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

+ **W.P.(C) 8908/2017**

GANESAN GOVINDARJAN Petitioner

Through: Ms.Saahila Lamba, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr.Rajesh Kumar, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

% **03.05.2019**

CM APPL.49747/2018 (delay)

1. For the reasons explained in the application, the delay in filing the petition is condoned and the application is allowed.

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2. The Petitioner who is at present a Sub Inspector ('SI')/Junior Engineer (Electrical) in the engineering set up of the Border Security Force seeks a direction to the Respondents to reckon his qualifying service for the purpose of promotion to the post of Inspector/JE (Electrical) with effect from either 5th April 2005 the date of promotion of the Petitioner in the rank of SI/RM or 19th September 2007 the date of appointment/joining of the Petitioner in the rank of JE Electrical Junior Grade/SI in the BSF on deputation basis and, thereafter, to promote the Petitioner to the rank of Assistant Commandant

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(Electrical) with all financial benefits applicable to him w.e.f. 31st March 2017 the date when his juniors were promoted.

3. The facts in brief are that applications were invited in 2007 from all eligible SIs having 3 years diploma in electrical engineering for being appointed on deputation basis as SI/JE Electrical Junior Grade in the engineer set up of the BSF. It is pointed out that in terms of the (Engineering Electrical) Group B and C Posts Recruitment Rules, 1999 ('1999 Rules'), 60% of the posts of JE Electrical Junior Grade/SI were to be filled up by direct recruitment and 40% by deputation/absorption failing which by direct recruitment.

4. For the purpose of deputation/absorption the eligibility criteria was:

“(i) serving BSF personnel in the rank of Sub-Inspector having 3 years Diploma in Electrical Engineering or

(ii) Serving BSF Personnel in the rank of Head Constable having 3 years Diploma in Electrical Engineering with 5 years service in the rank of Head Constable.”

5. The eligibility criteria for promotion to the post of JE Electrical Senior Grade/Inspector was JE Electrical/SI with 3 years regular service in the grade.

6. The Petitioner was on 17th September 1989 appointed as directly recruited Assistant Sub Inspector (ASI)/Radio Mechanic (RM) (DE) in the BSF and was subsequently promoted to the rank of SI/RM on 5th April 2005 in the payscale of Rs. 5,500-175-9,000 (revised to Rs. 9,300 – 34,800) with grade

pay R. 4,200 (which was equivalent to the post of SI/JE Electrical Junior). Since he possessed the 3 years diploma in Electrical Engineering he applied for the above post of JE/Electrical Junior Grade/SI on deputation basis. He was selected and appointed to the said post on deputation basis by an order dated 26th July 2007. He joined on 19th September 2007.

7. On 11th August 2010 an order was issued absorbing the Petitioner under aforementioned post of JE Electrical Junior Grade/SI in the pay band of Rs. 9,300 – 34,800 with grade pay of Rs. 4,600 in the engineering set up of the BSF. Another order dated 23rd September 2010 was issued stating that the seniority of the Petitioner in the engineering set up would be fixed from 5th April 2005 which is the date on which he was being promoted as SI/RM.

8. By a signal dated 29th March 2012 the Petitioner was promoted to rank of JE Electrical Senior Grade/Inspector in the pay band of Rs.9,300 – 34,800 with grade pay of Rs.4,600. The Petitioner was placed at Sl.Nos. 23 and 18 in the combined seniority list of Group B and C personnel of the BSF Engineering set up (Electrical and Civil) for the years 2013 and 2014-15 which was circulated on 5th December 2013, 2nd December 2014 and 8th December 2015 respectively. In the seniority list as on 1st December 2016 the name of the Petitioner was shown at Sl.No.16 reckoning his seniority in the rank of Inspector (Electrical) with effect from 29th March 2012.

9. On 10th October 2016, the Respondents issued an order stating that the seniority of the Petitioner had to be reviewed in view of the clarifications issued by the Department of Personnel and Training ('DOPT') in some other

case. The clarification issued by the DOPT stated that the service rendered in an equivalent post/grade governed by a different set of rules are not to be counted as qualifying service for promotion. On 14th December 2016 the Petitioner gave a representation dated 12th December 2016 explaining why his seniority should not be disturbed. This was forwarded to the competent authority.

10. On 30th November 2016 a Show Cause Notice ('SCN') was issued to the Petitioner to the effect that the Department Promotion Committee (DPC) which was held to fill up vacancies arising in vacancy year 2011-12 erroneously took into consideration seniority of petitioner as 5th April 2005 while assessing case of Petitioner for promotion to the rank of Inspector/JE (Electrical) and that the service rendered in an equivalent post/ grade which is governed by a different set of rules is not to be counted as qualifying service for promotion.

11. The Petitioner replied to the SCN on 29th December 2016. The Petitioner, thereafter, filed WP (C) 180 of 2017 in this Court seeking quashing of the above SCN. On 9th January 2017 this Court disposed of the petition with a direction to the Respondents to take a decision having regard to the reply given by the Petitioner and in the light of the judgment dated 22nd July 2010 of this Court in WP(C) 3845 of 2010 (*Union of India v. Pankaj Agnihotri*).

