



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 20, 2024

+ W.P.(C) 4627/2021
K J S BAINS

..... Petitioner

Through: Mr. Ankur Chhibber and
Mr. Anshuman Mehrotra, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar Mishra,
Mr. Alexander Mathai Paikaday &
Mr. Krishnan V., Advs. for UOI

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

V. KAMESWAR RAO, J

1. The petitioner has filed this petition with the following prayers:-

“(i) Issue writ of certiorari thereby setting aside order dated 01.10.2020 whereby representation by Petitioner was rejected by Respondents;



(ii) Issue writ of mandamus thereby directing the respondents to consider the Petitioner for promotion to the rank of Inspector General, Chief Law Officer by placing reliance on OM dated 04.02.1992 and 30.03.1988 and, if found suitable, grant notional promotion to Petitioner to the post of Chief Law Officer/IG in BSF from vacancy year 2013-14 along with consequential benefits; and

(iii) Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case."

2. The petitioner has challenged the order dated October 01, 2020, by which the request of the petitioner for grant of promotion to the post of Chief Law Officer/Inspector General ('CLO/IG', for short) from the date of Vacancy year of 2013-14 till the date of his retirement from service, was rejected on the ground that the petitioner was not in SHAPE-1 medical category and also Recruitment Rules to the post of CLO/IG are not available.

3. The facts as noted from the record and so stated by Mr. Ankur Chhibber are that the BSF is governed by BSF Act, 1968 and the Rules made in 1969.

4. The petitioner joined the BSF as Assistant Commandant on September 17, 1984. The petitioner was attached with the Law cadre of BSF on May 26, 1987. In the year 1988, the petitioner suffered an unfortunate accident which resulted in injuries to the petitioner on his right arm. The right forearm of the petitioner was amputated. The petitioner was promoted as Deputy Commandant in General Duty on September 21, 1989. Subsequently, he was promoted as Law Officer Grade-II/Deputy Commandant on February 15, 1990 and further



promoted to Law Officer Grade-I/Commandant on October 18, 1995. Finally, he was promoted to the post of CLO w.e.f., July 19, 2011, and superannuated on March 31, 2020.

5. Mr. Ankur Chhibber stated that the post of CLO/DIG was upgraded to the post of CLO/IG vide notification dated May 26, 2010. An *in-situ* promotion was given to one Mr. Hari Gopal Garg (H.C.Garg), who held the post of CLO/DIG at that point of time. The upgradation to the post of CLO/IG was only in force until superannuation of the said H.G. Garg on January 31, 2011. He stated that as per the tentative seniority list of Law Officer in BSF, the petitioner was placed at serial No.1 and one Mr. V. S. Yadav who was holding the post of CLO (DIG) (D&L) was placed at serial No.2.

6. According to Mr. Chibber, on June 28, 2013, MHA sanctioned the proposal for the upgradation of one post from CLO/DIG to CLO/IG. Consequently, aggrieved by the *inter-se* seniority with the petitioner, V.S. Yadav filed a writ petition being W.P.(C) 4647/2013 seeking stay on DPC for the post of CLO/IG. He stated that this Court, even though had not stayed the DPC, had directed that any appointment to the post CLO/IG (Law) shall be subject to the outcome of the writ petition.

7. In the meanwhile, on August 01, 2013, the respondent No.2 sent a proposal to MHA seeking grant of relaxation in SHAPE-I Medical Category and had requested the respondent No.1 that, since the petitioner is senior most officer in the feeder cadre w.e.f. July 19, 2011, necessary relaxation may be accorded to him. The DPC was held for filling up of the upgraded post of CLO/IG for the vacancy year of



2013-14. The respondent No.1 advised the BSF to take immediate steps to frame Recruitment Rules for the post of CLO/IG.

8. He stated that the respondent No.2 made another proposal to the respondent No.1 for approval to conduct the DPC to fill up the post of CLO/IG. The petitioner's file was referred to the DoP&T on May 16, 2017 for the appointment to the upgraded post of CLO/IG w.e.f July 19, 2017. He also stated that, on May 04, 2018, the Draft of RRs was forwarded to the DoP&T. It is his contention that, despite the draft rules having been submitted in the year 2013, the same were not finalised and the respondents did not convene the DPC for promotion to the rank of CLO/IG.

