

(2000) 01 DEL CK 0095

In the Delhi High Court

Case No : CWP. No. 3043 of 1998, CWP. No. 3465/96 and CWP. No's. 7285/99, 7450/99 and 7514/99

L/NK V.H.K. Murthy

APPELLANT

Vs

Special Protection Group and Another

RESPONDENT

Date of Decision : 31-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 4 AD 624 : (2000) 57 DRJ 157

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Anil Mittal, Mr. K.C. Mittal, Mr. K.P. Kapur and Mr. S.S. Tripathy, for the Appellant; Ms. Geeta Luthra, Mr. J.K. Singh, Mr. A.K. Srivastava, Mr. Abhilash Mathura, Mr. Maninder Singh, Ms. Manisha Dhir, for the Respondent

Judgement

A.K. Sikri, J.—These 5 writ petitions raise same question of law. All these writ petitions were accordingly heard together and are disposed of by this common judgment. In order to appreciate the controversy, let me first take stock of the facts in each case:

CW. 3043/98.

2. Petitioner is permanent employee of Central Reserve Police Force (CRPF) where he was appointed as Constable on 27.7.83. In the year 1995 his willingness to go on deputation to Special Protection Group (SPG) was asked by CRPF his parent department. He gave consent for the same. He was considered for deputation to SPG for which he had to undergo selection process in the form of interview, medical test, physical test, psychological test, oral and aptitude test etc. conducted by SPG. After the selection he was taken on deputation to SPG. Movement Order dated 21.7.95 was passed in this respect. He joined SPG at New Delhi on 8.8.95 and was attached with Welfare Branch for administrative duty. It is the case of the petitioner that he continued to work satisfactorily with SPG. However, on 18/19.5.98 when petitioner was serving as a Messenger at Saket

Control Room and his duties were to convey messages as given by his officer from one place to another. His duty hours were from 8 a.m. to 2 p.m. and then from 8 p.m. to 8 a.m. in the morning. On 18.5.98 when he reported for his night duty at about 7.45 p.m. to his office, he was informed by one Driver, Janak Raj that the vehicle had got punctured and Therefore petitioner will have to take messages on his bi-cycle. Petitioner reported for his duty and till 5.30 he carried out his duty of conveying messages. At about 5.30 p.m. when petitioner came out from his control room to convey the message to some other place he found out that one motor cycle of Hero Honda make was missing from the office compound. He immediately reported the matter to Communication Officer. After conveying the message as ordered, petitioner looked around the office complex in search of the missing vehicle. However, it was not found. Petitioner was asked by his superior officer on 19.5.98 to give an Explanation as to what happened on the night when vehicle was lost. Petitioner gave his written Explanation in which he informed that at about 1.30 p.m. he had checked all the standing vehicles and after doing his duty of conveying messages he came and sat down in his room. Thereafter, till 5.30 a.m. there was no message to be conveyed and at 5.30 a.m. when the message was given to him for conveying that time he found one vehicle was missing.

3. In order to check such thefts, Circular letter dated 22.5.98 was issued by SPG, which is reproduced below:

"It has been observed that there is a General tendency among the officers manning the control room at Saket to retire for rest between 0200 hrs. to 0500 hrs. This tendency should be curbed immediately as already an incident of theft of motor cycle (Hero Honda) has occurred in the vicinity of the control room, which belonged to the DR attached with Saket Control Room.

Since Communication Officer is the senior most officer manning the Control Room, he must ensure that no body sleep during night while on duty. He must also ensure that all Government vehicles like Motor Cycle parked in front of the Control Room are properly locked and keys are deposited in the key box after making proper entry in the register kept in the DR and any unlocked vehicle is found should be reported promptly to the Welfare Branch Officer.

In case anybody found breaching these instructions strong disciplinary action will be initiated against the defaulters".

4. However, on 15.6.98 petitioner received Office Order dated 3181/98 dated 15.6.98 issued by Assistant Director (Admn.), SPG in which the petitioner was informed that he had been replaced from the SPG at the disposal of his parent department w.e.f. 30.6.98. It is this repatriation order, which the petitioner has challenged in this writ petition.

