

(2016) 04 CAL CK 0023
In the Calcutta High Court
Case No : WPCT 419 of 2012

Asish Bhaumik

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Citation : (2016) 04 CAL CK 0023

Hon'ble Judges : Nishita Mhatre and Tapash Mookherjee, JJ.

Bench : Division Bench

Advocate : Bikash Ranjan Bhattacharyya, Achintya Kumar Banerjee, Raghunath Chakraborty, Sk. Faridulla and Anit Kr. Das, for the Appellant; Ranjan Kr. Roy, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—1. The petitioner was appointed as a Constable with the Tripura State Police on 10th November, 1987. By a letter dated 17th April, 2003 he requested that he be sent on deputation to the Central Bureau of Investigation (hereinafter referred to as "CBI"), Kolkata. Approval was granted on 23rd December, 2004 for the petitioner's deputation to the CBI for a period of three years. The petitioner was released from the Police Headquarters, Tripura and he joined the CBI, Special Unit, at Kolkata as a Constable on deputation on 17th January, 2005. The petitioner had exercised his option to draw pay in the Central scale and accordingly he was paid salary in the pay-scale Rs. 3050-75-3950-80-4590, his monthly pay being fixed Rs. 4,350/-. It was made clear by the order issued on 17th February, 2005 with respect to his pay-scale that the petitioner would not be entitled to any benefits applicable in his parent cadre and that he would not be entitled to deputation allowance during his period of deputation.

2. An order was issued on 29th October, 2008 by the Government of Tripura intimating the Director General of Police, Tripura that the petitioner's deputation in the CBI was extended up to 31st December, 2009. This period of deputation

was further extended up to 31st December, 2011.

3. On 24th September, 2009, the CBI issued an office memorandum regarding absorption of Constables in the CBI. This related to those Constables who were already on deputation in the CBI and who had passed the Matriculation Examination. It was a further condition that only those Constables, whose retention in the CBI was absolutely necessary in the interest of the organisation in the long run, should be recommended subject to certain guidelines. These guidelines were as follows:

"(1) Constables must have a minimum education qualification of Matriculation.

(2) Constables must be drawing pay in the pre-revised pay scale of Rs. 3050-75-3950-80-4590/- and revised pay scale of Rs. 5200-20200/- with corresponding Grade Pay of Rs. 2000/-). Constables who are from CPOs and are in receipt of higher pay scale under ACP Scheme are also eligible for absorption.

(3) Constables drawing pay in the pre-revised pay scales higher than Rs. 3050-75-3950-80-4590/- and revised pay scale of Rs. 5200-20200/- with corresponding Grade Pay of Rs. 2000/-) in their parent organizations are not eligible for absorption and their applications/recommendations should not be sent.

(4) It is also made clear that service rendered by Constables in State Police Organisations will not be counted for grant of financial upgradation under ACP scheme on absorption in CBI. The service after absorption in CBI is to be taken into account for the purpose of determining the reckonable service for financial upgradation under ACP scheme.

(5) Constables who will be completing their 4 years of approved deputation in CBI as on 30.11.2009 and are still serving in CBI on deputation will be considered for absorption. The recommendations in respect of such Constables only be sent.

(6) While sending the proposals for absorption a citation in support of their candidature indicating the detailed reasons, rewards/commendations earned by the individual may also be enclosed with the proforma for each candidate separately.

(7) Complete ACR folder pertaining to the period of work in CBI may be sent alongwith recommendations. The integrity of the individual and a vigilance certificate may also be furnished.

(8) Recommendations received with incomplete information are liable to be rejected forthwith without any intimation."