9. He stated that, in the meanwhile, the petitioner superannuated in the rank of CLO/DIG on March 31, 2020. He submitted that, a representation to the respondents was made requesting them to convene the DPC for his promotion to the post of CLO/IG and accordingly grant him consequential benefits. The request of the petitioner was rejected by the respondents vide the impugned order dated October 01, 2020, on the ground that the petitioner is not meeting the medical category of SHAPE-I and non-availability of RRs for the post of CLO/IG at the time of the petitioner's retirement.

10. It is the submission of Mr. Chibber that the post of CLO/IG was upgraded for the sole purpose of smooth functioning of the Legal Setup of the BSF and keeping it vacant till the notification of the RRs will frustrate the purpose. He submitted that the earlier post of Addl. CLO/DIG was also upgraded from Law Officer Grade-I/ Commandant and in the absence of the RRs, the MHA had still granted the approval



for conducting the DPC for the post of Addl. CLO/DIG. Whereas, the nature of work of the CLO/DIG and CLO/IG are the same and the MHA ought to have granted the approval for conducting the DPC for the said post.

11. He stated that the respondent No.2 requested the MHA to grant relaxation to the petitioner in order to enable BSF conduct the DPC and fill up the post of CLO/IG. It had referred to the DoP&T OM dated February 04, 1992 to substantiate that, when an upgradation involves a higher replacement scale without higher responsibilities, the incumbent need not be assessed for the suitability but must have the required qualifying service for the appointment to the upgraded post. He also stated that the respondent No.2 had referred to the BSF Group 'A' (GD Officers) Amendment Rules, 2012 to contend that the post of IG (equivalent to the post of CLO/IG) is to be filled by promotion of DIG having minimum 24 years of service in Group A including 2 years as DIG. He stated that the petitioner had completed 29 years, 10 months and 2 days in Group A and 2 years as CLO/DIG, and was eligible for promotion to the post of CLO/IG.

12. Mr. Chibber has stated that the BSF in reply to the DoP&T's query as to whether the upgraded post involves higher responsibility or not, the BSF has stated that the upgradation post involves only higher replacement scale without higher responsibility. He also stated that the respondent No.2 has requested the respondent No.1 for its approval to conduct DPC by reiterating that the CLO is a statutory post created under the Act of the Parliament and carries responsibilities as it has been upgraded at par with the rank of IG.



13. He submitted that the respondent No.1 did not appreciate the petitioner's case for upgradation, though the respondents had granted the *in-situ* promotion to the post of CLO/IG to H.G. Garg in the year 2010, in the absence of any notified recruitment rules. Whereas, in the case of petitioner the respondent No.1 failed to record any reasons for not conducting the DPC for the post of CLO/IG for more than 7 years. He also stated that the petitioner being similarly placed as H.G. Garg was reasonable in expecting promotion to the post of CLO/IG.

14. According to him, the post of CLO/IG has been kept vacant for nine years due to non-availability of Recruitment Rules even though the petitioner was eligible to be upgraded/promoted to the said post. He submitted that the respondents did not consider the petitioner's promotion to the post of CLO/IG only on the ground of medical reason for the injury attributed to service, resulting in amputation of his right forearm, is arbitrary.

15. He submitted that the administrative delay in keeping the post vacant due to non-availability of the Recruitment Rules even though the petitioner was eligible for the said post, is contrary to the judgment of the Supreme Court in the case of ***Union of India v. Hemraj Singh Chauhan, Civil Appeal No. 2651-52/2010***, wherein it is held that the department cannot take benefit of their own wrongs.

16. He submitted that the petitioner is entitled to get the notional promotion to the post of CLO/IG in BSF from June 28, 2013 for the following reasons:

- a. H.G. Garg was placed in upgraded post of CLO/IG on May 26, 2010, in absence of notified Recruitment Rules.



