

HIGH COURT OF DELHI

Bench: V. Kameswar Rao, J and Anoop Kumar Mendiratta, J

Date of Decision: 19 OCTOBER 2023

W.P.(C) 10707/2018

CM APPLs. 41701/2018, 27876/2019 & 32315/2023

Sudhir Kumar

..... Petitioner

Versus

Central Bureau Of Investigation & Anr.

.... Respondents

Sections, Acts, Rules, and Article:

Recruitment Rules

Article 309 of the Constitution of India

Subject: Service Law - Recruitment and Appointment on Deputation and Absorption - Eligibility of the petitioner for the post of Dy.SP in CBI - Absorption is a policy matter, but justifiable reasons are required for rejection - The petitioner's absorption was not arbitrary - The petitioner's challenge to the selection process and eligibility criteria was not upheld.

Headnotes:

Service Law - Administrative Tribunal - Challenge to order - Petitioner seeks quashing of order of the Central Administrative Tribunal dismissing his application for absorption as Deputy Superintendent of Police (Dy.SP) in the Central Bureau of Investigation (CBI) - Petitioner had joined CBI on deputation - Tribunal's order challenged on the grounds of violation of constitutional principles - Petitioner's prayers include quashing the Tribunal's order and CBI's order for his repatriation. [Para 1-30]

Recruitment Rules - Deputation and Absorption - Eligibility of the petitioner for the post of Dy.SP in CBI - The petitioner applied for the post of Dy.SP on deputation/absorption basis in CBI - He participated in the interview process and was appointed as Dy.SP on deputation basis - The petitioner's challenge to his non-appointment on deputation basis in a previous selection was not raised - The Recruitment Rules allowed for filling 10% of the posts of Dy.SP on deputation or absorption basis - The Interview Board found the petitioner fit for deputation but not absorption - No allegations of malafides against the Board members - The petitioner's conduct showed his preference for deputation - The petitioner's claim for absorption cannot be based on a statutory rule and requires concurrence from multiple parties - The maximum period of deputation is five years, and the petitioner had continued for almost ten years - Absorption is a policy matter, but justifiable reasons are required for rejection - The petitioner's absorption was not arbitrary - The petitioner's challenge to the selection process and eligibility criteria was not upheld - The judgment in Kunal Nanda was cited to support the conclusion - The petitioner's non-absorption was consistent with the Recruitment Rules - The

judgment in Rameshwar Prasad was cited, emphasizing that justifiable reasons are needed for rejection - The Supreme Court's judgment in V. Ramakrishnan did not apply to the petitioner's case - The petitioner's claim was dismissed. [Para 36-49]

Referred Cases:

- Rameshwar Prasad v. Managing Director U.P. Rajkiya Nirman Nigam, Ltd., (1999) 8 SCC 381
- Union of India, Thr. Government of Pondicherry and Anr. v. V. Ramakrishnan, 2005 8 SCC 394
- Kunal Nanda v. Union of India and Anr., (2000) 5 SCC 362
- Ct. Jagdish Prasad Jat and Ors. v. Union of India Ors., 2021 SCC OnLine Del 3825
- Ratilal B. Soni & Ors. v. State of Gujarat & Ors., AIR 1990 SC 112

Representing Advocates:

For Petitioner: Mr. S.N. Kaul, Mr. Shobhin Bali, Mr. Aditya Singh, Advs

For Respondent: Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Mr. Madhav Bajaj, Ms. Shreya V. Mehra and Ms. Anvi Garg, Advs. for R-1 & R-2

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this petition is to an order dated September 12, 2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA 3395/2018 ('OA', for short) whereby the Tribunal has dismissed the OA filed by the petitioner herein, by stating in paragraph 10 as under:

"10. It is well settled that an officer who is on deputation does not have any right to remain in the deputation post once the period of deputation has expired. The applicant has also been relieved from the duty. We do not find any merit in the OA and the same is accordingly, dismissed. However, we direct that the respondents shall permit the applicant to retain the quarter allotted to him, till the end of the academic year, on the normal terms. There shall be no order as to costs."

2. The facts as noted from the petition are that, on October 6, 1988, the petitioner was appointed Sub-Inspector in Central Industrial Security Force ('CISF', for short) and was promoted as Inspector in the year 2002. On May 29, 2013, he joined, on deputation as Inspector, the respondent No.1 organisation / Central Bureau of Investigation ('CBI', for short) effective from May 28, 2013 for a period of five years as per order dated May 29, 2013. On October 16, 2014, respondent No.1 issued a circular for filling up 8 vacancies in the rank of Deputy Superintendent of Police ('Dy.SP', for short) on deputation / absorption basis.