12. On 9th March 2017, the Respondents issued a speaking order that the DPC had erroneously taken the qualifying service of the Petitioner with

effect from 5th April 2005 instead of 11th August 2010 which was the date of his absorption in the engineering set up. It was stated that in terms of the 1999 Rules 3 years regular service in the grade was essential for promotion of the rank of Inspector, JE (Electrical).

13. On 3rd April 2017, Respondents issued an order promoting 21 Inspectors (Electrical) to the rank of ACs (Electrical) in the BSF officiating with effect from 31st March 2017. Those junior to the Petitioner were placed above him in the seniority list.

14. The Petitioner submitted a reply dated 8th April 2017 to the speaking order dated 9th March 2017. The Petitioner relied on another judgment of this Court in WP (C) 14097-100 of 2005 (***Dr. Rajender Kumar v. Govt. of NCT of Delhi***) where this Court held that service rendered on deputation would be included for the purpose of qualifying service for promotion.

15. However, the Petitioner's plea was turned down by a further order dated 14th July 2017 conveyed to the Petitioner on 4th September 2017. Thereafter, the Respondents issued a signal dated 31st August 2017 notionally promoting the Petitioner to the rank of Inspector JE (Electrical) with effect from 2nd April 2013. He was shown junior to Inspector Rajesh Kumar Aggarwal and above one Kuldeep.

16. In those circumstances, the present writ petition was filed seeking the above reliefs. The stand taken by the Respondents in reply to the petition is that 3 years of regular service in the grade is a necessary eligibility condition under the 1999 Rules. According to the Respondents, in terms of *W.P.(C) 8908/2017*

the DOPT instruction dated 19th December 2013 service rendered on an equivalent post/grade which is governed by the different set of rules is not to be counted as qualifying service for promotion. It is further stated that representations were received from certain other similarly placed persons and to consider these representations, a board of officers was constituted by an order dated 14th October 2015. The board of officers met on 5th September 2016 and took a decision as far as the Petitioner is concerned negating his plea. The decision reads as under

“Seniority of No.890099922Inspr/JE(Elect) G Ganeshan to be reviewed in reference of DoP&T clarification i.e. “Recruitment Rules/Service Rules for any post/service prescribe the eligibility requirements for appointment to the post/service, where, “Promotion” is included as a method of recruitment, the prescribed minimum qualifying service/residency period in the immediate feeder grade(s) as indicated in the Rules is required to be completed for consideration for promotion to the next level. The service rendered in an equivalent post/grade which is governed by a different set of rules is not to be counted as qualifying service for promotion.”

17. It is seen that in the present case pursuant to the orders passed by this Court on 9th January 2017 in WP (C) 180 of 2017 a note was prepared stating that the 3 years residency period to qualify for further promotion would be counted from the date of absorption in the engineering set up. Para 10 of the said note reads as under:

“It may be seen that promotion of Shri G.Ganeshan to the rank of JE/Inspector (Elect.) counting residency period from 05.04.2005 (from the date of holding the rank of SI/RM in Comn.Setup) seems to be incorrect. As per guidelines, three years residency period to qualify for further promotion may be counted from the date of absorption in Engg.Setup.”

18. This Court has carefully perused the decision in ***Dr.Rajender Kumar(supra)***. In terms of the said decision the period of service rendered by a deputationist before permanently being absorbed in the deputation post is required to be included in reckoning the period of qualifying service required by the deputationist of the post particularly when deputation is one of the modes of appointment.

19. In the present case, on the same analogy the period from 19th September 2007 to 11th August 2010 i.e. the period rendered by the Petitioner on deputation as SI/JE Electrical before being permanently absorbed in the said post is liable to be counted for determining his qualifying service for his next promotion. Further, as decided in the ***Pankaj Agnihotri (supra)***, services rendered by the Petitioner in his parent department before deputation on the post of SI/RM is to be taken into account for determining his qualifying service. The post of SI/RM in the grade of mechanic cadre in the BSF was one of the feeder cadres i.e. sources of appointment for the post of SI/JE Electrical. Thus, the Petitioner does process the requisite 3 years regular service in the grade of SI/JE Electrical for being promoted to the post of Inspector/JE Electrical.

20. In that view of the matter, the writ petition is disposed of with the direction to the Respondents to refix the seniority of the Petitioner after including the aforementioned period rendered by the Petitioner on deputation as SI/JE Electrical before being permanently absorbed to the said post for the purposes of his next promotion to the rank of Inspector/JE

Electrical.

21. The impugned orders dated 9th March and 14th July 2017 conveyed on 4th September 2017 and the signal dated 31st August 2017 are hereby set aside. The Respondents will consider the case of the Petitioner for promotion to the rank of Assistant Commandant Electrical and if found qualified to pass the necessary consequential orders. All the above steps will be taken by issuing appropriate orders within a period of 8 weeks from today. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 03, 2019

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