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

+ **W.P.(C) 8545/2018**

BHAG SINGH SAIN Petitioner
Through Mr. S. N. Kaul and Ms. Bushra
Waseem, Advocates
versus

UNION OF INDIA & ORS Respondents
Through Mr. Sanjeev Sabharwal, Senior
standing counsel with Mr. Pritish
Sabharwal, Advocates for
Respondent/UOI

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

% **ORDER**
13.11.2019

1. The Petitioner, who retired as Deputy Inspector General (DIG) of the Sashastra Seema Bal (SSB), has filed this petition challenging a decision communicated to the Petitioner by a letter dated 26th April, 2018 of the Assistant Director (Pers.-I) the Directorate General of SSB, declining his request for notional back-dated promotion as Inspector General (IG).

2. This is the third round of litigation involving the Petitioner, who joined the SSB on 1st August, 1969 as Company Commander (Assistant Commandant) which is a Class-I post. The Petitioner was promoted as Deputy Commandant (DC) on 27th June, 1977 and as Commandant on 25th June, 1981. The Departmental Promotion Committee ('DPC') for the post of

DIG, SSB was held on 20th August, 1987. The Petitioner was not considered for such promotion and challenged that decision by filing Writ Petition No. 332/1988. The stand of the Respondents was that he was not eligible for such promotion as per the Recruitment Rules (RRs) of 1977 and 1982. On 4th July, 2008, the said writ petition was disposed of, directing the Respondents to hold a review DPC and consider the case of the Petitioner for promotion to the post of DIG. The said writ petition was in fact filed by the present Petitioner and one other Petitioner. Respondent Nos.2 and 3 in the said writ petition were J. S. Bisht and R. B. Saxena.

3. This Court issued a direction that in case the Petitioners were found fit for promotion they should be given such promotion from the date Respondent Nos.2 and 3 were promoted as DIG, on notional basis. It was noted that by that time the Petitioners had already superannuated and therefore, would not be given arrears of pay. The Court however directed that “if they are held entitled to promotion, they would be deemed retired as DIG and their pension would be fixed accordingly”. They were held entitled to arrears of pension from the date of their retirement. The exercise was to be completed within three months.

4. The Special Leave Petition (SLP) filed by the Respondents against the above order dated 4th July, 2008 was dismissed by the Supreme Court on 12th February, 2013.

5. Thereafter on 7th June, 2013 a review DPC was held. Again, the Respondents found the Petitioner not to be eligible for promotion as DIG

with effect from the date of the original DPC held on 20th August, 1987.

6. The second time, the Petitioner filed Writ Petition No. 6993/2013 in this Court. This writ petition was disposed of on 15th September, 2015 by holding that the Petitioner was entitled to be considered for promotion as DIG with effect from the date his juniors were so promoted. The operative portion of the order passed by this Court is in para 6, which reads as under:

“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. When the above direction was not complied with, the Petitioner filed Contempt Case (Civil) No.899/2015 which was disposed of on 6th February, 2017 by the following order:

“Present contempt petition has been filed alleging wilful disobedience of order dated 15th September, 2015 passed by this court in W.P(C) No. 6993/2013.

Today in Court, Mr. Sanjay Jain, learned Additional Solicitor General has handed over a photocopy of the office order dated 2nd February, 2017 by virtue of which petitioner has been promoted to

the rank of Deputy Inspector General in the pay scale of Rs. 5100-150-5400-150-6150/- with effect from the date of promotion of Shri J. S. Bisht and Shri R. B. Saxena, both Area Organisers, i.e., 1st December, 1987, which is taken on record. The said order further states that the petitioner shall be entitled for pay and pension as well as arrears of pension from the date of his retirement.

Mr. Sanjay Jain clarifies that the order in question has been passed on the peculiar facts and circumstances of the present case and the government has directed that it should not have been treated as a precedent.

