

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**Date of decision: 02.03.2017**

**CWP No.1135 of 2014**

Ashok Kumar

...Petitioner

Vs.

Union of India & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. R.A.Sheoran, Advocate, for the petitioner.

Mr. Anil Chawla, Advocate, for the respondents.

**RAJIV NARAIN RAINA, J. (ORAL)**

Acting under Article 226 of the Constitution and having regard to the facts and the issues involved in the case, I would dismiss this petition for the following reasons:

- (i) Admittedly, the petitioner Ashok Kumar son of Mani Ram is not a blood relation of a BSF employee and, thus, not eligible to be considered for appointment in the reserved quota for the post of Constable (Barber).
- (ii) Mani Ram, father of the petitioner, has been proven to be an agriculturist in Village Modiyana, Post Office, Surehati Kalan, District Mahendergarh, Haryana. He has nothing to do with the BSF. Therefore, the petitioner could not have been recruited to service and his appointment was illegal and incurable.
- (iii) The recruitment process was conducted and concluded at Gandhi Nagar, Gujarat beyond the territorial jurisdiction

of this Court. However, the petitioner was serving in BSF at Jallalabad, Punjab, when the order of dismissal was passed.

- (iv) The petitioner candidly admitted in the complaint proceedings that one BSF Constable Umed Singh had helped him in getting recruited as a Constable (Barber) and it was after Umed Singh was prematurely retired from service by BSF that he made a demand of money from the father of the petitioner to keep his mouth closed, otherwise he would make a complaint to the BSF authorities regarding the wrongful recruitment of his son, the petitioner, by falsifying record and illegally declaring that Mani Ram was an ex-BSF employee bearing No.83209036 (HC).
- (v) Umed Singh's complaint led to the inquiry proceedings in BSF, which have culminated in a finding against the petitioner that he falsely claimed that his father was a BSF personnel to secure employment by illegal and fraudulent means.

The combination of the above infirmities in the appointment of the petitioner leads to the irresistible conclusion that the appointment made in 2007 was absolutely illegal since the petitioner did not belong to the quota from which he obtained appointment. Merely because the BSF was ignorant of this for 7 years will not lend legal flavor to the illegal appointment and or cure the defect in the induction itself. Length of service is no ground to save the appointment, which was the product of illegality and in the nature of fraud.

The original record produced by the learned counsel for the BSF has been perused by me in Court and shared with the counsel for the petitioner. The discrepancies in issuance of the blood relationship certificate and the date of appointment order are not sufficient to move this Court to hold in favour of the petitioner and save his career.

Learned counsel for the petitioner lastly implores that the complaint has ruined the life of the petitioner and after having served the Force for 7 years, this Court may consider, after upholding the dismissal order as one of removal from service. He tells me that petitioner is aged only about 30 years. He may be saved from further ruin. Having heard the matter at length and having perused the record and keeping in mind that the petitioner had spent 7 years in BSF and that his service record has not been commented upon as adverse as Constable (Barber), I would in the interest of justice read the dismissal order as one, without disqualification from future employment or one which will not be an absolute obstruction to future public employment, if any, in view of the stand in defence taken by the petitioner before the authorities in the enquiry that his friend filled up the application form and he only signed it where the words BSF are written on its face. I have seen the signatures and the hand-writing on the original and on this the petitioner may not be incorrect though he may be vicariously liable for the entry, but then he is stated to be an illiterate person. No doubt, the petitioner belongs to the lower strata of society having grown up in rural village surroundings where well rounded education has not penetrated and some allowance could be made on this account so as not to deprive him completely of future employment. Therefore, the benefit of doubt could be given to him not for the purpose of the saving dismissal, but for the purpose of future employment under the State or in State agency/ instrumentality/

corporation and towards this, needless to add, that his future employer may look into the BSF record, the inquiry proceedings, if requested, and take an independent decision, if it proposes to offer employment.

The other reason to make some allowance is that the BSF, who appointed the petitioner, took no steps on its own to remove the petitioner and got activated only when Umed Singh, an ex-Constable of the Force, made a complaint which has led to loss of job and deprivation of livelihood.

I hastily add that deprivation of livelihood is consequential to lawful termination/dismissal from service. It is not possible to ignore the defects in the appointment of the petitioner by an award of mandamus when the initial recruitment in 2006 itself was an illegal entry and not in terms of the criteria prescribed. I would, therefore, with a somewhat heavy heart dismiss the petition.

**02.03.2017**  
Vimal

**[RAJIV NARAIN RAINA]**  
**JUDGE**

*Whether speaking/reasoned:* *Yes*

*Whether Reportable:* *No*