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

Decided on: 10th March, 2017

+ WP(C) 4958/2016

CONSTABLE VEER SINGH Petitioner

Through: Mr. K. Ramesh (Retd) and Ms.
Archna Ramesh, Advocate.

versus

UNION OF INDIA & ANR. Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

% **INDIRA BANERJEE, J.**

1. In this writ petition, the petitioner, a constable of the Border Security Force has sought orders on the respondents to modify an order dated 01.05.2006 of the Commandant, 121st Battalion of the Border Security Force and an order dated 15.07.2010 of the Director General, Border Security Force, annexed to the writ petition as Annexures P1 and P3,

respectively, so that the petitioner could be deemed to have been discharged from service and granted waiver of shortfall of service so that he could be eligible for pension.

2. The facts giving rise to the writ petition are very briefly enumerated hereinafter.
3. The petitioner was appointed Constable of the Border Security Force in 1995. The petitioner claims to have been posted in various difficult areas.
4. About 11 years after the petitioner had been appointed, the respondents allegedly received information that the petitioner had got himself appointed by falsely representing that he belonged to a Scheduled Tribe.
5. The petitioner was dismissed from service after a Summary Security Force Trial on 01.05.2006. The petitioner claims that he did not have a single red ink entry or any other adverse entry in his records in the past.
6. A summary trial was held against the petitioner on the allegation that he had dishonestly obtained employment by misrepresenting himself to be a member of a Scheduled Tribe.

7. It appears that the petitioner pleaded guilty before the Summary Security Force Court, after which he was dismissed from service by an order dated 01.05.2016.
8. The petitioner filed a writ petition being WP(C) No.5498/2007 in this Court which was apparently withdrawn because the petitioner intended to challenge the proceedings of the Summary Security Force Court, which he had not done.
9. After the writ petition was withdrawn, the petitioner submitted two statutory petitions, the first of which is dated 01.12.2009 and the second is dated 01.04.2010. Both the statutory petitions were rejected by an order dated 15.07.2010 of the Director General.
10. It appears that the Director General took serious note of the letter dated 09.08.2005 of the Sub-Divisional Magistrate, Ahmedabad City informing the respondents that the Scheduled Tribe Certificate pertaining to the petitioner had not been issued by the office of the Sub-Divisional Magistrate, City Ahmedabad. The Director General also found that the petitioner had failed to produce any other certificate to substantiate his plea that he belonged to a Scheduled Tribe.

11. In this writ petition, there is no allegation of any procedural infirmity in the trial before the Summary Security Force Court. The petitioner had apparently been appointed on the basis of a certificate which was found not to be genuine. The petitioner pleaded 'guilty'.
12. The petitioner has relied on a judgment dated 20.04.2007 of a Division Bench of this court in ***Sepoy Sube Singh v. Union of India & Ors.***, reported in 140 (2007) DLT 26, in support of his submission that he be deemed discharged, and also be granted waiver of shortfall in service to entitle him to pension.
13. The judgment of this Court in Sepoy Sube Singh (supra) is clearly distinguishable on facts. In Sepoy Sube Singh (Supra), the concerned employee was alleged of overstaying leave and of intoxication. That was not a case where the appointment itself had fraudulently been obtained by submission of documents which were later discovered not to be genuine.
14. In Sepoy Sube Singh's case, the petitioner had, in response to a notice dated 21.10.2000 to show cause, submitted a reply explaining the reasons leading to the imposition of punishment upon him which included the illness of his wife.

The Court on consideration of materials found that the order impugned on its face revealed that the concerned authority passing the order did not properly apply his mind. The impugned order, therefore, could not be sustained. The Court found that in such a case the Court had power to mould the relief. The petitioner was, accordingly directed to be deemed to have completed his pensionable service as on the date of his discharge and given pensionary benefits.

15. This case is clearly distinguishable. The appointment of the petitioner had itself been obtained on the basis of a certificate which was found fabricated. The petitioner pleaded guilty in the summary court proceedings. The petitioner gave false certificate. The petitioner did not produce any other document in support of his contention that he belonged to a Scheduled Tribe.
16. The petition has rightly been dismissed. An appointment obtained by fraudulent misrepresentation is a nullity. A candidate who fraudulently obtains appointment from a reserved quota by relaxation of eligibility conditions and/or assessment standards deserves no sympathy. The initial appointment itself being a nullity, the petitioner cannot be allowed retiral benefits. In any case, the writ petition is also barred by delay.

17. For the reasons discussed above, the writ petition is dismissed.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

MARCH 10, 2017