



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

% Judgment delivered on: 26th February, 2024

+ W.P.(C) 3445/2020

NIGUDE ASHOK DASHARATH & ORS Petitioner

versus

UNION OF INDIA & ORS ... Respondents

+ W.P.(C) 11991/2022

VIRENDRA KUMAR & ORS. Petitioner

versus

UNION OF INDIA & ORS. Respondents

+ W.P.(C) 4308/2022

ANAMI SHARAN AND ORS Petitioner

versus

UNION OF INDIA & ORS. Respondents

Advocates who appeared in this case:

For the petitioners: Mr. Ankur Chhibber, Advocate, Mr. Himanshu Gautam and Mr. Lokesh Sharma, Advocates

For the Respondent: Mr. Harish Vaidyanathan, Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai Paikaday, Advocates Mr. Ripu Daman Bhardwaj, CGSC with Mr. Kushagra Kumar, Advocate
Ms. Pratima N. Lakra, CGSC, Ms. Archana Surve, Govt. Pleader, Ms. Kholi Rakuzhouro and Ms. Vanya Bajaj, Advocates for UOI.
Mr. Vineet Dhanda, CGSC & Mr. Hussain T., Advocate for UOI



CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner Nigude Ashok Dasharath & 16 others have filed Writ Petition 3445/2020 with the following prayer: -

(i) *Issue a writ of certiorari for quashing the orders dated 03.02.2020 to the extent that the petitioners have not been considered for grant of NFSG despite fulfilling all the conditions as laid down by the above OMs and by wrong calculation of Senior Duty Post;*

(ii) *Issue a writ of mandamus directing the respondents to calculate 30% of Senior Duty Post properly by including the posts held by Assistant Commandants already granted to STS (Grade Pay 6600/-) as well as post held by IPS for calculation of Senior Duty Post (SDP) and thereafter consider the petitioners for grant of NFSG and if found eligible then grant the same to the petitioners from the dates as shown in the above table in the petition with all consequential benefits;*

(iii) *Issue a writ of mandamus to enhance ceiling of Senior Duty Post (SDP) from 30% to 100% as a one-time measure to address acute stagnation to left out Second-in-Command (2ICs) those who are not covered by counting AC (STS) if any, and grant them NFSG with consequential benefits.*

2. Two more Writ Petitions i.e. WP (C) No. 11991/2022 and WP (C) No. 4308/2022 were filed and it was brought to the notice of this Court that issues raised in these writ petitions were common and since the pleadings in WP (C) 3445/2020 were already complete, with the consent



of the learned counsel for parties, said writ petition i.e. WP (C) 3445/2020 was treated as lead matter.

3. Petitioners are Second-in-Command (2IC) in Central Reserve Police Force (CRPF), posted in different locations across the country.

4. They are primarily agitated with the manner of calculation for the purpose of grant of benefit of Non-Functional Selection Grade (NFSG).

5. We need not emphasize that NFSG is intended to mitigate the rigors of stagnation to which these officers may be exposed for want of adequate number of posts in the higher grade.

6. There are two issues which have been raised in the present Writ Petition.

7. Firstly, the manner of calculation of 30% of Senior Duty Post (SDP).

8. It is not in dispute that, presently, the number of posts in NFSG is required to be equal to 30% of Senior Duty Post, CRPF being Organized Group A Service. The grievance of the petitioners is that while calculating the 'Senior Duty Post', respondents have left out Assistant Commandants (STS) as well as the posts held by IPS and, therefore, percentage of eligible officers stands reduced drastically.

9. Secondly, they pray for increase of such percentage to 100%, as a one-time measure.



10. It is stated that some of the officers are already in their 18th & 19th year of service and are facing stagnation whereas their counterparts, recruited through the same competitive examination and who are even junior to them and serving in other paramilitary forces, have already been given the benefit of NFSG and, therefore, keeping in mind the aforesaid position of stagnation, ceiling of Senior Duty Post be increased from 30% to 100% as a one-time measure. It is also contended that in most of the Organized Group A Services, the Senior Duty Post (SDP) are approximately 60% to 85% of total cadre strength, in CRPF, whereas it is approximately 45% only and thus more than 300 Second-in-Command (2ICs) including Petitioners have been are deprived of NFSG even after fulfilling all eligible criteria.

