



2024:DHC:8926-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 06.11.2024
Pronounced on: 20.11.2024

+ **W.P.(C) 9086/2024 & CM APPL. 64905/2024**
SATHIYARAJ V & ORS.Petitioners
Through: Mr.Abhay Kr. Bhargava, Adv.

versus

UNION OF INDIA & ORS.Respondents
Through: Mr.Manish Kumar, SPC,
Mr.Reshesh Mani Tripathi, GP
with DC Hemendra Singh, HC
Jitendra Kr. Mishra.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed by the petitioners praying for a direction to the respondents to place the case of the petitioners before the Board of Officers/Screening Committee for absorption as per the Standard Operating Procedure (in short, 'SOP') dated 31.01.2013 issued by the Directorate General, Border Security Force (in short, 'BSF'), Personnel Directorate.
2. It is the case of the petitioners that by way of the Border Security Force, Combatised Para-Medical Staff Recruitment Rules, 2013, issued on 16.01.2013 (hereinafter referred to as 'Recruitment Rules, 2013'), it has been prescribed that the post



of Laboratory Assistant/Technician (Head Constable), be filled by deputation or absorption from amongst the BSF personnel holding analogous or equivalent posts in the grade of Pay Band-1/Rs. 5200-20200 and Grade Pay Rs.2400/-, or with five years' regular service in the grade of Pay Band Rs. 5200-20200 and Grade Pay Rs. 2000/- possessing 10+2 with science or its equivalent and either a Certificate of Laboratory Assistant Course granted by an Institution recognized by Central or State Governments or having qualified 06 months Basic Lab Assistant courses conducted in BSF and having minimum two years' experience as Laboratory Assistant in any BSF Hospital.

3. Similarly, by the Recruitment Rules, 2013 it has been prescribed that the post of Junior X-Ray Assistant (Head Constable) was to be filled by way of deputation or absorption from amongst the BSF personnel holding analogous or equivalent posts in the grade of Pay Band-1/Rs.5200-20200 and Grade Pay Rs. 2400/- or with five years' regular service in the grade of Pay Band 1/Rs. 5200-20200 and Grade Pay Rs. 2000/- and possessing 'Diploma/Certificate in Radiography Course not less than one year with sufficient experience'.
4. The petitioners contend that to implement the above Recruitment Rules, 2013 the SOP dated 31.01.2013 was issued by the Ministry of Home Affairs (in short, 'MHA') *inter alia* providing for the procedure of absorption of personnel in the BSF who are on deputation either from some other organization or from within the BSF. The SOP stated that a Board of Officers/Screening



Committee was to be convened twice a year in the months of January and July to assess the suitability of the deputationist and recommend their case for absorption as per the eligibility criteria mentioned in the Recruitment Rules, 2013 and on merits. Further, another SOP dated 18.03.2021 was issued for filling up the vacancies/posts of Laboratory Assistant/Technician (Head Constable) and Junior X-Ray Assistant (Head Constable) by deputation or absorption. The said SOP also laid down the detailed selection procedure and the pre-requisites and conditions for absorption.

5. The petitioners contend that by an Order dated 06.12.2021, issued by the Commandant (Medical), BSF, the petitioner no.1 was deputed to the rank of Junior X-Ray Assistant (Head Constable), while the petitioner nos.2 to 5 were deputed to the rank of Laboratory Assistant/Technician (Head Constable).
6. The petitioners preferred representations to the respondent no.2 in the months of May/June, 2024 seeking their absorption to the posts of Junior X-Ray Assistant (Head Constable) and Laboratory Assistant/Technician (Head Constable) respectively. However, the respondents paid no attention to the said representations and failed to place the case of the petitioners before the Board of Officers/Screening Committee, thereby violating the mandate of the SOP dated 31.01.2013, which provides for the Board of Officers/Screening Committee to be convened twice a year, in the months of January and July, to assess the suitability of the deputationist.



7. The petitioners claim that they do not seek absorption but only a consideration of their case. In support, the learned counsel for the petitioners has placed reliance on the judgment of Gauhati High Court in ***Lal Babu Singh & Anr. v. The Union of India & Ors.*** Neutral Citation 2017:GAU:AS:3478.
8. On the other hand, the respondents contend that the MHA *vide* Letter dated 11.02.2010, had sanctioned two posts of Junior X-Ray Assistant (Head Constable) and four posts of Laboratory Assistant/Technician (Head Constable) to the Hospitals of the BSF. As per the Recruitment Rules, 2013, the method of recruitment was by transfer on deputation or absorption, failing which by direct recruitment.
9. The respondents contend that the MHA *vide* Letter dated 01.03.2019, sanctioned 44 more posts of Junior X-Ray Assistant (Head Constable) to the Hospitals of the BSF. They further contend that the vacancy of Junior X-Ray Assistant (Head Constable) and Laboratory Assistant/Technician (Head Constable) in the Hospitals of the BSF were to be filled by deputation or absorption, failing which by direct recruitment in accordance with the SOP dated 18.03.2021. The said SOP was issued *inter alia* for providing the classification of the posts, the method of recruitment, and the eligibility conditions.
10. The respondents contend that in terms of the said SOP dated 18.03.2021, the petitioners were appointed on deputation for three years to the post of Junior X-Ray Assistant (Head Constable) and Laboratory Assistant/Technician (Head Constable), *vide* Order



