

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 4th August, 2021.

+ W.P.(C) 6951/2019 & CM No.28903/2019 (for stay)

RAJIV KUMAR **Petitioner**
Through: Mr. Divyanshu Srivastava, Adv.
Versus
GOVERNMENT OF INDIA AND ORS. **Respondents**
Through: Mr. Vikas Mahajan, CGSC for UOI.
AND

+ W.P.(C) 6955/2019 & CM No.28906/2019 (for stay)

UPENDRA KUMAR **Petitioner**
Through: Mr. Divyanshu Srivastava, Adv.
Versus
GOVERNMENT OF INDIA AND ORS. **Respondents**
Through: Mr. Vikas Mahajan, CGSC for UOI.
AND

+ W.P.(C) 6957/2019 & CM No.28913/2019 (for stay)

SHREE KANT SUMAN **Petitioner**
Through: Mr. Divyanshu Srivastava, Adv.
Versus
GOVERNMENT OF INDIA AND ORS. **Respondents**
Through: Mr. Vikas Mahajan, CGSC for UOI.
AND

+ W.P.(C) 6959/2019 & CM No.28919/2019 (for stay)

BIJENDRA SINGH **Petitioner**
Through: Mr. Divyanshu Srivastava, Adv.
Versus
GOVERNMENT OF INDIA AND ORS. **Respondents**
Through: Mr. Vikas Mahajan, CGSC for UOI.
AND

+ W.P.(C) 9816/2019 & CM No.40489/2019 (for stay)

GOPAL SINGH **Petitioner**

Through: Mr. Divyanshu Srivastava, Adv.
Versus
UNION OF INDIA AND ORS. Respondents
Through: Ms. Amrita Prakash, Adv.
AND
+ **W.P.(C) 10248/2019 & CM No.42264/2019 (for stay)**

NAHAR SINGH MUND Petitioner
Through: Mr. Divyanshu Srivastava, Adv.
Versus
UNION OF INDIA AND ORS. Respondents
Through: Mr. Vishal Mittal, Adv. for R- 1 to 3.
AND
+ **W.P.(C) 2165/2020**

SUBHASH CHANDER Petitioner
Through: Mr. Divyanshu Srivastava, Adv.
Versus
UNION OF INDIA & ORS. Respondents
Through: Mr. Anil Soni, CGSC for UOI.
AND
+ **W.P.(C) 2192/2020**

AMIT AGARWAL Petitioner
Through: Mr. Divyanshu Srivastava, Adv.
Versus
UNION OF INDIA AND ORS. Respondents
Through: Dr. L.C. Singhi, Adv. for R-1 to 3.
AND
+ **W.P.(C) 2193/2020**

MANISH KUMAR JHA Petitioner
Through: Mr. Divyanshu Srivastava, Adv.
Versus
UNION OF INDIA & ORS. Respondents
Through: Dr. L.C. Singhi, Adv. for R-1 to 3.
AND
+ **W.P.(C) 2928/2020 & CM No.10173/2020 (for stay)**

RAMNIWASH NAGAR **Petitioner**
 Through: Mr. Divyanshu Srivastava, Adv.
 Versus
UNION OF INDIA AND ORS. **Respondents**
 Through: Mr. Jivesh Kumar Tiwari, Adv.
AND
 + **W.P.(C) 2930/2020 & CM No.10177/2020 (for stay)**

JAGAT RAJ **Petitioner**
 Through: Mr. Divyanshu Srivastava, Adv.
 Versus
UNION OF INDIA AND ORS. **Respondents**
 Through: Mr. Jivesh Kumar Tiwari, Adv.
AND
 + **W.P.(C) 2932/2020 & CM No.10181/2020 (for stay)**

BIJAY KUMAR JHA **Petitioner**
 Through: Mr. Divyanshu Srivastava, Adv.
 Versus
UNION OF INDIA AND ORS. **Respondents**
 Through: Mr. Jivesh Kumar Tiwari, Adv.
AND
 + **W.P.(C) 2987/2020 & CM No.10355/2020 (for stay)**

PARAS NATH YADAV **Petitioner**
 Through: Mr. Divyanshu Srivastava, Adv.
 Versus
UNION OF INDIA & ORS **Respondents**
 Through: Dr. L.C. Singhi, Adv. for R-1 to 3.
AND
 + **W.P.(C) 3034/2020 & CM No.10559/2020 (for stay)**

DALVEER SINGH **Petitioner**
 Through: Mr. Prashant Vaxish with Ms. Parul Juneja, Mr. Harsh Arora, Mr. Kartik Gupta and Mr. Ashish Anjani Sharma, Adv.
 Versus
BORDER SECURITY FORCE & ORS. **Respondents**

Through: Mr. Ajay Digpaul and Mr. Kamal R.
Digpaul, Advs. for UOI

AND

+ **W.P.(C) 3713/2020 & CM No.13300/2020 (for stay)**

SHRAWAN KUMAR SINGH

..... Petitioner

Through: Mr. Prashant Vaxish with Ms. Parul
Juneja, Mr. Harsh Arora, Mr. Kartik
Gupta and Mr. Ashish Anjani
Sharma, Advs.

Versus

BORDER SECURITY FORCE AND ORS. Respondents

Through: Mr. Sanjeev Sabharwal, Adv.

AND

+ **W.P.(C) 8006/2020 & CM No.26067/2020 (for stay)**

BHANWAR SINGH

..... Petitioner

Through: Mr. Prashant Vaxish with Ms. Parul
Juneja, Mr. Harsh Arora, Mr. Kartik
Gupta and Mr. Ashish Anjani
Sharma, Advs.

Versus

BORDER SECURITY FORCES & ORS. Respondents

Through: Mr. Sanjeev Uniyal with Mr. Dhawal
Uniyal, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner in each of these sixteen petitions is an "ex-serviceman", with a "Deemed Graduation Certificate" issued by Indian Army/India Air Force/Indian Navy/Armed Forces Medical Services, and had participated in the examination conducted by the respondent Staff Selection Commission

(SSC) in the year 2014 or in the year 2016, in the Ex-servicemen Category, for "Recruitment of Sub-Inspectors (SIs) in Delhi Police (DP), Central Armed Police Forces (CAPFs) and Assistant Sub-Inspectors (ASIs) in Central Industrial Security Force (CISF)" (hereinafter referred to as CAPF Examination-2014/2016). On success in the said examination, while the petitioners in W.P.(C) No.3034/2020, W.P.(C) No.3713/2020 & W.P.(C) 8006/2020 were appointed as SIs in Border Security Force (BSF), the petitioners in W.P.(C) Nos.6951/2019, 6955/2019, 6957/2019, 6959/2019, 9816/2019, 10248/2019, 2165/2020, 2192/2020, 2928/2020, 2930/2020, 2932/2020, 2987/2020 & 2193/2020, were appointed as SIs in CISF.

2. These petitions were filed, impugning the action of (a) the respondent SSC of, after the petitioners were so appointed and joined service and served for considerable time, revising the result of the CAPF Examination-2014/2016 to the prejudice of the petitioners; and, (b) the respondents BSF and CISF, of, as a consequence of the revision of the result, issuing notices to the petitioners appointed as SIs in BSF, to show cause why their services should not be terminated/terminating their service and/or to the petitioners appointed as SIs in CISF, to show cause why they should not be demoted/demoting them to the post of ASI in CISF.

3. The genesis of the actions of respondents SSC/BSF/CISF impugned in these petitions was, that the posts to which the petitioners had been appointed, were Group 'B' posts, the essential educational qualification for appointment whereto was "Bachelor's Degree from a Recognised University or Equivalent", and the petitioners, holding a Deemed Graduation Certificate of the Indian Army/Navy/Air Force/Armed Forces Medical Services, were

not eligible therefor and had been inadvertently appointed. The petitioners appointed as SIs in BSF having been found to have secured lesser marks than the last candidate selected in the examination for the post of ASI in CISF, were terminated/sought to be terminated. The petitioners appointed as SIs in CISF having been found to have secured more marks than the last candidate selected in the examination for the post of ASI in CISF, were demoted/sought to be demoted to the post of ASI in CISF. Needless to state, the post of ASI in CISF, is a Group 'C' post.