3. It is the case of the petitioner that, on November 5, 2014, he submitted an application for absorption in CBI as Dy.SP. The petitioner was called for interview on September 1, 2015. Thereafter, nothing was heard with regard to the absorption process and the process was said to be pending, when enquired by the petitioner. It is stated that the respondent vide circular dated April 25, 2016, initiated another process for filling up the post of Dy.SP on deputation / absorption basis.
4. On April 26, 2016, the petitioner submitted a representation seeking the details of the earlier absorption process / interview and outcome of his candidature. It is his stand that, on April 26, 2016, not to lose any further opportunity, he submitted his application towards the second absorption process and on November 15, 2016, petitioner was interviewed. On April 28, 2017, petitioner was appointed as Dy.SP on deputation basis up to May 27, 2018. Accordingly on May 3, 2017 the petitioner joined his post of Dy.SP on deputation basis.
5. On November 21, 2017, the petitioner submitted an application for extension of his deputation for a further period of two years. Upon seeking NOC by the respondent / CBI for the petitioner's extension of deputation, the parent department gave NOC up to May 27, 2019. It is also his case that between June 7, 2018 to August 15, 2020, he made representations regarding his non-absorption in both the selection processes. He resorted to RTI application for disclosure of information towards these two absorption processes. Thereafter, petitioner was supplied with information under the RTI Act, but no information was provided to him with regard to 2014 selection process. In reply to RTI application towards the 2016 absorption process, it revealed that, though none of the Dy.SP candidates were found suitable for absorption, though they were found suitable for deputation.
6. The case of the petitioner is that, instead of addressing the grievances of the petitioner or responding to his representations, the respondent No.1 vide order dated September 06, 2018 repatriated the petitioner to his parent organization on the ground that, his further extension was not received. It was his case that other similarly situated officers continued on deputation despite the fact that their status of approval from respondent No.2 (DoP&T) is the same. Accordingly, the petitioner on September 10, 2018, had filed OA before the Tribunal seeking his absorption with the respondent No.1 / CBI.
7. On September 10, 2018, while the OA of the petitioner was pending before the Tribunal, the respondent has handed over a letter dated September 7, 2018, on the strength of the impugned order dated September 6, 2018,

informing the petitioner that, he has been relieved w.e.f. September 7, 2018 with a direction to report to the AIG, CISF. On September 12, 2018, the Tribunal dismissed the OA filed by the petitioner.

8. The petitioner preferred a writ petition before this Court being *W.P.(C) 9941/2018* seeking quashing of the Office Order dated September 6, 2018 and inter alia seeking a prayer that he may not be repatriated. On September 10, 2018, the writ petition was listed before this Court. This Court granted *status quo* with regard to the post in favour of the petitioner. On October 3, 2018, oral submissions were made by the respondents that, no permission was required for two officers from the DoP&T, as they were non-gazetted officers. It was also informed to DoP&T that, after September 6, 2018, that permission is not required as the petitioner has been repatriated to his parent department vide order dated September 6, 2018. The writ petition was disposed of extending *status quo* till October 8, 2018 and giving liberty to the petitioner to file a fresh petition challenging the order dated September 12, 2018, in OA 3395/2018 passed by the Tribunal.
9. The case of the respondents is that the petitioner who was working as Dy.SP on deputation basis, has impugned the order of the Tribunal dated September 12, 2018 and order dated September 6, 2018 issued by the CBI, Head Office, New Delhi, has been relieved from the respondent No.1 / CBI. Accordingly, the challenge to the orders is totally misconceived and untenable.
10. The respondents stand is also that the petitioner joined CBI as an Inspector on deputation basis w.e.f May 28, 2013 for a period of five years. The petitioner vide his application dated November 5, 2014 applied for the post of Dy.SP in CBI on absorption basis against the vacancy of deputation / absorption basis notified vide a circular issued in 2014. But the petitioner and other deputationist were not found suitable for absorption. Thereafter, another advertisement was published by the respondent No.1, on April 25, 2016 to fill up the vacancies under deputation / absorption basis, against which the petitioner had also applied to which the CISF / parent organisation of the petitioner had given NOC for deputation / absorption, on October 10, 2016. However, the Interview Board had found none of the officers suitable for absorption. The Board recommended for the continuance of the officers on deputation basis. It is also stated that Dy.SP being Group-A Gazetted post, the approval of the Competent Authority being Department of Personnel and Training ('DoP&T', for short) was mandatory.
11. Accordingly, DoP&T vide its letter dated March 30, 2017, had conveyed its approval for the continuance of the petitioner as Dy.SP in CBI on deputation

basis. An order for continuation of petitioner on deputation basis was issued on April 28, 2017 and the petitioner had joined CBI as Dy.SP w.e.f May 3, 2017, on deputation basis for the total combined period of five years, i.e., till May 27, 2018.

