



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

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Date of decision: January 31, 2024

+ W.P.(C) 8639/2019

(4) SURINDER SINGH

..... Petitioner

Through: Mr. Mukesh Kumar Bhardwaj,  
Advocate

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC with Ms.  
Priya Singh and Mr. Vedansh Anand ,  
GP for UOI

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**SAURABH BANERJEE, J. (ORAL)**

1. The petitioner herein joined the Border Security Force<sup>1</sup> as Assistant Commandant (DE) on 02.01.1995 and while serving in the 08 Bn BSF at Chhenigund, Kargil (J&K), he lost his foot in a mine-blast during OP Vijay on 10.07.1999 resulting in his being placed in the Low Medical Category<sup>2</sup> of S1H1A3(L)P1E1. The petitioner was then promoted to the rank of Deputy Commandant on 10.08.2001 before being selected for deputation in Ministry of Home Affairs<sup>3</sup>(Control Room) for three years w.e.f. 30.07.2010 to 29.07.2013 and continuing till 27.07.2015. While on deputation, he was

<sup>1</sup> Hereinafter referred to as 'BSF'

<sup>2</sup> Hereinafter referred to as 'LMC'

<sup>3</sup> Hereinafter referred to as 'MHA'



promoted to the rank of Second-In-Command<sup>4</sup> w.e.f. 03.09.2010 and then posted to 155 Bn BSF (Duty Battalion), where he assumed charge of 2IC w.e.f. 25.08.2015.

2. The petitioner was then considered by the Departmental Promotion Committee<sup>5</sup> held on 26.09.2016 for promotion to the rank of Commandant, but he was found ineligible due to non-completion of 2 years of Mandatory Field Service<sup>6</sup> as 2IC in Duty Battalion on the relevant date for consideration i.e., 01.04.2016 for the vacancy year 2016-17 as he had only completed 7 months and 7 days MFS in Duty Battalion in the said rank of 2IC on such date.

3. Faced with the above situation, the petitioner made a representation on 11.10.2016 to the DG BSF to be considered for promotion to the rank of Commandant w.e.f. 07.10.2016 as he had completed more than one year of MFS as on 26.09.2016 i.e., the date of the DPC. However, the said representation was rejected by the FHQ BSF and the DG, BSF on 28.04.2017, based on the recommendations given by the Board of Officer<sup>7</sup> specially constituted for analyzing such representations including that of the petitioner, earlier on 30.11.2016. In fact, his subsequent representation dated 12.05.2017 to the Home Minister for considering that in view of Para-23.3 at Chapter-2 of the Medical Directorate Manual Vol-9 the condition of MFS should not be applicable to the petitioner, was also rejected by the Competent Authority about which he was informed on 27.09.2017.

<sup>4</sup> Hereinafter referred to as '2IC'

<sup>5</sup> Hereinafter referred to as 'DPC'

<sup>6</sup> Hereinafter referred to as 'MFS'

<sup>7</sup> Hereinafter referred to as 'BOO'



4. At last, the petitioner was eventually promoted to the rank of Commandant, Group A (General Duty) Officers, *albeit*, w.e.f. 07.10.2017 vide order of even date, after his case was considered in the DPC held on 15.09.2017 as the petitioner had by then completed more than 1 year 7 months and 7 days of MFS in view of the relaxation in MFS given under note-1 below schedule 6 of BSF Group-A (GD Officers) Recruitment Rules-2015<sup>8</sup>.

5. After his promotion, the petitioner made another representation on 01.12.2017 to the Competent Authority, which was also rejected by holding that service rendered by the petitioner in static location cannot be counted as MFS for promotion in higher rank in accordance with the RRs for Group-A (GD Officers) service vide impugned order dated 16.01.2018.

6. Hence, the petitioner, by way of the present petition under Article 226 of The Constitution of India seeks quashing and setting aside of the impugned order dated 16.01.2018 and for directing the respondents to grant him promotion to the rank of Commandant w.e.f. 07.10.2016 with all consequential benefits including arrears of pay and for declaring the action of respondents in not considering the petitioner for promotion to the post of Commandant alongwith his juniors in the DPC held in September, 2016 as illegal and issuing appropriate directions to the respondents to consider the claim of petitioner for promotion to the post of Commandant from the date of promotion of his junior by holding review Departmental Promotion Committee (DPC) and without insisting on the condition of completion of two years field service.

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<sup>8</sup> Hereinafter referred to as 'RRs'



7. Interestingly, during the pendency of the present petition, vide order dated 24.02.2021 passed by this Court, the respondents were directed to consider the claim of the petitioner for promotion to the rank of Commandant along with his junior, namely, Vinod Sareen w.e.f. 07.10.2016 in accordance with the directives/guidelines dated 02.06.2012. In compliance thereof, relaxation in MFS was accorded by the DG BSF to the petitioner and his case was referred to the MHA. However, vide order dated 18.11.2022 the claim of the petitioner was rejected since he was on deputation in MHA(Control Room) on his own volition w.e.f. 30.07.2010 to 27.07.2015 and because of which no relaxation could be given to him. Hence, his relaxation was withdrawn and he was not granted promotion to the rank of Commandant w.e.f. 07.10.2016.