5. On 29.6.98 while issuing notice to show cause in the writ petition, status quo regarding repatriation of the petitioner to his parent department was passed which continued from time to time.

CW.3465/96.

6. Petitioner in this case is holding substantive appointment as sub inspector with CRPF to which post he was appointed in October,1993. In the year 1995 his willingness to go on deputation to Special Protection Group (SPG) was asked by CRPF, his parent department. He gave consent for the same. He was considered for deputation to SPG for which he had to undergo selection process in the form of interview, medical test, physical test, psychological test, oral and aptitude test etc. conducted by SPG. After the selection he was taken on deputation to SPG. Movement Order dated 17.12.95 was passed in this respect. He joined SPG at New Delhi on 18.12.95 and was attached with Training Branch for Basic Foundation Course. It is the case of the petitioner that in May,1996 he came across advertisement in the weekly publication of "Employment News" regarding recruitment of Officers in the Territorial Army. As he was also eligible to apply, he decided to send his application for consideration. On his application the concerned authority of the Territorial Army sent requisite application form to the petitioner. Petitioner filled the form and forwarded it to the Assistant Director (TRG), SPG with request that the same may be forwarded to his parent department, CRPF for onward submission to the concerned Authority of Territorial Army for his commissioning/enrolment. However, SPG by letter dated 3.6.96 returned back the application on the ground that keeping in view the nature of duties in the SPG his request could not be acceded to. Petitioner still wanting to be enrolled in the Territorial Army, sent dated 7.6.96 to his parent department, CRPF with request to forward his application to Territorial Army. When SPG came to know of this move of the petitioner sending the application to CRPF for onward transmission to Territorial Army, letter dated 5.7.96 was written by Dy. Director (Training) SPG objecting to such move on the part of the petitioner in directly reaching to his parent department and stating that since it amounted to gross violation of conduct of rules, petitioner was directed to explain his conduct within 7 days from the receipt of this letter. He submitted his Explanation, inter alia, stating that he was keen to join the Territorial Army in case he was found fit and eligible and he had not concealed any fact either from SPG or CRPF, inasmuch as to CRPF he had written that his request has been turned down by SPG earlier for forwarding his application. Thereafter, petitioner received Office Order No.3094/96 dated 22.7.96 informing the petitioner that he has been replaced from the SPG at the disposal of his parent department w.e.f. 31.7.96.

7. On 17.9.96 while issuing notice to show cause in the writ petition, status quo regarding repatriation of the petitioner to his parent department was passed which continued from time to time.

CWP.7285/99.

8. Petitioner in this case is regular employee of Indo-Tibetan Border Police (ITBP) where he joined as Constable on 16.8.87. Like aforesaid two petitioners, he also consented for deputation with SPG and after his selection he was deputed to SPG and was posted at 3, South Avenue Lane at the residence of Ex-Prime Minister

Shri Chandra Sekhar w.e.f. 20.12.96. It is the case of the petitioner that on 13.10.96 he was on duty with former Prime Minister Shri H. D. Deve Gowda at Bangalore. On 22.11.99 he was sanctioned earned leave for 30 days by SPG and he proceeded on leave on 24.11.99. While on leave petitioner received letter dated 26.11.99 stating that his services were replaced at the disposal of his parent department w.e.f. 26.11.99. He has challenged this order. Although he has not stated anything in the petition as to what prompted the respondents to issue repatriation order, in the counter-affidavit respondents have explained that petitioner with another officer left the SPG Camp at Bangalore unauthorisedly on 9.11.99 at 20.30 hours. After consuming liquor, these two officers picked up quarrel with civilian personnel in the Satellite Township at 2130 hours. The petitioner has challenged his repatriation in this writ petition.

9. On 22.12.99 order was passed that till next date of hearing movement order be not given effect to.

CW. 7450/99.

10. Petitioner in this case is Constable in CRPF. He was also sent on deputation to SPG and was posted at Cabinet Secretariat on 15.9.94 for a period of six years. His allegation is that he was forced to carry out the duties of domestic servant by Shri Anil Sinha, the DIG. Although he did perform this work occasionally but said DIG wanted him to work regularly as domestic servant and when petitioner refused to do so, he was slapped with Office Order No.6875 dated 28.10.99 relieving from SPG with direction to report to Assistant Director (Personnel-II), CRPF, his parent department. He has challenged this order of repatriation.

