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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7013/2011

SHAMSHER SINGH

..... Petitioner

Through: Mr.M.K. Bhardwaj and Mr.Akash
Dahiya, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondent

Through: Mr.Abhay Prakash Sahay, Ms.Mannu
Singh and Mr.Sagar Saxena,
Advocates for R-1.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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06.02.2020

1. On 2nd November, 2015 the following order was passed:-

“We have heard counsels for the parties.

The petitioner’s services were terminated on 14.09.2011. He had incurred gunshot injuries and was assessed to be 100% disabled on that account. The petitioner's case is that after incurring the disability, he was assigned the responsibilities of Head Constable (Radio Operator) which he discharged to the satisfaction of his superiors. However, he was then terminated in 2011 even though other persons with 100% disability have been retained.

In reply, the BSF contends that the petitioner was allowed to continue service on a compassionate basis and that in all but one of the instances relied upon by the petitioner, the concerned personnel have since been terminated from employment. It is

submitted that one Sh.A.D.Awdali had been retained in service because he incurred the injuries while in the course of performance of his duties.

Apparently, the BSF does not have any formal policy of continuing service of its personnel who have incurred 100% disability but who have rendered considerable service and appears to instead permit them to serve upto the point when they can seek minimum pension. There is nothing objectionable in this by itself; however, what is overlooked is the case of injured or disabled personnel who are nevertheless assigned duties and have then possibly worked throughout to the satisfaction of the employer for a substantial period between four to six years after their injuries.

In the circumstances, the BSF could well consider creating a quota within which it could retain on a rational principle (such as seniority-cum-merit) such of the disabled candidates who would otherwise be terminated from employment after they attain the age of pensionable service. BSF shall file an affidavit in this regard disclosing the number of personnel it has in its employment who have more than 10 years' service, and also describe the nature of injuries suffered by them and whether it was in the course of employment or otherwise. The affidavit shall be filed within six weeks from today with the necessary information in a tabular form.

List on 22.12.2015.

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2. The Court has heard learned counsel for the parties.
3. It appears that the Petitioner was retained till such time he completed the qualifying service for regular pension, which he is since receiving.

4. Whether a person who is 100% disabled should be redeployed and for how many years and in what position is a matter in the discretion of the Respondents given the fact that there is no policy as such. The Court sees no legal possibility of directing the Respondents to frame such a policy and that too only for the Petitioner. This will be a decision that the Respondents have to take subject to the exigencies of service and the need for such a policy.

5. The Court is further informed that the gun shot injury suffered by the Petitioner resulting in his disability was not during service. It was incurred while he was at home during vacation.

6. In the circumstances, the Court sees no possibility of issuing any further directions in the matter.

7. The petition is disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 6, 2020

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