

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

Date of decision: 13th July, 2012

+ **W.P.(C) No.821/2011**

% **SUMIT JOSHI & ANR** **....Petitioners**
Through: Col. S.R. Kalkal, Adv.

Versus

UNION OF INDIA & ORS. **..... Respondents**
Through: Ms. Sweety Manchanda, CGSC for
UOI.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The two Commandants with the Sashastra Seema Bal (SSB) by this petition impugn the SSB Group 'A' Combatised (General Duty) Officers Recruitment Rules, 2004 to the extent that they allow promotion to the Combatised rank of Deputy Inspector General (DIG), also of the Area Organizers belonging to the non-combatised cadre of SSB. The challenge is on the ground that such merger at the post/rank of DIG of separate and distinct combatised and non-combatised cadres having distinct recruitment and service rules and having the effect of a non-combatised employee of SSB, commanding the combatised personnel and also of court-martialling

them without himself being subject thereto, is arbitrary.

2. Notice of the petition was issued. The application of the petitioners seeking interim stay of promotion of non-combatised personnel to the post of DIG was disposed of vide order dated 8th February, 2011 to the effect that actions taken in pursuance to the Rules under challenge shall be subject to the result of the writ petition. Counter affidavit has been filed on behalf of the respondents and to which rejoinder has been filed by the petitioners. The counsels have been heard.

3. It is the case of the petitioners:-

- a. SSB, then known as Special Service Bureau was raised in the year 1963 in the backdrop of Chinese aggression and since inception comprises of two types of officers' cadre namely combatised personnel and non-combatised employees;
- b. the combatised cadre was earlier governed by the Central Reserve Police Force Act, 1949 and CRPF Rules 1955 and the non-combatised cadre was governed by the CCS(CSA) Rules, 1965; employees
- c. that there have been different Recruitment Rules for the two cadres with the combatised officers being governed by the SSB

Group 'A' Combatised (General Duty) Officers Recruitment Rules, 2004 (supra) and the non-combatised officers being governed by the SSB (Senior Executive) Service Rules, 1990 and the Cabinet Secretariat, Special Service Bureau, Sub-Area Organizer and Circle Organizer Group 'B' Post Recruitment Rules, 1996;

- d. ultimately the Sashastra Seema Bal Act, 2007 was enacted and came into force on 1st August, 2009 and Sashastra Seema Bal Rules 2009 framed thereunder;
- e. that while the combatised officers are mostly deployed with the troops and required to maintain physical and medical fitness and undergo various courses for enhancement of their professional knowledge and commanding skills and superannuate at the age of 57 years, the non-combatised officers are deployed as staff with the Headquarters with no exposure of command and control of troops and with no requirement to maintain physical and medical fitness and superannuate at the age of 60 years;
- f. that while the legal remedy of the combatised officers is with

the respective High Courts, of those of the non-combatised officers is before Central Administrative Tribunal (CAT);

- g. that while combatised officers, for being eligible for the post of Commandant (for being considered for the post of DIG) are required to have minimum of 15 years of Group 'A' service, non-combatised officers, to be eligible for the post of Area Organizer (for being considered for the post of DIG) are to have 16 years of Gazetted service which includes Group 'B' Gazetted service as well;
- h. that the non-combatised cadres are not required to wear the uniform until posted as DIG;
- i. that while a Commandant promoted as DIG has experience of commanding, the Area Organizers promoted as DIGs have no such experience;
- j. that though the non-combatised cadres are also initially given some training but the same was held by the CAT in its judgment dated 2nd May, 2003 in OA No.459/2003 and MA No.486/2003 to be not enough to place them at par with the combatised cadre;

- k. that the non-combatised/civil cadres of SSB have already vide letter dated 26th March, 2003 of the Ministry of Home Affairs, Government of India been declared to be a dying cadre, to be phased out;
- l. that owing to the difference in the superannuation age, Area Organizers from the non-combatised cadre can be promoted to the post of DIG even beyond the age of superannuation of 57 years of the combatised cadres;
- m. that the merger of the two cadres at the post of DIG is against the principle of merger and natural justice.

Reliance is placed on:-

- i. *State of Maharashtra v. Chandrakant Anant Kulkarni* (1981) 4 SCC 130;
- ii. *State of Haryana v. Charanjit Singh* (2006) 9 SCC 321;
- iii. *State of West Bengal v. West Bengal Minimum Wages Inspectors Association* (2010) 5 SCC 225.

