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

+ **W.P.(C) 10726/2018**

GP CAPT TARUN SAHA

..... Petitioner
Through: Mr. S. C. Malhotra,
Advocate.

versus

DIRECTOR GENERAL BORDER SECURITY FORCE
AND ORS.

..... Respondents
Through: Mr. Vijay Joshi,
Advocate with Mr. Sameer
Dhasmana, Dy. Cmdt. and Mr.
Vinod Kumar, Law Officer,
BSF.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

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ORDER
12.09.2019

Dr. S. Muralidhar, J.:

1. The Petitioner, who is currently serving as Group Captain ('GC') Timescale ('TS') with the Indian Air Force (IAF), has filed the present petition challenging the rejection of his application for absorption in the post of Captain/Pilot (Deputy Inspector General) ('DIG') in the Border Security Force ('BSF').

Background facts

2. The background facts are that the Petitioner is with the IAF Flying Branch

since 14th June, 1989. While serving as Wing Commander (WC), the Petitioner joined BSF Air Wing on 24th February, 2014 on deputation against the post of Commandant/Pilot.

3. It is stated that a Memorandum of Understanding ('MOU') containing agreed terms and conditions was signed on 8th November, 2013 by the Ministry of Defence ('MoD') and the Ministry of Home Affairs ('MHA'), in terms of which the IAF was to continue providing assistance to the BSF Air Wing for the operation and maintenance of a fleet of 14 helicopters. This was on account of the fact that only the IAF had qualified Pilots, Engineers and Technicians on military registered helicopters. It is stated that the IAF has been sponsoring GC rank officers for appointment to the post of Captain/Pilot (DIG) in the BSF Air Wing and WC rank officers for the post of Commandant/Pilot in the BSF Air Wing.

4. The Petitioner applied for absorption in the BSF Air Wing to the post of Captain/Pilot (DIG) in the Rotary Wing. It is stated that the case of the Petitioner for absorption in the BSF Air Wing was examined at the Frontier Headquarters ('FHQ') (Personnel Directorate) BSF, but was not approved by the Competent Authority.

5. The Petitioner submitted representations dated 21st March, 23rd March and 14th May, 2018 to the Inspector General ('IG'), BSF Air Wing. He also made a representation dated 25th May, 2018 to the Director General ('DG'), BSF for reconsideration of his case for absorption to the post of Captain/Pilot (DIG) in the BSF Air Wing.

6. By a letter dated 8th August, 2018 of the FHQ (Pers. Dte.) the Petitioner was informed that his case has been examined again but was rejected as it lacked merit. The said letter *inter alia* gave the following reasons for rejection:

“2. It is to inform you that, your case for absorption in BSF Air Wing in the rank of Captain/Pilot (DIG) has been examined again. For appointment of IAF personnel in BSF Air Wing, MoU has been signed. On the issue of appointment of Group Captain (Time Scale), Indian Air Force has clarified vide their letter dated 11 April 2018 that, IAF is sponsoring Group Captain (Select) rank officers for the post of Captain/Pilot (DIG) and Wg Cdr/Group Captain (TS) rank for the post of Commandant (Pilot).

3. Further, you do not fulfill the criteria given in BSF Air Wing Officers (Group 'A' Combatised posts) Recruitment Rules 2011, for appointment to post of DIG (Pilot) under Deputation/Absorption clause. As per the rules, you are not holding analogous post of DIG (earlier GP Rs. 8,900 now pay matrix 13A). Moreover, you neither have 2 years regular service in the grade pay Rs. 8,700/- as you are holding time scale rank as Gp Capt (TS) in the grade pay of Rs.8,700/- nor you are having twenty years Group 'A' service.

4. In view of above, as approved by DG BSF, your case is considered and rejected as it lacks of merit.”

7. The Petitioner addressed a second legal notice dated 27th August, 2018 denying the above contentions. Apprehending that the post of Captain/Pilot (DIG) in the BSF might get filled up, the Petitioner filed the present petition on 28th September, 2018.

