



2025:DHC:4304-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 1806/2020 & CM APPL. 14747/2020**  
**RAHUL KUMAR & ORS** .....Petitioners

Through: Mr. Naushad Alam, Adv.

versus

**UNION OF INDIA & ANR** .....Respondents  
Through: Mr. Bhagvan Swarup Shukla,  
CGSC with Mr. Sarvan Kumar, Adv. for  
UOI

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**  
**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT (ORAL)**  
**21.05.2025**

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**C. HARI SHANKAR, J.**

1. The petitioners were appointed Assistant Commandant<sup>1</sup> (General Duty<sup>2</sup>) in the Indo Tibetan Border Police<sup>3</sup> on 2 January 2008.

2. On 20 June 2013, the Director General<sup>4</sup>, ITBP issued an order placing the petitioners in Pay Band – 3 (₹ 15600-39100) plus Grade Pay ₹ 5400/-, in accordance with an order dated 6 May 2002 issued by the Ministry of Home Affairs, Government of India. By virtue of this order, the petitioners were all placed in the scale of ₹ 15600-39100 with Grade Pay of ₹ 6600/- with effect from 2 January 2012. The pay scale of ₹ 15600-39100 with Grade Pay of ₹ 6600/- is the scale which

<sup>1</sup> “AC”, hereinafter

<sup>2</sup> “GD”, hereinafter

<sup>3</sup> “ITBP”, hereinafter



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is available to the post of Deputy Commandant<sup>5</sup> (GD). As such, Mr. Naushad Alam, learned Counsel for the petitioners submits that the petitioners have been in the grade of DC (GD) in the ITBP with effect from 2 January 2012.

3. *Vide* order dated 21 August 2017, issued by the DG ITBP, the petitioners were promoted as DC (GD), with effect from the 2015-2016 vacancy year.

4. Promotion, under the ITBP General Duty (Group A) Posts Recruitment Rules, 2018<sup>6</sup>, beyond the grade of DC (GD) is to the post of Second-in-Command<sup>7</sup>. The stipulated eligibility for promotion from DC to 2IC, as contained in the 2018 RRs, reads thus:

**“By Promotion:**

From amongst Deputy Commandants (General Duty) of the Indo-Tibetan Border Police Force in level 11 in the pay matrix *with five years regular service in the grade* and total ten years of regular service in Group 'A' and having successfully completed the prescribed pre-promotional training course.

**Note:** Where juniors who have completed their qualifying or eligibility service are being considered for promotion their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by 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 higher level in the pay matrix alongwith their juniors who have already completed such qualifying or eligibility service.”

(Emphasis supplied)

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<sup>4</sup> “DG” hereinafter

<sup>5</sup> “DC”, hereinafter

<sup>6</sup> “2018 RRs”, hereinafter

<sup>7</sup> “2IC”, hereinafter



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5. The petitioners were ultimately granted promotion as 2IC *vide* order dated 30 December 2022. The order did not stipulate the vacancy year against which the petitioners have been promoted as 2IC. This Court, in the present proceedings, by order dated 1 February 2023, required the respondents to file an additional affidavit, stipulating the date and the vacancy year against which the petitioners had been promoted as 2IC. In response thereto, an additional affidavit has been filed by the respondents, in which it is stated that the petitioners were promoted as 2IC against vacancies of the vacancy year 2023.

6. The grievance of the petitioners, in the present writ petition, as that as originally canvassed, was that they were entitled to be promoted as DC (GD) against the vacancy year 2014-15 rather than 2015-2016. However, on his attention being drawn to the fact that the office order promoting the petitioners as DC (GD) was issued as far back as on 21 August 2017, whereas the present writ petition was filed three years thereafter in 2020, Mr. Alam, submits that he is not pressing the case of the petitioners for promotion to the post of DC (GD) against the vacancies of the vacancy year 2014-015, and is willing to accept the office order dated 21 August 2017 as it stands, to the extent it grants promotion to the petitioners as DC (GD) against the vacancies of the vacancy year 2015-2016.

7. Mr. Alam's fundamental contention before us is that, even if the Office Order dated 21 August 2017 is to be read as it stands, the petitioners would be entitled to promotion as 2IC against the vacancy year 2021, and not against the vacancy year 2023. In fact, though Mr.



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Alam submitted that he was not pressing his claim to that extent, if the submissions of Mr. Alam are to be accepted, his clients would be entitled to be promoted as 2IC with effect from the vacancy year 2019 itself rather than the vacancy year 2021.

