

STATE OF PUNJAB AND ORS.

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v

INDER SINGH AND ORS.

OCTOBER 3, 1997

[SUJATA V. MANOHAR AND D.P. WADHWA, JJ.]

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Service law:

Deputation—Meaning of—Service outside the cadre or the Department on temporary basis—On expiry of the deputation period the employee has to come back to his parent Department on the same position/rank unless he has earned promotion in his parent Department as per rule.

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Deputation—Repatriation from—Employees served on deputation for very long period and during deputation earned promotions on ad hoc basis—On repatriation, employees have to work on the lower post in their parent department—If they retired on deputation they would earn pension on the basis of their holding high ranks, though the pension being paid by the parent Department—Longer period of deputation created a false hope in the employees that they would, continue there till retirement—Held, the deputation could not be without consent of the employees, they would, therefore, know their rights and privileges in the deputation post—Hence, repatriation from deputation cannot be resisted by the employees—However, equity permits that such deputationists who had completed 20 years on deputation could seek voluntary retirement.

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The respondents were enrolled as Constables in the Police Department and later deputed to Crime Investigation Department (CID) of the State Police. They served for long years in the CID and during the course of their deputation they earned promotion on *ad-hoc* basis and some of them reached the rank of Sub-Inspector. They were sought to be repatriated to their parent departments and they were to go back to their parent departments as Constables or Head Constables even though during deputation period they earned any promotions in their parent department. The respondents filed writ petition challenging the order of repatriation. High court held that the order of repatriation was legal and could not be set aside. It, however, directed that (1) if the respondent sought voluntary retirement from the posts they were holding in CID, the order of repatriation would not come in their way and their retirement be

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A considered on the basis of the posts they were holding in CID; and (2) the seniority of the respondents in their parent department be determined by giving them the benefit of service they rendered in CID. Hence, the present appeals by way of special leave.

Disposing of the appeals, the Court

B HELD : 1. The 'Deputation' is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry of the period of deputation, the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the recruitment rules. Whether the transfer is outside the normal field of the employment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. Hence, repatriation from deputation cannot be resisted by the employees. [439-F-G]

D. *D.M. Bharti v. L.M. Sud & Ors.*, (1991) Supp. 2 SCC 162; *Ratilal B. Soni & Ors. v. State of Gujarat & Ors.*, [1990] 1 SCR 414; *Puranjit Singh v. Union Territory of Chandigarh & Ors.*, [1994] Supp. 3 SCC 471 and *R. Prabha Devi & Ors. v. Government of India, Through Secretary, Ministry of Personnel and Training, Administrative Reforms & Ors.*, [1988] 3 SCR 147, relied on.

E *T. Shantharam v. State of Karnataka & Ors.*, [1995] 2 SCC 538 and *Narayan Yeshwant Gore v. Union of India & Ors.*, [1995] 4 SCC 470, distinguished.

F *Narender Chadha & Ors. v. Union of India*, [1986] 2 SCC 157, referred to.

G 2. The Constables on deputation to CID have reached higher ranks and retired from CID in those ranks. A hope, though not true, is instilled in officers like the respondents that they would continue in the CID holding high ranks till the age of superannuation. The conduct of the appellants in suddenly asking the respondents to go back to their parent departments when they have put in best years of their life in CID would appear to be rather unjust. It would have been more appropriate for the appellant to repatriate the respondent after the expiry of the initial period of deputation or at least they should have been told the consequence of their continuing on deputation and sudden H repatriation. It would also be more appropriate, considering the fact that the

deputation in CID could be for any number of years, that the rules are amended and a separate cadre is created in CID to absorb the officers, if they are on deputation for a number of years. It is said that Constables who have come on deputation to CID retired while holding high ranks in CID and they earned their pension on the basis of their holding high ranks though the pension was being paid by their parent department. This may be on the basis of relevant pension rules as applicable in the State. Now, if the respondents go back to their parent department and work there as Constables or Head Constables their emoluments would be reduced considerably and they would be deprived of getting higher pension when they retired. Hence, the High Court was justified in giving the option to the respondents to seek voluntary retirement as per the relevant Rules and the order be affirmed to the extent that option be given to all those respondents who have put in 20 years qualifying service as per the relevant rule to seek voluntary retirement from the CID in the ranks they are holding and they will be deemed to have worked in CID upto the date of this judgement. The option shall be given within 30 days.

