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**(1997) 01 DEL CK 0072**

**In the Delhi High Court**

**Case No : Civil Writ Appeal No. 4701 of 1993**

Raj Kumar Sharma

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 01-01-1997

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1997) 2 AD 537 : (1997) 40 DRJ 502

**Hon'ble Judges :** Devinder Gupta, J; Dalveer Bhandari, J

**Bench :** Division Bench

**Advocate :** R.P. Sharma and K.C. Mittal, for the Appellant;

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## **Judgement**

Devinder Gupta, J.

(1) The petitioner has sought the quashing of order (annexure-P.6) dated 12.8.1993 issued by respondent No.2 repatriating him to his parent force, namely, Border Security Force.

(2) The petitioner joined the Border Security Force (for short B.S.F.) as Constable (Wireless Operator) in 1978. He was promoted as Naik on 1.5.1981; as Head Constable on 1.8.1986 and as Assistant Sub Inspector (Radio Mechanic) on 30.1.1989. On a requisition from Special Protection Group; (hereinafter referred to as "the S.P.G."), a newly raised force, the petitioner requested for being sent on deputation to the said organisation.

(3) It is alleged by the petitioner that after thorough scrutiny of his service record, he was interviewed by a Board of Officers of S.P.G. and was duly selected for deputation. On 2.2.1993, order (annexure-P.1) was issued approving the officials of B.S.F. including the petitioner for duty in S.P.G. on deputation for a period of six years, subject to the condition that there can be pre-mature repatriation by S.P.G. on the grounds of unsuitability, indiscipline or exigencies of service etc. The only condition stipulated in the order of deputation was that the final decision about induction of the individuals in S.P.G. would depend upon

successful completion of S.P.G. Foundation Course. No where in the order it was mentioned that the petitioner's selection was provisional. It is the petitioner's case that he successfully completed the Foundation Course in May 1993 and on 18.6.1993, he was served with the order of repatriation.

(4) It is alleged that in the year 1981, the petitioner was awarded minor penalty of "reprimand" (censure) for a very minor lapse, while he was posted in B.S.F. After five years he was promoted as Head Constable and three years later as an Assistant Sub Inspector. Due to his promotion, the said adverse entry will be deemed to have been washed off. Since his service record was duly scrutinised and he was interviewed by a Board of Officers and no condition had been imposed in the order of deputation, the petitioner could not have been repatriated except on the grounds as were stated in the order of deputation, namely, ground of unsuitability, indiscipline or exigencies of service. Since in the impugned order dated 18.6.1993 no grounds were mentioned, the petitioner on 28.6.1993 sought an interview with 2nd respondent in order to find out the reason for his repatriation. Through order dated 7.7.1993, the petitioner's repatriation was held in abeyance. On 2.8.1993, fresh repatriation order (annexure-P.4) was passed repatriating the petitioner w.e.f. 16.8.1993. On receipt of this order, the petitioner learnt that the cause of repatriation was the existence of award of punishment of reprimand in 1981 in his service record. On 4.8.1993 the petitioner met the Director, S.P.G., who assured him that the said adverse entry would be ignored, after ascertaining from his parent department about the validity and effectiveness of the penalty of reprimand.

(5) It is also the petitioner's case that on 12.8.1993, the S.P.G. made a reference to the third respondent to find out that whether or not minor penalty of reprimand awarded as far back as 1981 was still valid and as per his information, on 28.8.1993 B.S.F. had informed S.P.G. that punishment of reprimand was valid only for a period of two years. Before receipt of the reply, another order dated 12.8.1993 (annexure- P.6) was passed stating that the petitioner had been sanctioned leave from 17.8.1993 to 15.10.1993 and on expiry of leave, namely, on 16.10.1993, he would report to his parent department. The petitioner has alleged that on 20.8.1993, another application was submitted by him praying for extension of period of repatriation. On 7.9.1993, respondent No.2 rejected the petitioner's request for extension. In this background, the petitioner has challenged the aforementioned order of repatriation on the ground that premature termination of six years deputation is arbitrary, unjust and illegal. There was no condition attached to the order of deputation that the same was provisional. His service record had been scrutinised before selecting him for deputation and the minor penalty of reprimand, after lapse of many years had lost its efficacy and the same could not have come in the way and be used by respondents in making the order of repatriation. It is also alleged that the order was passed in a mechanical manner, without affording reasonable opportunity of being heard. The petitioner had also gone through three months rigorous foundation course, the only pre-requisite condition in S.P.G., Therefore, he could

not be deprived of the benefit of serving on deputation.

(6) The respondent's version on the affidavit of Shri B. K. Gupta, Deputy Director in S.P.G., Cabinet Secretariat has been that the S.P.G. was constituted under the provisions of Special Protection Group Act, 1988 as an Armed Force of the Union for providing proximate security to the Prime Minister and former Prime Ministers of India and their immediate families. The posts sanctioned for S.P.G. are filled by appointment on deputation, of the members of the Central Police Organisation, Intelligence Bureau and State Police Organisation. S.P.G. being a highly sensitive organisation concerned with security of VVIPs, the persons selected for appointment on deputation should have unblemished record.