- b. the petitioner was granted relaxation in SHAPE-1 Medical Category and was promoted to the post of CLO/DIG on July 19, 2011.
- c. The upgradation of post of CLO/IG did not result in higher responsibilities. Out of the two posts of CLO/DIG and CLO/DIG (D&L), the post of CLO/DIG was upgraded to be equated to the rank of IG in the uniform force, on June 28, 2013.
- d. The petitioner superannuated on March 31, 2020, holding the post of CLO/DIG only because of the respondents did not convene a DPC to fill up the post of CLO/IG, keeping it vacant for about nine years against public interest.

17. In support of his submissions, he has relied upon the following judgments:

- i. *Dr. KK Saini v. Union of India And Ors., W.P.(C) No. 2727/1998.*
- ii. *Ram Pravesh Singh v. State of Bihar, 2006 (8) SCC 381,*
- iii. *P.N. Premachandran v. State of Kerala, (2004) 1 SCC 245,*
- iv. *Union of India v. Hindustan Development Corporation, (1993) 3 SCC 499.*

18. He seeks the reliefs as prayed for in this petition.

19. On the other hand, Mr. Harish Vaidyanathan Shankar, the learned CGSC appearing for the respondents stated that the petitioner was categorised in Permanent Low Medical Category (S1H1A3 (U) (P) P1E1) due to the amputation of right arm. He also stated the medical category of SHAPE-I is an essential condition for all combative



personnel in all groups/ranks/cadres of CAPFs for their promotion/upgradation in the higher grade, as such the Petitioner was not eligible for promotion due to his Low Medical Category. However, he was granted relaxation in SHAPE-1 medical category by the DoP&T/MHA while he was considered for promotion from LO Gde-I/Comdt to the rank of CLO/DIG during the vacancy year 2010-11.

20. He submitted that the petitioner after attaining the age of 60 years, superannuated from the service on March 31, 2020. Thereafter, he submitted a representation dated June 09, 2020 for promotion / placement to the post of CLO/IG. The MHA intimated that the petitioner's case is rejected. He also stated the petitioner filed this writ petition after a delay of 7 years seeking notional promotion for the vacancy year of 2013-2014.

21. He submitted that in writ petition being W.P.(C) 4647/2013, V.S. Yadav, CLO (D&L) / DIG sought the following prayers :

“(i) For setting aside the empanelment of Respondent No.3 i.e., Shri K J S Bains for promotion to the post of CLO/DIG during vacancy year 2010-11 and to quash the seniority list circulated on 31.07.2012.

(ii) To consider the Petitioner (Shri V S Yadav) for the post of Inspector General in preference to Respondent No.3 (Shri K J S Bains, CLO/DIG) as per his seniority.

(iii) To grant seniority to the Petitioner (Shri V S Yadav) in the rank of CLO/DIG w.e.f. 01.09.2010 i.e., date of first vacancy with all consequential benefits.”

In the said petition, the Court vide order dated February 12, 2015 has directed as under:

“Any appointment to the post of I.G. (Law) shall be subject to orders which may be passed in the writ petition and lest any



equity is created in favour of the person appointed, said fact would be disclosed in the letter of appointment.”

22. It is Mr. Vaidyanathan’s submission that the post of CLO / IG carries higher eligibility and responsibilities; which are apparent from the Recruitment Rules of 2023. Therefore, the suitability of the officer has to be assessed in terms of paragraph 3 of the DoP&T OM dated February 4, 1992. He also stated that, as per the OM the criteria to be followed for assessment is as under:

“3. If the upgradation involves higher responsibility or higher qualification or higher eligibility service, the suitability of the incumbents has to be assessed and if found suitable, they will be appointed to the upgraded post prospectively i.e., not earlier than the date of the U.P.S.C.’s advice letter or if the assessment is made by the Departments themselves, the date of assessment.”