[440-G-H; 441-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1293-1303 of 1995.

From the Judgment and Order dated 3.9.94 of the Punjab & Haryana High Court in L.P.A. Nos. 885-892 of 1994.

WITH

C.A. Nos. 8302/95 and 1939/97.

AND

C.A. Nos. 7137-38 and 7145-47/97.

P.P. Rao, S.K. Bagga (Sanjay Bansal) for R.S. Sodhi, Mrs. Sureshta Bagga, Seeraj Bagga, Ms. Tanuj Bagga, Ujjal Singh, K.P. Singh, (J.P. Singh) for R.C. Kaushik, (Neeraj K. Jain and U.S. Prasad) Ms. Abha R. Sharma, M.K. Dua and A.D. Sikri for the appearing parties.

The Judgment of the Court was delivered by

D.P. WADHWA, J. Leave granted in all the special leave petitions.

In this batch of appeals, it is the State of Punjab in the Police Department which is the appellant. There are in all 18 respondents. They were all enrolled as Constables in the Police Department and later deputed to the Criminal Investigation Department (CID) of the Punjab Police. During the course of

A their deputation, they earned promotions on *ad hoc* basis and some of the respondents reached the rank of *ad hoc* Sub-Inspectors. When they were sought to be repatriated to their parent departments, they were to go back as Constables or Head-constables if in the meanwhile on deputation they earned any promotion in their parent departments. They had served for long years in the CID and the prospect of going back as Constables was not to their liking. They, therefore, approached the High Court of Punjab and Haryana by filing writ petitions which were allowed to an extent. The High Court did say that the order of repatriation of the respondents being legal could not be set aside as such. However, directions were issued that the cases of the respondents in their parent departments be considered for promotions on the relevant dates when persons junior to them were promoted at different levels and, if necessary, even to relax the rules. In some of the cases two directions were given, namely, (1) if the respondents sought voluntary retirement from the posts they were holding in CID, the order of repatriation would not come in their way and their cases for voluntary retirement be considered on the basis of the posts they were holding in CID; and (2) to determine the seniority of the respondents in their parent departments by giving them the benefit of service they rendered in CID and consequently to be considered for promotion with effect from the date the persons junior to them were promoted.

To understand the rival contentions, we shall consider the case of Inder Singh one of the respondents (CA Nos. 1293-1303 of 1995). He was enrolled in the Punjab Police on August 31, 1966 as Constable and on April 13, 1969 was sent on deputation to CID in the same rank. He was sought to be repatriated on September 15, 1990 while he was holding the rank of *ad hoc* Sub-Inspector. During this period of deputation, Inder Singh, by order dated February 19, 1985 was promoted as officiating Head-Constable after giving him exemption under the relevant rules which we will consider hereinafter. In the parent Department, he was holding the substantive rank of Head Constable. During the pendency of the writ petition in the High Court, we are told that there was stay of order of repatriation. Inder Singh was not, however, given any posting till the judgment was delivered by the High Court. On November 7, 1994, he was posted in the CID unit at Faridkot. However, this joining was subject to final decision of the present appeal. This Court at the time of the admission of the special leave petition granted status quo which is continuing. The appellant has, therefore, contended that from the date of repatriation, Inder Singh remained absent, upto November 6, 1994. Taking into account this period of four years, Inder Singh was on deputation in CID for over 28 years.

