

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

Judgment reserved on : January 17, 2017
% Judgment pronounced on: February 28, 2017

+ Writ Petition (C) 7677/2016

SR. CPT. (IG) BINDU SETHI Petitioner
Through : Mr. Ankur Chibber, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through : Ms. Shiva Lakshmi, CGSC with
Mr. Sriram Krishna and
Mr. Ruchir Ranjan Rai, Advocates

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

J U D G M E N T

A. K. CHAWLA, J.

1. Petitioner, who came to be promoted as Sr. Captain (IG) in BSF after a protracted litigation, by the writ petition now filed, seeks issuance of a writ of certiorari to quash a communication dated 3.5.2016 issued by the office of the respondent no.2 declining to entertain representations made by the petitioner and in the context whereof, the petitioner seeks directions by way of a writ of mandamus for being given the charge of Inspector General (Air) and Accountable Manager in place of the

respondent no.4 AVM V.S. Bharti, being the senior most Sr. Captain (IG). Simultaneously, the petitioner has sought directions for the respondent no.4 being repatriated to his parent department.

2. Instant writ petition proceeds on the premise that the petitioner, who joined the Air wing of BSF as pilot in the year 1992, on the completion of the flying experience, was appointed as co-pilot/commandant on 24.3.1995 and was endorsed as Captain on B 200 (Super King Aircraft) and given Airline Transport Pilot License (ATPL) in the year 1997 and was promoted as Captain/Pilot (DIG) on 26.9.01. According to the petitioner, he had become eligible for being considered for promotion as Sr. Captain (IG) on completion of four years. To espouse his cause, he filed a CWP no.4840/10 in the year 2010 for being promoted as Sr. Captain (IG) w.e.f. 1.1.2009. This writ petition came to be disposed off by the Division Bench of this court vide judgment dated 26.9.2014, whereby, it was held that the petitioner was entitled to retrospective promotion w.e.f. 1.12.2011 and taking into consideration the stand taken by the respondents in an affidavit; various directions given by the court from time to time and more particularly, a statement made by the Govt. counsel on 11.5.2011; show cause notice on a contempt petition came to be issued to the respondents as to why the contempt proceedings be not initiated. During the course of such proceedings, the petitioner came to be promoted to the rank of Sr. Captain (IG) w.e.f. 1.12.2011 vide communication dated 12.3.2015 and the respondents also tendered an unconditional apology for the delay in holding the DPC. An issue is

however said to have occurred again. According to the petitioner, with his promotion effected w.e.f. 1.12.2011, he was senior to respondent no.4 AVM V.S. Bharti and therefore, it was his entitlement to be posted as Sr. Captain (IG) (Air) and Accountable Manager in place of AVM V.S. Bharti. According to the petitioner, the very appointment of AVM V.S. Bharti as Sr. Captain (IG) (Air) on deputation, was illegal and contrary to the recruitment rules. It is said that the appointments of petitioner and the respondent no.4 AVM V.S. Bharti to the post of Sr. Captain (IG) were to be governed by the recruitment rules dated 7.9.1999, which provided for promotion to the post of Sr. Captain (IG) by way of promotion only from amongst the Captain/Sr. Operating Officer and not on deputation as per the amended/revised rules dated 12.11.2011, which provided for 50% of the posts be filled by promotion and 50% by way of deputation. According to the respondents however, the post of Sr. Captain/Pilot (IG) held by the petitioner as well as AVM V.S. Bharti (deputation) in BSF Air Wing were similar posts, having identical pay band, grade pay and similar rank status and that, the chain of command of both the officers was identical and both the officers were under the overall supervision of an officer of the rank of ADG (Logistics). Ld. Single Judge hearing the contempt petition, refraining to get into the rival contentions, in view of the tender of unqualified and unconditional apology for the delay, closed the contempt proceedings and discharged the notices issued. Liberty was however reserved to the petitioner to challenge the appointment of AVM V. S. Bharti or seek any other or further relief, to which he may be entitled in accordance with law. Contempt proceedings so came to be disposed off vide order dated 4.12.2015. As a sequel to such events, the petitioner has