11. On 21.12.99 interim order was passed impugned order may not be given effect to.

CW. 7514/99.

12. Petitioner is working as Constable on permanent basis with CRPF since 30.6.81. In December,1992 his consent was taken for going on deputation to SPG. He gave his consent and after due selection he joined SPG on 16.4.93. The deputation period was six years which expired on 15.4.99. However, he continued to work with SPG even thereafter. It is the case of the petitioner that he has been performing his duties to the satisfaction of the SPG and was given various awards, including on 18.10.99 for 5th time he got cash award of Rs. 2,000/- for his exemplary performance and devotion to duty. However, within four days i.e. on 22.10.99 petitioner was served with repatriation order directing him to join his parent department and no reason was assigned. The allegation of the petitioner is that during the month of August, one civilian who happens to be a friend of the petitioner lodged one complaint in the SPG stating that the petitioner has misbehaved with his wife and visiting his house in a drunken state. The motive behind the letter of the said person was to extract some benefit from the petitioner. But when the petitioner came to know of his intention, the petitioner kept himself away from him which annoyed the civilian person and

consequent upon that the said letter was forwarded to the SPG. It is on the basis of the aforesaid complaint according to the petitioner that his repatriation orders are passed and before passing the order the authorities even did not verify the veracity of the allegation. He has challenged this repatriation order in this writ petition.

13. On 21.12.99 interim order was passed that impugned order may not be given effect to.

14. The terms of deputation in the case of the petitioner in CWP. No. 7514/99, inter alia, stipulated that the period of deputation will be one year in the first instance which is extendable up to 6 years on year to year basis. In other cases it is mentioned that period of deputation will ordinarily be 6 years and it is not mentioned that it would be initially for a period of one year which extendable from year to year basis. However, in all the cases deputation period mentioned is six years. Admittedly, these petitioners except petitioner in CWP. No. 7514/99 have not completed deputation period of six years when the repatriation orders were passed. Therefore, a common question raised in this petition is as to whether there can be repatriation of the petitioners before the expiry of their deputation period of six years. Although in CWP.No.7514/99 the petitioner had completed his deputation period of six years on 15.4.99, his argument is that since he was allowed to continue even thereafter, his deputation period stands extended by another six years from 16.4.99 and, Therefore, he makes same submission on this ground that he could not have been repatriated before the expiry of six years to be counted from 16.4.99.

15. Mr. Anil Mittal, learned counsel who appeared for the petitioner in CWP.Nos.3043/98 and 3465/96 submitted that when the period of deputation is six years, petitioner has right to remain on deputation for a period of six years. His tenure cannot be curtailed except on administrative reasons i.e. in exigency of service. He submitted that the petitioners in these two writ petitions were repatriated due to certain allegations against them which amount to misconduct and, Therefore, repatriation was stigmatic in nature. Although petitioner was not responsible for any such incident, sending him back to his parent department on such grounds amounted to inflicting punishment on him for which he was not given any opportunity to explain his position inasmuch as no show cause notice was issued or enquiry held. Such an order of repatriation was punitive in nature and, Therefore, could not be passed. In support of his submission he relied upon judgment of Kerala High Court in the case of C. Thiraviam Pillai Vs. The State of Kerala and others reported in 1976 (2) SLR 395.

16. Mr. K.C. Mittal who appeared for petitioner in CWP. No. 7285/99 submitted that although the petitioner was sent on deputation to SPG, the deputation was not of the nature which is generally understood in service jurisprudence. He submitted that as from very nature of SPG, the force is raised only by drawing officers on deputation basis and there is no regular selection. Therefore, mode of selection itself is by way of and a person who is considered for selection to be