Since learned counsel for the petitioner has expressed an apprehension that the order only directs payment of arrears of pension from the date of petitioner's retirement, it is clarified that the petitioner shall also be entitled for arrears of pay from the date of his promotion, i.e., 1st December, 1987 till the date of his retirement.

Consequently, keeping in view the order dated 2nd February, 2017 as well as the aforesaid clarification, present contempt petition is disposed of as satisfied.

This Court places on record its appreciation for the services rendered by learned Additional Solicitor General in the present matter.”

8. Following the above order, the Petitioner sent a representation on 12th October 2017, stating that if the Petitioner had not been denied his promotion as DIG at the relevant time he would also be eligible to be considered for promotion as IG with effect from 1st December, 1993 when late Mr. O. P. Chaturvedi was considered against the quota meant for SSB cadre officers and since there already existed four vacancies in the post of IG which were required to be filled amongst cadre DIGs of SSB. He accordingly pleaded that he be granted notional promotion as IG with effect from the above date. Another reminder was sent on 3rd January, 2018.

9. The impugned order dated 26th April, 2018 was thereafter passed declining the above request for the following reasons:

“Shri Bhag Singh Sain was promoted to the rank of DIG in compliance to Hon’ble High Court of Delhi order dated 15.09.2015 as a special case on court’s direction though the vacancy was not meant for Commandant stream. The Supreme Court vide its judgment has also held that this order shall not be treated as a precedent in any other case.

Since, Shri Bhag Singh Sain, Ex-DIG was promoted to the rank of DIG only to execute the order of Hon’ble Courts as a special case, as such, the claim for being senior to Shri O. P. Chaturvedi on the basis of promotion to the rank of DIG could not be sustained/established as Shri O. P. Chaturvedi was not superseded by Shri Bhag Singh Sain. Moreover, in the court cases filed till date, Shri Bhag Singh Sain has never impleaded Shri O. P. Chaturvedi as a respondent nor ever claimed that he was senior to Shri O. P. Chaturvedi.

In view of the facts established above, the request for promotion of Shri Bhag Singh Sain, Ex-DIG to the rank of IG w.e.f. 17.08.1995 i.e. after superannuation cannot be acceded to.”

10. This Court has heard the submissions of Mr. S. N. Kaul, learned counsel for the Petitioner and Mr. Sanjeev Sabharwal, learned senior standing counsel for the Respondents. The Court has also perused the counter affidavit filed by the Respondents and the rejoinder thereto filed by the Petitioner.

11. In the earlier rounds of litigation the Petitioner did not bring up the issue of promotion as IG. However, Mr. Kaul insisted that the expression “all such consequential benefits”, in para 6 of the order dated 15th September, 2015 passed by this Court in WP(C) No. 6993/2013 (extracted hereinbefore)

would include considering the Petitioner for promotion from the post of DIG to IG as well.

12. This Court is unable to agree with the above submission. The order dated 11th July, 2008 passed by this Court, which was affirmed by the Supreme Court by dismissal of the SLP of the Respondents on 12th February, 2013 made it clear that if the Petitioner was found fit for promotion as DIG, he would be given such promotion on notional basis. Importantly it was clarified that the Petitioner would be “deemed retired as DIG” and the pension would be fixed accordingly. In other words, the Court was clear when it passed the above order, which was at a stage when the Petitioner had superannuated, that he would not be considered even on notional basis for any further promotion beyond DIG.

13. Admittedly, the Petitioner has accepted the order dated 11th July, 2008. In fact, aggrieved by its non-implementation, he had filed second Writ Petition (C) No. 6993/2013.

14. Even para 6 of the order dated 15th September, 2015 passed by this Court does not expressly give any direction for considering the Petitioner’s case for promotion as IG. The whole discussion in that order revolves around the Petitioner’s claim for being promoted as DIG.

15. In that view of the matter, the Court finds no legal infirmity in the impugned order dated 26th April, 2018.

16. The writ petition is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 13, 2019

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