filed the instant writ petition, as the respondents vide impugned communication dated 3.5.2016 declined to entertain the representation made by the petitioner for the purpose and also informed him that any further representation on the same subject and issue will be ignored in the light of the instructions contained in DoP&T OM No. 11013/4/2010-Estt.(A) dated 19.4.2010. In this background, the petitioner has filed the petition for the relief prayed for. According to the respondents, in compliance of the order dated 26.9.2014 of this Court and in further compliance of the order of MHA dated 9.3.2015, the petitioner was promoted retrospectively from Captain Pilot (DIG) to the rank of Sr. Captain (IG) BSF Air Wing w.e.f. 1.12.2011 and that, in the meantime, vide MHA order dated 14.1.2015 conveyed approval of the President for appointment of AVM V. S. Bharti, YSM, VM, VSM of Indian Air Force to the post of Sr. Captain (IG) in BSF Air Wing. It is stated that the said officer was commissioned in Indian Air Force on 11.12.1981 and on repatriation of AVM J.S. Kler (IG) in BSF to his parent cadre IAF w.e.f. 1.2.2015, AVM V.S. Bharti, YSM, VM, VSM assumed the charge of Sr. Captain (IG) in BSF Air Wing on 2.2.2015 on deputation basis from IAF for a period of one year from the date of assumption of charge of posts or till 22.1.2016, whichever is later. Appointment of the respondent no.4- AVM V.S. Bharti as IG (Air)/Accountable Manager, as per the amended/revised RRs 2011 on deputation basis is said to have been made on the basis of critical operational and functional requirement of BSF Air Wing, which is also supported by MOU signed between MHA and Ministry of Defence, though both the posts held by the petitioner and the respondent no.4 AVM V.S. Bharti were similar posts, having identical pay

band, grade pay and similar rank status and that, both the officers were working under the overall supervision of ADG (Logistics). As, by the present writ petition, the petitioner seeks to occupy the office of IG (Air)/Accountable Manager, presently occupied by the respondent no.4-AVM V.S. Bharti, on account of notional promotion given to him w.e.f. 1.12.2011, one does not require to advert to the other factual matrix of the diverse appointments and the upgradation of one post of Sr. Captain (IG) (Air). During the course of hearing, it was brought to our notice that the deputation of the respondent no.4-AVM V.S. Bharti has been extended for a period of two years w.e.f. 2.2.2016 or until further orders, whichever is earlier.

3. Admittedly, both the petitioner and the respondent no.4 are working on the same post, which carries the same emoluments and the perks. Petitioner however, feels aggrieved of the fact that the organisation/management chart of BSF Air Wing shows that there existed two posts of IG rank, out of which, one is of IG (Air)/Accountable Manager and that is above the other, as per the pyramidal structure. But for pointing out for such administrative organisational/managerial set up, nothing comes to be pointed out for the office of IG (Air)/Accountable Manager being a superior office than the office of IG (Air) occupied by the petitioner. How does the additional responsibilities or an added command vested in an office in pursuance of an administrative instruction be construed to be infringement of any fundamental right of the petitioner, nothing has come to be seriously urged. What is strenuously contended is that in common parlance the office of IG (Air)/Accountable Manager as

per the hierarchical chart, is considered to be a superior office than IG (Air) and for that reason, the petitioner has been put in derogation inasmuch as, he is senior to the respondent no.4. The respondents say that the office of the IG (Air)/Accountable Manager has been given to the respondent no.4-AVM V.S. Bharti on the basis of critical operational and functional requirement of BSF Air Wing, which is also supported by MOU signed between MHA and Ministry of Defence. It is an administrative decision, which, prima facie, we do not find to be either discriminatory or based on illogical or irrational approach. Should this Court, in exercise of its jurisdiction under Article 226 get into the discreet details of such an administrative decision or instruction, is thus the foremost question for consideration before us. Having given our thoughtful consideration, we do not see infringement of any fundamental right of the petitioner in such a decision. As said earlier, the office of IG (Air)/Accountable Manager, is not a post higher than that occupied by the petitioner nor does it attract any additional emoluments and/or perks nor any such has come to be pointed out during the course of hearing. Organisational/managerial chart *ipso facto* cannot be a basis to draw distinction of office of IG (Air)/Accountable Manager being superior to that of the office occupied by the petitioner as IG (Air). Suffice to say, both the petitioner and the respondent no.4 are shown to be working under the overall supervision of ADG (Logistics). We therefore, refrain to interfere on an issue, which is of purely administrative nature. During the course of hearing, it has come to be pointed out that the deputation of the respondent no.4 has come to be extended for a period of two years w.e.f. 2.2.2016 and a communication that effect was also placed before this

Court, but, no challenge has come to be made. The petition becomes infructuous to that extent.

4. In view of the foregoing, we do not find any merit in the writ petition. Dismissed.

ANIL KUMAR CHAWLA, J.

INDIRA BANERJEE, J.

FEBRUARY 28, 2017
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