

HIGH COURT AT CALCUTTA
In the Circuit Bench at Jalpaiguri
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 1093 of 2021

Devendra & Ors.

Versus

Union of India & Ors.

For the petitioner : Mr. Jagriti Mishra
Mr. S.K. Dhar
Mr. Ashit Kumar Das
Ms. Ananya Bhatteya
Mr. Mrinmayee Das
Mr. Debayan Goswami

...Advocates

For the Union of India : Mr. Sudipto Kumar Mazumdar
Mr. Ajay Kumar Singhanian
Mr. Saptak Sarkar

...Advocates

Lastly heard on : 13.06.2023

Judgment on : 16.06.2023

JAY SENGUPTA, J.:

1. This is an application under Article 226 of the Constitution of India in alia, praying for a direction upon the respondent authorities to finalise the cadre review in respect of the carpentry cadre, promotional vacancies, career advancement and the recruitment rules thereof.

2. Mr. Mishra, learned counsel appearing on behalf of the petitioners, submitted as follows. The petitioners 1 to 3, 5 to 7, had joined Sahastro Seema Bal (SSB, for short) as Head Constable/carpenter. While the other Central Armed Para Military Forces (CAPFs, for short) like the Indo Tibetan Border Security Force and the Central Reserved Police Force provide for a scope of promotion and career advancement, in the non-combatised cadre of the SSB there is no avenue for promotion. And a staff who joins at an early age could serve for 33 years without any promotion whatsoever. Only in certain categories, there is a scope for promotion. This is absolutely arbitrary. It also violates the principles of natural justice as similarly placed personnel in the other armed forces do get a chance for promotion. Reliance is also placed on a decision of the Hon'ble Apex Court in Aswini Kumar versus Union of India and another passed in Miscellaneous Application No. 2560 of 2018 in WP(C) No. 738 of 2016. There, it was held that a writ of mandamus would lie if no review takes place for promotion as required.

3. Mr. Mazumder, learned Deputy Solicitor General representing the Union of India, submitted as follows. The policy decision of the Executive may not be interfered with by a Court of law in exercise of powers under Article 226 of the Constitution of India. Different CAPFs serve diverse needs and purposes. All of them cannot be treated as an homogeneous entity. The employees of each of such CAPF shall be guided by the respective laws which govern their forces. Reliance is placed on decision of the Hon'ble Apex Court in S. Ramanathan versus Union of India and Ors., (2001) 2 SCC 118 and on a decision passed by a Division Bench of this Court in the Union of

India and others versus Sri Pravat Kumar Manna, MAT 22 of 2021. However, for the cadre in question, pay has been revised from time to time. Moreover, the Force had earlier sent a proposal for having a scope for career advancement in the present cadre to the Ministry, which was returned. A fresh proposal has been sent again.

4. I heard the learned counsels for the parties and perused the writ petition and the affidavits filed.

5. In Sri Pravat Kumar Manna (supra), a Division Bench of this Court held as follows. *“Materials placed before us show that the promotional posts have been deemed to have been abolished. Hence, there is no question of framing recruitment rules for appointment to the said posts. Issue of revival of the said posts is a question of policy which this Court would not embark into.”*

6. The decision in S. Ramanathan (supra) also supports the contentions of the respondents in this regard.

7. On the other hand, the decision of the Special Bench of the Hon’ble Apex Court in Dr. Aswini Kumar (supra) goes on to support the stand taken by the respondents in this regard. Moreover, there was a scope for promotion there and a review was also provided for. In Dr. Aswini Kumar (supra), the Hon’ble Apex Court held as follows -

“28. Such directions must be issued with great care and circumspection and certainly not when the matter is already pending consideration and debate with the executive or Parliament. This is not a case which requires Court’s intervention to give a suggestion for need to frame a law as the matter is

already pending active consideration. Any direction at this stage would be interpreted as judicial participation in the enactment of law. This Court in **Supreme Court Employees' Welfare Association versus Union of India and Another** had directed that no Court can direct the legislature to enact a particular law. Similarly, when an executive authority exercises the legislative power by way of subordinate legislation pursuant to delegatory authority of the legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under delegated authority. Again, we would quote from Dipak Misra, CJ in **Kalpana Mehta's** case, in which it was observed:

“44. Recently, in *Census Commr. V. R. Krishnamurthy*, the Court, after referring to *Premium Granites versus State of T.N.*, *M.P. Oil Extrction versus State of M.P.*, *State of M.P. versus Narmada Bachao Andolan* and *State of Punjab versus Ram Lubhaya Bagga*, held: (R. Krishnamurthy case, SCC p. 809, para 33)

“33. From the aforesaid pronouncement of law, it is clear as noonday that is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions (sic) but the Court is not expected to sit as an appellate authority on an opinion.”

.....

“40. We have no hesitation in observing that notwithstanding the aforesaid directions in **D.K. Basu** (supra) and the principles of law laid down in **Prithipal Singh and Others versus State of Punjab and Another** and **S. Nambi Narayanan** (supra), this Court can, in an appropriate matter and on the basis of pleadings and factual matrix before it, issue appropriate guidelines/directions to elucidate, add and improve upon the directions issued in **D.K. Basu** (supra) and other cases when conditions stated in paragraph 27 supra are satisfied. However, this is not what is urged and prayed by the applicant. The contention of the applicant is that this Court must direct the legislature, that is, Parliament, to enact a suitable standalone comprehensive legislation based on the UN Convention and this direction, if issued, would be in consonance with the Constitution of India. This prayer must be rejected in light of the aforesaid discussion.”

8. In view of the above, it is abundantly clear that this Court would ordinarily not interfere with the policy decisions of the Executive.

9. Moreover, all the personnel of the diverse CAPFs cannot be treated as an homogenous entity. The CAPFs serve diverse needs and purposes.

10. Besides, before joining the Force, the petitioners must have made themselves aware of the conditions of service including the scope of promotion and career advancement.

11. In view of the above discussions, I do not find any merit in the writ petition.

12. Accordingly, the same is dismissed.

13. There shall, however, be no order as to costs.

14. It goes without saying that it shall nevertheless be open to the Executive to provide for a scope of promotion or career advancement in the present cadre as per the purported proposal of the Force or even otherwise.

15. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)