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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22 December 2025

Pronounced on: 9 March 2026

+ W.P.(C) 11848/2023, CM APPLs. 46273/2023 & 25807/2024

NARENDRA SINGH

.....Petitioner

Through: Mr. Abhay Kumar Bhargava,
Mr. Satyaarth Sinha, Ms. Shradha Mewati,
Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Raj Kumar, CGSC with
Ms. Vandana Sachdeva, Mr. Ankit
Choudhary, Mr. Sumit Choudhary, Mr.
Sushant Rana and Ms. Vidushi Sah,
Advocates

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

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09.03.2026

C. HARI SHANKAR, J.

1. The petitioner was recruited as Assistant Sub-Inspector¹/Radio Mechanic² in the Border Security Force³ on 1 February 2012.

2. The Border Security Force (Engineering/Electrical) Group B Recruitment Rules, 2012⁴ envisaged filling up of the post of Sub-

¹ "ASI" hereinafter

² "RM" hereinafter

³ "BSF" hereinafter

⁴ "the RRs" hereinafter



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Inspector⁵/Junior Engineer⁶ on deputation/absorption basis. Deputation/absorption could be from personnel outside the BSF, as well as from persons within the BSF. Deputation was permissible for serving BSF personnel in the rank of ASI in Pay Band I with Grade Pay of ₹ 2800, possessing a three-year Diploma in Electrical Engineering from a recognized institute, with 6 years' regular service as ASI in the BSF.

3. There is no dispute that the petitioner fulfilled these qualifications.

4. On 31 January 2013, the Director General⁷ BSF issued a Standing Operating Procedure⁸ for absorption of deputationists in the BSF. The following stipulations, in the SOP, are relevant:

“3. A need has, therefore, been felt to streamline the process of absorption of such deputationists (either from other organizations or from within BSF personnel), in respective posts in Border Security Force. It is, however, clarified here that deputationists do not have any inherent right of absorption as the discretion to absorb them rests solely with the BSF.

4. It must be ensured that only extremely deserving cases whose continuance in the BSF will be useful to the organization in the long run need to be recommended for absorption. It also needs to be ensured that the recommendations are not sent in routine manner and are supported by detailed reasons, justifying the absorption.

5. The requests for permanent absorption shall be considered only of such deputationists (officers/men), who have served in BSF for at least two years (as on 30th Jun of the year in which

⁵ “SI” hereinafter

⁶ “JE” hereinafter

⁷ “DG” hereinafter

⁸ “SOP” hereinafter



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absorption is being considered) and are still continuing on the basis of their prescribed tenure.

6. A board of officers/Screening Committee constituted separately for officers and SOs/ORs will be convened twice in a year in the months of January and July to assess the suitability of deputationists and recommend their cases for absorption as per the eligibility criteria mentioned in the RRs and merits.....”

5. On 18 February 2019, the petitioner was appointed JE/SI (Electrical) with immediate effect, on deputation for three years. The order of appointment expressly stipulated as under:

“5. The above personnel during the period of deputation will remain on the pro-forma strength of their parent unit/HQrs for all purpose and on completion of period of deputation they will be repatriated to report their parent Unit/HQrs.

6. It is also clarified that, above deputationists do not have any inherent right of absorption as the discretion to absorb them rests solely with the BSF.”

6. By order dated 25 March 2022, the deputation of the petitioner was extended by one year till 23 April 2023.

7. After his period of deputation was over, the petitioner represented to the DG, BSF on 9 May 2023, seeking that he be absorbed as SI/JE in the BSF in accordance with the SOP data 31 January 2013.

8. Without any favourable decision thereon, the petitioner was repatriated to his parent 95th Battalion in the BSF *vide* order dated 19 May 2023. A Movement Order was also issued, directing the petitioner to report to the 95th Battalion.



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9. The petitioner approached this Court by way of WP (C) 7495/2023, seeking quashing of the orders dated 19 May 2023 repatriating him to the 95th Battalion and the Movement Order of the same date. The petitioner further prayed that the BSF be directed to put up the case of the petitioner for absorption as SI/JE before the Screening Committee/Board of Officers as per the SOP dated 31 January 2013.

10. When the said writ petition came up before this Court on 26 May 2023, the BSF informed the Court that a new policy dated 24 November 2016 was in operation, and that the case of the petitioner fell under the said policy. The copy of the policy was also handed over to learned Counsel for the petitioner. The petitioner, thereupon, sought permission to withdraw the writ petition with liberty to raise contentions as per law.

11. The petitioner, thereafter, re-approached this court by way of WP (C) 7943/2023, seeking absorption in terms of the SOP dated 31 January 2013. Said writ petition was disposed of, by this Court, *vide* order dated 31 May 2023, with a direction to the respondents to decide the case of the petitioner in view of the SOP dated 31 January 2013, reserving liberty with the petitioner to reapproach this Court, should he continue to remain aggrieved.