H We may note that the Department has not taken any action against Inder

Singh for his alleged absence from the date of the order of repatriation till the order of his rejoining CID and his posting at Faridkot. The High Court in granting relief to respondents negated the contention of the State that the respondents could not be promoted to higher posts in their parent departments without passing the various departmental examinations as per the relevant Rules. That was how the High Court dealt with these contentions first by allowing the writ petitions by the learned single Judge and then on appeal before the Division Bench filed by the State against the judgment of the learned single Judge. The High Court was of the view that in terms of sub-rule (3) of Rule 21.25 of the Punjab Police Rules, when an officer borne on the rolls of a district or range reached a place in seniority which would entitle him to be considered for substantive promotion if he were serving in the establishment to which he belonged permanently, he shall be informed and given the opportunity to return to the district Police force. The Court said that admittedly, the writ petitioner, who was sent on deputation to the CID, was not so informed and given the opportunity to return to his parent Department when he was entitled to be considered for substantive promotion to the higher post. As held by the learned single Judge, the appellant who failed in its statutory duty to inform the writ petitioner when his juniors in the parent department were considered for promotion to the higher post, could not take advantage of its own wrong. The writ petitioner while on deputation to CID, Intelligence Department, was found fit and had been promoted as Sub-Inspector on 12th December, 1989, and was holding that post on the date when the order for the repatriation to his parent department was issued. The High Court said that in view of such peculiar facts, it would be a good ground for relaxing the rule for considering him for promotion to the higher post with effect from the date his immediate juniors were so promoted in accordance with the directions given by the learned single Judge. The respondent in the writ petitions had prayed for writ of certiorari for quashing the order of repatriation and a writ of mandamus directing the petitioner to absorb him in CID (Intelligence Department) where he had put in 23 years of service or directing the petitioner to determine the seniority of the respondent in his parent department after giving him benefit of service which he had rendered for 23 years in the CID and consequently to promote him from the date when his juniors were promoted.

The Rules are called Punjab Police Rules and have been framed under the Police Act, 1861. It is not necessary for us to quote the relevant Rules in extenso except Rule 21.25 dealing with deputation to CID which is as under:

“21.25(1) Upper and lower subordinate posts other than those of

- A Inspectors in the Criminal Investigation Department shall be filled by the deputation of suitable men from districts for a periods of three years extensible but not more than two years at a time at the discretion of the Deputy Inspector-General, Criminal Investigation Department.
- B (2) A Police officer on deputation to the Criminal Investigation Department will retain his original position in the cadre of his district or range. While in the Criminal Investigation Department he will be eligible for officiating promotion in that branch; on reversion from the Criminal Investigation Department he will assume his place in his original cadre. Officiating promotion may be given in the district or range in the place of an officer deputed to the Criminal Investigation Department, such officiating post lapsing on the officer's reversion.
- C (3) When an officer borne on the rolls of a district or range reaches a place in seniority which would entitle him to be considered for substantive promotion if he were serving in the establishment to which he belongs permanently, he shall be informed and given the opportunity of returning to district police work. No officer on deputation to the Criminal Investigation Department shall be substantively promoted to Head Constable or higher rank unless both the Deputy Inspector-General, Criminal Investigation Department and the Deputy Inspector-General of the range to which he belongs agree that he is qualified for such promotion by all the prescribed standards.
- D (4) The Deputy Inspector-General, Criminal Investigation Department, may make recommendation on behalf of, Sub-Inspectors serving under him to the Deputy Inspector-General of the range and the Inspector-General of Police, respectively, for promotion to the selection grade or admission to List F. A Sub-Inspector who becomes eligible while serving in the Criminal Investigation Department for grade promotion in the selection grade, shall receive such promotion, if the Deputy Inspector-General of the range and Criminal Investigation Department agree that he is fit for it.
- E (5) Annual reports on upper subordinates serving on deputation in the Criminal Investigation Department shall be sent by the Deputy Inspector-General, Criminal Investigation Department, to the range Deputy Inspector-General concerned for record and other necessary action.
- F (6) In very exceptional cases and for the political branch only and with the written sanction of the Deputy Inspector-General personally, direct
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enrolment as constable or in higher ranks, may be made to the Criminal Investigation Department. Specialists shall, however, when possible, be entertained on contract terms, so that their services may be dispensed with when their utility ceases or deteriorates. A

21.25. (A) The Deputy Inspector-General, Criminal Investigation Department, shall have complete disciplinary control over all police officers while serving in the Criminal Investigation Department." B

Rules also describe the duties of CID but that is not necessary for us to refer to.

