

SUPREME COURT OF INDIA

Kunal Nanda

Vs.

Union of India

C.A.No.2895 of 2000

(S. Saghir Ahmad and Doraiswamy Raju, JJ.)

24.04.2000

JUDGEMENT

RAJU, J.:-

1. Special Leave granted.

2. The appellant, who lost before the Tribunal as well as the High Court, has come up before this Court challenging the judgment of the High Court declining to interfere with the order dated 16-4-99 of the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No. 241 of 1999 which, in turn, repelled a challenge to the repatriation of the appellant to his parent department. The appellant, a member of CRPF and serving as an Assistant Sub-Inspector in the said parent department w.e.f. 1-1-87, joined the service of CBI on deputation in the same capacity as ASI on 1-8-91. He continued to work as ASI on the deputation terms for the initial period, which came to be extended from time to time with the mutual consent of the lending and borrowing department. In the year 1994, no doubt, the borrowing department expressed an inclination for permanent absorption in the CBI and sought for the concurrence of the CRPF to which, it appears, the lending department

also conveyed its clearance.

3. It may be noticed at this stage that while on such deputation in the CBI, the appellant was also appointed as Sub-Inspector on 1-6-95 and in his parent department also he was promoted as such. There are no specific statutory rules as such governing the question of absorption of a deputationist. On the other hand, the said subject is governed by departmental instructions and circular orders as per which the qualification and experience of the Officers to be selected should be comparable to those prescribed for direct recruits to such posts where direct recruitment has also been prescribed as one of the methods of the appointment in the Recruitment Rules. In consonance with such procedure, the appellant was asked to undertake a written test. He made a formal application disclosing his credentials and on the basis of his performance in the written test, the record relating to last five years' A.C.Rs. (Part-1 - Personal Data) for the period 1993-94 to 1997/98 in which the appellant mentioned about his basic educational qualification as B.A. and his performance in the interview, the Screening Committee constituted for the purpose recommended the absorption of the appellant in the CBI as Sub-Inspector. But when the appellant was asked to produce the documents in original in support of his educational qualifications etc., the appellant started explaining that for a person of his standing in service the basic educational qualification of passing Senior Secondary Examination is enough and passing of degree examination, may not be insisted upon. This was not only contrary to his earlier representation that he was a graduate but the Screening Committee's recommendation for absorption in CBI was also on the basis that the appellant was a graduate, as disclosed by him. This seems to have been taken also as proof of his doubtful integrity in furnishing wrong information about his educational qualification to be graduation to somehow gain absorption. Since, in terms of the relevant rules the total period of deputation in the rank of ASI/SI including that of deputation in any other cadre/cadre post cannot be for more than five years, the appellant was repatriated to his parent department and also relieved with effect from 31-1-99 (A.N.) with a direction to report for duty to the parent department. Apprehending the same, the appellant moved the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No. 241 of 99.

4. The Tribunal by its order dated 16-4-99, rejected the claim of the appellant holding that he had no vested right to absorption, that he was not totally an indispensable person in CBI and that he being not a graduate cannot be absorbed, under the relevant rules. The grievance of alleged differential treatment has also been found to be not substantiated - in that the absorption erroneously made of N. N. Mishra (a mistaken reference to N. P. Mishra) is sought to be undone by already initiating action in that direction and that the case of N. P. Pandey - a departmental officer has to be treated as regular promotion and not to be treated as a deputationist. It was ultimately held for those reasons that the CBI cannot be compelled to absorb the appellant, and consequently the order of repatriation dated 29-1-99 did not call for any interference. Not satisfied the appellant moved the Delhi High Court by means of Writ Petition (Civil) No. 2533 of 1999 and a Division Bench of the High Court, by an order dated 26-7-99 rejected the same observing that there are no merits in the petition and find no grounds to interfere with the order of the Tribunal under challenge. Relentless, the appellant has approached this Court.

5. Heard the learned Counsel for the appellant and Shri R. N. Trivedi, learned Additional Solicitor

General. The least said about the conduct of the appellant is better for him. The appellant, indisputably, is only a deputationist so far as CBI is concerned and his parent department is only CRPF and his substantive position and appointment is only in that department and ordinarily a deputation, as per governing rules, cannot last for a period more than five years. The frivolous claim that a person like him need not be a graduate for absorption and appointment in CBI, apart, the appellant appears to have rendered himself unreliable by making, to put it in most mild terms, an incorrect representation of his basic educational qualification to be a graduate while factually it is not so, and this one ground, strongly urged is enough to non-suit him. This itself will be sufficient to disentitle him to even continue in the CBI any longer. The Screening Committee which appears to have initially recommended for absorption also seem to have proceeded on the basis of the erroneous representation of the appellant of his basic educational qualification and the copy of the proceedings made available disclose this serious lapse and consequently no advantage can be claimed on the basis of the recommendation, made on a mistaken view of the facts more so, when such mistake was the making of the appellant himself. This assertion of the respondent-CBI Department was specific and reiterated in unmistakable terms from the beginning before the Tribunal (vide paras 4(h) and 5 of the reply) and thereafter before the High Court in the counter filed (vide para 3(e)) and finally before this Court also (vide para 5(c) of the counter filed on behalf of the respondent). Throughout, the response of the appellant to those assertions at various stages was evasive and nebulous and neither direct nor specific in refutation of facts in particular. Being an appeal under Art. 136 of the Constitution of India, this Court will be justified in even rejecting this appeal, on this ground alone.

6. 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 v. M.D., U.P. Rajkiya Nirman Nigam Ltd.*, (1999) 8 SCC 381 : 1999 AIR SCW 3427 : AIR 1999 SC 3443 : 1999 Lab IC 3285 : (1999 All LJ 2220) is inappropriate since, the consideration herein 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.

7. For all the reasons stated above, we see no merit in this appeal which shall stand dismissed. No costs.

Appeal dismissed.