

\$~56.

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

+

Date of Decision: 14.05.2019

% W.P.(C) 5206/2019

DALIP KUMAR SHARMA AND ANR..... Petitioner

Through: Ms. Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Mr. Shubhash Gosai with Mr. Amit
Kumar Dogra, Advs. for R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

C.M. No. 23049/2019

1. Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 5206/2019 and 23048/2019

2. The petitioners assail the central seniority list dated 22.02.2016 of the absorbed HC/ Nursing Assistant in BSF Para-Medical set up. The petitioners also seek a mandamus to direct respondent Nos. 2 and 3 to revise the central seniority list of absorbed HC/ Nursing Assistant by placing the

petitioners above respondent Nos. 4 to 38 in the seniority list of HC/ Nursing Assistant.

3. The Head Constables, General Duty (GD) of the BSF were offered deputation as Head Constable (Nursing Assistant) in the Para-Medical set up of the BSF. Apart from the petitioners, others, including respondent Nos. 4 to 38 also opted for the said deputation. It appears that the deputation took place in three tranches. Eventually, the respondents have decided to create a separate cadre of Head Constable (Nursing Assistant). Consequently, the impugned seniority list was circulated on 22.02.2016 inviting objections within one month from the date of receipt of the seniority list. Admittedly, the petitioners did not file any objection within the said period and they represented against the said list only on 11.03.2019.

4. The submission of learned counsel for the petitioners is that the petitioners were amongst the first batch of Head Constable (GD), who were sent on deputation as Head Constable (Nursing Assistant) in the BSF Para-Medical set up. According to the petitioners, they should rank senior to the other Head Constable (Nursing Assistant), who came on deputation in the subsequent batches. This submission of learned counsel for the petitioners is premised on the Standing Operating Procedure – 2010 laid down by the Govt. of India for recruitment of Head Constable (Nursing Assistant) in the BSF. The said procedure provides in relation to “observation” as follows:

“(f) *Absorption*

Absorption of willing and eligible personnel will be considered prior to completion of their deputation period. Absorption will be considered according to their work performance during deputation and instructions of Govt. of India on the subject and will be subject to recommendation of Board of Officers.”

5. Reliance is also be placed by Ms. Lamba on Clause 9 of the order dated 07.09.2014 which reads as follows:

“.....9. The board will prepare the proceedings in following three parts:-

(i) Part-I – the personnel who were selected as Head Constables (Nursing Assistant) on deputation as per Medical Dte order No. 15/45/HC/(NA)/11/Med/4623-4923 dated 11-05-2011 will be considered in part-I board proceeding.

(ii) Part-II – similarly the personnel who were selected as Head Constables (Nursing Assistant) on deputation as per Medical Dte order No. 15/45/HC(NA)/11/Med/5697-6000 dated 25-05-2011 will be considered in Part-II and.

(iii) Part-III – the personnel who were selected as Head Constables (Nursing Assistant) on deputation as per Medical Dte order No. 15/45/HC(NA)-Phase-II/11/Med/11031-11331dated 11-10-2011.....”

6. The submission of Ms. Lamba is that the aforesaid clauses show that the absorption had to be considered batch wise, and thus considered, the petitioners having been absorbed first, should rank senior in the cadre of Head Constable (Nursing Assistant).

7. A perusal of the impugned seniority list shows that the said seniority has been drawn on the basis of date of promotion as Head Constable (GD). The senior most person at serial No. 1 in the impugned seniority list became Head Constable on 01.08.2005. Admittedly, the petitioners though deputed as Head Constable (Nursing Assistant) earlier, became Head Constable (GD) subsequently.

8. We have heard Ms. Lamba and perused the record. It is not the petitioners' case that at the time of deputation, such deputation was offered to the Head Constable (GDs) according to the *inter se* seniority. Merely because the petitioners came on deputation earlier, would not make them senior in the cadre of Head Constable (Nursing Assistants), since it was not informed to the members of Head Constable (GD) cadre that their *inter se* seniority in the cadre of HC (Nursing Assistant) – that may be created subsequently, would rank from the date on which they come on deputation.

9. The aforesaid procedures, in our view, do not translate into granting seniority to the Head Constable (GDs) who were sent on deputation earlier as Head Constable (Nursing Assistants), in the cadre of Head Constables (Nursing Assistants). Merely because they were considered for the purpose of absorption batch-wise, would not mean that the *inter se* seniority would also be fixed batch-wise. A perusal of the impugned seniority list shows that the date of absorption has been fixed as 01.02.2015 in respect of all the absorbees. It, thus, appears that after completion of the process of deciding upon who all should be absorbed amongst the three batches of Head Constable (GDs) as Head Constable (Nursing Assistants), the respondents

have wisely fixed the date of absorption as a common date i.e. 01.02.2015. That being the position, it is obvious that their *inter se* seniority in the cadre of Head Constable (Nursing Assistant) has to be reckoned from the date of substantive promotion as Head Constable (GDs).

10. We do not find any merit in this petition.

11. Dismissed.

VIPIN SANGHI, J.

REKHA PALLI, J.

MAY 14, 2019

N.Khanna

