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

+ **W.P.(C) 175/2019, CM APPLs. 45432/2019 (vacation of stay) and 3665/2020 (delay)**

**SHEKHAR CHANDER SHARMA** ..... Petitioner  
Through: Mr. Rajesh Katyal, Advocate.

versus

**UNION OF INDIA AND ANR.** ..... Respondents  
Through: Ms. Biji Rajesh with Mr. Aman  
Bakshi, Ms. Aarti A. Mehto and  
Mr. Gaurang Kanth, Advocates.

**CORAM:**  
**JUSTICE S. MURALIDHAR**  
**JUSTICE TALWANT SINGH**

**ORDER**  
% **29.01.2020**

1. The Petitioner, who is an Area Organiser ('AO') in the Sashastra Seema Bal ('SSB'), (Respondent No.2 herein), which is under the administrative control of the Ministry of Home Affairs ('MHA'), (Respondent No.1 herein), has filed the present petition seeking the following reliefs:

“(i) To issue a writ of Mandamus directing the Respondents to hold the DPC as per Sashastra Seema Bal, Group 'A' Combatised (General Duty), Director General, Additional Director General, Inspector General, Deputy Inspector General and Commandant posts Recruitment Rules, 2013 (amended on 13.11.2015) for consideration of the case of the petitioner for

promotion to the post of Deputy Inspector General (DIG) before 15.01.2019.

(ii) To stay the operation of order dated 04.12.2018 regarding transfer of the posts of the non-combatised wing of SSB, limited to the extent that the petitioner with his post of Area Organizer may be permitted to continue in SSB till the holding of the DPC on promotion to the post of DIG, pending hearing and final disposal of this Writ petition.”

2. The Petitioner states that he joined the SSB as a Circle Organiser (‘CO’) on 1<sup>st</sup> February, 1989. He was promoted as a Sub Area Organiser (‘SAO’) on 12<sup>th</sup> September, 1993 and further promoted as a Joint Area Organiser (‘JAO’) with effect from 1<sup>st</sup> April, 2011. On 13<sup>th</sup> August, 2012, he was promoted as an AO. It is stated that the AO is the highest post in the hierarchy of the non-combatised personnel in the SSB.

3. The next higher post of promotion for AO is stated to be Deputy Inspector General (‘DIG’). It is stated that for the post of DIG there are two feeder cadres i.e. the AO, which is non-combatised, and Commandant, which is a combatised post. According to the Petitioner, with one Mr. S.K. Sarangi, DIG having gone on deputation, who was earlier promoted as DIG from the post of AO, there was one vacancy in the post of DIG which was to be filled from the AO stream.

4. According to the Petitioner, he became eligible for being considered for promotion as DIG since 2016 since he had completed 4 years of service as AO. This is the requirement in terms of SSB Group ‘A’ Combatised (General Duty), Director General (‘DG’), Additional Director General

(‘ADG’), Inspector General (‘IG’), DIG, and Commandant Posts Recruitment Rules, 2013 as amended in 2015 (‘the RRs’).

5. The Respondents issued an OM dated 23<sup>rd</sup> April, 2018 by which the seniority list of AOs in SSB as on 1<sup>st</sup> April, 2018 was published. The Petitioner was at Sl. No.5. As regards the four persons above him in the seniority list, those at Sl. Nos.2 and 4 have already been promoted as DIG. The Officer at Sl. No.3 was also promoted as DIG and has since retired. It is stated that the Officer at Sl. No.1 cannot be promoted as there are disciplinary proceedings pending against him. Accordingly, it is contended that the Petitioner at Sl. No.5 is the senior-most eligible AO and is entitled to be considered for promotion as DIG.

6. Upon a vacancy occurring in the post of DIG, with Mr. S.K. Sarangi going on deputation, the Petitioner submitted an application dated 25<sup>th</sup> June, 2018 for a personal interview. The Assistant Director (Pers-I) of the SSB by an intra office note dated 10<sup>th</sup> August, 2018 informed the Petitioner that a supplementary DPC would be convened in the MHA in the near future to fill up the vacancy of DIG and that the Petitioner would be considered by such DPC for promotion as DIG.

