
(2006) 10 DEL CK 0073
In the Delhi High Court
Case No : WP (C) 6540 of 2006

Khalil Sarvar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-10-2006

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : (2006) 327 DRJ 92

Hon'ble Judges : Manmohan Sarin, J;Aruna Suresh, J

Bench : Division Bench

Advocate : H.S. Dahiya and Anita Sharma, for the Appellant; Rajeeve Mehra and Arvind Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner in this Writ Petition, assails order dated 4th April, 2006 of the Central Administrative Tribunal (hereinafter referred to as "CAT") dismissing OA No. 2853/2005. Petitioner in OA had challenged the order dated 3.8.2005, repatriating him from CBI to CRPF.

2. Petitioner prays for directions to set aside the orders reverting and placing him at the disposal of his parent Department i.e. CRPF. He further prays for directions to the CBI for considering his case for absorption on the basis of his service record as per Rules and Circulars issued.

3. Facts leading to the present petition may briefly be recapitulated:

(i) Petitioner joined CRPF as Sub Inspector on 16.1.1991. He was selected for Deputation to CBI as Inspector after being released from CRPF with effect from 26.3.1997, he took charge on 4.4.1997. The initial deputation period was for five years and was extended for the sixth year i.e. up to 3.4.2004.

(ii) During his Deputation in CBI he was inter alia, entrusted with the investigation of the Telgi Scam Case No. RC SIB 2004. It may be noted that the

investigation of the Telgi Scam was the subject matter of Writ Petition (Civil) No. 522/2003: Ajay Kumar Aggarwal v. Union of India in the Supreme Court. Vide its Order dated 10.1.2005, the Supreme Court noted the statement of the Solicitor General as under:

Learned Solicitor General states on instructions from the Department of Personnel and Training (DOPT) that the CBI may submit proposals to the DOPT for extension of the period of deputationists on the case to case basis and such proposal, as far as possible, be considered by DOPT favorably, so as not to disrupt the pending investigations. This statement is taken on record.

4. Petitioner claiming to be an Investigating Officer in one of the Telgi cases has laid much emphasis on the above order of the Supreme Court to urge that the Supreme Court itself had directed that the period of deputation be extended so that the investigations are not disrupted, thereby devolving upon him a right to continue till the investigations are pending. He submits that the order of repatriation is contrary to the directions of the Supreme Court.

5. CBI issued a Circular dated 27.1.2005 bearing No. DP/PERS.II/2004/384/A21021/2/2004 calling for nomination of eligible Inspectors working in CBI for more than 4 years for absorption.

6. The prospective candidates for absorption were required to meet the eligibility conditions as per the Recruitment Rules. Beside, the suitability of the willing candidates was required to be assessed by duly constituted Screening Committee. Proposals were to be forwarded to the Head Office on or before 15.2.2005.

7. Petitioner, having completed eight years of service as Inspector in CBI applied for absorption in CBI in and around the month of March, 2005. Petitioner's case was recommended by SP, DIG and Joint Director under whose administrative control, he was working in CBI. Meanwhile, the case for extension of the deputation period of the Petitioner was also taken up with the DOPT. Decision on the same was awaited, when all of a sudden, the impugned order of repatriation of the Petitioner was passed on 3.8.2005.

8. Petitioner alleges that the repatriation order was served on him at the unearthly hour at 10:30 in the night, without there being any emergent cause for the same. It is his case that the repatriation order was served in such haste that it has cast aspersions on his integrity and degraded his reputation in the eyes of his immediate colleagues, peers and Superiors.

