



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

% **Reserved on: May 27, 2022**

Pronounced on: July 04, 2022

+ **W.P.(C) 5036/2021 & CM APPL. 15421/2021**

LALIT KUMAR KAIN COMMANDANT Petitioner

Through: Mr. Harpreet, Mr. Kunal Kishore,
Mr. Rajesh Jindal & Mr. Ajay,
Advocates

Versus

DIRECTOR GENERAL & ANR. Respondents

Through: Mr. Anurag Ahluwalia, CGSC &
Mr. Danish Faraz Khan, Mr. Reshab
Narayan & Mr. Shubham Gupta,
Advocates
Mr. Vinay Kumar Singh, Asst.
Commandant (M) BSF &
Mr. Hemendra Singh, Deputy
Commandant (Law), BSF

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

SURESH KUMAR KAIT, J

1. The petitioner, who is working as Commandant (Electrical) in BSF Engineering Wing since 15.05.2013 and is performing the duties of DIG (Work) w.e.f. 15.02.2021 till filing of the petition, has preferred the present



petition challenging the order dated 06.04.2021 passed by respondent No.1, vide which an officer of the GD Branch has been appointed as DIG (Works) in the BSF Engineering Setup.

2. Petitioner claims to have been promoted to the rank of Second-in-Command (Electrical) pursuant to order dated 19.01.2010 passed by this Court in W.P.(C) 8192/2009, which was challenged by the respondents, however, upheld by the Hon'ble Supreme Court vide order and judgment dated 02.05.2011 in Special Leave Petition 26582/2010; though he was promoted against a vacancy of the year 2011 instead of the vacancy of the year 2007-08, when the post of Second-in-Command (Electrical) was notified. By virtue of judgment dated 13.08.2012 passed by the Jodhpur High Court in W.P.(C) 823/2012 preferred by the petitioner, he was granted notional seniority w.e.f. 31.10.2007.

3. Petitioner claims that his promotion to the rank of Commandant (Electrical) was due in the year 2009 on completion of five years of regular service in the grade, with total fifteen years' service in Group "A", however, he was promoted on 15.05.2013 and since then, he is working in the same rank without any further promotion. Petitioner also claims to have made representation dated 07.10.2020 to the DG, BSF regarding his



delayed promotion, but has not received any response thereto.

4. During the course of hearing, learned counsel appearing on behalf of petitioner submitted that a proposal to include 02 vacancies of DIG (Engg/Works) and 01 vacancy of IG (Engg/Works) 0020 for Engineering Setup by the BSF Personnel Directorate has already been initiated and a Cadre Review Committee has already been formed vide letter No.FHQ No 16/26/2018-Pers/BSF/44856-68 dated 21.12.2018 and dated July, 2020 but final outcome thereof is yet to come.

5. Learned petitioner's counsel pointed out that the BSF officers in General Duty Cadre receive their promotion upto the rank of DIG without any stagnation, however, due to non-availability of post in DIG (Works) in the Engineering Cadre, petitioner has been suffering since the year 2013 when he got promoted to the rank of Commandant, despite being eligible since the year 2009-2010. It is further pointed out that the Union Home Secretary's order dated 11.05.2018 stipulates that the officers of General Duty Cadre, irrespective of their grade/ rank and academic qualifications, cannot exercise powers related to technical works; and these powers shall be exercised by only technical officers, who are appointed against the sanctioned post of engineering with requisite technical qualifications and



experience, as notified by Ministry of Home Affairs.

