

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2851/92

Shri Naresh Kumar

Date of decision: 22.04.1993.

...Petitioner

Versus

Union of India through the
Secretary, Ministry of Home
Affairs, New Delhi & Others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. J.P. Sharma, Member (J)

For the petitioner

Shri V.P. Sharma, Counsel.

For the respondents

Shri M.L. Verma, Counsel.

1. Whether Reporters of Local Papers may be allowed to see the Judgement or not? *no*
2. To be referred to the Reporter or not? *yes*


(I.K. RASGOTRA)
Member (A)

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Shri V.P. Sharma, Counsel.

For the respondents

Shri M.L. Verma, Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. I.K. Rasgotra, Member (A))

The petitioner was offered appointment as Junior Aircraft Mechanic/Sub-Inspector in the pay scale of Rs.1400-2300 vide order dated 21.10.1991 in the Border Security Force (BSF for short). He was, however, found medically unfit for the said post. The learned counsel for the petitioner drew our attention to page 32 of the paperbook, which is a sample appointment letter given to the BSF personnel, to justify that the posts of Junior Aircraft Mechanic are civil posts, to which the personnel are appointed and, therefore, they are not member of the Force. Since the issue raised before us is that of jurisdiction of the Tribunal, it will be expedient to reproduce the said sample letter of appointment in respect of Senior Aircraft Mechanic hereunder:-

".....

To

Shri Chotte Lal
House No:RZ/F-118

d

Sadh Nagar, Part-I, Gali No:43
Palam Colony, New Delhi.

Sub:-RE-EMPLOYMENT IN BSF

I am directed to convey that you have been approved for appointment to the post of Senior Aircraft Mechanic in the pay scale of Rs:2000-3200.

2. You are hereby directed to report to Dy. Director (Air) BSF Air Wing, F Wing, IIInd Floor, Nirman Bhavan, New Delhi-11 for completion of your re-employment formalities failing which this offering will be treated as cancelled. All testimonials pertaining to your past service should be produced before the appointing authority.

3. On joining the Force, you will be governed by the BSF Act and Rules or such other Act/Rules for the BSF as may be prescribed by the Government and the manual as amended from time to time.

4. You will not be entitled to any travelling/daily allowance for joining the first appointment.

5. The appointment order will be issued subject to your medical fitness by authorised medical board and verification.

sd/-
(S.K. ADDY)
Deputy Director (Air)"

Assuming that the petitioner had succeeded in securing appointment, his letter of appointment would have been worded as above.

Paragraph-3 of the above letter makes it clear that on joining the Force the petitioner will be governed by the BSF Act or Rules or such other Act/Rules for the BSF as may be prescribed by the Government. The learned counsel for the petitioner, Shri V.P. Sharma urged that the petitioner is not a member of the Armed Forces of the Union. He would actually be an employee of the Armed Forces viz. the B.S.F. He emphasized with considerable force that the distinction between the member of the Force and the employees of the

Force is a very significant and has to be borne in mind. The learned counsel further drew our attention to the Ministry of Home Affairs' letter dated 18.6.1991, according to which certain posts were sanctioned the B.S.F. The learned counsel submitted that in the said order the posts of Junior Aircraft Mechanic are sanctioned separately while the post of Sub Inspector figures at a separate serial number from that of the Junior Aircraft Mechanic. The post of Junior Aircraft Mechanic is thus separate from that of Sub Inspector. He further referred to advertisement (page 30 of the paperbook), inviting applications for the posts of Senior Radio Mechanic and Junior Radio Mechanic. This advertisement does not deal with the requirements of Junior/Senior Aircraft Mechanics and, therefore, need not hold us. The learned counsel further referred to Section 3 of the B.S.F. Act, 1968 which indicates the officers who will be governed by the Act. According to the said Section the following personnel are covered by the B.S.F. Act:-

- "(a) Officer and subordinate officers; and
- (b) Under officers and other persons enrolled under this Act."

Section 3 (2) further provides:-

"Every person subject to this Act shall remain so subject until retired, discharged, released, removed or dismissed from the Force in accordance with the provisions of this Act and the Rules."

The learned counsel affirmed that the petitioner is holder of the civil post and that he is not a uniformed personnel nor is he required to undertake any parade etc. which are essential for a member of the Armed Forces of the Union. The above provisions of the Act, however, in our view do not support the case of the petitioner. The learned counsel for the petitioner Shri V.P. Sharma referred us to the case

between Anil Kumar D. Sharma v. Union of India & Others - 1991 (15) ATC 3. We have perused the case carefully. We are of the opinion that this case is of no help to the petitioner.

2. Shri M.L. Verma, learned counsel for the respondents on the other hand submitted that the subject matter of this O.A. is outside the jurisdiction of this Tribunal in terms of Section 4 of the B.S.F. Act, 1968. Referring to paragraph-4.5(a) of the counter-affidavit the learned counsel submitted that the posts of Junior Aircraft Mechanic/Sub Inspector are not civilian posts. The post of Junior Aircraft Mechanic for which the petitioner was selected is combatised in the rank of Sub Inspector. Referring to the counter-affidavit, the learned counsel asserted that "The incumbents of the post are to wear uniform of Sub Inspector and are subject to the B.S.F. Act and rules of appointment." There is no difference between the employees and the member of the Force. Section 2 (o) defines the "members of the Force" as a subordinate officer and under officer or other enrolled person. He, however, submitted that according to Rule-14 the officers and the members of the Force are classified in accordance with the ranks in the following categories. The categories relevant for our purpose are listed in Rule 14 (b)(c) and (d) which are reproduced below:-

"(b) Subordinate Officers

(9) Subedar-Major

(10) Subedar.

(11) Sub-Inspector.

(c) Under Officers

(12) Head Constable.

(13) Naik.

(14) Lance Naik.

(d) Enrolled persons other than Under Officers

(15) Constables.

(16) Enrolled followers."

3. In view of the above classification, Shri Verma, learned counsel submitted that the petitioner being Junior Aircraft Mechanic/Sub Inspector is covered by the B.S.F. Act. There is no separate category of Junior Aircraft Mechanic in BSF Rules. It is for this reason that this category is equated to the Sub Inspector.

4. We have considered the matter carefully and find that no conclusive material has been placed before us to indicate that the post occupied by the petitioner is a civil post, amenable to the jurisdiction of the Tribunal. In fact, the sample appointment letter on which considerable reliance has been placed by the petitioner clearly states that "on joining the Force, you will be governed by the BSF Act." Had the petitioner been appointed, he would have been governed by the BSF Act. There is also no specific denial in the rejoinder to the contention of the respondents in paragraph-4.5(a) that the petitioner occupied a combatised post in the rank of Sub Inspector. In the circumstances, we are of the view that the matter falls outside the jurisdiction of the Tribunal. Since the subject matter of the O.A. does not come within the jurisdiction of the Tribunal, the Registry may return the paper to the petitioner.

J. P. Sharma
(J.P. SHARMA) 22.4.93
MEMBER(J)

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

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