

(2009) 12 DEL CK 0246

In the Delhi High Court

Case No : Writ Petition (C.) No. 13819 of 2009 and C.M. No. 15639 of 2009

Union of India (UOI) and Another

APPELLANT

Vs

Anil Kumar Choudhary and Others

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 12 DEL CK 0246

Hon'ble Judges : Vipin Sanghi, J;Anil Kumar, J

Bench : Division Bench

Advocate : A.K. Bhardwaj, for the Appellant; Rajesh Banati, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioner Union of India and Director, Intelligence Bureau have assailed the order dated 11.08.2009 passed in O.A. No. 944/2006 by the Central Administrative Tribunal, Principal Bench, New Delhi, whereby the aforesaid Original Application preferred by the respondent Nos. 1 & 2 has been allowed and the Tribunal has directed that they should be assigned seniority after reckoning the entire period that they have served in their parent cadre, namely, Central Industrial Security Force (CISF), respondent No. 3, in the equivalent grade of S.I. on regular basis. The respondents were also granted all consequential benefits including promotion and upgradation under the ACP Scheme, if and when due.

2. The respondent Nos. 1 & 2 were appointed as Sub-Inspector (Executive) in the grade of Rs. 1400-2300 in the CISF in October, 1988. They were sent on deputation to the Intelligence Bureau (I.B) on the equivalent post of ACIO-II(G) where they joined their service on deputation in April, 1992 under the Director, Intelligence Bureau. Vide office memorandum dated 23.09.1998 and 05.09.1997, respondent Nos. 1 & 2, were asked to give their option for absorption in the Intelligence Bureau and they gave their consent for absorption on 09.10.1998 and 26.09.1997, respectively. The Intelligence Bureau thereafter absorbed

respondent Nos. 1 & 2 in the post of ACIO-II(G) w.e.f. 27.04.1997 by order dated 22.02.2002. The said respondents were granted seniority in accordance with O.M. dated 03.10.1989 issued by DoP&T. In the absorption order, it was disclosed that the "No Objection Certificate" from the parent department i.e. CISF for the absorption of respondent Nos. 1 & 2 in the Intelligence Bureau was issued on 18.01.2000. However, we may notice that from the documents filed on record, it appears that the NOC in respect of respondent No. 1 was issued on 25/27.01.1999 and the NOC in respect of respondent No. 2 was issued on 24.11.1999. Vide memorandum dated 12.11.2002 and 01.08.2003, the Intelligence Bureau assigned seniority to the respondent Nos. 1 & 2 in the grade of ACIO-II(G) from the date that they completed five years of service on deputation to the Intelligence Bureau and not from the date from which they were appointed in the equivalent grade of Sub Inspectors in the CISF. Consequently, they have been assigned seniority w.e.f. 27.04.1997.

3. Respondent Nos. 1 & 2 represented against the assignment of seniority to them w.e.f. 27.04.1997 and placed reliance on O.M. dated 27.03.2001 of DoP&T in which it was stated that seniority would be counted from the date from which a person is absorbed in another department or had been appointed on a regular basis to an equivalent grade in his parent department, whichever is earlier. The representation of the respondent Nos. 1 & 2 were rejected on the ground that the instructions contained in DoP&T O.M. dated 27.03.2001 were effective only from 14.12.1999, as mentioned in paragraph 4 of the said O.M. and that the same would not apply to the said respondents, who were absorbed w.e.f. 27.04.1997. In these circumstances, the respondent Nos. 1 & 2 approached the Tribunal by filing the aforesaid Original Application.

4. It is pertinent to note that on 19.09.2001 the respondent No. 1 was directed to report to respondent No. 3 i.e. CISF, the parent department for undergoing a training course for cadre promotion to the post of Inspector (Executive). A similar communication was received by respondent No. 2 as well. Another aspect equally pertinent is that another officer, namely, Deepak Barthwal was absorbed w.e.f. 19.08.2001, on the basis of NOC given by respondent No. 3 on 12.03.2001, whereas respondent Nos. 1 & 2 had been absorbed w.e.f. 27.04.1997 on the basis of NOC issued by respondent No. 3 on 18.01.2000. (as mentioned in petitioner's order dated 22.02.2002, though from the documents the dates of NOC appear to be 25/27.01.1999 and 24.11.1999 respectively). As the date of issuance of the NOC by CISF, even according to the petitioners is 18.01.2000, we shall firstly proceed on the basis that the date of issuance of NOC by CISF indeed was 18.01.2000. We shall, however, also consider the effect of the dates of issuance of the NOC being 25/27.01.1999 and 24.11.1999 a little later.