Rules relating to promotion and deputation are quite specific and there is no ambiguity about them. Each district/Range (Districts are grouped into Ranges) has its own cadre of officers upto certain ranks. We are concerned with the rank upto Sub-Inspector. Promotion from one rank to another and from one grade to another in the same rank is on the basis of selection-cum-seniority. What factors are to be taken into consideration for promotion have been set out in Rule 13.1 and which are of general nature. Upto the rank of Sub-Inspector five lists A,B,C,D and E are to be maintained for the purposes of promotions from the Constables and contain the names of the candidates as per their seniority after they have fulfilled the specified requirements. List A contains the names of the Constables who were eligible for promotion to the selection grade and is maintained by the Superintendent of Police of the District. List B contains the names of all Constables selected from admission to the promotion course for Constables at the Police Training College. Selection is made in the month of January each year and is limited to the number of seats allotted to the district for the year with twenty percent reserve. A Departmental Promotion Committee is constituted which conducts tests in general law (Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and Local and Special Laws), interviews and examination of records and prepares the merit list. Rule 13.7 (2) prescribes the eligibility criteria of the Constables who are to be entered in List B. Those Constables who have passed the Lower School Course at Police Training College, Phillaur and are considered eligible for promotion to Head Constables are entered in List-C. Promotion to Head Constables are made in accordance with the principles set out in Rule 13.1 (1) and (2). Selection grade Constables who have not passed the Lower School Course but are otherwise considered suitable can be promoted to Head Constables upto a maximum of ten per cent of vacancies but that can be done with the approval of the Deputy Inspector-General of H

- A Police. Similarly List-D is maintained for selection for admission to the promotion course for Head Constables at the Police Training College is made from amongst, all the confirmed Head Constables. Eligibility for admission to the promotion course for Head Constables is prescribed in Rule 13.9(1). Those Head Constables who qualify at Police Training College in the promotion course for Head Constables find their names entered in Part-I of List-D. Rule
- B 13.9(2) prescribes that names of outstanding Head Constables who have not passed the promotion course for Head Constables due to being over-age but otherwise are of exceptional merit and are considered suitable may, with the approval of Inspector-General of Police, be entered in Part II of List D. Further under this sub-rule not more than 10% of the posts of Assistant Sub-Inspectors
- C will be filled from the names in Part II of List D. Promotions to the posts of Assistant Sub-Inspectors are to be made from List D (Part-II). Similar procedure is prescribed for promotion of all Assistant Sub-Inspectors to Sub-Inspector from List E (Part-1) which contains the names of Assistant Sub-Inspectors who qualified for promotion course for Assistant Sub-Inspectors at Police Training College. List E is also in two parts. Part II of List E contains the
- D names of Assistant Sub-Inspectors of exceptional merit who have not qualified the course for Assistant Sub-Inspectors at Police Training College and are considered suitable for promotion.

- E CID does not have a cadre of its own officers upto the rank of Sub-Inspectors. Rules 21.25 states that posts other than those of Inspectors in CID shall be filled by the deputation of suitable men from districts for a period of three years extensible but not more than two years at a time at the discretion of the Deputy Inspector-General, CID. A police officer on deputation to the CID retains his original position in the cadre of the district or range. While in the CID he is eligible for officiating promotion in that branch but on
- F reversion from CID he assumes his place in his original cadre. Sub-rule (2) of Rule 21.25 also prescribes that officiating promotion may be given in the district or range in the place of an officer deputed to CID but such officiating post lapsing on the officer's reversion. Under sub-rule (3) of this rule when an officer while on deputation in CID reaches a place in seniority in that
- G district he is entitled to be considered for substantive promotion as if he was serving in that district but he shall be informed and given the opportunity of returning to his district police work. This sub-rule further prescribes that no officer on deputation to CID shall be substantively promoted to Head Constable or higher rank unless both the Deputy Inspector-General, CID and the Deputy Inspector-General of the range to which the officer belongs agree that he is
- H qualified for such promotion by all the prescribed standards. It would appear

that under this sub-rule Inder Singh while on deputation with CID earned his promotion as officiating Head Constables without his having to have passed Lower School Course in Phillaur and thus promoted to Head Constable out of 10 per cent of vacancies as having been found suitable for the promotion.

