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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11742/2019

ARVIND KUMAR SHARMA

.....Petitioner

Through: Ms. Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Vikrant N. Goyal and Mr.
Arpit Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

01.10.2024

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1. The present petition has been filed under Article 226 of the Constitution of India praying for directions to the respondents to re-fix the seniority of the petitioner to the post of Sub-Inspector/Junior Engineer (in short, 'SI/JE') (Electrical) in the Border Security Force (in short, 'BSF') Engineering Set Up with effect from 15.05.2010, when the petitioner completed one year of deputation on the said post.
2. It is the case of the petitioner that the petitioner was appointed as Head Constable (Radio Operator) in the BSF on 04.10.2000. On 17.10.2008, the respondents issued a signal for filling up 18 posts of SI/JE Overseer (Civil/Electrical) on deputation basis from amongst the serving BSF personnel. The petitioner applied for the deputation and upon being selected, he was appointed as SI/JE (Overseer/Electrical



Engineer) on deputation in the National Disaster Response Force (in short, 'NDRF') BSF Battalion on 31.03.2009, initially for a period of one year, which was extendable up to a period of three years.

3. While the petitioner was on deputation, the Ministry of Home Affairs, *vide* Order dated 18.07.2011 created 71 posts of SI/JE (Electrical) in the Engineering Wing of the BSF, and 29 of these newly created posts were to be filled by deputation/absorption. The petitioner applied for absorption in the BSF as SI/JE (Overseer/Electrical Engineer) on 08.08.2011. The said application was forwarded to the Headquarters, Directorate General BSF, Personnel Directorate (Staff Section), New Delhi by the 9th BSF NDRF Bn, but the same was returned by a letter dated 21.09.2011. The tenure of the petitioner on deputation was, however, extended from time to time. Thereafter, on 02.04.2012, another signal was issued by the respondents whereby a recommendation roll of several BSF personnel working on deputation was called for permanent absorption to the post of SI/JE (Electrical/Civil) in the Engineering Set Up. Pursuant thereto, *vide* a note dated 31.05.2012, the Inspector General BSF North Bengal Frontier forwarded the recommendation rolls and other relevant documents of the eligible candidates to the Headquarters BSF.

4. The petitioner submits that while a similarly situated personnel namely, Sh. Jasmeet Singh, who was also working on deputation in the NDRF as SI/JE (Electrical) and whose name was also recommended along with the name of the petitioner in the signal dated 02.04.2012 and note dated 31.05.2012, was granted permanent



absorption in the Engineering Set Up as SI/JE (Civil) on 03.08.2012, the petitioner was denied this opportunity. It was only on 10.09.2014, that the petitioner was absorbed to the post of SI/JE (Electrical) in the BSF Civil Engineering Set Up. The petitioner, therefore, claims discrimination.

5. On the other hand, the learned counsel for the respondents submits that in supersession of the BSF (Engineering/Electrical) Group-B & Group-C post, Recruitment Rules, 1999, fresh BSF (Engineering/Electrical) Group-B post Recruitment Rules, 2012 were notified, and in accordance with the new Rules, deputation/absorption as a method of appointment has been made under the 'failing which' clause only. The respondents, therefore, in accordance with the new Rules, took further steps for filling the newly created posts only through promotion first and thereafter, the petitioner was absorbed to the rank of SI/JE (Electrical).

6. As far as the case of Sh. Jasmeet Singh is concerned, the respondents assert that he was working on deputation as SI/JE (Works) while the petitioner was working as a SI/JE (Electrical), and that the recruitment rules and the streams of both are separate.

7. We have considered the submissions made by the learned counsel for the parties.

8. In the present case, the eligibility of the petitioner to be absorbed to the post of SI/JE (Overseer/Electrical Engineer) pursuant to the creation of the said post in the Engineering Wing of the BSF is not denied. In fact, the respondents admit that the name of the petitioner was forwarded for being absorbed, however, the same was



returned. The reason for returning the same has not been stated in the counter-affidavit. The batchmate of the petitioner namely, Sh. Jasmeet Singh, was absorbed on 03.08.2012. The submission of the respondents that Sh. Jasmeet Singh was working on deputation as SI/JE (Works) while the petitioner was working on deputation as SI/JE (Electrical) cannot act as a ground for denying the relief of absorption to the petitioner as it is not shown by the respondents that there were two separate streams through which the absorption was to be made, with each having its seniority on the merit list.

9. In view of the above, we find that the denial of absorption to the post of SI/JE (Electrical) to the petitioner when the same was offered to his batchmate, namely, Sh. Jasmeet Singh, on 03.08.2012, cannot be sustained.

10. Accordingly, the petition is allowed to the limited extent that the petitioner shall be treated as having been absorbed to the post of SI/JE (Electrical) on 03.08.2012 along with his batchmate, however, without any financial benefit, though with notional fixation of seniority and other consequential benefits.

11. The petition is disposed of in the aforesaid terms.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 1, 2024/ss/SJ

Click here to check corrigendum, if any