

Pawan Kumar & Ors. Vs.union of India & Ors.

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Court : Delhi

Decided On : Nov-28-2018

Appellant : Pawan Kumar & Ors.

Respondent : Union of India & Ors.

Advocate for Pet/Ap. : Mr. Ankur Chhibber, Mr. Bhanu Gupta, Mr. Ravi Prakash, Mr. Varun Pathak, Mr. Bhanu W.P, Mr. Harish Garg, Mr. Sarfaraz Ahmad, Mr. Narender Mann, Mr. Manoj Pant, Mr. Rakesh Kumar

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:20th November, 2018 Pronounced on:

28. h November, 2018 W.P.(C) 6138 /2017 PAWAN KUMAR & ORS.

... Petitioner

s Through: Mr Ankur Chhibber and Mr Bhanu Gupta, Advocates. versus UNION OF INDIA & ORS.

... RESPONDENTS

Through: Mr Ravi Prakash, CGSC with Mr Varun Pathak, Advocates for R-1 to 6. + G. VENKATESAN

... Petitioner

Through: Mr Ankur Chhibber and Mr Bhanu W.P.(C) 10739/2017 Gupta, Advocates. versus UNION OF INDIA AND ORS.

... RESPONDENTS

Through: Mr Harish Garg and Mr Sarfaraz Ahmad, Advocates for R-1, 3 and 4. Mr Narender Mann, SPP for CBI with Mr Manoj Pant, Advocates for CBI. + DEVENDER SINGH AND ORS.

... Petitioner

s Through: Mr Ankur Chhibber and Mr Bhanu W.P.(C) 7702/2017 Gupta, Advocates.. W.P.(C) 6138 and connected matters Page 1 of 17 UNION OF INDIA AND ORS.

... RESPONDENTS

versus Through: Mr Rakesh Kumar, Advocate for UOI. Mr Narender Mann, SPP for CBI with Mr Manoj Pant, Advocates for CBI W.P.(C) 8912/2017 + E RAMESH KUMAR

... Petitioner

Through: Mr Ankur Chhibber and Mr Bhanu Gupta, Advocates. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through: Mr Ravi Prakash, CGSC with Mr Varun Pathak, Advocates for R-1,3 and 4. CORAM: JUSTICE S. MURALIDHAR JUSTICE SANJEEV NARULA

JUDGMENT

1 The

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s who were on deputation with Central Bureau of Investigation (hereinafter referred to as the CBI) have filed writ petitions under Article 226 of the Constitution of India challenging the circular issued by CBI relating to absorption of Constables working on deputation with CBI. They also challenge the letter dated 25th May 2017 whereby the earlier circulars dated 27th October 2016 and 31st October 2016 have been withdrawn. W.P.(C) 6138 and connected matters Page 2 of 17 2.

In all the petitions, identical reliefs have been sought and therefore all the petitions are being decided by a common judgment. Facts 3. The

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s are Constables working with various Departments of Central Armed Police Force (hereinafter referred to as the CAPF). They were sent on deputation to Respondent No.2 i.e. CBI for an initial period of three years. The

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s were granted extension twice and continued on deputation till such time they were repatriated.

4. As per the Recruitment Rules of CBI, the post of Constable (GD) can be filled up by two sources i.e. deputation and absorption. Fifty percent posts of Constables are required to be filled by way of deputation and the rest by absorption. The relevant clause of the Recruitment Rules for the posts of Constable (GD), is reproduced hereunder:

1.

2. Constable (GD) *1794 (2013) *Subject to variation dependant on workload.

8.

9. Not Applicable Not Applicable 3. General Central Service, Group 'C' Non-Gazetted, Non- Ministerial 4.

5. 6.

7. Not Applicable Not Applicable Not Applicable Pay Band- 1 Rs 5200- 20200 plus grade pay of Rs. 2000 12.

13. Not Applicable Not Applicable 10.

11. strength Hundred per cent deputation/absorption. Note: The total number or of Constables absorbed shall not exceed fifty percent of total strength of Constables. the posts Deputation/absorption Deputation: (i) Officials holding analogous on