23. He reiterated the submission of Mr. Chhibber and stated that, prior to the creation of CLO/IG there were two Branches in BSF Legal Setups i.e., Law Branch & Discipline & Litigation Branch, each headed by a CLO/DIG. The newly upgraded post of CLO/IG was supposed to supervise the functioning of both Branches of legal set up. The erstwhile CLO/DIG (D&L), which is now renamed as Addl. CLO/DIG shall function under the supervision of CLO/IG. The CLO/IG has to supervise the functioning of the Law Branch and Discipline & Litigation Branch which were earlier being supervised by two different CLO/DIGs. He relied upon the comparative eligibility chart for promotion to the rank of erstwhile CLO/DIG vis-à-vis CLO/IG, as reproduced under: -

<i>For promotion to the post of</i>	<i>For promotion to the post of</i>
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<i>CLO/DIG as per RRs-1999</i>	<i>CLO/IG as per RRs-2023</i>
<i>BSF LO Grade-1 with 05 years of service as LO Gde-1 with a total of 20 years of Group-A service</i>	<i>Serving Addl CGO/DIG with two years of regular service with total of 24 years of Group- 'A' service.</i>

24. He stated that that Paragraph 3.14(vi) of the DoP&T's OM dated December 31, 2010 provides that if there are overriding compulsions for filling any Group 'A' or Group 'B' post in the absence of RRs, a reference be made to UPSC for determination of method of recruitment as a onetime measure for filling up of the post. He also stated that, H.G. Garg, CLO/DIG (Retd.) was upgraded to CLO/IG vide MHA order dated May 26, 2010 without RRs and without any approval of ACC, as a measure personal to him (*in-situ* promotion), till further orders or his superannuation i.e., January 31, 2011, whichever is earlier. In lieu of promotion, one post of LO Gr-I (Comdt) was kept in abeyance as matching saving from May 26, 2010 to January 31, 2011.

25. He submitted that, vide letter No. 27012/8/2011/PF-V dated June 28, 2013, the respondent No.1 sanctioned the upgradation of one post of CLO/DIG (Grade Pay of Rs. 8,900/- in PB-4) to CLO/IG (Grade Pay of Rs. 10,000/- in PB-4). He also submitted that, as per Govt. of India, Ministry of Finance, O.M. dated September 9, 2003, if a post is held in abeyance or remains unfilled for one year or more, it is deemed as abolished and revival of such a post requires approval of Ministry of Finance. He also submitted that, the upgraded post of CLO/IG in BSF was sanctioned w.e.f. June 28, 2013 vide the Ministry's letter dated June 28, 2013, which could not be filled up within a period



of one year due to the non-availability of RRs. The post of CLO/IG was abolished w.e.f. June 27, 2014. He has also produced comparative chart with regard to service records of H.G. Garg, V.S. Yadav and the petitioner, which is reproduced as under:

S.No.	Name of officer	IRL A No.	Date of entry into BSF as Group-“A”	Date of promotion		Date of induction in Law Branch	Duration of each post held in BSF Law set-up			Remarks
							Post	From	To	
1.	Sh Hari Gopal Garg	17622905	02.02.1976 as AC (DE)	DC(GD)	10.09.85	01.12.1988 as LO Gde-II/DC	LO Gde-II/DC	01.12.1988	29.01.1990	As per PMIS Data
							LO Gde-I/Comdt	30.01.1990	02.07.2000	
							CLO/DIG	03.07.2000	25.05.2010	
							CLO/IG (in situ)	26.05.2010	31.01.2011	
2.	Sh KJS Bains	18430592	17.09.1984 as AC (DE)	DC(GD)	21.09.89	07.02.1990 as LO Gde-II/DC	LO Gde-II/DC	12.02.1990	05.03.1995	As per seniority list circulated vide Pers Dte L/No.3 2706-805 dated 16.10.2019
							LO Gde-I/Comdt	06.03.1995	18.07.2011	
							CLO/DIG	19.07.2011	31.03.2020	
3.	Sh Vijay Singh Yadav	18430721	09.10.1984 as AC (DE)	DC(GD)	21.09.89	22.04.1994 as LO Gde-II/DC	LO Gde-II/DC	22.02.1994	10.12.1996	
							LO Gde-I/	11.12.1996	18.07.2011	



							Comdt			
							CLO/ DIG	19.07. 2011	30.04 .2020	

26. Mr. Vaidyanathan has stated that the medical relaxation given to the petitioner for promotion to the rank of CLO/DIG does not entitle him to claim such relaxation for further promotion. He also stated that the MHA returned the proposal of the petitioner for holding DPC due to the reason that the DoP&T OM dated December 31, 2010 contemplates that, as soon a decision to create a new post / service or to upgrade post, action should be taken immediately to frame Recruitment Rules and the issue of relaxation arises only after the framing of the RRs.