posted with SPG is selected for a period of six years by this mode and, Therefore, he acquires vested right to be posted with SPG for a period of six years. If, in these circumstances, the officer is repatriated back before the expiry of six year period it amounts to termination of his services. He submitted that such repatriation has to be for good reasons and cannot be arbitrary. According to him the repatriation can be in three contingencies, namely, (i) for administrative reasons, (ii) on the ground of unsuitability of the concerned officer and (iii) because of such act of the officer/conduct of the officer which is treated as blameworthy and which in normal course would amount to misconduct. His further submission was that while repatriation in first two cases cannot be interfered with, if repatriation is on the ground of unsuitability, the SPG is supposed to disclose the material on the basis of which officer was treated as unsuitable And, in case the reason is attributable to his conduct, such a conduct has to be treated as misconduct and such repatriation would amount to termination which cannot be resorted to unless his Explanation is called and he is given a chance to make his position clear. It was the submission of Mr. K. C. Mittal that Principles of Natural Justice become applicable in such cases and if a person is repatriated without observing this mandatory requirement, such repatriation may be treated as illegal. His further submission was that it is necessary to check arbitrary exercise of power. Otherwise it would give uncanalised power to the respondents to repatriate the person before the completion of six years tenure on any false allegations at the whims of the authorities. He referred to the judgment of Full Bench of Punjab and Haryana High Court in the case of Dr. Bhagat Singh, Vice-Chancellor, Punjabi University, Patiala Vs. The Chancellor, Punjabi University and others reported in 1981 (2) SLR 329.

17. Mr. K.P. Kapur and Mr. S.S. Tripathy, learned counsel who argued CW.Nos.7450/99 and 7514/99 respectively made their submissions almost on the same lines as the submission of counsel in aforesaid cases. Mr. Kapur made additional submission stating that when the officer can be repatriated on the ground of "unsuitability" there has to be some material to show this unsuitability. He elaborated this submission by contending that when an officer joins SPG on deputation, it is only after he is found suitable by the authorities in SPG. Therefore, without showing as to what was the basis on which such an officer was treated as unsuitable, the respondents cannot repatriate him back to his parent department and such an action would clearly be arbitrary.

18. On behalf of respondents, Ms. Geeta Luthra submitted that the posting of an officer in SPG was a sensitive posting and total commitment to the duties was expected of an officer. If the respondents found that a particular officer was lacking in such a commitment even then it was dangerous to keep such an officer posted in SPG as the officer in SPG has to take care of the security of the Prime Minister or the former Prime Ministers. According to her, decision of the respondents taken with this consideration in mind is pure administrative decision and the petitioner has no right to challenge the same and this court would not interfere with such decisions of the respondents authorities. It was also

submitted that the concerned officer comes to SPG only on deputation and a deputationist has no right to remain on deputation against the wishes of host department where he is posted. It was always open to host department to send him back to his parent department. The orders by which the petitioners were repatriated were innocuous orders there was no imputation made in the said orders nor any stigma attached in sending the officer back to the parent department. Since extreme sense of discipline is required, if the concerned authorities feel that the officer on deputation may not be able to do complete justice to his posting, he can be repatriated back. It only shows that the high calibre which is expected of such an officer is not there as per the estimation of the concerned authorities and such a move is not stigmatic at all. She referred to the judgment in the case of Ratilal B. Soni & Ors. Vs. State of Gujarat & Ors. reported in 1991 (3) SLR 77 in support of her submissions.

19. Mr. Maninder Singh learned counsel who appeared for the respondents in CWP. No. 7450/99 while explaining the sensitive nature of the job to be performed by these deputationists in SPG made the following neat submissions:

1. The petitioners were the permanent employees in their respective parent organisations, namely, CRPF, ITBP etc. They came on deputation to SPG. Normal tenure of deputation is six years but law permits the SPG to curtail this period of deputation.

2. According to petitioners' own admission, there was a difference between "suitability of an officer" and "misconduct committed by an officer" while serving in SPG. If the officer is sent back to his parent department on the ground that he is unsuitable that is clearly permissible as per the terms of deputation.

3. The terms and conditions of deputation were duly accepted by the petitioners. One of the terms and conditions of deputation was that a person can be repatriated back even before the expiry of deputation period without assigning any reason and this was not challenged by any of the petitioners in any writ petition. That being the position, petitioners had no vested right to remain in SPG for complete period of six years.

4. In such a case when the person is repatriated back to his parent department, such a repatriation is as per the terms of his contract, namely, terms and conditions of deputation and there is no application of Principles of Natural Justice in such cases. In support of his submission he relied upon the judgment of Apex Court in the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, .

