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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3945/2017

SHAILENDRA SINGH & ORS

.... Petitioners

Through: Mr. Rakesh Tiku, Sr. Advocate along
with Ms. Jyotsna Mehta, Mr. Pranav
Chadha, Mr. Lokesh Bhardwaj and
Mr. Nikhil Palli, Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mrs. Bharathi Raju, CGSC for R-1 to
R-4.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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02.12.2019

1. A very short issue is involved in the present petition which has been filed by 9 personnel of the Border Security Force ('BSF') who serve in non-combated posts as Executive Engineers ('EEs'). The prayer is that each of the Petitioners should be granted revised pay-scale of Rs. 8,000-13,500/- with effect from 1st April, 2004 and further consequential reliefs.

2. The facts in briefs are that each of the Petitioners joined the Engineering Cadre ('EC') of the BSF on various dates between 1984 and 2001. Some of them have been working in the post of Assistant Engineer (AE)/Assistant Commandant ('AC') in the Group 'A' Service since 1995.

3. The recommendations of the 5th Central Pay Commission ('CPC') were that there should be re-structuring and upgradation of the post of ACs, which was a post of Group 'B' level, with the pay-scale of Rs. 6500-10500/-, to a Group 'A' level post, having the pay scale of Rs. 8000-13500. While this was implemented with respect to the ACs (Veterinary) and other Ministerial posts of equal status in other cadres of BSF, it was not implemented in the EC. As a result, several representations were made by personnel of the EC for grant of the upgraded pay-scales of Rs. 8000-275-13500, with effect from December, 1999, which is the date when the Director General ('DG'), BSF announced the restructuring proposal that was under consideration.

4. It is stated that the DG by an order dated 10th December, 2003 approved the proposal for restructuring of the supervisory and support infrastructure of the BSF, as a result of which the post of AC (Works/AE) in the BSF Engineering Cadre was upgraded from Group 'B' to Group 'A' level. By an order dated 23rd March, 2004 issued by the Ministry of Home Affairs to the DG, BSF the approval of the Government for implementation of the restructuring orders with effect from 1st April, 2004 was conveyed to the BSF. This was to be on the following terms and conditions:

“(a) Out of 2195 posts approved to be abolished, 1518 posts will stand abolished from the date of restructuring orders come into Force i.e. 1st April, 2004. Details can be seen at Annexure 1.

(b) Against remaining 677 posts of various categories, which are proposed to be retained on personal basis, they will be abolished immediately on vacation of posts. Till then posts will be retained. BSF would keep in abeyance the equal number of posts vacant

elsewhere.’’

5. The Petitioners have placed on record a copy of a noting by the Department of Personnel & Training (‘DoPT’) dated 13th July, 2019, which proposes implementation of the restructuring orders and the grant of the consequential benefits with effect from 1st April, 2004. The said note acknowledged that as a result of the delay in amending the Recruitment Rules (‘RRs’) to include the provision for assessment of suitability of incumbents for the aforementioned upgradation, there was a delay in grant of the benefits which were to be given with effect from the date of restructuring order i.e. 1st April, 2004. It may be noted here that the first set of amendments to the RRs were made on 31st October, 2007 when the BSF (Engineering Office) Recruitment (Amendment) Rules, 2007 were notified.

6. Consequentially, the aforementioned note dated 13th July, 2009 *inter alia* proposed as under:

“3. In terms of this Department instructions vide OM of 4.2.92, criteria to be adopted for placement of the officers in the upgraded post is specified. If the upgradation involves change in the group, but there is no higher responsibility or higher qualification or (higher eligibility service), the suitability of the incumbents has to be assessed and if found suitable they will be appointed to the upgraded post from the date notified by the Government.

4. In the present case the orders for restructuring have been issued w.e.f. 1st April 2004. It is also mentioned that the combatised personnel of other cadres of BSF have been given benefits of restructuring orders w.e.f. 1.4.04. In view of the same, the benefit of upgraded status/post with higher pay scale w.e.f. the date of implementation of the restructuring order may be allowed after following due procedure as above.”

7. The case of the Petitioners is that combatised personnel of other cadres of the BSF have indeed been given the benefits of restructuring orders with effect from 1st April, 2004. However, for the EC, the Respondents have not granted the same benefit.

8. The RRs stood amended for a second time in 2012, when on 11th May, 2012 a fresh set of BSF (Engineering Office) Recruitment (Amendment) Rules, 2012 were notified in supersession of the earlier rules of 2000, amended in 2007. Giving effect to the restructuring proposal, it provided that the Deputy Commandant ('DC') (Works) should have completed five years' regular service in the grade and ten years' overall service in Group 'A' for being considered for promotion as Second-In-Command/2IC (Works). The present Petitioners were unable to be considered as of that date, since they were granted benefits of upgradation only with effect from 2007 and not 1st April, 2004.

