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

+ **W.P.(C) No.2405/2013**

% **Date of decision: 29th May, 2013**

SH.DEVENDER SINGH SANDHU Petitioner

Through Mr.Ankur Chhiber, Adv.

versus

UNION OF INDIA AND ORS Respondents

Through Mr.Sumeet Pushkarna, Adv. with DC
Bhupinder Sharma, BSF
Commandant P.C. Sharma

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J (ORAL)

1. The present petitioner was appointed in the Border Security Force (BSF) on 28th December, 1992 upon his release from Short Service Commission with the Indian Army and was posted as Assistant Commandant with the 27th Battalion, BSF at Charare Sharif, Jammu & Kashmir where he remained till November, 1996. The petitioner was posted in January, 1997 to 14 Bn. at Aknoor and was attached to Frontier Headquarters, BSF as AC (Op).

2. On 24th May, 2000 based on his work performance and achievements, the

petitioner was duly promoted to the rank of Deputy Commandant in the BSF but was retained in the same unit i.e. 120 Btn. of the BSF at Srinagar. Unfortunately, the petitioner remained attached at Frontier Headquarters, BSF, Jammu and was not permitted to join his place of posting in 120 Bn by the respondents. Apprehending that the respondent may treat his attachment as a disqualification for further promotion on the ground that he had not completed a tenure in a duty battalion posting, the petitioner represented to the respondents, who relieved him from the Frontier Headquarters only on 3rd August, 2001 where he remained till September, 2001 & thereafter remained posted at different places.

3. In March, 2006, the petitioner and his batch-mates were considered by the Departmental Promotion Committee for promotion to the post of Second-in-Command. Though the DPC found the petitioner fit for promotion but he was not promoted on the ground that he did not have the requisite two years service in the duty battalion on the date when the DPC took place. The petitioner is aggrieved by this action inasmuch as the respondents have failed to take into consideration that w.e.f. 24th May, 2000 to 3rd August, 2001, the petitioner was attached to the Frontier Headquarters against his wishes even though he had been posted to 120 Battalion. It has also been pointed out to us that the petitioner had made representations to the respondents wanting to be relieved from the Headquarters

and expressed apprehension that the respondents may unfairly use his attachment to deny the petitioner's promotion on the ground that he had not completed the requisite tenure in the duty battalion.

4. Given the denial of his promotion on this ground, the petitioner made representation to the respondents on 16th March, 2006 to relax the requirement of having served two years tenure in a duty battalion for his promotion in the given circumstances where he had been denied the opportunity to serve and complete the requirement on account of an attachment order issued by the respondents.

5. Justice still eluded the petitioner. On 1st August, 2006, not only the batch-mates but also the juniors to the petitioner were promoted to the rank of Second-in-Command which promotion was denied to the petitioner as noted above on the respondents' rejecting the petitioner's representations and request for waiver of two year appointment in the duty battalion, by orders passed on 11th August, 2006 & 7th September, 2006. In these circumstances, the petitioner was ultimately promoted to the rank of Second-in-Command only on 28th May, 2007 and he was posted to the Sector Headquarters, BSF Srinagar.

6. The present writ petition has been filed by the petitioner contending that the respondents have illegally and unfairly denied the waiver of two years tenure in the duty battalion and have also refused to issue the orders of consequential benefits

which would arise in favour of the petitioner as a result of such waiver.

7. Mr. Ankur Chhiber, learned counsel for the petitioner has contended that the petitioner is entitled to the reliefs which have been granted by the High Court of Delhi by way of a judgment dated 27th October, 2009 rendered in WP (C) No.21900/2005 Ashok Kumar Vs. UOI & Ors and connected writ petitions wherein this very issue had arisen for consideration. Our attention is drawn to the following relevant paragraphs of the pronouncement:-

“ xxx xxx xxx
37. We accordingly quash the decision of the Central Government declining to relax the eligibility condition of two years" service in a duty battalion for promotion to the post of Inspector and 2 IC under BSF as also the post of Inspector under CRPF.