4. Though the petitions came up before this Court at different times, but the issue for adjudication therein being the same, were collated for adjudication.

5. Though the counsels have argued the entire batch of petitions as one, but it is apposite to list out the relevant factual controversy in each of the petitions.

W.P.(C) 3034/2020, W.P.(C) 3713/2020 & W.P.(C) 8006/2020 (of BSF Personnel)

6. The petitioner in W.P.(C) No.3034/2020 appeared in the CAPF Examination-2014 and on 7th September, 2015 was issued the recruitment letter and has been in service since 15th October, 2016. Vide letter dated 6th November, 2019, the respondent SSC, pursuant to revision of the result of the CAPF Examination-2014, informed BSF of his ineligibility, on the basis of Deemed Graduation Certificate for the post of SI in BSF and that though he was eligible for Group 'C' post of ASI in CISF under the Ex-serviceman Category, but he did not qualify therefor as he had scored lesser marks than the last candidate selected for the said post. Notice dated 11th March, 2020

was issued to him, to show cause why his employment with BSF should not be terminated. The petition was filed, impugning the show cause notice. The petition came up first before this Court on 1st May, 2020, when while issuing notice thereof, upon being informed that the petitioner was still working as SI in BSF, *status-quo* with regard to the services of the petitioner as SI in BSF was directed to be maintained and the said order has continued till now.

7. The facts of W.P.(C) No.3713/2020, save for minor differences in dates and which are not relevant, are identical to that of W.P.(C) No.3034/2020. This petition came up first before this Court on 24th June 2020, when notice of the petition was issued and *status-quo* with regard to service of the petitioner directed to be maintained and which interim order has continued till now. The respondents Union of India (UOI) in their counter affidavit in this petition have *inter alia* pleaded that the petitioner, in CAPF Examination-2014, was not selected for Group 'C' post, because he had less marks than the marks of the last candidate selected to Group 'C' post of ASI in CISF under the Ex-serviceman Category.

8. The relevant facts of W.P.(C) No.8006/2020 are also the same as those of W.P.(C) No.3034/2020 and W.P.(C) No.3713/2020. The said petition came up first before this Court on 15th October, 2020, when notice thereof was ordered to be issued. Though the said petition was also accompanied with an application for interim stay, to restrain the respondent BSF from terminating the services of the petitioner but there is no interim order in this petition. However in subsequent common orders in all the petitions, generally interim orders were directed to continue.

W.P.(C) No.6951/2019, W.P.(C) No.6955/2019, W.P.(C) No.6957/2019, W.P.(C) No.6959/2019, W.P.(C) No.9816/2019, W.P.(C) No.10248/2019, W.P.(C) No.2165/2020, W.P.(C) No.2192/2020, W.P.(C) No.2193/2020, W.P.(C) No.2928/2020, W.P.(C) No.2930/2020, W.P.(C) No.2932/2020 & W.P.(C) No.2987/2020 (of CISF Personnel)

9. The petitioner in W.P.(C) No.6951/2019 appeared in the CAPF Examination-2016 and joined CISF on 10th February, 2018 and was about to complete his probation period of two years when he was issued a notice dated 18th June, 2019 to show cause why he should not be demoted from the post of SI to ASI. The petition came up first before this Court on 1st July, 2019, when while issuing notice thereof, *status-quo* was directed to be maintained and which order has continued till date. The respondents Ministry of Home Affairs (MHA) and CISF, in the counter affidavit filed to this petition have pleaded, (a) that the petitioner, while filling up the form of the CAPF Examination-2016, gave first preference of Group 'C' post i.e. SI in DP and second preference to Group 'B' post i.e. SI in CISF; (b) that the petitioner, with a Deemed Graduation Certificate of Indian Army, was not eligible for a Group 'B' post; (c) that the petitioner was inadvertently offered a Group 'B' post, for which he was not eligible; (d) that a representation dated 27th May, 2018 was submitted by certain other Ex-servicemen Category candidates who had also participated in the CAPF Examination-2016 and who were also having Deemed Graduation Certificate and who were selected to the post of ASI in CISF, that though they had been allocated the post of ASI, certain others, similarly placed as them and holding the same Deemed Graduation Certificate, had been selected as SIs; (e) that the respondent SSC, on the basis of the said representation revised the result of the CAPF Examination-2016 and in pursuance whereunto notice

to show cause had been issued to the petitioner; (f) that the notice of CAPF Examination-2016 specifically mentioned in Note V to Clause 4(B) thereof, that as per the extant guidelines of the Department of Personnel and Training (DoPT), Deemed Graduation Certificate of Indian Army or corresponding certificate in the Navy or Air Force, granted on completion of 15 years in Armed Forces, was not applicable for Group 'B' posts; (g) that Rule 6(3) of the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 also provides as under:

"For appointment to any reserved vacancy in Group 'C' posts, to be filled partly by direct recruitment and partly by promotion or transfer, where the minimum educational or technical qualification prescribed for appointment by direct recruitment is higher than that prescribed for promotees or transferees, an ex-serviceman shall be deemed to satisfy the prescribed educational or technical qualification if he,-

- (i) satisfies the educational or technical qualification prescribed for direct requirement to the post from which promotion or transfer to the post in question is allowed; and*
- (ii) has identical experience of work in a similar discipline and for the same number of years in the Armed Forces of the Union, as prescribed for promotees or transferees.";*

(h) that even in the Deemed Graduation Certificate of the Indian Army/Navy/Air Force, it is clearly mentioned that such certificate makes the candidate eligible for appointment to any Group 'C' vacancy for ex-servicemen; (i) that the petitioner was thus well aware of the fact that he was eligible only for Group 'C' post but despite the same, wrongly and deliberately gave the second preference of Group 'B' post; if the petitioner

had correctly given second preference, he would not have been offered Group 'B' post; (j) that the petitioner cannot continue on a post for which he was not eligible; (k) that the Deemed Graduation Certificate is issued in terms of the decision taken and published in the Employment and Re-settlement Opportunities Bulletin 59 of January/February, 1977 issued by Ministry of Defence, Directorate General of Re-settlement, to the effect that a matriculate ex-serviceman with 15 years' service is deemed to be educationally qualified for the posts reserved for ex-servicemen where the required qualification is a degree; and, (l) that Deemed Graduation Certificate of Indian Army/Navy/Air Force, in terms of DoPT Notification dated 12th February, 1986 and DoPT Office Memorandum (OM) dated 25th February, 2014 is applicable only for Group 'C' posts for which essential qualification is graduation and where experience of technical or professional nature is not essential.

10. The respondent SSC, in its counter affidavit filed in W.P.(C) No.6951/2019, has pleaded (i) that the petitioner, in the CAPF Examination-2016 secured lesser marks than the last candidate selected and could not be appointed against the post of SI in DP; (ii) that while the post of SI in CISF, Into-Tibetan Border Police Force (ITBP), Central Reserve Police Force (CRPF), BSF and Sashastra Seema Bal (SSB) is a Group 'B' post, the post of SI in DP is a Group 'C' post; the post of ASI in CISF is also a Group 'C' post; (iii) that the required educational qualification for all the posts on offer in the CAPF Examination-2016, was a Bachelor's Degree from a Recognised University or Equivalent; (iv) that in respect of matriculate ex-servicemen, a provision had been made in Note-V of Para 4(B) in the notice of the CAPF Examination-2016, as under:

"A Matriculate Ex-Serviceman (which term includes an Ex-Serviceman, who has obtained the Indian Army Special Certificate of education or corresponding certificate in the Navy or the Air Force), who has put in not less than 15 years of service as on closing date with Armed Forces of the Union shall be considered eligible for appointment to the Group-C posts of SI in Delhi Police and ASI in CISF only. Thus, those Non-Graduate Ex-Servicemen who have not completed 15 years of service as on the last date for receipt of applications as stated in Note-III under Para 4 (B) are not eligible for these posts. Further, as per extant guidelines of Department of Personnel & Training, deemed graduation of Indian Army Special Certificate of education or corresponding certificate in the Navy or the Air Force, on completion of 15 years in Armed Forces is not applicable for Group-B posts.";

(v) that inadvertently, few matriculates who had put in more than 15 years of service in the Armed Forces of the Union were selected for Group 'B' posts of SI in various CAPFs, in the CAPF Examination-2014, 2015 and 2016 and which discrepancy came to notice through W.P.(C) No.18990/2017 filed in the High Court of Kerala at Ernakulum by some candidates who had participated in the CAPF Examination-2015; and, (vi) that upon the issue coming to the notice of SSC, results of 11 such candidates who were selected as SIs in CAPFs through the CAPF Examination-2016 including the petitioner, were immediately revised and a counter affidavit was filed in the aforesaid writ petition that action was being taken.