7. When no further action was taken in this regard, the Petitioner sent reminders on 13<sup>th</sup> September, 2018 and 30<sup>th</sup> October, 2018, requesting to “conduct an early DPC for the post of DIG against the quota of AO.”

8. On 4<sup>th</sup> December, 2018, an office order was issued by the Respondents approving transfers of 2104 posts of 19 cadres of the non-combatised wing

of SSB along with available incumbents of the said cadres to the Intelligence Bureau ('IB'), with effect from 15<sup>th</sup> January, 2019. This was followed by a memorandum dated 7<sup>th</sup> December, 2018 whereby the Respondents sought the DE/Vigilance status of criminal cases of eligible candidates. Pursuant thereto, a Vigilance Clearance Certificate dated 11<sup>th</sup> December, 2018, was issued stating that there was no DE/Vigilance case pending or contemplated against the Petitioner.

9. The Petitioner then submitted a representation dated 28<sup>th</sup> December, 2018, praying *inter alia* that he should be retained at the present place of posting till his promotion procedure was completed. Thereafter, the present petition was filed.

10. While directing notice to be issued in the Petition on 11<sup>th</sup> January, 2019, the following order was passed by the Court:

“2. Notice. Learned counsel for the Respondents accepts notice.

3. Learned counsel for the Respondents states that at the proposed meeting of the Departmental Promotional Committee the case of promotion to the post of DIG will be considered. It is stated that the proposal is pending with the Ministry of Home Affairs (MHA).

4. It is not in dispute that if the impugned order dated 4<sup>th</sup> December, 2018 transferring the posts of the non-combatised wing of the SSB, where the Petitioner's is holding the post of Area Organiser, is given effect to, he will lose his chance of being considered for such promotion.

5. Considering that the DPC is likely to be held in the immediate future, the operation of the order dated 4<sup>th</sup> December, 2018, in so far as it concerns the Petitioner, shall remain stayed till the next date.

6. List on 11<sup>th</sup> February, 2019.

7. Order be given *dasti* under the signatures of Court Master.”

11. Thereafter, Respondent No.2 has filed CM APPL. 45432 of 2019 seeking vacation of stay. In the said application, it was *inter alia* pointed out that after receiving the representations of the Petitioner, a note was submitted to the MHA on 19<sup>th</sup> December, 2018 for convening a supplementary DPC for promotion of AO to the rank of DIG for the vacancy year 2018-19. In the meanwhile, on the basis of representations of a Commandant, the matter was re-examined and it was found that:

“if AO is promoted to DIG because of the aforesaid vacancy, then the ratio fixed in the Recruitment Rules for distribution of DIG between Commandant and AO will be disturbed.”

12. According to the MHA, it returned the proposal for holding a supplementary DPC. The case was resubmitted to it on 2<sup>nd</sup> January, 2019. At a DPC held at the MHA on 19<sup>th</sup> February, 2019, the issue placed at the meeting for re-examination, was returned. It is then stated, that the case was submitted for reconsideration again on 27<sup>th</sup> February, 2019 stating that no case for promotion of AO to DIG was made out. It is further averred that:

“A DIG going on deputation remains in the seniority list based on which they are considered for promotion to the rank of Inspector General. The seniority of DIG will get disturbed being the two feeder cadres.”

13. It is then stated in paras 9 and 10 as under:

“9. That the Petitioner was in the zone of consideration for promotion from the post of AO to DIG. However, on examination of the matter by the Respondent No.2, it is found that there were 30 DIsG promoted from Commandant stream including 03 on deputation available against the authorization of 32 (28+4 diverted IPS quota) whereas, 12 DIsG, promoted from Area Organisers, are available including 03 on deputation against the authorization of 10 (9+1 diverted IPS quota). Thus, if one more AO, is promoted against the unforeseen vacancy which arose on 01.08.2018 and 04 Commandants are promoted, then strength of DIG promoted from AO, will become 13, against 34 DIsG posted from Commandant, which is in violation of the ratio fixed in the RRs.