38. A mandamus is issued to the Central Government to reconsider the issue pertaining to the promotions to the posts of 2 IC and Inspector under BSF and the post of Inspector under CRPF; the issue being exercising the power of relaxation vested under the Rules, to be exercised by the Central Government. While reconsidering the matter, the questions framed by us would be kept in mind while deciding the issue and the backdrop circumstances would be kept in mind while deciding the issue. Needless to state the decision of the Central Government would be a reasoned decision evidencing the application of mind with reference to the questions and the backdrop circumstances. The decision would be taken within a period of 8 weeks from date of receipt of this decision in the Ministry of Home Affairs i.e. the Nodal Ministry of the Central Government. We further mandate that if the decision taken is in favour of the petitioners, they would be promoted with effect from the date, persons junior to the petitioners were promoted and in said eventuality, the petitioners would be entitled to all consequential benefits such as seniority, pay

39. Before parting, we may note that some of the petitioners were subsequently promoted when they acquired two years' service condition in a duty battalion and qua some, as per the averments made in the pleadings, they were being considered for promotion as they had acquired said eligibility condition. In case said petitioners have been subsequently promoted, the case of all, for back dated promotions with consequential benefits would be at par, should the Central Government extend the benefit of relaxation as per the present decision."

9. The above pronouncement was followed by this court in the decision rendered on 25th October, 2010 in WP (C) No.2427/2010 Shri Virendra Singh Rajput. Vs. Union of India & Ors. and connected matters where in was observed thus:-

In view of the above, it is directed as follows:-

(i) The decision of the Central Government declining to relax the eligibility condition of two years service in duty battalion for promotion of the petitioners to the post of inspector under the CRPF shall stand quashed.

(ii) A direction is issued to the Central Government to reconsider the case of the petitioners, after the aforementioned relaxation, and to pass appropriate orders, if the decision is taken in their favour, for promotion with effect from the date persons immediately junior to the petitioners were promoted. In such eventuality, the petitioners would be entitled to all consequential benefits including seniority, pay fixation and arrears of pay.

(iii) The case of the petitioners shall be forwarded by the competent authority to the Ministry of Home Affairs positively within a period of four weeks from today. The consideration by the Ministry of Home Affairs shall be communicated to the petitioners within eight weeks thereafter.”

These decisions have been followed by us in several other matters as well.

10. Mr. Sumit Pushkarna, learned standing counsel appearing for the respondents, does not dispute that the respondents are vested with the power to waive the tenure requirement in a duty battalion as a pre-condition for eligibility for posting. We find that in the instant case, the respondents have in fact exercised that power and passed an order dated 25th October, 2012 issued by the Ministry of Home Affairs of the Government of India specifically directing waiver of the tenure of five months and thirteen days in a duty battalion for promotion from Deputy Commandant to the rank of Second-in-Commandant with regard to DPC held on 7th March, 2006 for the years 2006-2007. It is unfortunate that despite these clear directions of the Ministry of Home Affairs to the respondents, the formal orders granting the seniority to the

petitioner as well as all consequential benefits have not been passed and the present writ petition has been filed seeking implementation of the orders dated 25th October, 2012.

11. We are informed by Mr. Ankur Chhiber, learned counsel for the petitioner that the batch-mates of the petitioner had been considered in March, 2011 for promotion to the post of Commandant which consideration and promotion has been unfairly and illegally denied to the petitioner.

12. The present record discloses that notice was issued on this writ petition as back as on 16th April, 2013. The case has been listed at least on two occasions thereafter to enable the respondents to seek instructions in the matter. Despite the time having been given, the original of the record has been produced before us whereby we are informed that the respondents are proposing to send the matter, despite the decision dated 25th October, 2012, to the Ministry of Home Affairs. Mr. Sumit Pushkarna, learned counsel on instructions from Commandant P.C. Sharma, who is present in court, submits that a noting dated 9th January, 2013 penned by Shri R.P. Gupta, Under Secretary (Personnel-III) stating that the grant of relaxation (waiver of the duty battalion tenure condition) is not an order in BSF and the order dated 25th October, 2013 circulated by the BSF be treated as null and void.

