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

Reserved on -10.07.2018.
Date of Decision-02.08.2018.

+ W.P.(C) 6865/2017

AJEET KUMAR Petitioner

Through Mr.Ankur Chibber, Adv.

versus

UOI AND ORS. Respondent

Through Mr.Vivekanand Mishra, Senior
Panel Counsel with Mr.Vipul
Agrawal, Adv.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The petitioner, a Deputy Commandant in the Border Security Force, has preferred the present writ petition seeking quashing of the order dated 28.04.2017, whereby his representation to treat his tenure from 15.09.2011 to 25.11.2011 at the Frontiers Headquarters (Personnel Directorate), DG Secretariat and from 23.11.2011 to 01.04.2015 at the Frontier Headquarters (Provisional Directorate), New Delhi as mandatory field service, has been rejected and consequently, he has been declared ineligible for promotion to the rank of Second-In-Command (hereinafter referred to as "2IC") for the vacancy year 2016-2017. In the alternative, the petitioner seeks a

direction to the respondents to relax the mandatory requirement of 2 years of service in a duty battalion in his case, and thereafter consider him for promotion to the rank of 2IC w.e.f. 21.10.2016, the date on which his batch-mates were promoted to the said rank. Furthermore, in the event of being promoted to the rank of 2IC, the petitioner also seeks grant of all consequential benefits, if found fit for the same.

2. The facts as emerge from the record that are necessary for adjudicating the present petition are that the petitioner, having joined the BSF as an Assistant Commandant on 30.09.2000, was initially posted to 59 Battalion, BSF in Jammu and Kashmir. Thereafter, the petitioner was transferred to STC, BSF, North Bengal, where he joined his duty on 26.06.2007. It emerges that during his posting at STC, BSF, North Bengal, the petitioner was promoted to the rank of Deputy Commandant on 01.02.2008 and he was to complete his normal tenure of 3 years on 01.02.2011, when he submitted a request for being retained in the same STC for another period of one year. While seeking an extension of one year at STC, BSF, North Bengal, the petitioner gave an undertaking *inter alia* that if his tenure was extended as requested, he would not make any claim in the event his empanelment in the rank of 2IC was imperiled or delayed due to non-completion of the mandatory service of two years in a duty battalion, as prescribed in the Recruitment Rules. For the sake of ready reference, the relevant portion of the petitioner's aforesaid undertaking is being reproduced hereinbelow:-

“2. I am aware of the fact that two years service in a duty Bn as mandatory is essential eligibility criteria for

promotion to the rank of Second in Command as per notified recruitment Rules of Group 'A' GD Officers.

3. In the event of my extension of one year tenure in STC BSF North Bengal and in the event of empanelment to the rank of 2IC being imperiled or delayed due to non-completion of mandated Bn tenure as prescribed in the RRs, I will not make any claim or hold the BSF liable for consequential service and monetary loss as a sequel there to. The risk would be mine only. Further I am willing for one year extension in my tenure at this STC NB."

3. It transpires that the petitioner's aforementioned request for extension of tenure was not fully accepted and vide Signal dated 29.08.2011 itself, he was directed to report to the Frontier Headquarter (Personnel Directorate), DG Secretariat before 15.09.2011 by way of attachment, whereafter, vide Signal dated 14.10.2011, he was, posted to the same Frontier Headquarter (Personnel Directorate), DG Secretariat in public interest. However, shortly thereafter, the petitioner's posting to Frontier Headquarter (Personnel Directorate), DG Secretariat was cancelled and vide Signal dated 23.11.2011, he was posted to Frontier Headquarter (Provisional Directorate), New Delhi as DC (Transport) again in public interest.

4. After completing 3 years of service at the Frontier Headquarter (Provisional Directorate), New Delhi, vide Signal dated 01.04.2015, the petitioner was transferred to the Eastern Command for being posted to any of the units in the said Command. Accordingly, vide Signal dated 01.05.2015, the petitioner was adjusted in 123 Battalion, BSF at Shillong. However, it appears that despite issuance of the said posting order, the petitioner was not relieved from his duties at the

Frontier Headquarter (Provisional Directorate), New Delhi and was finally relieved therefrom only on 30.03.2016, whereafter he immediately reported to the 123 Battalion, BSF at Shillong on 31.03.2016.

5. It further transpires that after the petitioner had already been promoted as a Deputy Commandant, the High Court while dealing with a batch of writ petitions entitled *Ajay Suryavanshi & Ors. vs. Union of India & Ors.* [WP(C) No.1611/2015], directed the respondent vide order dated 22.04.2015, to carry out a cadre review in the BSF within a period of 6 months. In compliance with the said directions, the respondents carried out a cadre review and issued an order dated 21.09.2016, whereby 264 posts of 2IC were created. The result thereof was that the petitioner, who in the normal course, would not have been eligible for being considered for promotion to the rank of 2IC at that time, suddenly came within the zone of consideration for promotion.

