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

% **Date of decision: July 20, 2022**

+ W.P.(C) 5648/2021

PARAMJIT SINGH AND ORS Petitioners

Through: Mr. Ankur Chhibber and Mr. Nikunj
Arora, Advocates.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Harish V. Shankar, CGSC with
Mr. Srish Kumar Mishra, Mr. Sagar
Mehlawat, Mr. Alexander Mathai
Paikaday, Advocates.

+ W.P.(C) 7119/2020 & CM APPL.31939/2020 & 20156/2021

M. SHAIK ABDULLA AND ORS Petitioners

Through: Mr. Ankur Chhibber and Mr. Nikunj
Arora, Advocates.

versus

UNION OF INDIA AND ORS Respondents

Through: Ms. Bharathi Raju, Senior Panel
Counsel

+ W.P.(C) 7195/2020 & CM.APPL.20153/2021

NARENDER SINGH AND ORS. Petitioners

Through: Mr. Ankur Chhibber and Mr. Nikunj
Arora, Advocates.

versus



UNION OF INDIA AND ORS

.... Respondents

Through: Mr. Harish V. Shankar, CGSC with
Mr. Srish Kumar Mishra, Mr. Sagar
Mehlawat, Mr. Alexander Mathai
Paikaday, Advocates.

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 issue(s) raised in these petitions and the relief(s) sought are similar, therefore, these petitions are heard together and being disposed of by this common judgment, treating W.P.(C) 5648/2021 as the lead matter. We note that W.P.(C) 5648/2021 has been filed by the personnel belonging to CRPF, W.P.(C) 7119/2020 has been filed by the personnel belonging to CISF and W.P.(C) 7195/2020 has been filed by the personnel belonging to ITBP.
2. Vide W.P.(C) 5648/2021, petitioners are seeking quashing of office memorandum dated 12.04.2021, whereby the request of the petitioners for diversion for 08 posts of DIG from IPS quota to the Cadre officers has been rejected; directions to the respondents to convene the Departmental Promotion Committee (DPC) for promotion to the rank of Deputy Inspector



General from Commandant and to the rank of Commandant from Second in Command in line with the OM dated 08.05.2017 alongwith other reliefs.

3. Vide W.P.(C) 7119/2020, petitioners are seeking directions to respondents to invoke Rule 5 of the CISF Recruitment Rules, 2002 and 2010 which provides for relaxation of rules in respect of any class or category of persons and thereby divert the vacancies which have been kept vacant for IPS officers to cadre officers' after obtaining necessary approval from the Competent Authority/MHA and once such posts are diverted, hold a DPC to consider the case of the petitioners for promotion to the rank of DIG w.e.f. the date the vacancies for such posts have been lying vacant.

4. Vide W.P.(C) 7195/2020, petitioners are seeking directions to respondents to invoke Rule 10 of the ITBP Recruitment Rules, 2008 which provides for relaxation of rules in respect of any class or category of persons and thereby divert the vacancies which have been kept vacant for IPS officers to cadre officers' after obtaining necessary approval from the Competent Authority/MHA and once such posts are diverted, hold a DPC to consider the case of the petitioners for promotion to the rank of DIG w.e.f. the date the vacancies for such posts have been lying vacant.



5. It is pertinent to mention here that in W.P.(C) 7195/2020, vide order dated 29.09.2020, while issuing notice, this Court had observed as under:

“3. The grievance of the 4 petitioners, claiming to be Commandants in the respondents Indo-Tibetan Border Police (ITBP), is that though fulfilling the eligibility requirements for the next promotion to the rank of Deputy Inspector General (DIG), they are not being promoted as DIGs owing to lack of vacancies in the promotion quota of the said post of DIG.

4. It is their case, that there are 71 posts of DIG in ITBP and of which, as per the Rules, 57 are to be filled up by promotion from the feeder cadre and 14 by deputation of Indian Police Service (IPS) Officers. They contend that though all the 57 posts to be filled up by promotees are occupied, of the 14 posts of DIG to be filled in by IPS Officers on deputation, only 3 are filled up and the rest 11 are vacant. They further plead that the post of DIG is an operational post and the factum of the said posts remaining vacant ultimately affects the functioning and operations of the Force. It is further their case that on the other hand, there is stagnation amongst the promotes, with the petitioners in spite of having 27 years of service, having stagnated now for long at the post of Senior Commandants.

5. The petitioners claim that though under Rule 10 of the ITBP, General Duty Cadre (Group 'A' Posts) Recruitment Rules, 2018, there is a power of relaxation whereunder the DIG posts of the deputation quota can be diverted to the promotee quota and in exercise of similar Rules in the other Central Armed Police Forces (CAPFs), equivalent posts to be filled up by deputation of IPS officers have been diverted to the promotee quota, but the same has not been done in the respondents ITBP.

