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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 03.08.2015

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W.P.(C) 7912/2014

DHIRAJ RANJAN

..... Petitioner

Through : Ms. Rekha Palli, Sr. Advocate with Ms.
Punam Singh and Ms. Ankita Patnaik, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through : Sh. Vikram Jetly, CGSC with Sh.
Arvind Sharma, Deputy Commandant (Law)

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE V.K. SHALI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner seeks directions in these proceedings under Article 226 that he should be absorbed permanently by the Border Security Force (BSF) as Sub-Inspector (Junior Aircraft Mechanic) [hereafter referred to as "SI(JAM)"], a Group-B service in the Pay Band 2 (Rs.9300-34800) with Grade Pay Rs.4200 per month.

2. The petitioner initially joined the Indian Air Force (IAF) and was promoted to the post of Sergeant on 01.10.2004. At that stage, the pre-revised pay scales were in vogue and the petitioner was enjoying the pay scales applicable to the post of Sergeant. With the advent of the Sixth Pay Commission recommendations and their implementation with effect from

01.01.2006, his pay was fixed in PB-I (₹ 5200-20200) with Grade Pay of ₹ 2800. He continued to work in the IAF in the said pay scale for over six years. He was promoted – on account of the assured career progression (ACP) scheme in PB-2 in the next higher grade of ₹ 9300-34800 with Grade Pay of ₹ 4200 per month. He functioned in that post thereafter. The BSF had published an advertisement calling for application from eligible candidates for several posts is included. The one of SI(JAM), a Group-B service carrying Pay Band-2 (₹ 9300-34800 plus Grade Pay of ₹ 4200/-). The eligibility condition stipulated both in the rules as well as the advertisement were as follows:

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- a. (a) *Three years diploma in relevant trade recognized by Directorate General of Civil Aviation.*
- b. (b) *Group “X” diploma in relevant trade issued by Indian Air Force Minimum experience of eight years in Aircraft or helicopter maintenance experience on Border Security Force type of aircraft or helicopter (to be prescribed from time to time).*

FOR EX-SERVICEMEN
Deputation/Re-employment

The armed force personnel due to retire or who are to be transferred to reserve within a period of one year and having the requisite experience and qualification as prescribed at (i) and (ii) above shall also be considered. Such persons would be given deputation term up to date on which they are due for release from the armed forces; thereafter they may be continued on re-employment.”

3. The petitioner was invited for the interview to the post of SI(JAM) which took place on 26.04.2013. His candidature was found to be in order and he was offered appointment on deputation basis. He joined as SI (JAM) in the BSF on 01.10.2013. He worked continuously in the position for six

months. On 31.03.2014, upon the completion of his mandatory tenure in the IAF, he superannuated from the IAF. On 01.04.2014, the BSF issued an order stated as follows:

*“Accordingly, he was medically examined and found **FIT** on 13.02.2014 during the tenure of deputation. Thereafter, he was repatriated from BSF Air Wing on 19.03.2014 to IAF for getting discharge/retirement and IAF has accepted his discharge/retirement w.e.f. 31.03.2014. Now, consequent upon his release on pre-mature retirement from IAF, the individual reported to this HQ on **01.04.2014** for joining his duty on re-employment as SI (JAM), i.e. in the analogous/equivalent posts held by him in the IAF as per BSF Air Wing RRs-2012.*

3. The above individual is further directed to report to DIG (A), BSF Air Wing, New Delhi by today for utilization of his services on reemployment in BSF Air Wing is submitted please.”

4. On the very next date of 02.04.2014, the BSF issued another letter requiring the petitioner to join duty on reemployment as ASI, this time, stating that the latter post was analogous or equivalent to the post held by the petitioner in the IAF. The said letter made in these proceedings and referred to as “the impugned letter” reads as follows:

“Whereas the rank of No.760677-S Sgt. Dhiraj Ranjan of AFRO, IAF, who was directed to report to BSF Air Wing for further duties on reemployment vide UO Note No.19/01/2013-Estt/BSF/6423-25 dated 01 April 2014 has been erroneously mentioned as SI (JAM) instead of ASI (AAM). Hence this Section UO Note NO.19/01/2013-Estt/BSF/6423-25 dated 01 April 2014 is hereby withdrawn.

