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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: February 02, 2015

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W.P.(C) 4959/2014

RAJESH KUMAR GIRI & ORS.

..... Petitioners

Represented by: Ms.Rekha Palli, Mrs.Punam
Singh and Ms.Garima
Sachdeva, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.Arun Bhardwaj, CGSC with
Mr.Piyush Gaur, Ms.Apurva
Verma, Ms.Gunjan Bansal and
Mr.Rishi Kapoor, Advs. for
UI.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J (ORAL)

1. Recruitments to Group A and Group B posts in the Air Wing of the Border Security Force were as per the BSF Air Wing Officers (Group A and Group B posts) Recruitment Rules, 1999.

2. Concerning the posts of : (i) Chief Engineer/DIG, (ii) Deputy Chief Engineer/Commandant, & (iii) Senior Aircraft Maintenance/2-I/C, the eligibility criteria for promotion was :

- (a) **'Chief Engineer/DIG** : *Deputy Chief Engineer in the pay scale of ₹14300-18300 with five years regular service in the grade and possessing qualification : holder of a current Aircraft Maintenance License in category A & C or E, I & R on all aircrafts operated by*

BSF and total aircraft maintenance and experience of 14 years, out of which eight years experience as Aircraft Maintenance Engineer.

(b) **Deputy Chief Engineer/Commandant** : Senior Aircraft Maintenance Engineer/Senior Aircraft Radio Maintenance Engineer with five years regular service in the grade of ₹12000-16500 and possessing qualification : holder of current Aircraft Maintenance Engineer License in any two categories of Avionics Stream and Radio and total Aircraft Maintenance and experience of ten years, out of which five years' experience as Aircraft Maintenance Engineer.

(c) **Senior Aircraft Maintenance/2-IC** : Junior Aircraft Maintenance Engineer in the pay scale of ₹10000-15200 with five years regular service in the grade and possessing qualification : holder of a current Aircraft Maintenance Engineering license in category A & C in anyone Aircraft held by the BSF or AME License in anyone of the two categories being electrical or instrumental or in the alternative category A or C or two types of aircrafts on the inventory of BSF.

3. The petitioners joined service in the Air Wing of BSF as direct recruits to different posts on various dates in the Years 2006, 2007 & 2008.

4. Their grievance relates to the Recruitment Rules being amended, in that, being replaced by the BSF Air Wing Officers (Group A Combatized Posts) Recruitment Rules, 2011 being promulgated on November 11, 2011. The precise grievance, relating to the three posts, being as under:-

(a) For the post of Chief Engineer/DIG the eligibility criteria for promotion from the post of Deputy Engineer being now stipulated as : '02 years regular service in the grade with 20 years Group A service'.

(b) For the post of Deputy Chief Engineer/Commandant the eligibility criteria being now stipulated as : '05 five years regular service in the grade with 15 years Group A service'

(c) For the post of Senior Aircraft Maintenance Engineer the eligibility criteria being now stipulated as : *‘05 years service in the post of Junior Aircraft Maintenance Engineer with 11 years Group A service’*.

5. The grievance of the petitioners is apparent. The amended Recruitment Rules, apart from qualifying service in the feeder cadre posts, have introduced an element of service rendered in Group A posts, and for the post of Chief Engineer/DIG the requirement is of 20 years’ service in a Group A post. For that of the Deputy Chief Engineer/Commandant the requirement is of 15 years’ service in a Group A post. For that of the Senior Aircraft Maintenance Engineer the requirement is of 11 years’ service in a Group A post.

6. There exists an office memorandum dated December 31, 2010 issued by DOPT, concerning revision or amendments in the existing Recruitment Rules. Inter-alia, vide para 3.1.3 of the said Office Memorandum, under the heading ‘Retention of Existing Eligibility Service’ it is provided :-

‘RETENTION OF EXISTING ELIGIBILITY SERVICE

3.1.3 Where the eligibility service for promotion prescribed in the existing rules is being enhanced (to be in conformity with the guidelines issues by this Department) and the change is likely to affect adversely some persons holding the feeder grade posts on regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules, could be included in the revised rules.’

7. The petitioners made representations when the new Recruitment Rules were promulgated on November 11, 2011, highlighting therein, that while amending the Recruitment Rules their chances of promotion were being adversely affected. They drew the attention of the Director General, BSF to the OM dated December 31, 2010 issued by DOPT and in particular para 3.1.3 thereof.