6. The petitioners have thus filed this petition seeking mandamus, directing the respondents ITBP to invoke Rule 10 supra and to divert the vacancies which have been kept vacant for IPS officers to the promotee officers, after



obtaining the necessary approval from the Competent Authority/respondent No. 1 Ministry of Home Affairs (MHA) and once such posts are diverted, to hold a Departmental Promotion Committee (DPC) to consider the case of the petitioners for promotion.

7. The counsel for the respondents ITBP appears on advance notice and though contends that Rule 10 supra, which is quoted, does not provide what is stated by the counsel for the petitioners but also states that a counter affidavit will be required to be filed, to place the correct facts before the court.

8. The counsel for the petitioners along with the petition itself has filed earlier orders passed by this Court and wherefrom one option is to dispose of this petition today itself, directing the respondents ITBP to take a decision as is sought, in a time bound manner and to, if the decision is in favour of the petitioners, take consequential steps and giving liberty to the petitioners to take appropriate remedies if remain aggrieved from the decision. However we find such questions to be repeatedly arising and deem it appropriate to consider, (a) whether any decision till now under Rule 10 supra, if applicable, has been taken; (b) whether the respondents ITBP agree and consider the post of DIG to be an operational post and that keeping the same vacant affects the functioning and operations of ITBP; if the respondents are of the view that non-filling of the posts does not affect the functioning of the Force, then the reason for not reducing the number of posts of DIG in the Force be also disclosed; (c) what exercise has been undertaken to enquire from the IPS officers eligible for deputation to the said post, of their willingness to take up the said posts and if no such exercise has been undertaken, the reason therefor; and, (d) once the date of superannuation or the period of deputation is known with certainty, why should the post remain vacant for even one day and why the exercise is not undertaken in advance so that if there is no IPS officer willing or available for deputation to fill up the said post, the post can immediately be filled up from amongst the



promotees.”

6. Thereafter, the Ministry of Home Affairs, Government of India has taken decision vide order dated 29.06.2022 which is reproduced as under:

*“Government of India
Ministry of Home Affairs
(Pers.II Desk)*

Subject: Temporary diversion of posts of DIG of IPS quota to Cadre Officers quota in CRPF & BSF-reg.

A proposal was referred to DoPT for temporary diversion of DIG from deputation quota of IPS officers to quota of cadre officers of CRPF and BSF for the vacancy year 2022. DoPT has agreed to the proposal of the Ministry as under:-

- i) 15 posts of DIG from deputation quota of IPS officers to promotion quota of cadre officers of BSF for the vacancy year 2022; and*
- ii) 30 posts of DIG from deputation quota of IPS officers to promotion quota of cadre officers of CRPF for vacancy year 2022.*

2. DoPT has agreed to the above proposal subject to the following:-

- i) Immediately on availability of IPS officers, the number of diverted posts will be reverted back to IPS quota;*
- ii) As empanelment at the level of DIG has been dispensed with and more officers should now be available, necessary steps may be taken to evolve a permanent solution so as to avoid any such situation of diversion of posts, from one quota to another, 2023 onwards.*
- iii) The cadre review of BSF/CRPF which became due in 2021, must be initiated at the earliest. The cadre review proposal may also contain a permanent solution to the issue of posts earmarked for IPS quota.*

*(P.S. Dangwal)
Deputy Secretary (Pers.I)
Ph.230093029*

DG, CRPF/BSF

MHA UO No.I-45020/24/2022-Pers.II Dated, the 29th June, 2022

Copy for information to:-

- i. AS (Police-I) MHA,*
- ii. DS (Pers.I)”*



7. Since the decision has already been taken for personnel belonging to CRPF and BSF, therefore, without going into the merits of the these petitions, we hereby direct the respondents as under:

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8. In the light of aforementioned decision taken by Ministry of Home Affairs vide order dated 29.06.2022 with respect to the similarly situated personnel belonging to CRPF involved in the present petition, respondents are directed to communicate the outcome of their decision to the petitioners within one week from today and take further steps to conduct DPC for promotion of DIG.

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9. Respondents are directed to take a decision of the very nature qua personnel belonging to CISF and ITBP within three months in the light of decision vide order dated 29.06.2022 passed by Ministry of Home Affairs. If the respondents are of the opinion that the decision is also taken in favour of CISF and ITBP, the same shall be communicated to the petitioners within one week thereafter and the respondents shall take further steps to conduct Departmental Promotion Committee for promotion of DIG and if the respondents are of the view that the decision of the same nature is not



required qua CISF and ITBP, the respondents shall pass a reasoned order. If the petitioners feel aggrieved by the decision taken by the respondents, they may challenge the same before the appropriate forum.

10. With the aforesaid directions, these three petitions are disposed of. Pending applications also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

JULY 20, 2022/rk