9. At this juncture, it requires to be noted that the DoPT, on 2nd December, 2009 prepared a separate note proposing that the benefit of the upgradation with the higher pay-scale should be granted to the EC Personnel with effect from 31st October, 2007, which was the date of the amendment to the RRs, to include a provision for assessment of suitability of the incumbents for upgradation.

10. Aggrieved by the inaction of the Respondents in granting the upgradation with effect from 1st April, 2004, Petitioner No.6 submitted a representation dated 13th July, 2013. On 22nd July, 2013 the DIG (Works)

prepared a note, recommending that the pay of all of the affected engineers may be re-fixed in the revised pay-scale of Rs.8000-13500, with effect from December, 2003, and subsequently in the senior time scale, with effect from December, 2007, after completion of four years' service, which would reduce the monetary loss.

11. Thereafter, the present petition was filed seeking the above reliefs. The stand of the Respondents i.e. the MHA, DoPT as well as BSF, who have all filed a common counter affidavit, is that the benefit of the restructuring resulting in the upgradation of the pay-scale of the Petitioners to Rs.8000-13500 can be granted only with effect from 31st October, 2007 and not from the date of the implementation of date of restructuring order i.e. 1st April, 2004.

12. In para 3 of the petition there is a specific averment that the combatised cadres of the BSF were granted the benefit of restructuring with effect from 1st April, 2004 itself. There is a similar averment is therein para 12 of the writ petition.

13. In reply to the para 3 of the writ petition it is stated by the Respondents as under:

“The post of AC (veterinary Asstt. Surgeon) was upgraded after notification of BSF (Combatised) veterinary officers RRs 2003. Secondly, 67 post of AC (Min) was sanctioned by Govt. by abolishing the posts of AO(AC)/SO(AC)/SM(OS) w.e.f. 01-04-2004 vide MHA L.NO.11.27012/I/2003-PF-I dated 28-11-2003 and No. 11-27012/I/2003-PF-1 dated 23.03.2004. The DPC of said 67 posts was conducted on 28-09-2005 after notification of BSF (Combatised

Ministerial Cadre) Recruitment Rules 2005. Similarly, the Engg cadre officers were upgraded from Group - 'B' to Group - 'A' in the pay scale of Rs. 8000-275-13500 w.e.f. 31-10-2007 i.e. after the notification revised RRs of Engg Cadre by MHA w.e.f. 31-10-2007.”

A similar reply is given to para 12 as well.

14. From the stand taken by the Respondent, it appears that the denial of benefit of upgradation to the Petitioners is only on account of the time taken by the Respondents to notify the amended RRs to actually give effect to the restructuring proposal. It may be recalled that the MHA had issued clear instructions to the BSF conveying the decision of the Central Government to implement the restructuring orders with effect from 1st April, 2004.

15. The delay in notifying the changed RRs, including the eligibility criteria for upgradation on different dates for different cadres of the BSF is entirely due to the internal administrative exigencies of the Respondents. That cannot result in delaying the date from which the benefit ought to be given. In other words, notwithstanding that the RRs had been notified on a later date, or the assessment of the suitability of the incumbent for grant of upgradation may have been completed at an even later date, the actual benefit of the upgradation ought to be given from the date when it was meant to be given i.e. 1st April, 2004.

16. This is somewhat similar to recommendations of a CPC. Periodically, restructuring is undertaken; pay-scales are introduced and revised as a result of the recommendations of the CPC. However, the actual implementation of

these recommendations gets postponed because in the individual Departments and Ministries, the necessary changes to the RRs have to be made and notifications have to be issued. All of this postpones the actual grant of the benefit in that particular Ministry or Department. However, when it is finally given, the benefit is usually given from the uniform date when such revised pay-scales were made available, as a result of the recommendations of the CPC.

17. That same principle should apply in the present cases as well. In other words, notwithstanding that for the EC, the amended RRs may have been notified only with effect from 31st October, 2007, it would not postpone the actual date from which the benefits ought to be given i.e. 1st April, 2004.

18. For the aforementioned reasons, a direction is issued to the Respondents to issue necessary orders granting the benefit of the upgraded pay-scale to each of the Petitioners, and others similarly situated, with effect from 1st April, 2004, and on that basis, grant them all the consequential benefits, including re-fixing the notional date of their respective promotions.

19. The writ petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 02, 2019/rr