

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.6366/2008**

**Date of decision: 13<sup>th</sup> April, 2010**

CT (T) M.A. BAIJU ..... Petitioner  
Through Mr. A.K. Trivedi, Adv.

versus

UOI & ORS ..... Respondents  
Through Ms. Barkha Babbar, Adv.

**CORAM:**

**HON'BLE MS. JUSTICE GITA MITTAL**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether reporters of local papers may be allowed to see the Judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

**GITA MITTAL, J (Oral)**

1. This writ petition lays a challenge to the action of the respondents in not considering the petitioner for promotion to the next higher post in the technical trades in the Border Security Force (BSF). The admitted position is that the petitioner was enrolled in the BSF pursuant to the order dated 2<sup>nd</sup> April, 1991. This communication was captioned as "Recruitment of Constables (Tech) from Open Market". The petitioner has been serving as a constable with the respondents and was posted at various places in the technical branch. It is the petitioner's contention that even on date, he is working in the technical branch.

2. The petitioner places reliance on a letter dated 19<sup>th</sup> October, 2007 issued by the Assistant Commandant Mr. H.K. Yadav who was the administrative officer to the Central Workshop & Stores of the BSF informing that as per records available, the petitioner has been appointed as

Constable (Tech) w.e.f. 16<sup>th</sup> April, 1991. The petitioner contends that he has completed more than 12 years of service and has neither been given promotion nor the benefit of the Assured Career Progression Scheme (hereinafter referred to as 'ACP' for brevity). The petitioner contends that he has further been informed that if he wants to get the benefit of the ACP scheme, he has to undergo a list 'C' course. The petitioner contends that an order dated 10<sup>th</sup> January, 2003 has been issued by the respondents providing the procedure/criteria for preparation of list 'C', 'D' & 'E' for promotion to the higher rank which has provided that constable with at least eight years of service can be considered for promotion to the rank of Head constable and that he fulfils all eligibility condition for promotion to this rank but has not wrongly been considered.

3. It is further submitted that despite the petitioner's eligibility for promotion to the said post, the respondents wrongly and illegally considered General Duty (GD) personnel for promotion whose services are being utilised for performing technical duties.

4. The respondents have contested the case of the petitioner and contended that the petitioner was never appointed to a technical post but was appointed as against the vacancy of Constable (General Duty) in April, 1991. It has further been contended that the petitioner did not meet the requisite physical standard and condonation of short fall of two centimeters in height and three centimeters in chest was given to him at the time of recruitment. His technical expertise was one of the reasons which went in his favour for the purposes of grant of this condonation by letter dated 2<sup>nd</sup> April, 1991. It is pointed out that the petitioner underwent 24 weeks basic training as Constable (GD) at the BTC, Tekanpur and remained posted in CENWOSTO upto 7<sup>th</sup> October, 2004 in the trade of machinist. On 8<sup>th</sup> October, 2004, he was posted to SAW, Hazaribagh and further to the M & C

Frontier on 18<sup>th</sup> January, 2008.

5. The respondents have explained that based on the petitioner's technical knowledge and expertise, he was utilised as machinist but his appointment was against the vacancy of Constable (GD) alone. It has further been contended that there has never been a post of Constable (Technical) in the organisation. The petitioner was required to fulfill all the norms and conditions for GD Screening for further promotion. It is submitted that there are no recruitment rules for promotion of technical personnel of the Central Workshop & Stores.

6. Learned counsel for the petitioner has placed reliance on the letter dated 2<sup>nd</sup> April, 1991 which has been captioned as "Recruitment of Constables (Tech) from Open Market". Reliance has also been placed on the aforementioned communication dated 19<sup>th</sup> October, 2007. Mr. Trivedi, learned counsel for the petitioner has vehemently contended that the respondents have obtained the consent of the petitioner who has exercised the option to remain in the technical post only. Copy of the format purportedly signed by the petitioner has been placed on record.

7. On the other hand, the respondents have placed reliance on the provisions of the Border Security Force Act as well as the rules and regulations framed thereunder relating to recruitment and promotion of the personnel. Our attention is drawn to Section 2 of the BSF Act which provides the definition of a person enrolled into the force. Classification of officers and other members of the force is provided in Rule 14A of the Border Security Force Rules, 1969 ('BSF Rules' hereinafter). So far as the constables and enrolled followers are concerned, the same are covered under Rule 14A (d) of the BSF Rules which includes all enrolled persons other than the under officers.

8. The Government has also issued a notification dated 19<sup>th</sup> July, 1975

whereby the Border Security Force (Subordinate Officers and Under Officers) Promotion & Seniority Rules, 1975 came into force. These rules provide for promotion of General Duty Subordinate Officers, Under Officers and Enrolled Officers. These rules were amended by a notification dated 22<sup>nd</sup> September, 1984 making the same applicable to personnel working as Operators (Signals Set Up) under the Border Security Force.