12. It is the respondents stand that, since the petitioner's total approved deputation tenure of five years got completed on May 27, 2018, the respondent No.1 requested the MHA for extension of the deputation period of the petitioner for a further period of two years from May 28, 2018. However, the MHA vide its letter dated February 15, 2018 conveyed that the NOC granting the extension of the petitioner's deputation tenure can be only for one year, i.e., May 28, 2018 to May 27, 2019. The NOC was received from the MHA. Accordingly, a request was made to the DoP&T for the approval of extension of deputation period of the petitioner.
13. It was the respondents stand that because the decision of DoP&T for extension of the petitioner's deputation had not been received, the matter was followed and the petitioner was repatriated to his parent department vide CBI Head Office order dated September 6, 2018 and, the DoP&T was accordingly informed, not to process the matter any further. The DoP&T accordingly, dropped the proposal of extension of deputation period. It is also stated that the reasons for repatriation has been stated in the repatriation order itself, issued on September 6, 2018, that his repatriation is on completion of his approved deputation tenure and further extension of deputation period has not been received from the Competent Authority.
14. In this background, it is stated that the petitioner is working in CBI on the basis of this Court's order dated October 8, 2018, and not on the basis of NOC conveyed by his parent department, which expired on May 27, 2019, i.e., the NOC for 6th year extension. No further process has been initiated for obtaining the NOC for 7th year.
15. Mr. S. N. Kaul, learned counsel appearing for the petitioner stated that the impugned action of the respondent No.1 repatriating the petitioner back to his parent Organisation and not absorbing him, is *ultra vires* to Article 14, 16 and 309 of the Constitution of India, and that the petitioner was qualified for absorption by securing top / meritorious position as per the laid down criteria based on Recruitment Rules in the two consecutive recruitment processes, is unjust.
16. Furthermore, he stated that, it is a settled position of law through various judgments of the Supreme Court and this court that, absorption based on statutory rules having force of law, becomes a matter of right.
17. According to him, the Recruitment Rules of CBI framed under proviso to Article 309 of Constitution of India specifically stipulate for absorption as one of the prescribed modes of appointment to the post of Dy.SP. It is based on

the Recruitment Rules, the selection criteria was framed before hand by the respondents to award marks on four grounds, which is evident from the minutes of the Interview Board proceedings.

18. Mr. Kaul has stated that the petitioner stood first in the merit list, and once these rules and policy are framed and; it becomes the right of the petitioner to get absorbed, consequent upon being successful in the evaluation process, any deviation or departure from such rules at a later stage is illegal and bad in law. He also stated that, despite petitioner having stood first in the order of merit and in addition securing first position in the orientation course, respondents did not appoint him and in the facts issued letters of appointment dated February 22, 2016, to those candidates, who stood lower in the order of merit list. He also stated that the respondents concealed the result which was obtained through RTI from respondent No.2, at a later stage.
19. He also stated that, if the petitioner is fit for being appointed as Dy.SP on deputation basis, he is fit for absorption also.
20. He stated that, neither the Interview Board nor the Appointing Authority is empowered to travel beyond the Recruitment Rules at a later stage by arbitrarily nullifying the absorption process. In the interview conducted during the year 2016, the petitioner was again found meritorious and his name was included in the merit list. But to the utter shock and dismay of the petitioner, despite fulfilling and qualifying on merit for absorption, the petitioner was arbitrarily appointed as Dy.SP on deputation basis, which is totally in violation of his option, merit and the provisions of the Recruitment Rules.
21. He submitted that, in both the recruitment processes, beginning from the vacancy circulars which were issued as per Recruitment Rules till the completion of the process, each and every step, i.e., advertisement, application, eligibility criteria, NOC of parent department, selection / suitability criteria and preparation of merit list are undisputedly for the absorption. According to him, there is a gross violation of the statutory Recruitment Rules by the respondents, as the respondents cannot subsequently at a later stage arbitrarily observe that the petitioner does not appear suitable for the same and deny appointment under the prescribed mode which he has opted and successfully qualified.
22. Mr. Kaul has stated that the respondent's action has nullified the absorption process which is arbitrary and unconstitutional and is misuse of exemption from mandatory UPSC consultation. In a similar process of selection, which was undertaken by the UPSC in the year 2012, three candidates including Inspector Sh. N.R. Meena were selected and absorbed as Dy.SP in the

respondent No.1 / CBI. Hence, it becomes a legitimate expectation of the petitioner for equal treatment, when he has qualified the suitability criteria for absorption on merit and expects to be absorbed in the respondent No.1 / CBI.

