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

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W.P.(C) 6580/2016

PRASHANT SRIVASTAVA AND ORS.

..... Petitioners

Through: Mr Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms Maninder Acharya, ASG with Mr
Anurag Ahluwalia, CGSC for UOI
with Mr Abhigyal Siddhant,
Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **13.09.2019**

CM 37834/2019 (stay)

1. The short prayer in this application is for staying an order dated 19th July, 2019 issued by the DIG (Org) in the office of the Directorate General, Central Reserve Police Force ('CRPF'), which *inter alia*, states that "the assignment of duties to a Second-in-Commands ('2ICs') in the Male GD Battalions, designating them to perform the duties as 2ICs (Admn. & Accounts) and 2ICs (Ops.) will now be decided by the Unit Commandants at their end." The said order further states that "as far as possible Senior 2ICs may be assigned with the duties of 2ICs (Admn. & Accounts) in the Male GD Battalions.

2. The apprehension expressed by the Petitioners is two-fold. One is that if the Commandant has the discretion to decide which of the 2ICs will perform

the duties as 2ICs (Admn. & Accounts) and which as 2ICs (Ops.), it might give rise to nepotism and will be a departure from the current practice of designating the senior 2IC to perform the duties of 2ICs (Admn. & Accounts).

3. The second apprehension of the Petitioners is that in the absence of the CO, due to his proceeding on leave or for some other contingencies, it is normally the senior 2ICs (Admn. & Accounts), who officiates as Commandant. If the above arrangement recognizing discretion in the Commandant is permitted, then the junior 2IC will officiate as Commandant, in the absence of the Commandant, and this would be unacceptable given the hierarchy in the organization.

4. Today, Ms Maninder Acharya, learned ASG appearing for the UOI, has produced before the Court, a copy of an order dated 20th October, 2016, issued by the Directorate General ('DG'), CRPF on the issue of transfer and postings of 2ICs. Paragraph 2 of the said order reads as under:

“2. With a view to maintain balance between seniority and operational need to the Force, the following directions are issued for transfer and posting of the 2IC rank in the Force:-

- (i) Out of 494 offices of 2I/C rank, SI No. (1) to (240) will be posted as 2I/C (Adm. & Accts.) in 203 male GD Bns or static location/Bns where only 2 I/C is authorized. They will be officiating as Commandant in the absence of regular Commandant.
- (ii) SI. No. (361) to (494) will be earmarked as 2I/C (Ops.) and will be posted as 2 I/C (Ops.) in 203 male GD Bns. No static posting or attachment from this strength be

made so that they can complete their MFS.

- (iii) SI No. (241) to (360) 2I/Cs may be kept in Buffer zone to be posted either as 2I/C (Adm. & Accts.) or 2 I/C (Ops.) as per availability of vacancy and posting situation. If they are posted with the officers of group (i) i.e. 2I/C (Adm. & Accts.), they would be posted as 2 I/C (Ops.) and if they are posted with the officers of (ii) group i.e. 2 I/C (Ops.), they would be posted as 2I/C (Adm. & Accts.) senior 2I/C in a Bn. Will be posted as 2 I/C (Ops.), if junior 2I/C in the Gradation List is available in their Bn.
- (iv) Both 2I/Cs will be as link officer to each other in these 203 male GD Bns.
- (v) In case 2 I/C (Ops.) proceed on leave / duties/ absent or not posted, then 2I/C (Adm. & Accts.) will also hold additional charge of 2 I/C (Ops.).
- (vi) However, DG can change the present arrangement due to Adm. & Ops. Reasons.
- (vii) This list will be revised before issuing of SCT or whenever major reshuffle is proposed.”

5. The present application was necessitated on account of an order passed on 19th July, 2019, with the approval of the DG, CRPF, which states in paragraph 3 as under:

“The issue has further been examined in detail in consultation with Ops. Pers and Legal Branch of this Dte. After taking into consideration all the aspects of the case, competent authority has now decided that henceforth the basic concept of maintaining seniority with reference to Gradation list while deciding transfer/posting of 2-I/C is dispensed with. However, assignment of duties as 2-I/C posted in the Male GD Bns designating them to perform the duties as 2-I/C (Adm & Accts) and 2-I/C (Ops_ will now be decided by the Unit Commandants at their end. Moreover, as far as possible Senior 2-I/C may be assigned with the duties of 2-I/C (Adm & Accts) in the male GD Bn.”

6. On instructions, Ms Acharya states that as far as the arrangement put in place, by the order dated 20th October, 2016 is concerned, what has been stated in paragraphs 2 (i), remains unchanged, as of today. In that view of the matter, the Petitioners who were within S. Nos. 1 to 240, in the rank of 2IC and are currently posted as 2ICs (Admn. & Accounts), need not have any apprehension. If a Commandant at any stage in the future passes an order, posting the Petitioners as 2ICs (Ops.), and if the Petitioners are aggrieved by such an order, it will be open to them to seek appropriate remedies in accordance with law. Ms. Maninder Acharya, Ld ASG further submits that her submission is confined to the Petitioners only.

7. The application is disposed of with above order.

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8. Mr Chhibber has placed before the Court an O.M. dated 12th April, 2019 issued by the DoPT, instructing the Ministry of Railways and Ministry of Home Affairs to implement the judgment dated 5th February, 2019 of the Supreme Court in SLP No.12393 of 2013 (***Union of India v Sri Harananda***). According to him, this in effect would mean that with the recognition of the Railway Protection Force ('RAPF') and the CAPFs as organized forces, a fresh cadre review would have to anyway be undertaken.

9. Ms Acharya states that she will have to seek instructions on this aspect and prays for a short adjournment.

10. At her request, list on 24th October, 2019.

S.MURALIDHAR, J

SEPTEMBER 13, 2019
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TALWANT SINGH, J