

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

% **Date of decision: 4th September, 2020.**

+ **W.P.(C) 5968/2020**

LOKESH KUMAR ARYA AND ORS

..... Petitioners

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra, Mr. Harsh Dhankar and Mr. Nikunj Arora, Advs.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Arun Bhardwaj, CGSC with Mr. Abhishek Sharma and Mr. Nikhil Bhardwaj, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM APPL. 21576/2020 (for exemption).

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) 5968/2020

3. The three petitioners, being the personnel of the respondents Indo Tibetan Border Police Force (ITBP), have filed this petition (a) impugning the orders dated 15th January, 2020 and 31st January, 2020 whereby 3rd Cadre Review/Restructuring of Group 'B' & 'C' service of General Duty (GD) Cadre and Non - GD Cadre of the respondents ITBP has been approved; and, (b) seeking mandamus to the respondents ITBP to carry out a holistic Cadre Review, keeping in mind creation of promotional avenues in

the Education and Stress Counsellor (ESC) cadre, in order to overcome stagnation.

4. The counsel for the respondents ITBP appears on advance notice.

5. We have enquired from the counsels, what is the right of the petitioners to have a cadre restructured/designed in the manner as suggested by the petitioners in the petition. It has also been enquired, whether there is any right of retention of the same cadre, as on the date of joining the service.

6. The counsel for the petitioners has contended that though there is no right to retention of the cadre as on the date of joining of service but the Department of Personnel & Training (DoPT) has vide several Office Memorandums (OMs) and in the Monograph published in this regard, prescribed the criteria, parameters/principles and objectives of cadre review and the contention of the petitioners is that the impugned exercise of cadre review has not been done in accordance therewith and is liable to be set aside and fresh cadre review directed.

7. We have further enquired from the counsels, whether it falls in the domain of the Court, even if finds cadre review done to have been not done in accordance with DoPT OMs and the Monograph, to, on its own, carry out the corrections in the cadre and to prescribe/lay down the cadre. *Prima facie* it appears that the same is a policy matter and cannot be in the domain of the Court. We have thus also enquired, whether there are any judgments whereby the Court, while interfering with the cadre review exercise, on its own has corrected/laid down the cadre or prescribed the cadre to be in a particular design.

8. The counsel for the petitioners has drawn our attention to *Ajay Suryavanshi Vs. Union of India* 2015 SCC OnLine Del 8950 and has

contended that this Court in the said judgment, upon finding various errors in the cadre review exercise done and which errors are highlighted in the judgment running into 24 pages, directed the respondents to carry out cadre review exercise, considering the concerns expressed in the judgment and the data provided by the petitioners therein and keeping in mind the salient features as laid down in the said judgment.

9. We have enquired from the counsel for the respondents ITBP, that if ultimately a direction for the respondents ITBP to carry out cadre review exercise, if required after considering the case of the petitioners and after applying the principles laid down in the cited judgment, has to be issued, why should this petition be kept pending and be not disposed of today itself, directing the respondents ITBP to treat this writ petition as a representation of the petitioners against the impugned cadre review and to, after giving an opportunity of hearing to the petitioners and if find any merit therein, review the cadre review already done and/or to make corrections/modifications thereto.

10. The counsel for the respondents ITBP has fairly stated that though his instructions were to accept notice and file counter affidavit but he has no objection to the petition being disposed of today itself, in the fashion aforesaid, so that the merit, if any found in the grievances made in the petition, can be redressed expeditiously.

11. We have also enquired from the counsel for the petitioners, whether the petitioners were given a hearing before the impugned cadre review exercise.

12. The answer is in the negative.

13. We accordingly dispose of this petition by directing the respondents ITBP to, within four weeks hereof as sought, review the cadre exercise impugned in this petition, by treating the writ petition as a representation of the petitioners and by granting a personal hearing to the senior most Deputy Commandant (ESC Cadre) in ITBP and the petitioners, and in which hearing the petitioners and the said Deputy Commandant shall have a right to place further relevant data for consideration of the respondents and to, thereafter, if find any merit, review the cadre review already undertaken and/or to make corrections/modifications therein and, if not finding any merit in the claim of the petitioners, pass an order, giving reasons for rejecting the various claims/representations of the petitioners. It is further clarified that in the said exercise, the parameters/principles laid down by the Courts in the judgments relating to cadre review as well as the OMs and Monograph of DoPT, be followed.

14. It is further clarified that the review, if required, so ordered, would not suspend or come in the way of the operation of the cadre review already done/undertaken.

15. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 4, 2020

‘pp’