2. Further, No.760677-S Sgt. Dhiraj Ranjan of AFRO IAF Subroto Park, New Delhi was on deputation with BSF Air Wing as SI(JAM) w.e.f 01.10.2013. Prior to repatriation from BSF Air Wing, he had requested for re-employment in BSF Air Wing in terms of Deputation cum reemployment as per MoU. Competent Authority has approved that individual may be directed to carry out his medical examination

*from FHQ BSF hospital. Accordingly, he was medically examined and found **FIT on 13.02.2014** during the tenure of deputation. Thereafter, he was repatriated from BSF Air Wing on 19.03.2014 to IAF for getting discharge/retirement and IAF has accepted his discharge/retirement w.e.f. 31.03.2014. Now, consequent upon his release on premature retirement from IAF, the individual reported to this HQ on 01.04.2014 for joining his duty on re-employment as ASI(AAM) i.e. in the analogous/equivalent posts held by him in IAF as per BSF Air Wing RRs-2012.*

3. the above individual is hereby directed to report to BSF Air Wing through DIT (Air) BSF Air Wing, New Delhi along with required documents/testimonials for further duties on re-employment in BSF Air Wing as ASI(AAM)."

5. It is submitted that the letter dated 02.04.2014 is unsustainable because it in effect reduces the petitioner's rank. Learned senior counsel for the petitioner emphasizes that having satisfied itself that the petitioner fulfilled all the requisite qualifications prescribed for filling the post of SI/JAM, i.e. 6 years in the grade of ₹ 5200-20200 with Grade Pay of ₹ 2800/- it was not open to the BSF to state that he was eligible to hold the post of ASI and ineligible to hold the post of SI (JAM). In this regard, learned senior counsel relied upon the BSF Air Wing Non-Gazetted Combatized Groups B and C posts Recruitment Rules, 2012 in respect of the relevant entry for SI/JAM, stipulated that for deputation the requirements were as follows:

"II. Deputation (including short term contract/Absorption Officials under the CG or State Government or PSUs holding analogous posts on regular basis or in the grade of PB-2 (Rs.5200-20200 plus Grade Pay Rs.2800) with six years regular service in the grade and possessing qualifications prescribed for direct recruitment under column 7.

FOR EX-SERVICEMEN

Deputation: the Armed Forces Personnel due to retire or who are to be transferred to reserve within a period of one year and having the requisite experience and qualifications prescribed shall also be considered. Such persons would be given deputation terms upto the date on which they are due for release from the Armed Forces. Thereafter they may be continued on reemployment.

Reemployment: The Retired Armed Forces personnel possessing qualifications and experience as prescribed under column 7 and held analogous or equivalent post in the Armed Forces of the Union. The break in service should not be more than two years. The upper age limit for appointment by deputation shall not be exceeding fifty two years as on the date of receipt of application.””

6. It is argued that having allowed the petitioner to take over in the deputation post, i.e. as SI/JAM on 01.10.2013, permitted him to function and discharge duties in relation to that post, it was not open to the BSF to turn around and allege that he was ineligible to hold it in the first place. Learned counsel secondly highlighted that the impugned action is unfair and calls for interference. In this regard, it was submitted that had the petitioner been given the option of continuing within the BSF under the changed conditions before the completion of his tenure/term in the IAF, he could have exercised the choice of seeking extension in terms of IAF policy. Knowing fully well that his tenure ended in the IAF on 31.03.2014, the BSF could not on 02.04.2014 state that he was ineligible to function in a post for which he was concededly selected and in which he had discharged duties. Furthermore, there could have been no dispute about the fact that not only was he ineligible to hold the post having held the post of Sergeant Pay Band -1, ₹ 5200-20200 but also that he had in fact even been granted the higher pay

scale in 2010 – ₹ 9300-34800 with Grade Pay of ₹ 4200.