regular basis in Central or State Police Forces; and the (ii) minimum educational qualifications of 12th class pass or equivalent possessing W.P.(C) 6138 and connected matters Page 3 of 17 in or pay recognised from any Board or University. Note 1: For purpose of appointment on deputation/absorption basis, service rendered on a regular basis by an officer prior to 1st January, 2006 or the date from which the revised pay structure the Sixth based on Central Pay Commission has recommendations been extended, shall be deemed to be service the rendered corresponding grade pay scale extended based on the recommendations of the Commission, except where there has been merger of more than one pre-revised scale of pay into one grade with a common grade pay or pay scale, and where this benefit will extend only for the post(s) for which that grade pay or pay scale is the normal grade replacement without any upgradation. Note 2: The period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in same or some other organisation not shall exceed years subject screening midway for assessing fitness and suitability for on if a deputation and found person for unsuitable continuation on seven to continuation the ordinarily is W.P.(C) 6138 and connected matters Page 4 of 17 reverted deputation, for whatsoever reasons, he to shall be cadre parent immediately without any notice. Note 3: The maximum for age appointment by deputation shall not be exceeding fifty-six years as on the date of appointment on deputation. limit 5. On 29th July 2015, Director CBI convened a meeting to deliberate upon the process of absorption. It was decided to increase the strength by filling up vacancies expeditiously. Accordingly, a committee was constituted to work out the modalities of the absorption process.

6. On 27th October 2016, CBI issued a letter whereby it invited recommendations for the candidates who could be absorbed in CBI. In order to consider the candidature of a deputationist Constables, certain guidelines were laid down. These guidelines/criteria inter-alia provided minimum education qualification for induction in CBI. Various branches of CBI were called upon to send recommendations in accordance with the following Rules: (1) Constables must have a minimum education qualification of 12th class pass or equivalent (2) Constables must be drawing pay in the pre-revised pay scale of Rs. 5200-20200/- with Grade Pay of Rs. 2000/- and revised pay scale of Rs. 21700-69100

corresponding to Level -3 of 7th CPC Constables who are from CPOs and are in receipt of higher pay scale under ACP scheme are also eligible for absorption. (3) Constables drawing pay in the pre-revised pay scales higher W.P.(C) 6138 and connected matters Page 5 of 17 than Rs 5200-20200/- with Grade pay of Rs. 2000/- and revised pay scale of Rs. 21700-69100 corresponding to Level-3 to 7th CPC in their parent organizations are not eligible for absorption and their applications / recommendations should not be sent. (4) It is also made clear that service rendered by Constables in State Police Organisations will not be counted for grant of financial upgradation under ACP scheme on absorption in CBI. The service after absorption in CBI is to be taken into account for the purpose of determining the reckonable service for financial upgradation under ACP Scheme. (5) The performance of Constables who will be considered and absorbed in CBI will be monitored for a period of 2 years and if their services are not found satisfactory they may be considered for de-absorption and repatriation to parent deptt. (6) Constables who have completed their 4 years of deputation in CBI as on 31.03.2016 and are still serving in CBI on deputation will be considered for absorption. The recommendations in respect of such Constables only be sent. (7) While sending the proposals for absorption a citation in support of their candidature indicating the detailed reasons, rewards/commendations earned by the individual may also be enclosed with the proforma for each candidate separately. (8) Complete ACR folder pertaining to the period of work in CBI may be sent along with recommendations. The integrity of the individual and a vigilance certificate may also be furnished. (9) Recommendations received with incomplete information are liable to be rejected forthwith without any intimation. 7. In continuation of the letter dated 27th October 2016,

... RESPONDENTS

issued another letter dated 31st October 2016. By this letter, the minimum educational qualification criteria was modified to include candidates who W.P.(C) 6138 and connected matters Page 6 of 17 possessed qualification of 10th pass and above and had completed two years in CBI, as on 31st March 2016.

8. Respective branches of CBI forwarded the names of the

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s with their citations and recommendations.

9. Certain Constables, filed writ petition bearing number W.P. (C) No.11297/2016 titled as Raju Singh and Ors v. Union of India and Ors. and challenged the notifications dated 27th October 2016 and 31st October 2016 on the ground that the eligibility criteria of including candidates possessing educational qualification of 10th pass and above, was in violation of the Recruitment Rules. This Court vide order dated 6th December 2016, issued notice of the Petition to the

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10. On 25th May 2017, CBI issued a letter and withdrew the earlier circulars dated 27th October 2016 and 31st October 2016 with immediate effect.

11. Aggrieved by the withdrawal of circulars,

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s made representations to CBI.

12. It is also to be noted that in the meantime, CBI issued orders relieving some of the

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s on repatriation. Such

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s were directed to report to duty in their parent department. It appears that some of the

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s sought earned leave and the same was sanctioned and such Constables were asked to join the parent department after expiry of the earned leave.

