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

% ***Date of decision: July 07, 2022***

+ **W.P.(C) 3586/2022**

**SHILPI CHATTERJEE, 2IC AND ORS. .... Petitioners**

Through: **Mr. Ankur Chhibber & Mr.Nikunj  
Arora, Advocates**

**Versus**

**UNION OF INDIA AND ORS. .... Respondents**

Through: **Mr. Harish Vaidyanthan Shankar,  
CGSC with Mr.V.K.Singh,  
Asst.Commandant (MIN), BSF**

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT  
HON'BLE MR. JUSTICE SAURABH BANERJEE**

**J U D G M E N T (oral)**

1. The present petition has been preferred by the petitioners for issuing a writ of certiorari to the respondents to quash the orders dated 04.09.2020 and 13.05.2021, vide which representations of petitioners seeking to convene Departmental Promotion Committee (DPC), has been rejected.
2. Pertinently, petitioners belong to the Engineering Cadre in BSF, who claim to be eligible for promotion to the post of Commandant (Works) and seek their promotion to the two vacant posts, rather than filling them up with

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other Officers through deputation in terms of BSF (Engineering Officers) Recruitment Rule, 2012 (*henceforth referred to as the 'Recruitment Rules of 2012'*). In addition, petitioners are also praying for issuance of a writ of mandamus to the respondents to carry out necessary amendments in the '*Recruitment Rules of 2012*' to the effect that post of Commandant (Works) be filled on promotion in the larger interest of Engineering Cadre Officers of the Force who have duly retained the residency period of 2IC (Works) as 2 years instead of existing 5 years for promotion to the rank of Commandant (Works) i.e. for a direction to the respondents to relax Rule 11 of the '*Recruitment Rules of 2012*' to consider the combined Group A and B services of the petitioners for the purpose of promotion, instead of Group A service only and thereafter, to fill the existing two vacancies of Commandant (Works) in BSF on promotion basis instead of filling through deputation, by convening DPC in respect of eligible officers.

3. Mr. Ankur Chhibber, learned counsel appearing on behalf of petitioners submits that the petitioners had made representations to the respondent-BSF to convene a DPC to fill up the two vacant posts of Commandant (Works) by the eligible officers of Engineering Cadre in BSF instead of officers belonging to other Organizations through deputation,



however, their representations have been rejected on the ground that as per the '*Recruitment Rules of 2012*', total three (03) posts of Commandant (Works) are authorized i.e. 33% by promotion and 66% by deputation (including short term contract) and as such only one (01) post is authorized in promotion quota, which is already filled up. In addition, respondent/BSF has also reasoned that as per '*Recruitment Rules of 2012*', Five (05) years' regular service in the grade of 2IC (Works) and minimum fifteen (15) years of Group A service is required for promotion to the rank of Commandant (Works).

4. Learned counsel for petitioners further submits that there are only three posts of Commandant (Works), out of which two kept for deputation are lying vacant since implementation of '*Recruitment Rules of 2012*' and no cadre officer is being promoted, which has resulted in disparity with the CAPFs and injustice with the Engineering Officers having rendered more than 24 years of services to the Force.

5. During the course of hearing, learned counsel for petitioners has also submitted that the proposal for amendment in '*Recruitment Rules of 2012*' by the Directorate General Border Security Force (Engineering Branch) on behalf of respondent No.3, has been sent to the respondent No.1- Ministry of



Home Affairs (MHA), vide communication UO No. 122/02/2021/Recruitment-ENGG/BSF/507 dated 09.02.2022.

6. Mr. Harish Vaidyanthan Shankar, learned Central Government Standing Counsel, appearing on behalf of respondent No.1-MHA as well as respondent No.3-BSF, on instructions submits that the proposed amendment is under discussion and deliberation and the aforesaid proposal dated 09.02.2022 has not been received by the MHA.

