO Complex, Lodhi Road,
New Delhi ... Respondents

(Through Shri D.S. Mahendru, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was a Constable in Central Reserve Police Force (CRPF). He was deputed to the Intelligence Bureau (IB) as Security Assistant. He applied for absorption in the IB and based on recommendations of the absorption committee in IB, a No Objection Certificate (NOC) was sought from the CRPF. The NOC dated 11.06.2014 was issued by CRPF regarding permanent absorption of nine personnel in IB, including the applicant. Against his name, it was mentioned that his promotion as Head Constable has been released on 29.05.2012 and proforma promotion order not issued. It was further mentioned that as per Department of Personnel and Training (DoP&T) instructions, a deputationist can be considered for permanent absorption in borrowing department to the post carrying pay scale equivalent to the pay scale to which he has been granted proforma promotion. Regarding the applicant, it is mentioned that since he will be completing five years deputation tenure and his promotion has also been released/ proforma promotion order has been issued, he is eligible for absorption in the equivalent post i.e. Head Constable to which promotion has been allowed to him in parent department and absorption in lower rank to Constable cannot be considered. It was further mentioned in the NOC that in case IB does not agree to adjust the applicant in higher rank and Grade Pay, he should be repatriated to CRPF.

2. The applicant states that proforma promotion order has actually not been issued, which is clear from the entry against the applicant's name and, therefore, he can still be absorbed as a Constable in the IB.

3. The learned counsel for the applicant has quoted OM dated 30.11.2012 of DoP&T, which provides as follows:

"8.6 (a) If the Grade Pay of the officer in the parent cadre becomes higher than that of the deputation post after getting proforma promotion, he may be allowed the pay in the pay band + Grade Pay of the post to which he is promoted, if he so opts. In such cases, extensions in deputation after an employee has received the proforma promotion may be considered as per the instructions contained in paras 8.1 to 8.3.2."

It is stated that neither had the CRPF issued proforma promotion order nor had the applicant opted for the same, in which case he can very easily be absorbed in the post of Constable.

4. Learned counsel representing respondents 1 to 3 i.e. Ministry of Home Affairs and IB drew our attention to their reply which states that IB was ready to absorb the applicant in the post of Constable (Security Assistant) but since the NOC given by CRPF stipulates the condition that the said NOC was subject to the condition that deputation has to be absorbed in the higher rank of Head Constable, the applicant could not be absorbed and he was repatriated to his parent department i.e. CRPF vide order dated 9.09.2014 and subsequently relieved with effect from 12.09.2014 vide order dated 11.09.2014.

5. Learned counsel for the respondents further pointed out that as per OM dated 1.12.2010 regarding absorption in non-gazetted executive ranks, para 3 sub para (iv) provides that "the absorption is to be considered in the rank in which the officer is officiating" and in case of the applicant, he was officiating in the rank of Constable (Security Assistant) and, therefore, he cannot be considered for absorption against the post of Head Constable in which the CRPF proposes to absorb him. Lastly, it is argued that in cases of deputationists, all three parties, namely the deputationists, the lending department and borrowing department have to agree to the deputation/ absorption conditions. In this case, since one of the parties, CRPF do not agree, the applicant cannot be absorbed as Security Assistant.

6. We have heard the learned counsel for the parties and gone through the pleadings available on record.

7. It is not the case of the respondents that the applicant cannot be absorbed due to his incompetence or some other adverse fact. In fact, IB is ready to absorb him in the post of Constable (Security Assistant). The applicant is also ready to be absorbed in the post of Constable. It is only the CRPF which says that since he had been considered for proforma promotion, he should be absorbed in the rank of Head Constable. The OM dated 1.12.2010 also specifically provides that absorption should be considered in the rank in which the officer is officiating. We see no difficulty, therefore, in the applicant being absorbed in the post in which he is officiating i.e. Constable.

8. As regards respondents argument that in case of deputations all three parties have to concur, we agree with the general principle. However, Tribunals/ Courts are there to ensure that arbitrary or illogical decision by the State are corrected. The stand of the respondents does not stand logical scrutiny and hence has to be rejected.

9. As regards applicant's relieving and joining CRPF, in our order dated 23.09.2014, we had clarified that in the event the applicant submits joining report to the parent department pursuant to the impugned order, the same shall be subject to the final result of this Application.

9. In view of above discussion, the OA is allowed and the impugned orders dated 9.09.2014 of the Ministry of Home Affairs repatriating the applicant to CRPF and 11.09.2014 of the IB relieving him with effect from 12.09.2014 (A/N) are quashed and set aside. The OA is allowed and the respondents are directed to absorb the applicant in the IB to the post of Security Assistant within a period of 2 months from receipt of a copy of this order.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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