6. Petitioner is the senior most technical officer in the BSF Engineering Setup, having completed more than 26 years in Group 'A' Gazetted service and so, he is entitled to handle the functioning of DIG (Works) in Engineering Cadre. Attention of this Court was also drawn to the various achievements of petitioner having posted in the Engineering Branch to submit that petitioner deserves to be promoted to the rank of DIG and IG (Works/ Engg) in BSF. It is stated that despite having lapse of more than 2½ years, the Cadre Review Committee has not sanctioned the post of DIG/IG in the Engineering Cadre of BSF. Learned counsel submitted that other Central Arms Para Military Forces (CRPF, ITBP and SSB Assam Rifle), which are smaller than BSF, have already sanctioned posts for IG and DIG in Engineering Cadre, as per relevant rules, whereas presently the highest rank available in the BSF Engineering Branch for technical officer, is Commandant and for various decisions such like, executing tender above Rs.8.00 Crores, the permission of concerned department of Government of India is required to be obtained, which causes delay in execution of the projects, financial burden and also adversely affects the efficacy of the BSF.



7. On behalf of petitioner, it was submitted that a number of times petitioner has been asked to perform duties of DIG (Works) in the Engineering Branch of BSF, as the entire function of the engineering cadre is technical in nature and cannot be executed or supervised by a non-technical officer. However, in contravention of letter dated 11.05.2018 issued by the Ministry of Home Affairs and letter dated 28.06.2018, issued by the BSF, respondent No.1 has issued a posting of Deputy Inspector General of General Duty Cadre, who is non-technical.

8. Petitioner's grievance is that pursuant to this order, he shall be reverted to the rank of Commandant (Electrical) though he has been performing duties of DIG (Works) and has, therefore vide letter dated 19.03.2021 requested respondent No.1 to promote him to the rank of DIG, but has not received any response thereto. Therefore, a direction to respondent No.1 to the effect that one vacancy of DIG, out of the available/surplus vacancy of DIG in any other cadre of BSF, be transferred to the Engineering Cadre or regular vacancy of DIG (Engg) in terms of BSF, Personnel Directorate proposal dated 21.12.2018, is sought. A direction is also sought to respondent No.1 to not relieve petitioner from his existing duties till he is promoted against a transferred / regular vacancy in the



Engineering Cadre.

9. To the contrary, refuting the claims raised by the petitioner, the respondents brought to the notice of this Court that for restructuring of BSF Engineering Setup, the General Duty Officers working in Engineering Setup were merged in Engineering Setup on 18.07.2011 and a central seniority list was finalized. The BSF Engineering Setup has authorized setup of 1652 posts, out of which three posts of Commandant (03 in works, 01 in electrical and 01 in Arch.) are authorized in Engineering Setup, whereof 02 posts of Commandants (works) and 01 post of Commandant (Elec) are temporarily sanctioned. However, vide letter dated 21.05.2021, a proposal for converting these posts into permanent posts have been made.

10. According to respondents, a post of DIG (Works), in BSF Engg. Setup in terms of Order No. 15577-92 dated 06.04.2004 exists, however, there is no post of DIG (Works) from Technical Side of BSF. The proposal dated 21.12.2018 for strengthening and review of engineering cadre was placed before the Cadre Review Committee, which was processed for Director General's approval. However, upon certain observations of DG, the same was returned on 19.08.2021 for necessary rectification, observation and re-submission.



11. With regard to petitioner's plea to grant him Local Rank of DIG in Engineering Setup, the stand of respondents is that the Local Rank or Honorary Rank is given to a Government servant at the verge of retirement who have clear service record, but cannot be promoted to the next higher rank /post due to non-availability of vacancies. Moreover, since local rank in BSF was granted in some cases without approval of the DOP & T, as such the rank in BSF has been discontinued by MHA.

12. The respondents have further contended that due to overfall of post of DIG in General Duty Cadre and to ensure smooth administration and supervision over functioning of BSF, the post of DIG (Works) in the Engineering Branch was done vide order dated 06.04.2004 and since then DIG of General Duty Cadre used to be posted as DIG (Works) at Engineering Setup. According to respondents, since the DIG (Works) was empanelled to the rank of IG and the posting/ transfer of DIG (Works) from the General Cadre, was already in process, therefore, petitioner being the senior most Commandant of Engineering Setup at FHQ, was directed to temporarily look after the duties of DIG (Works), without any financial benefits till posting of regular incumbent vide order dated 15.02.2021.