8. For this, we must appreciate the exact submission advanced by Mr. Alam, to support the case that he seeks to canvass. Mr. Alam has predicated his case on two fundamental contentions.

9. The first contention is that the respondents were themselves remiss, for no legitimate reason, in not holding any DPC for promotion from the post of AC (GD) to the post of DC (GD) from 2015 till 2017. He submits that his clients had become eligible for promotion as DC (GD) in 2015 and that, as vacancies of DC (GD) were available in that year, the DPC should have been held and his clients ought to have been promoted as DC (GD) in that year itself.

10. Mr. Alam has, in this context, drawn our attention to the following averments contained in the counter affidavit filed by the respondents, to explain the reason why no DPC was held for promotion from AC (GD) to DC (GD) between 2015 and 2017:

“Petitioners of above said case are appointed as Assistant Commandant on 02.01.2008 and when they became eligible for promotion as Deputy Commandant (GD), no DPC could take place because of stay orders of Hon'ble High Court dated 08.01.2013 and Hon'ble Supreme Court dated 4.01.2016. After vacation of stay order by Hon'ble Supreme Court dated 03.03.2017 and in view of the fact that Hon'ble Delhi High Court had set aside OM dated 26.11.2010, DPCs were held as per the RRs of 1999. As per these RRs total 06 years residency period is prescribed for promotion from Assistant Commandant (GD) to Deputy Commandant (GD).”



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11. Mr. Alam's submission is that the averment of the respondents that, owing to the stay order dated 8 January 2013 passed by this Court and the subsequent order dated 4 January 2016 of the Supreme Court, no DPC could be held for promotion from AC (GD) to DC (GD), is bereft of substance. He submits that there was in fact no interdiction by this Court in its order dated 8 January 2013, restraining the respondents from effecting promotions from AC (GD) to DC (GD).

12. In order to appreciate this submission, we have perused the order dated 8 January 2013 passed by the Division Bench of this Court, on which the respondents place reliance. The said order, which was passed in WP(C) 7545/11<sup>8</sup> reads thus:

"1. Notice.

Mr. Sachin Datta, learned Standing Counsel for the respondents nos. 1 to 3 accepts notice and prays for time to file a reply. Let the same be filed within two weeks. Rejoinder thereto, if any, be filed before the next date of hearing.

2. By way of this application, the petitioners are seeking stay of the order passed by the respondents requiring persons in the non-GD cadre to proceed for courses which are essential for promotion from the post of Second-in-Commands to Commandants. In the main writ petition, the petitioner has laid a challenge to the merger effected by the respondents of the GD cadre officers with the non-GD cadre officers effecting the seniority of those in the GD cadre. A challenge by the officers of the non-GD cadre is also pending before this court in WP (C) No.596/2012 which is taken up with the present writ petition. Both these writ petitions are listed on 4th February, 2013.

3. The application has been necessitated for the reason that the respondents have issued an order dated 12th November, 2012 and 29<sup>th</sup> November, 2012 requiring officers from the non-GD cadre to proceed for courses which are to commence from 7th January,

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2013. It is urged that this direction by the respondents is a step towards effecting promotions of these officers even though they are not entitled to the same.

4. Our attention has been drawn to the order which we recorded on the 8<sup>th</sup> August, 2012 on CM No.9897/2012 which had been filed by the non-GD cadre officers in Writ Petition (C) No.596/2012. This application had been filed by the non-GD cadre officers seeking a stay of the direction of the respondents to proceed for similar training courses. The respondents had made a statement that they shall not insist upon the petitioners proceeding on the course and that the same would be postponed to the next date of hearing. Given this statement and the postponement of the course for the officers who had filed CM No.9897 of 2012, it is inexplicable as to how further orders are being issued requiring the non-GD cadre officers to proceed with the same courses. We may also note that on 8<sup>th</sup> August, 2012 and 8<sup>th</sup> November, 2012, the respondents have sought time to place an additional affidavit on record. Despite repeated opportunities, these directions have not been complied tiii date.

5. We are informed that the course in question commenced on 7<sup>th</sup> January, 2013. However, the applicants were unable to file the application prior thereto on account of their posting in different places.

6. In view of the above, an alternative prayer is, therefore, pressed before this court that even if the non-GD cadre officers are permitted to undertake the courses, the respondents would be prohibited from effecting further promotion based on the completion of such courses by these officers. There is substance in this submission.

7. In view of the above, the respondents shall not effect promotions based on the completion of the courses by the non-GD cadre officers till the next date of hearing.