23. He submitted that, other similarly situated officers continued on deputation despite the fact that their status of approval from respondent No. 2 was same as that of the petitioner. He also stated that the similarly placed / situated deputationist officers were granted approval for extension vide DoP&T letter dated June 1, 2020 and that the respondent No.1 / CBI waited for 20 months for the approval of extension from DoP&T. He also submitted that the impugned action of the respondents is arbitrary and liable to be set aside and that the prayers made need to be granted by setting aside the order of the Tribunal.

24. In support of his submissions, Mr. Kaul has relied upon the following judgments on the following propositions:-

- (a) ***Rameshwar Prasad v. Managing Director U.P. Rajkiya Nirman Nigam, Ltd., (1999) 8 SCC 381***, wherein the Supreme Court held that, once the policy is accepted and rules are framed for absorption, rejection must be for justifiable reasons. Respondent 1 cannot act arbitrarily by picking and choosing the deputationists for absorption. ***Union of India, Thr. Government of Pondicherry and Anr. v. V. Ramakrishnan, 2005 8 SCC 394***, wherein the Supreme Court held that, when the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such grounds, for example, unsuitability or unsatisfactory performance.

25. On the other hand Mr. Kirtiman Singh, learned CGSC, apart from taking us through the factual position has also stated that the petitioner has no right to seek absorption as the petitioner was on deputation and remained on deputation and was never found suitable for absorption in respondent No.1 / CBI by the Competent Authority. He also stated that the present petition has become infructuous on the expiry of the NOC approved by the parent department which was only upto May 27, 2019 (6th year) and no further NOC was sought by the respondent No.1 / CBI. Hence, the stay of the petitioner in the CBI beyond the 6th year is against the rules. Moreover, the stay of the petitioner in CBI beyond the prescribed period is not the subject matter of this writ petition.

26. According to Mr. Singh, petitioner accepted the offer of appointment issued by CBI, for deputation and not for absorption. The

petitioner being a deputationist has no legal right to remain posted in the borrowing department after the expiry of the approved tenure of deputation.

27. In support of his contention, he has relied upon the following judgments for the following propositions:-

(a) ***Kunal Nanda v. Union of India and Anr., (2000) 5 SCC 362;*** wherein the Supreme Court held that, unless the claim is based on any statutory rule, regulation or having the force of law, a deputationist cannot assert and succeed in any such claim for absorption.

(b) ***Ct. Jagdish Prasad Jat and Ors. v. Union of India Ors., 2021 SCC OnLine Del 3825,*** wherein a Co-ordinate Bench of this Court has held that the position of law is well settled with regard to absorption, that absorption cannot be claimed as a matter of right as there has to be a consensus between the parent department and the department in which absorption is sought.

28. He stated that the present petition filed by the petitioner be dismissed and the order of the Tribunal be restored.

29. Having heard the learned counsel for the parties and perused the record, at the outset we may state that this petition has been filed with the following prayers:-

- “i. Issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof, for quashing of impugned order dated 12.09.2018 passed in O.A. No. 3395 of 2018; ii. Issue a writ of certiorari or any other appropriate writ, order or direction in the nature thereof, for quashing of impugned office order dated 06.09.2018 no. 1412 of 2018 issued by Administrative Officer, CBI, Head Office, New Delhi; and*
- iii. Direct the respondent not to repatriate the petitioner;*
- iv. Direct the Respondent to absorb the Petitioner as DSP, CBI as the NOC has already been received;*
- V. pass such other order or directions as may be deemed fit and proper in the facts and circumstances of the case in favour of the petitioner and against the respondent.”*

30. The prayers are for quashing the order of the Tribunal dated September 12, 2018 in O.A. 3395/2018, whereby the Tribunal has dismissed the O.A. filed by the petitioner wherein he had sought his absorption as Dy.SP in CBI subject to NOC of his parent department and also order dated September 06, 2018 issued by CBI relieving the petitioner from CBI to join his parent office, CISF. The later order was passed after the dismissal of the O.A. by the Tribunal and during the

pendency of the earlier writ petition being W.P.(C) 9941/2018, when there was no status quo order.