13. On 11th July 2017, CBI issued fresh circular for considering the W.P.(C) 6138 and connected matters Page 7 of 17 candidature of deputationist Constables for absorption. This circular laid down the following guidelines/criteria: (1) Constables

must have a minimum education qualification of 12th class pass or equivalent (2) Constables must be drawing pay in the pre-revised pay scale of Rs. 5200-20200/- with Grade Pay of Rs. 2000/- and revised pay scale of Rs. 21700-69100 corresponding to Level -3 of 7th CPC Constables who are from CPOs and are in receipt of higher pay scale under ACP scheme are also eligible for absorption. (3) Constables drawing pay in the pre-revised pay scales higher than Rs 5200-20200/- with Grade pay of Rs. 2000/- and revised pay scale of Rs. 21700-69100 corresponding to Level-3 to 7th CPC in their parent organizations are not eligible for absorption and their applications / recommendations should not be sent. (4) It is also made clear that service rendered by Constables in State Police Organisations will not be counted for grant of financial upgradation under ACP scheme on absorption in CBI. The service after absorption in CBI is to be taken into account for the purpose of determining the reckonable service for financial upgradation under ACP Scheme. (5) The performance of Constables who will be considered and absorbed in CBI will be monitored for a period of 2 years and if their services are not found satisfactory they may be considered for de-absorption and repatriation to parent deptt. (6) Constables who have completed their 4 years of deputation in CBI as on the date on the issue of this circular (11.07.2017) and have not exceeded 07 years of maximum tenure on deputation will be considered for absorption. The recommendations in respect of such Constables only be sent. (7) While sending the proposals for absorption a citation in support of their candidature indicating the detailed reasons, W.P.(C) 6138 and connected matters Page 8 of 17 rewards/commendations earned by the individual may also be enclosed with the proforma for each candidate separately. (8) Complete ACR folder pertaining to the period of work in CBI may be sent along with recommendations (if already sent please ignore). The integrity of the individual and a vigilance certificate may also be furnished. (9) Recommendations received with incomplete information are liable to be rejected forthwith without any intimation. 14. The

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s have challenged the aforesaid circular in the present writ petitions. An application bearing number C.M. No.25510/2017 was also filed seeking interim order and stay of the operation of circular dated 11th July 2017. In the alternative,

permission was sought to participate in the absorption process. On the said application the following order was passed: Issue notice returnable on 1st September, 2017. Counter affidavit would be filed within three weeks. Rejoinder, if any, within three weeks of service of counter affidavit. The contention of the petitioners is that there is no valid and good reason to impose the condition not exceeded seven years of maximum tenure on deputation to be considered for absorption. The petitioners further state that in terms of circulars dated 22nd October, 2016 and 31st October, 2016 they were considered for absorption in the Central Bureau of Investigation and the process was almost complete. No objection certificates had been obtained the parent cadre. However, subsequently, these circulars were withdrawn and in these circumstances with effect from 1st June, 2017, repatriation orders have been issued by the Central Bureau of Investigation. The recruitment process pursuant to the notification dated 11th July, 2017 may continue, but appointments made would be subject to the outcome of the present writ petition. from W.P.(C) 6138 and connected matters Page 9 of 17 Submissions 15. Mr. Ankur Chhibber learned counsel appearing on behalf of the

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s at the outset submits that

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s have since been repatriated to their parent department and they have since joined the same. Mr. Chibber argues that despite the above situation, the present petition is still maintainable, as the

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s have been protected by the interim order reproduced above. His argument is twofold. Firstly, he submits that the eligibility criteria specified in the circular dated 11th July 2017, is contrary to the Recruitment Rules. His submission is that the Recruitment Rules nowhere provide that a deputationist Constable who has been with the organisation for more than seven years, would have been ineligible for absorption. He relied upon the note appearing in the Recruitment Rules and stated that the said proviso only states that the period of deputation shall ordinarily not exceed seven years. Mr. Chibber argues that, the guidelines in the impugned

circular, are in violation of the Recruitment Rules as they completely bar a Constable who has exceeded 7 years on deputation, from being considered. He strongly urged that CBI could not take away the

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s' right to be considered for absorption. Mr. Chibber very fairly stated that Deputationist do not have an automatic right of absorption but, they surely have a right of consideration.

