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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 15.09.2015

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W.P.(C) 6993/2013

BHAG SINGH SAIN

..... Petitioner

Through: Mr S.N. Kaul, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Vivekanand Mishra, Adv for
respondents 1 and 2

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The writ petitioner claims a direction that he should be considered for promotion to the post of Deputy Inspector General (DIG) in the Special Service Bureau (which has now been transformed into Sashastra Seema Bal ('SSB') with effect from 2001). The petitioner relies upon a judgment and order of this Court dated 04.07.2008 in *W.P.(C) No.330-332/1988 (M.C. Sharma & Bhag Singh Sain vs. Union of India and Ors)*. The question involved in that case was whether the petitioners were eligible for consideration for promotion to the post of Deputy Inspector General/Deputy Director in SSB.

2. The essential facts are not in dispute. The petitioner joined the services of the SSB; he was released from the Army, after serving the

Emergency Commission. Initially, he joined the SSB as a Company Commander. He was subsequently promoted as the Deputy Commandant on 27.06.1977 in the pay scale of Rs.1200-1700/- and later again was Commandant on 25.06.1981 in the pay scale of 1200-1700/- plus special pay of Rs.100/-. He had approached this Court earlier in *W.P.(C) No.330-332/1988*, complaining that the respondents wrongly overruled his claim for promotion to the post of DIG. At the stage when he filed the writ petition in 1988, the relevant promotion rules were amended with effect from 1992. Prior to 1992, the feeder cadre of posts for promotion as DIG were from amongst Assistant Directors/Area Organizers with eight years service or those holding equivalent grade. The SSB thus contended that Commandant/Deputy Commandant did not hold such equivalent grades and consequently denied the petitioner's consideration for promotion to the post of DIG. This Court rejected the SSB's contention. One of the contentions made was that the express mention of Commandants in the subsequent amendment in 1982, negative the intent of the rule making authority to include and render eligible Deputy Commandants/Commandants. However, all these contentions were comprehensively rejected. The Court, in this regard, rendered its findings in para 20. The relevant part of the said judgment is extracted below:-

“Though there was a dispute as to whether nature of duties of civilian Area Organizers and Commandants were same, the petitioners have placed on record order No.EA/SP/38/66 dated 23.7.88 of the Cabinet Secretariat (Department of Cabinet Affairs) Government of India. This order is issued in terms of Rule 9(1) of the IPS (Pay) Rules, 1954, Vol.I. It is stated in the order that the President is pleased to declare the post of

Commandant and Dy.Commandant/Assistant Commandant of SSB Battalions and Training Centre as equivalent in status and responsibilities to that of Assistant Director in the Intelligence Bureau and Superintendents of Police in Special Police Establishments respectively as specified in Schedule III thereof. Thus when the Commandant/Dy.Commandants etc. are treated as equivalent in status as Assistant Director in Intelligence Bureau and Superintendents of Police in Special Police Establishments, they would on this reckoning enjoying equivalent grade. It is clear from the above that in the 1977 Rules the expression 'or' in 'equivalent grade' would include Commandant/Dy.Commandants who were in the grade of Rs.1,200-1,700. It was equivalent to Area Organizers. The expression 'grade' in these rules thus has reference to equivalent pay scale enjoyed by the Commandants/Dy. Commandants who were performing the same duties. In fact Dy. Commandants and Commandants were initially in a grade higher than Area Organizers and later were placed in the same grade as Area Organizers."

3. The respondents were aggrieved and carried the matter in appeal by Special Leave being SLP (C) No.6069-6070/2009 (**Union of India vs. M.C. Sharma**) to the Supreme Court. However, the Special Leave Petition met with the same fate and was rejected on 12.02.2013. The Court directed that the SSB, i.e., Union of India "*consider the case of respondents in the light of the directions issued by the High Court expeditiously.*" In this background, the respondents claimed to have re-considered the matter and communicated on 11.09.2013 that the petitioner was not eligible. The relevant portion of the order impugned in these proceedings reads as follows:-

"3. You were promoted to the rank of Commandant w.e.f. 25.0.1981 and since, you have not completed 08 years of service in the rank of Commandant on the date of DPC held on 20.08.1987, the Review DPC which held on 07.06.2013 has

declared you as 'Ineligible' for promotion to the rank of DIG in view of not completing the requisite residency period of 8 years in the rank of Commandant in accordance with the provisions contained in SSB (Senior Executive) Service (2nd Amendment) Rules, 1982 on the date of convening DPC i.e on 20.08.1987.