31. Having said that, the facts that are noted from the record are that the petitioner joined CISF as SI and was promoted as Inspector, in the year 2002. The petitioner was taken on deputation as Inspector on May 28, 2013 for a period of five years. It is his case, that CBI issued a vacancy circular for filling up 08 vacancies in the rank of Dy.SP on deputation/absorption in CBI. The petitioner being eligible had applied for the same vide his application dated November 05, 2014. 32. On August 13, 2015, he was called for interview to be held on September 01, 2015. It is also his case that he vide letter dated April 25, 2016 had sought information on the benchmark/marks obtained by him and other four candidates. It is also noted that on April 25, 2016, the respondent, CBI had issued another circular for filling the post of DSP on deputation/absorption basis in CBI.

33. The petitioner vide his application dated April 26, 2016 had applied for absorption as Dy.SP in CBI. He was accordingly called for interview on November 15, 2016. Pursuant thereto an office order dated May 05, 2017 was issued appointing the petitioner as Dy.SP on deputation basis up to May 27, 2018.

34. Suffice to state, the petitioner was appointed as Dy.SP in CBI on deputation basis and continued as such till he was relieved on September 06, 2018 to report to CISF.

35. It is pertinent to mention here that the Home Ministry granted NOC for continuance of the petitioner on deputation basis till May 27, 2019. Similarly, DoP&T had also given NOC to the petitioner for deputation.

36. The plea advanced by Mr. Kaul is with regard to the selection undertaken by the CBI in the year 2014 for which the petitioner was called for interview on September 01, 2015 though he had applied for deputation / absorption and was found fit for deputation and was placed at serial no. 1 was not appointed on deputation basis. In fact, persons who were below in the merit list were appointed on deputation basis for the reasons best know.

37. This submission of Mr. Kaul though looks appealing on first blush but on a deeper consideration it is found that the petitioner had not challenged the action of the respondents not appointing him as Dy.SP on deputation basis in the year 2015 on any ground including the ground

that persons lower in merit were appointed by approaching the Court of law. In fact, he on the issuance of a circular dated April 25, 2018 by CBI for appointment as Dy.SP on deputation/absorption basis, had without demur applied through his application dated April, 26, 2016 for the said post. He participated in the interview process held on November 15, 2016 and was found fit for being appointed as Dy. SP on deputation basis and in furtherance thereto an appointment letter dated April 03, 2017 was issued to him, which post he joined on April 28, 2017. So in that sense, he cannot now agitate his non appointment as Dy.SP even on deputation basis, in respect of interview held on September 01, 2015.

38. One of the submissions of Mr. Kaul is with regard to selection process undertaken by the respondents pursuant to the circular dated April 25, 2016 for which the petitioner appeared for interview held on November 15, 2016 wherein the petitioner was found fit for deputation but not absorption though the recruitment rules clearly stipulating absorption, as illegal being in violation of Articles 14, 16 and 309 of the Constitution of India. In other words, the petitioner having been found fit for deputation, it necessarily means, he is fit for absorption, as well as the criteria for absorption cannot be different. To answer this plea, it is necessary to reproduce the relevant Recruitment Rule which stipulate recruitment to the post of Dy.SP in CBI as under:-

(8)	(9)	(10)	(11)	(12)	(13)
Not applicable.	Two years for promotees.	(a) 80% by Promotion. (b) 10% by deputation (including short-term contract) or absorption. (c) 10% by Limited Departmental Competitive Examination (LDCE).	Promotion: Inspector in Pay Band-2 of Rs.9300-34800 plus Grade Pay of Rs. 4600 with six years' regular service in the grade. Note 1:- Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service. Note 2 :- For the purpose of computing minimum qualifying service for promotion, the service rendered on a regular	<u>Group 'A'</u> <u>Departmental Promotion Committee (for considering promotion and confirmation) consisting of:</u> 1. Chairman or Member, Union Public Service Commission Chairman. 2. Additional Secretary or Joint Secretary (Vigilance), Department of Personnel and Training Member 3. Joint Director and Special Inspector General of Police, Central Bureau of Investigation Member 4. Deputy Inspector General of Police or	Consultation with the Union Public Service Commission necessary on each occasion.

From the above, it is clear that the rule contemplate 10% of the posts of Dy.SP in CBI shall be filled on deputation (including short term contract) or absorption.