5. Scope of judicial review in such cases is limited and the Courts could interfere only on the ground that repatriation order is actuated with mala fides and that too supported by sufficient material on the basis of which allegation of mala fides could be substantiated keeping in view the high standard of proof required to establish mala fides as per the law laid down by Supreme Court in the case of S. Pratap Singh Vs. The State of Punjab, .

20. Mr. Abhilash Mathur and Ms. Manisha Dhir also made their submissions substantially on the same lines as submissions made by the counsel for the respondents in other cases and noticed above.

21. Security of the persons holding high positions has become a matter of concern. This country has witnessed in last few years gory instances of assassination of such highly placed persons in the society and it includes Smt. Indira Gandhi, and Shri Rajiv Gandhi former Prime Ministers of India. There have been instances of attempt on the life of such VVIPs. In fact Smt. Indira Gandhi was assassinated by none-else but her own Guards who were supposed to protect her from any outside attacks. It is a matter common knowledge that after the assassination of Smt. Indira Gandhi at the hands of her own guards in October, 1984, a Special Task Force was raised in the intelligence Bureau to provide proximate security to the Prime Minister of India and his family members. The issue of providing high quality security to the Head of the Government was subjected to microscopic analysis by various agencies of the Government, and a high powered committee headed by Shri Birbal Nath was constituted to examine all aspects of VIP security and make necessary recommendations. The recommendations of the Birbal Nath Committee culminated in the of the Special Protection Group under the aegis of Cabinet Secretariat in March 1985 to provide proximate security to the Prime Minister and his immediate family members. After assassination of Shri Rajiv Gandhi in May, 1991, the SPG Act was amended to extend SPG security cover to the former Prime Ministers and their immediate family members for a period of five years from the date of demitting the office of Prime Minister. The period of this cover has been extended to 10 years by yet another amendment of the SPG Act in 1994.

22. It is a matter of common knowledge that Special Protection Group has no regular force of its own. It draws officers from various other organisations on deputation basis for a particular period and after the period is over, these officers are sent back to their parent organisation. The reason because of which the legislature thought not to have its own regular force for providing protection to the Prime Minister and former Prime Minister is not far to seek. The matter of security of these dignitaries is of very sensitive nature. The persons who provide security to Prime Minister cannot be allowed to remain there for all times to come or for that matter even for long periods. It is but imperative by the very nature of their duties to keep rotating such persons. That is the reason that even when a person comes on deputation and is deputed for the security of a particular person he does not remain there for a long time and security personnel provided to a particular person keeps changing. Reasons are obvious and need no elaboration. When the job of such persons is so sensitive even iota of doubt regarding capability, commitment, sincerity, devotion etc. of such persons would compel the authorities to remove such a person and replace him by other person. No body can afford to take any chances when matter concerns the security of Prime Minister or former Prime Ministers. For sound democracy,

maintenance of political stability and as well as law and order, security of such persons is of paramount importance. Therefore, the present case is to be viewed from this angle and is not to be compared with ordinary run of the mill cases where a person employed in one department and on substantive basis seeks deputation in other departments for better prospects, albeit for a short period or may be with hope to get absorbed in the department where he is joining on deputation. Therefore, there is a force in the arguments of respondents that for SPG, the respondents require persons with total commitment to duties and once even slightest but genuine apprehension arises in the mind of the concerned authorities that such a person is lacking this devotion or total commitment and this prompts the authorities to repatriate such officer back to his parent department, cutting short his deputation period, the action of the respondents cannot be treated as illegal or arbitrary and this court would not interfere with such a decision.