11. The factual position in W.P.(C) No.6955/2019, W.P.(C) No.6957/2019, W.P.(C) No.6959/2019, W.P.(C) No.9816/2019, W.P.(C) No.10248/2019 and W.P.(C) No.2193/2020, is identical to that in W.P.(C)

No.6951/2019, save for minor differences in dates but which are not relevant to the issue for consideration. Vide orders dated 1st July, 2019, 11th September, 2019, 20th September, 2019 and 2nd March, 2020 respectively, in the said petitions also, *status-quo* was directed to be maintained.

12. The petitioner in W.P.(C) No.2165/2020, pursuant to participation in the CAPF Examination-2014, was recruited as SI in CISF on 10th August, 2015; he was served show cause notice dated 19th December, 2019 and vide order dated 21st February, 2020 was ordered to be reverted to the rank of ASI in CISF. The said petition came up first before this Court on 25th February, 2020 and vide order dated 26th February, 2020 it was directed that the demotion, if not already given effect to, will be subject to the outcome of the petition. The petitioner preferred SLP(C) No.5842/2020 to the Supreme Court and vide order dated 9th March, 2020 therein, for the reason that the reversion in other petitions had been stayed, the order dated 21st February, 2020 was suspended. The said interim order continues in force till now.

13. The factual position in W.P.(C) 2928/2020, W.P.(C) No.2930/2020, W.P.(C) No.2192/2020, W.P.(C) No.2932/2020 and W.P.(C) No.2987/2020 is identical to that in W.P.(C) No.2165/2020, save for minor differences in dates but which are not relevant for the subject controversy. Vide orders dated 2nd March, 2020, 19th March, 2020 and 24th April, 2020 respectively, in the said petitions also, it was directed that if demotion had not already been given effect to, the same shall not be given effect to and which order continues.

14. Mr. Prashant Vaxish, Advocate for the BSF personnel argued, (a) that the petitioners were recruited, after the documents submitted by them,

including the Deemed Graduation Certificates, were duly verified; (b) that the notice to show cause had been issued to them, after nearly four years of the result of the CAPF Examination-2014 was announced; (c) that it has been held in paragraph 9 of *Chief Executive Officer, NSSO Vs. Biswa Bhusan Nandi* (2008) 10 SCC 161, that where the appointing authority is satisfied that the ex-serviceman is expected to perform his duties of the post by undergoing “on job training” for a short duration, such appointment can be made for non-technical work, even if experience is essential; the petitioners have now served for several years as SI in BSF; (d) that the petitioners have crossed the age of relaxation for ex-servicemen; (e) that till the year 2009, the post of SI in BSF was a Group 'C' post; though in the year 2009, the post of SI was converted into a Group 'B' post, but the educational and other qualifications for the post, after 2009 remained the same, as prior thereto; thus, when prior to 2009, the petitioners on the basis of Deemed Graduation Certificate would have been eligible for the post of SI in BSF, they cannot be said to be not eligible therefor merely for the reason of the same having been declared as a Group 'B' post; (f) that the petitioners, after having served as SI, BSF for several years and without any complaint of non-performance attributable to their educational qualification, ought not to be dismissed from service; there had been no change in the duties to be performed by SI in BSF, after the year 2009, when the same became a Group 'B' post; and, (g) that the post of SI in DP, having the same grade pay as the post of SI in BSF, is still a Group 'C' post.

15. Mr. Divyanshu Srivastava, counsel for the CISF personnel argued, (i) that the respondents have themselves to blame for the situation which has arisen and the fault if any is of SSC/CISF and the petitioners ought not to be

made to suffer therefor; (ii) that in ***Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*** (1990) 1 SSC 361, in paragraph 6, relief was granted, reasoning that practical experience would aid the person to effectively discharge the duties and is a sure guide to assess the suitability; it was held that initial minimum educational qualification prescribed for different posts is undoubtedly a factor to be reckoned with but only at the time of initial entry into the service; once the appointments were made as daily rated workers and the workers worked for considerable length of time, it would be hard and harsh to deny them confirmation on the ground that they lack prescribed educational qualification; the petitioners having served for 5/6 years, are not liable to be reverted from the post of SI in CISF to the post of ASI in CISF; (iii) that the test to be applied is, whether the educational qualification which the petitioners are stated to be lacking, has come in the way of performance of duties by the petitioners; the petitioners have been effectively and efficiently discharging their duties and have rather gained experience and ought not to be reverted; (iv) attention was also drawn to paragraphs 27 to 30 of ***Gujarat Agricultural University Vs. Rathod Labhu Bechar*** (2001) 3 SCC 574, to contend that the experience gained by the petitioners and the performance of duties on their post by the petitioners, without any complaint, are relevant factors to be taken into consideration; (v) reliance was also placed on ***Soban Singh Vs. N.D.M.C.*** MANU/DE/1803/2005, concerned with regularisation at the post, duties of which one had been performing for long; (vi) that the petitioner in W.P.(C) No.2193/2020, besides having the Deemed Graduation Certificate, also has a Diploma in Mechanical Engineering of August, 2012 from Indira Gandhi National Open University; (vii) attention was also invited to the Trade

Proficiency Certificate dated 26th July, 2016 issued to the petitioner in W.P.(C) No.2193/2020 from the Indian Air Force; (viii) attention was also invited to the Deemed Graduation Certificate dated 29th July, 2016 issued to the petitioner in W.P.(C) No.2193/2020 by the Indian Air Force, *inter alia* certifying,

"In view of the above concession, Service No. 775490-K Rank: SERGEANT Name: MANISH KUMAR JHA Trade: AIRFRAME FITTER Who has served in the IAF for 20 years and 15 days from 16 Jul 1996 to 31 Jul 2016, may be Considered educationally qualified for Group 'B' & 'C' post where prescribed Qualification is Graduation.";

(ix) reliance was also placed on *Purushottam Vs. Chairman, M.S.E.B.* (1999) 6 SCC 49, *Biswa Bhusan Nandi supra*, *Union of India Vs. Nareshkumar Badrikumar Jagad* 2018 SCC OnLine SC 2573, *United India Insurance Co. Ltd. Vs. Rajendra Singh* (2000) 3 SCC 581, *Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd.* (2005) 13 SCC 777 and *State of Karnataka Vs. State of Tamil Nadu* (2017) 3 SCC 362, on the aspect of the petitioners being not made to suffer for the fault of the respondents; (x) that in the notice of CAPF Examination-2016, it was for the first time provided that the Deemed Graduation Certificate made the ex-servicemen eligible for Group 'C' posts only; (xi) that there is no authority for making ex-servicemen with Deemed Graduation Certificate eligible for Group 'C' posts only; (xii) that Central Industrial Security Force Rules, 2001 (CISF Rules) permit demotion only for the reason of non-performance/incompetence/furnishing false or incorrect information at the time of appointment and not in the circumstances as was being done;

reference was made to Rules 25(2) and 26(4) of the CISF Rules; (xiii) that qua the petitioners whose probation period is over and who had already been confirmed, demotion can only be under Rule 34 of the CISF Rules, by way of penalty and after following the detailed procedure as prescribed therein; (xiv) that on the contrary, SSC and CISF revised the result without giving any opportunity of hearing to the petitioners; (xv) that once the SSC has revised the result, issuance of show cause notice by CISF was only a formality, inasmuch as CISF is bound to follow the decision already taken by SSC; (xvi) that in disciplined forces like CISF, the personnel carry their seniority on their shoulder and the petitioners would suffer humiliation and embarrassment, if reverted from the post of SI to the post of ASI, to whom, they till now have been seniors; (xvii) that there is no uniformity across establishments qua equivalence to be conferred to Deemed Graduation Certificate of Indian Army/Navy/Air Force; while Banaras Hindu University makes the holder of a Deemed Graduation Certificate of Indian Army/Navy/Air Force eligible to Group 'B' posts, the respondents CISF are making the Deemed Graduation Certificate eligible for only Group 'C' posts; (xviii) that the petitioners, on appointment as SIs, have planned their future accordingly and will suffer grave prejudice by demotion; and, (xix) that the nature of duties rendered by ASI and SI in CISF are exactly the same and the classification into Group 'B' and Group 'C' post is only nominal and salary-based.