4. The recommendations were expected to be received by 20th October, 2009. The petitioner submitted a representation to the Superintendent of Police, CBI, Special Unit, Kolkata, for considering his name for absorption in the CBI pursuant to the office memorandum that had been issued earlier. He mentioned in that

representation that he was drawing a Basic and Grade Pay of Rs. 9,540/- + Rs. 2,000/- and a total gross pay of Rs. 23,958/- whereas in Tripura, in his parent cadre, he would have been entitled to Basic and Grade Pay of Rs. 9,080/- + Rs. 1,800/- and the total gross pay of Rs. 15,539/- as of that day. He submitted another representation on 15th February, 2010 as there was no response to his earlier representation. He submitted repeated representations thereafter and also met Director, CBI, at New Delhi, requesting him to continue his service in Kolkata as he had a daughter who was an epileptic patient and his presence in Kolkata was necessary to care for her. Ultimately, as there was no favourable response from the respondents, the petitioner filed original application being O.A. No. 2205 of 2010 before the Central Administrative Tribunal, Calcutta Bench.

5. The petitioner pleaded in his application that he was eligible and fulfilled all the criteria and therefore he ought to have been absorbed as a Constable in the CBI. He further pleaded that his service record was without a blemish and therefore there could be no impediment in appointing him permanently in the CBI. He also pointed out that the Superintendent of Police, Special Unit, Kolkata, had recommended his name for absorption by a letter dated 06.07.2010 written to the Headquarters of the CBI, New Delhi.

6. The petitioner's case was heard by the Tribunal and by its interim order dated 22nd December, 2010 it noticed that the petitioner's deputation was not to be extended beyond 31st December, 2010. After considering certain circulars and office memoranda, the Tribunal observed that prayer of the petitioner for absorption had been rejected only on the ground that the period of deputation could not be extended beyond 5 years. In the peculiar facts and circumstances of the case, the Tribunal directed the respondents to reconsider the case of the petitioner for absorption in the CBI and also directed that he would not be repatriated till the next date. After further pleadings were filed, the Tribunal heard the matter finally and by its order dated 26th November, 2012 dismissed the original application. The Tribunal held that under the circulars issued by the Department of Personnel and Training a person could not continue on deputation beyond a period of 5 years and that the petitioner's request for continuing the deputation after the 7th year had rightly been rejected. The Tribunal noted that a deputationist could not claim the right of absorption on a permanent basis in the new department. It was of the view that the absorption of a deputationist was at the discretion of the borrowing organization. Therefore, the Tribunal dismissed the application.

7. Mr. Bikash Ranjan Bhattacharyya, the learned Counsel for the petitioner, submitted that there was no apparent or justifiable reason for denying the petitioner's appointment on a permanent basis in the CBI. He submitted that the petitioner has worked continuously since 2005 with the CBI without there being any complaint against him. When the CBI requires extra hands which is evident from the notification issued by it for absorption, the petitioner has unnecessarily been ignored, according to the learned Counsel. He drew our attention to the

communication dated 24th September, 2009 from the Headquarters of CBI, New Delhi, wherein recommendations were invited for absorption of deputationist Constables in the CBI. According to the learned Counsel the petitioner fulfils all the necessary criteria prescribed in the guidelines reproduced above and therefore, he ought to have been deployed in service with the CBI. He then submitted that the Tribunal had erred in concluding that a deputationist does not have the right of absorption in the CBI. The learned Counsel argued that although ordinarily a deputationist may not have a right to be absorbed in the transferee department, in the present case since the CBI was considering the regularisation of Constables who were on deputation, the petitioner ought to have been regularised in service. Furthermore, according to the learned Counsel, the superior officer of the petitioner had recommended his case for absorption to the Headquarters of the CBI. No weightage had been given by the Headquarters to this recommendation, according to the learned Counsel. The petitioner had been denied absorption in permanent service of the CBI illegally and erroneously urged the learned Counsel.

