

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

% **Date of decision: 9th November, 2020.**

+ **W.P.(C) 8839/2020**

WG. CDR. JITENDRA SINGH SANGWAN Petitioner

Through: Mr. S.C. Malhotra, Adv. with
petitioner in person.

Versus

**DIRECTOR GENERAL, BORDER SECURITY FORCE
& ANR. Respondents**

Through: Mr. Harish Vaidyanathan Shankar,
Mr. Satish Chander Malhotra, Ms.
Kinjal Shrivastava and Mr. Varun
Kishore, Advs. with Deputy
Commandant Vinod Kumar, Law
Officer, BSF

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.28452/2020 (for exemption)

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

W.P.(C) No.8839/2020 & CM No.28405/2020 (for ad-interim stay)

3. The petitioner, commissioned as a Group 'A' Officer in the Flying Branch of Indian Air Force on 17th June, 1995 and having been appointed as

a Commandant/Pilot in the respondents Border Security Force (BSF) on 5th September, 2017, has filed this petition seeking mandamus, directing the respondents BSF to constitute the Departmental Promotion Committee (DPC) and to consider the petitioner for promotion to Deputy Inspector General (DIG) / Captain / Pilot with effect from 1st January, 2019 against the vacancies available for DPC 2019 and/or alternatively for DPC 2020 with effect from 1st January, 2020 and to maintain his *inter se* seniority with DIGs of General Duty stream considered and promoted in the DPC held on 1st January, 2020. In the interregnum, the respondents BSF are also sought to be restrained from appointing any DIG/Captain Pilot by deputation or absorption.

4. It is the case of the petitioner, (i) that the next promotion due from the post of Commandant/Pilot to which the petitioner was appointed, is DIG/Captain Pilot and which, as per the Border Security Force Air Wing Officers (Group 'A' Combatised Posts) Recruitment Rules, 2011, requires residency period of two years at the post of Commandant/Pilot and minimum of 2000 flying hours; (ii) that the petitioner, after joining the respondents BSF, was not getting the requisite flying hours and thus applied to the respondents BSF for permission to compete the requisite flying hours privately; (iii) that on 27th/ 28th August, 2019, the petitioner was asked to join a Staff Court of Inquiry with respect to the complaints made against him with respect to seeking private flying; (iv) that the petitioner, on 2nd September, 2019 submitted a request for voluntary resignation with effect from 1st December, 2019 owing to limited availability of flying hours on the requisite aircraft and which was affecting his career/promotion; (v) that the petitioner, on 30th September, 2019 changed his request from that of voluntary resignation, to

voluntary retirement; (vi) that though the petitioner had sought waiver of residency period of two years for consideration for promotion to the post of DIG/Captain Pilot against the vacancy of the year 2019 but no relaxation was granted; (vii) that the petitioner completed his residency period of two years on 1st September, 2019; (viii) that the petitioner, on 7th September, 2020 withdrew his application for voluntary retirement and sought convening of DPC for promotion as DIG/Captain Pilot; and, (ix) that however the DPC has not been held owing to amendment of the Recruitment Rules aforesaid pending.

5. Contending that for the reason of proposed amendment of the Recruitment Rules, promotion cannot be withheld and further contending that the DPC should have been held within the time prescribed, this petition has been filed.

6. We have straightway enquired from the counsel for the respondents BSF appearing on advance notice along with Deputy Commandant Vinod Kumar, Law Officer, BSF, why the DPC is not being held.

7. The counsel for the respondents BSF has contended that though he will have to take instructions with respect to the DPC for the year 2020 but states that the DPC for the year 2019 has already been held. It is also stated that the petitioner does not qualify for consideration in the DPC, even if were to be held for promotion for the vacancies of the year 2020. On further enquiry, it is informed that though the petitioner has completed the residency period but does not have the requisite flying hours. Attention in this regard is drawn to Column 11, pertaining to the post of DIG/Captain Pilot, of the Schedule to the Rules aforesaid and which *inter alia* provides

qualification of minimum 2000 hours as Pilot in command on multi engine Aircraft or Helicopter, with 1000 hours as Pilot in command, on BSF type of Aircraft. It is stated that the petitioner does not fulfill the said criteria, to be eligible for promotion.