List on 4<sup>th</sup> February, 2013, the date already fixed.

Dasti.”

**13.** It is true that the dispute before this Court, in WP(C) 7545/2011 appears to have been at the instance of certain non-GD cadre officers. Even so, a holistic reading of the order dated 8 January 2013 would indicate that the intention of this Court was to keep promotions on



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hold till the issue of completion of courses by the non-GD cadre officers was resolved.

**14.** In any event, it is not in dispute that the GD cadre officers and non-GD cadre officers constitute part of one seniority list. As such, if the respondents decided to wait till the dispute which was subject matter of WP (C) 7545/2011 was resolved one way or the other, no fault can be found therewith.

**15.** WP (C) 7545/2011 ultimately came to be decided by the Division Bench of this Court on 25 May 2015. Against the said decision, the matter was carried in appeal to the Supreme Court by way of SLP (C) 20582-83/2015 (now 133-134/2016) filed by one Kalu Ram Meena, which was also disposed of by the Supreme Court on 9 October 2015.

**16.** Once the aforesaid dispute had been laid to rest, the respondents conducted the DPC for promotion from the grade of AC (GD) to the grade of DC (GD), following which, as already noted, by Office order dated 21 August 2017, the petitioners were promoted as DC (GD). The respondents were, however, fair in granting promotion to the petitioners against the vacancies of the vacancy year 2015-2016.

**17.** We, therefore, are not in agreement with Mr. Alam in his contention that there was no justification for the respondents holding the DPC for the vacancies of DG (GD) which arose in 2015-2016, only in 2017.



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**18.** This, therefore, is not one of those cases in which the respondents could be held liable for unjustified delay in holding of a DPC.

**19.** Mr. Alam's second contention is that, if one reads the prescribed eligibility qualifications for promotion from DC(GD) to 2IC, as contained in the 2018 RRs, they envisaged four stipulations, viz that:

- (i) the officer is a Deputy Commandant,
- (ii) the officer has five years regular service in a grade,
- (iii) the officer has 10 years regular service in the grade of DC,
- (iv) the officer has a total of ten years regular service in Group A, and
- (v) the officer has successfully completed the prescribed pre-promotional training course.

**20.** He submits that, after 2017, the petitioners satisfied all these criteria. They were DCs (GD) with effect from 21 August 2017. They were granted the grade of DC (GD) with effect from 2 January 2012, by order dated 20 June 2013. They, therefore, had completed five years regular service *in the grade of DC (GD)*, in fact, on 2 January 2017. Even on 17 July 2018, on which date the 2018 RRs came into effect, therefore, they had completed five years' regular service in the grade of DC (GD).

**21.** They had also completed ten years' regular service in Group A as they had been appointed as AC (GD), which was a Group A post,



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on 2 January 2008.

22. The only other requirement to be satisfied was completion of the prescribed pre-promotional training course which was something which lay at the doors of the respondent.

23. As such, Mr. Alam's contention is that even on the date when 2018 RRs came into force, the petitioners were already eligible to be promoted as 2IC.

24. He, however, submits that he is not pitching his case that high and that he would be willing if the period of five years, envisaged in the 2018 RRs for promotion to the grade of 2IC, is reckoned from 2015, as the petitioners' promotion as DC (GD) was given with effect from the 2015 vacancy year.

25. In this context, Mr. Alam has also drawn our attention to an OM issued by the DOPT on 24 March 2009, from which he specifically invites attention to the following paras:

“No. AB.14017/61/2008-Estt. (RR)  
Government of India  
Ministry of Personnel Public Grievances and Pensions  
Department of Personnel and Training  
New Delhi

Dated: 24th March, 2009

#### OFFICE MEMORANDUM

Subject: Sixth Central Pay Commission's recommendations  
revision of pay scales - amendment of Service  
Rules /Recruitment Rules

The recommendations of 6th CPC have been considered by

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the Government and the CCS (Revised Pay) Rules 2008 have since been notified on 29th August, 2008. Consequently, in place of the pre-revised pay scales, the revised pay structure comprising the Pay Band and Grade Pay / Pay Scales has come into effect. Some of the pre-revised pay scales have been merged and some others are upgraded / likely to be upgraded. In the light of these, it has been decided that the following consequential steps to amend the existing Service Rules / Recruitment Rules shall be undertaken on a priority basis:

(i) Substituting the existing scales by the Grade Pay along with the Pay Band

The existing pay scales have to be substituted by the new pay structure (Pay Band and Grade Pay / Pay Scale) straightaway without making a reference to the Department of Personnel and Training (DOP&T) / Union Public Service Commission (UPSC). The heading of column No. 4 of the Schedule on RRs may be modified to "Pay Band and Grade Pay / Pay Scale". In cases where deputation is also one of the methods of recruitment, the field of selection for deputation, which might include various grades, should also reflect the corresponding Grade Pay along with the Pay Band / Pay Scale, and the minimum eligibility service as per the revised guidelines, as enclosed in Annexure.