27. He stated that the petitioner cannot invoke the *Doctrine of Legitimate Expectation*, inasmuch, H.G. Garg was placed in the upgraded post of CLO/IG as a measure personal to him and the post was not in existence at that time. He also stated that the doctrine only applies when a person is deprived of a consistent past practice or having given an assurance of right whereas the case of the petitioner was regularly taken up for consideration but was not granted for the want of RRs for the upgraded post. Therefore, the petitioner is neither deprived of any followed practice nor was given any assurance about the promotion. Further, the upgraded post was required to be filled up by holding DPC of eligible officers as per the RRs.

28. According to him, there was no overriding compulsion for filling up the post of CLO/IG as the present incumbents i.e., CLO/DIG and CLO (D&L) DIG were in place and discharging statutory duties as assigned under the BSF Act. He also stated that the BSF CLO,



Additional CLO and LO Recruitment and Conditions of Service Rules, 2023 have been notified vide G.S.R No. 20(E) dated January 9, 2023 and have been enforced on the date of its publication and need to be followed. He seeks dismissal of the present petition.

ANALYSIS:-

29. Having heard the learned counsel for the parties and perused the record, the short issue which arises for consideration is whether a direction needs to be given to the respondents to consider the case of the petitioner for promotion to the post of Chief Law Officer (Inspector General) / Chief Law Officer in view of OM of February 4, 1992 and March 30, 1998 and if found suitable can he be granted notional promotion for the vacancy year 2013-2014 with all consequential benefits.

30. At the outset, it may be stated here that the petitioner had retired on attaining the age of superannuation on March 31, 2020. The claim of the petitioner is primarily on the basis of upgradation of the post of CLO / DIG as CLO/IG vide notification dated May 26, 2010 till the age of superannuation of one H.G. Garg on January 31, 2011. In other words, he is seeking similar benefit.

31. Though, on August 2, 2013 MHA had sanctioned upgradation of one post from CLO/DIG to CLO/IG, but it is a fact one V.S. Yadav filed a writ petition seeking stay of the DPC for the post of CLO/IG wherein, though no stay was granted, the Court had directed that any appointment made shall be subject to the outcome of the said writ petition.



32. In any case, on August 1, 2013, the respondent No.2 sent a proposal to MHA seeking grant of relaxation in SHAPE-I Medical Category and had requested the respondent No.1 that, since the petitioner is senior most officer in the feeder cadre w.e.f. July 19, 2011, necessary relaxation be accorded to him. The DPC was held for filling up the upgraded post of CLO/IG for the vacancy year 2013-14. It appears that respondent No.1 advised the BSF to take immediate steps to frame Recruitment Rules for the post of CLO/IG and as such the DPC proceedings were not given effect to, which decision has not been challenged.

33. A further proposal was made by the respondent No.2 on May 16, 2017 for making appointment to the upgraded post of CLO/IG w.e.f. July 19, 2017. But it appears that as the Recruitment Rules were not finalized, no DPC could be convened. In the meantime, as stated, the petitioner retired on attaining the age of superannuation.

34. The retirement of petitioner in 2020 is a very relevant factor, as till that year, the recruitment rules were not framed. The recruitment rules having been framed only in the year 2023, it is too late for the petitioner to make a claim for appointment to the post of CLO / IG that too w.e.f. 2013-2014, when he did not care to approach court of law seeking a direction in the manner he has done in the present petition.

35. The first representation of the petitioner was made only after his superannuation i.e., on June 09, 2020. There cannot be any contest that, any promotion to the post has to be in accordance with the Recruitment Rules. Merely because the post has been upgraded, would not mean that the person shall automatically be upgraded/promoted to



the post. We cannot overlook the fact that the Rules having been framed need to be followed for making promotion to the upgraded post of CLO/IG through the process of high powered DPC, which shall determine the relative merit of the candidate(s). The plea of Mr. Chhibber of legitimate expectation is also not appealing inasmuch as H.G. Garg had superannuated in the year 2011. Even the first DPC thereafter was held in 2013-2014 resulted in the writ petition filed by V.S. Yadav. Even the second DPC, supposed to be held on 2017, could not take place in the absence of Rules. By the time the Rules were framed in the year 2023, the petitioner had retired.