8. The office of the DG BSF considered the representations of the petitioners and on January 21, 2014 took note of the fact that the vacancies could not be filled up in spite of advertisements issued inviting applications. We note a relevant extract from the note in question concerning promotion to the post of Senior Aircraft Maintenance Engineer. It reads :-

'It is submitted that total 17 posts of Senior Aircraft Maintenance Engineer are sanctioned in BSF Air Wing for smooth functioning of its Rotary and Fixed Wings. Out of which 04 posts are filled up by the cadre officers excluding 03 posts filled up on contractual appointment basis. Thus, there are net 13 vacancies of the incumbent post. In order to fill up the vacant post of Sr.AME/2IC, the posts were advertised several times in employment news papers/letters and BSF Website, but no eligible candidates has turned up for the posts due to which the vacancies are left unfilled.'

As per BSF, Air Wing Officers (Group-A & Group-B posts) pre-revised RRs 1999 (Flag-A); the post of Sr.AME/2IC sanctioned in BSF Air Wing in the pay scale ₹12000-375-16500 (pre-revised) (now revised as PB-3 ₹15600-39100 + Grade Pay of ₹7600) were required to be filled up by promotion failing which by deputation/absorption/short terms contract/re-employment failing which by direct recruitment. By promotion, officers holding the post of Junior Aircraft Maintenance Engineer having five years regular service in the grade of ₹10000-325-15200 are eligible for consideration.'

9. Relevant would it be to highlight that the Director General, BSF drew attention of the Competent Authority in the Ministry of Home Affairs to a very relevant fact, being the department not being able to find any suitable candidate who could qualify for the post in question as per the amended Recruitment Rules because of the introduction of another eligibility criteria for the post : being 11 years' service in a Group A post, apart from 5 years' service in the post of Junior Aircraft Maintenance Engineer and of the 17 posts, 10 not being filled.

10. The response of the Ministry of Home Affairs, declines to do so, and while expressing regrets to concur with the proposal submitted by the Director General, BSF, gives the reason as under:-

‘According to BSF the requirement of 20 years of service in group A has been introduced in the RRs 2011, on the consideration that the promotional prospects of GD cadre officers from the rank of Commandant to the rank of DIG on completion of 20 years of Group A service. DOPT’s OM’s dated 25.03.1996 and 31.12.2010 provide “Where the eligibility service for promotion prescribed in the existing rules in being enhanced (to be in conformity with the guidelines issued by this Department) and the change is likely to affect adversely some persons holding the feeder grade posts on regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules, could be included in the revised rules.” Such a provision should have been made at the time of revision of the RRs in 2011 but it was not done.’

11. Suffice it to state that the Ministry of Home Affairs has not found favour, after recognizing the problem faced by the Border Security Force of not being able to fill up the posts due to the newly inserted condition of eligibility for the posts in question regarding service rendered in a Group A post and hence the desirability of putting a note in the Recruitment Rules in conformity with para 3.1.3 of the DOPT OM dated December 31, 2010, on the sole ground that such a provision should have been made in the Recruitment Rules when they were amended.

12. We are more than a little bit surprised from the response for the reason the response overlooks the fact that Recruitment Rules can always be amended prospectively and if need be even retrospectively. The Ministry of Home Affairs, having conceded to the fact that it was by oversight that the DOPT OM dated December 31, 2010 was overlooked when the Recruitment

Rules of the year 2001 were promulgated, and that the eligibility service for promotion prescribed in the existing Rules stood enhanced and the change adversely affected persons holding the feeder grade posts on regular basis, it became necessary to pen a note in the new Recruitment Rules to the effect that the eligibility service shall continue to be the same for persons holding the feeder post on regular basis on the date of notification of the revised Rules, as per para 3.1.3 of the DOPT OM dated December 31, 2010.

13. It hardly matters whether the amendment is made prospective or retrospective for the reason the posts with which we are concerned continue to be available.

14. Since the decision taken by the Cadre Controlling Ministry is on a wrong appreciation of the legal position we dispose of the writ petition issuing a direction to the Ministry of Home Affairs to process the recommendations made by DG, BSF and take corrective action, in that, accept the proposal to amend the BSF Air Wing Officers (Group A Combatized Posts) Recruitment Rules, 2011 by inserting a note therein to give effect to para 3.1.3 of the DOPT OM dated December 31, 2010, and for which direction we note that the Ministry of Home Affairs is the Cadre Controlling Ministry (The Rules of the year 1999 and the ones promulgated in the year 2011 have been notified by the Ministry of Home Affairs). Thereafter, case of the petitioners qua promotion be considered as per the Rules of 2011 with the note inserted therein.

15. No costs.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

FEBRUARY 02, 2015
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