

IN THE HIGH COURT OF DELHI

Writ Petition (Civil) No. 1945/2007

Date of decision: 22nd January, 2010

NAGENDRA SINGH Petitioner
Through Mr. Manish Sharma, Mr. Amit Bhardwaj and
Mr. Vishal Malhotra, Adv.

versus

UOI & ORS Respondent
Through Ms. Jyoti Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

GITA MITTAL, J(Oral)

1. By this writ petition, the petitioner has assailed a corrigendum dated 12th February, 2007 issued for amending a prior notification dated 4th September, 1987 laying down equivalent ranks in the General Reserve Engineering Force and the Regular Army for the purpose of applicability of the Army Act, 1950.
2. The Border Roads Organisation ('BRO' hereafter for brevity) and Border Roads Development Board (BRDB) were set up by the Government of India on account of several reasons including economic development of the North Eastern areas, security concerns etc. An order was passed on 18th April, 1960 whereby the post of Director General, Boarder Roads was sanctioned, which was declared as equivalent to the post of a Major General in the Indian Army, to head the BRO. A further policy decision was taken that the BRO should

continue as part of the Directorate General of works of the Army headquarters but would work under the Border Roads Development Board which was set up by the Government of India as a self contained authority under the chairmanship of the Prime Minister with the Defence Minister as the Deputy Chairman and other higher functionaries.

3. On 16th June, 1960, the Government of India conveyed sanction of the President of India to the Director General of the BRD/BRDB with regard to raising and maintenance of the General Reserve Engineering Force ('GREF' for brevity hereafter). The present writ petition is concerned with the equivalence of the ranks of army personnel and the civilian officers assigned to this force.

4. By a statutory rule and order bearing SRO no. 329 dated 23rd September, 1960 issued by the Ministry of Defence under Section 4(1) (4) of the Army Act, 1950, it was notified that the Army Act would apply to the members of GREF except for the statutory provisions which were detailed in the Schedule A thereto. This was followed by SRO No. 330 dated 23rd September, 1960, also issued by the Ministry of Defence under section 21/102(4)/191 of the Army Act, stating that specified army rules would also apply to GREF.

5. So far as the matter of equivalence of between the civilian and army personnel is concerned, the Border Roads Regulations enacted in 1960 provided equivalence of the civilian posts vis-a-vis the posts under the Indian Army in the following terms :-

“Equivalent civilian post vis-a-vis Army rank

- a) Chief Engineer (GDE-I) -Brig.(For Comd.of project Level-I)

- | | |
|----------------------------|---------------------------------------|
| b) Chief Engineer (GDE-II) | -Col.(for Comd. of Project Level-II). |
| c) Superintending Engr. | -Lt.Col.(For Comd.of Task Force) |
| d) Executive Engr. | -Maj. (for Comd. of Road Const.Co.) |

Subsequently post of Chief Engineer was created by merging Chief Engineer GDE-I and GDE-II, which resulted that there was no civilian post equivalent to Colonel of the Army."

6. This prescription was substituted by the Government of India by a notification dated 4th November, 1987 which provided the following equivalence so far as the civilian and military posts were concerned :-

- | | |
|--|-------------|
| "a) Chief Engineer | - Brigadier |
| b) Superintending Engineer
(Selection Grade) | - Colonel |
| c) Superintending Engineer
Civilian Officer Grade I
(Selection Grade)" | - Lt.Col. |

7. A further clarification was issued by the Government of India on 5th May, 1989 to the effect that the post of Colonel would take precedence over the Superintending Engineer (Selection Grade) in all functional enactors. This notification was followed by an order dated 3rd January, 2005 passed by the Under Secretary of the Government of India saying that the Superintending Engineer (Functional Scale) would be equivalent to the post of Colonel in the Indian Army. Following this prescription, an order dated 6th January, 2005 was passed by which posts in GREF were reorganised and renamed.

8. The orders dated 3rd January, 2005 and 6th January, 2005 were re-examined by the respondents. An order passed on 12th May, 2006 whereby the Directorate General, Border Roads restored status quo in the matter including the nomenclature of

the appointments to the position which subsisted prior to the issuance of the order dated 3rd January, 2005. The order dated 6th January, 2005 was also superseded by the same order.