5. The Tribunal in these circumstances observed, and in our view rightly so, that the issue to be determined is whether the lien of respondent Nos. 1 & 2 in the parent department i.e. CISF stood terminated before the issuance of the NOC by

the CISF for their absorption in the I.B. The Tribunal relied on its earlier order in O.A. 280/1988 "V.N. Ahuja v. Union of India and Ors." wherein a similar issue had arisen. The applicants in that O.A. were absorbed in a public sector undertaking, namely, India Railway Construction Company Limited (IRCON) where they were sent on deputation from the Indian Railways. The Tribunal held that it was well settled that the lien of the applicant in the parent department could not be treated as terminated from a date prior to the date the railway authorities issued their approval to the acceptance of resignation or retirement of the applicant. The Tribunal relied on its earlier decision in the case of J. Sharan, which has not been disturbed by the Supreme Court and the appeal has been dismissed. This, we gather from RBE No: 108/1997 issued by the Railway Board which reads as follows:

R.B.E. No. 108/97

Subject: Permanent absorption of Railway servants in Central Public Enterprises and Central Autonomous Bodies while on deputation in such organisations.

[No. F(E)III/97/PM1/9, dated 08.08.1997]

As per existing policy of the Government Railway servants can, as a general rule, join posts in Central Public Enterprises/Autonomous Bodies only on "immediate absorption" basis. Deputation is permissible only in respect of certain specified exemptions. Further, the Railway servants on deputations to Public Enterprises are required to exercise an option within the deputation period either for reversion to the parent cadre or for permanent cadre absorption in the Public Enterprises/Autonomous Bodies concerned. Such a Railway servant, who has been permitted to be absorbed in Public Enterprises/ Autonomous Bodies shall, if such absorption is declared by the Government to be in Public Interest, be deemed to have retired from service from the date his resignation is accepted and shall be eligible to receive retirement benefits from such a date.

Despite these instructions, instances have come to notice where resignations rendered by the Railway servants on deputation to above mentioned bodies have been accepted retrospectively after considerable delay, at the time of issue of the Presidential orders indicating the terms & conditions of their permanent absorption in the Public Sector Undertaking/Autonomous Body concerned in Public Interest. Such retrospective orders have been challenged in the various Central Administrative Tribunals (CATs) by the concerned officers/employees. For instance in the case of Shri J. Sharan, who was absorbed in RITES, Hon"ble CAT/ Principal Bench observed that such orders should be operative from the date on which these were issued and not from a retrospective date. It was held by that Hon"ble CAT that the lien of the applicant from his cadre post in the parent Department stood terminated only with effect from the date of issue of Presidential orders and that he was entitled to all consequential benefits in respect of salary, etc. Based on this judgment, various CATs have given identical orders in respect of similarly placed officers/employees. SLPs filed by the

Railways, against all such cases have also been dismissed by the Hon''ble Supreme Court.

In the above background, it is reiterated that resignations tendered by Railways employees while on deputation to Public Sector Undertakings etc. in order to get absorbed in such organisations, should be processed and orders accepting the same issue before the expiry of the sanctioned deputation term and not at a later date with retrospective effect. This should be followed immediately by the Presidential sanction indicating the terms and conditions of permanent absorption of the concerned employee in the concerned Public Sector Undertaking/Autonomous Body.

These orders may be followed strictly on the Railways.

6. We also find no reason to take a different view and endorse the same. Reliance can also be placed on K. Phani Ramesh Vs. Dy. Director Navodaya Vidyalaya and Others, ; Gauhati High Court and Another Vs. Kuladhar Phukan and Another, ; State of Rajasthan and Another Vs. S.N. Tiwari and Others, .

7. The submission of the petitioners herein, to justify the retrospective absorption of respondent Nos. 1 & 2 from the year 1997, was that the said respondents had come on deputation to I.B. in the year 1992. Under the recruitment rules on completion of five years on deputation, the said respondents could be absorbed in the I.B. Consequently, on the date on which the said respondents completed five years of deputation period, i.e.27.04.1997 they were treated as absorbed though the No Objection Certificate from the parent department i.e. CISF was received only on 18.01.2000.