13. On this aspect, to say the least, this is clearly blinkered and has been pen down without application of mind to the pronouncements of this court. The judgment in **Ashok Kumar (supra)** was rendered on 27th October, 2009. This was noticed by this court while passing the judgment dated 27th September, 2012 in WP (C) No.8046/2011 Ghamman Singh Vs. UOI & Ors. and connected writ petitions wherein it was held as follows:-

“11. The respondents have not only failed to act in accordance with the principles laid down by this court in the judgment dated 27th October, 2009 in Ashok Kumar (supra) and the specific finding that the action of the respondents was unwarranted and arbitrary but the respondents have also not remedied the manner in which they have acted necessitating filing of these unwarranted writ petitions.

12. The wastage of judicial time which has been necessitated by this conduct of the respondents is only one aspect of the matter. It cannot be denied that the direct consequence of the failure to promote the petitioner is that they have not only been denied the fruits of the promotion but juniors to them have been posted above them thereby resulting in the ignominy to the petitioners of serving under their juniors. The same would have certainly caused much anguish to the petitioners. There is no defence at all for this action other than a submission that the entire matter is even now pending with the Ministry of Home Affairs.

13. We are informed by Mr. Sachin Datta, learned Standing Counsel, Mr. Rajinder Nischal as well as Dr. Bhardwaj, learned counsel for the respondents that the respondents have now formulated a policy on 2nd June, 2012 whereby it has been set out that in case a person has not been posted to a duty battalion, he would be entitled to waiver of the requirement of such posting in order to render him eligible for promotion to the next post. This could have been done within a reasonable period of the judgment against the respondents so the precious judicial time would have saved the agony of the petitioners.

14. *It was on a consideration of these aspects that while allowing the Writ Petition (C) No. 2427/2010 on 25th October, 2010 and while allowing the writ petition filed by Vinod Kumar (supra) and Virendra Singh Rajput (supra), we had directed the payment of arrears of the wages as well. We see no reason as to why the present petitioners ought not to be granted the same benefit. The petitioners have been prevented from working at the higher post even though they were willing to do so for no fault attributable to them by the illegal and arbitrary action of the respondents alone.*

15. *The writ petitioner Karamjeet Singh (petitioner in W.P.(C) No.1991/2012) filed the petition on 9th April, 2012 who has been denied promotion to the post of Asstt. Comdt. even though his juniors were so promoted with effect from January, 2012 again for the reason that he did not satisfy the eligibility condition of two years service in a duty battalion.*

16. *W.P.(C) No.82/2012 has been filed by HC Ram Naresh Tiwari on 5th January, 2012 aggrieved by the fact that though his juniors stood promoted to the post of Sub-Inspector in July, 2011, he has been denied promotion again on the ground that he failed to fulfil the eligibility requirement of two years service in a duty battalion.*

In view of the above, it is directed as follows :-

(i) The decision of the Central Government declining to relax the eligibility condition of two years service in duty battalion for promotion of the petitioners to the post of Sub-Inspector, Inspector and Head Constable respectively under the CRPF shall stand quashed.

(ii) A direction is issued to the Central Government to reconsider the cases of the petitioners, after the aforesaid relaxation, and to pass appropriate orders, if the decision is taken in their favour, for promotion with effect from the date persons immediately junior to the petitioners were promoted. In such eventuality, the petitioners would be entitled to all consequential benefits including seniority, pay fixation and arrears of pay.