9. The present writ petition has been filed by the petitioner's assailing a notification dated 12th February, 2007 issued as a corrigendum by the Ministry of Defence of the Government of India and as an amendment to the equivalent prescription under the notification dated 4th September, 1987. In order to appreciate the grievance of the petitioner and the contentions of the respondent, it would be useful to extract this notification in extenso which reads as follows :-

“The Gazette of India
EXTRA ORDINARY
Part-I—Section 3
PUBLISHED BY AUTHORITY

New Delhi, Monday, February 12, 2007/Magha 23, 1928

Ministry of Defence

CORRIGENDUM

New Delhi, the 12th February, 2007

No.1(E) The following further amendment is made to Government of India. Ministry of Defence. Notification dated 4th September, 1987 laying down equivalent ranks in the General Reserve Engineers Force and the Regular Army for the purpose of the Army Act, 1950 as applied to the General Reserve Engineer Force, namely:

General Reserve Engineer Force
Chief Engineer
Superintending Engineer (Functional
Scale)

Regular Army
Major General

Colonel

Executive Engineers
(Non-Functional Selection Grade)
Executive Engineer
Assistant Executive Engineer

Lieutenant Colonel
Major
Captain

2. The inter-se seniority between the Colonels and Superintending Engineers (Functional Scale) will be with reference to date of their assumption of Charge as Superintending Engineer (Functional scale) the date of appointment as Colonel. The inter-se seniority between other ranks at different levels will be decided similarly. The post of Chief Engineer may however be held by a Brigadier till such time sufficient number of Major Generals is not available from the regular Army.

File No.BRDB/06/86/98/GE-I

Sd/-
Under Secretary to the Govt. of India”

10. The grievance of the petitioner in the present writ petition is that as a result of this notification, the respondents have disturbed the equivalence so far as administrative and seniority issues between the officers is concerned. It is contended that the petitioner who is an officer of the Indian Army with GREF apprehends that, on account of the notification dated 12th February, 2007, his rights and entitlements based on his seniority inter se the civilians who are deputed to the task force would be adversely impacted.

11. Ms. Jyoti Singh, learned counsel representing the respondents has drawn our attention to the detailed counter affidavits which have been filed by the respondents. It is submitted by Ms. Singh that the apprehensions of the petitioner are wholly misconceived and that the notification has clearly prescribed that the corrigendum has been issued and has clarified the equivalence only for the purposes of the Army Act. It is her further submission that this equivalence is only for the exercise of disciplinary powers, if any, with

regard to the discipline which is required to be maintained in the task force which consists of a mixture of civilian employees as well as military personnel working in synergy in an interdependent organisation, with one complimenting the knowledge and skills of others. The respondents have further clarified that equivalence in respect of disciplinary matters in respect of notifications noticed above have been issued.

12. In this regard, we find that the counter affidavit filed by it, the Border Roads Development Board has clearly stated that the notification dated 12th February, 2007 was issued for the purpose of disciplinary matters governing civilian General Reserve Engineering Force (GREF) officers of Border Roads Organization (BRO) and was in no way concerned with the organization of Indian Army. It is a categorical stand of the respondents that the equivalence is only in the context of certain provisions of the Army Act, i.e. in respect of disciplinary matters and is not applicable across on a one to one basis for all matters.

13. The stand taken by the respondent nos. 1, 2 and 3 is reiterated by the Border Roads Organisation which has also filed an affidavit explaining the position. The respondent no. 4 has clarified the position as follows :-

“.....The parity conferred by the impugned notification is limited only to exercise of disciplinary powers by the civil officers under the provision of AA while posted in a specific appointment tenable by both army as well as civilian officer. This notification does not in any way govern the administrative hierarchy of the Dte General of Border Roads which is manned both by Army as well as civilian officers.”

The same stand has been reiterated in other portions of the counter

affidavit.

14. The respondents have clearly explained that the notification itself spells out that the equivalence is only for the purposes of disciplinary powers under the Army Act. So far as the reason and necessity thereof is concerned, it has been explained that the Superintending Engineers are now being posted as task force commanders because it is an appointment on which colonels from the Indian Army are posted. For this reason and to provide for similarity of disciplinary powers, the Superintending Engineers and Colonels from the army have been equated vide the notification dated 12th February, 2007 without any direct bearing on status equivalence or other matters. Placing reliance on the pronouncement of the Apex Court in **UOI vs. V. Ramakrishnan & Ors. (2005) 8 SCC 394**, it is admitted that two classes of a service cannot be treated all alike by way of a notification.

15. In view of the above stand taken by the respondents, it is clearly obvious that the apprehensions of the petitioner are unwarranted and this writ petition was wholly unnecessary. The contention of the petitioner that by way of the notification dated 12th February, 2007, superintending engineers have been equated in status or for seniority or any other purposes to colonels from the army who are deployed with GREF is misplaced and not correct. The effect of the notification dated 12th February, 2007 is merely that the superintending engineers are given equal disciplinary powers under the provisions of the Army Act in terms of the earlier notification

No issue arises for adjudication in the present writ petition which is

accordingly disposed of in the above terms.

CM No.3598/2007

In view of the orders passed in the writ petition, this application does not survive for adjudication and is disposed of as such.

GITA MITTAL,J

VIPIN SANGHI, J

JANUARY 22, 2010
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