

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

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Reserved on: 3rd December, 2018

Pronounced on: January 16, 2019

W.P.(C) 7154/2017

CHITTARANJAN SAHU & ORS

..... Petitioners

Through: Mr. A.K. Bhardwaj, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ravi Prakash, CGSC with
Mr. Varun Pathak, Mr. Farman Ali
and Mr. Kunal Bhargava, Advocates
for R-UOI.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA**

J U D G M E N T

SANJEEV NARULA, J

1. Petitioners who retired as Sergeants from Indian Air Force have been denied re-employment/up-gradation to the rank of Sub Inspector/ Junior Aircraft Mechanic (SI/JAM) in BSF. Aggrieved with the deprivation, they have approached this court under Article 226 of the Constitution of India and *inter-alia* seek writ of certiorari for quashing the rejection orders issued by Respondents.

Factual background

2. Petitioners No. 1 to 7 were enrolled with Indian Air Force (hereinafter referred to as "IAF") w.e.f 10.07.1987, 02.03.1989, 12.08.1989, 13.11.1990,

11.03.1991, 14.03.1991 & 14.07.1992 respectively. They all got due promotions from time to time upon the rank of Sergeant and were placed in grade pay of Rs. 2800/- on different dates. They got discharged from IAF after completing more than six years of regular service in the said grade pay. Whilst in service of IAF, Petitioners completed the Diploma Course in Electrical Engineering and were issued the Diploma Certificates.

3. Respondent No.2 invited applications for different posts to be filled up on deputation or re-employment. Petitioner No. 7 was re-employed as ASI in BSF w.e.f 1st February 2013 and made representations dated 18th June 2013 and 18th August 2013 to IG (AIR), BSF requesting that he be re-employed as Sub Inspector (JAM). However, his requests were not considered. Similar representations were made by other Petitioners. In response, the Respondents issued missives and called upon some of the Petitioners to furnish certain information. On 24th September 2015, the claim of the Petitioner No. 2 was rejected on the ground that he did not fulfil the requisite criteria for the post of SI (JAM) as his last pay scale on the analogous post i.e. Sergeant was 5200-20200 with Grade Pay of Rs. 2800/- that is less than the grade pay Rs. 4200/- prescribed for the post of Sub Inspector. Similarly, the representations of Petitioner Nos. 1, 4 to 7 were also rejected vide impugned order dated 13th May 2017 on the ground that the post held by them in IAF was analogous to the post of ASI and not SI. Representation of Petitioner No. 3 was also rejected vide impugned order dated 24th July 2017. Petitioners have jointly approached this court challenging the respective rejection orders.

4. Pursuant to the judgement of this Court in ***Dhiraj Ranjan v. Union of India*** reported in **2015(152) DRJ341** dated 03rd August, 2015, Sh. Dhiraj Ranjan, Ex-Sergeant in IAF was re-employed as Sub Inspector in the Air Wing of BSF w.e.f 1st April 2016 .

Submissions

5. The Court has heard Mr. A.K. Bhardwaj learned counsel for the Petitioners and Mr. Ravi Prakash, CGSC appearing on behalf of the Respondents. Mr. Bhardwaj primarily relied upon the judgment of the Coordinate Bench in the case of ***Dhiraj Ranjan*** (Supra) and submitted that all the Petitioners are squarely covered by the said decision. Petitioners fulfil the eligibility criteria and since all the Petitioners were senior to Mr. Dhiraj Ranjan in the IAF, they cannot be treated differently.