8. Mr. Ranjan Kr. Roy, the learned Counsel for the respondents, submitted that the criteria listed in the communication dated 24th September, 2009 for recommending deputationist Constables to be posted in the CBI are to be strictly adhered to. He pointed out that those persons who were drawing pay in the pre-revised pay-scales higher than Rs. 3050-75-3950-80-4590 and in the revised pay-scale of Rs. 5,200-20,200 with the corresponding Grade pay of Rs. 2,000/- in their parent organisations were not eligible for absorption in the CBI. He pointed out that the petitioner was drawing Rs. 3,300-7,100 in the pre-revised pay-scale in the parent organisation and therefore, was not eligible for appointment. Furthermore, according to the learned counsel, the policy decision taken by the CBI laying down specific criteria for absorption cannot be tinkered with by anybody. The petitioner having completed four years on deputation was not entitled to the benefit of absorption as a Constable with the CBI. The learned Counsel has produced before us a list of 144 eligible candidates who had applied for absorption in the CBI in the year 2009. He has also produced a list of 42 Constables, who had been absorbed on a permanent basis in the CBI with effect from 25th February, 2010. He submitted that those who were rejected were drawing a higher pay in their parent cadre and therefore, the name of the petitioner had rightly been rejected. He further pointed out that most of those Constables who had been selected for absorption in the CBI on deputation were from the Central Industrial Security Force (hereinafter referred to as "CISF") after considering their training etc. Besides, the petitioner did not meet the eligibility criteria required for absorption in service, contended the learned Counsel. He pointed out that the educational qualification which was required according to the Recruitment Rules for Junior Police posts of the CBI was passing twelfth standard examination whereas the petitioner had only passed his Madhyamik examination and therefore was not eligible for absorption in the CBI.

9. The facts here are not in dispute. The petitioner was employed with the

Tripura State Police. He was sent on deputation on his own request to the CBI, Special Unit, Kolkata, for a period of three years with effect from 17th January, 2005. On completion of the three years, he requested the concerned authorities to permit him to continue in the CBI. Accordingly a fresh order was issued continuing the petitioner on deputation for a further period of two years. While he was on deputation in this extended period, he sought further extension of his deputation on the ground that his daughter was an epileptic patient and was under the treatment of a renowned doctor in Kolkata. While his representations were pending before the authorities, the CBI had decided on 24th September, 2009 to absorb Constables who were on deputation into the CBI. Accordingly, the petitioner submitted his representation on 30th June, 2010, and his case was recommended by his superior officer on 6th July, 2010. However, the application of the petitioner and the representation was sent after the last date for receiving recommendations under the scheme for absorption of deputationist which was 20th October, 2009.

10. There is no dispute that the petitioner was drawing a Basic salary of Rs. 3,300-7,100 in his parent department, i.e., Tripura State Police. When he was sent on deputation, he opted to draw the pay-scale fixed by the CBI, i.e., Rs. 3,050-4,590 and was thus drawing a pay-scale of Rs. 4,350/-.

11. The contention on behalf of the respondents is that the petitioner would have drawn a higher salary in his parent department than what was envisaged for those who were to be appointed on permanent basis in the CBI. There can be no dispute that this fact is borne out from the record before us. However, we have noticed that the CBI has absorbed even those deputationists who would have drawn a higher pay in their parent department, mainly those whose parent department was the Punjab Police. Furthermore, it is evident that some of those persons who have been absorbed in service had not completed their Higher Secondary examination. Therefore, the contention of the learned Counsel for the respondents that those persons who were drawing a higher pay-scale in the parent department and who had not passed Higher Secondary examination had been weeded out from the list by those who had applied for absorption is not correct. From the list of 144 eligible candidates, which the learned Counsel for respondents has produced before us, several of them have completed either the 10th Class or 11th Class. Many would have drawn a higher pay-scale in their parent department had they not been on the deputation. Some of the applicants have submitted their application after the deadline on 20th October, 2009. Yet all these persons have been absorbed in service.

12. Therefore, we find no reason why the petitioner has been denied the absorption. There is no dispute that he has completed 4 years on deputation in the CBI which is one of the criteria required as per the guidelines of 2009. It is not possible to fathom the reason for denying the petitioner this relief when others who are similarly placed have been granted the relief. Furthermore there is no material on record to suggest that the petitioner's service with the CBI was

marred by any misconduct on his part. In these circumstances we are of the opinion the respondents have discriminated against the petitioner illegally and without any justifiable reason.

13. The impugned order of the Tribunal is therefore quashed and set aside. The petition is allowed. The respondents will consider absorbing the petitioner in the CBI, Kolkata in the light of our observations. An appropriate order to that effect shall be passed by the respondents within eight weeks from today.

14. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.