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

+ **W.P.(C) 7873/2015& CM No. 15741/2015**

SHANKAR PRASAD SINGH

..... Petitioner

Through: Mr. Vijay Kumar, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Shivalakshmi, CGSC alongwith
Mr. Arvind Sharma, DC, BSF.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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26.08.2015

The petitioner seeks a direction in these proceedings under Article 226 of the Constitution that his name be considered for promotion in terms of the Border Security Force Policies and Recruitment Rules for regular promotion to the grade of Sub-Inspector (GD) sometime in 2010.

The petitioner joined BSF as Constable (GD) in 1980. The Recruitment and Promotion Rules governing the BSF require that in order to be considered for promotion to the grade of SI and otherwise eligible Constable (GD) should undergo a two-year Mandatory Field Service (MFS). The petitioner however was not sent for such field service at the relevant time i.e. 2007-2008. On this ground, he was

overlooked for promotion when his name was to be considered as per his turn in 2010. Petitioner relies upon the judgment of this Court in ***Arul Raj Vs. Union of India*** in W.P. (C) No. 2266/2011 decided on 02.08.2011. In that case, the Court was concerned with promotion to the post of SI (GD) in the BSF where too an identical condition of two years mandatory field service had been prescribed. In the present case too, it is argued that mandatory field service has been prescribed by the BSF but with a clause permitting exemption. The Court in ***Arul Raj*** (supra) case directed that the deployment of a Constable to the field or to undergo field services is not within his control, consequently, the employer has to grant one time exemption as and when the occasion arises i.e. when his turn for promotion is to be taken up for consideration.

Learned counsel for the respondents submits upon instructions that the petitioner's case for consideration in the light of the decisions of this Court including in ***Arul Raj*** (supra) case has been taken up and that the relevant service filed has currently been transmitted to the concerned authorities who were to deal with it and make recommendations.

It is evident that the BSF's instructions – contained in the latest circular dated 02.06.2012, thus require the fulfilment of the two years MSF condition. In para 4 of the said circular, the eventuality of the personnel's inability to fulfil the condition has been envisioned. Para 5 therefore relieves this condition in the following term.

“It has been decided that since MFS is the operational requirement for the Force to hold higher responsibilities,

doing away with the requirement of MFS from the Recruitment Rules itself will adversely affect the operational efficiency and functional effectiveness of these CAPFs & ARs. Therefore, all such cases wherein the CAPFs & ARs personnel concerned, has not completed the MFS, while his name is being considered for promotion to the next rank, the waiver/relaxation of such eligibility condition should be considered by the CAPFs/MHA objectively and sympathetically, CAPFs & ARs may follow the following guidelines while considering such waiver/relaxation of the MFS condition prescribed in the RRs:-

- (i) xxx xxx xxx
- (ii) *As regards the CAPFs & ARs personnel who have not completed the MFS owing to their own request for being posted in static postings/offices where service rendered by them is not counted towards MFS or whenever such personnel have expressed their unwillingness for posting to field units/ops areas and get posted/attached, on their own volition, to static offices, their cases will not be considered for granting relaxation in MFS.”*
- (iii) xxx xxx xxx
- (iv) xxx xxx xxx
- (v) xxx xxx xxx
- (vi) xxx xxx xxx

In **Arul Raj** (supra) too, although the Court dealt with the condition of fulfilment of MSF vis-a-vis the CRPF, in the present case too, the petitioner contends that he has been caught in the same situation. Consequently, the respondents are hereby directed to consider the petitioner’s case for promotion, by invoking the exemption condition under Clause 5(1) of Office Memorandum/Circular dated 02.06.2012; if the petitioner is otherwise eligible and has to be promoted-regardless of the MSF, the onetime exemption clause shall be resorted to and he shall be given promotion

and all consequential benefits w.e.f from the date is immediate junior in the batch year of his recruitment was given such promotion. This would include the petitioner's entitlement of arrears of salary and allowances w.e.f. 01.01.2003 as well as notional fixation of salary, notional increments and other allowances admissible to him from the date of such notional promotion in 2010. The writ petition is allowed in the above terms.

The above direction shall be carried out within 8 weeks from today.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 26, 2015

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