6. Mr. Bhardwaj submits that in view of the observation of this Court in the said judgment, it clearly shows that the Respondents understanding is wrong and they cannot deny re-employment to the Petitioners as SI/JAM on a misplaced and misconceived plea that Petitioners have not held an analogous/equivalent post in the IAF. The interpretation given by the Respondents is incorrect and untenable. He further submits that the eligibility condition for holding the post of SI should be six years in the PB-II, 5200-20200 plus Grade Pay of Rs. 2800/-. In respect of Petitioner No. 3, he states that the said petitioner joined the grade pay of Rs. 4200/- at the time of his discharge from the services of IAF. He also cites the case of one Ex-Sergeant Shri Jagpal Singh who retired from IAF as Sergeant and was re-employed in BSF as SI/Store man. He submits that all those who

retired as Sergeants from Flight Gunner Stream were re-employed in BSF as SI. The basic qualification of 10+2 pass with two years experience as technicians is the eligibility requirement for being appointed as ASI in BSF for a person applying directly. Petitioners cannot be compared to such persons as they have rendered service of twenty years or more in IAF and are treated at par with Engineering Degree Holders. He further submits that re-employing the Petitioners as ASI/AAM would be in violation of Article 14 and 16 of the Constitution of India.

7. Learned Counsel for the Petitioners also relied upon judgment of the Supreme Court in *SI Roop Lal v. Lt. Governor to Chief Secretary Delhi & Ors* reported in *JT 1999 (9) SC 597* in support of his submission that in order to ascertain the equivalency of the post, several factors as laid down in the aforesaid judgment had to be taken into consideration. He submits that in view of the abovementioned judgment, the Petitioners ought to be re-employed as SI(JAM) and not ASI(AAM).

8. Mr. Ravi Prakash on the other hand, referred to the relevant Recruitment Rules and differentiated the case of the Petitioners with that of Dhiraj Ranjan. Dhiraj Ranjan came on deputation with BSF on the post of SI (JAM) and continued on re-employment to the same post. He submits that Petitioners had applied for re-employment to the post of ASI (AAM) in BSF Air Wing on the basis of the eligibility criteria mentioned in the advertisement published by BSF. Petitioners were holding the rank of Sergeant in IAF at the time of their retirement which is an analogous/equivalent post to the rank of ASI in BSF. They have not served

in BSF Air Wing on deputation unlike Dhiraj Ranjan and thus the judgment in the case of Dhiraj Ranjan (Supra) is not applicable to the present Petitioners.

9. In this behalf, he referred to the relevant provision dealing with Ex-servicemen in the Recruitment Rules for the post of SI/ JAM that reads as under:

“For Ex-service men

i) Deputation

"The Armed Force Personnel due to retire or who are to be transferred to reserve within a period of one year and having the requisite experience and qualifications prescribed shall also be considered. Such persons would be given deputation terms upto the date on which they are due for release from the Armed Forces, **thereafter they may be continued on re-employment.**"

10. He submits that the Petitioner's case in comparison is entirely differentiable, in as much as Petitioners have neither served in BSF Air Wing on deputation to the post of SI (JAM) and nor have they applied to the post of SI (JAM). He explains this by referring to the following chart:

S.No.	Regt No. , Rank & Name	Date of Retireme nt From IAF and rank	Rank at the time of retirem ent	Applied post for reemploy ment in BSF Air Wing	Date of Joining in BSF Air Wing	Willingness / Joining report to the rank of ASI (AAM)
i).	131400098 ASI(AAM) Raj Kishor Singh	30.11.20 10	Sergeant	ASI (AAM)	01.02.2013	Joining report is annexed as as 7(1)

ii).	131400487 ASI(AAM) Nabab Singh	31.03.20 11	Sergeant	ASI (AAM)	15.07.2013	-do- as 7(2)
iii).	131400496 ASI(AAM) Jagbir Singh Barewal	31.03.20 11	Sergeant	ASI (AAM)	15.07.2013	-do- as 7(3)
iv).	131400113 ASI(ARM) Naveen Kumar Sharma	30.07.20 12	Sergeant	ASI (AAM)	01.02.2013	-do- as 7(4)
v).	171400021 ASI(AAM) Mahesh Singh Solanki	31.10.20 15	Sergeant	ASI (AAM)	30.01.2017	-do- as 7(5)
vi).	09000806 ASI(AAM) Now SI(JAM) R K Tyagi promoted to the rank of SI(JAM) wef 28.04.2016	31.03.20 09	Sergeant	ASI (AAM)	08.09.2009	-do- as 7(6)

11. He also differentiated the case of Ex-Sergeant Jagpal Singh Ramesh as SI (Storeman) clarifying that there are separate Recruitment Rules applicable to Technicians and Non-Technicians (Store man) and Petitioners cannot claim parity with them.