In the writ petition of Inder Singh he raised the following four questions which according to him needed consideration :

“(i) Whether the respondents were bound to absorb the petitioner in the CID Intelligence Department where he has put in 23 years service and he had excellent and unblemished service record?

(ii) Whether the respondents are justified in repatriating the petitioner after more than 23 years of service and that too without giving him any benefit of 23 years of service which he has rendered in the CID, Intelligence Department?

(iii) Whether the respondents are justified in repatriating the petitioner as Constable to his parent department when his juniors have been promoted and are working on the post of Sub-Inspectors and Inspectors?

(iv) Whether the order of repatriation is discriminatory and violative of Articles 14 and 16 of the Constitution of India?”

As to what relief the High Court granted we have noted above.

We find that the respondents have not challenged their repatriation to their respective districts on the rolls of which they are borne but what they contend is that they should hold the same position there as they were holding in CID. They submitted that while they were on deputation to CID their juniors have been promoted and now if they go back they have to work under them. These contentions do not appear to us to be correct. For one the respondents do not have any right to hold on the post which they were having in CID in their parent department and (2) they were holding the posts in CID only on ad hoc basis. Appellants have brought on record a chart to show that even Constables who were senior to the respondents are still working as Constable as they could not qualify for further promotion in terms of the Rules mentioned above. In the case of Inder Singh no Constable junior to him has been promoted and there are 65 Constable who are senior to Inder Singh who are still working as Constables. Respondents have then contended that as per sub-rule (3) of Rule 21.25 they were never informed and given no

- A opportunity of returning to their respective districts after they reached their places in seniority of their districts entitling them to be considered for substantive promotion. In the case of Inder Singh appellants have stated that old record of test for List-B was not traceable. However, Inder Singh has given his unwillingness to undergo Intermediate School in the term commencing with effect from April 1, 1990 to October 1, 1990. For promotion from Constable to Head Constable passing of B-1 test is a must. Inder Singh was not eligible to appear in the test for the first three years as he had not completed three years of service. Subsequently also he did not appear in any test held for the purpose. However, he was promoted on February 19, 1985 as officiating Head Constable by order of the Senior Superintendent of Police Ludhiana from List
- B to Head Constable passing of B-1 test is a must. Inder Singh was not eligible to appear in the test for the first three years as he had not completed three years of service. Subsequently also he did not appear in any test held for the purpose. However, he was promoted on February 19, 1985 as officiating Head Constable by order of the Senior Superintendent of Police Ludhiana from List
- C C having been given exemption. Appellants have stated that since test is held in January every year circulars/letters are issued to the organisations including the CID where their employees are working asking them to appear in the test. This test is held on the same date throughout the State. The Constables who are eager to compete are always on the alert to appear in the test as it is known to all the Constables that the test is being held. Appellants have also
- D brought on record that apart from the fact that every Constable on deputation in CID would come to know of the test, the respondents were also individually informed except that in the case of one or two of the respondents records were not available to show that they had also been individually informed of the test being held. On the dates of holding of the test eligible candidates
- E assemble at the prescribed place where the test is conducted. Several Constables serving in the CID on deputation appeared in B-1 test. So it is very well known to every Constable wherever he may be, the appellants submit. It would, therefore, appear to us that there cannot be any excuse that the candidates were not aware of the holding of the test.
- F It is then submitted that deputation to CID could not exceed a period of five years and after the expiry of this period the respondents should have been sent back to their respective districts and that after all this period on deputation to CID now asking them to appear in test would not only be irregular but arbitrary as well. We do not think that sub-rule (1) of Rule 21.25
- G limits the deputation to CID for a maximum period of five years. In the first instance deputation is for three years and it can be extended for not more than two years at a time. It cannot be said that after three years the extension is for further two years and no more. We have to give an ordinary meaning to the words used in the sub-rule. We however, agree with the respondents that every time deputation was extended they should have been informed of their
- H rights in CID while on deputation vis-a-vis their parent department.