11. Thus, it needs to be seen as to who is covered under 'Senior Duty Post' and whether petitioners have been able to demonstrate that ceiling of Senior Duty Post should be increased to 100% as a one-time measure.

12. According to respondents, there is no error in the method and manner of calculation and, therefore, the Writ Petition deserves to be dismissed. It is argued that there are several petitioners who do not even fulfil the primary mandatory criteria and, therefore, even otherwise they are not eligible for grant of NFSG. As regards expression 'Senior Duty Post', it is contended that organization comprising of CRPF is being manned by 'cadre officers' as well as 'IPS officers on deputation' and that the posts to be filled by CRPF cadre are separately earmarked and the number of posts to be filled by IPS on deputation is mentioned



separately in same Recruitment Rules. It is thus submitted that only such number of posts meant for CRPF 'cadre officers' can be taken into consideration for calculation of Senior Duty Post and grant of NFSG in as much as deputationist IPS officers run in an altogether separate paradigm.

13. Respondents also contend that Assistant Commandants, who are already getting Senior Time Scale (STS) cannot be considered to be part of SDP and that SDP would constitute Deputy Commandant and above. It is argued that term 'duty' in SDP indicates that only posts with functional position and notional position are to be taken into account. It is also submitted that the petitioners cannot draw any parallel with the officers of other services like Indian Trade Service (ITS), Health & Family Welfare, Department of Ayush and Indian System of Medicine and Homeopathic Physicians as these departments are not affiliated to the Ministry of Home Affairs and have different cadre structure vis-a-vis Central Armed Police Forces (CAPF). Moreover, when as one-time measure, ceiling was enhanced from 30% to 50% to ITS, it was specifically observed in the relevant Office Memorandum that same shall not be quoted or cited as a precedent. As per respondents, the cadre structure of each CAPF is unique and, therefore, it cannot seek parity either with Indo-Tibetan Border Police or Sashastra Seema Bal.

14. It is not in dispute that the Department of Personnel & Training, which is the nodal agency of Government of India of personnel management policies, has come up with Monograph of cadre review and



as per such Monograph, any well-structured Group 'A' cadre consists of Regular Duty Posts and Reserves.

15. Regular Duty Posts consists of both permanent posts as well as temporary posts and the reserves are of four types viz. (i) probationers' reserves, (ii) leave reserves, (iii) training reserves & (iv) deputation reserves. Probationers' reserves cannot be considered to be the part of Regular Duty Post of a service as they are intended to perform regular service function. Other reserves, namely, leave, training and deputation are intended to serve as substitute for Regular Duty Post in the event of service officers holding the duty post being temporarily away from their cadre as it is expected that in given point of time, there would be some officers who must be on leave, deputation or training.

16. Cadre structure is generally in the shape of pyramid and the officers joining a particular service have certain expectations from the service in terms of going up through the different ladder and within reasonable interval of time. If the cadre pyramid is steep, obviously, the promotional opportunities for individual members of the service would be limited but if it is not steep, one can expect reasonable promotional opportunities and thus higher the ratio between Senior Administrative Grade posts and total cadre strength, the better are the promotional opportunities for any member of given service

17. As per the aforesaid Monograph issued by DoPT, 'Senior Duty Posts' comprises of total strength minus (-) reserves minus (-) number of



posts at Junior Time Scale. According to petitioners, the manner in which the respondents have calculated the Senior Duty Posts is not only in defiance of monograph published by DoPT in the year 2010 but is also against its own various circulars.

18. Our attention has been drawn towards note dated 14.02.2014 which goes on to show that CRPF had agreed in principle to count Assistant Commandants (STS) for calculation of Senior Duty Post. It is argued by the petitioners that as per specific instructions, NFSG was required to be calculated @ 30% i.e. all duty posts at the level of Senior Time Scale and above in the cadre which had been even agreed by CRPF and the DoPT had also given liberty to Cadre Controlling Authority to count its posts of Assistant Commandants (STS) as well as the post held by IPS while calculating 30% of Senior Duty Post.

