

IN

**PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. 12466 OF
2020**

WITH

INTERLOCUTORY APPLICATION NO.11026 OF 2021

IN

**PETITION FOR SPECIAL LEAVE TO APPEAL (C)NO.12570 OF
2020**

ORDER

Five sets of officers belonging to the Indian Police Service (IPS) have applied for being impleaded in this set of petitions for special leave to appeal (SLPs). These proceedings arise from a common Judgment delivered by a Division Bench of the Delhi High Court in five writ petitions brought by Group A officers of the Central Industrial Security Force (CISF), Central Reserve Police Force (CRPF), Indo Tibetan Border Police (ITBP), Border Security Force (BSF) and Sashastra Seema Bal (SSB). These forces are collectively referred to as the Central Armed Police Force(s). In course of hearing, intervention has also been asked for by the Central Indian Police Service

Association on the strength of caveat applications lodged by them.

2. The scope of dispute involved in the writ petitions out of which these proceedings arise have been summarised in the first paragraph of the Judgment under appeal. This paragraph reads:-

"These five petitions, by personnel of different services viz. Central Reserve Police Force (CRPF), Border Security Force(BSF), Sashastra Seema Bal (SSB), Indo Tibetan Border Police(ITBP), and Central Industrial Security Force (CISF), collectively known as Central Armed Police Forces (CAPFs), (i)impugn the direction of each of the said services, for filling up of the additional posts created pursuant to the Cadre Review (CR)of the year 2016, as per existing Recruitment Rules (RRs), which provide for certain percentage of posts at each level upto Senior Administrative Grade (SAG) being filled up by deputation; and, (ii) seek mandamus directing the respondents to amend the RRs of each service, by including various attributes, as required by Department of Personnel and Training (DoPT) Office Memorandums (OMs)dated 20th November, 2009, 15th December, 2009, 24th March 2009, 24th April 2009 and 8th May, 2018, particularly to the extent provide for all posts upto SAG level being filled up by promotion only and not by deputation, and to thereafter conduct CR of Group 'A' Officers of each cadre, by treating each service as Organised Group 'A' Service (OGAS), as held by this Court in G.J.Singh Vs. Union of India 2015 SCC online Del 11803 and affirmed by the Supreme Court in Union of India Vs. Harananda (2019) 14 SCC 126."

3. The writ petitions were disposed of in the following terms by the High Court:-

"We thus dispose of these petitions:

(I) By permitting the members of each Central Armed Police Force to, if so desire, make comprehensive representation(s) to the Ministry of Home Affairs, for amendment of the respective Recruitment Rules of each Central Armed Police Force including qua Cadre Structure, Residency, Deputation etc.

(II) By directing the Ministry of Home Affairs to, in compliance of the DoPT OMs dated 31st December, 2010 and 8th May, 2018, immediately undertake the exercise for review of existing Recruitment Rules of each Central Armed Police Force, also taking into consideration the representation(s), if any, received from the members of the Central Armed Police Forces and after giving them an opportunity of being heard and to place its decision in this regard before the Department of Personnel and Training.

(III) By directing the Department of Personnel and Training to, immediately on receipt of decision from the Ministry of Home Affairs qua review of Recruitment Rules of respective Central Armed Police Forces, take necessary action thereon;

(IV) By permitting the petitioners to make comprehensive representation(s) qua each Central Armed Police Force to the Department of Personnel and Training, qua the Cadre Review due in the year 2021 including as to the terms of reference if any thereof.

(V) By directing the Department of Personnel and Training to ensure timely commencement of Cadre Review exercise due in the year 2021 and to, in the terms of reference qua Cadre Review for Central Armed Police Forces, consider incorporating the representation(s), if any, made by the members of each Central Armed Police Force, and the decision of the Ministry of Home Affairs qua the review of Recruitment Rules of each Central Armed Police For.

(VI) By directing that the entire exercise aforesaid be concluded on or before 30th June, 2021."

4. The applicants want to be impleaded on the basis of their apprehension that posts in the five CAPFs kept for being filled up by deputation by the officers from the Indian Police Service might get diluted in the event the main plea of the petitioners is accepted. Their prayer for impleadment, however, has been strongly resisted by the petitioners, inter-alia on the ground that barring one, Jitender Rana, who is the first applicant in two impleadment applications, being Interlocutory Application No.7477 of 2021 (relating to SSB) and Interlocutory Application No.11026 of 2021 (relating to CRPF), none of the applicants is posted in any of the CAPFs as a deputationist. Interlocutory Application No. 11014 of 2021 is in relation to proceedings instituted by the ITBP, Interlocutory Application No.11786 of 2021 relates to petition for Special Leave to Appeal instituted by the officers of BSF, whereas Interlocutory Application No. 16706 of 2021 arises out of proceedings pertaining to CISF. Said Jitender Rana appears to have been posted on deputation in CISF as a DIG. He, however, has not applied for being impleaded in the proceedings arising out of the writ

petition filed by the senior officers of CISF. It has also been contended on behalf of the petitioners that the applicants have not been empanelled for central deputation and no legal right of the applicants can be said to have been created or could taken away by the ultimate outcome in the present set of SLPs, if the stand of the petitions is upheld. It is also argued on behalf of the petitioners that the deputationists or potential deputationists do not have any vested legal right to any post in the senior cadre of the CAPFs. Mainly on these grounds, it is submitted that the applicants are neither necessary nor proper party in SLPs. My attention has also been drawn to paragraph 13 of the impugned judgment. It has been recorded therein that the impleadment application of IPS officers were not allowed. I find from the said paragraph that the High Court had assured them of hearing and the counsel for the IPS officers was heard before the Bench of the Delhi High Court.

