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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10542/2018 & CM No. 41132/2018**

RAJIVA RANJAN SAHAY

..... Petitioner

Through: Mr. Ankur Chibber, Advocate with
Mr. Varun Pathak, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Vijay Joshi, Advocate with Mr.
Satya Ranjan Swain, Mr. Naveen
Bhagar and Mr. Shubhash Chand,
Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **19.11.2018**

1. The Petitioner is currently serving as Inspector General, Central Industrial Security Force (CISF). His grievance concerns the proceedings of the Departmental Promotion Committee (DPC) held on 29th June, 2018 for promotion of officers from the rank of Inspector General, CISF to Additional Director General, CISF.

2. According to the Petitioner, this is first time that the additional post was created of Additional Director General, CISF to provide one more avenue for the cadre officers to be promoted to the next higher post. The normal rule, otherwise known as 'T-1', is for the DPC to consider the Annual Performance Appraisal Reports (APAR's) of eligible candidates for five years immediately preceding the date of the DPC.

3. A change was introduced by an Office Memorandum (OM) No. 22011/4/2013-Estt (D) dated 8th May, 2017 issued by the Department of Personnel and Training (DoPT), Ministry of Personnel, Public Grievances and Pensions, Government of India whereby *inter alia* it was decided as under:

“4. As per the extant instructions, say for vacancy year 2017-18, complete proposal to the UPSC has to be sent by 15 July, 2016 (in ACC cases) and 31 July, 2016 (in non-ACC cases) with APARs up to the year 2015-16. However, the entire process of recording APAR for the year 2015-16 is complete by 30th November, 2016 only. After the issue of guidelines regarding time schedule for completion of APAR, the time lines make it practically impossible to make the last APAR (the APAR of the year immediately preceding T-1th year) available for DPCs, i.e., the APAR for the year 2015-16 does not attain finality and thus may not be available before sending proposal for DPC for vacancy year 2017-18. In this background, the instructions regarding the procedure for convening DPCs have been reviewed in consultation with UPSC.

5. In order to streamline the process of timely convening of DPCs, it has been now decided that henceforth, the following changes may be effected in the DPC procedure in partial modification of this Department OM No. 22011/5/86-Estt.(D) dated 10.4.89, OM No. 22011/9/98-Estt.(D) dated 16.6.2000, OM No, 22011/9/98- Estt.(D) dated 8.9.98 and OM No. 22011/6/2013- Estt.(D) dated 28.5.2014(crucial date of eligibility):

(i) The vacancy year may be shifted to Calendar Year from the year 2018 onwards, wherever the financial year based vacancy year being followed now.

(ii) The crucial date of eligibility will be 1st of January of the

Vacancy year w.e.f 2019.

(iii) The APARs for five years preceding T-2nd year may be taken as reckoning APARs, i.e. for the vacancy year 2019 (January 2019 to December, 2019), the reckoning APARs shall be 2016-17, 2015-16, 2014-15, 2013-14 and 2012-13.

(iv) The year of 2018 being the transitional year, the vacancy period shall be from 1st April 2018 to 31st December, 2018. The reckoning APARs for this vacancy year shall be 2015-16, 2014-15, 2013-14, 2012-13 and 2011-12. The crucial date of eligibility shall be 1st April, 2018 for the transitional year.”

4. It is apparent from the above OM, that it was meant to apply prospectively i.e. to the vacancies that occur after 1st January, 2019. The OM further clarifies that in the transitional year 2018, if a vacancy occurs between 1st April and 31st December 2018, then the earlier system of following T-1, which is to consider the APARs of the immediate preceding five years, would continue to apply.

5. Admittedly in the present case the vacancy in the post of Additional DG occurred on 1st February, 2018. Therefore, the question of applying the above OM dated 8th May, 2017 to such vacancy does not arise.

6. On the previous date, while directing notice to issue to the Respondents, the Court passed the following order:

“W.P.(C) 10542/2018 and C.M. No. 41152/2018 (Stay)

1. Learned counsel for the respondents shall obtain instructions from the Department with regard to the relevant material placed before the DPC held on 29.6.2018, for making promotions to the rank of ADG in the CISF wherein the petitioner is one of

the contenders. He shall also obtain instructions as to whether the relevant information placed before the DPC for consideration included APARs of the concerned officers in particular, APAR for the year 2016-17.

2. List on 19.11.2018.”

7. Today, learned counsel for the Respondents states that they have decided to scrap the DPC held on 29th February, 2018 altogether. He states that as and when the next DPC is held, the case of the Petitioner will also be considered, in accordance with law.

8. It is made clear that whenever the next DPC is held, the legal position as explained above by this Court in this order will be followed.

9. It is further directed that the fresh DPC should be held not later than a period of four weeks from today considering that the vacancy has occurred on 1st February, 2018 and the Petitioner is stated to superannuate on 30th January, 2019.

10. The petition and the pending applications are disposed of in the above terms. Order be given *dasti* under the signatures of Court Master.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 19, 2018/sapna