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

+ **W.P.(C) 5090/2015 & CM No. 18067/2015**

JATINDER PAL SINGH MAAN

..... Petitioner

Through: Mr. R.S. Mohra, Advocate.

versus

THE UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC for
respondent nos. 1 to 5 alongwith Mr.
Arvind Sharma, Dy. Commandant
/Law, BSF.
Mr. P.K. Joshi, Med, BSF.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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05.01.2016

The petitioner claims-that his initial appointment should be treated as having been to the cadre of Sub-Inspector Pharmacists qualified as opposed to the appointment-through letter dated 15.03.1992, to the post of Assistant Sub-Inspector (unqualified). He seeks a declaration that the recruitment rules governing the concerned post of ASI (Pharmacists-qualified) be declared as arbitrary and unconstitutional.

The petitioner claims to, at the relevant time, the qualifications of a Pharmacist as within the contemplation of the Pharmacists Act, 1948 (Sections 31 and 32 thereof). It is stated that the petitioner completed his diploma in Pharmacy from a recognised College in

Punjab and therefore had to be treated as duly possessing the qualification necessary for consideration to the post of ASI (Pharmacy-qualified). The Border Security Force had advertised vacancies for the post of ASI (Pharmacists-unqualified) to which concededly the petitioner applied. He was selected and issued an Offer of Appointment on 15.03.1992 which he accepted. It is contended by counsel that the respondents acted arbitrarily in treating the petitioner as ASI (Pharmacists-unqualified) despite being made aware that he possessed a requisite qualification of a qualified Pharmacists in accordance with law. The counsel relies upon the provisions of the Pharmacy Act and the copies of the diploma issued to the petitioner in this regard. It is stated that the respondents acted arbitrarily in not advertising the post of ASI (Pharmacists-qualified) and instead advertising the vacancies in ASI (Pharmacists-unqualified). The respondents in their counter affidavit states that the petitioner had consciously applied to the vacancies advertised in ASI (Pharmacists-unqualified) and accepted Offer of Appointment dated 15.03.1992 in the pay-scale of Rs.1200-1800. He was confirmed to the rank of ASI (Pharmacists-unqualified) w.e.f. 15.03.1994. They also stated that the petitioner was granted a scale of qualified Pharmacists w.e.f. 15.03.2007 and was permitted the benefit of first and second financial upgradation under the MACP Scheme in PB-II with the grade pay of Rs.4200 and 4600 respectively.

The respondents advert to the petitioner's representation that he ought to be treated and his recruitment regularised as qualified ASI (Pharmacists) instead of unqualified dated 21.07.2014. The

representation, it is stated, was rejected on 24.07.2015 as devoid of merit. The respondent-BSF further states that under the Recruitment Rules, an unqualified Pharmacists ASI would be eligible for grant of pay of scale for the post of Pharmacists (qualified) after 10 years service of the feeder cadre. They state that being fully aware about the nature of the posts advertised, the petitioner cannot now turn around and claim that he was appointed to a lower post having regard to his qualification. The BSF also states further that:

“It is imperative to mention here that at the time of establishment of the Border Security Force, there was no direct recruitment of the pharmacist. The time Constable General duty were being trained under supervision of the medical practitioner (MEDICAL OFFICER) by imparting training for a period of three to five years continuously for composing and dispensing the drugs experience and then the necessary certificates were being issued by the concerned medical practitioner/medical officer then that individuals were registered as pharmacists under section 31 (a) Pharmacy Act 1948. This was the requirement of that time and after 1980 pharmacy Council of India has stopped this registration under the above section. Thereafter only minimum requirement were kept as qualification having diploma in Pharmacy for registration as a pharmacist in any state of pharmacy Council. But BSF had continued to adopt above stated procedure because there was shortage of technical persons in the states as the states imposed bars to put their services at least for five years by filling bonds from individuals. Further it is mentioned that the first batch of ASI pharmacists were recruited directly by BSF in the year 1988 and second batch was recruited in the year 1989 and the third was recruited in 1990 but the BSF had recruited on complete batch (unqualified) in the

year 1991 by adopting direct recruitment procedure illegally, violating the guidelines of Pharmacy Council of India and wrong/incorrect Recruitment Rules.”

The above factual narration shows that the petitioner in a sense claims that he ought to be treated as appointed to the grade of qualified ASI Pharmacists.

The rules in question are the Border Security Force (Group-C) Combatized Para-Medical Staff (Recruitment Rules 1991). The method of recruitment, age limit, qualifications, etc provided for in Rule 3 are spelt out in greater details in various entries to the schedule. There are three to five sanctioned posts in the cadre of Pharmacists (qualified). The scale of pay provided for in the rules for that post is Rs. 1350-2200. The Column 12 indicates that the mode of filling up of these posts is direct recruitment. The qualification prescribed for is a) matriculation or equivalent b) degree or diploma in Pharmacy granted by any institution of a Central or State Government or an institution recognised by a Central or State Governments. Instead of a degree, a candidate can possess a diploma in Pharmacy of which the period of training is 2 years followed by an internship of 4 months. The third category of qualifications would be that the candidate should possess qualifications under Sections 31 and 32 of the Pharmacy Act, 1948. The post of ASI (Pharmacists-unqualified) carries a pay scale of Rs. 1200-1800. The essential qualification is that the candidate should be a matriculate and also possess qualification specified in Section 31 (d) of the Pharmacy Act and it should be registered under Section 33.

There is no doubt that the rules made a distinction between the

kind of qualifications that the candidate to the post of ASI (Pharmacists-qualified) on one hand had to possess an ASI (Pharmacists-unqualified) was to possess. The essential qualifications for the later did not envision a degree of diploma atleast of the kind required of qualified Pharmacists.

The facts no doubt reveal that the petitioner was eligible for competing to the post of and consideration for ASI (Pharmacists-qualified). His endeavour here however is that even though he was selected against advertised vacancies in the grade of Pharmacists-unqualified, he ought to have now been declared entitled to have occupied the grade of ASI (Pharmacists-qualified). The respondents do not dispute that the petitioner was a qualified Pharmacist. However, their objection to the claim is that having competed to the lower grade of Pharmacists-unqualified and even being further promoted in accordance with the rules, to the grade of Pharmacists-qualified in the normal channel, he cannot now question his initial selection and appointment. This Court holds that there is substance and merit in this argument. The mere circumstance that the petitioner possessed qualifications required for the higher post cannot obliterate the fact that he competed for the post that he did i.e. ASI (Pharmacists-unqualified). There might possibly have been compulsion-the most obvious one being the unemployment. At the same time, the fact that a candidate possesses qualifications required for a higher post ipso facto cannot give rise to a right to claim that he ought to be treated as selected to that higher post given that the advertisement was not for that higher post and that he or she had not

competed for that particular post. To accede to this claim would mean that others holding like qualifications but who did not compete for the lower posts for their own reasons and who instead chose to wait for the post of ASI (Pharmacists-qualified), but were not subsequently selected, would be placed to their disadvantage. The other reason which this Court finds compelling is that when the petitioner was afforded a chance to participate in an open competition for the post of ASI (Pharmacists-qualified), he did not do so. Having passed up that chance, he cannot after this passage of time, claim the same post in the guise of challenge to the Rules or characterising his initial appointment as the mistaken one.

For the above reasons, we hold that there is no merit in the writ petition and it is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 05, 2016

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