39. So in that sense, discretion is bestowed on the authority for filling up the post of Dy.SP to the extent of 10% quota, either by deputation or on absorption basis. We find from the minutes of the interview board the following has been stated for not absorbing the petitioner in CBI:-

“May kindly refer the matter on pre-page and F/FR

2. *Matter under consideration is a proposal from CBI seeking approval of the competent authority for induction of DySP on deputation/absorption basis.*

3. *As per the RRs, 2013 for the post of Dy.SP in CBI, 10% of the vacancies are to be filled by inducting officers on deputation (including short term contract) or absorption basis. Also, as per the notification issued by this Department vide F.No.213/3/2010AVD-II dated 22/11/2013, CBI has been exempted from consultation with UPSC for the recruitment to the post of Dy.SP for a period of three years.*

4. *For the year 2016, there was 10 vacancies of DSP under deputation (including short term contract) or absorption basis quota. To fill up these vacancies, advertisement vides. Vacancy Circular No.DP/Pers.I/2016/1273/8/01/2016/Pers.I dated 25.4.2016 was published in Employment News (14 to 20 May 2016). The vacancy circular was also issued to all ministries/departments and also placed on CBI Web-site to give wide publicity.*

5. *In response, 211 applications were received by CBI. The applications were scrutinized by a Screening Committee. The Screening Committee shortlisted 64 candidates as eligible. Further, 5 BSF candidates among the applicant, were dropped from the list due to non-receipt of data/record from their parent department. Thus, 59 candidates were interviewed on 15.11.2016 and 16.11.2016 by an Interview Board duly constituted under the Chairmanship of Shri Y.C. Modi, Addl. Director/CBI and including DS(V-II), DOPT as one of its members.*

6. *The Interview Board assessed the candidates on knowledge of Law, Procedure and Domain knowledge, personality including communication skills, past performance in CBI, experience in inquiry or intelligence investigation work including ACR gradings during last 05 years, bio-data.*

7. *Based on a thorough examination during interview and after careful consideration of the qualifications, experience, professional skills and APAR of the candidates, the Board observed that no candidates appeared suitable for absorption in CBI at this stage. The Interview Board has recommended the names of following 10 candidates in order of merit for appointment as DSP on deputation basis only to fill up the above vacancies and 02 candidates as Reserve Panel:*

(Recommended Panel: 10 Candidates)

<i>SN</i>	<i>Name of the officer/S/Sh</i>
<i>1</i>	<i>Sunit Kumar, Inspector, Customs & Central Excise</i>
<i>2</i>	<i>K. Jayaraj, Assistant manager, ITDC</i>
<i>3</i>	<i>Kunal Prakash, AAO, East Central Railway, Hajipur</i>
<i>4</i>	<i>N.K. Jain, Manager, AIR</i>
<i>5</i>	<i>Rajesh Kumar, Supdt, Anti Evasion-II Service Tax-V, Mumbai</i>
<i>6</i>	<i>Gajendra, Supdt. Central Excise, Customs & Service Tax Gurgaon</i>
<i>7</i>	<i>Ashwani Kumar Gupta, ACIO-I IB, New Delhi</i>
<i>8</i>	<i>S.S. Bhadoriya, DSP, SRPF</i>
<i>9</i>	<i>Naveen Kumar, AO, O/o the Pr.AG, WB</i>
<i>10</i>	<i>Sudhir Kumar, Inspector of CISF</i>

Reserved Panel (02 Candidates)

SN	Name of the officer S/Sh
1	Sanjay Kumar Bhatt, Chief Manger of Central Bank of India
2	R. Vijayalakshmi, Supdt. Of Central Excise, Chennai

8. *The Interview Board has recommended that an offer of the appointment may be made to the candidates only on deputation basis. A copy of the minutes of the Interview Board may be perused on pp.279-288/).*

9. *After recommendation of the Interview Board, CBI has undertaken verification of the candidates, NOC from the parent department etc. CBI has now stated that only 03 candidates have been presently found suitable for their induction in CBI on deputation basis. Based on this the present status of all the candidates may be enumerated as under:*