4. The respondents in their counter affidavit have pleaded:-

- A. that a similar challenge was made by the combatised cadres

before the High Court of Guwahati also by way of W.P.(C) No.3804/2010 which was dismissed on 19th July, 2010 holding that “how many posts should be kept available for promotion of combatised or non-combatised personnel is not a matter for judicial review in the sense that it is entirely for the respondents to decide whom to promote to the post of DIG and how many”;

- B. that in the absence of any plea that the Area Organizers from the non-combatised cadres are in any way disentitled to hold the post of DIG, no case of any hostile discrimination is made out;
- C. that the petitioners have concealed the factum of dismissal of same challenge by the Guwahati High Court;
- D. that initially the post of DIG used to be filled by way of promotion/ deputation/ direct recruitment/ re-employment only from the non-combatised cadres and the Commandants were not included in the zone of consideration for promotion to the rank of DIG in SSB and were so included for consideration and 15% quota reserved for them for the first time in the year 1977;

the quota of Area Organizers in the non-combatised cadre was 60% and remaining 25% posts of DIG were to be filled up by deputation of State/Central Government officers eligible for appointment to such grade;

- E. subsequently the Rules were amended to provide for 75% quota in the post of DIG for promotion from Area Organizers (belonging to the non-combatised cadre) and Commandants (belonging to the combatised cadre) in equal share and remaining 25% to be filled up by deputation of State/Central Government officers – no challenge at any time was made thereto;
- F. that upon the transfer in the year 2004 of the administrative control of SSB from the Cabinet Secretariat to the Ministry of Home Affairs, 60% of the posts of DIG were to be filled by promotion of Departmental Officers and remaining 40% by deputation of Indian Police Service Officers;
- G. As per Recruitment Rules in existence as on date, out of 19 posts of DIG, 07 posts are filled by promotion from the rank of Commandant and 04 posts by promotion from the rank of Area

Organizers and the remaining 08 posts are to be filled by deputation of the Indian Police Service Officers;

- H. that in view of the raising of additional 09 Sectors and 03 Frontiers in SSB, the Ministry of Home Affairs has already on 18th April, 2011 re-fixed the quota for promotion to the rank of DIG in respect of Area Organizers and Commandants as 04 posts by promotion of Area Organizers and the remaining posts by promotion of Commandants and suggested amendment of Recruitment Rules in terms thereof;
- I. that a policy decision in this regard having already been taken, the petitioners are left with no valid cause of action;
- J. that the Area Organizers from the non-combatised cadres having been a feeder cadre for promotion to the rank of DIG in SSB since prior to the year 1977, the challenge thereto made in the year 2011 is highly belated;
- K. that officers of non-combatised wing also are deployed in the field as per the requirement of force and in accordance with the policy decision of the Government;
- L. officers of both combatised and non-combatised wings have to

complete the prescribed residency period for promotion to the next higher rank;

- M. the condition of medical category shape for promotion to the post of DIG is mandatory in the case of Area Organizers also;
- N. that officers of both cadres have to undergo some promotional courses for promotion to the rank of DIG; non-uniformed officers were also undergoing training in Weapon & Tactics Course till the year 2001;
- O. that the challenge now when the Force has undergone huge organizational reform, is not tenable;
- P. that the matters agitated are policy matters of the Government, not subject to judicial review;
- Q. that the cited judgment of CAT is not relevant;
- R. that comparison of the two cadres is not justified;
- S. that though the age of superannuation of Commandants is 57 years but those promoted to the post of DIG retire at the age of 60 years and Commandants below the age of 57 years are eligible as per the established instruction in vogue, to be promoted to the rank of DIG;

- T. that though separate seniority of combatised and non-combatised cadre is maintained but a common seniority of DIGs is maintained for further promotion to the rank of IG in SSB in the quota meant for the Departmental Officers;
 - U. that the combitisation of the non-combatised cadres is still a proposal and has not attained finality.
5. The petitioners in their rejoinder plead:-
- I. that the proceedings before the Guwahati High Court were concerned with the fixation of quota for the post of DIG between the combatised and non-combatised cadres while the present petition challenges the Recruitment Rules; the order therein thus has no relevance to the present controversy;
 - II. It is controverted that the combatised officers were earlier not eligible for the post s of DIG;
 - III. that in no other military or para-military organization a civilian officer is promoted to put on a combatised dress after 20 to 25 years of service or conferred the disciplinary power including of convening a court-martial when he himself is not a subject thereto;

IV. that mere delay in raising the issue, if found to be relevant is no reason to reject such challenge.

6. In *Chandrakant Anant Kulkarni* (supra) the Apex Court enunciated the following principles in the matter of equation of posts:-

- (i) Where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis.
- (ii) Where, however, there were no such similar cadres, the following factors will be taken into consideration in determining the equation of posts:-
 - (a). nature and duties of a post;
 - (b). powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged;
 - (c). the minimum qualifications, if any, prescribed for recruitment to the post.
 - (d). the salary of the post

The aforesaid principles were described as having a statutory force.

Of course, the aforesaid principles were formulated in the context of integration of cadres while re-organizing the States and not in the context of promotion as in the present case. Even while doing so it was observed that the matter of equation of posts is purely an administrative function to be left

entirely to the employer and it is not open to the Court to consider whether the equation of posts by the employer is right or wrong.

7. The judgment of the Apex Court in ***Charanjit Singh*** relied upon by the petitioners was concerned with the principle of equal pay for equal work and we are unable to find any applicability thereof to the matter in hand. The only other judgment cited i.e. of ***West Bengal Minimum Wages Inspectors Association*** supra also was concerned with the same principle and further laid down that the principle of equal pay for equal work is not a fundamental right but a constitutional goal and is dependent on various factors such as educational qualifications, nature of the job, duties to be performed, responsibilities to be discharged, experience, method of recruitment etc. and comparison merely based on description of posts is misconceived.