12. *Vide* order dated 31 July 2023, the petitioner's representation has been rejected by the DG. The order is lengthy, and reasoned. The reasons for rejecting the petitioner's representation may be itemised as under:



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- (i) MHA letter dated 22/24 November 2016 provided, apropos absorption of CAPF personnel by a borrowing organisation/department, that the personnel had to have a minimum of 18 years' service on the date on which absorption was proposed by the borrowing organisation/department and should already have been on deputation with the said organisation.
- (ii) Having enrolled in the BSF on 1 February 2012, the petitioner had not yet completed 18 years of service with the BSF.
- (iii) Moreover, the petitioner was no longer on deputation as SI/JE (Electrical), as his extended period of deputation had come to an end on 23 April 2023. He stood repatriated to the 95th Battalion on 19 May 2023 and Movement Order had also been issued.
- (iv) Para 18 of the MHA letter dated 22/24 November 2016 further provided that no individual had a right to claim absorption and that the discretion to accept, or reject, a request for absorption vested exclusively with the parent CAPF or the cadre controlling authority. This stipulation was also expressly mentioned in the order dated 18 February 2019 whereby the petitioner was appointed as SI/JE (Electrical) on deputation basis. The petitioner had willingly accepted the appointment, in awareness of the said condition.



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(v) The petitioner had also submitted an undertaking on 3 May 2019 that he would not submit any representation/application for permanent absorption, as the discretion in that regard vested exclusively with the BSF.

These reasons stand summarised in para 18 of the order, which read thus:

“18. The competent authority has examined the request of the petitioner for absorption to the post of SI/JE(Electrical) in BSF Engineering Set-up as made in his representation dated 09.05.2023 in light of Standing Operating Procedure for absorption of deputationists in BSF issued vide FHQ BSF (Pers Dte -Pers Section) L/No. 8621-8975 dated 31.01.2013; it is observed that the petitioner was appointed on deputation as SI/JE(Electrical)in BSF Engineering Set-up for a limited period, by the end of which he had to return to his parent cadre; while on deputation he did not have inherent right of absorption as the discretion to absorb him rests solely with the Department. FHQ BSF has already proposed to fill up the post of SI/JE(Electrical) substantively further by Direct Recruitment only by amending existing Recruitment Rules and thus recommendation/proposal(s) were not called from field formations for absorption of deputationists with BSF Engineering Set-up. The petitioner has been fully aware of the above mentioned facts/provisions as the same is envisaged in the order dated 18.02.2019 related to his appointment to the post of SI/JE(Electrical) on deputation in BSF Engineering Set-up; which he acknowledged In his willingness dated 20.08.2018 for deputation and also in the undertaking dated 03.05.2019 rendered by him on his appointment. Apart from this, the petitioner is presently not on deputation and was repatriated to his parent cadre on 19.05.2023 (AN) whereas as per SOP dated 31.01.2013, absorption shall be considered only of such deputationists who are still continuing on the basis of their prescribed tenure. Thus, request of the petitioner for permanent absorption to the post of SI/JE(Electrical) in BSF Engineering Set-up as made in his representation dated 09.05.2023 has been rejected being beyond purview of relevant rules/policies.”

13. This writ petition assails the above order dated 31 July 2023.



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14. We have heard Mr. Abhay Kumar Bhargava, learned Counsel for the petitioner and Mr. Raj Kumar, learned SPC appearing for the Union of India, at length. Written submissions have also been filed by learned Counsel.

15. Mr. Bhargava submits that the respondents erred in not considering the case of the petitioner for absorption as SI/JE (Electrical) immediately after he had completed two years. He points out that, as per the SOP dated 31 January 2013, the Board/Committee was required to meet every year in January and July to consider the case of eligible deputationists for absorption. Two years' service in the deputation post was the only requirement, and the petitioner satisfied this requirement in February 2021 itself. His case ought, therefore, to have been considered by the Board/Committee in 2022 and 2023.

16. Mr. Bhargava further submits that the stipulation, in para 17 of the MHA letter dated 22/24 November 2016, requiring 18 years of service on the date when absorption was proposed, was in excess of the prescriptions in the RRs and could not, therefore, be enforced in law.

17. Mr. Raj Kumar contends, *per contra*, that the petitioner had always been aware that his appointment as SI/JE on deputation did not confer, on him, any right to absorption in the said post. He had, further, subscribed to an undertaking on 3 May 2019 that he would not submit any representation seeking absorption. Further, his deputation period had also come to an end on 23 April 2023, and he had been



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repatriated to his parent 95th Battalion on 19 May 2023. The petitioner could not, therefore, lay any legitimate claim to absorption.

