

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 1439/2021
CM Nos. 5766, 5767, 6018,
6019 & 6127 of 2021

Pronounced on : 22.10.2021

Talvir Singh

.... Petitioner/Appellant(s)

Through:- Mr. Rajesh Bhushan,
Advocate

V/s

Union of India and others

.....Respondent(s)

Through:- Mr. Vishal Sharma, ASGI
Mrs. Monika Kohli,
Advocate

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. Petitioner while working as Constable in the Border Security Force (BSF) was sent on deputation to Central Bureau of Investigation (in short 'CBI') Jammu, pursuant to CBI Headquarter letter dated 01.03.2013.

The deputation of the petitioner was initially for a period of three years but the same was extended for further period of two years.

02. The petitioner, subsequently, appeared in the Personal Assessment Test on 09.09.2017 for his absorption in the CBI, and was successful in the screening test and, accordingly, shortlisted for the same.

Thereafter, the petitioner applied for extension of his deputation period vide representation dated 08.12.2017 and respondent No. 4 informed the CBI Headquarter that the petitioner's case is under consideration for absorption and NOC has been sought from parent department. The case of the petitioner alongwith some other persons was recommended by the B.S.F on 18.01.2019 to respondent No. 1 for grant of permanent absorption in CBI w.e.f 18.10.2017, subject to relaxation. The respondent

No. 4, however, on 13.07.2021 issued order for repatriation of 69 Constables of CAPF including petitioner as the MHA had conveyed refusal of NOCs.

03. The petitioner has assailed the order of his repatriation to his parent department dated 13.07.2021 and also the order No. 254/2021 dated 14.07.2021 directing him to report for further duties to Director General, BSF, New Delhi. He is aggrieved of these orders on the ground that the same are in violation of Articles 14 and 16 of the Constitution of India. The petitioner also submits that he has rendered outstanding service for more than 08 years with the respondent-CBI and has also cleared the Personal Assessment Test for his permanent absorption. He, accordingly, applied for extension of his deputation to the concerned authorities for which NOC was given by the parent department and a recommendation was also made in his favour. According to him, the respondent-CBI have not adopted a uniform criteria for absorption of all the eligible persons in their organization. They have been absorbing similarly situated persons but have denied the same benefit to the petitioner. The respondents all along have been regularizing the overstay of the similarly situated persons by granting post facto NOC also in their favour for permanent absorption but have arbitrarily refused the same to the petitioner. It is also submitted that the petitioner continued working with the CBI even after the expiry of his tenure on 24.08.2018, therefore, had a legitimate expectation of his absorption in CBI.

04. In the objections, the stand of the respondent-CBI is that the petitioner does not have any inherent right of permanent absorption with

their organization. It is further submitted that petitioner joined CBI, ACB, Jammu on 29.04.2013 as Constable from Border Security Force on deputation basis for an initial period of 03 years and subsequently, requested that his deputation tenure be extended for further two years i.e. 4th and 5th year up to 2018. His deputation tenure was accordingly extended for further one year i.e. 4th year upto 28.04.2017 and for 5th year i.e. upto 28.04.2018. The tenure of the petitioner expired on 24.08.2018 but his case for permanent absorption in CBI was under process, the petitioner, therefore, submitted an application for extension of his deputation tenure for further 6th and 7th years also. The CBI Headquarter New Delhi, however, vide its circular dated 03.09.2019 directed to repatriate all overstaying personnel from CBI on completion of approved deputation tenure. In this regard, clarification was sought regarding repatriation of petitioner from CBI, Headquarter, New Delhi and vide letter dated 13.07.2021 it was informed that MHA vide communication dated 12.07.2021 has conveyed its refusal for grant of NOCs in respect of 69 Constables including petitioner and directed to repatriate them immediately and also to report back to their parent cadre/organization. In compliance to the CBI headquarter order dated 13.07.2021, the petitioner was repatriated and relieved on 14.07.2021 from CBI, ACB, Jammu and was directed to report to DG BSF, New Delhi.

