

(2013) 07 DEL CK 0090

In the Delhi High Court

Case No : Writ Petition (C) No. 2977 of 2010

Akhilesh Kumar Dixit and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2013) 07 DEL CK 0090

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Anshuman Sinha, for the Appellant; Joginder Sukhyo, for the Respondent

Final Decision : Disposed Off

Judgement

Gita Mittal, J.—The instant writ petition has been filed by the petitioners praying for issuance of directions to the respondents for considering the petitioners for promotions to the post of Superintending Engineer (Civil) in the Border Roads Engineering Service (BRES) which is also controlled by the Department of Personnel and the Ministry of Defence. The petitioners have complained that statutory guidelines were issued by the Central Government through a letter dated 6th May, 1972 by the Department of Personnel and Training to carry out a mandatory Cadre Review after an interval of every three years. However, even after expiry of more than 23 years no Cadre Review of Boarder Roads Engineering Services (Civil) {hereinafter referred to as "BRES (Civil) Cadre"} has been undertaken. The petitioners contend that BRES (Civil) Cadre was declared as an Organised Group "A" Service of Government of India in the year 1977 and as per the Government policy atleast 6 to 7 Cadre Reviews should have been undertaken till date. In this regard, the petitioners have contended that the review was to be undertaken by the Border Roads Engineering Service.

2. To support the submission that the Cadre Review was binding, the petitioners have drawn our attention to the recommendation of the 5th Pay Commission which were duly approved by the Central Government to the effect that the

Cadre Review with regard to the Organised Group "A" services must be carried out within a maximum period of every five years.

3. In the writ petition, the petitioners have given details of the Cadre strength of BRES, however, for purpose of the direction, which we proposed to issue, the same does not require to be set out in great detail.

4. We may note that in a matter relating to the State Civil Service of the State of Uttar Pradesh, the Supreme Court had an occasion to deal with the similar issues in Civil Appeal No. 2651-52 of 2010 titled as Union of India & Another vs. Hemraj Singh Chauhan & Others. After detailed consideration, the Supreme Court has observed as follows:-

44 Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely, lethargy, in-action, an absence of a sense of responsibility cannot fall within category of just exceptions.

5. The respondents appeared in answer to the show cause notice issued by this court and have filed a counter affidavit on record. Respondents No. 1 to 3 had admitted receipt of a proposal for Cadre Review from the Respondent No. 4 and had filed an affidavit in compliance of the directions issued on 20th October, 2011, disclosing as follows:

2. That Respondent No. 6 (Director General of Border Roads) had submitted a Cadre Review proposal of all Group "A" officers of General Reserve Engineer Force of Border Roads Organisation to Respondent No. 5 (Border Roads Development Board). Respondent No. 5 examined the proposal and detected many discrepancies/shortcomings in the proposal. Accordingly, Respondent No. 5 returned the proposal to Respondent No. 6 Organisation with the request to take necessary action on the observations made/clarifications sought and submit the revised proposal. Respondent No. 6 submitted the revised proposal to Respondent No. 5 on 14.2.2011. The revised proposal was examined by the Respondent No. 5 and observed some further discrepancies/shortcomings in the light of the DOP&T guidelines in the matter. Hence the proposal was returned to Respondent No. 6 on 5.4.2011. Respondent No. 6 is examining the matter and the revised proposal will again be in due course for consideration of Respondent No. 5 in the light of DOP&T guidelines.

3. That Respondents No. 5 and 6 though receive their budgetary grants through Respondent No. 4 (Ministry of Road Transport and Highways) but otherwise are under the administrative control of Respondent No. 3 (Ministry of Defence). Thus Respondent No. 4 has no role in the administrative matters of Respondents no. 5 and 6. Therefore, name of Respondent No. 4 may be deleted from the list of respondents.

4. That as the proposal has not yet been rectified and confirmed by Director General of Border Roads and as such not yet finalized by the administrative Ministry, the same has not yet been forwarded to Respondent No. 2 (DOP&T) for taking a final view as per extant guidelines. Since the cadre review proposal is not pending with DOP&T, name of Secretary, DOP &T may also be deleted from the list of respondents.

6. Vide orders dated 19th March, 2013, we had directed the respondents to place an affidavit on record disclosing the status of the Cadre Review of the BRES (Civil) Cadre.

7. The factual narration and position of Cadre Review is disclosed in the affidavit dated 11th July, 2013 which was filed pursuant to the directions contained in order dated 19th March, 2013. Vide the said affidavit, the respondents have made the following disclosures:-

3. That I say the first Cadre Review of the Border Roads Engineering Service (BRES) (Civil) Cadre was undertaken in 1987.

4. That I say, thereafter, on 16.1.1989 Government had created one post of Additional Director General (ADG) for BRES (Civil) by upgrading one post of Chief Engineer (Civil).

5. That in 2006 Cabinet Committee on Security (CCS) had inter alia approved restructuring of Border Roads Organisation (BRO). As per the restructuring approved by the CCS, the number of posts were increased in different grades of BRES (Civil) cadre as indicated below:

6. That thereafter a cadre review proposal of Group "A" cadres including BRES (Civil) Cadre was submitted by Directorate General of Border Roads in 2011. The same was examined by Border Roads Development Board in consultation with Ministry of Defence (Finance/Border Roads) and discussed many times at various levels but could not be finalised.

7. That a meeting of Border Roads Development Board (BRDB) was held on 4th February, 2013. The Board discussed the issues relating to "Cadre review of subordinates and Officers" and "Review of Manning Policy" along with other items. After discussion in the BRDB meeting it was decided to constitute a Committee to look into the issue of "Manpower needs of Border Roads Organisation (BRO) and the matter of manning ratio".

8. Accordingly, a Committee has been constituted under the Chairmanship of Joint Secretary (G), Ministry of Defence with other senior officers as Members. As the manpower needs of Border Roads Organisation (BRO) and the matter of manning ratio are interlinked with the cadre review, the Committee has been asked to consider the issue while making its recommendations. The Committee has held its meetings on 25.4.2013, 31.5.2013 and 06.6.2013 and further action will be taken on the basis of the recommendations of the Committee on "Manpower needs of Border Roads Organisation (BRO) and the matter of

manning ratio".

8. The matter has remained pending in this court to enable the respondents to disclose the status of the Cadre Review. We have been informed by the respondents that the draft proposal of Cadre Review is under consideration for finalization in consultation with Ministry of Finance and Ministry of Defence etc.

9. Upon considering the above disclosures which have been made by the respondents as well as bearing in mind the fact that the respondents are finally actively undertaking an exercise of Cadre Review of the BRES (Civil) Cadre, the present matter can be disposed of with the direction to the respondents to complete the exercise in a time bound manner. The respondents should bear in mind that valuable rights relating to the service of the petitioners are entailed and the exercise of Cadre Review being undertaken by the respondents is completed in stipulated period of time. The same is essential to prevent a spirit of demoralisation, which may result if the respondents do not actively engage in the matter, and ensure promotional avenues for which the force personnel would strive. Needless to say, the respondents are expected to complete the exercise of Cadre review and thereafter its effective implementation within specified period of time.

In view of the above, we dispose of this writ petition directing the respondents to ensure that the Cadre Review being undertaken as disclosed in the affidavit dated 11th July, 2013 is completed within a period of six months from today and to ensure its prompt and effective implementation of the same immediately thereafter.

C.M. Nos. 5919/2010, 11447/2010 and 19281/2012

In view of the above, the present pending applications do not survive for consideration and are disposed of accordingly.