16. The second limb of his argument is that the

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s had a legitimate expectation for being considered for absorption in light of the assurance given to them by the Authorities. He says the assurance is evident from the fact that the Director, CBI had directed a note initiating process of absorption resulting in issuance of the circulars dated 27th October 2016 and W.P.(C) 6138 and connected matters Page 10 of 17 31st October 2016. Pursuant to the abovementioned circulars, the

... Petitioner

s were recommended for absorption. He submits that vide communication dated 25th May 2017, the

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have withdrawn the Circular, without giving any reasons. He further submits that the

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s during their deputation with CBI were highly appreciated by the Department and for this reason several extension were granted to them with the assurance that ultimately they would be absorbed in CBI. According to him, this creates a right in their favour for being considered for absorption. He prayed that directions be given to the

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to consider

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s for absorption. In support of his argument, Mr. Chibber has relied upon the judgment of the Supreme Court in the case of Rameshwar Prasad v. Managing Director, U.P. Rajkiya Nirman Nigam Ltd & Ors., reported in (1999) 8 SCC381, Ram Pravesh Singh & Ors v. State of Bihar & Ors, reported in (2006) 8 SCC381 and Girjesh Shrivastava & Ors v. State of Madhya Pradesh & Ors, reported in (2010) 10 SCC707 17. Mr. Ravi Prakash learned CGSC appearing on behalf of the

... RESPONDENTS

on the other hand has urged that the petition has become infructuous in as much as the petitioners have been repatriated and they have since joined their parent department. He submits that it is evident from the Recruitment Rules and also the impugned circular that only such Constables can be considered for absorption, who are on deputation with CBI. Since the

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s are no longer on the strength of CBI, they cannot be said to be deputationist and therefore there is no right in their favour of being considered for absorption. He further submits that CBI has rightly withdrawn the earlier circulars of 27th October 2016 and 31st October 2016, W.P.(C) 6138 and connected matters Page 11 of 17 since the eligibility criteria in these circulars was not in sync with the Recruitment Rules. He submits that no fault can be attributed to CBI, for correcting a wrong. He relied upon the observations made by this court viz Clause 6 of the impugned circular, by referring to the order dated 26th July 2017, passed in C.M. No.26330/2017 wherein it has been categorically recorded as under: Reliance placed by the petitioners on circular dated 11th July, 2017 is misconceived. Clause-6 of the circular will only apply to the persons who are still on deputation on the date when circular dated 11th July, 2017 was issued. This is clear from paragraph 2 of the Circular dated 11th July, 2017. Learned counsel for the applicant has drawn our attention to the earlier circular dated 27th October 2016 wherein the expression and are still serving in CBI on deputation was used. This too in our opinion would not make any difference and cannot be a ground to read

clause -6 of the circular dated 11th July, 2017 differently. The language of Clause 6 of the circular dated 11.07.2017 is clear and catagoric. Officers who are not serving in the CBI on deputation on 11th July, 2017, are not eligible. In these circumstances, we do not think the applicant is entitled to any interim relief in view of circular dated 11th July, 2017. We dismiss the present application, however, making it clear that it is open to the petitioner to challenge the said circular if he is so advised, in accordance with law. We also clarify that the disposal of this application would not affect any right of the petitioner under earlier circulars dated 27th October, 2016 and 31st October, 2016 as also the challenge to withdrawal of these circulars. 18. Mr. Ravi Prakash relied upon Note II of the Recruitment Rules and urged that it is clearly mentioned therein that period of deputation with CBI, including the period of deputation in another ex cadre posts shall W.P.(C) 6138 and connected matters Page 12 of 17 ordinarily not exceed seven years, subject to screening midway for assessing fitness and suitability for continuation on deputation. His submission is that the total deputation period in a particular case shall not exceed seven years and this includes the period rendered on deputation in other organisations, prior to coming on deputation with CBI. Mr Ravi Prakash therefore urged that the circular dated 11th July 2017 is in conformity with the relevant Clause of Recruitment Rules. Finally, Mr. Ravi Prakash submitted that the names of the

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s were never recommended by the committee constituted for absorption. No NOC was received from the parent organisation and therefore the

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s cannot say that they had legitimate expectation for being considered for absorption. Findings 19. The question before the Court is rather a simple one. Do the

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s have a right of being considered for absorption?. The right to be considered for absorption would arise only if the

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s are eligible for absorption, as per the Recruitment Rules. A careful reading of Note II of the Recruitment Rules distinctly indicates that the candidates, who are to be considered for absorption, should be on deputation with CBI on the date of consideration. The concept of midterm review to assess eligibility and suitability of a candidate for continuation of deputation prior to appointment on absorption basis, undeniably means that only such persons would be eligible, who are presently serving with CBI on deputation. This is also clear from the language of Clause 6 of the impugned circular. In the present case as on date, none of the

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s are on deputation. We therefore find no basis for the

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s to seek directions to CBI to W.P.(C) 6138 and connected matters Page 13 of 17 consider their candidature. We note that this Court had passed an interim order, observing that the recruitment process pursuant to the notification dated 11th July 2017 may continue, but such appointments would be subject to outcome of the petition. However, such an order does not vest a right in favour of the

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s. Even if this Court were to quash the recruitment process, it would only mean that the appointments made pursuant to the impugned notification are invalid.