SN	Name of the officer S/Sh	Whether Suitable/ Not Suitable / Present Status
<i>Recommended Panel</i>		
1	Sunit Kumar	NOC for deputation from parent cadre is awaited
2	K. Jayraj	Not Suitable
3	Kunal Prakash	NOC for deputation from parent cadre is awaited
4	N.K. Jain	Not Suitable
5	Rajesh Kumar	Verification report is awaited
6	Gajendra	Not Suitable
7	Ashwani Kumar Gupta	Suitable (Fit for Induction)
8	S.S. Bhadoriya	Suitable (Fit for Induction)
9	Naveen Kumar	NOC for deputation from parent cadre is awaited
10	Sudhir Kumar	Suitable (Fit for Induction)
<i>Reserved Panel</i>		
1	Sanjay Kumar Bhatt	NOC for deputation from parent cadre is awaited
2	R. Vijayalakshmi	Not Suitable

10. In view of the above, as the post of Dy. SP in CBI is a Group „A“ post in the pre-revised pay scale of PB-3 of Rs.15,60039,100/- + Grade Pay of Rs.5400, the appointing authority to which is the President of India, file may be submitted for soliciting kind approval of MOS(PP) for induction of the following three officers as Dy.SP in CBI on deputation basis w.e.f. the date of assumption of charge of the post:

SN	Name of the officer/S/Sh
1	Ashwani Kumar Gupta, ACIO-I, IB, New Delhi
2	S.S. Bhadoriya, DSP, SRPF
3	Sudhir Kumar, Inspector of CISF

(NARENDRA)/27.03.2017 US(V-II)”

40. The aforesaid will reveal that the Board had also considered the petitioner for absorption but like others he was also not found suitable for absorption. It had recommended the petitioner for appointment as Dy.SP on deputation, which is also one of the mode for recruitment to the post of Dy. SP under the Recruitment Rules. In that sense, the Recruitment Rules have been acted upon.

41. The conclusion drawn by the interview board not to absorb the petitioner cannot be challenged unless there are allegations of malafides against the Members of the Board that for extraneous reasons, they have not absorbed the petitioner. It is not such a case here. It is also not the case of the petitioner that some of the persons named in the panel of 10 candidates have been absorbed as Dy.SP. In fact, the record of this petition shows that the last absorption made on the post of Dy.SP was in the year 2012 and not thereafter. That apart, the petitioner himself on November 21, 2017 had applied for his continuance on deputation and not on absorption basis, hence, the petitioner cannot now contest his non-absorption on any ground. He is bound by his own conduct / acts seeking continuance on deputation.

42. A perusal of the O.A. filed by the petitioner reveal that the same was filed seeking absorption because the Recruitment Rules provided for absorption and also there is nothing against the petitioner which may have a bearing on his absorption. The plea, also appears to be that persons without any NOC from the DoP&T continued on deputation beyond five years i.e., for six years / seven years and as such the action of the respondents is discriminatory. Such a plea is not sustainable, today, as the petitioner on the strength of the interim order passed by this Court has continued for almost ten years on deputation. 43. It is a

settled position of law, in terms of the judgments of the Supreme Court that a deputationist cannot continue to hold the post in perpetuity when the instructions issued by the DoP&T clearly stipulates the maximum period of deputation as five years. In this regard we reproduce paragraph 6 of the judgment in **Kunal Nanda (supra)**, in our conclusion, wherein it is held as under:

*“On the legal submissions made also there are no merits whatsoever. 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. The reference to the decision reported in *Rameshwar Prasad vs M.D., U.P. Rajkiya Nirman Nigam Ltd. and Others [1999 (8) SCC 381]* is inappropriate since, the consideration therein was in the light of statutory rules for absorption and the scope of those rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree need mention, only to be rejected. The stand of the respondent department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e., a degree is a must and essential and that there could no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim.”*
(emphasis supplied)

44. It is also settled position of law that a deputationist cannot seek his absorption as a matter of his right as the process of absorption involves three parties i.e., lending office, absorbing office and the officer himself, whose concurrence is mandatory for absorption. Concedingly, the DoP&T / CBI and the parent office of the petitioner have not given their concurrence for absorption of the petitioner. In this regard, we may refer to the judgment of the Supreme Court in the case of **Ratilal B. Soni & Ors. v. State of Gujarat & Ors., AIR 1990 SC 112** wherein it is held as under:

“It is clear from the above quoted provision that a Panchayat servant who is not reallocated within a period of four years from. April 1, 1963 would be deemed to be finally allocated to the Panchayat Service. The High Court has held that the appellants have not been able to show that they made any such options before March 31, 1967. Even if it is assumed that the appellants gave some sort of option the same having

*not been accepted before March 31, 1967, the appellants stood finally allocated to the Panchayat Service. **The appellants being on deputation they could be revert- ed to their parent cadre at any time and they do not get any right to be absorbed on the deputation- post.** We see no infirmity in the judgment of the High Court and as such we*

dismiss the appeal. There shall be no order as o costs.”

