

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1493 OF 2003

New Delhi, this the 12th day of September, 2003

HON'BLE SHRI KULDIP SINGH, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Binay Kumar Mishra
S/o Shri Jagdish Mishra
R/o D/3265, Vasant Kunj,
New Delhi-110070.

....Applicant

(By Advocate : Shri K.K. Rai with Shri V.P. Singh)

Versus

1. The Union of India
Through The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001.
2. National Crime Records Bureau
through its Director
East Block 7,
R.K. Puram,
New Delhi-110066.
3. Shri Ram Avtar Yadav,
Director,
National Crime Records Bureau,
East Block 7, R.K. Puram.
New Delhi-110066.
- 4., Shri S. Prakash,
Deputy Director (A & R),
East Block 7,
R.K. Puram,
New Delhi-110066.

.....Respondents

(By Advocate : Shri N.K. Aggarwal)

O R D E R

SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER :-

By this application under 19 Section of the Administrative Tribunals Act, 1985, the applicant has challenged his pre-mature repatriation and has claimed the following reliefs:-

- "i) Quash the impugned orders dated 27.05.2003 (Annexure A-1) and 02.06.2003 (Annexure A-2); and
- ii) Pass any other order that is deemed fit and proper in view of the facts & circumstances of this case."

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The OM dated 27.5.2003 (Annexure A-1) issued by the Govt. of India, Ministry of Home Affairs, conveys the "approval of the competent authority to the repatriation of Shri Binay Kumar Mishra, IPS (AM:88), Assistant Director, NCRB to his parent cadre with immediate effect." The order dated 2.6.2003 (Annexure A2) has been forwarded to National Crime Records Bureau ('NCRB' for short) and is addressed to the applicant informing him that he "is relieved from National Crime Record Bureau with instructions to report to his parent cadre with immediate effect i.e. 2nd June, 2003".

2. The applicant, who belongs to the Indian Police Service of Assam and Meghalaya cadre, was selected on deputation for a period of four years as Assistant Director, NCRB. Accordingly, by a notification dated 30.10.2000 (Annexure A-3), he was released from his parent cadre. It is further submitted by the applicant that he joined as Assistant Director (Records), NCRB on 20.11.2000.

3. The applicant's claim is that the impugned orders of repatriation to his parent cadre has been issued on account of mala fides of respondent No.4. In order to support his claim, the applicant has stated that he was assigned the task of conducting cultural programme of annual day on 11.3.2003. Respondent No.4 had expressed his desire to see performance of certain individuals on 28.2.2003. The behaviour of respondent NO.4 was not desirable and some of his remarks were

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derogatory against the applicant's junior colleagues. Later, the applicant received a circular from respondent No.4 dated 28.2.2003 (Annexure A-4) relieving him from the work of Incharge of cultural programme. In his place, Shri R.C. Meena was made incharge of the cultural programme. At the time of hearing, learned counsel of the applicant stated that no affidavit in denial of the allegations of the applicant has been filed by respondent no.4 even though he has been made respondent by name in this OA. The contention of the applicant is that he has been issued several Memos, as can be seen from the Annexures A-12, A-13 and A-14. The applicant has given reply to these Memos vide letter dated 9.5.2003 (Annexure A-15). In case, the applicant had committed any misconduct, he was willing to face the inquiry and proceedings, if any.

4. Learned counsel of the applicant fairly stated that he did not want to question the power of respondents to curtail the period of deputation. However, he was agitating against the manner in which such power is being exercised. According to him, the rules and principles of natural justice have not been followed in this case. Therefore, the impugned orders deserve to be quashed and set aside. He also placed reliance on the decision of the Hon'ble Supreme Court in the case of K.H. Phadnis Vs. State of Maharashtra, 1971 (1) Supreme Court Cases 790, wherein

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the Hon'ble Supreme Court has held that the repatriation order in that case was in the nature of reduction in rank by way of punishment in violation of the provisions contained in Article 311 of the Constitution of India. The Hon'ble Supreme Court in this case of K.H. Phadnis pointed out that there were two objective tests to determine if the reduction of post or rank of a Government servant was by way of punishment, viz, whether the servant had a right to the post and whether he had been visited with evil consequences. It was further held that the Government has a right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order, is a genuine one. In para 16 of the said judgement, the Apex Court observed that "The appellant was reverted neither because the temporary post was abolished nor because he was found unsuitable to continue. The parent department of the appellant did not want him back." This decision of the Hon'ble Supreme Court has been subsequently followed in the case of K.R. Panicker Vs. Union of India, 1996 (1) ATJ 18, by the Bombay Bench of this Tribunal. In the case before the Bombay Bench of this Tribunal, no reasons were given for repatriation. No concurrence/demand of the parent department for repatriation of the applicant in that case was there. Therefore, the Bombay Bench of this Tribunal held that repatriation order issued by the respondents was

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illegal and accordingly quashed the same and the principles laid down in K.H. Phadnis (supra) were reiterated. Learned counsel of the applicant relying on these judgements stated that the case of the applicant is squarely covered. The applicant could not have been repatriated without giving any reasons for the same. It was further stated by the learned counsel of the applicant, as an alternative plea, that the applicant could be adjusted at Delhi in any other post, as he has threat to his life.

