



2024:DHC:10069-DB



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

Date of decision: 23.12.2024

+ W.P.(C) 9836/2023, CM APPL. 37830/2023 & 50028/2023
BIMLESH KUMAR NEGI & ANR.Petitioners
Through: Dr. S.S. Hooda, Mr.
Aayushman Aeron, Advs.

versus

UNION OF INDIA & ANR.Respondents
Through: Mr. Ruchir Mishra and Mr.
Mukesh Kumar Tiwari, Advs.
for UOI.

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+ W.P.(C) 13238/2023, CM APPL. 52316/2023
VISHWAMITRA ANANDPetitioner
Through: Mr. Ankur Chhibber, Mr.
Anshuman Mehrotra, Mr. Arjun
Panwar, Mr. Nikunj Arora, Mr.
Amrit Kaul and Ms. Muskan
Dutta, Advs.

versus

UNION OF INDIA AND ORSRespondents
Through: Mr. Ruchir Mishra and Mr.
Mukesh Kumar Tiwari, Advs.
for UOI.

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+ W.P.(C) 13364/2023, CM APPL. 52769/2023
SANJEEV ROLBA AND ORS.Petitioners
Through: Mr. Ankit Yadav and Ms.
Shaoni Das, Advs.

versus

DIRECTOR GENERAL THROUGH THE DIRECTORATE

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Signing Date: 27.12.2024
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W.P.(C) 9836/2023 and connected matters

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GENERAL INDO TIBETAN BORDER FORCE AND ORS.

.....Respondents

Through:

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+

W.P.(C) 16137/2023, CM APPL. 64857/2023

HOSIYAR SINGH

.....Petitioner

Through: Dr. S.S. Hooda and Mr.
Aayushman Aeron, Advs.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Shoumendu Mukherji, SPC
with Mr. Gokul Sharma, Advs.
for UOI.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. These petitions have been filed by the petitioners, challenging the findings and opinion dated 15.09.2022 of the Court of Inquiry; the Order dated 19.12.2022 passed by the Inspector General, North-West Frontier, Indo Tibetan Border Police ('ITBP'); and the Order dated 15.06.2023 passed by the Deputy Inspector General ('DIG'), ITBP, directing initiation of recovery against the petitioners based on the Court of Inquiry report.

2. The learned counsel for the respondents has handed over a copy of the Order dated 13.12.2024, passed by the Director General ('DG'), ITBP, which decides as under:-

"16. NOW THEREFORE, considering the facts that have emerged and brought out by the Board of Officers that there is no actual loss to the Govt. exchequer and the loss assessed by



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the COI is only a presumptive loss, it may not be appropriate and legally sustainable to recover the loss/ presumptive loss that has not occasioned. As such, by invoking the inherent powers of the DG, ITBPF given under Section 5 of the ITBPF Act 1992, the following orders are hereby issued in the interest of justice:-

(a) The proceedings and findings of the Col, presided over by Shri R.K. Chauhan, DIG (Engineer), is hereby set aside due to violation of the mandatory provisions of ITBPF Rules in the composition of the Col. illegalities/irregularities committed during its proceedings and for venturing beyond its fact-finding mandate by recommending punitive measures.

*(b) Consequently, the IG, North-West Frontier order dated 19.12.2022, which was predicated on the finding of the aforesaid CoI loses its enforceability. And hence, Order No. 1286-92 dtd: 19.12.2022 passed by IG, NW Ftr HQ is hereby **quashed and set aside** invoking the provisions of Section-5 of ITBPF Act, 1992. Simultaneously Western Command, ITBPF Order No. 147 dtd 01.04.2024 (**which was kept in abeyance**) and Order No. 420 dtd 27.09.2024 are also hereby quashed.*

*(c) The officers involved could not come out clean of this complete episode since there are palpable instances of lack of scrutiny and as such, these 14 officers against whom recovery has been ordered deserve to be issued with an **advisory**, by the respective Frontier IsG, to be more careful in future, while dealing with such matters.*

d) The amount already recovered in compliance with Order No. 1286- 92 dtd: 19.12.2022 passed by IG, NW Ftr HQ, from the officers involved/petitioners in the



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aforementioned writ petitions be refunded forthwith.

(e) This order shall be placed before the Hon'ble Court when the aforementioned writ petitions come up for hearing and a submission may be made at bar that the writ petitions have been rendered infructuous and further prayed, to dispose of the writ petitions, accordingly."

3. The learned counsels for the petitioners submit that while the major grievance of the petitioners stands satisfied by the above order, the DG, ITBP has also directed issuance of an 'advisory' based on the Court of Inquiry which has been set aside by the very order.

4. We are of the opinion that in case the petitioners are aggrieved of the above decision to issue an 'advisory', it shall be open to the petitioners to challenge the same in accordance with law. As far as the present petitions are concerned, as the prayers made therein, have been granted by the respondents themselves, nothing further survives in these petitions.

5. We, however, direct that the amount already recovered from the petitioners, which has been ordered to be now refunded to them, should be refunded within a period of four weeks from today.

6. The petitions along with pending applications stand disposed of in the above terms.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 23, 2024/sds/B/VS

Click here to check corrigendum, if any

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