19. DoPT by its Letter dated 13.01.2015, wherein in the context of grant of NFSG for officers of BSF, has stipulated that MHA (the Cadre Controlling Authority) can take a decision at its level whether or not posts filled up by deputationists from IPS or by re-employment of Army as cadre posts of BSF as also whether or not the posts occupied by the Assistant Commandants already granted STS should be taken on the strength of STS cadre posts.

20. We may note that the manner in which ceiling has been calculated by the respondents, 30% of SDP comes to around 578 for the year 2016 whereas had the respondents considered the Assistant Commandants



(STS) and Deputationists, such figure would have increased to 830 for the said year.

21. According to respondents, as regards considering Assistant Commandants, who are getting STS, for calculation of 30% SDP for NFSG Posts, Asstt. Commandant on completion of four years of service are though granted scale of Deputy Commandant as financial up-gradation but their substantive grade remains Asstt. Commandant. Since SDP includes post of Dy. Commandant and above, the Asstt. Commandants who are getting STS cannot be taken into consideration for calculation of SDP posts.

22. This is disputed by the petitioners and they contend that the respondents on one hand, while calculating number of officers eligible for NFSG deduct those officers (Commandants in this case) who are already drawing Grade Pay of Rs.8700/- as a result of regular promotion as per advise of DoPT but when it comes to including officers in the rank of Assistant Commandant who are granted Senior Time Scale in Senior Duty Post, they are reluctant to do so inspite of the fact that DoPT, vide letter dated 13.01.2015, has given full liberty to MHA to decide inclusion of AC(STS), post held by IPS on deputation and posts held by Army officers on re-employment.

23. Moreover, the Monograph published by the DoPT in the year 2010 clearly defines Senior Duty post as "SDP (Total strength-Reserves-Number of post at junior time scale)." As per the definition, only posts at



Junior Time Scale and reserves are to be subtracted for calculation of SDP. Also, DoPT vide its OM dated 25.06.2014 clarified that Senior Duty Posts means all cadre posts at Senior Time Scale (Rs.6600/-) and above Senior Time Scale. Thus, the officers who are in Senior Time Scale are to be considered for calculation of SDP.

24. We do not find any real logic for excluding the posts held by Assistant Commandants who have been granted Senior Time Scale as well as the posts held by IPS. We say so because in above noted clarification issued by DoPT way back on 25.06.2014, it was specifically clarified that Senior Duty Post would mean all cadre posts at Senior Time Scale (GP Rs. 6600/-) and above the Senior Time Scale. Merely because, the Assistant Commandants have been granted Senior Time Scale and are not formally promoted and merely because several posts are held by deputationists would not mean that they cannot be reckoned to be part of SDP, at least in context of present service which is faced with acute stagnation.

25. We need not lay emphasis that NFSG is a benefit given to those employees who do not get promoted to the high rank/post due to the unavailability of the vacancy. The spirit of this benefit is employee-centric as it motivates those employees who do not get promoted despite putting in enough years of service. Thus, for the purpose of grant of NFSG, there is no reason for excluding them. Respondents cannot be heard claiming that posts held by IPS also do not belong to the cadre and, therefore, they cannot be calculated for the purposes of Senior Duty Post



and thus the formula adopted by the respondents does not seem to be correct.

26. Fact, however, remains that the petitioners have not been able to place on record the requisite data which may, at the moment, compel us to increase the ceiling of SDP from 30% to 100%.

27. In view of our foregoing discussion, we hereby partly allow the present Writ Petition and direct the respondents to re-calculate the grant of NFSG while including the posts held by Assistant Commandants (STS) as well as the posts held by IPS on deputation. Needless to say, NFSG would be given to those officers only who are otherwise found eligible and meet the prescribed conditions and parameters.

28. As regards enhancement of ceiling of Senior Duty Post from 30% to 100% as a one-time measure, petitioners would be at liberty to file appropriate representation and the respondents would be at liberty to consider the same as expeditiously as possible. If aggrieved by the outcome thereof, they would certainly be at liberty to take recourse to law.

29. The petitions are disposed of in the aforesaid terms.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

February 26, 2024/dr