

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(through virtual mode)

WP(C) No. 3577/2019
MP No. 7294/2019

Reserved on: 04.12.2025

Pronounced on: 20.12.2025

Uploaded on: 23.12.2025

*Whether the operative part or full
judgment is pronounced-**Full Judgment***

Gowhar Gulzar Lone

...Petitioner(s)

Through: Mr. Molvi Aijaz Ahmad, Advocate.

Vs.

Union of India & Ors.

...Respondent(s)

Through: Mr. T.M.Shamsi, DSGI with
Mr. Faizan Ahmad Ganie, CGC.

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. The petitioner is aggrieved of the Order No. Estt/WP(C)-17829 of 2018/2018/14317-21 dated 21.12.2018 issued by respondent No.2- Inspector General, STC, BSF, Bangalore, in terms whereof the case of the petitioner, to consider him for appointment to the clerical/other posts in BSF, was rejected by the respondents, as according to the respondents same is inconsistent with the relevant Recruitment Rules and being devoid of any merit.

2. In the instant petition it has been averred that the petitioner was enrolled in BSF on 16-02-2013 as Constable (GD) vide Order No. 1061/Estt/rectt Cell/STC/2013/1280-1442 dated 23-02-2013 issued by STC BSF, Srinagar and subsequently the petitioner reported at STC BSF, Bangalore on 03.03.2013 for undergoing basic training; that, immediately after his arrival, he reported sick and was referred to Bowring & Lady Curzon Hospital, Bangalore on 06/03/2013, where he was diagnosed as a case of '*non-union fracture PP with infection*'. That, he was further referred to Orthopedic Surgeon, BGS Global Hospital, Bangalore, where he was diagnosed as a case of '*Chronic osteomyelitis of 5th Metatarsal head, Proximal Phalanx & Distal Phalanx of 5th Toe of left foot*', and 5th ray amputation of left foot was done on 20-03-2013. That, consequently, the petitioner was placed in low medical category S1H1A3(LL)(T-12) P1E1 w.e.f., 04/04/2013 and relegated to next junior batch.
3. It has been further averred that vide STC BSF, Bangalore Order No. 303/Estt-III/Rectt-COI/2013/6572-76 dated 30/03/2013, a Court Of Inquiry (CoI) was convened to investigate the circumstances under which the petitioner had sustained injury in his left foot; that, the petitioner was discharged from service vide STC, BSF, Bangalore Order No. 338/Estt/STC/BSF/2013/24930-25029 dated 10/12/2013 without any pensionary benefits under the provision of Para-2 of his appointment order, service condition No.2 under Part-II of Appendix-I of Rule 13 of BSF Rules, 1969 and in exercise of power under Rule 17(A) of BSF (Amendment) Rules, 2011, after observing all mandatory formalities.

4. It has been next contended that the petitioner had submitted a representation for his re-instatement in BSF; that, on being examined the documents in detail, Ftr HQ (Spl Ops) BSF, Bangalore set aside the order of discharge No. 134201285 Ex-Rectt/Const and ordered to re-instate the petitioner in service with immediate effect; that, the petitioner filed a petition SWP No.164/2018 before this Court with a prayer to direct the respondents to consider the petitioner for any clerical post or class –IV, as the petitioner has become ‘disabled’ because of amputation of left foot and to decide the representation of the petitioner; that, vide order dated 29.09.2018 passed in SWP No.164/2018, this Court directed the respondents to treat the said writ petition as representation on behalf of the petitioner and accord consideration to the claim of the petitioner in accordance with relevant rules; that, the case of the petitioner was considered by the respondents but his appointment to a clerical/other post, being impermissible under the relevant rules, was not acceded to.

5. Aggrieved of the same, the petitioner has come up with the instant writ petition for quashment of the same. The petitioner, through the medium of the present petition, has prayed for the following reliefs in the nature of writ of:-

a) “Certiorari and quash the order impugned in the writ petition passed by respondent 02- Inspector General STC, BSF, Bangalore dated 21st of December 2018 bearing No: Estt/WP (C) 17829 of 2018/2018/14317-21.

b) Mandamus: commanding the respondents to reinstate the petitioner as has already been ordered by the respondents, as reflected by them in the

impugned order, in para 06 vide order No:134201285.Rectt/CT Gowhar Gulzar Lone, which has even not been withdrawn specifically by virtue of the impugned order of discharge or is this honorable court deems fit and proper, a fresh. The honorable court be further pleased to direct the respondents to give to the petitioner all service benefits, as would have been available to him had he not been discharged from the services including salary and seniority and other perks as admissible under rules. Or in the alternative the honorable court be pleased to command the respondents to give to the writ petitioner substitute employment/alternative employment or in the alternative the honorable court be pleased to direct the respondents to give to the writ petitioner, "the disability pension" and invalid pension.

c) The honorable court may be pleased to give a direction in favour of the petitioner and against the respondents, which this honorable court finds proper and convenient in the peculiar circumstances of the case, though not specifically prayed for, in the interests of Justice, for which the petitioner shall ever remain grateful."