23. After all, even otherwise, what are the rights of a deputationists?

24. It is now well settled that deputation is just a transfer of a Government employee from one department to another or from one Government to another, i.e. from Central Government to State Government or State Government to State Government or State Government to Central Government. So in its very nature, the tenure of a deputationist is a precarious one. Of course, in some cases, it may be for a fixed term, but even then it is implicit that a deputationist can always be repatriated to his parent State/Department in public interest or in the exigencies of service. Further, a deputationist continues to hold lien on his permanent post in his parent cadre till of course he is permanently absorbed in the borrowing department. Another wholesome principle is that if many persons are drafted to serve on deputation, their inter-seniority in the borrowing department should be respected and preserved during the period of such deputation to the new department. *K. Madhavan and Another Vs. Union of India (UOI) and Others*, wherein it was observed: "There is not much difference between deputation and transfer. Indeed when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one Government to another." It is thus manifest that a deputationist has no right to the post held by him in the borrowing department and he can always be repatriated to his parent department in public interest and exigencies of service. This right of the borrowing department to repatriate the employee and for that matter right of the lending department to recall their own employee sent on deputation, is well recognised in service jurisprudence.

25. For these reasons I am also inclined to accept the submissions made by Mr. Maninder Singh learned counsel for the respondents that the tenure of deputation can be curtailed for bona fide reasons and in the instant case the moment it is found that "suitability" of an officer has attracted a question mark, it is permissible for the respondents to repatriate said officer to his parent

department. For this reason the Constitutional Bench judgment of Supreme Court cited by the petitioners in the case of K.H. Phadnis Vs. State of Maharashtra, may not be of any help to the petitioners. First as I have already pointed out above, the sensitive nature of the duties is to be kept in mind which is the hallmark of the present case. Secondly, even as per the aforesaid judgment of the Supreme Court "unsuitability" would be a valid ground to repatriate an officer. Thirdly, since petitioners have no vested right to remain in SPG for complete period of six years, the question of observance of Principles of Natural Justice, before sending a person back to his parent department would not arise, inasmuch as the repatriation of these petitioners is as per the terms of contract and the judgment of Supreme Court in the case of Kaushal Kishore Shukla (Supra) comes handy.

26. Of course, it is not to suggest that the respondents have right to act in an arbitrary manner or they can use the sensitive nature of job to be performed by the petitioners as a cover to use the power of repatriation as a colourable exercise of power. The judicial power of review can be exercised on the basis of accepted norms i.e. to say when it is found that the action of the respondents suffers from the vice of arbitrariness or mala fides etc. However, once it is found that the action is bona fide and the apprehension of the respondents is based on some relevant considerations then this court has to stay its hands off. Further keeping in view the sensitive of job to be performed by the petitioners, the discretion which is conferred upon the competent authority has to be wide and even a doubt, of course genuine doubt, nurturing in the mind of the respondents, which may become the basis of their decision not to keep a particular officer in SPG any longer would meet the test of bona fide exercise of power.

27. Examining the cases of the petitioners from the view point of the aforesaid principles, these petitions have to fail. In none of the cases any case of mala fides is even alleged and/or made out. There are no allegations worth the name, and even whisper of mala fides which is attributed to any particular officer. In the writ petition No.3043/1998, while the petitioner was on duty, a vehicle was found missing. His Explanation that his duty was only confined to Control Room and he was not supposed to keep a watch on Office Compound from where the vehicle was stolen, may be of no value. At the cost of repetition it is emphasised that the matter concerns the security of Prime Minister or former Prime Ministers. Can it be an Explanation of a person to say that he was in the Control Room and some intruder is able to come up to the Office Compound? When the Motor Cycle was found stolen from Office Compound and the authorities after deliberations came out with stringent measures to prevent such occurrences, while doing so they were within their right to take steps of repatriating the said petitioner as genuine doubts cropped up in the mind that this officer may not be in a position to deliver his best when situation would demand him to do so. Therefore, I do not find that action of the respondents in issuing Office Order dated 15.6.98 informing that he had been replaced from SPG at the of his parent department w.e.f. 30.6.98 suffers from any illegality. Likewise the opinion of the respondent authorities that

petitioner in CWP. No. 3465/96 lacks total commitment as he was more keen to join Territorial Army is also bona fide. Even when the SPG had rejected his request for forwarding his application for joining Territorial Army, he showed his defiance in sending the said application directly to CRPF for onward transmission to Territorial Army. The grounds on which other petitioners are repatriated are much more serious in nature. The contention of the petitioner that such grounds amounted to misconduct and, Therefore, their Explanation should have been called and they should have been given a hearing before repatriating, is without any force. I may mention that very purpose of raising such a force from deputationists would be lost, if SPG is to indulge into such an exercise. However, still in order to satisfy my conscious that the action of the respondents qua these petitioners was not arbitrary and without any basis I summoned the record relating to repatriation of these three petitioners i.e. CWP. Nos. 7450/99, 7514/99 and 7285/99 and from the perusal of the material on record, I am satisfied that the concerned authorities formed their opinion on the basis of relevant consideration and proper material on record which prompted them to take decision to repatriate these petitioners and the action taken was not actuated with any malafides or arbitrariness.