5. Submission on behalf of the applicants, on the other hand, has been that the Indian Police Service

is an All-India Service under Article 312 of the Constitution of India. As per IPS (Cadre Rules) 1954, every State has a central deputation reserve not exceeding 40% of the total senior duty posts. It is pointed out on behalf of the applicants that deputation is an integral part of the constitutional scheme under Article 312 of the Constitution of India. Learned counsel appearing for the applicants has pointed out that the individual service rules of each of the five forces provide for deputation in senior posts and the IPS officers' right to get impleaded in these five proceedings flow from such provisions also. It is urged on behalf of the applicants that the object of the petitioners is to do away with deputation in the CAPFs by IPS officers altogether and fill up all the senior administrative grade posts of the respective forces from within the service only. This would impact the IPS officers' career prospect. On the point as to whether the applicants are necessary or proper parties, the case of **Prabodh Verma And Ors. vs State of Uttar Pradesh & Ors.**[1984 (4) SCC 251] has been relied upon. In this Judgment, it has been, inter-alia held:-

"The real question before us, therefore, is the correctness of the decision of the High Court in the Sangh Case. Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered from two serious, though not incurable defects. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties-not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."

6. Similar view has been expressed by this Court in the case of **A. Janardhana vs Union of India** [1983 (3) SCC 601], though, in this case, a slightly different approach has been taken. It has been held in this authority:-

"It was contended that those members who have scored a march over the appellant in 1974 seniority list having not been impleaded as

respondents, no relief can be given to the appellant. In the writ petition filed in the High Court, there were in all 418 respondents. Amongst them, first two were Union of India and Engineer-in-Chief, Army Headquarters, and the rest presumably must be those shown senior to the appellant. By an order made by the High Court, the names of Respondents 3 to 418 were deleted since notices could not be served on them on account of the difficulty in ascertaining their present addresses on their transfers subsequent to the filing of these petitions. However, it clearly appears that some direct recruits led by Mr Chitkara appeared through counsel Shri Murlidhar Rao and had made the submissions on behalf of the direct recruits. Further an application was made to this court by nine direct recruits led by Shri T. Sudhakar for being impleaded as parties, which application was granted and Mr P.R. Mridul, learned Senior Counsel appeared for them. Therefore, the case of direct recruits has not gone unrepresented and the contention can be negated on this short ground. However, there is a more cogent reason why we would not countenance this contention. In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to G.M., South Central Railway, Secundrabad v. A.V.R. Siddhanti. Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in the case, this court observed that [SCC para 15, p. 341 : SCC (L&S) p. 296] the respondents (original petitioners) are impeaching the validity of

those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and therefore, even if technically the direct recruits were not before the court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negatived."

7. In a subsequent authority, **Mukul Kumar Tyagi vs State of Uttar Pradesh and others** [2020 (4) SCC 86], it has been observed by this Court:-

"The present is a case where the writ petitioners had not raised any challenge to a particular qualification of any individual candidate rather their challenge was that without scrutiny large number of candidates, who were claiming qualification equivalent to CCC Certificate have been included without there being any scrutiny and without they fulfilling the qualification. The case of the writ petitioners was that the computer certificate issued by the private organisations and unregistered societies, who neither were recognised by the State Government or the Central Government or by any statutory body could not issue any certificate. We may further notice that the Division Bench also noticed the above argument of non-impleadment of all the selected candidates in the writ petition but the Division Bench has not based its judgment on the above argument. When the inclusion in the select list of large number of candidates

is on the basis of an arbitrary or illegal process, the aggrieved parties can complain and in such cases necessity of impleadment of each and every person cannot be insisted. Furthermore, when select list contained names of 2211 candidates, it becomes unnecessary to implead every candidate in view of the nature of the challenge, which was levelled in the writ petition. Moreover, few selected candidates were also impleaded in the writ petitions in representative capacity."

8. While dealing with the present set of applications, I am not examining the legality of the judgment assailed on the ground of non-joinder of necessary parties. The applicants have approached this Court for being heard on the conflict points involved in these petitions. Thus the question I will have to examine is as to whether they can be given access to this set of petitions as parties. I shall be addressing only the plea for impleadment or intervention of the applicants.