8. On 8th October 2018 the following order was passed by this Court:

“1. Learned counsel for the respondents states that he may granted time to obtain instructions from the Department. He further states on instructions that the post of DIG, Air Wing (Rotary) in the respondents BSF in terms of the advertisement dated 24.06.2016, shall not be finalised till the next date of hearing.

2. List on 10.12.2018.”

9. Subsequently, on 10th December, 2018 the following order was passed:

“CM. No. 41782/2018

1. The order dated 8th October, 2018 passed by this Court is modified by directing that any appointment made for the post of DIG in the BSF AIR Wing (Rotary Wing), in the meanwhile, will be subject to the outcome of this writ petition.

2. The application is disposed of

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3. Notice. Learned counsel for the Respondents accepts notice.

4. List the matter before the Registrar on 17th January, 2019 for completion of pleadings.

5. List before the Court on 25th March, 2019.”

Case of the Petitioner

10. The case of the Petitioner is that he fulfils all the terms and conditions for appointment as DIG in the BSF Air Wing, as set out in the advertisement dated 24th June, 2016. The qualifications for appointment of the said post were as under:

“(a) Officers under the Central Government or the state Government or public undertaking holding analogous posts or with two years regular service in the grade of Pay Band-4 (Rs.

37,400-67,000) and Grade Pay 8700/- with twenty years' Group 'A' service and Possessing qualifications and experience specified below:

(A) (i) Current Airlines Transport Pilot's License or current Commercial Helicopter Pilot's License with current Flight Radio Telephone Operator's License with current instrument rating on Aircraft or Helicopter (as prescribed from time to time as per requirement); and

(ii) Flying experience to fly Aircraft above all up weight 5700 Kilogram/Helicopters as Pilot-In-Command with VIPs as per DGCA norms; and

(iii) Minimum 2000 hours as Pilot-in-Command on Multi-Engine Aircraft or Helicopter.

Or

(B) (i) Current Military flying Category 'A'/'B' Master Green rating preferably with DGCA endorsement of Pilot-In-Command on Aircraft or Helicopters (as prescribed from time to time as per requirement); and

(ii) Flying Experience to fly helicopters as Pilot in Command with Very Important Persons as per Military Norms; and

(iii) Minimum Pilot in Command experience 2000 hours on Aircraft or Helicopters.”

11. The Petitioner submits that despite fulfilling the above criteria, he received an intimation dated 1st March, 2018 stating that his case for absorption in the rank of Captain/Pilot (DIG) in the BSF Air Wing had been examined but not approved by the Competent Authority. The Petitioner is aggrieved by the fact that no reasons were given for the rejection of his

candidature.

12. The representations made by the Petitioner against the refusal did not elicit any positive response. The DG granted an interview to the Petitioner and read out to the Petitioner the recommendations of the Screening Committee, where it was mentioned that since the Petitioner was a GC (TS), and not a GC (Select), his case for absorption was not recommended. He was asked to take up the matter with the IG (Pers.).

13. The Petitioner then informed the DG that he had already taken up the case with the IG (Pers.) in writing through letters dated 21st March, 23rd March and 14th May, 2018. The Petitioner states that the DG instructed the IG (Pers.) to examine the Petitioner's grievance.

14. On 20th June, 2018 the Petitioner was called for an interview with the IG (Pers.). The Petitioner was assured that his application for absorption dated 30th June, 2017 could not be time barred on 30th June, 2018. With the Petitioner having received no intimation on the subject of re-examination, he again sought an interview with the IG (Pers.), who in turn assured him, on 23rd July, 2018, that he would receive information regarding the re-examination within the next 15 days.

15. The Petitioner pointed out that after the last official communication on 1st March, 2018 the Petitioner was left with no option but to seek legal remedies. Accordingly, a legal notice dated 8th August, 2018 was addressed to the Respondents.

