

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

+ **W.P.(C) 3969/2016**

Reserved on: 24th July, 2017

Date of decision : 21st August, 2017

SATISH KUMAR AND ORS.Petitioners
Through Ms.Garima Sachdeva, Adv.

versus

UNION OF INDIA & ORS Respondents
Through Mrs.Abha Malhotra, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

The petitioners, who are working as Head Constable(s) (Electrician/Mechanist/Mason/Fitter) on deputation with National Disaster Response Force (in short NDRF), have filed the present writ petition, praying for the respondents to consider them for absorption in accordance with the BSF (Engineering/Electrical) Group 'C' Posts Recruitment Rules, 2012 (in short BSF Rules-2012) and if found fit, to absorb them in their present post of Head Constable and not to repatriate them without considering them for permanent absorption as per BSF Rule-2012.

2. The petitioners had joined the Border Security Force (BSF) as Constable(s) (General Duty) on different dates between 1995 to 2002 and based on their technical qualifications were selected for deputation to the post of Head Constable (Electrician/Technician) in NDRF vide Order No.49001/30/06/Staff(E)/BSF/8617-27 dated 27.04.2011, initially for a period of one year extendable upto 3 years on year to year basis. The permissible tenure of deputation of the petitioners was further extended to 5 years. The petitioners' contended that NDRF is a part of the BSF and in accordance with the BSF Rules-2012 and the Standing Operating Procedure dated 31.01.2013, they are entitled to be considered for permanent absorption in the post of Head Constable. They further assert that similarly placed deputationists working in BSF battalion have been permanently absorbed as Head Constables. The petitioners, therefore, have prayed for consideration for permanent absorption.

3. Upon issuance of notice, the respondent BSF, has filed its counter affidavit. It has been submitted that as per Section 44 of the Disaster Management Act, 2005, a National Disaster Response Force (NDRF) was constituted under the superintendence, direction and

control of the National Disaster Management Authority (in short NDMA) for the purpose of specialized response to a threatening disaster situation or disaster. It is further submitted that the Ministry of Home Affairs vide order dated 19.01.2006 constituted the NDRF by upgrading/conversion of eight Standard Battalions of Central Para Military Forces (two Bn each from BSF, CRPF, CISF and ITBP). Initially, 1st NDRF and 2nd NDRF Bn was raised by converting 128 Bn of BSF and 106 Bn of BSF respectively. The Central Government by notification dated 13.02.2008 notified the Disaster Management (National Disaster Response Force) Rules, 2008. In terms of Rule 3, the personnel deputed from the Central Para Military Forces by the Central Government vide order dated 19.01.2006 shall be deemed to have been deputed in the NDRF under the said Rules. Rule 3(2) further empowers the Central Government to depute, as and when required, such number of personnel from the Central Para Military Force to the NDRF for the purpose of Disaster Management, having skills, capabilities, qualifications and experience of handling disasters and their management and such other technical qualification as may be prescribed on this behalf. Rule 3(3) specifically provides that the

personnel of a battalion deputed to NDRF under the rules, shall remain ordinarily in such battalion for a period of five years. Rule 4 stipulates that the superintendence, direction and control of NDRF shall vest in the NDMA while command and supervision shall vest in the Director General of NDRF to be appointed by the Central Government.

4. Thereafter, the Central Government further notified the National Disaster Response Force, Technical Group 'C' Post Recruitment Rules, 2010 ("Recruitment Rules, 2010") on 26.02.2010. In terms of the said rules, the post of Head Constable (Technician) and Head Constable (Electrician/Electrical) were to be filled through deputation from officials of the Central or State Government(s) or Union Territories or Armed Forces, Central Para Military Forces or Central or State Police Organizations. The Recruitment Rules, 2010 specifically provide that the period of deputation, including the period of deputation in another ex-cadre post held immediately preceding the appointment under the said rules in the same or some other organization or department of the Central Government shall ordinarily not exceed five years. There was no provision for appointment through absorption or absorption of the deputationist for the said post.

5. At the outset, we may note that there are in all ten petitioners who have filed the present petition. In the additional short affidavit filed on 25.10.2016 by the respondents, it has been stated that five out of ten petitioners have been repatriated and stand relieved by the NDRF, to join their parent cadre/post. As far as, the remaining petitioners are concerned, it is stated that this Court vide order dated 23.09.2016 had passed status quo order with regard to their services, however, as they have also completed the period of their deputation, they are liable to be repatriated to their parent cadre.

6. As far as the claim of the petitioners for their consideration for absorption is concerned, we agree with the submission of the respondents that NDRF being a separate force constituted under the Disaster Management Act, the said force cannot be held to be a part of the BSF. NDRF is governed by its own Recruitment Rules and more specifically the Recruitment Rules dated 26.02.2010, referred by us above. In accordance with the said rules, recruitment to the post of Head Constable (Technician) and Head Constable (Electrician/Electrical) can only be made through deputation (including short term contract). Therefore, there is no provision for recruitment through

absorption. In absence of Rules providing for appointment through absorption, the petitioners cannot claim any legal right to be so absorbed in NDRF. It is settled law that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory rules, regulation or an order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption.

7. As far as the claim for absorption in BSF under BSF Rule-2012 and SOP dated 31.01.2013 is concerned, the same is clearly based on misreading of BSF Rules-2012. The said Rules will apply to those officers who are working on deputation with BSF and not to those working on deputation with NDRF. The claim of the petitioner in this regard is clearly based on an incorrect surmise that NDRF is a part of BSF. This is not correct. As mentioned above, NDRF is an independent Force, though initially it may have been created by conversion/upgrading inter-alia BSF Battalions. It is, therefore, not governed by BSF Rules-2012 nor can an officer working on deputation with NDRF claim to be working on deputation with BSF. The claim of petitioners that other officers have been absorbed while

they are being ignored, is ill-founded as a bare reading of order dated 09.02.2015, placed on record by them shows that these officers were working on deputation as Head Constable Technical (Electrical) in BSF and not in NDRF. In any case, the respondents have filed before us an order dated 30.09.2016 rejecting such claims or contention on behalf of the petitioners. The same is not in challenge before us and, therefore, we refrain from making any comment on one way or the other on the same.

8. In view of above, we find no merits in the present petition and same is accordingly dismissed with no order as to cost.

NAVIN CHAWLA, J

SANJIV KHANNA, J

AUGUST 21, 2017/vp