16. Mr. Vikas Mahajan, counsel for the respondents argued, (a) that the appointments of the petitioners to Group 'B' posts is contrary to the Rules and the Conditions in the advertisement inviting applications and is *void ab initio* and does not confer any right on the petitioners; (b) that the essential

educational qualification for the post to which the petitioners were appointed, was "Graduation" and not "Deemed Graduation"; (c) that the petitioners, without holding the essential qualification, cannot claim any right to continue on the post; (d) that merely because the petitioners have got appointed to the said post and have gained experience, is no ground to allow the petitioners to continue on the post for which they were not eligible; there is no estoppel against the law; (e) that the continuance of the petitioners on the subject post, is without being eligible therefor and not valid; (f) that the reliance on the CISF Rules is misconceived, inasmuch as this is not a case of imposition of penalty for any misconduct; (g) that the respondents are within their right to revise the result; (h) that once the appointment was illegal i.e. contrary to the Rules, the petitioners acquired no right to the post; (i) that notwithstanding the aforesaid, notice to show cause was given to the petitioners; (j) that categorization/classification, i.e. into Group 'B' and Group 'C' posts, is a policy decision and in which the Courts ought not to interfere; (k) that the petitioners in all the petitions have not even challenged the categorization/classification; (l) that the categorization/classification is unequivocal in terms; (m) that the advertisement inviting applications for CAPF Examination-2016 clearly provided that Deemed Graduation Certificate of Indian Army/Navy/Air Force was valid for only Group 'C' posts; (n) that the matter is governed by statutory Rules; (o) that the petitioners participated in the recruitment process knowing of the stipulation in the advertisement inviting applications as well as of the statutory Rules and are not entitled to challenge the result of the examination declared in accordance with the stipulation and the statutory Rules; (p) that if the challenge in some of the petitions to categorization/classification of posts

into Group 'B' and Group 'C' is accepted, the same would affect the entire result; (q) attention was invited to the Deemed Graduation Certificate issued to the petitioner in W.P.(C) 6951/2019, providing, "...that a Matriculate Ex-serviceman with 15 years service is to be deemed educationally qualified for reserved posts where if required qualification is 'Degree'" and it was emphasized that it is not a degree; (r) attention was invited to the advertisement inviting applications for CAPF Examination-2016, Annexure P-4 in W.P.(C) No.6951/2019, particularly to Note V to Clause 4(B) thereof, providing that "A Matriculate Ex-serviceman...who has obtained Indian Army Special Certificate of education or corresponding certificate in the Navy or the Air Force, who has put in not less than 15 years of service as on closing date with the Armed Forces of the Union, shall be considered eligible for appointment to the Group-C posts of SI in Delhi Police and ASI in CISF only"; attention was also invited to Clause 5, titled "Essential Educational Qualifications" in the said advertisement, prescribing "Bachelor's Degree from a Recognised University or Equivalent"; (s) on enquiry, it was informed that SSC has no equivalence list; (t) attention was also invited to Clause 17 of the said advertisement, providing that in all matters relating *inter alia* to eligibility, the decision of SSC shall be final; (u) attention was invited to the application form filled by the petitioner in W.P.(C) 6951/2019, particularly to the column "Preference of Posts", to show that the petitioner therein had filled up first preference of Sub-Inspector in Delhi Police (DP), second preference of Sub-Inspector in Central Industrial Security Force (CISF), third preference of Assistant Sub-Inspector in Central Industrial Security Force (CISF), fourth preference of Sub-Inspector in Sashastra Seema Bal (SSB), fifth preference of Sub-

Inspector in Central Reserve Police Force (CRPF), sixth preference of Sub-Inspector in Border Security Force (BSF) and seventh preference of Sub-Inspector in Indo-Tibetan Border Police Force (ITBP); it was argued that the petitioner/s though eligible only for the post of SI in DP and ASI in CISF, which alone are Group 'C' posts, applied for Group 'B' posts also and which led to the petitioners, in pursuance to the result earlier declared, being appointed as SIs; (v) attention was invited to Annexure R-11 to the counter affidavit in W.P.(C) No.6951/2019, being the order dated 9th April, 2009 of DoPT, issued in exercise of powers conferred by Proviso to Article 309 and Clause 5 of Article 148 of the Constitution of India read with Rule 6 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and in supersession of the Notification dated 20th April, 1998, classifying the civil posts under the Union in Group 'A', Group 'B', Group 'C' and Group 'D', according to grade pay and it was contended that there is no challenge thereto; (w) attention was also invited to Annexure R-2 to the counter affidavit in W.P.(C) No.6951/2019, being the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979, particularly sub-rule (3) of Rule 6 thereof, as reproduced above; (x) that it is not as if, the petitioners are being terminated; they are being accommodated as ASI in CISF; (y) reliance was placed on (i) ***Union of India Vs. Rakesh Kumar*** (2001) 4 SCC 309 (paragraph 21) to contend that no relief contrary to the Rules can be sought; (ii) ***Satish Kumar Sharma Vs. Bar Council of H.P.*** (2001) 2 SCC 365 (paragraphs 21 & 22) to contend that since the appointments of the petitioners suffered threshold bar and the impugned action against the petitioners was on such ground and not on the ground of misconduct, therefore the procedure prescribed for misconduct was not

required to be followed; (iii) ***Shiv Kumar Vyas Vs. Indira Gandhi National Open University*** 2000 (85) DLT 182 (DB) (paragraph 27), to contend that once the petitioners have been appointed without having requisite qualification, on the grounds of misplaced sympathy, they cannot be allowed to continue merely because some time has been taken in litigation; (iv) ***Guardisman Manar Ram Vs. Chief of Army Staff*** MANU/DE/1805/2002 (DB) (paragraph 11) to contend that even though the error in the result first declared by the SSC is not attributable to any misrepresentation on the part of the petitioners, no vested right has accrued to the petitioners; (v) ***Mohd. Sartaj Vs. State of U.P.*** (2006) 2 SCC 315, to contend that in view of the basic lack of qualifications, the petitioners could not have been appointed nor could their appointment have been continued and that the petitioners did not hold any right over the post and therefore no hearing was required before cancellation of their services; (vi) ***State of Rajasthan Vs. Kulwant Kaur*** (2006) 9 SCC 564 (paragraphs 12 to 15), to contend that once the petitioners were without essential qualifications, merely because interim order has been granted in their favour and whereunder they have continued in service, is not a ground to continue the petitioners further in service; (vii) ***Anita Mishra Vs. Govt. of N.C.T. of Delhi*** 2007 (145) DLT 191 (DB) (paragraph 5), to contend that a wrong appointment has to be rectified and cannot be allowed to be perpetuated and that the petitioners cannot claim any right; (viii) ***State Bank of India Vs. D. Hanumantha Rao*** (1998) 6 SCC 183 (paragraphs 2 to 5), to contend that the legal fiction has to be confined to the purpose for which it is created and it was argued that under the Rules, the Deemed Graduation Certificate of the Armed Forces of the Union, by a legal fiction, is deemed to be graduation, but only for Group 'C' posts and

