

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

Date of decision: 13.02.2017

+ W.P.(C) 8956/2016 and CM No. 36411/2016 (stay)

RAVINDRA SINGH MANN Petitioner

Through Mr. Ankur Chhibber,
Advocate.

versus

UNION OF INDIA & ORS Respondents

Through Mr. Darpan Wadhwa and Mr.
Arnav Kumar, Advocates for
UOI.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

JUDGMENT

INDIRA BANERJEE, J (ORAL)

1. In this writ petition, the petitioner has prayed for orders directing the respondents to consider the case of the petitioner for promotion to the rank of Senior Captain (Inspector General) in accordance with the revised Border Security Force Air Wing (Combatised Group 'A' Posts) Rules, 2011 hereinafter referred to as the '2011 Rules'.

2. The petitioner was re-employed in the BSF Air Wing with effect from 01.09.2006, upon his retirement from the Indian Air Force from the rank of Group Captain on 31.08.2016.

3. The BSF Air Wing comprises of two wings i.e. Fixed Wing and the Rotary Wing. The petitioner was appointed to the Rotary Wing. The petitioner was in the rank of Captain, which is equivalent to the post of Deputy Inspector General of Police. Senior Captain is equivalent to the post of Inspector General of Police.

4. The 2011 Rules *inter alia* provides:-

"4. Method of recruitment, age limit, qualifications etc. — The Method of recruitment age limit, qualifications and other matters relating thereto shall be as specified in columns (5) to (13) of the aforesaid Schedule.

6. Seniority — (1) The inter-se-seniority of officers appointed to posts in different categories or grades of the cadre shall be determined in accordance with the general order issued on the subject by the Central Government from time to time.

(2) Subject to the provisions of sub-rule (1) while determining inter-se-seniority, the following shall be taken into account, namely: -

(i) Officers of Central Armed Police Forces who are on attachment to Border Security Force Air wing on the date of notification of these recruitment rules, at the level of Deputy Commandant or Assistant Commandant (Pilot), shall be considered for absorption and their inter-se-seniority shall be decided on the basis of the year of recruitment according to the aggregate marks obtained by the officers in the Central Police Organisations

examination conducted by the Union Public Service Commission and in the Basic professional course;

(ii) the period for which any officer fails to possess necessary qualification or proficiency to achieve current valid license, after being provided the required administrative arrangement by the Department, shall not be counted towards the residency period for the post.

5. The Schedule *inter alia* provides:-

Schedule

Name of the post	Number of posts	Classification	Pay Band and Grade Pay or Pay Scale
(1)	(2)	(3)	(4)
1. Senior Captain (Inspector General)	02* (2011) *Subject to variation depending on workload.	General Central Service, Group 'A' Gazetted, Non-Ministerial (Combatised).	Pay Band-4 (Rs.37,400-67000/-) and Grade pay of Rs.10,000/-

Whether selection post or non-selection post	Age limit for direct recruits	Educational and other qualifications required for direct recruits
(5)	(6)	(7)
Selection post	Not applicable	Not applicable
Whether age and educational	Period of probation, if any,	Method of recruitment whether by direct recruitment or by

qualifications prescribed for direct recruits will apply in case of promotes		promotion or deputation or absorption and percentage of vacancies to be filled by various methods.
(8)	(9)	(10)
Not applicable	Not applicable	Fifty percent by promotion. Fifty percent by deputation (including Short-term contract) / absorption For Ex-servicement. Deputation/Re-employment. Note: Absorption can be effected only in the case of officers from the Central Government or the State Governments.

6. From time to time, office memorandums and orders have been issued for determining the seniority of various categories of persons employed in the Central Services. The memorandums relied upon are memorandum No.9/11/55-RPS, New Delhi, dated 22.12.1959, Memorandum No.35014/2/80-Estt.D dated 07.02.1986 and Memorandum No.28011/6/76-Estt.(D) dated 24.06.1978. Office memorandum dated 22.12.1959 *inter alia* provides:-

"General Principle 6: A roster should be maintained based on the reservation for direct recruitment and promotion in the Recruitment

Rules. Where the reservation for each method is 50% the roster will run as follows:-

(1) Promotion, (2) Direct recruitment, (3) Promotion, (4) Direct Recruitment and so on. Appointment should be made in accordance with this roster and seniority determined according."