9. On the 22<sup>nd</sup> March, 2002, the Ministry of Home Affairs superseded the Border Security Force (Subordinate Officers and Under Officers) Promotion & Seniority Rules, 1975 and the Border Security Force Sub Inspector (General Duty) (Group `C' posts) Recruitment Rules, 1994. These rules were substituted by the "Border Security Force General Duty Cadre (Non-Gazetted) Recruitment Rules, 2002 which regulated the method of recruitment to the posts of the General Duty Cadre (Non-Gazetted) Recruitment Rules.

We find that these rules provide for recruitment to the post of constable in the general duty cadre and the method of promotion as well. It is noteworthy that none of the aforementioned rules contained a reference to any post of Constable (Technical) therein. We also find no provision for promotion of a constable in the specific technical stream under these rules.

10. It appears that the respondents have as a matter of abundant caution, placed all rules which govern recruitment and promotion to the post of constable and which are applicable to the personnel of Border Security Force on record. A notification dated 21<sup>st</sup> September, 2006 issued by the Central Government regulating the method of recruitment to the post of Motor Transport Workshop Cadre in the BSF titled as the "Border Security Force Motor Transport Workshops (Non-Gazetted) Group `C' Posts Recruitment Rules, 2006" has also been placed on record. The schedule to these rules includes the post of Constable (Technical). The rules came into

force only in September, 2006 on the date of publication of the notification and would therefore have no bearing on the present consideration.

11. The above narration would show that so far as the provisions of the statute, the rules and regulations framed thereunder which governs the method of recruitment and promotion as well as the description of the posts in the BSF are concerned, the same do not contain any technical cadre and make no reference to a post of Constable (Technical).

12. Ms. Barkha Babbar, learned counsel for the respondents has asserted that the reference to the post of Constable (Technical) in the communication dated 2<sup>nd</sup> April, 1991 as well as the letter dated 19<sup>th</sup> October, 2007 relied upon by the petitioner, is an inadvertent, clearly erroneous and wholly illegal reference by the author of the communications in view of the statutory rules and regulations which would bind consideration of the present matter.

13. The petitioner cannot place reliance on any representation which is contrary to the specific statutory provisions governing the subject. It needs no elaboration that the petitioner has to base his claim on the classification of posts under the rules and regulations and not on any reference in a communication from the respondents. No applicable legal provision has been pointed out which would come to the aid of the petitioner or support his contention.

In view of the above discussion and the rule position afore-noticed, there is certainly merit in this contention.

14. The respondents have also explained the petitioner's allegations of discrimination against him. The petitioner has cited instances of Head Constable Shatrughan Sharma; SI Hari Ram Cochare; SI Sunil Rajhans and SI Inrath Singh contending that these persons were appointed as Constable (Technical) and even promoted in the technical trades to the post of Head

Constable by the BSF. The respondents have on affidavit disputed this claim and explained that these personnel were promoted to the next respective higher rank in the general duty scheme after qualifying the pre promotion courses as are prescribed and after undergoing the scrutiny of Departmental Promotion Committee as is applicable to personnel of GD stream. Nothing to the contrary has been placed before us.

15. We, therefore, find no merit in the petitioner's contention that he was appointed as a Constable (Technical) and is entitled to promotion in the said stream.

16. So far as the petitioner's grievance that he is required to undergo the pre-promotion course/mandatory course as Constable (GD) before he could be considered for promotion to the next post is concerned, it has been pointed out that the rules require a constable to qualify such course for eligibility to a financial upgradation under the Assured Career Progression (ACP) scheme. In view of the fact that the petitioner had undergone the list "C" grade and qualified the same only on 18<sup>th</sup> September, 2004, he was granted the first financial upgradation under the ACP Scheme with effect from this date.

17. The respondents have also stated that the petitioner's case for promotion would be considered on availability of vacancy in the force on the basis of the central seniority of all constables in the Border Security Force. As on the date of filing of the counter affidavit, the respondents had considered the cases of Constable (GD) having seniority upto 13<sup>th</sup> March, 1989 for the next higher rank of Constable (GD) w.e.f. 1<sup>st</sup> April, 2009. On this date, the petitioner was having seniority of 16<sup>th</sup> April, 1991.

The petitioner would obviously be entitled to such consideration as per the applicable rules.

In view of the above, the action of the respondents is clearly in accordance with law and cannot be faulted on any legally tenable grounds.

We, therefore, find no merit in this writ petition which is accordingly dismissed.

**GITA MITTAL, J**

**INDERMEET KAUR, J**

**APRIL 13, 2010**  
**aa**