Analysis and Findings

12. The crux of the matter in the present petition pertains to the Recruitment Rules for re-employment for the post of SI (JAM). Since the Petitioners rely upon the judgment of this Court in *Dhiraj Ranjan (supra)*, where this Court had the occasion to consider the Recruitment Rules for the purpose of SI (JAM), it will be apposite to make a comparison of the Recruitment Rules for the post of SI/ JAM and ASI/AAM as the same are distinct and provide for different modes of recruitment. The said rules provide as under:

Assistant Aircraft Mechanic/Assistant Radio Mechanic (Assistant Sub Inspector)	75% by direct Recruitment 25% by Deputation (including short-term contract)/ Absorption/Reemployment failing which by direct recruitment. <u>FOR DEPUTATION INCLUDING SHORT TERM CONTRACTS ABSORPTION.</u> Personnel under Central Government/ State Government / Public Sector Undertakings holding analogous posts on regular basis or in the grade of Pay Band-1 (Rs. 5200-20,200 plus Grade pay of Rs. 2400/-) with 05 years regular service in the grade and possessing qualifications prescribed under column (7) (now mentioned below shall be eligible :-
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	Essential :- (i) (a) Three years Diploma in the relevant trade recognized by the Directorate General Civil Aviation ; Or (b) Group "X" Diploma issued by the Indian Air Force, (ii) Preferably two years relevant aviation experience after completion of diploma course (to be prescribed from time to time) <u>For Ex-Serviceman</u> <u>Re-employment:-</u> The Retired Armed Forces personnel possessing qualification and experience as prescribed under column (7) and held <u>analogous</u> or <u>equivalent post</u> in the Armed Forces of the Union. The break in service should not be more than two years. The upper age limit for appointment by deputation shall not be exceeding fifty-two years as on the date of receipt application.
Junior Aircraft Mechanic/Junior Radio Mechanic (Sub Inspector)	Promotion failing which by Deputation (including short-term contract)/Absorption/Re-employment failing which by direct recruitment. <u>For Deputation / Absorption /Short term contract</u> Officials under the Central Government or State Governments or Public Sector undertakings holding analogous posts on regular basis or in the grade of PB - 2 (Rs.

	5,200-20,200 plus Grade Pay Rs. 2,800/-) with six years regular service in the grade and possessing qualifications prescribed for direct recruitment under column (7):- 1(a) Three years Diploma in the relevant trade recognized by the Directorate General Civil of Aviation; (b) Group "X" Diploma in the relevant trade issued by Indian Air Force. (II). Minimum experience of 08 years on Aircraft or Helicopter maintenance with three years maintenance experience on Border Security Force type of Aircraft or Helicopter (to be prescribed from time to time. <u>For Ex-serviceman</u> <u>Deputation:-</u> The Armed Force Personnel due to retire or who are to be transferred to reserve within a period of one year and having the requisite experience and qualifications prescribed shall also be considered. Such persons would be given deputation terms upto the date on which they are due for release from the Armed Forces, thereafter they may be continued on re-employment. <u>Re-employment</u> The Retired Armed Forces Personnel possessing qualification and experience as prescribed under
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	column (7) and held analogous or equivalent post in the Armed Forces of the Union. The break in service should not be more than two years. The upper age limit for appointment by deputation shall not be exceeding fifty-two years as on the date of receipt of application.
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13. It is clearly evident from the above that for the post of ASI, the recruitment is either by way of direct intake or by way of deputation (including Short Term Contract/Absorption/Re-Employment). However, **only personnel under Central Government/State Government/Public Sector Undertakings are eligible to come on deputation.** The eligibility requirement *inter-alia* provides for an essential condition of holding analogous post on regular basis or in the Grade of Pay Band (5200-20200) plus Grade Pay of Rs. 2400/- with five years regular service in the grade.