Mr. P.P. Rao learned counsel for the appellant-State of Punjab, submitted that repatriation of the respondents was necessary as Government thought of injecting fresh blood in CID. It appears to be rather a specious plea. It is not disputed that officers having put in more years than the respondents are still working on deputation in CID. No reason is forth-coming as to why the respondents are the only persons who are picked up to be repatriated. But since this question was not raised in these terms we are not called upon to decide the same.

It was then submitted by the respondents that deputation to CID had no meaning as all the police departments in the State are headed by the Inspector General of Police who is also the administrative head of CID. Reference in this connection was made to Rules 1.2, 1.4. and 1.5. It is, however, not necessary for us to refer to these Rules as we do not find any substance in this contention. Rules are statutory and each district/range in the State has a separate cadre of its officers. There is no cadre of officers up to the rank of sub Inspector in CID and the officers upto this rank are drawn from various districts in the State. Merely because the administrative head of all the police departments in the State is one it cannot be said that there can be no rule for deputation to a particular department in the whole of the police establishment in the State. If we refer to the Rule 21.25 Deputy Inspector General, CID has complete disciplinary control over all the police officer while serving in that department. On this very reasoning, there is no scope for the argument that respondents be absorbed in CID as this Department has no cadre of its own upto the rank of Sub-Inspector.

It was than submitted that officers in CID are of exceptional merit and they have vast experience of conducting investigation and in fact they help the district police in the conduct of investigation and that they should be given exemption from appearing in tests or undergoing any training in the Police Training School and that they should be promoted in 10 per cent quota meant for officers of special qualities. If that is done it will certainly be in violation of the statutory rules. Promotion has to be by prescribed standards. Moreover it is nobody's case that any vacancy exists to which the respondents could have been promoted. In any case, we are not impressed with this argument.

Mr. Bagga appearing for some of the respondents submitted that the case of Amrit Kumar (CA 1297/95) was different. In his writ petition (No. 8979 of 1991) in the High Court it was mentioned in the order dated June 12, 1991 that Amrit Kumar was working as Sub-Inspector in CID and was being

A repatriated as Head Constable to his parent department. The High Court ordered that he shall be repatriated as Sub-Inspector and it shall be open to the authorities to determine his seniority in the parent department in accordance with law. On clarification sought by the State the court order dated March 6, 1992 states that it shall be open to the Department to determine the seniority of Amrit Kumar and post him to the post he was entitled to and that the order dated June 12, 1991 would not confer any benefit on him. We, therefore, fail to see how this case is any different or that Amrit Kumar would be posted as Sub Inspector in his parent department on repatriation.

C During course of arguments, certain decisions of this Court were referred to on the question of deputation and the right of the deputationist on his repatriation. These, we may note. In *D.M. Bharti v. L.M. Sud & Ors.*, [1991] Supp. 2 SCC 162, the appellant who was working as a Tracer in Municipal Corporation Ahmedabad went to Town Planning Establishment by way of deputation. In the Town Planning Establishment, the appellant was promoted as Junior Draftsman and there was a proposal to promote him further as D Surveyor-cum Draftsman. But before this promotion could materialise, the Town Planning Establishment was wound up. The appellant, was, therefore, reverted back to his parent department, i.e., the Municipal Corporation and posted as a Tracer and not as a Junior Draftsman. The appellant treated this as a reversion and challenged the same. This Court said that it was not reversion and that when the appellant left the Municipal Corporation and joined the Town Planning Establishment, he was a Tracer and he could go back only as a Tracer subject, however, that if in the meantime, while he was on deputation, he had qualified for promotion to a higher post in the parent department, that benefit could not be denied to him. The Court said that promotions earned by an employee on deputation did not enjoin any protection and that on repatriation, he could be accommodated only on its original post or to the post to which he stood notionally promoted in the parent department by having so qualified. In *Ratilal B. Soni & Ors. v. State of Gujarat & Ors.*, [1990] 1 SCR 414, the appellant who belonged to the Revenue Department of the Gujarat Government was allocated to the Panchayat Service on coming into force of Gujarat Panchayat Act 1961. He went on deputation as Circle Inspector in the State Service and was later reverted back to his parent cadre in the Panchayat Service, This was challenged by the appellant. This Court held that the appellant being on deputation could be reverted to his parent cadre at any time and he did not get any right to be absorbed on the deputation post. In *Puranjit Singh v. Union Territory of Chandigarh & Ors.*, [1994] Supp. 3 SCC 471, it was held that when a deputationist was repatriated,

