

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 16 of 2022

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1. Roshan Kumar, aged about 32 years, Son of Shri Shiv Gulam Gupta, Resident of Bhatauni, Post Office and Police Station- Bhatauni, District- Saharsa (Bihar), At present posted as ARM (ASI) (COMBATIZED) at Air Base, Ranchi, and presently residing at Hinoo, Post Office -Hinoo, Police Station-Doranda, and District- Ranchi.

2. Indra Kumar Salame, aged about 35 years, Son of Shri Chokhelal Salame, Resident of Kadaiya, Post Office and Police Station- Kadaiya, District- Chhindwara (M.P). At present posted as ARM (ASI) (COMBATIZED) at Air Base, Ranchi, and presently residing at Hinoo, Post Office -Hinoo, Police Station-Doranda, and District- Ranchi

.....Petitioners

-Versus-

1. Union of India, through Director General, Office of Directorate General Border Security Force, Block No.10, CGO Complex, Lodhi Road, New Delhi, Post Office and Police Station-Lodhi Road, District New Delhi.

2. The Director General, Office of Directorate General Border Security Force, Block No.10, CGO Complex, Lodhi Road, New Delhi, Post Office and Police Station-Lodhi Road, District New Delhi.

3. Inspector General (Air), Office of Directorate General Border Security Force, Block No. 10, CGO Complex, Lodhi Road, New Delhi, Post Office and Police Station-Lodhi Road, District New Delhi

4. Deputy Inspector General (Air), Office of Directorate General Border Security Force, Block No.10, CGO Complex, Lodhi Road, New Delhi, Post Office and Police Station-Lodhi Road, District New Delhi.

5. Commandant (Recruitment), Office of Directorate General Border Security Force, Block No.10, CGO Complex, Lodhi Road, New Delhi, Post Office and Police Station-Lodhi Road, District New Delhi.

6. Deputy Commandant (Air), Office of Directorate General Border Security Force, Block No 10, CGO Complex, Lodhi Road, New Delhi, Post Office and Police Station-Lodhi Road, District New Delhi

....Respondents

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CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

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For the Petitioner : Mr. Jai Prakash, Sr. Advocate
For the Respondents : Mr. Anil Kumar, Sr. Advocate
Ms. Nitu Sinha, CGC

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RESERVED ON 22/08/2024

PRONOUNCED ON 11 /09/2024

Heard learned counsel for the parties.

2. The instant writ application has been preferred by the petitioners praying therein for quashing of the order issued by Respondent No.4; whereby the request of the petitioners for review of DPC is rejected.

The petitioners have further prayed for a direction upon the respondent authorities to promote the petitioners to the post of JRM (SI) by maintaining their seniority; inasmuch as, many ARM(ASI), who were appointed with the petitioners as also many ARM(ASI), who were appointed after the appointment of the petitioners have been promoted as JRM (SI).

3. The brief facts of the case as it appears from the pleadings is that on 27.01.2012, an advertisement was floated inviting application for various posts in Border Security Force (Air Wing), Ministry of Home Affairs, Government of India including the post of ARM(ASI). Thereafter, written test was conducted, interview was held and finally on 18.05.2012, result of successful candidates was published.

Thereafter, the petitioners were appointed on 18.10.2012 as ARM (ASI). Petitioner no.1 joined on 26.11.2012 and petitioner no.2 joined on 22.11.2012 as ARM (ASI) in the pay scale of Rs. 5200-20,000/- with Grade Pay of Rs. 2800/-. On successful completion of two years of probation period, petitioner no.1 was confirmed on the post of ARM (ASI) (COMBATIZED) on 26.11.2014; while petitioner no.2 was confirmed on 22.11.2014.

4. In the year 2019, a Departmental Promotion Committee (hereinafter referred to as 'D.P.C. in short) for the vacancy year 2019 was held of eligible candidates for promotion from the post of AAM/ARM/(ASI) to the post of JAM/JRM(SI); wherein the names of petitioners were also sent.

5. At this stage, it is necessary to indicate that Boarder Security Force, Air Wing, Non-Gazetted (Combatized) Group 'B' and Group 'C' Posts Recruitment Rules 2012 (hereinafter called 'B.S.F. 2012 Rules' in short), was notified on 06.01.2012 and it provided for mechanism of recruitment, promotion etc.

6. The petitioners were not promoted either by 2019 D.P.C. or 2020 D.P.C. Thereafter, the petitioner No.1 on 10.06.2020 made a request of review D.P.C. for the vacancy year 2020 referring to B.S.F. 2012 Rules; however, the same was refused.

7. The grievance of the petitioner is that the request for review D.P.C. was rejected without adhering to the B.S.F. 2012 Rules. It has been submitted that by 04.12.2019, the petitioners were in regular service for more than 7 years on the aforesaid pay band and grade pay. The eligibility service requires minimum experience of eight years on aircraft or helicopter maintenance and half of that period would be 4 years. It is not in dispute that by 04.12.2019 the petitioners have the experience or aircraft and helicopter maintenance of more than 7 years and have successfully completed their probation period; as such, they were entitled for the promotion which has been denied to them.

