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

+ **W.P.(C) 4373/2018**

AJIT SINGH & ORS

..... Petitioners

Through: Mr.Subhro Sanyal with Ms.M.
Theepa & Mr.A.K. Pandey, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Rajat Gava with Mr.Sravan
Kumar Shukla, Advs. for Mr.Sanjeev
Narula, CGSC for R-1 to 3.
Mr.Naresh Kaushik with Mr.Omung
Gupta, Advs. for R-4/UPSC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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04.10.2018

1. The present petition has been filed by the petitioners seeking directions to the respondent nos.2 &3/BSF and respondent no.4/UPSC to re-draw the Gradation List, 2016 for Group 'A' General Duty (GD) Officers as also for quashing and setting aside the order dated 17.02.2017, passed by the respondent nos.2 and 3/BSF, rejecting their representation seeking change in the seniority list of Deputy Commandant Gradation List of Group 'A' GD Officers, 2016.

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2. On a perusal of the impugned order dated 17.02.2017, it transpires that the representation dated 25.01.2017 submitted by the petitioner no.3 seeking change of seniority of Deputy Commandants in the Gradation List of Group 'A' GD Officers, 2016 wherein an objection had been taken in respect of the respondent No.5/Shri Avinash Kumar, DC being placed at Sl. No.33, was turned down by the respondents by stating that the *inter se* seniority of the respondent no.5 had been settled in compliance with the judgment of the High Court and the said officer had accordingly been re-assigned the AC(DE) batch at Sl.No.32.

3. In the present petition, though a reference has been made by the petitioners to the writ petition filed by the respondent no.5 in the High Court, registered as W.P.(C) No.1349/2013, very conveniently, a copy of the said decision has not been placed on record for our perusal. Learned counsel for the respondent nos.2 and 3 hands over a copy of the judgment dated 29.10.2015 passed by a Coordinate Bench.

4. W.P.(C) No.1349/2013 was filed by the respondent no.5, being aggrieved by an order dated 23.11.2012, issued by the BSF rejecting his request for treating him as an Appointee along with other candidates who had joined the 32nd batch for training, as a direct recruit Assistant Commandant (DE). The operative paras 8 to 12 of the judgment dated 29.10.2015, are as follows:-

“8. In the present case, it is evident from the factual narrative that the petitioner at all relevant times disclosed his involvement in the various criminal cases he was implicated in. He was acquitted of all charges honourably by the judgment of the competent criminal court on 07.08.2007. Even this was brought to the notice of BSF. The record further discloses that the rejection of the petitioner’s candidature took place during the pendency of the writ petition preferred by him, i.e. W.P.(C) 8287/2007. In fact, the rejection took place on 25.01.2008. Keeping in mind the conspectus of these circumstances and also after considering the record including the two judgments of the competent court, it was held that the action of the respondent BSF in cancelling the petitioner’s candidature and refusing to appointment was arbitrary. Consequential direction naturally was that he ought to be directed to be appointed “forthwith”. It is not the BSF’s case that there was suspension or stay of the Court judgment during the pendency of the Special Leave Petition preferred by it. Even that Special Leave Petition was rejected on 29.09.2008. Their contention now is that the literal and plain meaning is to be given to the rule i.e. Rule 7 (3) (iv).

9. This Court is of the opinion that the BSF is hardly in a position to justify itself in this regard. The implication of the decision of the Court quashing the respondents’ decision (taken belatedly given that the petitioner had already approached this Court on 06.11.2007 before the 32nd Batch was sent for training) was that full effect had to be given, to the declaration and the consequential direction of 19.02.2000 in W.P.(C) 8287/2007. Whilst the BSF may otherwise be correct in contending that the mandate of proviso of Rule 7 (3) (iv) is unequivocal in its view that the date of appointment is defined or determined on the date the candidate is deployed or reports for training and that every candidate has to undergo training, nevertheless this Court

cannot overlook three important considerations. First, the petitioner was diligent in reporting the disqualifying circumstances i.e. the pendency of the criminal case on 16.11.2006 and he did so again upon its quashing on 07.08.2007. Even then, the BSF chose not to take any action. Second, the petitioner's approaching this Court on 06.11.2007 could well have been the occasion for the BSF to decide the further course of action. They chose not to do so. It appears now to be pressed in a rather ill-considered manner to justify rejection of the petitioner's appointment along with his batch mates who were selected pursuant to the recruitment process of 2005. The third important circumstance is that in the light of the first two, the Court had directed full weight and effect to be given to its decision by requiring that the petitioner be appointed "forthwith". That direction was nowhere disturbed – it was never stayed and the Supreme Court rejected the respondent's Special Leave Petition.

10. The above circumstances, in our opinion are sufficient to draw a distinction between the facts of this case and that in Rohitash Kumar's case (supra) that was a case where administrative inconvenience and principles compelling necessity restrained the BSF from issuing appointment letters to 87 of the selected candidates. In the absence of police verification and other necessary records it could well be said that the selection itself was incomplete. It is in the light of such facts that the Supreme Court's interpretation (in Rohitash Kumar's case) that the plain, literal and full meaning has to be given to Rule 7 (3) (iv) and has to be understood. Such clearly is not the case in the present instance. On 01.03.2013, upon an interim application by the petitioner this court had directed the respondents to keep one post unfilled in the next higher rank of Deputy Commandant during the pendency of this writ petition. Considering the totality of circumstances, the petitioner's

entitlement to be treated as a member of the BSF joining in its 32nd Batch (for training as Assistant Commandant) stands established.

11. For the above reasons, we hereby direct that the petitioner should be treated as having been appointed along with those who joined in the AC(DE) Batch 32 and be given due seniority having regard to Rule 7 (3) (iv) i.e. by taking into account his performance in the UPSC recruitment and the performance in the training undergone in the 33rd batch.

12. The writ petition is allowed and C.M.2558/2013 is disposed of in the above terms.”

5. Learned counsel for the respondent no.2 states that once the High Court had directed that the respondent no.5 should be treated as having been appointed along with those who had joined the 32nd AC(DE) batch and had ordered that he should be given due seniority having regard to Rule 7(3)(iv) of the BSF Group ‘A’ (General Duty) Recruitment Rules, 2010, the respondent nos.2 &3/BSF had correctly placed respondent no.5 at Sl.No.32 in the seniority of the Deputy Commandants in the Gradation List of Group ‘A’ GD Officers, 2016.

6. Learned counsel for the petitioners states that the aforesaid decision has upset the apple cart for the petitioners and disturbed their seniority list of the Deputy Commandant. If that is the position, then it was for the petitioners to have taken appropriate legal recourse in respect of the judgment dated 29.10.2015. However, the present

petition filed by the petitioners without even filing a copy of the judgment dated 29.10.2015 or seeking any orders in respect of the said judgment, is not maintainable. In any case, it is not for us to clarify a decision rendered by another Division Bench of this Court. We therefore, decline to entertain the present petition, which is dismissed in *limine*.

7. If aggrieved by the judgment dated 29.10.2015, rendered in W.P.(C) No.1349/2013, it is for the petitioner to seek legal recourse, as may be advised.

HIMA KOHLI, J

REKHA PALLI, J

OCTOBER 04, 2018

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