
(2010) 08 GAU CK 0111
In the Gauhati High Court
Case No : Writ Petition (C) No. 191 of 2010

Churamoni Subedi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 6 GLR 510

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : P.D. Nair and G. Alam, for the Appellant; R. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Heard Mr. P.D. Nair, learned Counsel for the Petitioner, and Mr. R. Sharma, learned Asstt. S.G.I., appearing on behalf of the Respondents.

2. The material facts, as discernible from the hearing of the parties and on perusal of the records may, in brief, be set out as under:

The Petitioner joined Special Service Bureau ("the SSB") as a constable on 4.9.1986. By memorandum bearing No. 2/69/03/SSB/E.III/3248, dated 26.9.2003, issued by the Respondent No. 3. namely, Director General, Special, Service Bureau, the Petitioner was allowed to go on deputation to Intelligence Bureau ("the IB"). In terms of the direction so issued, by memorandum, dated 26.9.2003, aforementioned, an order was made, on 20.11.2003, by the Commandant 12th Bn. SSB, Valmikinagar, relieving the Petitioner enabling him to join the IB on deputation. The Petitioner, accordingly, joined the Subsidiary Intelligence Bureau (SIB), which is a part of the IB, in the post of Security Assistant (General) at Guwahati. By Government notification, issued on 27.3.2004, the Special Service Bureau was named as Sashastra Seema Bal and by enactment of Sashastra Seema Bal Act, 2007, a new para military force was

raised.

3. On having completed more than 3 (three) years of service in SIB, the Petitioner, on 19.9.2007, made a representation to the Respondent No. 5, namely, Assistant Director/(A), Subsidiary Intelligence Bureau, Guwahati, requesting him to consider the Petitioner's case for permanent absorption. Acting on the Petitioner's said representation, Respondent No. 5 issued an order, dated 22.4.2008, addressed to the Respondent No. 3, namely, Director General, SSB, requesting concurrence of the SSB and also issuance of a No Objection Certificate by the SSB for permanent absorption of the Petitioner and one more person in the SIB. By memorandum, dated 23.7.2008, issued by the Section Officer/(G), SIB, the Petitioner was requested to submit duly filled up forms for his absorption in the IB. By another memorandum, dated 18.8.2008, respondent No. 6, namely, Additional Deputy Director, SIB, with the approval of the Respondent No. 5, namely, Joint Director, SIB, recommended the Petitioner's case for permanent absorption and also issued an order, dated 17.12.2008, requesting Respondent No. 3, namely, Director General, SSB, to give concurrence and requisite NOC in order to enable the IB to permanently absorb the Petitioner. By order, dated 7.1.2009, issued by the Assistant Director, SSB, the SSB expressed its inability to issue NOC for the Petitioner's absorption and also the absorption of some others, namely, Jadab Kumar Dutta, Manoj Kumar Gogoi, Milan Ch. Shil, C.M. Subedi and Siddharth Baruah.

4. Some of these persons, including Manoj Kumar Gogoi and Jadab Kumar Dutta, who belonged to SSB, but were on deputation, in the IB, filed a writ petition, which gave rise to WP(C) No. 80(AP) of 2009, seeking appropriate direction from the Court so that they may be absorbed in the IB. By order, dated 23.6.2009, the said writ petition was disposed of by making an observation to the effect that while the SSB, being the parent Department, had not agreed to the absorption, the IB was willing to absorb the Petitioner, who had filed the said writ petition, and, hence, a direction was issued by the court to the IB for considering the Petitioner's representation for absorption making it clear that while deciding the question of absorption, the IB shall obtain the consent of the parent department, i.e., SSB. Another writ petition, which had given rise to WP(C) No. 128(AP) of 2009, was also disposed of in terms of the directions already passed in WP(C) No. 80(AP) of 2009. Thereafter, NOC having been issued, on 19.10.2010, by SSB, an order was made, on 13.8.2009, by the IB absorbing five persons, namely, Shri Manoj Kumar Gogoi, Shri Indreswar Pegu, Shri Jadab Kumar Dutta, Shri Rupak Kumar Deka and Shri Dipu Patangia, in the IB.

5. By order, dated 2.12.2009, issued by Respondent No. 4, namely, the Joint Director, SIB, it was directed that the present Petitioner would be repatriated with effect from 4.12.2009. This order was, however, modified by another order, dated 3.12.2009, whereby the Petitioner was to stand repatriated with effect from 15.12.2009. This was, again, modified by yet another order, 4.12.2009,

making it clear that the Petitioner would stand repatriated with effect from 31.12.2009. The order, dated 3.12.2009 and 4.12.2009, according to the Petitioner, was served on the Petitioner, on 23.12.2009, informing him about his repatriation to the SSB. The Petitioner, then, submitted a representation, dated 4.12.2010, to the Respondent No. 5, namely, Assistant Director/(A), SIB, Guwahati, requesting him to consider his case for permanent absorption.

6. As the SSB remained reluctant to grant NOC, resulting thereby the denial of absorption of the Petitioner by the IB, the Petitioner has filed this writ petition challenging, inter alia, the orders, dated 2.12.2009, 3.12.2009 and 4.12.2009, aforementioned, whereby he stands repatriated to SSB. By this writ petition, the Petitioner has also sought for direction to be issued not only to allow him to continue to render service in IB, but also to permanently absorb him in the SIB.