(7) It is stated in the reply that the petitioner was nominated by Border Security Force Headquarters as one of the candidates for appointment. He was called for interview on 28.12.1992. During selection it was noticed that his service record contained an adverse red entry relating to the award of penalty of reprimand on 10.8.1981 for having slept after removing the clips of the battery while on duty. The entry regarding imposing of such penalty appeared from the record to have been scored off and another entry was recorded stating that the adverse report made in service record stood invalidated. Since there appeared to be some ambiguity on this score, the Selection Board recommended the case of the petitioner subject to verification of red entry in his service record. Owing to the urgent requirement, the petitioner's case was processed, subject to verification of the alleged adverse report. Offer of deputation accordingly was issued, which stipulated that the petitioner would be liable for pre-mature repatriation, if found unsuitable for the service in S.P.G. Since the matter was referred to the B.S.F. for clarification the same was received saying that the punishment awarded to the petitioner remained valid. On receipt of the clarification, the petitioner was repatriated to B.S.F. w.e.f. 16.8.1993. On request 60 days leave w.e.f. 17.8.1993 to 15.10.1993 was sanctioned to the petitioner. It is also the respondents' case that while taking decision, the nature of the offence for which penalty was imposed was duly taken into consideration, which recorded "sleeping after removing the clips of the battery while on active duty". In view of the sensitive duties in S.P.G., this lapse was considered to be sufficient that the petitioner was not suitable for service in S.P.G. It is further stated that the petitioner submitted a petition 4.8.1993 requesting for clarification about adverse report. In addition, the S.P.G. had also sought clarification from the Chief Law Officer, B.S.F. Headquarter to confirm whether the punishment was being treated as expunged/deleted. B.S.F. Head quarter had thereafter amply clarified that the punishment awarded to the petitioner cannot be treated as expunged. It is also stated that the petitioner's representation dated 26.8.1993 was also considered. The petitioner's retention in S.P.G. was against policy since none having red entry was to be taken in S.P.G.

(8) Learned counsel for the parties were heard at length. For our perusal, original record of selection was also made available including the service record of the

petitioner.

(9) The contention of the petitioner that his selection was not provisional, in view what we find from the selection record cannot be accepted. At the time of interview, a note was made by the Selection Board of the S.P.G. that the petitioner's selection was subject to clarification as regards the "red" entry dated 10.6.1981. This is made amply clear on reference being made to the proceedings of the Interview Board where similar entries are to be found in case of some other candidates also. From the petitioner's service record also it was noticed that after the red entry of imposing penalty of reprimand had been made, the same appeared to have been deleted with a note put thereunder. Later note made in the service record reveals that the deletion was found to be wholly incorrect and made unauthorisedly. Subsequently, the earlier red entry of reprimand dated 10.6.1991 was restored. The petitioner had been awarded the said penalty of reprimand for his lapse, namely, "having slept while on active duty, after removing the clips of the battery". The petitioner placed reliance upon photo copy of list of persons stated to have been interviewed suggesting that the list does not say that selection was provisional and subject to verification. But this copy of list produced by the petitioner is not a complete list and is not a complete copy of the document. The record of the interview do suggest that a question mark was put against the petitioner's selection suggesting that the same was subject to verification as regards the entry in service record.

(10) The order of deputation clearly stipulated:-

"The period of deputation will be for 6 years subject to premature repatriation by Spg on the grounds of unsuitability, indiscipline or exigencies of services etc. The individuals while on deputation to Spg will be governed by the terms and conditions, as laid down in Cabinet Sect Order No.A.11013/16/85- DD.I dated 30.2.85 as mended from time to time."

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The aforementioned stipulation did envisage that the period of deputation could be pre-maturely curtailed for various reasons including unsuitability. Though the order no where states that the selection of the petitioner was provisional but record of selection do suggest that it was subject to verification and after respondent No.2 got clarification about the adverse entry of 1981 and on that basis rescinded its decision that the petitioner while on active duty had after removing the clips of the battery gone to sleep, such a decision cannot be said to be arbitrary or irrational. May be that the said minor penalty of reprimand might not have come in the petitioner's way for according him promotion in the B.S.F., as Head Constable and Assistant Sub Inspector but the fact remains that such a lapse could be taken note of while considering the petitioner's suitability to a prestigious force like S.P.G., which is enjoined with the responsibility to look after the security of VVIPs. The requirement for induction in the S.P.G. is of having an unblemished record. In view of the above, we find no illegality and irrationality in

the decision making process or with the impugned decision of the respondents to repatriate the petitioner to his parent force and find no merit in the petition, which is hereby dismissed.