28. After all what is impugned action taken by the respondent authorities ultimately? The petitioners are only sent back to their parent department. Of course, after the authorities convinced themselves that it is not in the interest of SPG to retain these petitioners on deputation any longer. Once such an opinion is formed on the basis of material on record which can be treated as sufficient material, it was not necessary that petitioners should have been given any notice to show cause or memo before repatriating them back to their parent department. No disciplinary action is taken by the respondents. There is no adverse effect on the service conditions of the petitioners. The effect of the impugned order is that these petitioners go back and join their parent department, the post which they are holding on substantive basis, without entailing any loss either in terms of status which they were enjoying as regular employees in their parent department or the emoluments or other service conditions. I may hasten to add here that all this discussion should be read in the context of the nature of sensitive job to be performed in SPG without laying down any general proposition of law.

29. I do not agree with the submissions of the petitioners that the impugned order visits with any stigma. Admittedly, the impugned order does not make any reflection on the work and conduct of the petitioners. Only when the petitioners filed the writ petitions and to meet the challenge of arbitrariness, respondents have stated in the counter-affidavit the reasons which compelled the respondents to repatriate the petitioners. The petitioners have tried to highlight the reasons stated in the counter-affidavit and argue on that basis that order is stigmatic. I do not agree. It may be mentioned that the respondents in Catch-22 situation. Had the counter affidavit would not disclose any reason for repatriation of these petitioners, the petitioners would have contended that the impugned repatriation

orders are passed without any basis and or material and, Therefore, these orders are arbitrary. If the reasons are disclosed in the counter-affidavit to show that the exercise of power by the respondents was bona fide and it was on the basis of material on record which compelled the respondents to form an opinion about the unsuitability of the petitioners to retain them further in the SPG, petitioners are challenging the action as stigmatic. It is only to satisfy the conscious of the court and to further show that the impugned action was not arbitrary but based on relevant considerations and bona fide exercise of power that the reasons are disclosed in the counter affidavit. From these reasons disclosed in the counter-affidavit, petitioners cannot be allowed to argue that the orders are stigmatic. No doubt it is the power of the court to go behind the order passed and see the real motive by piercing the veil. However, as mentioned above, in such cases where the person comes on deputation and has no vested right to remain with the host department, the Court has to interfere only when the order is passed arbitrarily and mala fide. If there was some material which shows some negligence or conduct of the petitioner and becomes the basis of decision of the respondents to repatriate such an officer, it cannot be called as a stigmatic, more so when the impugned order is innocuous and silent on the conduct of the petitioners. Once I take the aforesaid view, various judgments cited by the petitioners may not be of any consequence. I have already referred to the Constitutional Bench Judgment of the Supreme Court in the case of K.H. Phadnis (Supra) and observed that even as per that judgment a person who is unsuitable can be sent back to his parent department. Other judgments cited either relate to observance of Principles of Natural Justice or lifting of veil to decide in order to find the real cause for passing the orders. These aspects I have already detailed with above. Needless to mention I say at the cost of repetition that matter pertains to security of Prime Minister or former Prime Ministers. In such a case even slightest doubt in the mind of respondents about the competency of an officer would justify the reversion as no chance can be taken with security of this nature. Slightest error may cause irreversible damage. Further as I have already pointed out above, I have perused the record also to satisfy as to whether the order passed were arbitrary or for extraneous or mala fide reasons and I am satisfied from the record that the action of repatriation of the petitioners to their parent department was a bona fide exercise of power. For these reasons Rule is discharged. Interim orders stand vacated. All these petitions fail and dismissed. In view of the peculiar facts of these cases, there shall be no orders as to costs.