the legal fiction cannot be extended to Group 'B' posts; (ix) ***R. Kalyani Vs. Janak C. Mehta*** (2009) 1 SCC 516 (paragraph 32), holding that a statute whereby legal fiction, vicarious criminal liability is fastened, all ingredients laid down under the statute must be fulfilled and it was argued that the legal fiction, deeming the certificate of Armed Forces of Union to be a Graduation Certificate, having been restricted in the Rules for Group 'C' posts only, has to be confined thereto only; (x) ***Secretary, State of Karnataka Vs. Umadevi*** (2006) 4 SCC 1 (paragraphs 15 to 18 and 53 to 54), to contend that statutory Rules are sacrosanct and that ***Bhagwati Prasad*** supra cited by the counsel for the petitioners is not good law; (xi) ***Union of India Vs. S. Vinodh Kumar*** (2007) 8 SCC 100 (paragraphs 18 and 19), to contend that even a selected candidate does not have any right to be appointed and that after participating in the selection process, the Rules thereof cannot be challenged; it was argued that the petitioners, knowing the applicable Rules and the stipulations in the advertisement, that they were eligible for Group 'C' posts only, participated in the selection process and now cannot claim any right to Group 'B' posts; (xii) ***Amlan Jyoti Borooah Vs. State of Assam*** (2009) 3 SCC 227 (paragraphs 29 to 36) laying down that candidates who take part in the selection process knowing full well the procedure laid down therein cannot be permitted to turn back and assail the same after having been declared unsuccessful; (xiii) ***Yogesh Kumar Vs. Govt. of NCT, Delhi*** (2003) 3 SCC 548 (paragraph 8), holding that recruitment to public services should be strictly in accordance with the terms of the advertisement and the Recruitment Rules and that merely because in the past some deviation and departure was made, cannot be a reason for a patent illegality to continue; (xiv) ***Kunnashada Muthukoya Vs.***

Administrator, Union Territory of Lakshadweep (2008) 9 SCC 169 (paragraph 4) to contend that fixing of pay/classification of posts is a technical matter of policy (we however do not find the judgment to be holding so); and, (xv) *P.U. Joshi Vs. Accountant General, Ahmedabad* (2003) 2 SCC 632 (paragraph 10), holding that questions relating to constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service, pertain to the field of policy and are within the exclusive discretion and jurisdiction of the State and it is not for the Courts to direct the Government to have a particular method of recruitment or eligibility criteria and that it is within the competency of the State to change the Rules from time to time as per administrative exigencies; (z) *Biswa Bhusan Nandi* supra relied upon by the counsel for the BSF personnel was a challenge of nomenclature and not of classification and the Supreme Court therein did not deal with the issue as has arisen herein; and, (aa) attention was invited to the Deemed Graduation Certificates in W.P.(C) No.6955/2019 (Annexure P-3) and W.P.(C) No.6959/2019 (Annexure P-2), which themselves provide that they were for appointment to Group 'C' posts only.

17. Mr. Ajay Digpaul and Ms. Amrita Prakash, Advocates for respondents adopted the arguments of Mr. Vikas Mahajan, Advocate.

18. Dr. L.C. Singhi, Advocate for the respondents argued, (i) that though the Deemed Graduation Certificate issued by the Indian Air Force to the petitioner in W.P.(C) No.2193/2020 entitles the holder thereof to be considered as eligible for appointment to Group 'B' as well as Group 'C' posts where prescribed qualification is Graduation, but has its genesis in the

Rules aforesaid and as per which the Deemed Graduation Certificate is for the purposes of Group 'C' posts only; thus the petitioner cannot avail any benefit thereof; (ii) that though the petitioner is only a Matriculate but for the purposes of Group 'C' posts, is deemed to be a Graduate; and, (iii) attention was invited to Annexure R-2 to the counter affidavit of respondent SSC in W.P.(C) No.2192/2020, being the Central Industrial Security Force, Security Wing, Sub-Inspector (Executive) Recruitment Rules, 2013, to show that the educational qualification prescribed is, "Bachelor's Degree of a Recognised University or Equivalent".

19. We however interrupted the counsel and drew his attention to the fact that the educational qualification to which attention was drawn was for direct recruitment and not for the ex-servicemen and the said Rules, for ex-servicemen, provide, "An ex-service-man possessing Bachelor's degree and the Indian Army Special Certificate of Education or corresponding certificate in the Navy or Air Force and not less than fifteen years of service as on closing date with Armed Forces of the Union shall be considered eligible for appointment to the posts being advertised".

20. Dr. L.C. Singhi, counsel for the respondents responded that the aforesaid has to be read with the requirement of holding the substantive rank of Subedar Major and Subedar, and equivalent rank in the Army, Navy and Air Force and it was informed that Subedar is a higher rank than Constable and the petitioner was thus not eligible.

21. Mr. Jivesh Tiwari, Advocate for the respondents in W.P.(C) No.2928/2020, W.P.(C) No.2930/2020 and W.P.(C) No.2932/2020 argued (a) that the Deemed Graduation Certificate of all the petitioners are only for

Group 'C' posts; (b) that the petitioners, inspite of being conscious of the said fact, still applied for Group 'B' posts; (c) that the examination centre of all the petitioners was at Calcutta and thus the Courts at Delhi have no jurisdiction.

22. Mr. Anil Soni, Advocate for the respondents in W.P.(C) No.2165/2020 argued, that the error in the appointment of the petitioner as SI in CISF was caused by the petitioner, inspite of being not eligible therefor, having filled up the preference for the said post and that the petitioner for this reason alone is not entitled to any relief.

23. Mr. Divyanshu Srivastava, Advocate for the CISF personnel, in rejoinder drew attention to *Kapra Mazdoor Ekta Union* supra to contend that SSC had no power to review or revise the result and on query, whether *Umadevi* supra overrules *Bhagwati Prasad* supra cited on behalf of the petitioners in the opening arguments, contended that *Umadevi* supra, on the aspect of benefit to be given of the experience gained, does not overrule *Bhagwati Prasad* supra; it was argued that *Umadevi* supra only overrules the aspect of regularisation of employees. On the comments of Mr. Vikas Mahajan, Advocate qua *Biswa Bhusan Nandi* supra cited by the petitioners in opening arguments, it was contended that the Supreme Court therein gave full effect to the deeming provision. Else, it was contended that *Rakesh Kumar* supra, *Satish Kumar Sharma* supra and *Mohd. Sartaj* supra cited by Mr. Vikas Mahajan, Advocate are not relevant to the matter in issue. (We may note that *Gujarat Agricultural University* supra, relating to regularization, is also overruled in light of *Umadevi* supra).

24. Mr. Prashant Vaxish, Advocate for the BSF personnel, in rejoinder drew attention to the Border Security Force General Duty Cadre (Non-Gazetted) Recruitment Amendment Rules, 2009 filed as Annexure P-10 to W.P.(C) No.3034/2020, to show that the same had been enacted in exercise of powers under Section 141 of the Border Security Force Act, 1968 and pointed out that the same amends only the pay scale of SI in BSF and does not purport to convert the post of SI in BSF from Group 'C' to Group 'B' post.

25. We have considered the pleadings, documents and the aforesaid contentions along with judgments cited by the counsels.

26. Merit is found in the contentions of Mr. Vikas Mahajan, Advocate for the respondents, (i) that the appointments of all the sixteen petitioners is contrary to the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979; (ii) that the procedure prescribed for imposing punishment/penalty, of dismissal from service/demotion being not required to be followed; (iii) that the petitioners being not eligible for the posts, are not entitled to continue on the same; (iv) that no right has accrued to any of the petitioners; (v) that mere passage of time does not work to the advantage of the petitioners; (vi) that the principle, that once the law requires a state of affairs to be imagined, the imagination ought not to be permitted to be boggled down, is not applicable in the facts of the present case, where the Rules creating the legal fiction themselves limit the extent to which the imagination is permitted to extend; and, (vii) that the matter of categorisation/classification of posts into Groups 'B' and 'C' being a matter of policy and in which matter the Court cannot impose its own view and the

same is in the sole domain of the Executive. The judgments cited by Mr. Vikas Mahajan, Advocate for the respondents speak for themselves and the need to reproduce the law enunciated therein in this judgment, thereby burdening this judgment, is not felt. In accordance with the same, it certainly cannot be said that the petitioners, as a matter of right and in law are entitled to any relief from this Court.