7. Learned counsel for the respondent argued that the petitioner had tendered willingness on 12.12.2014 for reemployment after retirement from IAF on 31.03.2014. He had agreed for medical examination in terms of the BSF's requirement. It was submitted that the petitioner was correctly absorbed as ASI (JAM) because on reemployment, his entitlement was to hold the post in this case or equivalent to what was held by him as an ex-servicemen in the concerned armed force. Since in the present case, the petitioner was holding the post of Sergeant, which was analogous to that of ASI, he could not claim to be absorbed as SI on reemployment basis.

Analysis and Conclusions

8. In the preceding part of the judgment, there is no dispute with regard to the essential facts. BSF does not contest that the petitioner was in fact working as Sergeant from 2004-2010 – in which position he was drawing pay in the scale of ₹ 5200-20200 with Grade Pay of ₹ 2800. At the time of his deputation, concededly, he was drawing pay in the scale ₹ 9300-34800 with Grade Pay of ₹ 4200. The incentive for him to apply in the BSF naturally was to continue in the force after his tenure in the IAF ended on 31.03.2014. That the petitioner joined as SI and functioned in that position for about six months too is not disputed. The narrow premise for denying the absorption in the post of SI is that he did not hold “equivalent” or “analogous” post in the IAF at the time when he ended his service in the IAF.

8. The argument of the BSF is that whilst his deputation from Sergeant

to SI was justified so is also his absorption as ASI because the analogous or equivalent post – in the case of Sergeant is ASI. The BSF's argument to deny the petitioner's absorption as SI(JAM) is specious to say the least. The section on "deputation" – extracted in the previous part of this judgment – and found in Column 11 of the Schedule to the 2012 Rules, has to be read indivisibly. While the BSF does not dispute that the petitioner fulfilled the eligibility stipulation for holding the post of SI on deputation, it makes a fine distinction that in addition to the eligibility condition of six years' regular service in the pay scale of ₹ 5200-20200, the reemployed personnel must have held analogous/equivalent post in the armed forces, i.e. analogous to that of SI (JAM). This interpretation, according to the Court is untenable and would lead to startling results. Firstly, the section on "reemployment" makes it clear that the analogous or equivalence required of candidates should be in respect of those who have actually left the concerned armed forces. The reference to "*break in service*" should not be "*more than two years*" can lead to no other inference. Consequently, the specific head of "deputation" and the condition that the "*armed forces personnel due to retire or who are to be transferred to reserve within a period of one year and having the requisite experience and qualification as prescribed shall be considered...*" specifically applies itself to the main part of the channel of recruitment, i.e. deputation. This clearly states that the eligibility condition for holding the post of SI should be six years in the pay band in PB-2, i.e. ₹ 5200-20200 plus Grade Pay ₹ 2800. Furthermore, even for ASI/AAM, the post in which the petitioner was sought to be absorbed with effect from 02.04.2014 –a promotional quota has been kept apart for filling the post of SI (JAM). There too the ASI/AAM has to possess eight years' in aircraft or helicopter

maintenance with three years' maintenance experience. Even such ASIs have to necessarily be in the pay scale of ₹ 5200-20200 to be eligible for consideration for promotion as SI (JAM). In the present case, the petitioner had the necessary experience and expertise for 10 years and was drawing higher pay scale of ₹ 9300-34800 with Grade Pay of Rs.4200 with effect from 01.10.2012 itself. In these circumstances, the denial of benefit of absorption as SI/JAM is wholly untenable.

9. For the above reasons, we are of the opinion that the petitioner is entitled to the reliefs claimed. The impugned order/letter dated 02.04.2014 is hereby set aside. A direction is issued to the respondents to comply with the order dated 01.04.2014 and to treat the petitioner as a Sub-Inspector/Junior Aircraft Mechanic in Group-B with effect from 01.04.2014. The petitioner is entitled to all arrears constituting the difference between the pay actually drawn by him and the pay he is entitled to in such post, i.e. SI with effect from 01.04.2014 and all consequential benefits such as increments etc. All consequential orders shall be made within six weeks and arrears disbursed in line with such orders within ten weeks from today.

S. RAVINDRA BHAT
(JUDGE)

V.K. SHALI
(JUDGE)

AUGUST 03, 2015