36. Insofar as in the judgment of the Supreme Court in ***Hemraj Singh Chauhan (supra)*** relied by Mr. Chhibber is concerned, the issue before the Supreme Court was that whether the cadre review operates prospectively or retrospectively from the point of time when the cadre review actually became due. The Supreme Court held that it cannot be construed to have any retrospective operation. The Supreme Court granted relief under Article 142 of the Constitution of India to the respondents therein, though, by observing that rules cannot be given retrospective effect. This Court is exercising its jurisdiction under Article 226 and cannot grant relief in the manner done by the Supreme Court. The said judgment is distinguishable on facts and in law.

37. In the case of ***Ram Pravesh Singh (supra)***, the Supreme Court held that the concept of legitimate expectation can only apply if any representation or promise is made by an authority, either expressly or impliedly or if regular and consistent past practice of the authority gives room for such expectation. The doctrine shall not help the case



of the petitioner because in the present case the petitioner is seeking parity qua H.G. Garg who was granted *in-situ* promotion and thereafter the post was vacant for more than one year and was abolished in view of the O.M of the Ministry of Finance and moreover, in the absence of Recruitment Rules, no DPC could take place.

38. Insofar as the judgment of this Court in ***Dr. K. K. Saini (supra)*** is concerned, the question before the Court was whether the holder of a single post existing in the cadre automatically becomes entitled to the upgraded post or whether suitability needs to be assessed before being appointed to the upgraded post. In view of the Rules framed, the assessment of relative merit has to be made. In any case, in view of our finding above that the Rules having been framed, the appointment to the upgraded post cannot be made with retrospective effect. The judgment is distinguishable.

39. Insofar as ***Hindustan Development Corporation (supra)*** is concerned, the Supreme Court held that the legitimate expectation can only operate in public law field. The Supreme Court has also noted, the denial of the same does not itself confer an absolute right to claim relief as the grant of relief should be limited only to the cases where a denial amounts to denial of any right or where decision / action is arbitrary unreasonable and not in public interest and inconsistent with principles of natural justice. Moreover, the Court has categorically highlighted that the Court will not interfere merely on the ground of change in government policy. In view of our above reasons, the ground of legitimate expectation raised by the petitioner is unsustainable.



40. Insofar as *P.N. Premachandran (supra)* is concerned, the issue before the Supreme Court was primarily with regard to the seniority of direct recruits and promotees and their retrospective promotion. The Supreme Court held that delay in convening the DPC being administrative lapse, promotees cannot be made to suffer for no fault on their part. The Supreme Court has also held that the appellants therein were appointed in the year 1984 as they were not qualified to hold the post in 1964. In the present case, the post of CLO/IG could be filled under the RRs, which were framed only in the year 2023, when the petitioner had already retired.

41. In the case of *Shailendra Singh & Ors. v. Union of India & Ors., W.P.(C) 3945/2017*, this Court was concerned with facts wherein the claim of the petitioner was for grant of pay scale of ₹8000-13500 w.e.f., April 01, 2004. The petitioners joined the BSF on various posts between 1984-2001 and was working on the post of Assistant Engineer (AE)/Assistant Commandant ('AC') in the Group 'A' Service since 1995. The recommendations of the 5th Central Pay Commission ('CPC') were that there should be re-structuring and upgradation of the post of ACs, which was Group 'B' level post, with the pay-scale of ₹6500-10500/-, to a Group 'A' level post, having the pay scale of ₹8000-13500. While the same was implemented with respect to the Assistant Commandants (Veterinary) and other Ministerial posts of equal status in other cadres of BSF, it was not implemented in the Engineering Cadre. As a result, several representations were made by personnel of the Engineering Cadre for grant of the upgraded pay-scales of ₹8000-275-13500.



On December 10, 2003, the DG approved the proposal of restructuring of the supervisory and support infrastructure of the BSF, as a result of which the post of AC (Works/AE) in the BSF Engineering Cadre was upgraded from Group 'B' to Group 'A' level. By an order dated March 23, 2004 issued by the Ministry of Home Affairs to the DG, BSF the approval of the Government for implementation of the restructuring orders with effect from April 01, 2004, was conveyed to the BSF.

