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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CONT.CAS(C) 99/2017**  
**ANUJ KUMAR TIWARI**

..... Petitioner

Through: Mr. Amitesh Kumar, Adv.

versus

**SH.RAJIV MEHRISHI, UOI @ ANR.**

..... Respondent

Through: Mr. Rajesh Gogna, CGSC for R-1 &  
2

**CORAM:**  
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**  
% **27.02.2018**

1. The present contempt petition has been filed by the petitioner alleging non compliance of order dated May 31, 2016 in W.P. (C) 9808/2015. Suffice to state, the W.P.(C) No. 9808/2015 is a second round of litigation, inasmuch as the petitioner had earlier filed a writ petition No. 2170/2002, which was disposed of on February 20, 2014 whereby this Court had set aside the order of penalty imposed on the petitioner and directed his reinstatement with full benefits of pay and allowances, continuity of service etc.
2. The writ petition No. 9808/2015 was initially disposed of by this Court on October 16, 2015 with the following orders:-

*“4. In addition, the petitioner has sought for promotion on the basis of continuity of service. He contends that his batch mates and even his juniors have been promoted as Havildar. The respondents shall review the entire record and ensure that the petitioner is given the same benefit for promotion as was accorded to his batch mates and immediate juniors. All further consequential benefits too shall be given to him in terms of the final order of this court made in the previous proceeding i.e. W.P.(C) 2170/2003 (disposed of on 20.02.2014). The respondents shall pass appropriate orders in this regard within 12 weeks.”*

3. It appears that the respondents herein had filed an application for modification of the order dated October 16, 2015. This Court had considered the application vide order dated May 31, 2016 when it held as under:-

*“This Court is of the opinion that the respondent should consider the issue of clearing the mandatory courses in a reasonable perspective and decide whether power of relaxation under Rule 15 can be exercised reasonably. The order of reinstatement shows that the petitioner could not have cleared the courses at the relevant time. Therefore, the BSF, should in our opinion, invoke the power of relaxation in the petitioner’s case. As far as the medical categorisation is concerned, the respondents shall take steps expeditiously and preferably within four weeks and ensure that re-categorisation is done. The application is disposed of in the above terms.”*

4. It is the submission of the learned counsel for the petitioner that the respondents have not given promotion to the petitioner to the post of

Havildar.

5. In the additional compliance affidavit filed by the respondents, the respondents have in paras 13 to 19, taken the following stand:-

*“13. That based on the legal opinion offered by the Government counsel and in respectful compliance of the Court order dated 31<sup>st</sup> May, 2016, a Medical Board of the petitioner was convened on 28<sup>th</sup> June, 2016 to re-categorize the medical category of the above petitioner. The **medical category of the petitioner has been re-categorize by the Medical Board as S<sub>1</sub>H<sub>1</sub>A<sub>3</sub>(L)(T-48)P<sub>1</sub>E<sub>1</sub> for 48 weeks.** The batch-mates and juniors of the Petitioner were promoted to the rank of head Constable (GD) w.e.f 10<sup>th</sup> September, 2015 vide FHQ BSF (Pers Dte) Signal No. R-3206 dated 10<sup>th</sup> September, 2015 w.r.t DPC List-‘C’ held on 12<sup>th</sup> August, 2015.*

*14. That **as per Recruitment Rules-2002**, the following qualifications are essential for promotion from Constable (GD) to Head Constable (GD):-*

- (a) Having not less than 08 years regular service in the grade, out of which 05 years’ service in a service coy of a duty Battalion.*
- (b) Matriculate/10<sup>th</sup> Class pass or equivalent.*
- (c) Basic Training as prescribed for entry level post.*
- (d) Map reading Standard-II.*
- (e) Section leader Course.*
- (f) Medical Category SHAPE-I.*

*15. Whereas, the Petitioner does not meet the certain eligibility conditions i.e qualifying **Map Reading Std-II and Section Leader Course**, besides, he was not in **medical category SHAPE-I.***

*16. That the **Petitioner has filed the present Contempt***

***Petition (C) No. 99/2017 before this Hon'ble Court.*** The matter was listed for hearing on 06<sup>th</sup> February, 2017 and after hearing, the Hon'ble Court issued notice to Respondent No. 2 i.e DG BSF and directed the Counsel for Respondent to file a Compliance Affidavit within 06 weeks and adjourned the matter for 24<sup>th</sup> July, 2017. Accordingly, Compliance Affidavit was filed by the department on 29<sup>th</sup> March, 2017.

17. That in continuation to earlier compliance affidavit filed on 29<sup>th</sup> March, 2017 and consequent upon approval of DG BSF, a proposal seeking relaxation in the requirement of **Map Reading Standard-II and Section Leader Course** in favour of petitioner as on 01<sup>st</sup> April, 2015 i.e crucial date for determining eligibility for the vacancy year 2015-16 was mooted to MHA vide UO No. 17/26/2017-Pers/BSF/13008 dated 21<sup>st</sup> February, 2017 to consider his case for promotion to rank of Head Constable (GD) by convening Review DPC w.r.t the DPC met on 12<sup>th</sup> August, 2015 in accordance with Rule 15 of the BSF GD Cadre (Non-Gazetted) RRs, 2002 to comply the Court order dated 31<sup>st</sup> May, 2016, passed by Hon'ble High Court of Delhi which has been concurred by the MHA vide their CF-3381587/2017 dated 10<sup>th</sup> march, 2017 (**Annexure 'B'**)

Copy of UO No. 17/26/2017-Pers/BSF/13008 dated 21<sup>st</sup> February, 2017 is annexed herein as **ANNEXURE R2/'A'**

Copy of the MHA CF-3381587/2017 dated 10<sup>th</sup> march, 2017 **ANNEXURE R2/'B'**)

18. That in respectful compliance of the judgment dated 31<sup>st</sup> May, 2016 passed by the Hon'ble High Court of Delhi in the WP(C) No. 9808 of 2015 and relaxation granted by MHA, a Review DPC was held on 20<sup>th</sup> April, 2017 at 67 Bn BSF for considering the Petitioner for promotion to the rank of HC(GD) with reference to the DPC held on 12<sup>th</sup> August,

*2015 in which his immediate juniors were empanelled for promotion to the rank of Head Constable.*

*19. That the Petitioner failed to secure minimum 50% marks in Group-III (Interview) as prescribed in the procedure/criteria for preparation of DPC list C, D & E circulated by FHQ (Pers Dte) Letter No. 5413-5713 dated 10<sup>th</sup> Jan, 2003 due to which the petitioner has been declared as "UNFIT" for promotion from Constable (GD) to the rank of Head Constable(GD)."*

6. On a reading of the aforesaid paras, it is noted that the respondents have rejected the case of the petitioner for promotion on certain grounds. It is conceded by Mr. Gogna that no order with respect to his non promotion has been communicated to the of the petitioner. He states, that the respondents shall communicate to the petitioner a reasoned order on his non promotion to the post of Havildar within three weeks from today along with all the documents.

7. If that be so, on receipt of such a communication, the petitioner shall be at liberty to challenge the same in a separate proceedings in accordance with law. The contempt petition is closed. The notices are discharged.

**V. KAMESWAR RAO, J**

**FEBRUARY 27, 2018/ak**