18. We, at the outset, do not subscribe to the reliance, by Mr. Raj Kumar, on the undertaking dated 3 May 2019. No such undertaking can be thrust upon an employee. It is always open to an employee to represent for service benefits, which would include absorption, promotion, and the like. If the representation is unmerited, it has to be dismissed. An employee cannot, however, be barred from raising legitimate service grievances. We, in fact, unequivocally disapprove of the very exaction of such an undertaking from the petitioner.

19. Equally, we are not proceeding on the basis of the stipulation, in the MHA letter dated 22/24 November 2016, requiring 18 years of service on the date when absorption was proposed. There is *prima facie* substance in Mr. Bhargava's contention that this clause is unenforceable in law, as it travels beyond the prescribed qualification and eligibility for deputation/absorption as contained in the RRs. It is settled, in law, that executive instructions cannot override the stipulations contained in Recruitment Rules framed under Article 309 of the Constitution of India. Any such stipulation would be unenforceable in law, even if it is not specifically made subject matter of challenge.

20. That said, having heard learned Counsel for both sides and perused the record, we are of the opinion that this writ petition has to fail for a variety of reasons.



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21. Firstly, a deputationist has no right to absorption in the borrowing department.⁹ He can be repatriated at any time, even prior to the expiry of the stipulated period of deputation.¹⁰

22. Secondly, the order dated 18 February 2019, appointing the petitioner as SI/JE on deputation basis, made it amply clear that the petitioner had no right to absorption and that the decision, on whether to absorb or not to absorb a deputationist, vested entirely with the BSF.

23. Thirdly, the petitioner is conflating the concepts of eligibility and entitlement. These are different and distinct concepts in service jurisprudence. Eligibility to a post does not *ipso facto* entitle the concerned employee to that post. The petitioner may have become eligible for absorption as SI/JE on completion of two years' deputation. That did not entitle him, as of right, to absorption, especially in the face of the stipulation, to the contrary, in his order of deputation dated 18 February 2019.

24. Fourthly, Mr. Bhargava's submissions proceed on a premise that there was a legal obligation on the respondent to convene every year in January and June to consider absorption of deputationists. We see no such requirement, in the SOP dated 31 January 2013. All that it states is that the Board/Committee would convene, to consider such cases, in January and June. This is obviously subject to the pre-

⁹ Refer **Kunal Nanda v. Union of India**, (2000) 5 SCC 362

¹⁰ Refer **Ratilal B. Soni v. State of Gujarat**, 1990 Supp SCC 243, **Union of India v. S.N. Panikar**, (2001) 10 SCC 520, **Muni Singh v. State of Bihar**, (2002) 9 SCC 485



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eminent right of the BSF to decide whether any deputationist actually deserved absorption.

25. Fifthly, a reading of the SOP dated 31 January 2013 further makes it apparent that absorption of deputationists was not a matter of routine or a matter of right. In fact, the SOP makes it clear that only deputationists who performed outstandingly, and whose services in that Department were found to be required, would be considered for absorption. Satisfaction of the eligibility criteria for absorption did not, therefore, *ipso facto* entitle an employee to be absorbed.

26. Sixthly, the petitioner's period of deputation had come to an end on 23 April 2023. One of the conditions in the SOP dated 31 January 2013, for a deputationist to be considered for absorption was that his deputation period had to be ongoing. A deputationist, whose deputation period had come to an end, *ipso facto* stood disentitled to absorption.

27. Seventhly, the representation of the petitioner, seeking absorption as SI/JE was itself submitted on 9 May 2023, after his extended period of deputation had come to an end.

28. Eighthly, the petitioner stood repatriated to his parent 95th Battalion on 19 May 2023. In the absence of any enforceable right to absorption as SI/JE, or any enforceable obligation on the BSF to absorb the petitioner as SI/JE prior thereto, there was obviously no illegality in the repatriation of the petitioner, once his period of deputation had come to an end on 23 April 2023. A deputationist who



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stands legally repatriated to his parent Department cannot, quite obviously, be considered for absorption in the borrowing department thereafter. The petitioner's representation was, therefore, bound to be rejected even on this score.

29. *Ubi jus*, as the hallowed adage goes, *ibi remedium*¹¹. Absent a right, there can be no remedy in law.

30. The petitioner's claim is defeated by the existing executive instructions, the terms and conditions of his own order of deputation, and the legal position as it flows from authoritative judicial pronouncements, cited *supra*.

31. The writ petition is therefore dismissed, with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MARCH 09, 2026/aky/yg

¹¹ Where there is a right, there is a remedy.