8. We are unable to agree with the opposition to the maintainability of the present petition on the ground of delay. Undoubtedly the Area Organizers from the non-combatised cadres have been eligible for promotion to the post of DIG and to which a challenge is now being made, for nearly 30 years prior to the filing of the petition. However that in our opinion would be irrelevant. The cause of action to the petitioners who are

now in the zone of consideration for promotion to the post of DIG, has accrued now only. Merely because others similarly placed as the petitioners did not make any grievance in the past, is no ground for denying a right of challenge to the petitioners.

9. The counsel for the petitioners also has clarified that the petitioners are not against giving promotion to the Area Organizers but says that it should be in a separate cadre not and placing them in a position to command the combatant officers.

10. The counsel for the respondents has also placed before us a copy of the letter dated 19th December, 2011 of the Ministry of Home Affairs to the Director General, SSB in respect of re-constructing of SSB by combatisation of the non-combatised posts. A perusal of the said letter shows abolition of the existing vacant non-combatised posts and creation of combatised posts in lieu thereof, giving of option to the incumbents of the remaining non-combatised posts to combatise and the future vacancies in the non-combatised posts to be combatised by way of abolition etc.

11. However the same does not come to the rescue of the petitioners. The combatisation in future would not give relief to the petitioners who would be deprived of promotion to the post of DIG for the reason of allocation of

some of the posts of DIG to the non-combatised cadres.

12. As far as the judgment of the Guwahati High Court is concerned, we are unable to agree with the petitioners that the matter for consideration therein was any different from that raised before us. The challenge therein also was to the provision of 04 posts for promotion of Area Organizers on the ground of the same being unconstitutional and the prayer was that all the 11 posts for promotion of departmental officers should be made available to the Commandants. The said challenge was negated by the Guwahati High Court in the words re-produced above. We have also recently in our judgment dated 25th April, 2012 in W.P.(C) No. 1610/2012 tilted ***Zakat Foundation of India v. Union of India***, relying on ***Union of India v. S.L. Dutta*** AIR 1991 SC 363 and ***State of Andhra Pradesh v. V. Sadanandam*** AIR 1989 SC 2060 held that the manner in which posts are to be filled up including the methodology and the modalities thereof is the prerogative of the employer and that once a policy decision based on expert advice is taken and all the aspects are thrashed out, it cannot be treated as without application of mind or arbitrary and such functions are best left to the Executive and the Courts should not interfere with the same.

13. However neither the judgment of the Guwahati High Court nor the

counter affidavit of the respondents in the present case takes care of the crucial arguments of :-

- A civilian being suddenly made to command the troops.
- The combat cadres who otherwise have no obligation to salute the civilian officer, even though senior to them, being suddenly required to honour such civilian with a salute.
- Whether such a civilian would inspire feelings of bravado in the troops he is commanding.

14. We have wondered whether such a civilian being suddenly thrust in the position of commanding the combatants would invite the allegiance of the soldiers; whether such soldiers, at the mere command of such a civilian officer who is suddenly made to adorn the uniform, would be willing to lay down their lives; if the answer is no, whether the same would not interfere with the discipline of the SSB.

15. We are however not equipped to go into all these questions. The pleadings also before us are not exhaustive in this regard. Moreover as aforesaid, it is not our duty to study the said aspects. The function is of the employer and our jurisdiction is only to see that while taking such decision all aspects are thrashed out and consequences considered. We may further

notice that there is no challenge to the quota in the post of DIGs to be filled in from the officers of the Indian Police Force. It also needs to be examined whether the personnel of the Police Force eligible for the post of DIG in SSB are equivalent to the Area Organizers whose quota is challenged or akin to the Commandants. Needless to state that if the said police officials eligible to be considered for the post of DIG in SSB are akin to the Area Organizers, then the challenge to the Rule making the Area Organizers eligible would be misconceived.

16. Need is thus still felt inspite of the letter dated 19th December, 2011 (supra) for the respondents to have a re-look into the matter in a time bound manner so that the petitioners, if entitled to the relief, get the same.

17. We therefore dispose of this petition with the following directions:-

- (i). The respondents to within three months hereof consider the representations of the petitioners by taking into account all aspects including those discussed above and take a reasoned decision thereon after hearing the representatives of the combatised as well as non-combatised officers.
- (b). If the decision is in favour of the petitioners, the respondents to further consider whether the same number of posts of DIG as

existing today are to be retained or reduced with alternative cadre equivalent to DIG being created for the non-combatised force.

- (c). If the number of posts for DIG are to remain the same, the petitioners to be considered for the same as on the date they became eligible therefor or on the date of filing of this petition whichever is later.
- (d). Upon the petitioners being selected for the said post, the petitioners be granted said promotion with all consequential benefits – all within six months herefrom.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 13 , 2012

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