

(2019) 05 CAT CK 0044

In the Central Administrative Tribunal

Case No : Original Application No. 785 Of 2018, Miscellaneous Application No. 1388, 1389 Of 2019

Shivpal Singh

APPELLANT

Vs

Central Bureau Of Investigation

RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Citation : (2019) 05 CAT CK 0044

Hon'ble Judges : L. Narasimha Reddy, J; Aradhana Johri, J

Bench : Division Bench

Advocate : Shaurya Sahay, Hanu Bhaskar

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J

1. The applicant was appointed as a Constable in the Indo-Tibetan Border Police (ITBP). He came on deputation to CBI on 01.01.2013. The term of deputation was initially for a period of three years and thereafter it was extended for another term of three years, in spells of one year each. The respondents initiated the process of absorption of suitable employees working on deputation in their service. The grievance of the applicant is that though he participated in the process of absorption, he was denied absorption, without valid basis. This OA is filed with a prayer to declare and hold that the applicant has been wrongly excluded from consideration for absorption and for a direction to the respondents, to consider his case afresh. Prayer is also made for grant of all consequential benefits.

2. The respondents filed counter affidavit opposing the OA. It is stated that the process for absorption was undertaken and the applicant was also considered in it. It is stated that the applicant was far below in the merit list and accordingly he was not absorbed.

3. The OA was dismissed on an earlier occasion through order dated 15.03.2019.

Aggrieved by that, the applicant filed WP(C) No. 3487/2019 before the Hon'ble High Court of Delhi. The Writ Petition was allowed by the High Court on 05.04.2019 on the ground that the various submissions made by the parties were not considered and no discussion was undertaken either accepting or rejecting them. The case was remanded for rehearing and reconsideration, on merits.

4. We have taken up the OA for hearing afresh. We heard Sh. Shaurya Sahay, learned counsel for the applicant and Sh. Hanu Bhaskar, learned counsel for the respondents.

5. The question that arises for consideration is whether the case of the applicant was considered for absorption. Initially, the deputation of the applicant was for a period of three years and thereafter, it was extended for three years in spells of one year each. One of such extensions was through an order dated 03.11.2017, at the end of the fifth year. It was mentioned against the name of the applicant that the extension is up to 28.02.2019. However, through a corrigendum dated 05.03.2018, it was mentioned that the extension is up to 31.12.2018, for the sixth year.

6. In the year 2017 itself, the respondents have undertaken the process for absorption of suitable employees of various categories working on deputation. The case of the applicant was also considered, but, he was not absorbed. The relevant paragraph of the counter affidavit reads as under:

"5. That the application/petition as filed by the applicant is liable to be dismissed as the process for consideration for absorption in the Department was done in October 2017, in which the applicant though considered, could not be selected being lower in the merit list, and when the further consideration would take place is not known to the Department as of today. The earlier absorption was held in 2009 and thereafter in October 2017."

7. In reply to paragraph 4.4 and 4.6 of the OA, the counter affidavit stated as under:

"4.4-4.6 The para as stated is wrong and denied. The reply as stated in earlier paras may kindly be read as part of this para. The RRs for the said post are in place and the applicant was duly considered for absorption as per the standard and uniform yardstick applied for all the candidate and upon consideration the applicant could not make it due to his lower rank in the merit list. The APAR etc. of the applicant are a matter of record."

8. Even the applicant does not dispute that he applied for absorption and his case was considered. In Para 4.6 and 4.7, he stated as under:

"4.6 That for purposes of absorption, the respondent organisation initiated a process vide circular dated 11/07/2017 (Annexure A/5) and the applicant applied for the same. In the said circular there is a specific mention that preference will be given to Constables having trade skills such as driving/computer/typing/

security aid. Constables considered for absorption on the basis of driving skills will be taken in MT branch only.

4.7 That thereafter only interviews were conducted and the results have been declared without conducting driving tests vide various lists dated 18-20/10/2017 (Annexure A/6) (colly), the applicant was shocked to know that he has not been selected for permanent absorption."

9. From a perusal of this, it becomes clear that the grievance of the applicant was that though he was interviewed, the selections were made without conducting the driving test. This plea of the applicant is met by the respondents by stating that the applicant was already driving an official vehicle and there was no doubt about his driving capacity.

10. Once the applicant was considered for absorption, his rights stand respected. The subsequent development, namely, whether he was selected or not will depend on the satisfaction of the respondents. It is fairly well settled that an employee on deputation cannot insist on being absorbed and much would depend on his fulfilling the prescribed criteria and satisfaction of the borrowing department.

11. The necessity for us to examine the issue further is obviated on account of the fact that the applicant has since been repatriated to his parent department on 12.03.2018.

12. We do not find any merit in the OA and accordingly the same is dismissed.

Pending MAs, if any, stand disposed of.

There shall be no order as to costs.