14. **For Ex-servicemen**, the recruitment is only by way of Re-employment. Retired Armed Force personnel who possess the requisite qualifications and experience as prescribed and are holding an **Analogous or Equivalent Post** in the Armed Forces of the Union can be considered for Re-employment. The other condition is that the break in service should not be more than two years. In contrast, for the post of **SI (JAM), for Ex-servicemen**, there are two modes for recruitment (a) Deputation & (b) Re-employment. The eligibility requirement for Armed Force Personnel to come on deputation is prescribed. Such personnel who are due to retire or who are to be transferred to reserve within a period of one year and have the requisite

experience and qualifications can be considered. Such persons are taken on deputation upto the date of release from the Armed Forces. The retired Armed Forces Personnel who possess the qualification and the experience as prescribed and who hold **analogous or equivalent post** in the Armed Forces of the Union without a break in service of more than two years are eligible for re-employment. It is pertinent to note that the rules also provide that Armed Forces Personnel, **who come on deputation** would have an opportunity **to continue on re-employment**, after the release from Armed Forces.

15. The Armed Force Personnel who are recruited on re-employment basis, are retired Officers of the Armed Forces of the Union. Such persons are thus seeking an extension of their employment **after retirement**. Re-employment thus has to be in accordance with the Recruitment Rules which lays down a specific requirement that such retired Armed Force Personnel should hold an analogous or equivalent post. It is noticeable that unlike for the post of ASI, the Recruitment Rules for the post of SI provide for an additional mode of employment of recruitment for ex-servicemen i.e. **by way of Deputation**. Personnel coming on deputation are **serving Armed Force Personnel and are due to retire** within a stipulated period. There is **no condition** in the Recruitment Rules that for deputation, such serving Armed Force Personnel should be holding an analogous or an equivalent post in the Armed Forces. The condition for holding analogous or equivalent post is however applicable for recruitment by way of re-employment basis for both the posts i.e. ASI and SI. **Retired Armed Force Personnel are taken on re-employment basis for the respective post on the basis of the analogous**

or equivalent post held by them in the Armed Forces. In the present case, all the Petitioners were holding the post of Sergeant in Indian Air Force. As per Swamy's Establishment and Administration (for Central Government Officers), 12th Edition 2010 at para 5, Analogous Post on recruitment by absorption/deputation lays down the following criteria for determining as to whether the post is analogous or otherwise:

“i) Though the scale of pay of the two posts which are being compared may not be identical, they should be such as to be an extension or a segment of each other e.g., for a post carrying the pay scale of Rs. 3000-5000 (pre-revised scale), persons holding posts in the pay scale of Rs. 3000-4500(Pre-revised scale) will be eligible.

ii) Both the posts should be falling in the same Group of posts as defined in the Department of Personnel and Administrative Reforms Notification No. 13012/2/87-Estt(D), dated the 30th June, 1987 viz. Group 'A', Group 'B' etc.

iii) The levels of responsibility and the duties of the two posts should also be comparable.

iv) Where specific qualifications for deputation/absorption have not been prescribed, the qualifications and experience of the officers to be selected should be comparable to those prescribed for direct recruits to the post where direct recruitment has also been prescribed as one of the methods of appointment in the Recruitment Rules.”