dated 06.12.2021 of the Force Headquarter BSF (Medical Directorate), and were posted to the Hospitals of BSF. It was clearly mentioned in the said order that the period of deputation in respect of the petitioners was three years from the date of issuance of the order, subject to premature repatriation on the grounds of unsuitability and exigency of services as well as any other unforeseen factor. It was also mentioned that since the posting/transfer of these personnel was purely on deputation basis, they were to be reverted to the parent cadre (GD) on the completion of the prescribed deputation tenure and were not allowed to claim any seniority for having held the post of Head Constable (Laboratory Assistant/Technician) or Head Constable (Junior X-Ray Assistant) in the BSF.

11. The respondents further contend that in the meantime, the MHA issued the 1st Cadre Review of Nursing and Paramedical Cadre (Group-A, B and C) in the BSF, on 01.02.2024. In this Cadre Review, the posts of Head Constable (Junior X-Ray Assistant) and Head Constable (Laboratory Assistant/Technician) in the BSF were abolished. Further, as per the said Cadre Review, the entry Grade/Post in X-Ray/Radiographer Cadre and Laboratory Technician Cadre was made Assistant Sub-Inspector and there was no post below the Grade/Post of Assistant Sub-Inspector in the X-Ray/Radiography Cadre and Laboratory Technician Cadre.
12. The respondents contend that keeping in view the above, the representations of the petitioners seeking absorption in the rank of Junior X-Ray Assistant (Head Constable) and Laboratory



Assistant/Technician (Head Constable) were considered and rejected by the Competent Authority, by the Letters dated 01.08.2024.

13. The learned counsel for the respondents submits that there is no inherent right of a deputationist to seek absorption. He further submits that since the abovementioned posts have been abolished, the claim of the petitioners in the present petition no longer survives. In support, the learned counsel for the respondents has relied upon the Judgment of this Court in ***Subhash Kumar & Ors. v. Union of India & Ors.*** Neutral Citation 2021:DHC:2300-DB.
14. We have considered the submissions made by the learned counsels for the parties.
15. In ***Kunal Nanda v. Union of India & Anr.***, (2000) 5 SCC 362, the Supreme Court has reiterated that unless the claim of the deputationist for permanent absorption in the department is based on any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in a claim for absorption. There is no vested right in such person to continue for long on deputation or to get absorbed in the department to which he had gone on deputation. Relying on the above judgment, a Division Bench of this Court by its common Judgement in ***R. Sugumaram & Ors. v. Union of India & Ors.*** and ***Narender Singh & Ors. v. Union of India & Ors.*** Neutral Citation 2021:DHC:2178-DB, has reiterated that deputationist do not have an inherent right of absorption in the borrowing department.



16. In the present case, though there is no doubt that the Recruitment Rules, 2013 provide for a method of recruitment *inter alia* through absorption to the post of Junior X-Ray Assistant (Head Constable) and to the post of Laboratory Assistant/Technician (Head Constable) in the BSF, and SOPs have also been issued prescribing the procedure and pre-requisites by which the claim for absorption is to be considered by the Board of Officers/Screening Committee, the fact remains that by way of the 1st Cadre Review dated 01.02.2024, the posts of Junior X-Ray Assistant (Head Constable) and Laboratory Assistant/Technician (Head Constable) have been abolished. The petitioners, therefore, cannot claim a right of absorption to posts which no longer exist. There cannot be a legitimate expectation of absorption merely because at the time the petitioners were appointed on deputation basis, such posts existed in the borrowing department.
17. The Judgment of the Gauhati High Court in ***Lal Babu Singh*** (supra) also cannot come to the aid of the petitioners because of this subsequent development, being the abolition of the posts of Head Constable (Junior X-Ray Assistant) and Head Constable (Laboratory Assistant/Technician) by the 1st Cadre Review dated 01.02.2024.
18. In view of the above, we find no merit in the present petition, as the relief claimed by the petitioners can no longer be granted and placing the case of the petitioners before a Screening Committee would be a futile exercise.



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19. Accordingly, the petition alongwith the pending application is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J.

SHALINDER KAUR, J.

NOVEMBER 20, 2024
RN/SJ

Signature Not Verified

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