The petitioner therein had placed a copy of the noting by the Department of Personnel & Training ('DoPT') dated July 13, 2019, which proposes implementation of the restructuring orders and the grant of the consequential benefits with effect from April 01, 2004. The said note acknowledged that, as a result of the delay in amending the Recruitment Rules to include the provision for assessment of suitability of incumbents for the upgradation, there was a delay in grant of the benefits which were to be given with effect from the date of restructuring order dated April 01, 2004. The Recruitment Rules were amended on October 13, 2007. The case of the petitioner is that combatised personnel of other cadres of BSF have been given the benefits of restructuring from April 01, 2004. The respondents have not granted the same benefit to the petitioners. This Court was of the view that the denial of benefit of upgradation to the petitioners is only on account of the time taken by the respondents to notify the amended Recruitment Rules despite the fact that MHA had issued clear instructions to the BSF conveying the decision of the Central Government to implement the restructuring orders with effect from



April 01, 2004. It was in this background that this Court had granted the benefit to the petitioners w.e.f., April 01, 2004. The said judgment is clearly distinguishable of facts.

42. In the present petition, there is no restructuring of cadre. The post of IG came to be abolished as the post was not filled for more than one year in the absence of any Recruitment Rules. Even the DPC of the year 2017 could not be held for the same reason. The recruitment rules having been notified only in the year 2023, the petitioner's case could not have been considered as he had superannuated in the year 2020. Therefore, the petitioner cannot seek the benefit of upgradation from back date of 2013-2014.

43. That apart, the petitioner never approached the Court of law seeking the benefit of the upgraded post of CLO/IG. In fact, V. S. Yadav had contested the *inter se* seniority between him and the petitioner, which would also indicate that, on the basis of seniority, the petitioner could not have been given the upgraded post of CLO/IG.

44. Insofar as the judgment in the case of ***State of Mizoram & Anr. v. Mizoram Engineering Service Association & Anr., (2004) 6 SCC 218***, is concerned, Mr. Chhibber has relied upon paragraph 6, which reads as under:-

“6. Great stress was laid on the fact that Engineering Service in the State was not an organised service and therefore, it did not have categorisation by way of entrance-level and senior-level posts and for that reason the higher scale of Rs 5900-6700 which was admissible for senior-level posts could not be given in the Engineering Service. The main reason for dubbing Engineering Service as an unorganised service in the State is absence of recruitment rules for the service. Who is responsible



for not framing the recruitment rules? Are the members of the Engineering Service responsible for it? The answer is clearly “No”. For failure of the State Government to frame recruitment rules and bring Engineering Service within the framework of organised service, the engineers cannot be made to suffer. Apart from the reason of absence of recruitment rules for the Engineering Service, we see hardly any difference in organised and unorganised service so far as government service is concerned. In government service such a distinction does not appear to have any relevance. Civil service is not trade unionism. We fail to appreciate what is sought to be conveyed by use of the words “organised service” and “unorganised service”. Nothing has been pointed out in this behalf. The argument is wholly misconceived.”

45. The aforesaid paragraph 6 has no applicability to the facts of this case. In the said case, the issue was with regard to the failure on the part of State Government to frame Recruitment Rules and bring Engineering Service within the framework of organised service. The Supreme Court therein held that there is hardly any difference in organised and unorganised services as far as government service is concerned.

46. It is true that the Recruitment Rules were not framed for holding DPC for the vacancy year 2013-2014 for post of CLO / IG but *inter-se* seniority was challenged by V.S. Yadav claiming seniority over the petitioner, which is pending litigation. Hence, the non-framing of the Recruitment Rules would not better the case of the petitioner. In any case, the petitioner had made his claim for the post of CLO/IG only after his retirement/superannuation in the year 2020, which is quite belated.



47. So, in view of the discussion above, the prayers as made by the petitioner for upgradation to the post of CLO/IG, relating back to the year 2013-2014, cannot be granted. The petition is dismissed, being without merit. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

MARCH 20, 2024/aky