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(iii) Consequential changes

It is necessary to make consequential changes in the Recruitment Rules / Service Rules so as to prescribe eligibility conditions with reference to the revised Grade Pay/Pay Scale. It is also necessary to review other columns of the Recruitment Rules / Service Rules, where some minimum service in a particular scale / grade is prescribed for consideration for appointment on deputation / absorption etc., keeping in view particularly the merger of a number of pre-revised scales, upgradation of some scales and the consequential changes in the minimum eligibility service in a grade."

26. Mr. Alam's contention is that while, in the pre-existing 1999 RRs for the post of 2IC, the qualifying service prescribed was in the post of DC, following the aforesaid DOPT OM dated 24 March 2009,



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the emphasis was of regular service rendered *in the grade*, rather than *in the post* of DC. He submits that, therefore, the prescribed qualifications for promotion to the post of 2IC, as contained in the 2018 RRs, have to be understood and interpreted in the light of the DOPT OM dated 24 March 2009.

**27.** Though the submission of Mr. Alam is facially attractive, we are of the opinion that the RRs, having been issued under Article 309 of the Constitution of India, have to be interpreted as they stand, and that their interpretation cannot be coloured by any administrative instructions issued by the DOPT or by any other administrative Ministry. It is only if there is any ambiguity in the RRs that one can seek assistance from executive instructions which, too, can only supplement, and not supplant, the RRs. To our mind, it is not necessary, therefore, to refer to the DOPT OM dated 24 March 2009, as the stipulated eligibility qualification for promotion to the post of 2IC, as contained in the 2018 RRs, is clear and categorical.

**28.** The key to understanding the prescribed qualifications for promotion as 2IC, as contained in the 2018 RRs, in our view, lies in one single word – ‘with’.

**29.** What is required by the 2018 RRs, in order to render a DC (GD) eligible for promotion as 2IC is service as DC (GD) in Level 11 in the Pay Matrix *with* five years regular service in the grade, apart from a total of ten years regular service in Group A and satisfaction of the prescribed pre-promotional training course.



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**30.** The use of the word “with”, in the aforesaid clause, in our view, is significant.

**31.** The intention of the clause is, obviously, that the five years regular service in the grade of DC must be rendered *after* the person is already appointed or promoted as DC (GD). In other words, it is only officers *who are DC (GD) with five years regular service in the grade of DC (GD)* who would be eligible for promotion as 2IC, subject to their satisfying the remaining conditions in the clause, i.e., ten years’ regular service in Group A and satisfactory completion of the pre-promotional training course.

**32.** Understood thus, it is not possible to accept Mr. Alam’s contention that the service rendered by the petitioners in the Grade of ₹ 15600-39100 with Grade Pay of ₹ 6600/-, prior to their being actually promoted as GD, can count towards the five years’ qualifying regular service in the grade of DC (GD), as envisaged in the 2018 RRs for promotion as 2IC.

**33.** Undisputedly, the petitioners were promoted as DC (GD) only on 21 August 2017. By virtue of our above understanding, service rendered by them in the Pay Band-3 with Grade Pay of ₹ 6600 prior to 21 August 2017 cannot count towards the required ‘five years regular service in the grade’ as envisaged in the 2018 RRs for promotion as 2IC.

**34.** We, therefore, do not find any error in the respondents reckoning the eligibility of the petitioners for promotion as 2IC with



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effect from 21 August 2017.

**35.** Viewed thus, there is no error in fixing 2023 as the vacancy year with effect from which the petitioners would be entitled to promotion as 2IC.

**36.** As a result, we do not find any error in the impugned actions of the respondents.

**37.** The submissions of Mr. Alam, though they were undisputedly attractive, and did give us some food for thought, do not sustain deeper scrutiny.

**38.** We, therefore, are of the opinion that the writ petition and the case that the petitioners have sought to make out in the writ petition is devoid of merit.

**39.** The writ petition is, accordingly, dismissed with no orders as to costs.

**C. HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**MAY 21, 2025/aky**

*Click here to check corrigendum, if any*