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

+ W.P.(C) 5810/2020

KULWANT RAI SHARMA & ORS. Petitioners

Through: Dr. S. S. Hooda, Mr. Aditya Hooda
and Mr. Rahul Besoya, Advs.

versus

UNION OF INDIA & ANR. Respondents

Through: Ms. Bharathi Raju, CGSC, Ms.
Aakanksha Kaul and Mr. Manek
Singh, Advs with Mr. Vinod Kumar,
Law Officer.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

O R D E R

% **31.08.2020**

[VIA VIDEO CONFERENCING]

1. Fifty personnel of the respondents Border Security Force (BSF) have filed this petition, seeking (i) mandamus directing the respondents BSF to convene Departmental Promotion Committee (DPC) for consideration of the petitioners for enlistment in Select Panel for the ranks of Deputy Inspector General (DIG), Commandant, Second-in-Command, Deputy Commandant and other ranks to which they may be entitled to and to promote the officers so enlisted and found fit by the DPC to be promoted; (ii) mandamus directing the respondents BSF to conduct DPCs for the vacancy year 2020-21, as per the timeline provided in Department of Personnel and Training (DoPT) Office Memorandum (OM) dated 8th May, 2017; and, (iii) mandamus directing the respondents BSF to treat diversion of posts from IPS and Ex-Army cadres to BSF cadre, as pre-DPC activity and to undertake

the said exercise every year as per the timeline provided in DoPT OM dated 8th May, 2017.

2. The counsel for the respondents BSF appears on advance notice.
3. Considering the nature of the reliefs claimed, we have enquired from the counsel for the respondents BSF, why the petition should not be disposed of today itself, by directing the respondents BSF to, for the existing vacancies, hold the DPC and carry out the promotions within eight weeks of today and to also take a decision on the diversion and similarly, in a time bound fashion, hold the DPC for the diverted posts.
4. The counsel for the petitioners has contended that the conduct of the DPC is delayed, year after year, further accentuating the problem of stagnation in BSF owing to the increase in superannuation age till the rank of Commandant. It is his further contention that the diversion of the posts from IPS and Ex-Army cadre is invariably done by the month of August or September of each year, resulting in the posts which are vacant for that year remaining vacant for nearly eight to nine months of the year and those from the BSF cadre ultimately promoted to the said diverted posts, having the benefit of promotion for the remaining months of the year only, though were entitled to promotion at the beginning of the year.
5. The counsel for the respondents BSF has fairly stated that as far as prayers 'a' & 'b' in the petition, for holding of DPC are concerned, time bound direction therefor can be given today itself. However, for the mandamus sought for decision regarding diversion to be taken within time, so that the diverted posts are filled up at the beginning of the year, it is stated that a short adjournment may be granted.

6. We are of the view that there is no need for any adjournment for the prayer 'c' as well inasmuch as we agree with the petitioners that the decision regarding diversion should be taken well in advance since there is hardly any uncertainty about the date of superannuation of officers and the likely vacancies each year. We have already, in some earlier orders/judgments, expressed a view that the high ranking posts in forces like BSF should not be kept vacant and should be filled up immediately and for which timely action is required, as directed by the DoPT also. It is unfortunate that inspite of OMs of the DoPT in this regard, the malady continues.

7. We have enquired from the counsels whether the promotion to the vacancies of BSF cadre and to the diverted vacancies if any, are required to be carried out at the same time and whether, if the said promotions are not carried out at the same time, if any other disputes of seniority etc. would arise.

8. The counsel for the petitioners states that the promotions need not be at the same time and for the existing vacancies of the BSF cadre can be carried out immediately and for the diverted vacancies if any, at a later date and the same would not lead to any other disputes.

9. We accordingly dispose of this petition with the following directions:-

- (i) the respondents BSF to, within eight weeks hereof, conduct the DPC for the existing vacant posts of DIG, Commandant, Second-in-Command, Deputy Commandant and other ranks, belonging to the BSF cadre and consider all those, including the petitioners, found eligible therefor and promote the officers found fit by the DPC, within the said period of eight weeks

hereof; if any of the petitioners is not found eligible to be considered in the DPC, reasons therefor be informed in writing, within four weeks herefrom;

- (ii) the respondents to, within eight weeks from today, take a decision, whether any of the aforesaid posts in BSF, of IPS or Ex-Army cadre, are required to be diverted to the BSF cadre and to, within further six weeks thereafter conduct the DPC for the diverted posts and effect the promotions; and,
- (iii) the respondents BSF to take a decision qua diversion of the posts in BSF, of the IPS and / or Ex-Army cadre, either in advance for each year, so that the diverted posts are released at the beginning of each year, for promotion of the BSF cadre officers, or latest by the end of the month of March of each succeeding year, so that the posts do not remain vacant.

10. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

ASHA MENON, J

AUGUST 31, 2020
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