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

+ **W.P.(C) 323/2018**

DALIP KUMAR SHARMA AND ANR Petitioners

Through: Ms.Saahila Lamba, Advocate.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr.Manish Mohan, CGSC with
Ms.Manisha Saroha, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **27.02.2019**

1. This is the second round of litigation in regard to the prayer of the Petitioners, who have been working as Head Constables (HCs)/Nursing Assistants (Medic) (NA) in the Para-Medical Cadre of the Border Security Force (BSF) seeking a cadre review for the said post.

2. Earlier these very Petitioners had filed WP(C) 758 of 2017 in this Court seeking the same relief. The following order was passed thereon on 27th January 2017:

“W.P.(C) 758/2017

After hearing the respective parties, this writ petition is disposed of by directing the respondent authorities to treat this writ petition as representation of the writ petitioner for cadre review and to take a decision on the representation in accordance with law within six months from date.”

3. Consequent on the above order, a speaking order was passed by the Medical Directorate forming part of the Directorate General BSF on 21st July 2017 where *inter alia* it was observed that in terms of an Office Memorandum (OM) dated 14th December 2010 issued by the Ministry of Personnel, Public Grievances and Pensions cadre review should be undertaken once in every five years. It was observed that “since the post of Head Constables/Nursing Assistant in para medical set up was introduced on 1st February 2015, hence cadre review becomes due after 1st February 2020.” In other words the prayer of the Petitioners for the cadre review to be undertaken forthwith was rejected.

4. This is led to the filing of the present petition challenging the said order dated 21st July 2017 and reiterating the prayer for the cadre review.

5. In the present petition the following order was passed by this Court on 9th July 2018:

“W.P.(C) 323/2018

1. On the last date of hearing, learned counsel for the respondents had sought an adjournment to enable her to obtain instructions from the department in the light of the Standing Operating Procedure, 2010 (Amended) prepared by the BSF(Annexure P-1) so as to reconcile their stand taken in the impugned order dated 21.07.2017 to the effect that the post of Head Constable/Nursing Assistant in Para-medical set up was introduced in the BSF only on 01.02.2015 and thus, the cadre review becomes due after 5 years, i.e. on 01.02.2020.

2. Learned counsel for the respondents, on instructions, states that vide their letters dated 22.01.2009 and 11.02.2010, the

Ministry of Home Affairs had sanctioned the post of Head Constable/Nursing Assistant in the BSF and after framing the SOP for recruitment of Head Constable/Nursing Assistant in the BSF and obtaining the approval from MHA, the eligible Head Constable/Constable General Duty personnel were selected as Head Constable/Nursing Assistant on deputation basis in the BSF Medical Set-up w.e.f. 11.05.2011. As a result, the petitioners had continued on deputation from May, 2011 and vide order dated 30.01.2015, they were absorbed in the BSF along with 350 others only w.e.f. 01.02.2015 and therefore, their cadre review would become due only after 5 years reckoned from the said date, i.e. on 01.02.2010.

3. The aforesaid explanation does not throw any light on what steps had the respondents taken after the Standing Operation Procedure, 2010 for recruitment of Head Constable/Nursing Assistant in the Para-medical set up of BSF was issued by the Ministry of Home Affairs, Government of India to fill up the subject posts, instead of continuing the petitioners and 350 others on a deputation basis for several years.

4. The respondents are directed to file a detailed affidavit on the aforesaid aspect within four weeks along with all the relevant documents. An advance copy thereof shall be furnished to the learned counsel for the petitioners, who may, file a reply thereto, if necessary, within four weeks thereafter.

5. List on 16.10.2018, before the Joint Registrar for completion of pleadings in the said affidavit.

6. List in Court on 27.02.2019.”

6. Pursuant to the above order an additional affidavit has been filed by the Respondents in which *inter alia* it is stated that as per the Standard Operating Procedure (SOP)-2010 recruitment as HCs/NAs in the para medical set up of the BSF was by “deputation/absorption”. It is further

stated that the Petitioners were by order dated 11th May 2011 selected/appointed 'on deputation basis' by the Medical Directorate for a period of three years. It is further stated that as per the SOP-2010 the deputation and work performance during the said period were pre-requisite conditions of further absorption in the post of HC/NA in the BSF. After completion of three years' deputation, the case of the Petitioners for permanent absorption in the BSF para military set up processed in June 2014 as per the provisions of Border Security Force Combatised Para-Medical Staff Recruitment Rules, 2013 (notified on 16th January 2013) and SOP-2010. It is stated that on the recommendations of the duly constituted Board of Officers, the Petitioners and other suitable persons who were permanently absorbed as HC/NA in the BSF Para-Medical Staff by an order dated 15th January 2015.

7. Juxtaposing the earlier speaking order dated 21st July 2017 with the additional affidavit now filed it becomes plain that the claim in the speaking order that the post of HC/NA was "introduced on 1st February 2015" is incorrect. From the additional affidavit now filed it is plain that in terms of the SOP-2010 the post of HC/NA was in fact created. It is only that in terms of the SOP-2010 appointment to those posts could be only by the mode of deputation/absorption. Admittedly, the Petitioners were appointed on deputation as HC/NA in the para medical set up of BSF by an order dated 11th May 2011. After completion of the requisite period of three years and after review by a duly constituted Board they were permanently absorbed on 30th January 2015.

8. The delay in their permanent absorption has not been explained. What, however, is clear is that the Petitioners were working in the post of HC/NA in the para medical cadre by virtue of the order dated 11th May 2011. For all practical purposes, therefore, the post of HC/NA in the para medical cadre of BSF did exist from 11th May 2011 onwards.

9. On that basis, and in terms of the OM dated 14th December 2010 issued by the Ministry of Personnel, Public Grievances and Pensions cadre which states that review should be undertaken once in every five years, the further cadre review for the para medical cadre of HC/NA is due five years after the Petitioners' appointments to those posts on deputation i.e. in May 2016.

10. In that view of the matter, the Court sets aside the speaking order dated 27th January 2017 and directs the Respondents to undertake the cadre review of the para medical cadre of the BSF forthwith and complete the exercise within a period of six months from today. The further consequential orders in respect of the Petitioners as a result of the cadre review will be issued within a further period of three months thereafter. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 27, 2019/ tr