9. Petitioner, in these circumstances applied for leave on 4.8.2005 and did not join his Parent Organisation i.e. CRPF. He was granted earned leave for 58 days w.e.f 4.8.2005 to 30.9.2005. Petitioner vide his representation dated 10.8.2005 protested to the respondents against the repatriation order by the CBI served on 3.8.2005 at 10:30 in the night. The unusual haste in his repatriation had dismayed and shattered him. On inquiring about the reasons for his repatriation,

he was informed by various sources that during the interrogation of one Sansar Chand, a notorious wild life poacher and smuggler, in case RC-3/2005, it was revealed that the Petitioner met Sansar Chand and one criminal Yakoob Qureshi. He sought to explain that such meeting on 10.1.2001 was on the instructions of the Superior officers and in course of investigations. He sought an opportunity to explain his conduct but to no avail.

10. CBI did not entertain his protest against repatriation on the ground that the Petitioner already stood repatriated to his parent Department on the day of the representation. Besides, as borrowing Department, they were within their right to repatriate the Inspector who had come on deputation, the period of deputation being already over.

11. Petitioner preferred OA No. 2853/2005 challenging the order of repatriation alleging that the order was punitive and caused stigma and aspersions on his integrity. The order was also assailed on the ground that it has been passed in violation of Article 311(2) of the Constitution, without any opportunity of being heard.

12. Respondent refuted the claim of the petitioner of repatriation casting aspersions or being punitive in nature. Petitioner had no vested right to continue on deputation or to be absorbed with CBI. There was no violation of Article 311(2) nor any question arising of opportunity of hearing being provided prior to repatriation. Borrowing Department has right to repatriate the deputationist when the services are no longer required. Petitioner does not have any vested right to be absorbed in the service of CBI. The CBI was not obliged to assign any reason for repatriation to a deputationist to his parent department. It was denied that during an investigation, the DIG had directed the Petitioner to meet notorious wildlife smuggler Sansar Chand as claimed. Even if petitioner had interrogated or met Sansar Chand and Yaqoob earlier who were previously involved in a crime of similar nature, the same cannot be used by the petitioner as a justification or to assail the repatriation order.

13. Upon considering the submissions made before it, the CAT dismissed the OA of the Petitioner holding that the order of repatriation was not malafide. His reversion to the Department is a pure incidence of service and does not attract Article 311 of the Constitution of India.

14. The short question that arises for our consideration is whether the Petitioner's repatriation from CBI to his Parent Department suffers from any patent illegality or infirmity which has been overlooked by the CAT.

15. The order appears to be an order of repatriation simplicitor. It does not cast any stigma on the Petitioner. It does not become malafide simply because during the investigation of some other case the conduct of the Petitioner came under cloud. The information which was received during the investigation of a case about the Petitioners meeting some accused is not the foundation of the order of repatriation though it may be the motive for it. The Petitioner has surpassed the

normal deputation period. His reversion to the Department by repatriation order is a pure incidence of service and does not attract Article 311 of the Constitution of India.

16. The right of deputationist to continue to work on the deputation post in the borrowing Department has been succinctly summarised by the Supreme Court in the matter of Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others,

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 is 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 term of deputation should not be curtailed except on such just grounds as for example, unsuitability or unsatisfactory performance. But even when a 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.

In Kunal Nanda v. Union of India (2000) 6 SCC 574, the Supreme Court has held as under:

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.

17. Further, the argument of the Petitioner that the Circular quoted above vests in him a right to absorption in the CBI can also not be sustained. The Circular called for nominations but did not vest a right of absorption in the Petitioner, nor did the order of the Supreme Court (supra) direct CBI to continue with the services of the Deputationists. Reversion to the parent Department is an incidence of service. The Courts loathe to interfere unless prima facie malice is evident in the repatriation action. No particulars of malice as required have been disclosed. There is no foundation for the same specially when the petitioner has already surpassed the normal and extended period of deputation.

18. In view of the foregoing discussion, petitioner has failed to make out any case of violation of his constitutional or enforceable legal rights. Petitioner has failed to prima facie demonstrate that the respondent's order is actuated by malafides or is stigmatic or punitive even though it might have left petitioner with some sense of disappointment or hurt. No ground is made out for interference in exercise of writ jurisdiction. Dismissed.