8. Today, the learned counsel for petitioner submits that the petitioner ought to have been granted promotion to the rank of Commandant w.e.f. 07.10.2016 vide DPC held on 26.09.2016 as he had already completed 1 year, 1 month and 1 day field service against the requirement of two years on the date of the DPC i.e., 26.09.2016, and further as the RRs provide that while promoting the junior officer, the senior officer shall also be considered for promotion if he is not short of more than half of the requisite qualifying or eligibility service or two years whichever is less.

9. Learned counsel further submits that since the petitioner had suffered an injury in the Kargil War and was in the LMC, he ought to have been granted exemption regarding SHAPE-1 medical category and operational duties for the purposes of promotion in terms of Para 4.14 (a)(i) and Para 23.3 of the Medical Directorate Vol-IX, Chapter-2, and by virtue thereof,



was to be granted relaxation for completion of two years of MFS in terms of the guidelines dated 02.06.2016.

10. *Per contra*, learned CGSC for the respondents while opposing the present petition submits that the petitioner is not eligible to be promoted to the rank of Commandant w.e.f. 07.10.2016 as according to the RRs, the relevant date for determining eligibility for the DPC held on 26.09.2016 was 01.04.2016 and on 26.09.2016, the petitioner was unable to complete the MFS because his field service as 2IC was to be counted from the date when he joined the Duty Battalion i.e., 25.08.2015.

11. Learned CGSC further submits that the relaxation granted to the petitioner against completion of MFS was withdrawn by the MHA on a detailed analysis of his case, as it was found that at the time of promoting the petitioner to the rank of 2IC, he had voluntarily sought deputation in the MHA (Control Room), and also despite knowledge of the requirement of MFS, he never requested for reversion from the deputation to complete MFS. Based thereon, as per the learned CGSC the condition for completion of MFS cannot be waived in the case of the petitioner.

12. Since it is an undisputed position that the petitioner, while serving in the Kargil war, suffered a major injury as he lost his foot in a mine-blast during OP Vijay on 10.07.1999, he qualifies as a 'War Hero'. Also, under the present circumstances, the petitioner is admittedly not fit for operational duties and is thus very much eligible for extension to the benefit of Para 4.14 (a)(i) and Para 23.3 of the Medical Directorate Vol-IX, Chapter-2, reproduced hereunder:-

**“4.14 RELAXATION IN SHAPE-I MEDICAL CATEGORY**

*The relaxation in SHAPE-I medical category will be admissible to the following two*



categories of CPMFs personnel to the extent detailed below:-

a) Officials/personnel wounded/injured during war or while fighting against the enemy/militants/intruders/armed hostiles/insurgents due to an act of these in India or abroad will be eligible for promotion while placed in one of the following medical classification.-

i) Individual Low Medical Factors

(aa) H2 or E2 or P2(Dental) which will be considered at par with SHAPE -I; and

(ab) A2 or P2 or A3

ii) Combined Low Medical Factors

(aa) H2 and E2 combined, and

(ab) H2 or E2 combined with A2, A3 or P2

### **23.3 'A' FACTOR (APPENDAGES)**

|        |                                                                                                                                    |                                                                                     |
|--------|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| A-3(L) | Has a disease or disability above knee on one side including pelvic girdle, but should be able to walk up to 5 Km at his own pace. | Fit for sedentary duties only. Not fit for high altitude/operational/CI/IS Duties." |
|--------|------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|

13. Moreover, in light of the exceptional circumstances of the present case and considering the service rendered by the petitioner for the Country and his LMC, in the opinion of this Court, the petitioner herein is also entitled to the benefit of exemption from the condition of completion of two years of MFS in accordance with the guidelines contained in Para 5 (iv) of the MHA letter F.No.I-45020/7/2012-Pers-II dated 02.06.2012 relating to *Grant of relaxation in condition of 2/3 years Mandatory Field Service (MFS) in a duty Bn. to become eligible for next rank promotion in respect of Executive personnel of Central Armed Police Forces (CAPFs) & Assam Rifles (ARs)*, reproduced hereinbelow:-

*"5. It has been decided that since MFS is the operational requirement for the Force to hold higher responsibilities, doing away with the requirement of MFS from the Recruitment Rules itself will adversely affect the operational efficiency and functional effectiveness of these CAPFs & ARs. Therefore, all such cases wherein the CAPFs & ARs personnel concerned, has not completed the MFS, while his name is being considered for promotion to the next rank, the waiver/relaxation of such eligibility condition should be considered*



*by the CAPFs/MHA objectively and sympathetically. CAPFs & ARs may follow the following guidelines while considering such waiver/relaxation of the MGS condition prescribed in the RRs :-*

*(i)....*

*(ii)...*

*(iii)...*

*(iv) The Force personnel who are not able to complete the MFS owing to their poor Medical shape category shall also not be considered for waiver of MFS criteria. However in respect of personnel in poor Medical Shape Category due to injury sustained by him attributable to active Govt. duty, the requirement of Mandatory Field Service will be relaxed by DG of CAPF concerned to treat certain low medical category at par with Shape-I medical category for the purpose of promotion."*

*(emphasis supplied)*

14. Admittedly, the petitioner was granted relaxation in MFS by the DG BSF, only to be withdrawn later simply because he was on deputation in the MHA (Control Room) on his own volition and as he did not seek reversion of the same to complete the MFS in the Duty Battalion. However, as per the existing facts, the petitioner was entitled to be granted exemption/waiver of MFS due to his being in the LMC and for which he was also exempted from performing operational duties. Thus, that the petitioner was posted on deputation with the MHA(Control Room), is of no relevance. In fact, in the opinion of this Court, the petitioner was rightly granted waiver/exemption from MFS by the DG BSF and the same could not have been withdrawn.

