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

+ W.P.(C) 9012/2018 & C.M. No. 34673/2018

HC WELDER BANI SINGH Petitioner

Through: Mr. Ankur Chhibber, Advocate and
Mr. Bhanu Gupta, Advocate

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Rajesh Kumar Singh, Advocate
with Mr. Reeshesh Mani Tripathi, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **28.08.2018**

1. The present petition has been filed by the petitioner praying *inter alia* for quashing of the order dated 21.11.2014, passed by the respondents/BSF approving his permanent absorption to the rank of Constable (Welder) in Sector Motor Transport Workshop, Technical Cadre, retrospectively, with effect from 29.6.2009. The petitioner states that as a matter of fact, he ought to have been absorbed with effect from 21.9.2006, instead of 29.6.2009 and thereafter, his case for promotion to the rank of SI ought to be considered by counting his past service.

2. We may note that prior to filing the present petition, the petitioner had in the year 2012, filed a writ petition in this Court, registered as W.P.(C) No.

2722/2012, seeking his absorption in the SMT Workshop Technical Cadre as his case was not being considered by the respondents even though, many other personnel, who were performing duties in the same cadre, were considered and they were absorbed in the SMT Workshop, Technical cadre along with others in the same rank and seniority.

3. Upon consideration of nine such instances enumerated by the petitioner in his writ petition, the Division Bench vide its order dated 26.8.2014, had allowed the writ petition by observing as follows:-

“5. The petitioner herein was appointed as Constable (Welder) on 11.11.1988 and from November 1998 to June 1989, he underwent training as applicable to the Welder Trade and on successful completion of the training, he got posted to Sector Motor Transport Workshop at Firozpur, Punjab and thereafter, from July 1989 to September 2004 at various Sector Motor Transport Workshops from Ferozepur to Gurdaspur and in September 2004 he was posted to Special Repair Organization (SRO) BSF, New Delhi from SMT Workshop, Srinagar (J and K). It is also the case of the petitioner that the respondent has approved a separate cadre for Motor Transport (MT) Workshop Personnel and the Rules for BSF MT, Workshop (Non-Gazetted) Group ‘C’ Posts Recruitment Rules 2006 were notified and made effective with effect from 21.9.2006. As per the said Rules, all those persons who were working in the MT Trade on regular basis as on the date of the commencement of the said Rules, were deemed to have been appointed in accordance with the said Rules. The petitioner was promoted to the rank of Head Constable vide orders dated 31.10.2008 in GD Cadre. It is also the case of the petitioner that he has not been absorbed yet in the SMT Workshop cadre although personnel junior to him have already been absorbed.

6. In the light of the aforesaid stand taken by the respondents in their additional affidavit and also in terms of

the signals sent by Deputy Commandant (DPT) to the SHQ BSF, Udaipur dated 20.8.2014, it is no more in dispute that the name of the petitioner has already been sent for consideration for his absorption and as per the respondents, in all likelihood, the name of the petitioner shall be considered in the next Board Proceedings. In the above circumstances, we direct the respondents to consider the case of the petitioner for his absorption in SMT Workshop cadre in the next Board proceedings. We make it explicitly clear that under no circumstances, the case of the petitioner shall be differentiated from others who were junior to him and were absorbed in the said cadre and at the same time their rank was also protected.”

4. Pursuant to the passing of the aforesaid directions by the Court, the respondents issued an order dated 21.11.2014, the operative para whereof reads as follows:-

“6. Whereas, the Hon’ble Court vide order dated 26.8.2014, passed on the above said Writ Petition had directed to consider the case of the petitioner for his absorption in BSF, Sector Motor transport, Workshop Cadre.

7. Whereas, now the said Const. (Now HC/GD) Bani Singh, has submitted his willingness and undertaking to forgo his promotion to the rank of HC (GD) in parent general duty cadre, earned on 24.10.2008, for his permanent absorption to the post of Const. (Welder) in BSF, Sector Motor Transport, Workshop, Group ‘C’ Technical Cadre at par with those already absorbed in BSF, Sector Motor Transport, Workshop, Technical Cadre.

8. Now, therefore the competent authority, after detailed examination of the case and also in respectful compliance of the order dated 26.08.2014 passed by the Hon’ble Delhi High Court, has approved the case of no.

882560629 Const Bani Singh of SHQ BSF, Udaipur for his permanent absorption to the rank of Const (Welder) in Sector Motor Transport, Workshop, Technical Cadre respectively w.e.f. 29 June, 2009 under the provision of Rule 4 (1) & (2) of Motor Transport Workshop RRs 2006.

9. On absorption to the post of Const (Welder), in BSF, he will be governed by BSF, Motor Transport Workshop (Non Gazetted) Group-‘C’ posts Recruitment Rules-2006 notified vide GSR 234 dated 21 Sept., 2006 for all purposes including seniority, promotion, other service matters etc. His inter-se-seniority will be fixed by Pers Dte (Pers Section) for placing him at the appropriate place in the Central Seniority List of SMT Workshop Cadre.

10. Const (Welder) Bani Singh shall not make any claim/representation or hold the BSF liable for the consequential service and monetary loss, if any, in future, consequent upon his absorption in BSF, Sector MT workshop which was considered in view of the irrevocable option exercised by him.

11. Consequent upon his permanent absorption to the post of Const. (Welder) in BSF, Sector Motor Transport Group-‘C’ Technical Cadre, No. 882560629 Const (Welder) Bani Singh of SHQ BSF, Udaipur is hereby posted to SHQ BSF, Shillong (SMT WKSP) against the existing vacancy with immediate effect”.

5. Now, after expiry of almost four years reckoned from the date of his absorption as Constable (Welder), the petitioner has filed the present petition claiming *inter alia* that the respondents had committed an error in giving

him absorption with effect from 29.6.2009 whereas, he was entitled for being absorbed w.e.f. 21.9.2006, the date when the BSF MT, Workshop (Non-Gazetted) Group 'C' Posts Recruitment Rules, 2006, came into force.

6. At the outset, we have inquired from learned counsel for the petitioner as to what steps did the petitioner take, if he was aggrieved by the order dated 21.11.2014, particularly, when the said order left no manner of doubt with regard to the date of his absorption, as the Competent Authority while approving the petitioner's case for permanent absorption to the rank of Constable (Welder) in Sector Motor Transport, Workshop, Technical Cadre, had clearly specified the same to be retrospectively applicable with effect from 29.6.2009.

7. Learned counsel for the petitioner fairly states that the petitioner did not take any legal recourse against the aforesaid order or approach the court claiming non-compliances of the order dated 26.8.2014.

8. That being the position, we do not see any reason to put the clock back by permitting the petitioner to challenge the order passed by the respondents, with which he was fairly satisfied four years ago. We may also add here, that in para 10 of the impugned order dated 21.11.2014, the respondents clearly stated that the petitioner will not make any representation or hold the BSF liable for consequential service or monetary loss, if any, in future, consequent upon his absorption in BSF, Sector MT Workshop, which absorption had been considered in view of the irrevocable option exercised by him.

9. Given the above facts and circumstances, we see no reason to entertain the present petition by exercising our discretionary powers of judicial review. The petition is accordingly dismissed along with the pending application.

HIMA KOHLI, J

REKHA PALLI, J

AUGUST 28, 2018

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