7. Upon hearing learned counsel representing both the sides and perusal of material placed before this Court, we find that the respondent –BSF vide aforesaid communication UO No. 122/02/2021/Recruitment-ENGG/BSF/507 dated 09.02.2022 has observed as under:-

*“10. In order to mitigate the issues ad cope up with the works of Engg Dte, 02 posts (i.e. presently on deputation quota as per RRs 2012) of Codt. (Works) can be filled up immediately by the eligible feeder cadre officers and 01 post can be filled up w.e.f. 01.01.2023 i.e. after superannuation of Shri B S Sandhu, Comdt. (Works) subject to approval of the following suggested measures.*

- (i) Onetime relaxation for residency period w.e.f. RRs 2012 in favour of four 2IC (Works) namely Shri S C Das, Shri R K Shrivastava, Shri Satpal Singh and Smt. Shilpi Chhaterjee may be sought from MHA/DoP & T so that the posts of Commandant (Works) is not kept vacant w.e.f. 01-01-2023 after superannuation of Shri B S Sandhu, Comdt.(Works) for immediate remedy.*
- (ii) Amendment to the RRs-2012 for filling up the 02*



*posts of Commdt (Works) with feeder cadre instead of deputation quota for long ter solution.”*

8. We have also gone through another document placed before this Court, which is a Communication by respondent No.3- BSF to the respondent No.1-MHA, which reads as under:-

“सीमा सुरक्षा बल, महानदेशल्य  
अभियांत्रिकी शाखा

Sub: PROPOSAL FOR SEEKIGN ONE TIME EXEMPTION IN THE METHOD OF RECRUITMENT OF COMMANDANT (WORKS) AND RELAXATION IN RESIDENCY PERIOD OF 2IC (WORKS) FOR PROMOTION

Kindly refer your Uo No. 17/41/2020/Pers/BSF/6568-70 dated 02 Mar 2022

2. In this regard, kind attention is drawn to para-10 of this Dte UoNo.507 dated 09.02.2022. it is reiterated that till the time, the existing RRs' of BSF Engineering Officers are amended, a case for temporary diversion of these two posts of Commandant (Works) by and Administrative order of MHA may be considered in the interest of functioning of Engg. Dte. There is already precedence of diverting the posts of DIG (GD Cadres) of other's quota to GD quota on functional requirement basis in BSF.
3. The amendment in existing RRs is time taking process and likely to take some time which is to be done by Pers Dte (Confid Sec) FHQ.
4. In view of above, it is once again requested to take up the matter with the MHA for temporary diversion of posts of Commandants meant for deputations be made available for incumbent 2IsC(Works) of BSF.

(एन एन डी दुबे)  
उप महानिरीक्षक  
(कार्य)

Pers Dte (Pers Sec) बल मुख्यालय सिसुबल  
सं0 122/02/RR/2021/ अभि/ सिसुबल/1781

28 मार्च 2022"



9. After going the afore-noted documents we find that the respondent No.3-BSF has fairly conceded that the amendment in the existing recruitment rules is time consuming and therefore, has proposed for temporary diversion of posts of Commandants to eligible incumbents in promotion quota. However, the said proposal is still pending. We find that this stalemate status is not enuring to the benefit of anyone, much less the respondents themselves as the seats are still lying vacant since long. Moreover, due to inaction of respondents, great prejudice is caused to the whole nation and the public at large not to say it is affecting the overall career prospects of the petitioners and similarly situated employees with respondent No.3-BSF.

10. We hereby direct the respondent No.3- BSF to take a final decision in respect of communication UO No. 122/02/2021/Recruitment-ENGG/BSF /507 dated 09.02.2022 within four weeks, failing which the respondents shall be burdened with costs of Rs.50,000/- to be paid in favour of Delhi High Court Legal Services Committee. The decision so taken be then send to the respondent No.1-MHA within two weeks thereafter with information in this regard to the petitioners. The respondent No.1- MHA is directed to take final decision upon the amendment received from the respondent No.3-



BSF within four weeks of receipt of the same, failing which respondent No.1 shall be burdened with cost of Rs.50,000/-. The decision so taken by respondent No.1/UOI be also communicated to the petitioners within two weeks.

11. We also make it clear that if the proposed amendments are in favour of the petitioners, then the case of eligible petitioners be considered accordingly. However, if petitioners are still aggrieved, they are at liberty to challenge the same before appropriate authority.

12. With aforesaid directions, the present petition is accordingly disposed of.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**(SAURABH BANERJEE)**  
**JUDGE**

**JULY 07, 2022**

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