27. However, the jurisdiction under Article 226 of the Constitution of India permits this Court to, (a) grant relief, even if does not find any right in the petitioner/s thereto, but nevertheless finds the grant of the relief to be necessary to serve the ends of justice and in the particular facts and circumstances; and, (b) to refuse relief, even if the petitioner is found entitled thereto in law. Of course, the said discretion has to be exercised with care and does not vest a magician's wand in the hands of the Court, permitting the Courts to pass any order. A discussion, supported with precedents, in this regard is to be found in *Bessy Edison Vs. Indira Gandhi National Open University* (2011) 176 DLT 335 and in *Gurmeet Singh Vs. DDA* MANU/DE/2951/2011 and in *Amandeep Singh Vs. University of Delhi* MANU/DE/2194/2015. Supreme Court, in *Shangrila Food Products Ltd. Vs. Life Insurance Corporation of India* (1996) 5 SCC 54, *Dwarka Nath Vs. Income Tax Officer, Special Circle, D-Ward, Kanpur* AIR 1966 SC 81, *Life Insurance Corpn. of India Vs. Asha Goel* (2001) 2 SCC 160 and *Union of India Vs. R. Reddappa* 1993 (4) SCC 269. It has been held that Article 226 is couched in comprehensive phraseology and it *ex-facie* confers a wide power on the High Court to reach injustice wherever it is found. The High Court is empowered to mould the relief to meet the peculiar and complicated requirements of this country. The Constitution

does not place any fetters on the exercise of the extraordinary jurisdiction of the High Courts under Article 226. It is left to the discretion of the High Court. This Court can, in exercise of such jurisdiction, take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. Once this Court is satisfied of injustice or arbitrariness, then the restrictions on the exercise of power, self imposed or statutory, stand removed and no rule or technicality, on exercise of power, can stand in the way of rendering justice.

28. Of the sixteen petitioners before this Court, three BSF personnel and six CISF personnel i.e. total of nine, had participated in the CAPF Examination-2014. The remaining seven petitioners participated in the CAPF Examination-2016.

29. The Notification/Advertisement inviting applications for CAPF Examination-2014, in Note V to Clause 4(B) thereof, provided as under:

*"A Matriculate Ex-Serviceman (which term includes an Ex-Serviceman, who has obtained the Indian Army Special Certificate of education or corresponding certificate in the Navy or the Air Force), who has put **in not less than 15 years of service as on closing date** with Armed Forces of the Union shall be considered eligible for appointment to the posts being advertised through this examination. Thus, those Non-Graduate Ex-Servicemen who have not completed 15 years of service as on the last date for receipt of applications as stated in Note-III under Para 4(B) are not eligible.*

EXPLANATION 1: *An Ex-Serviceman **means** a person who has served in any rank whether as a combatant or non-combatant in the Regular Army, Navy, Air Force of the Indian Union, and*

(i) who retired from such service after earning his/her pension. This would also include persons who are

retired/retire at their own request but after having earned their pension; or

- (ii) who has been released from such service on medical grounds attributable to military service/circumstances beyond his control and awarded medical or other disability pension; or*
- (iii) who has been released, otherwise than on his own request from such service as a result of reduction in establishment; or*
- (iv) who has been released from such service after completing the specific period of engagements, otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity; and includes personnel of the Territorial Army of the following categories, namely:-*
 - (a) Pension holders for continuous embodied service,*
 - (b) Persons with disability attributable to military service; and*
 - (c) Gallantry award winners.*

EXPLANATION 2: *The persons serving in the Armed Forces of the Union, who on retirement from service, would come under the category of "ex-serviceman" may be permitted to apply for re-employment one year before the completion of the specified terms of engagement and avail themselves of all concessions available to ex-servicemen but shall not be permitted to leave the uniform until they complete the specified term of engagement in the Armed Forces of the Union."*

It would immediately be noticed that the aforesaid Note in the Notification/Advertisement of CAPF Examination-2014 is materially different from that in Notification/Advertisement for CAPF Examination-2016. While the Notification/Advertisement of CAPF Examination-2016

expressly informed the prospective applicants that the Deemed Graduation Certificate could make ex-servicemen eligible for appointment to Group 'C' posts of SI in DP and ASI in CISF only and would not be applicable for Group 'B' posts, the Notification/Advertisement of CAPF Examination-2014 though also indicated that the posts of SI in DP and ASI in CISF were Group 'C' posts and the other posts advertised were Group 'B' posts, in Note V informed the prospective applicants that ex-servicemen with Deemed Graduation Certificate, "shall be considered eligible for appointment to the posts being advertised through this examination", meaning all the posts advertised to be filled in through the said examination i.e. Group 'B' as well as Group 'C' posts.

30. Though undoubtedly the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979, as amended in 1986, since 1986 i.e. prior to CAPF Examination-2014, made an ex-serviceman with Deemed Graduation Certificate eligible for appointment to Group 'C' posts only but once the respondent SSC in its advertisement informed the prospective applicant ex-servicemen, that they on the basis of the Deemed Graduation Certificate were eligible for all the posts advertised i.e. Group 'B' as well as Group 'C' posts, the ex-servicemen were well entitled to assume that the stipulations of the Notification/Advertisement were in terms of and in accordance with the law and the Rules and were not required to take make any further enquires, whether the stipulations of the Notification / Advertisement were in accordance with the law and Rules or not. The "Important Instructions" to candidates, in the Notification/Advertisement of CAPF Examination-2014, at Serial No.3, advised the candidates to, before applying, go through the detailed instructions contained in the said

Notification/Advertisement and did not ask the prospective ex-servicemen candidates to go through the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979.

31. Moreover, respondent SSC, not only represented so in the Notification/Advertisement of CAPF Examination-2014, but also selected the nine petitioners inducted through the said examination to Group 'B' posts. Not only did the respondents so appoint the petitioners pursuant to the CAPF Examination-2014 but also allowed the respondents to complete their probation and confirmed the appointment of the petitioners. The petitioners recruited pursuant to the CAPF Examination-2014, on the date when the show cause notice was served on them, had served for about 5 to 6 years. It is felt that removing the three personnel of BSF recruited through the said examination, after such length of time, during which they have lost out on other career opportunities, would leave them without a source of livelihood. Similarly, though the six CISF personnel recruited through the CAPF Examination-2014 are not being removed and are only being demoted, but merit is found in the contention of the counsel for the petitioners that in disciplined forces as CISF, where personnel wear their rank on their shoulder and where hierarchy/seniority has a special meaning, would play havoc on the said petitioners. The said petitioners, in the last 5-6 years as SIs and as superior to ASIs, would have dealt with ASIs of different hues and shade under them, and to place the said petitioners in the midst of ASIs, will undoubtedly embarrass the said petitioners and make them susceptible to harm at the hands of ASIs over whom they have exercised control till now.

32. There is another factor. Note II to Clause 12 of the said Notification/Advertisement of CAPF Examination-2014, was as under:

"NOTE-II: The candidates applying for the examination should ensure that they fulfill all the eligibility conditions for admission to the examination. Their admission at all the stages of examination will be purely provisional, subject to their satisfying the prescribed eligibility conditions. If, on verification, at any time before or after the written examination and skill test, it is found that they do not fulfill any of the eligibility conditions, their candidature for the examination will be cancelled by the Commission."

The respondents, though under the clause aforesaid were entitled to verify the eligibility of the petitioners to the posts applied for and are assumed to have so verified, notwithstanding the petitioners in their applications having disclosed their Deemed Graduation Certificate and having not claimed to be possessing/holding Bachelor's Degree from a Recognised University, were found suitable for the post. Merely because the petitioners may have given a higher preference for a Group 'B' posts was not a reason for the respondents to allocate the Group 'B' posts to the petitioners, if the petitioners were not eligible therefor.

33. In our view, for the aforesaid reasons alone, the nine petitioners aforesaid are not liable to be now disturbed from the posts to which they were appointed.

