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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1801/2003
with
Original Application No.3100/2003

New Delhi, this the 13th day of October, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

O.A.No.1801/2003

1. Netram Choursiya
House No.80
Mohammad Pur Village
Sector 1, R.K.Puram
New Delhi – 110 066. Applicant

(By Advocate: Sh. Harvir Singh)

Versus

1. Union of India through
Secretary
Ministry of Home Affairs
Central Sectt.
North Block
New Delhi.

2. Director (Intelligence Bureau)
Ministry of Home Affairs
Government of India
East Block – 7, Level-7
R.K.Puram
New Delhi – 110 066.

3. Director General
Border Security Force
Block No.10, 5th Floor
CGO Complex, Lodhi Road
New Delhi – 110 003. Respondents

(By Advocate: Sh. A.K.Bhardwaj)

O.A.No.3100/2003:

1. Shayam Singh
Village Chhabra
P.O. Noida, Sector-37
Gautam Budh Nagar (UP) Applicant

(By Advocate: Sh. Harvir Singh)

Versus

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1. Union of India through
Secretary
Ministry of Home Affairs
Central Sectt.
North Block
New Delhi.
 2. Director (Intelligence Bureau)
Ministry of Home Affairs
Government of India
East Block – 7, Level-7
R.K.Puram
New Delhi – 110 066.
 3. Director General
Border Security Force
Block No.10, 5th Floor
CGO Complex, Lodhi Road
New Delhi – 110 003. ... Respondents

(By Advocate: Sh. D.S.Mahendru)

O R D E R

By Mr. Justice V.S.Aggarwal:

By this common Judgment, we propose to dispose of the two Original Applications, namely, OA No.1801/2003 and OA No.3100/2003. The question involved in both the applications is identical and, therefore, we have taken liberty in referring to the facts of the case of **Net Ram Chaurasia** (OA No.1801/2003).

2. The applicant has joined as Constable on 1.10.1987 in the Border Security Force (for short 'BSF'). He was taken on deputation in the Intelligence Bureau on 1.2.1996 in the capacity of Security Assistant (General). The deputation initially was for a period of five years. He continued to be on deputation thereafter and on 30.1.2003, he had completed 7 years on deputation. The applicant claims that his work and conduct has been above board and appreciated.

3. The grievance of the applicant is that Intelligence Bureau has time and again recommended the claim of the applicant for absorption but his parent department has not given the consent for absorption in Intelligence Bureau. By virtue of the present application, he seeks quashing of the order dated 10.7.2003

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(Annexure A-1A) whereby his services have been placed at the disposal of the Director General, BSF on his repatriation and to hold and declare that the applicant is deemed to have been absorbed in the Intelligence Bureau. The impugned order reads

“The services of Shri Netram Chaurasiya, Constable (No.87003874) who is currently on deputation to the Intelligence Bureau, as Security Assistant/General replaced at the disposal of the Director General, BSF, New Delhi.

2. On repatriation, he would stand relieved from IB Hqrs. W.e.f. 31.07.2003 (AN) with the instructions to report for duty to the Dy. Commandant/Estt., BSF, Block No.10, CGO Complex, Lodhi Road, New Delhi – 110 003.”

Sd/-
Dy. Director/E

No.21/Estt(G)/2003(39)-3882
Intelligence Bureau
(Ministry of Home Affairs)
Govt. of India

To
The Branch Order Book

New Delhi, the
10.7.2003”

4. The application is being contested. Respondents contend that applicants can be reverted to their parent department at any time. As the Border Security Force has not given a 'No Objection Certificate', the claim of the applicants could not be considered. They have no right to claim that they are deemed to have been absorbed and thus, the application is stated to be without any merit.

5. On behalf of the respondents, an objection has been raised that this Tribunal has no jurisdiction to entertain the applications. According to the learned counsel, in terms of Section 2 (a) of the Administrative Tribunals Act, 1985, since the applicant belongs to BSF, which is an Armed Force of the Union, this Tribunal has no jurisdiction to consider the claim of the applicants. However, our attention has been drawn towards the decision of the Delhi High Court in the **SATENDER PAL & ORS. v. UNION OF INDIA & ORS.**, CW No.7406/2002, decided on 20.11.2002. The Delhi High Court held:



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“We find substance in the plea because petitioners OA was directed against order dated 11.11.2002 (Annexure A to OA) passed by the IB whereby petitioners were to be ordered to be repatriated. The Tribunal was required to examine the validity of this order first because it had taken over the issue of NOC. Since this order was passed by the IB, any challenge to it squarely fell within the jurisdiction of the Tribunal. Therefore, the order passed by it washing its hands off cannot sustain and is set aside.”

6. Keeping in view the findings of the Delhi High Court, which binds this Tribunal, we have no option to hold that this Tribunal can interfere in the present applications.

7. The contention of the applicants basically was that the applicants had been working for more than five years on deputation. They are deemed to have been absorbed and, therefore, the impugned order cannot be sustained.

8. There were conflicting decisions of this Tribunal and in these petitions, the matter was referred to the Full Bench of this Tribunal. The following questions have been posed:

“1. Whether the applicant can be deemed to have been absorbed in I.B. under the respondents irrespective of the instructions on the subject?

2. Whether the applicant has a right to be considered for absorption in I.B. without the consent of his parent department?

3. Generally.”

9. The answers given by the Full Bench vide the order dated 5.7.2004, are:

“(1) Applicants cannot be deemed to have been absorbed in IB under the respondents irrespective of the instructions on the subject.

(2) The applicants have no right to be considered for absorption in IB without the consent of the parent department in terms of instructions contained in IB OM dated 13.1.1992.

(3) Does not arise.”

10. Keeping in view the answers which had already been given and considered by the Full Bench, which being a Larger Bench, binds this Bench, we

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hold that applicants cannot be deemed to have been absorbed in the IB. They have no right of being considered without the consent of the parent department.

11. In that view of the matter, there is a precious little for the applicants to urge by the learned counsel for the applicants that certain other persons have been absorbed but the same cannot be taken to be a discrimination. Each case has its own merits. If some other persons have been absorbed, that does not imply that every person on deputation has deemed right to be absorbed.

12. No other arguments have been advanced.

13. For these reasons, both the Original Applications, must fail and are dismissed. However, since during the pendency of the present applications, the operation of the impugned orders had been stayed, we direct that the applicants shall not be repatriated for a period of four weeks from today.

S.K.Naik
(S.K.Naik)

Member (A)

V.S.Agarwal

(V.S.Agarwal)

Chairman

/NSN/