15. Further, in terms of the RRs, an officer of the BSF holding the rank of 2IC is entitled for promotion to the rank of Commandant, provided he fulfills the requisite qualifying or eligibility service and where juniors who have completed the qualifying/eligibility service are being considered for promotion, any senior would also be considered provided such senior is not short of more than half of such qualifying/eligibility service or two years



whichever is less. The relevant qualifications for the promotion to the rank of Commandant as per the said RRs are reproduced as under:-

| <i>“(9)”</i>          | <i>“(10)”</i>       | <i>“(11)”</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Not applicable</i> | <i>By promotion</i> | <p><i>Promotion:</i></p> <p><i>Second-in-Command of Border Security Force with five years regular service in the grade with total fifteen years Group ‘A’ service and possessing the following qualifications, namely:-</i></p> <p><i>(a) should have qualified courses or training as prescribed by Director General, Border Security Force from time to time;</i></p> <p><i>(b) two years service as Second-in Command in duty Battalion;</i></p> <p><i>(c) Medical Category SHAPE-I.</i></p> <p><i>Note.-1 The Central Government by issue of specific order may prescribe eligibility and number of posts to be manned by Indian Police Service Officer.</i></p> <p><i>Note.-2 The service rendered on deputation posting /attachment basis in National Training Institutions including Border Security Force Academy Tekanpur will be treated as 50% of the required field service for the purpose of promotion and no relaxation in respect of the remaining 50% mandatory service will be granted in such case.</i></p> <p><i>Note.-3 Where juniors who have completed their qualifying or eligibility service are considered for promotion their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service for more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next grade along with their Juniors who have already completed such qualifying or eligibility service.</i></p> <p><i>Note.-4 For the purpose of computing minimum qualifying service for promotion, the service rendered on a regular basis by an officer prior to the 1<sup>st</sup> January 2006, or the date from which the revised pay structure based on the sixth Central Pay Commission recommendations has been extended, shall be deemed to be service rendered in the corresponding grade pay or pay scale extended based on the recommendations of the</i></p> |



|  |  |                                                                                                                                                                                                                                                                                                                                                        |
|--|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |  | <p><i>Commission except, where there has been merger of more than one pre-revised scale of pay into one grade with a common grade pay or pay scale, and where this benefit will extend only for the post(s) for which that grade pay or pay scale is the normal replacement grade without any up gradation.”</i></p> <p><i>(emphasis supplied)</i></p> |
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16. In the present case, undisputedly, the petitioner being a War Hero was not fit for high altitude/operational/CI/ IS duties and had already completed more than one year of service in the duty Battalion as on the date of DPC i.e. 26.09.2016 for promotion to the rank of Commandant. Though the relevant date for determining the eligibility for DPC held on 26.09.2016 as per RRs was 01.04.2016, however, as per Para 23.3 of the Medical Directorate Vol-IX, Chapter-2 and the guidelines of the contained in Para 5 (iv) of the MHA letter F.No.I-45020/7/2012-Pers-II dated 02.06.2012, the petitioner was exempted from completion of the MFS.

16. Therefore, what entails from the aforesaid discussions and the readings thereto is that under the special existing circumstances, the petitioner is very much entitled to the benefits of each of the above said exemptions under Para 4.14 (a)(i) and Para 23.3 of the Medical Directorate Vol-IX, Chapter-2, and also under the RRs and further under the MHA letter F.No.I-45020/7/2012-Pers-II dated 02.06.2012.

17. Even otherwise, that the very same petitioner despite having lost his foot and being placed in the LMC, was posted in field areas later, although he was neither meant nor required to do so and that he also chose to proceed for deputation in the MHA(Control Room) cannot, under the existing



circumstances, be a factor for him being denied promotion from the date when his batch-mates and juniors were actually granted promotion.

18. For the forgoing reasons and findings, the present petition is allowed and the order dated 16.01.2018 and also the order dated 18.11.2022 are quashed and set aside. As a corollary, the respondents are directed to grant promotion to the petitioner to the rank of Commandant with effect from 07.10.2016 with all consequential benefits including arrears of pay within a period of eight weeks after following due procedure in accordance with law.

19. Accordingly, the present writ petition is disposed of in the above terms, with no order as to costs.

**SAURABH BANERJEE, J**

**V. KAMESWAR RAO, J**

**JANUARY 31, 2024/So..**