13. Learned counsel for respondents has pointed out that the order issued



to the petitioner to look after the duties of DIG (Works) in Engineering Setup stands already cancelled vide order dated 20.04.2021 and regular DIG (Works) has also assumed charge on 21.05.2021.

14. In the counter affidavit filed, respondents have pleaded that the pursuant to decision of this Court in previous round of litigations, the petitioner was notionally promoted to the rank of 2IC (Elec.) w.e.f. 21.10.2007. Further stand of respondents is that according to Engineering Cadre Recruitment Rules, 2012, only one post of Commandant (Elec) is sanctioned in the Engineering Setup. Also stated that after completion of two years regular service as 2IC (Elec) with fifteen years Group 'A' service, petitioner had met the eligibility criteria to the post of Commandant (Elec) in the year 2009, however, since the said one seat was already occupied, petitioner was promoted only on 15.05.2013 and also that mere fulfilment of minimum eligibility criteria does not give right to promotion to the Government servant.

15. Learned counsel for respondents next submitted that the General Duty Cadre is separate in BSF, in which DIG and IG are sanctioned by the Ministry of Home Affairs. It is submitted that post of DIG (Works) in the Engineering Setup of BSF is not sanctioned. It is not disputed that on



21.12.2018 cadre review of Engineering Setup has been proposed, which has been returned on 19.08.2021 for necessary rectification and according to learned counsel, once it is received, the same shall be processed for DG's approval.

16. With regard to order dated 11.05.2018 passed by the MHA, vide which powers of technical sanction, acceptance of tender and all other related to technical works has to be exercised only by technical officers appointed against the sanctioned posts with requisite technical qualifications, it is submitted on behalf of respondents that in terms of MHA order No. II-27012/24/CF.3274157/2014-PF-I dated 05.09.2017, the major works upto Rs.15.00 crores and minor works upto 1.00 crores, the DG has the financial powers to get the works executed.

17. Learned counsel appearing on behalf of respondents empathically submitted that at present, there is post of DIG, Electrical/ Engineering Cadre in BSF is not existing and so, promotion of petitioner to the rank of DIG (Elec) does not arise. Lastly, learned counsel appearing on behalf of respondents submitted that the present petition is devoid of merits and deserves to be rejected.

18. In rebuttal, learned counsel appearing on behalf of petitioner



submitted that in the counter affidavit filed on behalf of respondents, several assertions made on behalf of petitioner have been stated as ‘matter of record’ and thereby admitted and respondents have failed to provide any cogent reason for depriving the petitioner of his legitimate right to promotion to the rank of DIG (works) in Engineering Setup, as has been granted in the General Cadre.

19. The arguments advanced by learned counsel appearing on behalf of both the sides were heard at length and the material placed on record has been perused.

20. From the contention raised on behalf of petitioner and averments made in counter affidavit filed on behalf of respondents, it is made out that as on date, the highest rank available in the General Duty Cadre of BSF is “DIG” and the officers working in this cadre have got their eventual promotion to this rank without any stagnation. However, the highest rank available in the BSF Engineering Branch for Technical Officer is “Commandant”. According to respondents, no post of DIG (Works) is sanctioned in the technical side. Moreover, a post of DIG (Works) from General Duty Cadre has been set up in BSF Engineering setup.

21. Pertinently, Ministry of Home Affairs by its office Order No.



II27012/22/2018-PFJ (CF.No.3424149) dated 11.05.2018 has issued the following directions:-

*No. II27012/22/2018-PFJ (CF.No.3424149)
Government of India
Ministry of Home Affairs
Police-II Division
(PF.I Desk)*

*North Block, New Delhi
Dated, the 11th May, 2018*

ORDER

*“Sub: Regarding the Engineering Wings of CAPFs,
AR & NSG.*

In continuation of this Ministry's order No.II.27012/24/CF.3274157/ 2014-PF I dated 05.09.2017, on delegation of financial powers to the DsG of CAPFs, AR & NSG, the undersigned is directed to convey the sanction of the competent authority for authorizing the Engineering Wings of Central Armed Police Forces (CAPFs) , AR & NSG to execute works as per GFR 133(2).