In order to maintain the ratio as stipulated in the RRs, DIsG promoted from Commandant and Area Organiser should have ideally been sent on deputation in the ratio 3:1 but in the instant case 02 excess DIsG promoted from Area Organiser have been sent on deputation. This has resulted in a situation where the DIsG promoted from AO are more in number as per the ratio which has distorted the seniority of DIG as the DIG promoted from AO have become senior to the DIG promoted from Commandant. Further, if one more AO is promoted to DIG, then the ratio stipulated in RRs will not be maintained and it will amount to violation of the provisions of RRs, thus no case was made out for the promotion of the petitioner.

10. That, vide the Impugned Order, the transfer of 2104 posts of the 19 cadres of non-Combatised Wing of SSB, alongwith available incumbents of the said cadre to the IB was approved with effect from 15.01.2019. Thereafter, vide order dated 11.01.2019, this Hon’ble Court was pleased to stay the operation of the Impugned Order and hence, the Petitioner has not been transferred to the IB as yet.”

14. Learned counsel appearing for Respondent No.2 states that except the Petitioner who has been retained in the SSB as a result of the interim order passed by this Court on 11<sup>th</sup> January, 2019, the entire non-combatised posts in the SSB have been transferred to the IB. The non-transfer of the Petitioner was causing serious administrative difficulties since there was no “non-combatised post left to accommodate the Petitioner” in the SSB. It is further pointed out that SSB, a Para Military Force:

“deals with security forces & issues at the Border and these postings are associated with national Security issues. Hence, non-transfer of the petitioner is causing complexities in the administration.”

15. The SSB contends that, “if one more AO is promoted as DIG against the unforeseen vacancy which arose on 1<sup>st</sup> August, 2018, and 4 commandants are promoted, then the strength of DIG promoted from AO will become 13, against 34 DIsG posted from commandant”, which is stated to be a violation of the ratio fixed in the RRs.

16. Learned counsel for the Petitioner sought to contest the above assertions. He also questions the so-called ratio of 3:1 spoken of by the SSB to be maintained in the promotions from Commandants and AOs respectively as DIGs. According to him, there was no such stipulation in the RRs. He submitted that the delay in convening the DPC was only to somehow deprive the Petitioner of the promotion as DIG which was due to him. He being the senior most AO was entitled to be considered for such promotion. It was also submitted that the Petitioner had a legitimate expectation regarding such promotion.

17. The Court is unable to accept the above submissions on behalf of the Petitioner. At the highest, the Petitioner could have only been considered for promotion. There is no vested right to be promoted as DIG.

18. The question whether the entire non-combatised posts in the SSB should be transferred on block to the IB is obviously a policy decision of the MHA and not judicially reviewable. It is not possible to accept that such transfer of as many as 2104 posts was done not for purely administrative purposes, but designed to somehow deprive the Petitioner of his promotion as DIG. There is no basis for this kind of submission.

19. If indeed there are no longer any non-combatised posts in the SSB, the question of considering the Petitioner for promotion as DIG in the SSB on the basis of his seniority in the cadre of AOs does not arise. Any further promotions would have to be sought only in the IB to which the Petitioner stands transferred as a result of the post occupied by him with the SSB itself getting transferred. In that view of the matter, it is unnecessary for the Court to examine if promoting one more AO as DIG would alter the ratio between AOs and Commandants respectively promoted as DIG in terms of the RRs. That question itself has been rendered irrelevant in view of the subsequent development of transfer of as many as 2104 non-combatised posts, including the post currently held by the Petitioner in the SSB, being transferred to the IB.

20. In that view of the matter, the Court finds no merit in the petition and is

accordingly dismissed. The interim order dated 11<sup>th</sup> January, 2019 which was made absolute on 11<sup>th</sup> February, 2019 stands vacated. CM 45432 of 2019 is allowed and CM 3665 of 2020 is disposed of.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**JANUARY 29, 2020**

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