6. Objections stand filed by the respondents, wherein it has been stated that the petitioner was enrolled in BSF as Constable (GD) on 16.02.2013 but his appointment was subject to certain terms and conditions; one of the conditions as specified under para-2 of his appointment was that he will be initially on probation for two years and during the period of probation his services can be terminated by the competent authority at any time without assigning any reason as per the provisions of BSF Act and Rules, if the authority considers

that he is not likely to become an efficient member of the force or fail to qualify the basic training within the permissible time.

7. It is further stated that after the arrival of the petitioner at Bangalore, to undergo basic training, he reported sick and was referred to Bowring & Lady Curzon Hospital, Bangalore on 06/03/2013, where he was diagnosed as a case of '*non-union fracture PP with infection*'. He was further referred to Orthopedic Surgeon, BGS Global Hospital, Bangalore, where he was diagnosed as a case of '*Chronic osteomyelitis of 5th Metatarsal head, Proximal Phalanx & Distal Phalanx of 5th Toe of left foot*' and 5th ray amputation of left foot was done on 20-03-2013. Furthermore, the respondents stated that during the Court of Inquiry proceedings, it was established that during the last week of December, 2012 i.e., before joining in BSF, the petitioner had felt pain in his little toe of the left foot at his home town i.e., Anantnag, J&K and he got treatment from nearby private hospital and thereafter on 24/01/2013 he went to Government Hospital for Bone & Joint Surgery, Barzulla, Srinagar, and got admitted there. It is further stated that all the medical procedures were done after the final medical examination carried out by the BSF Medical Board on 14/04/2012 for enrolment of the petitioner in BSF through SSC and before his joining BSF i.e. on 16/02/2013.
8. Respondents further pleaded that the competent authority found him unfit for further retention in service and he was called upon to show cause as to why his services should not be terminated on the grounds of unsatisfactory progress in basic training due to amputation of 5th metatarsal toe of left foot, under the provision of para-2 of his

appointment order. Reply of the petitioner to the said show-cause notice was received, perused and was found devoid of any merit.

9. Furthermore, the respondents stated in their objections that after examining the documents in detail, respondents observed that the procedure adopted for discharge of petitioner from service was not in order under the provisions of Rule 17-A of BSF (Amendment Rules, 2011), as such, the discharge order of the petitioner was ordered to be set-aside and was directed to be reinstated in BSF with a further direction to the petitioner to report STC, BSF Bangalore within 15 days on the receipt of the order, but neither the petitioner reported nor any intimation was received from him.
10. Respondents have filed their response to the writ petition wherein the specific stand taken is that the petitioner's claim for appointment to clerical or other posts in the BSF, being inconsistent with the applicable recruitment rules, stands rejected on the strength that appointment to clerical or other posts is impermissible under the said rules, as all appointments in the BSF are of a combat nature, for which physical fitness and SHAPE-I medical category are mandatory requirements. Finally, the respondents have prayed for dismissal of the instant petition, being devoid of any merit due to baseless, fabricated and misleading facts.
11. Heard learned counsel for the parties, perused the record and considered the same.
12. Learned counsel for the petitioner vehemently argued that the impugned order has been passed in clear and brazen violation of the provisions of BSF Act, 1968 and BSF Rules, 1969 framed there-

under. It is alleged that the proceedings initiated by the respondent-authorities against the petitioner are violative of his fundamental rights, particularly Article 21 of the Constitution, as his right to life in the form of right to livelihood, was denied to him, inasmuch as, the proceedings before the court of enquiry was conducted without due notice to the petitioner and without affording any opportunity to him and also that the proceedings against him was carried out, without following due procedure in accordance with the provisions of the BSF Act, 1968 as well as the relevant BSF Rules, 1969.