2. The above will be subject to the condition that powers of technical sanction, tender acceptance and all other related technical work will be exercised only by the technical officers appointed against the sanctioned posts of Engineers with requisite technical qualification/ experience, as provided in respective RRs. It is clarified that Officers of General Duty Cadre, irrespective of their grade/ rank/academic qualifications, cannot exercise powers related to Technical Work. Such Wings may execute Major works up to Rs.15.00 crore and Minor works up to Rs.1.00 crore, as per the extant delegated financial powers to the DsG vide MHA's order No.II 27012/24/CF.3274157/2014-PF I dated 05.09.2017, subject to strict observations of



CPWD Manual.

XXXXX ”

22. It is not in dispute that in terms of afore-noted order dated 11.05.2018 passed by Secretary, Ministry of Home Affairs and letter dated 28.06.2018 issued by BSF, the functioning of Engineering cadre cannot be executed/ supervised by the non-technical officer; irrespective of grade/ rank and academic qualifications; and these powers shall be exercised by technical officers only, who are appointed against the sanctioned post of engineering with requisite technical qualifications and experience. In view of above, there is not plausible explanation as to why DIG (Works) in Engineering Setup is appointed from the General Duty Cadre, when there is no power to execute the work, as by virtue of order dated 11.05.2018 of Secretary, Ministry of Home Affairs and letter dated 28.06.2018 of respondent/ BSF, non-technical officers do not have any powers.

23. Further, there is no explanation as to why the highest available rank in the Engineering Setup is Commandant, who is vested with powers to execute tenders only upto Rs.8.00 crores and over and above, the permission of concerned department of Government of India is required to be obtained, when DIG (Works) in the Engineering Setup can get the works



executed upto Rs.15 crores. The delay in execution of the projects and financial burden on respondent/BSF can be checked if the officer of rank holding these powers is seated.

24. So far as objection of respondents that petitioner was permitted to work as DIG (Works) only as a temporary arrangement and so, he should not be allowed to continue hold the post and also that only because an officer is efficiently handling a vacant seat or fulfils the eligibility criteria, will not entitle him to hold a permanent rank, we find substance in these arguments. However, we also concur with the argument advanced on behalf of petitioner that non-availability of rank of DIG in Engineering Setup, leads to stagnation and lack of promotional avenues for the officers and if the 'doctrine of necessity' is not allowed, it would lead to the benefit of officers of General Duty Cadre only. Moreover, attention of this Court has also been drawn to the fact that the Central Arms Para Military Force (CRPF, ITBP, SSb, Assam Rifle) under respondent No.2, which are smaller than BSF, have already sanctioned posts of IGs and DIGs in Engineering Cadre in terms of RR rules. We have gone through copy of notification in the Gazette of India: Extraordinary, G.S.R. 203 (E) dated 08.03.2019, wherein post of Deputy Inspector General (Engineer) in Indo- Tibetan



Border Police Force Act, 1992 has been published.

25. The Hon'ble Supreme Court in *Food Corporation of India Vs. Parashotam Das Bansal* (2008) 5 SCC 100 has dealt with the need to formulate a scheme which provides promotions to the officers in different departments. The pertinent observations of Supreme Court in *Food Corporation (Supra)* are as under:-

“9. The appellant is “State” within the meaning of Article 12 of the Constitution of India. An employee of a State although has no fundamental right of promotion, it has a right to be considered therefor. What is necessary is to provide an opportunity of advancement; promotion being a normal incidence of service.

10. This Court in O.Z. Hussain (Dr.) v. Union of India [1990 Supp SCC 688 : 1991 SCC (L&S) 649 : (1991) 16 ATC 521] opined: (SCC pp. 691-92, para 7)

“7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical ‘A’ Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to



attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate."