05. The law regarding deputation is well settled and the necessity of deputation which arises is always in public interest to meet the exigencies of public service. The deputationists do not have any inherent right to be absorbed in the borrowing department. It depends on the consent of the

parent department as well as the department in which absorption is sought.

06. In **‘Umapati Choudhary V. State of Bihar and another, 1999(4) SCC 659**, the Apex court held as under:

“8. Deputation can be aptly described as an assignment' of an employee (commonly referred to as the deputationist) of one department or cadets or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service.....”

07. Similarly in **‘State of Punjab and others V. Inder Singh and others, (1997) 8 SCC 372**, has held that:

“18. Concept of "deputation" is well understood in service law and has a recognised meaning. 'Deputation' has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also

seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be.”

08. Thus, it is well settled that deputationists do not have any inherent right of being considered for absorption in the borrowing department. The consent of both the departments for the same is a condition precedent.

09. In **Kunal Nanda V. Union of India and another, (2000) 5 SCC 362.**

“6.It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation.”

10. The plea of the petitioner is that the impugned order of repatriation being arbitrary, discriminatory is without any basis as it is for the lending department or the borrowing department to decide regarding permanent absorption of any individual working with him. The petitioner has been repatriated by the respondent-CBI alongwith 69 other personnel who have been refused NOC, therefore, the plea of discrimination does not hold any ground. The contention of the petitioner is that he is working

in the organization even after completion of his tenure on 24.08.2018 with consent of the respondents and, therefore, there is a legitimate expectation in his favour of being absorbed in the organization is without any basis as merely by continuation on deputation, it cannot be said that any right has accrued to him. The petitioner has placed reliance on the judgment of Delhi High Court in 'Jaga Ram V/s Union of India and others' in WP(C) No. 5091/2020, however, this judgment is not applicable to the facts of the present case. As per the judgment, it was held that courts should not interfere in the policies being formulated by the Government. It was observed that no policy has been framed and accordingly, a direction was issued to the Government to frame policy. In the present case, the respondents are relying upon the policy guidelines dated 22.11.2016 i.e., Policy guidelines and deputation of combatised CAPFs and AR personnel in other organizations.

11. The Ministry of Home Affairs has issued policy guidelines for deputation of combatised CAPFs and AR personnel in other organizations with regard to absorption and para 18 being relevant is reproduced as under:

“18. A requisition made by the borrowing Organization/Department or willingness tendered by a person for absorption, will not automatically confer any right on an individual or the borrowing department to claim absorption as a matter of right. The discretion to accept or reject, a request for absorption will be exclusively with the parent CAPF or the cadre controlling authority, i.e., Ministry of Home Affairs as the case may be. In the case of Subordinate Officers and Other Ranks, the proposals for absorption shall

be decided by the Director General of the CAPF concerned in consultation with Ministry of Home Affairs.”

The policy guidelines in paragraph 19 also provides that any personnel aggrieved by rejection of permanent absorption in the force can prefer a representation

12. From the perusal of policy guidelines, it is clear that the discretion to accept or reject a request for cadre controlling authority will exclusively be with the parent department i.e. CAPF or Cadre Controlling Authority i.e Ministry of Home Affairs. The Cadre Controlling Authority after considering all aspects conveyed its refusal of NOCs for 69 Constables and directed the respondents to repatriate and relieve them immediately to their parent cadre organization.

13. In view of the above discussion, there is no merit in this petition and the same is, accordingly, dismissed. However, the petitioner is at liberty to make a representation to the Competent Authority as per the Policy dated 22.11.2016 issued by Ministry of Home Affairs.

14. Dismissed alongwith connected application(s).

(Sindhu Sharma)
Judge

JAMMU
22.10.2021
SUNIL-II

Whether the judgment is speaking	:	Yes
Whether the judgment is reportable	:	Yes