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s would not acquire the eligibility for being considered. In absence of any vested right, the petitioners cannot succeed. Therefore, we fail to see as to how the interim protection granted to the

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s would in any manner render them eligible as per the Recruitment Rules. The

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s are presently on the strength of their respective parent departments.

20. It is well settled in law that a person has no vested right to continue on deputation or to be absorbed. The law relating to deputation has been settled in

several judgments. The Supreme Court in Kunal Nanda v. Union of India & Anr., reported in, (2000) 5 SCC362 held as under: 6. It is well settled that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department 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. 21. Similar view has been expressed by the Supreme Court in Union of W.P.(C) 6138 and connected matters Page 14 of 17 India v. V. Ramakrishnan & Ors, reported in (2005) 8 SCC394 Union of India (UOI) and Ors. vs. S.A. Khailiq Pasha and Ors. reported in MANU/SC/1536/2009 and by the Division Bench of this Court in the case of Chander Pal Singh v. Union of India & Ors., reported in 104 (2003) DLT8 22. Besides the above mentioned reason, there is another, as to why the Petitions should fail. The circular impugned in the present petition stipulates that the constables who have not exceeded 7 years on deputation will be considered for absorption. This is in line with Note II of the Recruitment Rules of 2013. The period of seven years provided in Clause 6 of the impugned circular deals with the maximum tenure on deputation. Therefore, we do not find any infirmity in the impugned circular that would warrant an intervention by this Court. We note that the earlier circular of 27th October 2016, modified by letter dated 31st October 2016, did bring in an element of conflict with the Recruitment Rules. CBI has stated that they sought intervention of Do PT for relaxation of the eligibility criterion, but the request was declined and CBI had to withdraw the said circular. This action of withdrawal does not appear to be arbitrary. The fresh circular issued after withdrawal is in conformity with the Recruitment Rules.

23.

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s plea of legitimate expectation is also without merit. Merely because the

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s continued to be on deputation for a period of seven years or more, it cannot be said that a right has accrued in their favour. The delay on the part of CBI to complete this absorption process was also on account of the earlier circulars being contrary to the Recruitment Rules. Mr. W.P.(C) 6138 and connected matters Page 15 of 17 Chibber relies on the Judgment of the Supreme Court in the case of Ram Pravesh Singh & Ors v. State of Bihar & Ors, (2006) 8 SCC381 This judgment is distinguishable from the facts of the present case. The Appellant therein were working for the Futwah-Phulwarisharif Gramya Vidyut Sahakari Samiti Ltd. (for short the Society). This society was brought into existence by the Bihar Government and the Bihar State Electricity Board by issuing a license to the Society under the State Electricity Act. Thereafter the license issued to the society was revoked and it was merged with the Board. On account of this merger, the Appellants claimed a right to be absorbed relying on the doctrine of legitimate expectation.

24. Further, the judgment of the Supreme Court in Rameshwar Prasad (supra) is also of no assistance to the

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s. In the said case the

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who was on deputation claimed that he should be declared to be deemed to be absorbed on the ground that the parent department had stopped paying him deputation allowance.

25. It is worth noting what has been stated in para 15, relevant portion thereof is reproduced below: 15. In the present case, considering the facts, it is apparent that inaction of respondent No.1 of not passing the order either for repatriation or absorption qua the appellant was unjustified and arbitrary. (emphasis supplied) 26. The facts of Rameshwar Prasad (supra) therefore are completely W.P.(C) 6138 and connected matters Page 16 of 17 differentiable, in as much as the

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in the said case continued to be with borrowing department and there was no order for repatriation. In the instant case as noted above, all the

... Petitioner

s have been repatriated and they have joined their parent department.

27. Similarly, the judgment of the Supreme Court in *Girjesh Shrivastava & Ors v. State of Madhya Pradesh & Ors*, (2010) 10 SCC707 is also not relevant to the facts of the present case. In the above noted case the Apex Court held that if there are irregularities in a selection process, then those irregularities should be weeded out instead of striking down the entire selection process. Whereas, in the present case, the earlier circulars that have been withdrawn, were contrary to the Recruitment Rules. This would mean that the entire process had to be done afresh.

28. In view of the aforementioned discussion, we find no merit in the present petitions and the same are dismissed with no order as to costs. NOVEMBER28 2018 nk SANJEEV NARULA, J S. MURALIDHAR, J W.P.(C) 6138 and connected matters Page 17 of 17

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