16. The Petitioner received a letter dated 8th August 2018 from the DIG, BSF stating as under:

“For appointment of IAF personnel in BSF Air Wing MoU has been signed. On the issue of appointment of Group Captain (Time Scale), Indian Air Force has clarified vide their letter dated 11 April 18 that, IAF is sponsoring Group Captain (Select) rank officers for the post of Captain/Pilot (DIG) and Wg Cdr/Group Captain (TS) rank for the post of Commandant (Pilot).”

17. In the same letter the Petitioner was further informed as under:

“Further, you do not fulfill the criteria given in BSF Air Wing Officers (Group 'A' Combatised posts) Recruitment Rules 2011, for appointment to post of DIG (Pilot) under Deputation/Absorption clause. As per the rules, you are not holding analogous post of DIG (earlier GP Rs. 8, 900/- now pay matrix 13 A). Moreover, you neither have 2 years regular service in the grade pay Rs. 8,700/- as you are holding time scale rank as Gp Capt (TS) in the grade pay of Rs. 8,700/- nor you are having twenty years Group 'A' service.”

18. It is in the above circumstances that the present petition has been filed.

Stand of the Respondents

19. In the counter-affidavit filed on behalf of the Respondents, the Respondents have referred to a letter dated 29th March, 2018 by the MHA Police-II Division (Air Wing), whereby it was clarified to the BSF Air Wing as under:

“Sub: Counting of Previous Commissioned Service rendered in Indian Navy for the purpose of Promotion: Clarification thereof.

Kindly refer to BSF UO No. 17/87/2017/Pers/BSF/1279 dated 16.01.2018, on the subject cited above.

2. The proposal of BSF has been examined in this Ministry in consultation with Estt. (RR) Division, DoP&T. DoP&T has stated that any post is to be filled as per existing Recruitment Rules (RRs). The RR provides 11 years group 'A' service for promotion therefore the same is required for promotion. DoP&T have not issued any Office Memorandum related to counting of service rendered in Defence Service for considering at par with Group 'A' of Central Civil Service. BSF is requested to examine whether there is any precedent case, if so the details may be provided.

3. In view of above, the undersigned is directed to return the file for necessary action at your end, please.”

20. The Respondents also referred to a letter dated 11th April, 2018 from the Air Headquarters Vayu Bhawan, New Delhi stating as under:

“as per 'Agreed Terms and Conditions' IAF is sponsoring Gp Capt (Select) rank Officers for the post of Captain Pilot (DIG) and Wg Cdr/Gp Capt (TS) rank Officers for the post of Commandant (Pilot).”

21. The Respondents state that as per the BSF Air Wing Officers (Group 'A' Combatised Posts) Recruitment Rules, 2011 ('RRs'), the mode of selection for appointment to the post of Captain/Pilot (DIG) in the BSF was as under:

(i) By Promotion failing which by deputation (including short-term contract)/absorption basis.

Eligibility Criteria: Officers under Central Government or the State Government or Public under taking holding analogous posts or with two years regular service in the grade of Pay Band -4 (Rs. 37400-67000) and Grade Pay Rs. 8700 with

twenty years Group 'A' service and possessing qualifications and experience as specified below:

a) Current military flying Category "A/B" Master Green rating preferably with Directorate General of Civil Aviation endorsement of Pilot-in-Command on Border Security Force Type of Aircraft or Helicopters.

b) Flying experience to Fly helicopters as Pilot-in-Command with very important persons as per military norms.

c) Minimum Pilot in command experience 2000 hours on Aircraft or Helicopters including 1000 hrs on BSF type of Aircraft or helicopters.

22. It is stated that there are at present 4 Captain/Pilots (DIG); 1 on deputation, 2 on absorption and 1 on promotion basis, as against the authorization of 8 Captain/Pilots (DIG). In the course of submissions today, it was pointed out that at least 2 posts of DIG in the Air Wing of the BSF remain vacant.