he could not claim promotions in the parent department on the basis of officiation in higher post in the borrowing organisation. In *R. Prabha Devi & Ors. v. Government of India Through Secretary, Ministry of Personnel and Training. Administrative Reforms & Ors.*, [1988] 3 SCR 147, the question before this Court which fell for consideration was whether the service rule requiring eight years of approved service as Section Officer both for the direct recruits as well as for promotees for being eligible for consideration for promotion to the Grade-I post in the Central Secretariat Services was arbitrary being in contravention of Articles 14 and 16 of the Constitution of India. This Court laid the following principle:

“The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years’ approved services in the grade of Section Officer as a condition of eligibility for being considered for promotion to Grade I Post of C.S.S. This rule is equally applicable to both the direct recruit Section Officers as well as the promotee Sections Officers. The submission that a senior Section Officer has a right to be considered for promotion to Grade-I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section Officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can over-ride it in the matter of promotion to the next higher post. The rule in question which

A prescribes a uniform period of qualified services cannot be said to be arbitrary or unjust violative of Articles 14 or 16 of the Constitution.”

In view of the clear statement of law, the respondents before us cannot claim promotion in their parent department in contravention of statutory Rules as they do not satisfy the eligibility conditions.

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In *T. Shantharam v. State of Karnataka & Ors.*, [1995] 2 SCC 538, the appellant was appointed in the Revenue Department of the State Government as Second Division Clerk. He was sent on deputation to the Food and Civil Supplies Department which was then part of Revenue Department as Assistant

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Civil Supplies Inspector. There he was promoted as Second Grade Civil Supplies Inspector. There was a seniority dispute between the appellant and Mr. R.K. Vasudev who was appointed in the Food Wing of the Revenue Department. The Court found that at all levels of appointments and promotions, the appellant was always senior to Mr. R.K. Vasudev. But fact remained that the appellant continued to be on deputation in the Food Wing of the Revenue

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Department right from 1967 to 1986. When the appellant was sought to be repatriated, he approached the Karnataka Administrative Tribunal which by order dated January 28, 1988 directed absorption of the appellant in the Food Department holding that he had not been given any proforma promotion in his parent department and that there was no valid ground to reject his request

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for absorption and that the appellant was entitled for a direction to the respondents to absorb him in the Department of Food and Civil Supplies in the post then held by him. The appellant was, thus, absorbed and was placed above R.K. Vasudev. The appellant was then promoted as Assistant Director on January 1, 1980. Similarly, R.K. Vasudev was also promoted as Assistant Director. The question before this Court was of the *inter se* seniority between

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the appellant and R.K. Vasudev. This Court agreed that as per Rules, the appellant could not have been sent on deputation to higher post than the post held by him in the parent Department. But then the Court said that he had uninterruptedly worked in the Food Department and under those circumstances though initially the appellant might have been mistakenly deputed

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to hold higher post in the Food and Civil Supplies Department, but “since the appellant had obviously discharged his duties and higher responsibilities to the satisfaction of all concerned, at this distance of time, it is highly unjust to send him back to hold the post in the parent department which he was entitled to hold and the Tribunal is not right to interfere with action of the department in its absorption of the appellant as per its own earlier order.” This