9. In the event the petitions for Special Leave to Appeal are allowed and the plea of the petitioners for excluding deputationists from the senior administrative posts of the respective CAPFs eventually come to be accepted, it would obviously have an impact on the upper reaches of the service avenues of the IPS officers. The prayers made in

SLP(C) No. 12158 of 2020 is quoted below for proper understanding of the scope of the petitions for Special Leave to Appeal:-

"Main Prayer

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Grant Special Leave to Appeal to the petitioner against the impugned judgment and final order dated 27.07.2020 passed by the Hon'ble High Court of Delhi at New Delhi in W.P.(C) No. 12751/2019; and
- b) Pass any other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Prayers for Interim Relief:

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a. Grant stay of appointment of persons by way of deputation to any of the cadre posts of CISF Group A Executive Cadre;
- b. Grant ad interim ex-parte stay of the impugned judgment and final order dated 27.07.2020 passed by the Hon'ble High Court of Delhi at New Delhi in W.P.(C) No. 12751/2019; and
- c. Pass any other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

Similar are the prayers in the other petitions for special leave to appeal. Before the High Court, the petitioners had mainly relied on an earlier decision of this Court in the case of **Union of India vs Harananda** [(2019) 14 SCC 126]. In this judgment, inter-alia, it was held that Railway Protection Force

was to be constituted as Organised Group A Civil Service.

10. Argument advanced on behalf of the petitioners is that the applicants are not necessary or proper parties in this set of proceedings. The petitioners are seeking directions for amendments of a set of existing Rules and office memoranda, which provide for, inter-alia, filling up of certain percentage of senior administrative grade posts by deputation. Relief is sought here against the concerned arm of the Union Government over framing of service rules that would have the effect of, among other change in service structure, entail IPS officers from holding the senior positions of the respective Forces on deputation. But as I have already observed, by filing these applications, the applicants are volunteering their participation in these petitions to highlight their grievances. Thus the ratio of **A. Janardhana** (supra), which dealt with the aspects of leaving out a set of persons from whose interest could be affected by the outcome of a case, cannot be applied in this set of proceedings. The applicants' claim for entry to these proceedings is founded on their

possibility of being engaged on deputation to the senior administrative posts of CAPFs being adversely affected. Objections to their presence in these proceedings are mainly on two grounds. First is that the petitioners are questioning certain actions of the Government pertaining to clogging of promotional avenues of in-service officers of the CAPFs. In the event such plea of the petitioners is accepted by this Court, then the right of an IPS Officer to be in deputation will lapse or be largely impaired. Such deputation provisions do not originate from general principles of being placed on deputation, which is a recognized practise guiding organized services. Placing an IPS Officer on deputation in these Forces are integrally linked to the service rules of the respective Forces. Moreover, there is provision for deputation of IPS Officers as per the IPS Cadre Rules, 1954. Reference has been made to the schedule to Central Industrial Security Force (Group 'A' Executive Cadre) Recruitment Rules, 2002, Rule 13 of the SSB Rules, 2009, schedule to the Central Reserve Police Border Force Group "A" General Duty Officers Recruitment Rules and Section 12 of ITBP Act, 1992

and schedule to the Border Security Force (Seniority, Promotion and Superannuation of Officers) Rules, 1978. These instruments provide for recruitment by deputation to the senior administrative posts of the CAPFs. In the given facts in my opinion, Jitender Rana, first applicant in Interlocutory Application Nos. 7477 and 11026 of 2021 ought to be impleaded in the respective petitions for Special Leave to Appeal in connection with which these applications have been taken out. He is an IPS Officer on deputation in a CAPF and has direct and subsisting interest in the subject controversy. The two petitions in which he seeks to be impleaded however do not relate to the Force in which he is on deputation. But considering the fact that these proceedings are being heard together and arise out of a common judgment, I do not consider this factor should determine his plea of being impleaded to these proceedings. I am of the opinion that he fulfils the requirement of being impleaded as a proper party and direct him to be added as a respondent in Petition for Special Leave to Appeal (Civil) No. 12466 of 2020 and Petition for Special Leave to Appeal (Civil) No. 12570 of 2020.

11. Rest of applicants also have been able to demonstrate sufficient interest on the ultimate outcome of the five petitions for special leave to appeal. Under these circumstances, I allow them to intervene in these proceedings.

12. Objection was made as regards as intervention of the Indian Police Service Central Association. The Association have not filed any application for impleadment or intervention before the High Court. I have referred to paragraph 13 of the impugned judgment in this regard. Their intervention was not allowed but they were heard. I further find from the judgment that they were actually heard. They have argued before me on the point of impleadment on the basis of having filed caveat application. But while as caveators they have the right of being notified of the lodging of the SLPs in terms of Clause 2 of Order XV of the Supreme Court Rules, 2013, mere filing of caveat application cannot grant them an entry into a Petition for Special Leave to Appeal. Filing of Caveat by itself does not entitle them to be treated as a party to the proceeding. I accordingly grant them leave to apply for being impleaded before the

appropriate Bench of this Court. Questions were raised before me on legitimacy of such an Association. But that question I am not determining in this order, having regard to my observation as regards their right of participation in relation to the present set of applications.

13. These five applications are disposed of accordingly.

14. Let necessary amendments and alteration of records be carried out on the basis of this order.

15. There shall be no order as to costs.

.....**J**
(ANIRUDDHA BOSE)

New Delhi
Dated: 28th June, 2021