23. In the counter-affidavit filed by the Respondents the stand taken is that the Petitioner submitted an application on 30th June, 2017 stating that he had been promoted from the rank of WC to the rank of GC on 14th June, 2015. Since he was promoted on TS basis and not on merit selection, the BSF took the stand that the Petitioner's request to jump two scales to hold a higher post in the BSF was not tenable. It is stated that his request to get absorbed in the rank of DIG, which is higher than the rank he is holding on deputation, was not tenable. According to the Respondents, the Petitioner did not meet the eligibility criteria in terms of the RRs.

24. The reasons given in the counter-affidavit for rejection of the Petitioner's candidature are as under:

“a) As per Recruitment Rules, the mode of filling up the post of Capt Pilot (DIG) is by Promotion failing which by deputation/absorption.

b) Further the clause for absorption in the rank of Capt Pilot (DIG) is "Deputation (Short Term Contract)/Absorption".

c) DoPT instructions indicate that, absorption and deputation are not synonymous and there is a substantial difference between deputation and absorption. The Officer, who will come on deputation, may be permanently absorbed in the post/grade if recruitment rules prescribe for absorption as mode of recruitment. Such absorption can be affected only in the case of Officers who are on deputation from the Central/State Government.

d) The Petitioner is on Deputation to the Post of Commandant (Pilot) in the pay matrix 13. While joining BSF, he was holding post of Wg Cdr in pay matrix 12 A of defence pay matrix and promoted to the post of Gp Capt (Time Scale) in pay matrix 13 and he has applied for absorption in higher post of pay matrix 13 (A) for which is neither permissible nor he is eligible.

e) The Officers of IAF are deputed to BSF by maintaining rank parity of Wg Cdrs to the post of Commandant (Pilot) and Gp Captain (select) to the post of DIG. Further, IAF has also highlighted that, they are sponsoring Wg Cdrs/Gp Captain (TS) rank Officers for the post of Comdt (Pilot) only.

f) There is no Official/formal communication from IAF regarding promotion/Charge Assumption in promoted post in respect of their Officer. Like in the instant case it only came to the notice, when Officer applied for the post vide his application dated 30 Jun, 2017 that, he has been promoted as

Gp Capt since 14 Jun, 2015 wherein also he did not mention that he is promoted on Time scale basis.

g) There is no instruction of DoPT for treatment of Commissioned service at par with Group 'A' service. In this regard on the issue of treatment of Commission service as Group 'A' service, the clarification of DOP&T in a case received through MHA is, "any post is to be filled as per existing Recruitment rules (RRs). The RRs provide 11 years group 'A' service for promotion therefore the same is required for promotion. DoP&T have not issued any Office Memorandum related to counting of service rendered in Defence Service for considering at par with Group A' of Central Civil Service."

25. The Respondents maintain that the Petitioner does not fulfil the eligibility conditions as per the RRs and was informed accordingly. It is further pointed out by the Respondents that "it is in the interest of the organization that more suitable officers are inducted at senior positions to man the BSF Air Wing which has more dependence on officers on deputation and has a very meager cadre of its own."

The decision in Atul Shukla

26. The central issue to be considered is whether the Respondents are justified in rejecting the candidature of the Petitioner for the post of DIG in the Air Wing of the BSF on the ground that he is a GC (TS) and not a GS (Select)? It requires to be noted at the outset that no such clear distinction has been made by the Respondents in the advertisement issued or at any stage of the qualification tests. Indeed, functionally, there does not appear to be any real difference between a GC (Select) and a GC (TS).