6. Apprehending that he may not be considered for promotion to the rank of 2IC along with his batch-mates because he had been posted at the Frontier Headquarter, BSF only since the year 2011, the petitioner submitted a representation dated 08.10.2016 to the respondents to consider him as eligible for promotion to the rank of 2IC on the ground that he was not at fault for not completing the mandatory field service and on his part, he had carried out all the task assigned to him by the organization to the utmost satisfaction of his superior officers. Even though the petitioner's aforesaid representation was duly forwarded with recommendations made by

both, the Deputy Inspector General, SHQ, BSF, Jowai and Inspector General, HQ Meghalaya, FTR, BSF, SHG, he was not promoted to the aforesaid rank and the DPC declared him ineligible for promotion on the ground of non-fulfillment of the mandatory duty battalion service, whereas his batch-mates, including some of his juniors, were promoted to the rank of 2IC w.e.f. 21.10.2016.

7. It may be noted here that the aforesaid requirement of two years of service in a duty battalion was introduced by the BSF, for the first time, by virtue of the Border Security Force (General Duty Officers) Recruitment Rules, 2001. Aggrieved by the said requirements, some of the officers of the BSF, who were unable to fulfill the condition of two years of service in a duty battalion on account of their being posted to static stations in public interest, had approached this Court by way of W.P.(C) No. 21900/2005 entitled *Ashok Kumar vs. UOI & Ors.* The Court while noticing that there was a sudden increase in the number of vacancies, observed that matters pertaining to transfer/posting are not in the hands of the concerned officer, but is the prerogative of the department and, therefore the department has to ensure that it affords an opportunity to all its officers to become eligible for promotion by serving in duty battalions. In view of the above, while allowing the said petition vide judgment dated 27.10.2009, the Division Bench directed the respondents to consider the issue pertaining to promotion to the rank of 2IC by relaxing the aforementioned requirement in respect of those officers who could not serve in a duty battalion on account of being posted in public interest to static stations.

8. The decision in the case of **Ashok Kumar (supra)** was followed by a judgment dated 02.08.2011 in the cases of **S. Arul Raj vs. Union of India & Ors.** [W.P.(C) No.2266/2011] and judgment dated 27.09.2012, **Chamman Singh vs. Union of India & Ors.**[W.P.(C) No.8046/2011], wherein similar directions were issued, after quashing the decision of the Central Government declining to relax the eligibility condition of service of two years in a duty battalion. The Court was constrained to observe that the respondents had not only failed to act in accordance with the principles laid down in its judgment dated 27.10.2009 in the case of **Ashok Kumar (supra)**, but even their action in not remedying the manner in which they had acted, had necessitated filing of unwarranted writ petitions.

9. Pursuant to the aforesaid observations of the Court, the petitioner's representation, upon being duly recommended by the concerned DIG/IG, was considered by a board of officers constituted by the Directorate General, BSF for examining requests of similarly situated officers seeking relaxation in respect of the requirement of mandatory field service. The said board of officers duly recommended the petitioner's case for grant of relaxation in respect of the requirement of mandatory field service on opining that he was given static postings in public interest, due to which he was not at fault for being unable to complete his mandatory field service. Despite the board of officers specifically recommending grant of relaxation to the petitioner, the IG (Personnel) did not accept the said recommendation and rejected his request for relaxation vide the impugned order dated 28.04.2017. In these circumstances, the petitioner has approached this

Court seeking *inter alia* quashing of the aforesaid order dated 28.04.2017.

10. Upon notice, the respondents have filed their counter affidavit and have also produced the relevant records before us, which have been perused. The only plea taken by the respondents in their counter affidavit is that despite knowing that he had not completed his mandatory field service, the petitioner had submitted an undertaking for his retention in the STC, North Bengal on 23.02.2011. It is further contended that even after being posted to the Frontier Headquarters, Delhi w.e.f. 24.10.2011, where the petitioner had remained till 30.03.2016, he had never requested for posting to a duty battalion and in these circumstances, the respondents were fully justified in rejecting his representation for relaxation of the requirement of mandatory field service.

11. Having heard the learned counsels for the parties at length and on perusing the record, we find that there is no dispute about the fact that as per the applicable Recruitment Rules (i.e., BSF Group 'A' (General Duty Officers) Recruitment Rules, 2015), to be eligible for promotion to the rank of Second-in-Command (2IC), it is mandatory for a Deputy Commandant to not only have 5 years of regular service in the said grade with a total of 10 years in Group 'A' service, but have also completed 2 years' of service as a Deputy Commandant in a duty Battalion or a Regiment Commander in the BSF Artillery. The only exceptions to the aforesaid rule are in relation to the Deputy Commandants who are in the Field 'G' team and Field Vigilance team

of the Border Security Force and those who have rendered services in the Special Protection Group and National Security Guard.