7. There is no dispute that there have been cases of deputationists from SSB being absorbed by the SIB. In the case of the Petitioner, the SSB has declined to give requisite NOC enabling the Petitioner's absorption in the IB. The Petitioner challenges this decision of the SSB on the ground that it is discriminatory in nature inasmuch as other persons, similarly situated, have been, according to the Petitioner, allowed to be absorbed by IB, prominent amongst them, according to the Petitioner, being Manoj Kumar Gogoi and Jadab Kumar Dutta. Refuting the allegation of discrimination, which the Petitioner alleges to have been meted out to him, Respondent, in the affidavit-in-opposition, have averred as under:

Further, the deponent begs to state that the Petitioner even otherwise cannot complain prejudice because the doors of his parent department are not closed for him in view of the continuance of his lien therewith, with all applicable allowances. This apart, the examples as has been cited by the Petitioner to buttress his contention of being prejudiced is totally unfounded and not correct and for this aspect the deponent would like to state as follows - Sri Alok Nath did not have much experience in working under the answering Respondents whereas the Petitioner was deputed after he had already served for more than 17 years under the SSB and was, thus, an (sic) Respondents. Similar is the case of Sri J.D. Bhattarai, Sri J.P.(sic) Prashant Baruah and Sri Kishore Kumar Pathak all of them are similar to the case of Sri Alok Nath as all of them did not have much experience of working under the SSB as the Petitioner has.

Thus, the inability of the answering Respondents in issuing the NOC which arises from shortage of manpower is also further compounded due to the absence of experienced manpower. That being so the service of the Petitioner who is an experienced employee of the answering Respondent is valuable to the answering Respondents and that being so the answering Respondents are unable to issue NOC in respect of his absorption in the IB.

Thus, in the absence of any Statutory Rule, regulation or order, having the force of law, to trace the right and claim of the Petitioner for permanent absorption in the SIB having been violated by the answering Respondent while refusing to

issue the NOC in question in favour of the Petitioner the allegation of any violation of natural justice, fundamental right as has been alleged by the Petitioner in his writ petition is not correct and completely untenable in any view of the matter.

That apart it is pertinent to mention herein that the IB Headquarters in view of the no-receipt of the NOC from the answering Respondent s has already issued directions to the SIB, Guwahati to repatriate the Petitioner to his department immediately vide Memo No. 21/EST(G-1)/2003(136)-4981 dated 13.11.2009.

8. From the averments made above, what becomes clear is that the SSB does not want to agree to the absorption of the present Petitioner in the IB, because of the fact that the Petitioner had already spent more than 17 years in the SSB before he was sent, on deputation, to IB particularly, when it (SSB), according to the SSB, has been facing acute shortage of experienced employees. There can be no dispute that a person, on deputation, cannot be refused to be repatriated by the borrowing department to the parent department nor is it in dispute that a deputationist cannot be absorbed by the borrowing department without the consent of the parent department. It is also not in dispute that a deputationist cannot, as of right, demand absorption in the department to which he was sent on deputation. For the purpose of not permitting the Petitioner's absorption, no special reason is required to be assigned by the parent Department.

9. In the present case, however, the Petitioner's case rests on discrimination. The Petitioner has, however, not been able to show that his case stands on the same footing as do the cases of those of others including Manoj Kumar Gogoi and Jadab Kumar Dutta, who have been absorbed except the fact that the said persons too were, on deputation, in the IB from SSB. In the face of the categorical stand taken by the SSB that they are unwilling to agree to the absorption of the Petitioner, because of the fact that the Petitioner, unlike some others, is abtexperienced person, for, he, unlike others, has worked in the SSB for as long as 17 years, this Court cannot sit on the merit of this decision inasmuch as the SSB, as parent Department, has the discretion in the matter and unless such discretion can be said to have been arbitrarily exercised or actuated by mala fide, the exercise of the discretion cannot be interfered with.

10. In the case at hand, as already indicated above, there is no material record to show that the absorption, which has not been consented to by SSB, is actuated by mala fide and/or is discriminatory. In such circumstances, the Petitioner's case cannot be said to be similar to the ones, who have been absorbed. For contending, therefore, that the refusal to permit the Petitioner to be absorbed suffers from discrimination, the Petitioner has not been able to make out any case.

11. At the time of hearing of this writ petition, it was sought to be contended, on behalf of the Petitioner, that the nature of the duties, in the SSB, have materially changed from what the duties one had, in SSB, before the Sashatra Seema Bal

was constituted in 2007. Though the Petitioner has mentioned, in his writ petition, at para 2, that the nature of the duties of his erstwhile organization stand changed, he has not challenged the authority of the SSB to demand his repatriation nor has the Petitioner contended that the passing of the said Act of 2007 or, his repatriation to the SSB suffers from jurisdiction.

12. Situated, thus, this Court does not find that the Petitioner has been able to make out any case calling for interference by this Court in exercise of powers under Article 226 of the Constitution of India.

13. This writ petition, therefore, fails and the same shall accordingly stand dismissed.

14. No order as to cost.