27.1 This was acknowledged by the Supreme Court in its decision in *Union of India v. Atul Shukla (2014) 10 SCC 432*. Although the main issue in the said case was whether the qualification of GC (Select) and GC (TS) for the purpose of the age of superannuation was arbitrary and discriminatory, in answering the question in the affirmative the Supreme Court held that the above classification “does not stand scrutiny on the touchstone of Articles 14 and 16 of the Constitution”. Consequently, the Court declined to interfere with the order of the Armed Forces Tribunal (‘AFT’) Principal Bench impugned therein. In coming to the above conclusion, the Supreme Court held as under:

“16. Time now to test the validity of the classification in the case at hand; in the light of the legal position enunciated in the decisions of this Court juxtaposed with the rationale which the appellant-Union of India has advanced to justify its action. As noticed earlier, there are in substance two main reasons which the appellant has advanced in support of the classification made by it. The first and foremost is that officer who get promoted to the rank of Group Captains on the basis of merit constitute a class different from the ones who do not make it to the next rank on that basis. That officers who fail to make the grade in merit selection on three occasions admissible to them are eventually promoted to the rank of Group Captains based on the length of their service does not, according to the appellant, make them equal to their colleagues who have stolen a march over them by reason of their superior merit. The second and the only other ground called in aid of the classification is that Group Captains (Time Scale) do not discharge the same functions as are discharged by Group Captains (Select). The deployability of time scale Group Captains being limited, they can, according to the appellants, be classified as a different group or category even when in all other respects they are equal to the officers promoted on merit.”

27.2 In *Atul Shukla*, the Supreme Court further observed that the AFT was justified in rejecting the above grounds as the basis to discriminate between the two sets of GCs for the purposes of the age of superannuation. The Supreme Court noted that GCs (TS) “wear the same rank, are paid the same salary and allowances and all other service benefits admissible to GCs (Select)” and that there was no “real or reasonable basis for treating them to be different for the purposes of age of retirement.” It was observed:

“24. The principles stated in the above decisions lend considerable support to the view that classification of Group Captains (Select) and Group Captains (Time Scale) in two groups for purposes of prescribing different retirement ages, is offensive to the provisions of Articles 14 and 16 of the Constitution of India.”

27.3 The Supreme Court further observed as under:

“Promotion to a higher cadre invariably implies higher responsibilities even when the essential nature of work may continue to be the same. For instance, a Wing Commander in the flying branch may be required to fly fighter aircrafts on peace time training or when the country is at war. A Group Captain (Select) would also be doing the same work as indeed even the Group Captains (Time Scale) shall be required to do. Flying a fighter aircraft is thus essential part of the duties of an officer serving in the flying wing. But to say that since a Group Captain (Time Scale) continues to fly as he was flying as a Wing Commander, his promotion as a Group Captain (Time Scale) is inconsequential from the point of view of nature of work may not be correct. Nature of duties in such situations does not undergo any significant change even when an officer picks up a higher rank. It is only the addition of higher and more onerous responsibility attached to the office that fall on his shoulder. One could well say that if Group Captain (Time Scale) continues to work as a Wing Commander, what work are the Wing Commanders doing.

That apart, allocation of work and duties is a matter left for the Air Force Authorities to determine. Lesser or higher allocation of such duties will not trivialise the promotion of a Wing Commander to the rank of Group Captain which progression must be treated to be a promotion for all intents and purposes. That is perhaps the reason why the Tribunal appears to have repeatedly asked the appellants to explain the basis on which a distinction was made between Group Captains (Select) and Group Captains (Time Scale) no matter they are wearing the same uniform, same rank, getting the same salary and the same grade pay. In the absence of any rational basis for such a distinction, the Tribunal was right in saying:

“We asked learned counsel for the respondent repeatedly to tell us that what is the rationale for making this distinction when the both the officers, one selected by “select” and other by “time scale” they wear same uniform, they wear same rank, they get same salary and they get same grade pay and discharge identical duties (except flying branch) then why this distinction is sought to be made from their earlier birth mark. There is no rationale which has been brought up either in reply or by the learned counsel for the respondent. The only argument was that these are basically Wg Cdr and they continue to be wing commanders. Once they have been promoted as a Gp. Captain (TS) they cease to be Wg Cdr, it is there administrative arrangement that out of these Wg Cdrs, some posts are upgraded in order to provide salary to these persons of Gp. Cap. Once they are drawing a salary of Gp. Capt and automatically post of Wg Cdr stand upgraded otherwise no salary of the Gp Capt will be given unless post of the Wg Cdr to which he is posted is upgraded.”