13. Learned counsel for the petitioner, while making submissions, pleaded that the petitioner would have responded to the order of reinstatement, had it been communicated to him but the fact of the matter is that it had never been communicated to him. If for the sake of arguments it is presumed that he had received the order of reinstatement then what was the fun for the petitioner to approach this Court for his reinstatement.
14. Learned counsel for the respondents, ex-adversus, fervently argued that the present writ petition is not maintainable, inasmuch as, the case of the petitioner was examined and he was reinstated in the service, however, he failed to resume his duties within the time prescribed. He further contended that in terms of the order dated 29.09.2018 passed in earlier filed writ petition SWP No.164/2018, the case of the petitioner was considered but was established that under the relevant recruitment rules it is a mandatory obligation for a candidate to be physically fit/SHAPE-I medical category for the appointment in BSF,

which requirement in the present case is lacking, accordingly, the case of the petitioner was rejected by the respondents.

15. Learned counsel for the respondents further contends that once the petitioner was reinstated in the service, he should have without losing a moment and quick as a flash, resumed his duties sensing the significance of the same. Finally, learned counsel for the respondents submits that the present petition, in view of the aforementioned facts, is without any merit and prayed for its dismissal.

16. The facts that crystallized for the disposal of this petition are that the petitioner was appointed as Constable (GD) by the respondent-Border Security Force on 23.02.2013 and after his recruitment, he reported at STC BSF, Bangalore on 03.03.2013 for undergoing basis training. However, immediately after his arrival, he reported to be sick and on being referred to Bowring & Lady Curzon Hospital, Bangalore on 06.03.2013, where he was diagnosed as a case of 'non-union fracture PP with infection' and his 5th ray amputation of left foot was done on 20.03.2013 and, finally, he was placed in low medical category w.e.f. 04.04.2013 and relegated to next junior batch; that on a 'Court of Inquiry' conducted by the respondent-BSF, it was found that the injury sustained by the petitioner was before he joined the respondent-BSF, as such, he was discharged from service on 10.12.2013 without any pensionary benefits.

17. Against his discharge from service without pensionary benefits, the petitioner made a representation for his re-instatement in BSF and his representation was allowed and he was reinstated. The petitioner's case is that he had not received the communication, whereby, he had

been reinstated and he could not join the services, whereas the case of the respondent is that despite service of the communication through registered post dispatched to his residential home address, the petitioner had chosen not to join the duties.

18. The petitioner in the year 2018 filed SWP No. 164/2018, which was disposed of by this court vide order dated 29.09.2018, directing the respondents to treat the said writ petition as representation on behalf of the petitioner and accord consideration to his claim in accordance with relevant rules.

19. Pursuant to directions passed by this court, the respondents considered the matter and passed the order impugned herein, whereby, it was decided that the petitioner could not be appointed to a clerical/other post being impermissible under the relevant rules. The learned counsel for the petitioner on his behalf has canvassed mainly on the point that the petitioner on his restatement had not been communicated, as such, he could not join back his duties. However, in his Writ Petition (SWP No.164/2018), he had not raised any such issue and had prayed a relief that he should be appointed on some clerical/other post and on consideration of the direction passed by this court, the respondents rejected the plea raised by the petitioner holding that the same was not permissible under the relevant rules as all the posts in the BSF fall under the Combat and with a disability which the petitioner had suffered did not permit him to be appointed on such post. The learned counsel for the petitioner has failed to substantiate from any of the provisions of the Border Security Force Act, 1968 or Border Security Force Rules, 1969 that such a relief is permissible in favour of a

person having disability. The petitioner in his representation and as pleaded in SWP No. 164/2018 had admitted to have suffered the disability. The learned counsel for the petitioner has also not been able to substantiate the plea of the petitioner that any such order having been passed in favour of a person having similar medical condition by the Respondent-BSF so as to enable this court to consider the matter in the light of the prayer made by the petitioner.

20. Having regard to the aforesaid discussion and rival submissions made by learned counsel on both sides, this court is of the considered opinion that the petitioner has failed to make out a case for any interference in the impugned order dated 21.12.2018 or to command the respondents to reinstate the petitioner against some clerical/other post which can be manned by a person of such a medical condition of which the petitioner had suffered.

21. Viewed thus, the petition is found to be without any merit and substance and is liable to be rejected. As a result, the petition is dismissed along with connected application(s).

(M. A. CHOWDHARY)
JUDGE

Srinagar
20.12.2025
Muzammil. Q

Whether the Judgment / Order is Reportable: Yes / No