4. The Review DPC has acted upon according to the statutory rules which were in force on the date of convening DPC i.e. 20.08.1987. In view of this, there appears that neither the respondent has defied the directions of Hon'ble High Court and Apex Court, nor any injustice has been made towards the petitioners while convening review DPC on 7.06.2013 and conveying the decision thereof on 02.07.2013. ”

4. The petitioner's counsel has relied upon the findings recorded by this Court in the previous writ petition and stated that the position adopted by SSB is untenable. Once the Court renders a finding that those holding the post of Deputy Commandants/Commandants were equivalent in rank to the feeder category, then existing, i.e., Assistant Director/Area Organizer, there could not have any second opinion as to the petitioner's eligibility. The impugned order, stressed counsel, seeks not only to confuse the issue, but, in fact, attempts to re-visit the same arguments, which were rejected by the Court in the first instance. Emphasizing that the petitioner had worked for eight years as Company Commander and was continuously holding the post of Deputy Commandant and later on Commandant from 1977 onwards, it was highlighted that the SSB's omitting to consider him along with his juniors for promotion was discriminatory and without authority of law. Counsel for the respondent urged that Area Organizers and Commandants were two different posts with differing duties and responsibilities as a Commandant. The petitioner could not have been treated at par with Area Organizers/Assistant Directors in respect of diverse matters such as

command, control and responsibilities. This was sought to be supported by the fact that the Area Organizers are governed by separate set of recruitment rules and separate regime exist in regard to the disciplinary matters. Furthermore, the petitioners have not claimed equivalent in the grade to Area Organizers/Assistant Director, the later were civilian position.

5. It is evident from the factual narrative itself that what was put in issue in the earlier round of proceeding was the eligibility of the petitioner for consideration for the post of Deputy Inspector General in the SSB. There was no confusion as to the rank and post he held initially as Deputy Commandant with effect from 1997 and later as a Commandant with effect 25.06.1981. It is equally not in dispute that the petitioner claims to have been aggrieved—a grievance which he articulated as far back as in 1988 on account of the omission of the respondents to consider his name along with those of his juniors in the DPC held in 1987. Given these set of facts and the findings rendered by this Court in the previous round of litigation which was categorical both as to the petitioner's entitlement—as holder of an equivalent post as well as to his eligibility, the recalcitrant attitude shown by SSB in denying promotion is one which not only could have been obviated, but in fact needlessly contentious. All that was required by SSB was to give effect to the order and to convene a review DPC which ought to have been taken into consideration the petitioner's case record at the relevant time when his juniors were promoted in 1987. Instead, the order impugned in this case dated 11.09.2013 was issued. The respondents belatedly have sought to overreach the directions of the Court and re-visit the issue by reciting the same arguments that were rejected in the first instance, i.e., the change of

rules with effect from 1982, whereby the Commandants were given a separate quota (15% for promotion to the post of DIG).

6. For the above reasons, this Court is of the opinion that the petitioner is entitled to be considered for promotion with effect the date his juniors were promoted. The respondents shall take immediate steps to convene the review DPC and consider the petitioner's record as it existed on 20.08.1987 when the first DPC was held. The result of the examination by way of promotion or otherwise should be communicated to the petitioner within four weeks from today. In case he is granted promotion, the respondents shall ensure that all such consequential benefits with effect from the date the petitioner's juniors were promoted is also afforded to him. Likewise, in such eventuality, the petitioner's pension order shall also be reviewed with appropriate adjustment given the recommendations of the 5th and 6th Pay Commissions which would result in upward revision of pension. Time for compliance with regard to the consequential orders is eight (8) weeks from today.

7. It is to be noted that following specific directions were issued by this Court in *W.P.(C) No.330-332/1988*:

*“At the same time, direction is given to the respondents to hold Review DPC and consider the cases of the petitioners for promotion to the post of DIG treating them as **eligible**.”*

(Emphasis supplied)

It is apparent that this Court had already directed the respondent to treat the petitioner as eligible, but, despite that, the petitioner's candidature for promotion to the rank of DIG was rejected on the ground of being ineligible.

8. In the circumstances, the respondents are directed to pay ₹ 50,000/- as costs to the petitioner within four weeks. The writ petition is allowed in above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

**SEPTEMBER 15, 2015
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