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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 7th February, 2019

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W.P.(C) 13600/2004

HARI OM GAUR

..... Petitioner

Through : Ms. Garima Sachdeva, Adv.
along with petitioner.

versus

UOI & ORS.

..... Respondents

Through : Mr. Manish Mohan, CGSC with
Ms. Manisha Saroha, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J. (ORAL)

1. The petitioner's grievance is that his claim for parity in recruitment rules and promotional opportunities, with the combatised stream of Aircraft Maintenance employees and officials, was denied by the Central Administrative Tribunal (CAT) in its impugned judgment.

2. The brief facts necessary for deciding this case are that the petitioner had initially worked with the Indian Air Force; after his retirement, he joined the Border Security Force (BSF), Air Wing as a Senior Aircraft Mechanic on 07.05.1991. He was appointed to the position of Senior Aircraft Mechanic (in the non-combatised, civilian stream) in the pay-scale of Rs.1400-2300 w.e.f. 07.05.1991. On

18.06.1991, a revision of the pay-scales was directed; the pay-scale for the post of Senior Aircraft Mechanic was revised to Rs.2000-3200/-.

3. On 15.06.1992, the Director General of BSF issued a circular conveying the approval of the Union Government for creation of additional posts, including 21 posts of Senior Aircraft Mechanic, which were to be treated as combatised positions. The circular *inter alia* stated as under :

“As per the Govt. of India, MHA order No.16/8/96/Pers/BSF/FP-II dated 18.6.91, the following additional posts have been created as given below :-

<u>S.No.</u>	<u>Name of Post</u>	<u>No. of Post</u>	<u>Pay Scale</u>
1.	Sr. Aircraft Mechanic	21	Rs.2000-3200
2.	Jr. Aircraft Mechanic	25	Rs.1400-2300
3.	Asstt. Aircraft Mechanic	10	Rs.1320-2040
4.	Sr. Radio Mechanic	1	Rs.2000-3200
5.	Jr. Radio Mechanic	4	Rs.1400-2300
6.	Asstt. Radio Mechanic	2	Rs.1320-2040

All the above mentioned posts are “Combatised” Posts.

The posts existing earlier to creation of these new posts are “Non Combatised” and the pay scales are lower.

All personnel who are in the Non Combatised Scale are requested to give the willingness for combatiseation so that they are able to draw the pay as per scales of Combatised post, subject to availability of vacancies in Combatised posts.”

4. In line with the combatisation order, the petitioner was asked to express his willingness to be borne in the cadre of combatised position of Senior Aircraft Mechanic. He however, by a letter dated

18.06.1992, sought clarifications with respect to the pay scale, procedure of fixation of seniority and date of retirement with respect to the personnels after combatisation. This was clarified to him on 31.12.1993, in the following terms:

- “(a) On opting for combatisation, you will be entitled to the pay scale of Rs.2000-3200 sanctioned by the Govt. of India for the post of Sr. Aircraft Mechanic for BSF Air Wing vide Order No.16/8/96-Pers/BSF/FP-II dated 18.6.91. However, the pay scale will be admissible from the date of your actual combatisation, subject to approval of Competent authority.*
- (b) Seniority will be fixed as per relevant Rules.*
- (c) On being combatised, you superannuation age would be 55 years.”*

5. Apparently, the petitioner did not opt for combatisation; he again sought a clarification. However, he expressed his willingness much later by a letter dated 17.05.1996, on the condition that he would be combatised from the date of joining the BSF i.e. 07.05.1991. It would be useful to recollect that the combatisation order was made on 15.06.1992. In these circumstances, the respondent BSF did not accede to his request.

6. The petitioner had earlier approached the CAT by filing O.A.No.1688/1993 challenging the disparity in pay, vis-à-vis those who held combatised positions in the Aircraft Maintenance stream and those who did not, like him. That application was allowed and the extracted portion of the circular dated 15.06.1992 (quoted above)

regarding pay scales was quashed in the following terms :

“5. In view of what has been held and discussed above, we find much force in the contentions of the applicants raised in this O.A. The O.A. is accordingly allowed with costs and the respondents are directed to pay to the applicants salary in the pay scale of Rs.2000-3200/- from the date salary in the same pay scale was paid to the combatised section of Senior Aircraft Mechanics. The costs are assessed at Rs.1000/- which shall be paid by the respondents. But it shall be open to the respondents to fix the responsibility for taking such wrong decision and recover the aforesaid costs from the person who had issued the erroneous orders referred to above.”