H

judgment is quite distinguished and of no help to the respondents as the

question which falls squarely for consideration before us was not there and the appellant in that case had been absorbed by the department. In the present case before us, there is no separate cadre to which the respondents or any one of them could be absorbed. In *Narayan Yeshwant Gore v. Union of India & Ors.*, [1995] 4 SCC 470, the appellant who was working in the National Sample Survey Organisation as Inspector was sent on deputation to Census Department at Nagpur. He remained there from 1961 to 1975 and earned promotion. His last promotion being that of Assistant Director. When he came back to his parent department, he was appointed as Assistant Director on *ad hoc* basis. While he was on deputation, his juniors in the parent department were appointed as Assistant Directors on *ad hoc* basis. After the decision of this Court in *Narender Chadha & Ors. v. Union of India*, [1986] 2 SCC 157, where it was held that all those officers who were appointed as Assistant Directors in the National Sample Survey Organisation should be deemed to have been appointed substantively from the date of their *ad hoc* appointment. In consequence there of, they became senior to the appellant. This Court held that the appellant was similarly situated along with those who were granted benefit by this Court and merely because the appellant was working in the Census Department at the relevant time, he could not be prejudiced. The Court extended the benefit given in *Narender Chadha's Case* (*supra*) to the appellant as well. Again this decision does not support the case of the respondents before us.

Concept of "deputation" is well understood in service law and has a recognised meaning. 'Deputation' has a different connotation in service law and the dictionary meaning of the word 'deputation' is of no help. In simple words 'deputation' means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case

A may be.

B It is no doubt really harsh on the respondents to be sent back after they have served the CID for number of years in higher rank though on *ad hoc* basis and now when they go back they have to work either as Constables or Head Constables. It was submitted before us that an employee could seek voluntary retirement after putting in 20 years of qualifying service and that the High Court in the impugned judgment gave option to the respondents to seek voluntary retirement while still working in the CID and holding higher ranks. This option can, however, be limited to only those respondents who have put in 20 years of qualifying service as per the relevant Rules. In our
C opinion, the High court was justified in giving such an option to the respondents to seek voluntary retirement. At the time when special leave petitions were filed against the impugned judgment of the High Court, this Court directed that status quo be maintained while staying the impugned judgment of the High Court. The High Court in the writ petitions filed by the respondents granted stay of the orders of repatriation. After the impugned
D judgment, there was order of status *quo* by this Court. In this view of the matter, the respondents continued to be in the CID. We affirm the impugned judgment of the High Court to the extent that the respondents who put in 20 years of qualifying service in their parent departments and in CID would be entitled to seek voluntary retirement from the ranks they are holding in CID
E and the period of qualifying service would be counted upto the date of this judgment. These options the respondents shall give within 30 days from the date of this judgment. The respondents who do not give such option and those respondents who have not put in 20 years of qualifying service would have to revert back to their parent department.

F It is in fact an admitted position that Constables on deputation to CID have reached higher ranks and retired form CID in those ranks. A hope, though not true, is instilled in officers like the respondents that they would continue in the CID holding higher ranks till the age of superannuation. The conduct of the appellants now suddenly asking the respondents to go back
G to their parent departments when they have put in best years of their lives in CID would appear to be rather unjust. It would have been more appropriate for the appellant to repatriate the respondents after the expiry of the initial period of deputation or at least they should have been told the consequences of their continuing on deputation and sudden repatriation. It would also be more appropriate, considering the fact that the deputation in CID could be for
H any number of years, that the rules are amended and a separate cadre is

granted in CID to absorb the officers, if they are on 'deputation' for a number of years. It is submitted before us that Constables who have come on 'deputation' to CID retired while holding higher ranks in CID and they earned their pension on the basis of their holding higher ranks though the pension was being paid by their parent department. This may be on the basis of relevant pension rules as applicable in the State. Now, if the respondents go back to their parent department and work their as Constables or Head Constables their emoluments would be reduced considerably and they would be deprived of getting higher pension when they retire. A B

Considering the whole aspect of the matter we affirm the order of the High Court to the extent that option be given to all those respondents who have put in 20 years qualifying service to seek voluntary retirement from the CID in the ranks they are holding and they will be deemed to have worked in CID upto the date of this judgment. The option shall be given within 30 days. C

Except as aforesaid the appeals are allowed and the impugned judgment is set aside. Writ petitions filed by the respondents are dismissed. There will be no order as to costs. D

B.K.S.

Appeals allowed. E