16. Further It is also to be noted that as per an MOU signed between the Ministry of Home Affairs (MHA) and Ministry of Defence (MoD) on 8th November 2013, the post of Sergeant in the IAF is analogous/equivalent to the post of ASI (AAM) in BSF, Air Wing. The equivalency chart of

analogous post is as under:

S. No.	Rank of IAF Personnel	Rank equivalence in BSF
1.	Warrant Officer	Inspector
2.	Jr. Warrant Officer	Sub Inspector
3.	Sergeant	ASI

17. Supreme Court in *SI Rooplal v. Lt. Governor Through Secretary* (Supra), had the occasion to consider the question of equivalency of the post of SI in BSF to that of SI (Executive and Delhi Police). In the said judgment, the Court also referred to its earlier judgment in the case of *Union of India v. P.K. Roy (1968) 2 SCR 186* and reiterated the factors for considering the question of equivalency of two posts. The relevant portion of the said judgment reads as under:

“17. In law, it is necessary that if the previous service of a transferred official is to be counted for seniority in the transferred post then the two posts should be equivalent. One of the objections raised by the respondents in this case as well as in the earlier case of Antony Mathew is that the post of a Sub-Inspector in the BSF is not equivalent to the post of a Sub-Inspector (Executive) in Delhi Police. This argument is solely based on the fact that the pay-scales of the two posts are not equal. Though the original Bench of the tribunal rejected this argument of the respondent, which was confirmed at the stage of SLP by this Court, this argument found favour with the subsequent Bench of the same tribunal whose order is in appeal before us in these cases. Hence, we will proceed to deal with this argument, now-Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than 'Pay' will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. It is

so held by this Court as far back as in the year 1968 in the case of **Union of India and Anr. v. P.K. Roy and Ors**, [1968] 2 SCR 186. In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors are : (i) the nature and duties of a post, (ii) the responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criterion. If the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different, would not in any way make the post 'not equivalent'. In the instant case, it is not the case of the respondents that the first three criteria mentioned hereinabove are in any manner different between the two posts concerned. Therefore, it should be held that the view taken by the tribunal in the impugned order that the two posts of Sub-Inspector in the BSF and the Sub-Inspector (Executive) in Delhi Police are not equivalent merely on the ground that the two posts did not carry the same pay-scale, is necessarily to be rejected. We are further supported in this view of ours by another judgment of this Court in the case of **Vice-Chancellor, L.N. Mithila University v. Dayanand Jha**. [1986] 3 SCC 7 Wherein at para 8 of the judgment, this Court held: "Learned counsel for the respondent is therefore right in contending that equivalency of the pay scale is not the Only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regarded of equal status and responsibility xxx The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts, xxx"

18. In the present case, the Petitioners have questioned the decision of the Respondent of nixing their employment by not treating the post of the

Petitioners at par with SI (JAM). However, there is no challenge or declaration sought to the effect that the post of Sergeant in Indian Air Force should be considered equivalent to the post of SI in BSF. The MoU between MoD and MHA in this regard is not the subject matter of challenge before this Court. The entire challenge in the writ is in fact premised on the judgment of ***Dhiraj Ranjan*** (supra), under the assumption that the said decision holds Sergeant as analogous to the post of SI. We would be dealing with this question elaborately in the subsequent paragraphs. However for present, it has to be noted as stated above, the Recruitment Rules prescribe that Ex-servicemen can be recruited by way of re-employment on the condition that they hold analogous or equivalent post. This is a distinctive condition for the aforesaid two posts i.e. Sub Inspector and Inspector. It is settled position in law that recruitment to the post can be only in terms of the Recruitment Rules. In this regard, it would be apt to refer to the judgement of the Supreme Court in the case of ***Rabindra Sharma v. State of Punjab*** reported in (1995) IILL J589SC and ***State of Himachal Pradesh v. Swesh K. Verma*** reported in JT 1996(2) SC 455.

19. The submission of the Petitioner with regard to re-employment of Ex-Sergeant Jagpal Singh Ravesh as SI (Store man) and the Petitioners as ASI/AAM is not persuasive as the Recruitment Rules for Technicians and Non-Technicians are different and thus the Petitioners cannot seek parity with re-employment of Non-technicians as SI in BSF.