34. In ***Rajesh Kumar Vs. State of Bihar*** (2013) 4 SCC 690, the answer key of an examination held by the Bihar State Staff Selection Commission was challenged and on the basis of the report of the Expert Committee appointed, modified and a fresh examination ordered. However during the

pendency of the challenge, certain candidates were appointed; it was ordered that they could continue till the publication of the result of the fresh examination but if failed to make the grade on the basis of the next examination, will be removed but entitled to appear in another examination to be conducted by the Commission. Supreme Court, finding that the said candidates were not to be blamed, found merit in their contention, that they had served the State efficiently and without any complaint for nearly seven years, that most of them had become overage for fresh recruitment within the State or outside the State, they had also lost the opportunity to appear in the subsequent examination, their ouster from service after their employment on the basis of properly conducted competitive examination not itself affected by any malpractice or other extraneous consideration or misrepresentation, will cause hardship to them and ruin their careers and lives. Merit was further found in the contention that the experience gained by them over the years would also go waste as the State will not have the advantage of using valuable human resource which was found useful in the service of the people of the State of Bihar for a long time. It was further reasoned that the said candidates were innocent parties. Accordingly, while directing re-evaluation on the basis of correct answer key, it was directed that the said candidates, even if did not make the grade after such re-evaluation, shall not be ousted but shall figure at the bottom of the list of selected candidates.

35. As far as the seven personnel of CISF who were recruited through the CAPF Examination-2016, the Notification/Advertisement inviting applications wherefor unequivocally informed the prospective ex-servicemen applicants that they were eligible for Group 'C' posts of SI in DP

and ASI in CISF only, is concerned, the said personnel, prior to the issuance of the show cause notice, had not even completed their probation period of two years and had not been confirmed. Else, the mistake of respondents in the recruitment of the said year also is the same as in the recruitment of 2014.

36. For the reasons below mentioned, we are of the view that the said seven petitioners recruited through CAPF Examination-2016, are also not liable to be demoted from the post of SI in CISF, to which they were appointed and which they have been allowed to occupy for one and a half years prior to the date when they were sought to be demoted therefrom.

37. The results of the CAPF Examination-2014 as well as CAPF Examination-2016, pursuant whereunto the petitioners were appointed attained finality and were not challenged in Court or otherwise. The reason given by the respondents in their counter affidavit, for having a relook at and revising the results are twofold. Firstly, it is contended that some other ex-servicemen appointed on Group 'C' posts through the same examinations complained of the petitioners, though similarly placed, having been appointed to Group 'B' posts. Secondly, it is stated that a writ petition was filed in the High Court of Kerala, also raising the same issue and in which the respondents filed an affidavit stating that they were taking action. Neither did the colleagues of the petitioners who made the representation file any petition in the Courts nor is the High Court of Kerala in the petition aforesaid stated to have passed any order directing the respondent SSC to revise the results. During the hearing, we enquired from the counsels, whether it was open to the respondent SSC to so reopen and revise the

results of the examination, which had attained finality and in pursuance whereunto the appointments have been made. Mr. Divyanshu Srivastava, Advocate, in this regard cited *Kapra Mazdoor Ekta Union* supra but which is in the context of the powers of a Court under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 to review its orders but is not in the context of respondent SSC, which is an organisation under the Government of India to recruit staff in various Ministries and Departments of the Government of India and in sub-ordinate offices. We entertain doubts that the respondent SSC, after the result of an examination conducted by it has attained finality, can reopen the said result, at its own instance or even on receipt of complaint.

38. It cannot be lost sight of that neither of the petitioners herein is guilty of having practiced any misrepresentation in the matter of securing appointment. If any of the petitioners had practiced fraud or misrepresentation, of course the said fact alone would not have entitled such petitioner/s to any equitable remedy from this Court. The present is a case, where neither the result declared nor the appointments made pursuant thereto was/is subject matter of any judicial proceeding nor was any other proceeding filed in the Court impugning the appointment of any of the petitioners. In such circumstances, it is felt that the career of the petitioners should not be destabilized, after the petitioners have changed their position. In *Rajesh Kumar* supra, inspite of the challenge to the recruitment process having succeeded in the Court, those appointed and who were post re-evaluation, not found entitled to appointment, were retained. The said judgment squarely applies to the seven recruits through CAPF Examination-2016 also.

39. Mention may also be made of ***Vikas Pratap Singh Vs. State of Chhattisgarh*** (2013) 14 SCC 494, where also on challenge made to a recruitment examination succeeding and finding that in the interregnum 26 candidates, who as per the revised merit list were to be ousted, had been appointed and completed their training and had been in service for more than three years and noticing that a person appointed erroneously on a post must not reap the benefits of wrongful appointment, it was still reasoned/held, where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, the Courts have taken a sympathetic view in the light of various factors including *bona fide* of the candidate in such appointment and length of service of the candidate after such appointment; reliance was placed on ***Vinodan T. Vs. University of Calicut*** (2002) 4 SCC 726, ***State of U.P. Vs. Neeraj Awasthi*** (2006) 1 SCC 667, ***Girjesh Shrivastava Vs. State of Madhya Pradesh*** (2010) 10 SCC 707, ***Union of India Vs. Narendra Singh*** (2008) 2 SCC 750, ***Gujarat State Dy. Executive Engineers' Association Vs. State of Gujarat*** 1994 Supp. (2) SCC 591, ***Buddhi Nath Chaudhary Vs. Abahi Kumar*** (2001) 3 SCC 328. It was reasoned that the candidates having successfully undergone training and having efficiently served for three years, it would be highly unjust and grossly unfair to remove them. What was held in the said judgment, squarely applies to the facts of the present case also.

40. Consideration also has to be given to the fact that each of the sixteen petitioners before this Court, is an ex-serviceman who has devoted upwards of 15 years of his youth in defence of the nation. We have in ***Brijlal Kumar Vs. Union of India*** MANU/DE/2107/2020, in the context of members of the

Armed Forces, observed that they are the only ones required under the Constitution of India and under the laws, to take an oath, of abiding by the command issued to them by the President of India or by any officer set over them, even to the peril of their life; the oath required to be taken, neither by the President of India or by the Vice President of India or by the Governors of the States or by the Judges of the Supreme Court and the High Courts requires them to lay down their lives in the service of the country. Reliance was placed on *Confederation of Ex-Servicemen Associations Vs. Union of India* (2006) 8 SCC 399, holding that those who serve in the Army, Air Force and Navy during the cream period of their youth, put their lives to high risk and improbabilities and render extremely useful and indispensable services, deserve respect and gratitude. It was thus held that the defence personnel are a class apart and cannot be compared with civilians.

41. Reference may also be made to *D.N. Chanchala Vs. State of Mysore* (1971) 2 SCC 293, holding that reciprocal obligations towards those who serve the interest of the country's security justified setting apart of certain seats in educational institutions for defence personnel; such preferential treatment was held permissible under Article 15(4) of the Constitution of India. It was held that defence personnel are at a disadvantage in the matter of education. Similarly, in *State of Orissa Vs. Mohd. Yunus* 1994 Supp. (2) SCC 55 it was held that ex-servicemen, after putting in several years of service in defence, cannot be considered at par with others, making the benefits, concessions, reservations provided for them, illusory; the State Governments and the Public Service Commission were accordingly directed to consider desirability for fixing lower standards for ex-servicemen. Yet again in *Sansar Chand Atri Vs. State of Punjab* (2002) 4 SCC 154, it was

held that the provision for reservation in the Service Rules is meant for the benefit of ex-servicemen in the context of the scheme of the provisions; the said provisions should be interpreted in a purposive and reasonable manner so the intent and the purpose of the provisions is served.

42. In ***Capt. Virendra Kumar Vs. Union of India*** (1981) 1 SCC 485 also it was observed that defence personnel fight on the warfront and expose their lives to extinguishment, so that the security of the nation might be defended; the unwillingness of the Government to value such patriotism was adversely commented upon and it was felt that the same may adversely affect the morale of the Defence Forces. The unimaginative attitude of the authorities was also deprecated and it was held that the Defence Personnel deserve special solicitude having regard to the supreme sacrifice they are sometimes called upon to make. Supreme Court, in ***Union of India Vs. C.S. Sidhu*** (2010) 4 SCC 563 also commented with regret on the shabby manner in which the army men in our country were being treated. It was observed that they bravely defend our country, even at the cost of their lives and deserve a better and humane treatment.