(iii) The case of the petitioners shall be forwarded by the competent authority to the Ministry of Home Affairs positively within a period of four weeks from today. The consideration by the Ministry

of Home Affairs shall be communicated to the petitioners within eight weeks thereafter.

17. Inasmuch as we have directed payment of arrears of pay, we are making no orders as to costs even though the petitioners deserve to be compensated for the litigation which has been generated by the failure of the respondents to act in accordance with law.

These writ petitions are allowed in the above terms.”

14. Mr. Ankur Chhiber, learned counsel for the petitioner has placed before us a letter dated 2nd June, 2012 whereby a considered view has been taken and policy guidelines under the signatures have been issued by the Ministry of Home Affairs, Police-II Division (Personnel) wherein the following was decided:-

“3. Recently in another such case {WP(C)No.8046/2011 SI/GD Ghaman Singh Vs. UOI}, the Hon’ble High Court of Delhi has observed and directed as under:-

“Once a matter has been decided by the Apex Court, all the similarly placed persons should be granted the relief in a uniform manner without compelling the members of the Force to go before the Court further directing that in case such frivolous matters are brought before the Court, they will be disposed of with very heavy cost which may have to be recovered from the senior officers responsible for not curbing the litigation. The Court has given 4 weeks time from 28.03.2012 to take a decision on the issue to allow promotion without insisting on 2 years mandatory field service.”

4. The matter has been examined and it has been found that such problem of not completing the MFS which is an operational requirement of the Force and also provided under the RRs to become eligible for next promotions pertains to less than 2% of the total Force personnel which means about 98% personnel are being promoted in conformity of the RRs after completion of the MFS. Even these 2% personnel are not able to complete the required MFS:

(i) Either due to exigency of their services for the Force concerned in the interest of the Force; or

(ii) *Due to their own personal reasons such as health, family problems, social commitments, education/marriage of children etc.*

While some Force personnel are posted/attached to static offices due to the administrative requirements of the Force concerned/MHA, there is another category of personnel, who express their unwillingness for being posted to a field unit or in the Ops areas citing different personal reasons as mentioned above and as a result get posted/attached to static office/offices knowing fully well that the service rendered by them does not count towards MFS as provided under RRs. Besides this, certain Force personnel are not able to complete the MFS owing to their Medical Shape category.

5. *It has been decided that since MFS is the operational requirement for the Force to hold higher responsibilities, doing away with the requirement of MFS from the Recruitment Rules itself will adversely affect the operational efficiency and functional effectiveness of these CAPFs & ARs. Therefore, all such cases wherein the CAPFs & ARs personnel concerned, has not completed the MFS, while his name is being considered for promotion to the next rank, the waiver/relaxation of such eligibility condition should be considered by the CAPFs/MHA objectively and sympathetically. CAPFs & ARs may follow the following guidelines while considering such waiver/relaxation of the MFS condition prescribed in the RRs:-*

(i) *Those CAPFs & ARs personnel who could not be posted to Duty Battalion due to exigency/requirements of CAPFs in the interest of the work of the Force or due to other technical reasons/grounds, cases of such CAPFs and ARs personnel will be duly considered by the DG of the CAPF concerned, for granting waiver/relaxation in the Mandatory Field Service.*

(ii) *As regards the CAPFs & ARs personnel who have not completed the MFS owing to their own request for being posted in static postings/offices where service rendered by them is not counted towards MFS or wherever such personnel have expressed their unwillingness for posting to field units/ops areas and get posted/attached, on their own volition, to static offices, their cases will not be considered for granting relaxation in MFS.*

(iii) *While posting such CAPFs & ARs personnel to the*

static postings, the CAPF concerned may inform the Force personnel concerned regarding the consequences of such postings with regard to their not meeting the eligibility criteria for next promotion as per RRs. While posting personnel to any of such static postings, it may be categorically intimated to the personnel that his tenure will not be counted towards Mandatory Field Service and no representation will be entertained for claiming promotion to next rank in relaxation to the prescribed MFS. Therefore, such personnel shall not be considered for promotion by the DPCs till they complete the requisite Mandatory Field Service as laid down in the Recruitment Rules. In case of such personnel, who have been left out by DPC, due to his being declared UNFIT by the DPC for not completing MFS, his seniority will depreciate and he would be considered by the subsequent DPCs for next vacancy year.