8. The counsel for the petitioner has contended, (a) that the petitioner was a Fighter Pilot in the Indian Air Force and has flying experience on fighter aircrafts and which flying experience is several times more than the flying experience on other types of aircrafts; (b) that owing to the same, the petitioner, though did not fulfill the requisite flying hours at the time of appointment in the respondents BSF also, was appointed, considering his vast experience; (c) that though the respondents BSF, at the time of appointment, had *suo moto* given relaxation to the petitioner but is now not giving relaxation inspite of the petitioner applying for the same; (d) attention is invited to Rule 9 of the Rules aforesaid which *inter alia* provides that the Officers who have completed their qualifying or eligibility criteria as contained in the Schedule shall be considered for appointment to the grade(s) and the second proviso whereto *inter alia* provides that the respondents BSF shall provide necessary opportunity for obtaining endorsement for conversion training and to complete the required flying hours; it is contended that it was thus incumbent on the respondents BSF to provide opportunity to the petitioner for completing the requisite flying hours but which the respondents BSF did not provide inspite of repeated pleas of the petitioner, to enable the petitioner to, if not available with the respondents BSF, complete the flying hours privately; (e) that the respondents BSF has only one EMBRAER Aircraft and four Pilots qualified to fly the same and hence only one gets an opportunity to command the

same and the other three have to co-pilot by taking turns; (f) that the respondents BSF cannot on the one hand appoint the personnel as Commandant/Pilot by assuring them timely promotion and at the costs of private employment paying manifold and thereafter deprive them of opportunity to earn the next rank even; and, (g) attention is also drawn to Rule 10 containing the power to relax any of the requirement of the Rules; it is argued that considering the experience of the petitioner of Indian Air Force, the requirement ought to have been relaxed in favour of the petitioner.

9. The counsel for the respondents BSF has contended that the advertisement pursuant to which the petitioner applied, and copy of which has been filed by the petitioner himself along with this writ petition, does not show any qualifying flying hours prescribed, waiver of which the petitioner claims to have been *suo moto* given while appointing the petitioner.

10. The counsel for the petitioner controverts and states that there is a requirement.

11. The petitioner, in the petition, has neither challenged the Recruitment Rules prescribing the criteria aforesaid nor sought any relief regarding relaxation. We have thus enquired from the counsel for the petitioner that in the face of the Recruitment Rules prescribing the qualifying criteria and which is not under challenge, how is it open to us, in exercise of jurisdiction under Article 226 of the Constitution of India, to grant relief in contravention of the statutory rules. If the petitioner is not eligible to be

considered in the DPC, for holding of which direction is sought, the petitioner does not have the locus to seek convening of the DPC even.

12. Moreover, till the Rules aforesaid are struck down on challenge, the petitioner cannot seek consideration for promotion as DIG/Captain Pilot without having been conferred relaxation in flying hours.

13. We however appreciate the predicament of the petitioner and have told the counsel for the petitioner that the only relief which can be granted to the petitioner is to direct the respondents BSF to consider granting relaxation to the petitioner within a time bound manner, either by treating this writ petition as a representation or if the petitioner desires to add something thereto for the purposes of seeking relaxation, by giving an opportunity to the petitioner therefor.

14. The counsel for the petitioner states that the petitioner, within three days will submit a representation containing additional facts in support of the writ petition and the writ petition along with the said additional facts be treated as the representation of the petitioner for grant of relaxation.

15. Though the counsel for the respondents BSF seeks six weeks' time for taking a decision on the representation but we feel that considering all the facts, a period of four weeks for taking a decision on the representation of the petitioner is sufficient.

16. We thus dispose of this writ petition, by giving liberty to the petitioner to, within three days make an additional representation to the respondents BSF and by directing the respondents BSF to, within four weeks hereof, take a decision on the relaxation in requisite flying hours sought by the petitioner, by treating the writ petition along with the

additional representation to be made as the representation of the petitioner. The decision in writing on the representation of the petitioner be communicated to the petitioner within one week of completion of four weeks hereof.

17. The petitioner, if remains aggrieved with the decision taken on his representation, would have liberty to take remedial action.

18. At this stage, Deputy Commandant Vinod Kumar, Law Officer, BSF informs that DPC for the vacancies for the year 2020 was conducted on 8th October, 2020.

19. The petition is disposed of.

20. The counsel for the petitioner states that the DPC conducted on 8th October, 2020 was pursuant to order of this Court in another writ petition and there are other vacancies for which DPC is yet to be conducted.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

NOVEMBER 9, 2020

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