8. This submission of the petitioners was rejected by the Tribunal and, in our view, rightly so. The parent department i.e. CISF continued to exercise control over respondent Nos. 1 & 2, and they continued to hold lien in the parent department. This is also evident from the fact that CISF directed respondent Nos. 1 & 2 to report for undergoing a training course for promotion to the post of Inspector (Executive). Without the No Objection from the parent department, respondent Nos. 1 & 2 could possibly not have been absorbed. Since the No Objection Certificate came only on 18.01.2000, the absorption of respondent Nos. 1 & 2 in the I.B. could not have been made effective from 27.04.1997, or from any date prior to 18.01.2000.

9. Learned Counsel for the petitioner has shown the relevant recruitment rule contained in O.M dated 13.01.1992, which states that deputationists, who have rendered not less than five years service on deputation in I.B, could be absorbed. This shows that there is no automatic absorption immediately on completion of five years of service by a deputationist in I.B. The five years service as a deputationist in I.B. is an essential requirement for absorption. It does not mean that any one who has completed five years service on deputation gets absorbed from the date of completion of the said period. Consequently, in our view, the reasoning adopted by the petitioners to deny the application of DoP&T O.M.

dated 27.03.2001 in the case of respondent Nos. 1 & 2, on the ground that the said O.M. was effective only from 14.12.1999 is untenable and has rightly been rejected by the Tribunal, as the absorption of respondent Nos. 1 & 2 could not have taken place prior to 18.01.2000.

10. We now consider the impact of date of issuance of NOC by the CISF as 25/27.01.1999 and 24.11.1999. Firstly, the process of absorption is not complete namely, on the issuance of NOC by the parent department. The absorption/transfer in the foreign service would be complete only when the foreign department passes an order absorbing the deputationist. In this case, the order of absorption was passed on 22.02.2002 i.e. well after 14.12.1999. Therefore, O.M dated 27.03.2001 would apply to the respondent's case.

11. There is another aspect to this matter. The O.M. of DoP&T dated 29.05.1986 laid down the policy for grant of seniority to persons absorbed after being on deputation with another department. Paragraph 7(iv) of the General Principles communicated by this O.M. read as follows:

(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Transfer on deputation/Transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

- the date he has been holding the post on deputation,

or

- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department,

whichever is later.

12. The validity of the said O.M. was challenged before the Supreme Court in S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, . The Supreme Court upheld the challenge and held as follows:

23. ...the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned Memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the Memorandum, as has been prayed in the writ petition, the rights of the appellants could be preserved, we agree with the prayer of the petitioners/appellants and the offending words in Memorandum "whichever is later" are held to be violative of Articles 14 and 16 of the Constitution, hence,

those words are quashed from the text of the impugned Memorandum. Consequently, the right of the petitioners/appellants to count their service from the date of their regular appointment in post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police, is resorted.

Following the judgment of the Supreme Court, the DoP&T issued an OM dated 27.03.2001 in which the phrase "whichever is later" was replaced by the phrase "whichever is earlier". This OM also mentioned in paragraph 4 that the instructions would take effect from 14.12.1999, which was the date of judgment of the Supreme Court in S.I. Roop Lal (supra).

13. These aspects have been taken note of by the Tribunal in the impugned order.

14. The declaration of the law by the Supreme Court in S.I. Roop Lal (supra) could not have been restricted in its application only w.e.f. 14.12.1999. When the Supreme Court declares the law, it declares the law as it has always been. Unless the Supreme Court decides to restrict the effect of its declaration prospectively, the said declaration cannot be given only prospective effect. Therefore, the O.M. dated 29.05.1986 would have to be read with the substituted words "whichever is earlier" and given effect to even in respect of cases of absorption which took place prior to the judgment of the Supreme Court being rendered. The ratio of the said decision in S.I. Roop Lal (supra) would have application to the case of the respondent Nos. 1 & 2, even if it were to be assumed that they were validly absorbed in the year 1997 as contended by the petitioners or in 1999, when the NOC were issued by CISF. For this reason as well, we are of the opinion that the action of the respondents in denying seniority to respondent Nos. 1 & 2 by not counting their service rendered in the grade of S.I. (Executive) in CISF was erroneous.

15. For the aforesaid reasons, we find no merit in this petition and dismiss the same.