43. In the spirit of the aforesaid judgments, it is felt that when none else has claimed right to the post, which the petitioners are occupying, removal of the petitioners therefrom, either by dismissal or by demotion, would not serve any purpose. It is not as if, today if the petitioners are removed/demoted, the posts which they are occupying, can be filled up by anyone else. The said posts in the Ex-servicemen Category of the CAPF Examination-2014/2016 would be vested. This according to us, is a very big factor for not disturbing the petitioners therefrom. None else is competing

with the petitioners for the said posts. In the circumstances, the error in appointment of the petitioners thereto without being eligible therefor, is technical and ought not to have any consequence for the petitioners.

44. We are also of the view that once the appointment/recruitment is claimed under the Ex-servicemen Category and in which no candidate who is not an ex-serviceman can claim appointment, restricting the Deemed Graduation Certificate to be equivalent to Bachelor's Degree of Graduation from a Recognised University for the purposes of Group 'C' posts only, is without any rationale or intelligible differentia to the purpose thereof. According to the arguments aforementioned of the counsel for the petitioners, there is no difference in the duties to be performed by the personnel in Group 'B' and Group 'C' posts. In fact, while the post of SI in DP is a Group 'C' post, that of SI in CAPFs is a Group 'B' post. Moreover, it is not controverted that till the year 2009, post of SI in BSF was a Group 'C' post and became a Group 'B' post merely because of increase in pay thereof. No difference between the duties to be performed by SI in DP and the SI in BSF or between the SI in BSF prior to 2009 and thereafter, has been shown. It is felt that the experience of 15 years and more in the Defence Forces, particularly when recruitment as SI in CAPFs is through a recruitment examination comprising of a written examination in (i) General Intelligence and Reasoning; (ii) General Knowledge and General Awareness; (iii) Quantitative Aptitude; (iv) English Comprehension; (v) English Language and Comprehension, followed by Physical Standards Test and Physical Endurance Test and Medical Examination, is sufficient for performance of duties as SI in CAPFs and equivalent to a Bachelor's Degree in Graduation from a Recognised University. Just because the Ex-servicemen do not have

a college degree, does not mean that they will not be able to perform the duties of SI in CAPFs, particularly when they are found fit to perform the duties of SI in DP. It appears that a college degree is not required to be an SI in CAPFs. Intelligence is not just being book smart or having a college degree. It comprehends within itself, being intuitive and having ability to think outside the box and sometimes just realising that things need to change and being smart enough to change it. The ex-servicemen learn the essential lessons of life from hard battlefields. Moreover, the kind of duties, which the CAPFs are performing, are not different from the duties being performed by the defence personnel. A college degree is not needed by a member of the Armed Forces.

45. We have already noted above, that at least in one of the sixteen petitions i.e. in W.P.(C) No.2193/2020, the Deemed Graduation Certificate issued to the petitioner therein provides for the same making the petitioner eligible for Group 'B' as well Group 'C' posts. We have, in ***Subhash Chander Vs. Govt. of India*** MANU/DE/1665/2020 (DB) entailing the same controversy and which had first came up before this Court, also noticed that "Equivalent of Naval Trade Certificate" issued by the Indian Navy certified the petitioner therein as having qualification *inter alia* of "Grade-II/Class B Non-Gazetted Officer, Central/State Government" and equivalent to that of "Sub-Inspector Police". The decision taken and published in the Employment and Re-settlement Opportunities Bulletin 59 of January/February, 1977 issued by Ministry of Defence, Directorate General of Re-settlement, was also to the effect that a matriculate ex-serviceman with 15 years' service is deemed to be educationally qualified for the posts reserved for ex-servicemen where the required qualification is a degree. It

appears that the decision so taken, in its implementation, has been diluted, to the prejudice of ex-servicemen, by confining the "deeming" to, for the purposes of Group 'C' posts only. No material has been placed before us why, once the Certificate so issued by Army/Navy/Air Force is Deemed Graduation, such legal fiction is restricted to Group 'C' posts only. There certainly appears to be some arbitrariness in the matter.

46. We may also notice that the essential educational qualification prescribed in the Notification/Advertisement of CAPF Examination-2014/2016 was/is "Bachelor's Degree from a Recognised University or Equivalent". However, when we enquired, whether respondent SSC had done any exercise to judge the equivalence of the Deemed Graduation Certificate of Army/Navy/Air Force with the Bachelor's Degree from a Recognised University, we were told that no such exercise had been done and that respondent SSC does not have an equivalence list. In our view, once the employment Notification/Advertisement provides for "Equivalent", the conduct of an exercise to determine equivalence is essential.

47. For the aforesaid ambiguities, though we are of the opinion that in the facts and circumstances of the case and to do justice, the appointments of the petitioners, though contrary to Rules, are not liable to be disturbed. However, to clear the air for future, need is felt to issue directions. We direct the respondents to, within six months of today, have a re-look at the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 including by conducting equivalence studies and by examining the differences in nature of duties to be performed by incumbents of Group 'B' and Group 'C' posts in CAPFs, and take a decision whether the Deemed

Graduation Certificate issued by Army/Navy/Air Force is required to be the holder thereof eligible for Group 'B' and other posts also, where the essential educational qualification prescribed is a Bachelor's Degree from a Recognised University.

48. For sustaining the appointments of the petitioners, though contrary to the Rules, we also draw strength from Rules 6(4), 6(5) and 6A of the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979. We have hereinabove already reproduced Rule 6(3). Rule 6(4), 6(5) and 6A are as under:

"(4) For appointment to any reserved vacancy in Group 'C' posts, a Matriculate Ex-serviceman (which term includes an ex-serviceman, who has obtained the Indian Army Special Certificate of Education or the corresponding Certificate in the Navy or Air Force); who has put in not less than 15 years of service in the Armed Forces of the Union may be considered eligible for appointment to the post for which the essential educational qualification prescribed is graduation and where

- (a) work experience of technical or professional nature is not essential; or*
- (b) though non-technical professional work experience is prescribed as essential yet the appointing authority is satisfied that the ex-serviceman is expected to perform the duties of the post by undergoing on the job training for a short duration.*

(5) For appointment to any reserved vacancy in Group 'C' and Group 'D' posts, where the prescribed minimum educational qualification is matriculation, the appointing authority may, at his discretion relax the minimum educational qualifications in favour of an ex-serviceman who has passed the Indian Army Class-I Examination or equivalent examination in the Navy or the Air Force, and who has put in at least 15 years of service in

the Armed Forces of the Union and is otherwise considered fit to hold the post, in view of his experience and other qualifications.

6A. Lower Standard for Selection

In the case of direct recruitment, if sufficient number of candidates belonging to the ex-servicemen are not available on the basis of general standard to fill all the vacancies reserved for them, candidates belonging to the category of ex-servicemen may be selected under a relaxed standard of selection to make up the deficiency in the reserved quota subject to the condition that such relaxation will not affect the level of performance by such candidates."

The aforesaid Rules permit of relaxation of standards in Ex-servicemen Category. Once the appointments of the petitioners though found to be contrary to the Rules, is found to have been made inadvertently, with no blame on the petitioners therefor, it is not as if, this Court would be directing anything contrary to the Rules by quashing the proceedings/orders for removal/demotion of the petitioners. The Rules themselves permit of relaxation in certain eventualities. Though the eventuality as has arisen is not eventuality in which the Rules permit relaxation but is comparable thereto, particularly when the posts so occupied by the petitioners cannot today be given to any other ex-servicemen.

49. The petitions thus succeed, the proceedings initiated/orders passed for removal of the petitioners and/or for demotion of the petitioners are quashed/set aside and the petitioners held entitled to continue on the posts to which they were appointed, including to all benefits including further promotions etc. thereof. If any of the petitioners has been removed/demoted, such removal/demotion is quashed/set aside and the petitioner/s restored to

the position as immediately before the revision of the results by the respondent SSC. It is however clarified, that this judgment shall not entitle any other ex-servicemen to claim appointment contrary to the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 and shall also not entitle any other ex-servicemen to claim promotion or any other benefits. The respondents are also directed to, carry out the exercise, as directed in paragraph 47 above.

50. The petitions are disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

AUGUST 4, 2021

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