7. The next memorandum dated 07.02.1986 *inter alia* provides "where appointment to a grade is to be made 50% by direct recruitment and 50% by promotion from a lower grade, the inter-se-seniority of direct recruits and promotees is determined on 1:1 basis". The illustration of the said memorandum is as follows:-

"Illustration:

Where the Recruitment Rules provide 50% of the vacancies in a grade to be filled by promotion and the remaining 50% by direct recruitment, and assuming there are 10 vacancies in the grade arising in each of the years 1986 and 1987 and that 2 vacancies intended for direct recruitment remained unfilled during 1986 and they could be filled during 1987, the seniority position of the promotes and direct recruits of these two years will be as under:

1986

1. P1
2. D1
3. P2
4. D2
5. P3

1987

9. P1
10. D1
11. P2
12. D2
13. P3

6. D3
7. P4
8. P5

14. D3
15. P4
16. D4
17. P5
18. D5
19. D6
20. D7

8. The next memorandum dated 24.06.1978 provides that a new roster would have to be started from the date the Recruitment Rules are notified in the Gazette and when there is an amendment to the Recruitment Rules which changes the percentage allotted for the various modes of recruitment. The instructions were to come into force with effect from the date of issue of the office memorandum and recruitment rosters already maintained need not be reviewed on the basis of changed instructions. On a perusal of the rules read with the office memorandums, it is absolutely clear that for every one post that there is a promote, the next post has to be filled up by a direct recruitee or a deputationist.

9. The respondents constituted a Departmental Promotion Committee for considering departmental candidates for being promoted to the post of Senior Captain and by an order dated 19.02.2014, Shri Bindu Sethi and Shri Dilbag Singh were appointed as Senior Captain w.e.f. 19. 02.2014. Shri Bindu Sethi was however,

given notional promotion as Senior Captain w.e.f. 01.12.2011 by an order dated 12.03.2015. The order was pursuant to a judicial order.

10. One Air Vice Marshall V.S. Bharti assumed charge as Senior Captain (IG) in the BSF on deputation on 02.02.2015. The deputation came to an end on 02.02.2016. Air Vice Marshall V.S. Bharti, however, continued and later on the retirement of Shri Dilbag Singh in September, 2016, he was shifted to the vacancy created by the retirement of Shri Dilbag Singh.

11. There were two sanctioned vacancies of Senior Captain (Inspector General) of which one had been occupied by Shri Bindu Sethi and the other by Shri Dilbag Singh. On the retirement of Shri Dilbag Singh, the vacancy was filled up by Shri V.S. Bharti, a deputationist. Shri Bindu Sethi was a promotee.

12. We are unable to accept the submission that the first vacancy which accrued would have to be filled up by a promotee even though one post was already under the occupation of a promotee. In our view, the rules are to be interpreted to mean that the first vacant post available goes to a promotee and the next to a deputationist. The third post, if any, would go to a promotee, the 4th to a deputationist and so on.

13. We do not find any irregularity in the appointment of a deputationist to the post which fell vacant by reason of the retirement of Shri Dilbag Singh. We need not go into the question of whether the Air Wing V.S. Bharti has rightly or wrongly been appointed to the said post. We are of the view that the said post was to be filled up by a deputationist and the petitioner herein not being a deputationist cannot claim any inherent right to the said vacancy. In any case, as submitted by the respondents, the petitioner retired w.e.f. 31.12.2016.

14. This writ petition seeking orders on the respondents to consider the case of the petitioner for promotion to the post of Senior Captain has, therefore, become infructuous and the same is dismissed. The pending application is disposed of.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

February, 13 , 2017/gm