27.4 The Supreme Court further held as under:

“35. More importantly, the respondents have asserted that

Group Captains (TS) and Group Captains (Select) perform the same functions and duties which are higher than the duties and functions performed by the Wing Commanders, they wear the same uniform and rank which is higher than the Wing Commanders apart from drawing the same pay scale as Group Captains, which too is higher than the one admissible to Wing Commanders. On the question of posting profile of Group Captains (TS) and Group Captains (Select), the respondents have, on affidavit, denied not only the alleged difference in the nature of duties and functions performed by the two but specifically claimed that Group Captains (TS) have been posted and have held positions and appointments that are ordinarily given to Group Captain(Select).”

28. The decision in *Atul Shukla* is, therefore, a complete answer to the principal contention of the Respondents that on account of the functional differences in the posts of GC (TS) and GC (Select), it is only the latter that would be eligible to be considered for appointment as DIG in the Air Wing of the BSF. It is not possible to read the above decision in the limited context of equating the age of superannuation of GC (TS) and GC (Select) since the above discussion in the judgment is quite extensive and holds that there is no basis for treating the two posts differently even otherwise.

29. The Respondents have sought to place reliance on the decision of the AFT, Regional Bench, Kochi dated 8th June, 2016 in OA No. 81 of 2015 (*Group Captain Sazia Ibrahim v. Union of India*) where the decision of the Supreme Court in *Atul Shukla* (*supra*) was purportedly interpreted. The distinction sought to be maintained between the two sets of GCs i.e. GC (TS) and GC (Select) by the AFT was in the context of seeking promotion to the post of Air Commodore from the date of promotion as GC within the

IAF. This may not be entirely relevant for the purpose of considering the eligibility of the present Petitioner for the post of Captain/Pilot (DIG).

30. Learned counsel for the Respondents referred to the letter dated 11th April, 2018 addressed to the DIG (Pers.) by the Air Headquarters which reads thus:

“1. Refer your letter No. 359/Estt/Pers-TS/AW/SAP/BSF/14/1977 dated 15 Feb 18.

2. As per the 'Agreed Terms and Conditions' IAF is sponsoring Gp Capt (Select) rank officers for the post of Captain/Pilot (DIG) and Wg Cdr/Gp Capt (TS) rank officers for the post of Commandant Pilot.

3. It is a prerogative of BSF to select the officers for permanent absorption/re-employment as per the recruitment rules of BSF and in accordance with the DoPT guidelines. In case any such NOC/clarification is necessitated, BSF may take up the case with IAF.”

31. What the above letter states is simply that IAF has been sponsoring only WC/GCs (TS) for the post of Commandant/Pilot, whereas for the post of Captain/Pilot (DIG), it has been sponsoring only GC (Select) rank Officers. The concept of sponsorship arises when an officer is sent on deputation to the BSF. Here it is a case of ‘absorption’ and hence the IAF appears to be suggesting that it is up to the BSF to select officers as per the RRs. In other words the above letter is to the effect that for such absorption no such NOC is needed from the IAF.

32. In any event for determining whether the Petitioner is eligible for

‘absorption’ one has to go by the relevant RRs which have been duly reflected in the terms and conditions set out in the advertisement that have been extracted hereinbefore. The Court is unable to find in the advertisement anything to indicate that GCs (TS) are ineligible to apply for the post of DIG. Indeed, learned counsel for the Respondents was unable to dispute the fact that no difference between a Group Captain (TS) and Group Captain (Select) was made when the advertisement was issued.