5. The respondents have opposed this OA. According to the respondents' learned counsel, the appointment order dated 23.10.2000 (Annexure R3) has specifically stated that the deputation was "until further orders". This Fax Message dated 23.10.2000 asking the Chief Secretary of Assam and Chief Secretary of Meghalaya was as follows:-

"CENTRAL GOVERNMENT HAS APPROVED THE APPOINTMENT OF SHRI BINOY KUMAR MISHRA, IPS (AM:88) AS ASSISTANT DIRECTOR IN THE NATIONAL CRIME RECORDS BUREAU ON DEPUTATION BASIS FOR A PERIOD OF FOUR YEARS FROM THE DATE OF ASSUMPTION OF CHARGE OF THE POST OR UNTIL FURTHER ORDERS WHICHEVER EVENT TAKES PLACE EARLIER ON USUAL TERMS AND CONDITIONS OF CENTRAL DEPUTATION (.) KINDLY RELIEVE SHRI MISHRA IMMEDIATELY WITH INSTRUCTION TO REPORT FOR DUTY TO THE DIRECTOR NCRB, NEW DELHI FOR TAKING UP HIS NEW ASSIGNMENT UNDER INTIMATION TO THIS MINISTRY (.) MATTER MOST URGENT (.)"

6. He also invited attention to the Office Memorandum dated 6.4.2000 (Annexure R-2) being deputation policy/procedure for selection and appointment of IPS officers in various organisations of the Centre and guide-lines for inter-cadre

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deputation. Para 10 of this policy specifically provides as follows:-

"The deputation tenure as prescribed in the preceding paragraphs will not confer any right on the officers to remain on Central deputation. The Central Government reserves the right to revert such officers to their parent cadres at any time without assigning any reason."

7. The learned counsel of the respondents invited attention to the several Memos issued to the applicant. Some of them were annexed as Annexure- R-8 to the reply of the respondents. He referred to the Advisory Memo dated 19.2.2002 (Annexure -R8(iii)) wherein the applicant was "once again advised to refrain from unnecessarily interacting with the media on NCRB's functioning, many aspects of which he himself would not be fully conversant with". According to the learned counsel of the respondents, in view of the activities of the applicant, the respondents' organisation had lost confidence in the applicant. Therefore, repatriation of the applicant was desirable. In view of the provisions contained in the deputation policy and the appointment on deputation letter of the applicant, the said right was with the borrowing department. Therefore, the repatriation is as per the rules. At the time of hearing of this OA, learned counsel of the respondents produced one confidential file relating to repatriation of the applicant for the perusal of the Bench. With reference to note in that confidential file, the learned counsel wanted to submit that

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respondent No.4 has been acting only in accordance with rules and he was never inimical or prejudiced against the applicant. The learned counsel of the respondents also rebutted the allegation of mala fides against the applicant which is alleged. In this connection, he invited the attention to the decision of the Hon'ble Supreme Court in the case of Indian Railway Construction Co. Ltd. Vs. Ajay Kumar (2003) 4 Supreme Court Cases 579, wherein it has been stated by the Apex Court that burden of proof is heavy on one who alleges mala fides and must be discharged. According to the learned counsel, the applicant has not discharged the burden placed on him. There is also no link between the impugned order and the alleged mala fides of respondent No.4. He, therefore, submitted that the present OA deserves to be dismissed.

8. We have heard the learned counsel of the parties and perused the materials made available at the time of hearing.

9. The applicant has not questioned the power of respondents to curtail the period of deputation. The basic grievance of the applicant is that he was being sent to his parent cadre on account of mala fides. The learned counsel of the applicant has specifically invited attention to Wireless Message dated 12.1.2000 (Annexure R.I-6) wherein the name of the applicant is stated to be included in the target list of Ulfa. He stated that the applicant should be continued on the

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deputation or, in any case, he may be accommodated on any other post in Delhi. We are of the view that this alternative plea of being retained at Delhi on any other post is not one of the reliefs claimed and cannot be adjudicated by this Bench. So far as the impugned orders are concerned, we notice that the same are not in conformity with the judgement of the Hon'ble Supreme Court in the case of K.H. Phadnis (supra). The respondents have annexed several Memoranda as Annexure-R8 to their reply which show that the alleged conduct of the applicant is unbecoming of a senior Govt. officer and some of them may perhaps amount to misconduct inviting issue of charge-sheet and disciplinary proceedings. The curtailment of deputation, as a short-cut cannot be approved. If the work and conduct of the applicant was not in accordance with the prescribed rules and procedures, he may perhaps be suitably dealt with under the relevant service conduct rules. The respondents have merely stated that they lost confidence in the applicant, therefore, they want to repatriate him to his parent cadre. The confidential file relating to repatriation of the applicant shown to the Bench confirms the view that instead of taking action as per rules, the applicant has been asked to go back to his parent cadre. The Hon'ble Supreme Court in the case of K.H. Phadnis (supra) has observed that such a repatriation results in reversion to lower post. Therefore, the same could be justified only in three situations, namely, if the deputation


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post was abolished, the deputationist employee was found unsuitable and if there was request for repatriation of the employee from his parent cadre. None of the above three situations are there in the present case. Therefore, we find ourselves unable to uphold the impugned orders. The impugned orders are, therefore, quashed and set aside. The applicant be taken on duty forthwith if already relieved.

10. Before parting, we may observe that the applicant had also made a request that he may be granted leave of two months as provided in para 11 of the deputation policy dated 6.8.2000 (Annexure R-2). According to the applicant, such a request has been made as per letter dated 24.6.2003 (Annexure RJ10). However, we find that no such relief has been claimed by the applicant in this OA. Therefore, we refrain ourselves from issuing any directions/observations on this plea of the applicant. Similarly, we do not find any basis for any observations regarding consideration of the applicant for being retained in Delhi in any other post. Therefore, no directions are being issued to the respondents in this regard.

11. In the facts and circumstances of this case and for the reasons stated earlier, this application is allowed without any order as to costs.


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER


(KULDIP SINGH)
JUDICIAL MEMBER

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