20. Before averting to the judgement of ***Dhiraj Ranjan*** (supra), it must be noted that it is an admitted case of the Petitioners that they joined BSF Air

Wing on re-employment basis after rendering their entire service in IAF. They were not on deputation. Petitioners never applied for the post of SI (JAM) on deputation basis. All the Petitioners applied for re-employment for the post of ASI (AAM). Keeping the aforesaid facts in the back drop, we now proceed to consider the judgment of the Coordinate Bench in ***Dhiraj Ranjan*** (supra), which has been strongly relied upon by the Petitioners. First and foremost, it is to be noted that in the case of ***Dhiraj Ranjan*** (supra), the Recruitment Rules that were in question related to the post of SI (JAM). The said Recruitment Rules provide for a mode of recruitment by way of deputation. Dhiraj Ranjan was appointed on deputation basis as SI (JAM) in the BSF on 1st October 2013. He continuously worked for six months and on completion of his mandatory tenure in IAF, he superannuated on 1st April 2014. Having him found fit, he was directed to report for joining his duty on re-employment as SI in the BSF. On the very next day, On 2nd April 2014, another letter was issued requiring him to join on duty as ASI as the said post was analogous/equivalent to the post held by him in IAF. The letter dated 1st April 2014 asking him to report for duty on re-employment basis as SI (JAM), was completely contradictory to letter dated 2nd April, 2014 that required him to join duty as ASI. With this apparent contradiction, Dhiraj Ranjan approached this Court and impugned the letter dated 2nd April 2014 on the ground that it reduced his rank. He urged that since he fulfilled all the requisite qualifications prescribed for filling the post i.e. six years regular service in the Grade Pay of Rs. 5200-20200 with the Grade Pay of Rs. 2800/-, BSF could not contend that he was ineligible to hold the post of SI (JAM). Relying upon BSF Air Wing Non-Gazetted combatized Group B and C post Recruitment Rules 2012, Dhiraj Ranjan

asserted that he was correctly absorbed as SI (JAM). This Court after considering the submissions held as under:

“8. The argument of the BSF is that whilst his deputation from Sergeant to SI was justified so is also his absorption as ASI because the analogous or equivalent post – in the case of Sergeant is ASI. The BSF’s argument to deny the petitioner’s absorption as SI(JAM) is specious to say the least. The section on “deputation” – extracted in the previous part of this judgment – and found in Column 11 of the Schedule to the 2012 Rules, has to be read indivisibly. While the BSF does not dispute that the petitioner fulfilled the eligibility stipulation for holding the post of SI on deputation, it makes a fine distinction that in addition to the eligibility condition of six years’ regular service in the pay scale of Rs. 5200-20200, the reemployed personnel must have held analogous/equivalent post in the armed forces, i.e. analogous to that of SI (JAM). This interpretation, according to the Court is untenable and would lead to startling results. Firstly, the section on “reemployment” makes it clear that the analogous or equivalence required of candidates should be in respect of those who have actually left the concerned armed forces. The reference to “break in service” should not be “more than two years” can lead to no other inference. Consequently, the specific head of “deputation” and the condition that the *“armed forces personnel due to retire or who are to be transferred to reserve within a period of one year and having the requisite experience and qualification as prescribed shall be considered...”* specifically applies itself to the main part of the channel of recruitment, i.e. deputation. This clearly states that the eligibility condition for holding the post of SI should be six years in the pay band in PB-2, i.e. Rs. 5200-20200 plus Grade Pay Rs. 2800. Furthermore, even for ASI/AAM, the post in which the petitioner was sought to be absorbed with effect from 02.04.2014 –a promotional quota has been kept apart for filling the post of SI (JAM). There too the ASI/AAM has to possess eight years’ in aircraft or helicopter maintenance with three years’ maintenance experience. Even such ASIs have to necessarily be in the pay

scale of Rs. 5200-20200 to be eligible for consideration for promotion as SI (JAM). In the present case, the petitioner had the necessary experience and expertise for 10 years and was drawing higher pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4200 with effect from 01.10.2012 itself. In these circumstances, the denial of benefit of absorption as SI/JAM is wholly untenable.

