

SUPREME COURT OF INDIA

Mahesh Kumar K. Parmar

Vs.

S.I.G. of Police

(G Pattanaik and B Kumar JJ.)

08.02.2002

ORDER

1. The petitioners are the head constables of the Gujarat Police. When the government decided to set up a separate organisation to be called as Intelligence Bureau, these petitioners were drifted into that bureau way back in the year 1991 by way of deputation. It was indicated also in the scheme that was framed for having this bureau, that recruitment rules will be separately framed for the re-designated posts incorporating, inter alia, the method of filling them. In accordance with the aforesaid provisions in the scheme, that was evolved on 3rd November, 1990, rules came into existence by a notification dated 7.12.1991. Under the rules, more specifically rule 29 (a), it was stipulated that the post in the bureau could be manned by direct selection or by transfer of a person from amongst the persons working in the cadre of head constables, grade-I or grade-II (armed branch or unarmed branch or wireless branch) of the Gujarat subordinate service. The rules also provide for test to be held for selecting people to be brought on transfer from Gujarat police to the Intelligence Bureau. The petitioners were permitted to continue in the Intelligence Bureau even after the enforcement of the rules till 1999, and then were repatriated to their parent organisation. The petitioners' grievance is that since they could be brought into the Intelligence Bureau by way of transfer in accordance with rules, that have been framed in exercise of power under Clause (b) of Section 5 of the Bombay Police Act, and since they have already rendered services in the bureau from 1991 till the date of their repatriation, they must be held to have acquired a right to be permanently absorbed in the bureau or at least a legitimate expectation to be absorbed. The aforesaid grievance of the petitioners not having been acceded to by the competent authority, they approached the High Court. The High Court having dismissed the writ petition, they have approached this Court. Dr. Dhawan, the learned senior counsel appearing for the petitioners vehemently contended that since the petitioners satisfied all the tests and requirements under the rules to be permanently absorbed, there was no rhyme or reason to repatriate them to their parent organisation, particularly when they have rendered services in the bureau from 1991 till the date of their repatriation. According to Dr. Dhawan these petitioners, who instead of being sent back to their parent organisation on expiry of their period of deputation of three years, having been continued in the bureau, even after enforcement of rules, and after having passed certain tests in the bureau, they had the legitimate expectation to be absorbed in the bureau, and therefore, the Court would be in a position to issue a mandamus to the state government for their permanent absorption in the

bureau. Mr. Dholakia, the learned senior counsel appearing for the state, on the other hand, submitted that the rules never contemplated a permanent absorption of the existing employees on deputation, and therefore since the nature of their tenure in the bureau was that of a deputation, the employer has always a right to repatriate the deputationist to the parent organisation, and consequently, question of issuing a mandamus for their permanent absorption does not arise. Having considered the rival submissions and also the relevant provisions of the rules, we do not see any enforceable right with the petitioners for being permanently absorbed though we see sufficient force in the contention of Dr. Dhawan that the appropriate government should be well advised to consider the retention of these petitioners permanently in the bureau having regard to the case that they have already rendered services from 1991 till the 1999, and that the rules itself contemplate to man the post on transfer. While, therefore, we are unable to issue any mandamus to the state government requiring them to permanently absorb these petitioners in the bureau, we would observe that the state government may consider the case of these petitioners for absorption on transfer in accordance with the rules, if they are found otherwise suitable. In that case the administration would be better served on account of experience, the petitioners have already got in the bureau by serving for eight years.

2. The special leave petitions are disposed of.