



2024:DHC:6252-DB



\$~61

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

% ***Date of decision: 12th August, 2024***

+ **W.P.(C) 10760/2024**

YESHPAL SINGH AND ORS.

....Petitioners

Through: **Ms. Saahila Lamba, Advocate**

versus

UNION OF INDIA AND ORS.

....Respondents

Through: **Mr. Farman Ali, Senior Panel
Counsel with Ms. Laavanya Kaushik,
GP, Ms. Usha Jamnal and Mr.
Krishan Kumar, Advocates**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The present petition has been filed by the petitioners under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents to grant promotion to the petitioners to the rank of Senior Aircraft Maintenance Engineer-Second-in-Command (in case of petitioner No.1)/Chief Engineer – Deputy Inspector General (in case of petitioner No.2)/Deputy Chief Engineer–Commandant (in case of petitioners Nos.3 and 4) from 02.02.2015 i.e. the date when judgement with respect to grant of promotion to higher ranks to the petitioners was passed by this Court in W.P. (C) No.4959/2014.

2. Notice issued.



2024:DHC:6252-DB



3. Mr. Farman Ali, learned senior panel counsel for respondents, who appeared on advance notice, accepts notice.
4. With the consent of learned counsel for the parties, the present petitions are taken for final disposal.
5. The petitioners had joined Air Wing, BSF as direct recruits by qualifying competitive examination. At the time of their appointment, Border Security Force, Air Wing Officers (Group 'A' and Group 'B' posts) Recruitment Rules, 1999 were in place. On 11.11.2011, when the petitioners were about to fulfill the eligibility criteria in terms of said Rules, the respondents amended the Rules and notified Border Security Force, Air Wing Officers (Group 'A' Combatised posts) Recruitment Rules, 2011 wherein new eligibility criteria for promotions to all the ranks in the Air Wing of BSF was prescribed. As a result, the petitioners and other cadre officers working in Air Wing of BSF became ineligible for promotion not only at the relevant time but also for the next 5 to 10 years in future.
6. It is pertinent to mention here that on 21.01.2014, respondents Nos.3 and 4 took up the case with respondent No.1 with reference to para 3.1.3 of office memorandum dated 31.12.2010 for amending the 2011 Rules by incorporating a note under the schedule to the effect that "*The eligibility service shall continue to be the same for persons holding the feeder posts of regular basis on the date of notification of the amended rules*" in 2011 Rules. However, respondent No.1 returned the proposal for amendment of 2011 rules on the ground that it may have repercussions on other cadres and informed respondents Nos.3 and 4 that the proposal for relaxation in prescribed qualifying service in respect of such officers be examined on functional requirement and case to case basis.



2024:DHC:6252-DB



7. Considering the large number of vacancies in Air Wing of BSF and the functional requirements of the posts therein, respondents Nos.3 and 4 again took up the matter with respondent No.1 for considering the petitioners and other cadre officers for promotion in terms of 1999 Rules, specifically pointing out therein that out of 17 sanctioned posts of Senior Aircraft Maintenance Engineer/ Senior Aircraft Radio Maintenance Engineer, 13 posts have remained vacant despite various advertisements in the Employment News for filling up the same.

8. On 02.02.2015, even though the respondents Nos.3 and 4 had taken up the case of the petitioners for promotion with the respondent No.1 but no fruitful result in respect thereof was yielded leading the petitioners (and some other similarly situated personnel) to prefer a writ petition before this Court seeking directions to the respondents to act in accordance with the Office Memorandum dated 31.12.2010 issued by the Department of Personnel and Training and incorporate a note in the 2011 Rules to the effect that eligibility service shall continue to be the same as prescribed in 1999 Rules for persons holding the feeder post as on 11.11.2011. Also sought a writ of mandamus directing the respondents to consider all the petitioners therein for promotion in accordance with eligibility criteria of 1999 Rules, and if found fit, grant them promotion from the due date, with all consequential benefits or in the alternative direct the respondents to grant relaxation to the petitioners therein as recommended by respondent No.2 and consider them for promotion, if found fit grant them promotion from the due date with all consequential benefits.

9. After holding that the decision taken by the respondent No.1, rejecting the proposal sent by respondent No.2 for insertion of a note in



2024:DHC:6252-DB



terms of office memorandum dated 31.12.2010 in the 2011 Rules, is on the wrong appreciation of the legal position. Consequently, this Court allowed the aforesaid petition with directions to the respondent No.1 (Ministry of Home Affairs) to process the recommendations made by respondent No.2 (Director General, BSF) and take corrective action and accept the proposal to amend the 2011 Rules by inserting a note therein to give effect to para 3.1.3 of the Office Memorandum dated 31.12.2010. Thereafter, case of the petitioners (and other officers who were petitioners in said petition) qua promotion was directed to be considered as per 2011 Rules with the note inserted therein.

10. Being aggrieved, the respondents filed a Special Leave Petition before the Hon'ble Supreme Court, which subsequently got converted to Civil Appeal No.1485/2017. The Hon'ble Supreme Court issued notice and it was directed that *status quo*, as on said date, shall be maintained in the meantime.

11. On 20.10.2023, during the pendency of aforesaid Civil Appeal before the Hon'ble Supreme Court, the respondent No.1 (Ministry of Home Affairs) amended 2011 Rules and replaced them with Border Security Force Air Wing Officers (Group 'A' Combatised Posts) Cadre, Recruitment Rules, 2023. No note in terms of Office Memorandum dated 31.12.2010 as directed by this Court vide judgment dated 02.02.2015 was inserted in 2023 Rules.

12. Further during the pendency of aforesaid Civil Appeal before the Hon'ble Supreme Court, the petitioners met the eligibility for promotion to the higher ranks contained in 2023 Rules as also 2011 Rules, including the condition relating to required number of Group A service and thus got promoted to the Senior Aircraft Maintenance Engineer – Second-in-



2024:DHC:6252-DB



Command on 09.03.2020 in case of petitioner No.1; Chief Engineer – Deputy Inspector General on 01.02.2024, in case of petitioner No.2; Deputy Chief Engineer – Commandant on 23.03.2023 in case of petitioners Nos.3 & 4.

13. After noting that all the petitioners stood promoted to higher ranks (as were prayed by them in the petition filed before this Court) the Hon'ble Supreme Court disposed of the said petition with liberty to the petitioners to initiate appropriate legal proceedings with regard to their effective date of promotion.

14. Accordingly, petitioners made representations dated 20.05.2024 to the competent authority praying for grant of promotion to the higher ranks from 02.05.2015 i.e. the date when judgment with respect to grant of promotion to higher ranks to the petitioners was passed by this Court in W.P. (C) No.4959/2014, however, according to petitioners, there is no response from respondents till date.

15. In view of above, we hereby direct the respondents to decide the representations dated 20.05.2024 made by petitioners within six weeks by passing a speaking and reasoned order. The fate of representations shall be communicated to the petitioners in writing within one week thereafter.

16. With the directions as aforesaid, the present petition is allowed and disposed of accordingly.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 12, 2024/rk