12. It may be appropriate to refer to Entry 7 in the Schedule appended to the aforesaid Rules, which is reproduced hereinbelow for the sake of ready reference:-

(1)	(2)	(3)	(4)
7. <i>Second -in- Command (General Duty)</i>	269 * (Two hundred sixty nine) (2015) (*Subject to variation dependent on workload)	<i>General Central Service Group 'A' Gazetted, Non-Ministerial</i>	<i>Pay Band-3 (Rs.15,600-39,100 and Grade Pay of Rs.7,600/-</i>

(5)	(6)	(7)	(8)	(9)
<i>Selection</i>	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>

(10)	(11)
<i>By promotion</i>	<i>Promotion- Deputy Commandant of Border Security Force with five years regular service in the grade with total ten years Group 'A' service and possessing the following qualification, namely:-</i> <i>(a) should have successfully completed pre-promotional course or courses as prescribed by the Director General, Boarder Security Force from time to time;</i> <i>(b) two years service as Deputy Commandant in a duty Battalion or as Regiment Commander in Border Security Force Artillery except for those Deputy Commandants who are in Field 'G' team and Field Vigilance team of Border Security Force, service rendered in Special Protection Group and National Security Guard;</i> <i>(c) Medical Category SHAPE-I</i>

	Note-1 The service rendered on deputation posting/attachment basis in National Training Institutions including Boarder Security Force Academy Tekanpur will be treated as 505 of the required field service for the purpose of promotion and no relaxation in respect of the remaining 50% mandatory service will be granted in such case. Note -2 Where juniors who have completed their qualifying or eligibility service are considered for promotion their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service for more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next grade along with their Juniors who have already completed such qualifying or eligibility service. Note-3 For the purpose of computing minimum qualifying service for promotion, the service rendered on a regular basis by an officer prior to the 1st January 2006, or the date from which the revised pay structure based on the sixth Central Pay Commission recommendations has been extended, shall be deemed to be service rendered in the corresponding grade pay or pay scale extended based on the recommendations of the Commission except, where there has been merger of more than one pre-revised scale of pay into one grade with a common grade pay or pay scale, and where this benefit will extend only for the post(s) for which that grade pay or pay scale is the normal replacement grade without upgradation.
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(12)	(13)
Group 'A' Departmental Promotion Committee for considering Promotion (1) Director General - Chairman Border Security Force (2) Joint Secretary - Member Ministry of Home Affairs	

(3) <i>Inspector General</i> <i>Border Security Force</i>	- <i>Member</i>	
(4) <i>Inspector General</i> <i>Border Security Force</i>	- <i>Member</i>	

13. From a perusal of the aforesaid Rules, it is evident that that even though the requirement for being eligible for promotion to the post of 2IC is 2 years of service in a duty battalion, in view of Note 2 thereof, in cases where juniors are being considered for promotion, their seniors would also be considered eligible for the same if they are not short of the requisite qualifying or eligibility service by more than half of such service or by two years, whichever is less. The result thereof is that the petitioner would have to be treated as eligible for promotion to the rank of 2IC with his batch-mates even if he had completed only one year of service in a duty battalion at the time of his consideration by the DPC.

14. Thus, the only question left for us to examine now is whether in the light of the aforesaid Rule position, as already examined in **Ashok Kumar** (*supra*) and **Chamman Singh** (*supra*), would the petitioner, who admittedly does not fulfill the requisite field service, be entitled to relaxation so as to be eligible for promotion to the post of 2IC.

15. Having considered the facts of the case as noted above, what emerges from the record is that the petitioner's posting profile as a Deputy Commandant shows that from 01.02.2008 to 15.09.2011, he was posted at the STC, BSF, North Bengal, which is a static station. Thereafter, he was posted to the Frontier Headquarters, initially on attachment from 15.09.2011 and thereafter, by way of regular posting

from 24.10.2011 to 30.03.2016, which posting was in public interest. It is only w.e.f. 30.03.2016 that the petitioner was relieved from the Frontiers Headquarters and was, thus, able to join 123 Battalion, BSF at Shillong on 31.03.2016, even though his posting to 123 Battalion had been issued almost a year ago, on 01.04.2015.

16. The issue, thus, would be whether the petitioner can be faulted for not being able to complete the requisite period of service of one year in a duty battalion during his 8 years of service as a Deputy Commandant or whether his non-postings to a duty battalion in those 8 long years is attributable to the respondents.