7. It appears that the Union approached this court, by filing a writ petition being W.P.(C)No.4351/1999 challenging the order of the CAT. That writ petition was allowed; this court noted that those holding combatised positions had to undergo additional tests and training like physical efficiency test, annual range classification, firing, battle inoculation, etc. and were deployed to meet the operational requirements during peace and war and were subjected to call for duty any time, unlike those holding combatised positions. On the basis of these factors and the Supreme Court judgment in *Union of India v. Ram Gopal Aggarwal & Ors.*, (1998) 2 SCC 589, this court allowed the writ petition and set aside the order of the CAT. As a consequence, the differential, as it were, created between the combatised personnel and non-combatised personnel, was restored. The order of the Division Bench was carried in appeal by Special Leave; that appeal (C.A.No.6529-30/2005) was dismissed on 15.12.2010 by the Supreme Court, which confirmed the view of this

court.

8. In the meanwhile, the petitioner had approached the CAT through a fresh proceeding being O.A.No.2180/2001. In that application, along with the petitioner, several others had joined. The claim essentially was to direct the respondent to consider the applicants/petitioners for promotion to the post of Junior Aircraft Engineer. It was contended furthermore that those called by the respondent BSF were junior to the petitioners, and that this was discriminatory given the earlier order of the CAT in *B.N. Shukla* (O.A.No.1688/1993). The CAT after discussing the previous position, especially the defence of the respondent BSF that two different streams existed i.e. combatised and non-combatised and those holding the combatised positions were treated differently and have to undergo more onerous responsibilities, dismissed the petitioners' applications.

9. The fundamental reasoning adopted by the CAT is as follows :

“It is an admitted position that there are two different streams i.e. Combatised and non-combatised. The persons who are holding the post of combatised are bound to wear uniform, undergo physical/arms training regularly. They also attend daily morning parade, annual firing, physical test etc., whereas the persons who are holding the post of non-combatised are not bound to wear uniform and do not come under the preview of BSF Act and Rules. It is also the fact that there are separate recruitment rules for the combatised and non-combatised persons and non-combatised persons are also different. It is not in dispute that as per the circular dated 16-6-1992 issued by the DF, BSF, the options had been invited from the personnel who were holding the posts of non-combatised for their willingness for combatised posts. The applicant has not given his option for changing the cadre from non-

combatised to combatised. Learned counsel for the applicant has also failed to establish this fact by giving any documentary proof that he had sent his willingness for change of cadre from non-combatised to combatised, as required under the aforesaid circular. In view of the above facts, the applicant cannot claim his promotion for the post which form part of combatised stream. He can only claim his promotion in his own stream i.e. Non Combatised.

7. For the reasons recorded above, we do not find any merit in the present case and the same is dismissed. According O.A.No.121/2001 and O.A. 2180/2001 are also dismissed. No costs.”

10. It is argued on behalf of the petitioner that even if the position, vis-à-vis essentially disparity of pay was to be accepted, denial of promotion, merely on the basis of an office circular or order, on the one hand and rank discrimination on the other; and the fact that the combatised personnel like one Mr. A.V. Balachandran and certain others were allowed to continue till the age of 60 years (which was not the retirement age of combatised Aircraft Maintenance personnel, who retired rather at 57 years), was a flagrant violation of Article 14 of the Constitution of India. It is therefore, contended that mere appellation of a combatised Senior Aircraft Maintenance mentioning that it was non-combatised *ipso facto* meant nothing given that the actual duties discharged by both, combatised and non-combatised, personnel were identical.

11. The previous discussion and the factual narrative clearly show that the petitioner's grievance in the earlier round of proceedings was with respect to what he categorized as the discriminatory nature of unequal treatment meted out to non-combatised personnel vis-à-vis

combatised personnel. The latter were given a higher pay grade. Furthermore, the latter were also entitled to different channel of promotion. Initially, no doubt, the petitioner succeeded before the CAT (in *B.N. Shukla & Ors.*, O.A.No.1688/1993); the CAT quashed the differential pay-scales. However, a Division Bench of this court set aside that order. This in turn meant that the disparity, which the office circular had brought in, was restored. The appeal against this court's order was dismissed by the Supreme Court on 15.12.2010. This placed a seal of finality on the challenge to the differential pay-scale and different terms and conditions including promotion.

12. So far as the question of grant of accelerated promotion or even promotion to combatised personnel is concerned, this court is of the opinion that since the essential differential is not only concerning pay scale but also other service conditions, the fact that combatised personnel could be promoted in their own stream on the higher post cannot now be questioned. The only surviving grievance that the petitioner could articulate at all stages of these proceedings is with respect to the so called parity on account of the fact that the combatised personnel like A.V. Balachandran retired at the age of 60 years. The record would reveal that A.V. Balachandran was slated to retire at the age of 57 years but on account of the interim orders, continued to serve in BSF till he attained the higher age of superannuation i.e. 60 years (which was not available to him under the rules but was only meant for non-combatised personnel). That *per se* could not have clothed the petitioner with a cause of action to complain that a combatised personnel was allowed to retire, upon

attainment of an age of retirement, identical to what was prescribed for him, and therefore, he was entitled to equal service terms and conditions.

13. In view of the above reasons, this court is of the opinion that no relief can be granted to the petitioner. This writ petition is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 07, 2019

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