8. At the outset, Mr. Jai Prakash, Ld. Sr. Counsel for the petitioners draws attention of this Court towards Annexure-6, which is the B.S.F. Rules, 2012 and submits

that the same has not been considered by the concerned respondent while deciding the promotion.

The argument advanced by Ld. Sr. Counsel is that the impugned order has been passed without taking into consideration the Note-1 of Clause-11(1) of the B.S.F. Rules, 2012, wherein it has been specially mentioned that where juniors who have completed their qualifying or eligibility service, are being considered for promotion; their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service for more than half of such qualifying or eligibility service of two years, whichever is lesser and have successfully completed their probation period for promotion to the next grade along with the Juniors, who have already completed such qualifying or eligibility service.

9. Mr. Prakash contended that the petitioners are having requisite qualifying conditions and are eligible, inasmuch as, they are having eligibility service of more than two years and have successfully completed their probation period for promotion.

He further submits that after promotion of the juniors; the petitioners have represented before the competent authority, but their claim was rejected without considering Note-1 of Clause-11(1) of the BSF Rules, 2012 (Annexure-12 of the writ petition).

He lastly submits that petitioner no.1 has been given promotion for the vacancy 2022; however, petitioner no.2 has not yet been promoted. Accordingly, both the petitioners should be reconsidered for promotion from the date the juniors have been promoted.

10. Mr. Anil Kumar, Ld. ASGI representing the respondents submits that this application should be dismissed for non-joinder of necessary party as the promotion was given four years back in the case of these

petitioners and even the next batch of promotion has been given in the year 2022, in which one of the petitioners has been given promotion and since those candidates who have been promoted have not been made party; this application should be dismissed at the threshold.

11. Having heard learned counsel for the parties and after going through the documents available on record and the averments made in the respective affidavits; to decide the issue involved in this case as to whether the case of the petitioners should have been considered for promotion, it is necessary to peruse the relevant B.S.F. Rules 2012.

For brevity, the same is extracted hereinbelow:

“Promotion:

Assistant Radio Mechanic with six years regular service in the grade of Pay Band -1 (Rs. 5200-20,200 plus Grade Pay of Rs. 2800/-) and possessing experience prescribed as under :-

Minimum experience of eight years on Aircraft or Helicopter maintenance with three years maintenance experience on Border Security Force type of Aircraft or Helicopter (to be prescribed from time to time).

Note 1: Where juniors who have completed their qualifying or eligibility service are being considered for promotion their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service for more than half of such qualifying or eligibility service of two years, whichever is lesser and have successfully completed then probation period for promotion to the next grade along with then juniors who have already completed such qualifying or eligibility service”.

Emphasis Supplied

12. After going through the aforesaid condition enshrined in the B.S.F. Rules 2012, wherein there is a Note given in 11(1), which stipulates that where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service for more than half of such qualifying or eligibility service of two years, whichever is lesser and have successfully completed their probation period for promotion to the next grade along with the juniors who have already completed such qualifying or eligibility service; it appears that the legislature must have thought of giving the benefit of promotion by relaxing the

criteria to the seniors in order to maintain their moral if at all they are not qualified with the juniors.

13. After going through Annexure-12, which is review of D.P.C. for promotion from ARM (ASI) to JRM(SI), it clearly transpires that Note-1 of Clause-11(1) of the B.S.F. Rules, 2012 which has been referred to hereinabove, has not been considered by the concerned respondent while disposing of the representation of the petitioners.

14. The contention of Ld. ASGI that the instant application should be dismissed for non-joinder of necessary party as the promotion was given four years back in the case of these petitioners and even the next batch of promotion has been given in the year 2022, in which one of the petitioners has been given promotion; does not have much substance; inasmuch as, the Review Committee of D.P.C. did not consider the specific stand of the petitioners and without taking into consideration Note-1 of Clause-11(1) of the B.S.F. Rules, 2012, which gives benefit to the seniors if they have qualified certain degree as indicated in the Rule itself will also be considered; as such the impugned order requires interference.

15. Looking to the overall facts and circumstances of the case; especially the fact that the D.P.C. was held in the year 2020 and even in 2022 one of the petitioners has been given promotion; interest of justice would be sufficed by quashing the impugned order; and directing the respondents to reconsider the case of the petitioners.

Accordingly, the impugned order (Annexure-12), is quashed and set aside. The concerned respondents is directed to reconsider the case of the petitioners after verification of their service record coupled with Note-1, which has been referred to hereinabove, by passing a reasoned and speaking order and if the claim of the petitioners is found to be in their favour; necessary order

be passed. The entire exercise shall be completed by the concerned respondent within a period of 12 weeks from the date of receipt/production of copy of this order.

16. As a result, the instant writ application stands allowed in the manner indicated hereinabove. Pending I.A.s, if any, is also closed.

(Deepak Roshan, J.)

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