11. The question also came up for consideration in Ujagar Prints (III) v. Union of India [(1989) 3 SCC 531 : 1989 SCC (Tax) 512 : AIR 1989 SC 972] and Council of Scientific and Industrial Research v. K.G.S. Bhatt [(1989) 4 SCC 635 : 1990 SCC (L&S) 45 : (1989) 11 ATC 880] . In the latter decision, this Court held: (SCC pp. 638-39, para 9)

"9. ... It is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See Principles of Personnel Management by Flipo Edwin B., 4th Edn., p. 246.) Every management must provide realistic opportunities for promising employees to move upward. 'The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors.' (See Personnel



Management by Dr. Udai Pareek, p. 277.) There cannot be any modern management much less any career planning, manpower development, management development, etc. which is not related to a system of promotions.”

12. When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that they fell within a category of employees excluded from promotional prospect, the superior court will have the jurisdiction to issue necessary direction.

13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a superior court of the country.”

26. It is not in dispute that the Cadre Review Committee set up on 21.12.2018 has identified the requirement of promotion of officers in Engineering Setup to the rank of DIG and IG, which is still pending consideration before the concerned authorities. This Court has gone through letter dated July, 2020 written by DIG (G) BSF to Pers Dte (Pers Sec) FHQ (Annexure P-11), wherein it is stated that the members of the board constituted to prepare a consolidated proposal for strengthening and



cadre review of Engineering Set up on functional requirement basis have been posted out and, therefore, a request is made to constitute a fresh board. It is also not disputed that pursuant to the aforesaid communication of July, 2020, exchanged inter-se the competitive authorities, petitioner has filed a representation dated 07.10.2020 on this very aspect, however, the said representation has still not been decided. As to why after lapse of more than four years, the concerned officers of BSF are sitting over the said proposal and have not yet given final decision thereon. During the course of hearing, learned Central Government Standing Counsel appearing on behalf of respondents was not able to persuade this Court as to what has stopped the concerned authorities to take a decision on petitioner's representation dated 07.10.2020 even after lapse of more than one and a half year.

27. We have been informed by learned counsel for the respondents that a DIG from General Duty Cadre has been posted in the Engineering Branch since 21.05.2021. This Court on that very day itself i.e. 21.05.2021, when the matter was heard on the first date, had raised several queries to find out as to whether petitioner was entitled to hold the subject post and directed the respondent /BSF to expedite cadre review, however, to our utter



disappointment even order of this Court has not been complied with till date.

28. It is pertinent to mention that the other forces of Central Arms Para Military Force (CRPF, ITBP, SSb, Assam Rifle) under respondent No.2, which are smaller than BSF, have already sanctioned posts of IGs and DIGs in Engineering Cadre in terms of RR rules, which is evident by the copy of notification in the Gazette of India: Extraordinary, G.S.R. 203 (E) dated 08.03.2019, wherein post of Deputy Inspector General (Engineer) in Indo- Tibetan Border Police Force Act, 1992 has been published.

29. In the aforesaid view of the matter, we hereby direct the respondents/BSF to form a Cadre Review Committee within four weeks of passing of this judgment, who shall take a decision within two weeks thereafter for creation of posts in terms of letter FHQ No 16/26/2018-Pers/BSF/44856-68 dated 21.12.2018 and communication of BSF dated July, 2020, after taking necessary approval from the concerned Ministry or any other department. The concerned department/ Ministry shall take decision on approval within two weeks from the receipt of any communication from the Cadre Review Committee /BSF. Thereafter, respondent /BSF shall fill the posts so created within four weeks and if



petitioner is the senior most eligible officer to hold the position of DIG (Works), as claimed, he be considered.

30. Needless to say, it is expected that the Cadre Review Committee of respondent /BSF shall not only bear in mind the future scenarios of promotion to avoid stagnancy in Engineering Setup, but also the fact that similarly placed officers in two different cadres of a department, should have similar promotion prospects.

31. With aforesaid directions, the present petition is disposed of. Pending application is disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(SUDHIR KUMAR JAIN)
JUDGE

JULY 04, 2022

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