

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-3203/2015**

**Reserved on : 11.12.2015.**

**Pronounced on : 22.12.2015.**

**Hon'ble Mr. Shekhar Agarwal, Member (A)**  
**Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Sh. K. Pradeep Kumar,  
S/o late Sh. C. Krishnan,  
R/o C/o Kukoo, KMP-1206,  
Dispensary Gali, 3<sup>rd</sup> Floor,  
Mahipalpur, New Delhi-110037.

.... Applicant

(through Ms. Jyoti Singh with Ms. Tiku Bajaj and Sh. Padma Kumar S., Advocate)

Versus

1. Union of India through  
Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi.
2. Director General,  
Central Reserve Police Force,  
CGO Complex, Lodhi Road,  
New Delhi-110 003.
3. Intelligence Bureau through  
Director,  
(Ministry of Home Affairs)  
35, S.P. Marg, Bapu Dham,  
New Delhi.

..... Respondents

(through Sh. N.D. Kaushik, Advocate)

**O R D E R**

**Mr. Shekhar Agarwal, Member (A)**

Applicant joined CRPF as a Constable in March, 1991. On 04.12.2006 he joined IB on deputation and even got promoted to the rank of JIO, which corresponds to a Head Constable in CRPF. On 28.01.2011, the applicant requested for permanent absorption in IB. However, the respondents issued

order repatriating the applicant to CRPF on 01.02.2011. The applicant filed Writ Petition (C) No. 850/2011 before the Hon'ble High Court of Delhi. On 09.02.2011, Hon'ble High Court directed the respondents to treat the applicant's petition as a representation and pass a reasoned order. On 02.05.2011, the respondents sought willingness of the applicant for absorption in IB. However, his parent department CRPF on 22.09.2011 refused to grant concurrence for his absorption on the ground that he had already received proforma promotion during his deputation tenure. The applicant challenged the aforesaid order of the respondents on 27.09.2011 by filing Writ Petition (C) No. 7270/2011. Separately, he was communicated adverse remarks in his APAR for the year 2011-2011 on 17.01.2013. On 21.01.2013, the applicant submitted a representation against adverse remarks, which was rejected by the respondents on 14.03.2013. The applicant, however, submitted another representation against his APAR. On 25.03.2014, Hon'ble High Court ordered in Writ Petition (C) No. 7270/2011 that respondents conduct a screening committee to consider absorption of the applicant in IB. The respondents, however, not only rejected applicant's second representation against APAR but also did not accede to his request for permanent absorption in IB due to adverse remarks in his APAR for the year 2011-2012. The applicant again filed Writ Petition (C) No. 4506/2014 before Hon'ble High Court of Delhi. This was, however, permitted to be withdrawn by Hon'ble High Court on 23.07.2014 with liberty to the applicant to approach this Tribunal. The applicant then filed OA-2565/2014 on 28.07.2014 praying for quashing of the orders rejecting his claim for absorption as well as for expunging the adverse remarks from his APAR. The respondents, however, issued an order on 28.08.2014 declaring that the applicant was unfit for absorption in IB on account of adverse APAR for the year 2011-2012 and also repatriated him back to CRPF. On 02.09.2014, the applicant filed an MA in OA-2565/2014 seeking stay

against impugned order for repatriation. This Tribunal, however, disposed of the OA itself on 20.04.2015. The operative part of the order reads as follows:-

"7. In the circumstances, the impugned memo dated 14.03.2013 is quashed and the matter is remitted back to the Respondents for disposal of the representation of the applicant afresh with due regard to the aforementioned guidelines. In the meantime status-quo regarding the posting of the applicant in BOI should be maintained for a week after disposal of the representation."

2. Pursuant to the order of this Tribunal, the respondents issued an order dated 18.06.2015 by which the applicant's APAR for the year 2011-2012 was upgraded and his integrity was certified. According to the applicant since the only hurdle remaining in his absorption was the adverse remarks in his APAR, which had been upgraded since then, the applicant approached this Tribunal seeking the following relief:-

- "(a) To quash the Respondents impugned order dated 28.08.2014.
- (b) To direct the Respondent to permanently absorb the applicant in the IB consequent to rectification of his APAR for the period 2011-12, which was the only ground on which his consideration for absorption in the IB by the Screening Committee was rejected.
- (c) Any other order that the Hon'ble Tribunal may deem fit and proper in the facts of the case."

3. The applicant's contention is that he has suffered at the hands of the respondents, who have shown vindictiveness forcing him to take recourse to protracted litigation for his rights. He submitted that his case for absorption in IB was rejected by the Screening Committee because there were adverse remarks in his APAR for the year 2011-2012. Now, that these remarks have been expunged and his APAR has been upgraded, there is no hurdle in his absorption.