(emphasis supplied)

45. At this stage we may also state the counsel for the petitioner had referred to the following judgment in the case of **Rameshwar Prasad (supra)** to contend, if the statutory rules provides for absorption then the case of the employee must be considered for absorption and if absorption is rejected, the same must be for justifiable reasons. The ratio of the said judgment has been followed in this case as the case of petitioner was also considered for absorption but was not found suitable for absorption. Hence, in that sense there is a compliance of the Recruitment Rules. Moreover, the Supreme Court in paragraph 17 has held as under:-

“17. In our view, it is true that whether the deputationist should be absorbed in service or not is a policy matter, but at the same time, once the policy is accepted and rules are framed for such absorption, before rejecting the application, there must be justifiable reasons. Respondent 1 cannot act arbitrarily by picking and choosing the deputationists for absorption. The power of absorption, no doubt, is discretionary but is coupled with the duty not to act arbitrarily, or at the whim or caprice of any individual.”

(emphasis supplied)

In the said judgment, the Supreme Court has held that the respondent No.1 had acted arbitrarily by picking and choosing the deputationist for absorption. It is not such a case here. So, there is no arbitrariness in not absorbing the petitioner.

46. In **V. Ramakrishnan (supra)**, the Supreme Court was concerned with the facts that the respondent therein was appointed on deputation as Chief Engineer of Public Works Department, Government of Pondicherry on short term deputation on temporary basis pending selection of the regular incumbent by the UPSC w.e.f., July 01, 2004. He was repatriated to his parent department on February 14, 2005 and relieved his duty on the same day. The respondent challenges the same before the Central Administrative Tribunal. R. Sundar Raju, the appellant in the connected appeal before the Supreme Court, the Superintending Engineer having six years experience was holding current charge of the duties of the post of Engineer at that time had filed an application

questioning the deputation of the first respondent. The Government of Pondicherry has taken a stand that he was not eligible to the post of Chief Engineer as he did not fulfill eligibility criteria therefore, the O.A. was dismissed on the ground of ineligibility to hold the said post and furthermore, regular appointment in terms of the Rules was yet to take place. In the meanwhile, draft Rules were framed altering the eligibility criteria as regards experience for the post in terms thereof the eligibility criteria of five years experience was reduced to three years. R. Sundar Raju was promoted on April 27, 2004 purely on adhoc basis. The first respondent before the Supreme Court questioned the appointment by filing an application for amendment of the original application on June 23, 2005 before Central Administrative Tribunal on or about April 08, 2005. R Sundar Raju was recommended for promotion by the Departmental Promotion Committee as Chief Engineer and he was promoted so purely on ad-hoc basis. On or about April 21, 2005, first respondent was posted on CPWD, New Delhi as Director of Works (SR), Chennai.

The O.A. filed by the first respondent was allowed by the order dated July 14, 2005. Both the appeals preferred before the High Court of Madras, were dismissed. The Court held that the first respondent sent on deputation pending selection of regular incumbents by the UPSC. Till such regular appointment is made he had a right to hold the said post. So long, the draft rules were not approved by the competent authority i.e., UPSC, R. Sundar Raju was ineligible to be appointed as Chief Engineer, Pondicherry. The Supreme Court in paragraph 32, 34 and 36 has held as under:-

“32. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the terms of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post-haste manner also indicates malice.

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34. The matter relating to appointment through the Government of Pondicherry Public Works Department Group „A“ Post of Chief Engineer Recruitment Rules,

1996 was governed in terms of a notification dated 1112-1996. The said notification was issued by the Government of Pondicherry in exercise of its power under the proviso to Article 309 of the Constitution. Rule 3 thereof prescribes that the method of recruitment thereto shall be as specified in columns 5 to 14 of the Schedule appended thereto. In terms of the Schedule, the post of Chief Engineer was a selection post and one of the methods for recruitment as envisaged in column 11 thereof is that the same post may be filled up by direct recruitment or by promotion or by deputation/transfer. The said post could be filled up by transfer on deputation in terms of column 12 of the Schedule appended thereto. The appointment of the first respondent to the said post was on short-term deputation/temporary basis till a regular appointment is made.”

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36. The Tribunal and the High Court, therefore, cannot be said to have committed any error in passing the impugned judgments.”

47. To be noted the judgment has no applicability in the facts of this case.
48. We do not see any merit in the petition, the same is dismissed.

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49. In view of our finding above, all the pending applications have become infructuous.

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