33. In fact the objection that the Petitioner at the time of applying for the post did not indicate that he is a GC (TS) but only that he is a GC is also without basis. Neither the RRs nor the advertisement or for that matter the form require him to do so. That being the position, there could be no justification for denying the candidature of the Petitioner to the post of DIG in the BSF Air Wing.

Group A service

34. One of the two criteria that is required to be fulfilled in terms of the advertisement as well as the RRs is that the candidate seeking absorption should either be an officer of the central or state government holding an ‘analogous post’, or he should have two years’ regular service in the grade of Pay Band - 4 (Rs. 37,400 - 67,000) and Grade Pay 8700/-. The second criteria is that he should have 20 years’ Group ‘A’ service.

35. It is not in dispute that the Petitioner did complete two years of regular service in the grade of Pay Band-4 on 30th June, 2017 and that therefore, he fulfilled that criterion. As far as the requirement that he should have 20

years' Group A service, the Respondents have referred to the letter dated 29th March, 2018 (extracted hereinbefore) to urge that the requirement of 11 years' Group 'A' service for promotion does not permit counting of service rendered in defence services.

36. In this context, the Petitioner has cited the examples of other GCs (Select) being selected for the post of DIG who did not fulfil the requirement of 20 years' Group A service. In ground 'M' of the writ petition it has been averred by the Petitioner as under:

“It is also pertinent to mention that the BSF has, against this very advertisement has already appointed the following officers who also, as per BSF contention, do not have the required eligibility of 20 years/15 years of Group 'A' service and they were neither holding a post which was analogous to the post of DIG/Commandant with Grade Pay of Rs 8900-/8700: -

i) Gp Capt DK Taneja (Retd) with GP Rs 8700/- to post of DIG (Pilot) with GP Rs 8900/-.

ii) Gp Capt MK Sihag (Retd) with GP Rs 8700/- to post of DIG (Pilot) with GP Rs 8900/-.

iii) Wg Cdr S Malik (Retd) with GP Rs 8000/- to post of Commandant (Pilot) with GP Rs 8700/-.

iv) Wg Cdr HD Lohani (Retd.) with GP Rs 8000/- to post of Commandant (Pilot) with GP Rs 8700/-.”

37. In the counter-affidavit, in reply to the above ground, it is pointed out that both Group Captain D. K. Taneja and Group Captain M. K. Sihag were already on deputation to the rank of Captain/Pilot (DIG) and were absorbed

accordingly. It is then averred as under:

“Moreover, when BSF can have wider & better field of choice in the shape of officers holding higher ranks on selection basis in IAF it is within the legitimate liberty of the organization to deny officers like petitioner who could not pick up the rank on selection basis but merely on time scale basis. The wisdom to choose best for the organization shall be left to BSF.”

38. The above averment does not therefore deny that in the above instances, BSF has appointed as DIGs those who did not fulfil the criteria of 20 years of Group ‘A’ service. It is pointed out by the Petitioner that he had 28 years of commissioned service as on the date of his application. His case that commissioned service should be treated as equivalent to Group ‘A’ service appears reasonable. Indeed, if IAF officers who may not have in a strict sense fulfilled the criteria of the number of years of Group ‘A’ service have been absorbed in the BSF Air Wing, clearly, in their cases the years of commissioned service have been considered equivalent or higher in status to a Group ‘A’ service.

39. For the aforementioned reasons, the Court finds no justification for the differential treatment in denying the Petitioner the post of Captain/Pilot (DIG) in the BSF Air Wing. Accordingly, the impugned orders dated 1st March, 2018 and 8th August, 2018 issued by the DIG (Pers.), BSF rejecting the candidature of the Petitioner for the post of DIG are hereby set aside. A direction is issued to the Respondents to consider the Petitioner’s application dated 30th June, 2017 for absorption in the BSF against the available vacant post and issue the consequential orders not later than 4 weeks from today.

40. The petition is allowed in the above terms, but in the circumstances with no orders as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 12, 2019

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