17. The respondents, in their counter affidavit as also during arguments, have laid great emphasis on the fact that the petitioner had, while seeking a one year extension of his tenure in the STC, BSF, North Bengal, given an undertaking on 23.02.2011, clearly stating that he will not hold the BSF liable in case his empanelment to the rank of 2IC is delayed due to the non-completion of the mandated battalion tenure. They have therefore contended that it is the petitioner himself who is to be blamed for not having completed the mandatory field service.

18. Having carefully examined the petitioner's aforesaid undertaking, we are unable to comprehend how the same furthers the case of the respondents or makes the petitioner ineligible for relaxation. The undertaking furnished by the petitioner was clearly conditional on his being granted an extension of one year in the STC, BSF, North Bengal. Thus, the same could be held against him had he been permitted to remain at the STC, BSF, North Bengal for a period

of the year i.e. till 31.01.2012. However, he was retained there only till 15.09.2011. In view of the said fact position the undertaking could not be used against the petitioner to deny him relaxation for the period beyond 15.09.2011, when the admitted facts clearly show that all the petitioner's postings were made in public interest and he had never made any request to cancel his posting, with the sole exception of his request made in February, 2011 for retention in the STC, North Bengal for another year, which request was also turned down by the respondents as he was transferred out from the STC, North Bengal within six months i.e. on 15.09.2011.

19. The respondents have failed to give any justification as to why after being promoted as a Deputy Commandant on 01.02.2008, the petitioner was not posted to any duty battalion for 8 long years and why, even after issuance of his posting order for the Eastern Command and his consequential posting on 01.04.2015 to the 123 Battalion, which is admittedly a duty battalion, he was relieved by the Frontier Headquarters, New Delhi only on 30.03.2016, i.e., after expiry of another year. These circumstances clearly show that it is the respondents, who are alone responsible for the petitioner not being able to render service in any duty battalion from 01.02.2008 i.e. the date when he was promoted as a Deputy Commandant, till 31.03.2016 when for the first time he was posted to a duty battalion, i.e., 123 Battalion.

20. We have also considered the decision in the case of **Ashok Kumar** (*supra*) and find that the facts of the instant case are similar to those of the petitioner's in the aforementioned case. Like in the case

of Ashok Kumar (supra), in the present case also there has admittedly been an unprecedented increase in the number of vacancies of 2IC in June, 2016 and, therefore, the petitioner cannot be blamed for not protesting when he was continuously being allocated static postings in public interest, instead of being posted to duty battalions so as to enable him to fulfill the eligibility criteria for his next promotion. The record also shows that the board of officers which had been constituted to examine the cases of similarly placed officers, had after carefully examining the petitioner's case and the reasons for his non-posting to duty battalions, specifically recommended that he was entitled to be granted relaxation, which recommendation was rejected by the IG (Personnel) on wholly untenable grounds.

21. In our considered view, once the petitioner had no say in his postings, the respondents were obliged to exercise the power of relaxation by keeping in mind the fact that he was not posted to any duty battalion from 01.02.2008 till 01.04.2015, for no fault of his whereafter also, he was not relieved from the Frontiers Headquarters till 30.03.2016. In these circumstances, we have no hesitation in holding that the petitioner could not complete the mandatory period of service in a duty battalion solely on account of the respondents' own orders and therefore, the rejection of the special board's recommendation for granting relaxation to the petitioner by the IG (Personnel) is erroneous and wholly unsustainable.

22. We are informed that the petitioner, upon being posted to the 123 Battalion on 31.03.2016, upon completion of one year in the aforesaid duty battalion during the pendency of the present petition

has now been promoted as 2IC w.e.f. 07.11.2017. Even though the petitioner now stands promoted as 2IC, a direct consequence of the failure on the part of the respondents to promote him along with his batch-mates is that he has not only been deprived of the salary of the rank of 2IC from 21.10.2016 till 07.11.2017, but he is also being treated as junior to his erstwhile batch-mates.

23. For all the aforesaid reasons, the decision of the respondents in declining to relax the eligibility condition of two years service in a duty battalion for promotion of the petitioner to the post of 2IC as also the impugned order dated 28.04.2017 rejecting his representation are unsustainable and liable to be quashed. Ordered accordingly. The respondents are directed to reconsider the petitioner's case after granting him the necessary relaxation and pass appropriate orders, if he is otherwise found eligible for promotion to the rank of 2IC w.e.f. 21.10.2016 i.e. the date when officers immediately junior to him were promoted. The respondents are further directed to grant the petitioner all the consequential benefits including seniority, pay fixation etc. except actual arrears of pay. The aforesaid directions shall be implemented within a period of eight weeks.

24. The writ petition is allowed in the aforesaid terms while leaving the parties to bear their own costs.

(REKHA PALLI)
JUDGE

(HIMA KOHLI)
JUDGE

AUGUST 02, 2018/gm