(iv) The Force personnel who are not able to complete the MFS owing to their poor Medical shape category shall also not be considered for waiver of MFS criteria. However, in respect of personnel in poor Medical Shape Category due to injury sustained by him attributable to active Govt. duty, the requirement of mandatory Field Service will be relaxed by DG of CAPF concerned to treat certain low medical category at par with Shape-I medical category for the purpose of promotion.

(v) A certificate with reasons recorded in writing for the waiver/relaxation in requirement of Mandatory Field Service, wherever given, will be placed in the ACR dossier of the personnel concerned.

(vi) That Sector-wise, Frontier-wise/Group Centre-wise static postings, as applicable, which are not to be counted towards the MFS will be determined and notified by the DG concerned from time to time.

The guidelines will have prospective effect.”

15. In this background, the observations made in the noting dated 9th January, 2013 are completely misconceived and erroneous. The order dated 25th October,

2012 is premised on the guidelines issued by the Ministry of Home Affairs on the 2nd June, 2012. The same is also in compliance with the repeated directions made by this court as upheld by the Supreme Court.

16. In view of the above, it is apparent that instead of implementing the directives of the Ministry of Home Affairs issued to them as back as on 25th October, 2012, filing of this writ petition after issuance of advance notice as back as on 10th April, 2013, the respondents are only indulging in act of pushing the file of the petitioner from one desk to another. The Ministry of Home Affairs has taken a categorical policy decision in the matter dated 2nd June, 2012. A specific order has been passed on 25th October, 2012 based on the guidelines issued. This order has been passed by the Ministry itself based on the guidelines issued as well as taking into consideration the several judicial pronouncements on the issue.

17. In view above, the conduct of the respondents in initiating the noting dated 9th January, 2013 is in fact contumacious and renders the author of the noting liable for appropriate action under the Contempt of Courts Act.

18. At this stage, Mr.Sumit Pushkarna, learned standing counsel expressed regret and submits that this court may not initiate contempt action against the respondents. We are assured by the Commandant P.C. Sharma that all orders of this court shall be strictly complied with at the earliest.

19. In view of the above, it is directed as follows:-

(i) In view of the above, the orders dated 11th August, 2006 and 7th September, 2006 are clearly contrary to law and the policy directions dated 2nd June, 2012 and are hereby quashed.

(ii) The respondents shall forthwith issue the appropriate communication in terms of the order dated 25th October, 2012 issued by the Ministry of Home Affairs, granting the petitioner waiver of the tenure in the duty battalion rendering him eligible for promotion to the rank of Second-in-Command with effect from the date on which the Departmental Promotion Committee first considered him. The petitioner shall be entitled to grant of notional promotion in the position of Second-in-Commandant and all further promotions on the date on which his juniors were actually promoted. The petitioner shall, however, be entitled to all consequential benefits including the pay and allowance, the increments, if any, as well as for promotion upto the post of Commandant with effect from the date his immediate juniors were considered.

(iii) The respondents are directed to convene a Departmental Promotion Committee (DPC) within a period of six weeks from today for consideration of the petitioner for promotion to the post Commandant. In case the DPC finds the petitioner eligible for such promotion, the promotion which is given to the

petitioner shall relate back to the date on which his juniors have been promoted.

The petitioner shall be placed appropriately in the place above his immediate juniors and shall be entitled to all consequential benefits and other benefits.

(iv) The petitioner is also entitled to costs of the petition which are quantified at Rs.25,000/- which shall be paid to him with the next month's salary.

Dasti to parties.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

MAY 29, 2013

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