9. For the above reasons, we are of the opinion that the petitioner is entitled to the reliefs claimed. The impugned order/letter dated 02.04.2014 is hereby set aside. A direction is issued to the respondents to comply with the order dated 01.04.2014 and to treat the petitioner as a Sub-Inspector/Junior Aircraft Mechanic in Group-B with effect from 01.04.2014. The petitioner is entitled to all arrears constituting the difference between the pay actually drawn by him and the pay he is entitled to in such post, i.e. SI with effect from 01.04.2014 and all consequential benefits such as increments etc. All consequential orders shall be made within six weeks and arrears disbursed in line with such orders within ten weeks from today.”

21. The Court took note of the Recruitment Rules 2012 in respect of the relevant entry for SI (JAM) and observed that since the Petitioner was holding the post of SI on deputation, BSF would not be justified in restructuring the “Re-employment” of such deputationist to the post of ASI. The Court was thus persuaded on account of the fact that since ***Dhiraj Ranjan*** (supra) was initially holding the post of SI on deputation, he ought to be re-employed as SI. The other factor which prevailed upon the Court to take such a view, was perhaps for the reason that the Petitioner had the necessary experience and expertise for ten years and was drawing higher pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4200/- w.e.f 1st October 2012 itself. This is evident from the following observation in the said judgment which reads as under:

“Furthermore, even for ASI/AAM, the post in which the petitioner was sought to be absorbed with effect from 02.04.2014—a promotional quota has been kept apart for filling the post of SI (JAM). There too the ASI/AAM has to possess eight years' in aircraft or helicopter maintenance with three years' maintenance experience. Even such ASIs have to necessarily be in the pay scale or Rs. 5200-20200 to be eligible for consideration for promotion as SI (JAM). In the present case, the petitioner had the necessary experience and expertise for 10 years and was drawing higher pay scale of Rs. 9300-34800 with Grade Pay of Rs.4200 with effect from 01.10.2012 itself. In these circumstances, the denial of benefit of absorption as SI/JAM is wholly untenable.”

22. From the above reading of the judgment, the following things emerge. The said judgment was rendered in the peculiar facts of the case, where the Petitioner-Dhiraj Ranjan was with BSF on deputation basis as SI(JAM). The Court considered the Recruitment Rules for Sub Inspector/ JAM and not ASI/AAM. The said judgment has not held or decided that the post of Sergeant is analogous/equivalent to the post of SI.

23. The facts of the Petitioners in the present case as discussed above are distinct. The Petitioners never applied to come on deputation with BSF Air Wing and approached under the relevant Recruitment Rules only for re-employment. The re-employment was thus considered in terms of the Recruitment Rules and therefore the Respondent's decision impugned in the present petition is justified and does not call for any interference.

24. Before concluding, we would like to state that in the present case, there has been no challenge to the Recruitment Rules, and therefore in absence of such a challenge, we are not examining its validity. However, it would be

appropriate to note that the Recruitment Rules as framed permit Sergeant in IAF to be recruited on deputation prior to his retirement. Such Armed Force Personnel are then permitted to continue on re-employment basis. This could lead to a situation that such deputationist can continue on re-employment basis on the post of SI, but retired Armed Forces Personnel, who apply on re-employment basis, would have to meet the eligibility criteria of holding the analogous or equivalent post.

25. In view of the above discussion, we decline to interfere with the impugned decision of the Respondent and accordingly the present petition is dismissed. No orders as to costs.

SANJEEV NARULA, J

S. MURALIDHAR, J

January 16, 2019

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