4. Learned Senior counsel for the applicant argued that the respondents have all along been taking the stand that a deputationist like the applicant has no right to be absorbed in the borrowing organization. She argued that while

this may be true, the applicant does have a right to be considered for absorption in a fair manner as the respondents do have a policy of absorbing deputationists. In the instant case, the same has been repeatedly denied to him. First his parent department i.e. CRPF had refused to give concurrence for his absorption. However, after intervention of Hon'ble High Court of Delhi, this hurdle was removed. Thereafter, the respondents rejected his case for absorption on the ground that there were adverse remarks in his APAR for the year 2011-2012. Learned Senior counsel further argued that now that those adverse remarks have been expunged and his APAR has been upgraded, there is no reason why the respondents are not reconsidering the applicant's case for permanent absorption in IB.

5. In their reply, the respondents have opposed the claim of the applicant. Without disputing the above narrated facts of the case, they have contended that the applicant has since been repatriated to his parent department where he has also joined. Relying on the judgments of Hon'ble High Court of Delhi in the case of **Surender Singh Vs. UOI & Ors.** (WP(C) No. 4496/2015) dated 06.05.2015 and **Mahendra Sinsinwar Vs. UOI & Ors.** (WP(C) No. 7371/2014) dated 01.05.2015 alongwith one connected case, learned counsel for respondents submitted that the absorption of a deputationist in the borrowing organization was not a matter of right. The same has to be considered with the consent of three involved parties i.e. the Lending Department, the Borrowing Department and the individual himself. Even if a post is meant to be filled by permanent absorption, the deputationist does not get an indefeasible right to be absorbed on the same.

6. We have heard both sides and have perused the material on record. We agree with the Senior Counsel for the applicant that even though the applicant

does not have a right to be absorbed in IB, he does have a right to be fairly considered for absorption in IB if the respondent department does have a policy of absorbing deputationists. The respondents cannot act arbitrarily and whimsically and all deputationists deserve to be considered in a fair manner. It is seen from the material made available that the only reason for rejecting the applicant's case for absorption given by the Screening Committee was that there were adverse remarks in his APAR for the year 2011-2012. The same have now been expunged and applicant's APAR has also been upgraded as is evident from order dated 10.08.2015 passed by the respondents. Thus, there is merit in the contention of the applicant's counsel that the case of the applicant for absorption needs to be reconsidered after this material change in his record.

7. However, we notice that the applicant has been repatriated to his parent cadre on 10.08.2015. He has also been relieved of his duties w.e.f. 14.08.2015 and admittedly he has now joined in his parent department. We also notice from the material placed on record that on the day when repatriation orders of the applicant were passed, the applicant had already completed his prescribed deputation period with IB having joined there on 04.12.2006. Also there was no Court case pending nor was there any stay order of any Court operating against applicant's repatriation. The last case filed by the applicant was OA-2565/2014, which was disposed of by this Tribunal on 20.04.2015 with a direction to the respondents to dispose of the representation of the applicant against adverse APAR afresh and also to maintain status quo regarding the applicant's posting atleast for a week after disposal of the representation. In pursuance of the same, the respondents disposed of the representation of the applicant and repatriated him thereafter. The present O.A. has been filed on 25.08.2015. Thus, it is clear that the orders of the respondents repatriating the

applicant cannot be faulted for violation of directions of any Court or for frustrating the case of the applicant for absorption by repatriating him during pendency of any OA. Further, in our opinion, the applicant had a right to be considered for permanent absorption in IB only as long as he was a deputationist with them. Now that the applicant has joined his parent cadre, no such right subsists as the applicant is no longer a deputationist but an employee of CRFPF. In the case of **NHAI Vs. Ashok Kumar Gupta** (WP(C) No. 8412/2014) Hon'ble High Court on 03.12.2014 has held that the choice of the public employer whether, or not, to absorb the individual, is entirely based upon its discretion and its perception about the utility, competence and efficiency of the deputationists and barring procedural failure in this regard, the subject would hardly be one for judicial review. Hon'ble High Court has also directed that Courts/Tribunals should not routinely interfere in such matters. In the same judgment, it has also been observed that the deputationist's right to continue much less seek absorption, after the end of the deputation tenure is so tenuous, as to be called non-existent and barring manifestly perverse or arbitrary orders, the borrowing organisation cannot be compelled to continue with the employment of the deputationist much less absorb him.

8. Under these circumstances, no relief can be granted to the applicant. The O.A. is dismissed. No costs.

**(Dr. Brahm Avtar Agrawal)**  
**Member (J)**

**(Shekhar Agarwal)**  
**Member (A)**

/Vinita/

