



2024:DHC:9371-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 03.12.2024

+ W.P.(C) 16505/2024 & CM APPL. 69735/2024

ARJUN BAPARI

.....Petitioner

Through: Mr. Abhay Kumar Bhargava,
Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Shankar Kumar Jha, SPC,
Mr. Survesh Shrivastava, Adv.
and Mr. Hemendra Singh,
Deputy Commandant (Law),
BSF.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE GIRISH KATHPALIA

NAVIN CHAWLA, J. (ORAL)

1. The present petition has been filed by the petitioner challenging the Order dated 13.11.2024 passed by the Commandant, 155 Battalion, Border Security Force ("BSF"), dismissing the petitioner from service with effect from 13.11.2024 in exercise of the powers under Section 11(2) of the Border Security Force Act, 1968 (in short, 'BSF Act') read with Rule 17 of the Border Security Force Rules, 1969 (in short, 'BSF Rule').

2. As a brief background, it is the case of the petitioner that the petitioner had applied for the post of Constable (Cook) pursuant to an



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advertisement dated 20.02.2023 issued by the Commandant (Recruitment) for recruitment to the post of Constable (Tradesman) (Male & Female) for filling up 1284 vacancies in the BSF. The petitioner underwent the selection process and was offered appointment by a letter dated 12.02.2024 issued by the Inspector General (Frontier HQ), BSF, South Bengal. Thereafter, a Show Cause Notice (“SCN”) dated 25.07.2024 was issued by the Commandant, 155 Bn, BSF, calling for the petitioner to show cause why the necessary action for termination of his service, under Rule 17 of the BSF Rules, be not initiated. The Impugned Order has, thereafter, been passed by the Commandant, 155 Bn. BSF, dismissing the petitioner from service observing therein that the petitioner had obtained appointment based on a forged trade certificate.

3. The learned counsel for the petitioner submits that in terms of Rule 17 of the BSF Rules, it is only the Appointing Authority which can dismiss any person for furnishing false or incorrect information or for obtaining appointment by adopting any fraudulent means. He submits that in the present case, the Appointing Authority was the Inspector General (Frontier HQ), BSF and therefore, the SCN and the Impugned Order having been passed by the Commandant, 155 Bn, that is, an officer below the rank of the Appointing Authority, would be *void ab initio*.

4. He further submits that the Impugned Order also suffers from discrimination inasmuch as other persons were granted opportunity by the respondents to submit fresh trade certificates, which opportunity has been denied to the petitioner. The details of such persons have



been given by the petitioner in his petition. The learned counsel for the petitioner submits that therefore, the respondents cannot adopt a pick and choose policy with regard to recruitment in the Force.

5. On the other hand, the learned counsel for the respondents, who appears on advance notice, submits that the Commandant, 155 Bn was the Appointing Authority for the petitioner and the same is evident from the appointment letter dated 25.04.2024 issued by the Commandant. He submits that, therefore, no infirmity can be found in the Appointing Authority, that is, Commandant, 155 Bn, issuing the order of dismissal under Rule 17 of the BSF Rules.

6. He further submits that as far as the plea of discrimination is concerned, merely because some other persons have been offered employment or granted some relief, cannot be a ground to extend the similar benefit to the petitioner, who admittedly obtained appointment on the basis of a false document.

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

8. The learned counsel for the respondents has handed over a copy of the appointment order dated 25.04.2024 issued by the Commandant, 155 Bn, BSF (Establishment Branch) appointing the petitioner as Constable (Cook) in the BSF. It has been explained that the Commandant is the Appointing Authority for the rank of Constable, BSF and in terms of Rule 17 of the BSF Rules read with Section 11(2) of the BSF Act, is competent to pass the order dismissing the petitioner from service. As the Commandant is the Appointing Authority, therefore, we do not find any merit in the



submission of the learned counsel for the petitioner that the Impugned Order has been passed by an Authority not competent to pass the same.

9. As far as the plea of discrimination is concerned, merely because some other persons have been given an opportunity to submit fresh certificates, even assuming such to be the case, cannot absolve the petitioner of his misconduct of obtaining appointment to the BSF, a disciplined Force, based on a false certificate. There cannot be a negative equality established under Article 14 of the Constitution, which cannot be invoked for perpetuating a wrong.

10. Accordingly, we find no merit in the present petition. The same is, accordingly, dismissed. The pending application is also dismissed.

11. At this stage, the learned counsel for the petitioner submits that the petitioner be granted opportunity to avail of his statutory remedies against the Impugned Order.

12. We clarify that this order shall not prejudice the statutory rights of the petitioner to challenge the Impugned Order, in accordance with law.

NAVIN CHAWLA, J

GIRISH KATHPALIA, J

DECEMBER 3, 2024/ss/as

Click here to check corrigendum, if any