

(2012) 04 DEL CK 0071

In the Delhi High Court

Case No : Writ Petition (C) No. 2042 of 2012 and CM No. 4432 of 2012

U.O.I. and Another

APPELLANT

Vs

R.K. Sharma

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Sashastra Seema Bal Group A Combatised (General Duty) Officers Recruitment Rules, 2004 — Rule 10, 19

Citation : (2012) 04 DEL CK 0071

Hon'ble Judges : V.K. Jain, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Ankur Chhibber, for the Appellant; Rajesh Katyal, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed

1. This writ petition is directed against the order dated 04.01.2012 in O.A. No. 3068/2011. The respondent had challenged the order dated 18.04.2011 whereby the ratio of the quota for promotion to the post of DIG between Area Organizers and Commandants had been altered from that prescribed under the relevant recruitment rules being the Sashastra Seema Bal Group "A" Combatised (General Duty) Officers Recruitment Rules, 2004. It is an admitted position that as per the existing recruitment rules 19 posts of DIG were available. Out of these 19 posts 60% were to be through promotion and the remaining 40% were to be on deputation from IPS. We are here concerned with the manner in which the 60% quota of promotion is to be distributed amongst the Area Organizers and Commandants. As per the existing recruitment rules 60% of 19 posts of DIG translates to 11 posts which are to be filled through promotion. Out of these 11 posts 7 have been earmarked for promotion from Commandants and the remaining 4 posts from the Area Organizers. In other words, although there is no percentage prescribed as to the quota for Area Organizers and Commandants, there is distinct ratio of 7:4 between the Commandants and Area Organizers

prescribed in the recruitment rules itself.

2. It so happened that because of administrative reasons there was a requirement for a greater number of posts, inter alia, of DIGs. As a result of which the number of posts for DIGs was sought to be increased from 19 to 23 in 2010-2011, 28 in 2011-2012, 33 in 2012-2013, 35 in 2013-2014 and 37 in 2014-2015. It is in this context that the issue of the extent of quota for Area Organizers and Commandants has arisen.

3. The Tribunal after considering the arguments advanced on the part of both sides came to the conclusion that the recruitment rules provided for a 7:4 ratio between Commandants and Area Organizers and that ratio had to be maintained for the increased number of DIG posts also. The Tribunal also came to the conclusion that mere executive instructions cannot override the recruitment rules.

4. Insofar as the recruitment rules are concerned, we are informed by the petitioner that there is a proposal for amending the recruitment rules taking into account the increase in the size of the entire organization as also the relative strengths of Area Organizers and Commandants. However, the proposed recruitment rules have not yet been put in place.

5. The learned counsel for the petitioner drew our attention to rule 10 of the said recruitment rules. The said rule reads as under:-

10. Power to relax.-Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing relax any of the provisions of these rules with respect of any class or category of persons.

A plain reading of the said rule would indicate that where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons. According to the learned counsel for the petitioner there has been a relaxation of the rule by the Central Government and the same is reflected in the note dated 23.06.2011 of the Department of Personnel and Training (DoPT). The said note reads as under:-

Department of Personnel & Training

Estt. (RR) Division

Pre-notes of MHA refer.

2. As per the existing RRs for the post of DIG in SSB (PB-4, GP of Rs. . 8900), the method of recruitment prescribed is 60% by promotion of Departmental Officers and 40% by deputation of IPS Officers. For promotion, 7 posts are earmarked for considering promotion of Commandants with 3 years regular service subject to a total of 20 years Group A Service and 4 posts are earmarked for promotions of Area Organiser with 3 years regular service subject to a total of 20 years. Group A Service. MHA have indicated that due to fresh authorization of

additional posts in the combatised system including the post of DIG in SSB, the quota for promotion of Commandant and Area Organiser to the rank of DIG has been reviewed in MHA U.O. Note dated 18.4.11, the same is prescribed as 4 posts by promotion of Area Organizer and the remaining posts by promotion of Commandants with the requisite service and eligibility conditions. As the notification of the revised RRS with the above changes is likely to take some time, approval of DOPT has been sought for filling up vacancies in the grade of DIG with revised distribution of posts on the basis of existing RRs. The proposal may be considered for approval. MHA may also expedite the notification of RRs.

We find that the note does not even use the word relaxation and there is no reference to rule 10 of the said recruitment rules. In fact there are no reasons recorded at all for any relaxation in terms of rule 10 of the recruitment rules. In any event, the note also categorically states that as the notification of the revised recruitment rules bringing about changes was likely to take some time, approval of the DoPT had been sought for filling up vacancies in the grade of DIG with revised distribution of posts on the basis of existing recruitment rules. In other words, the intention of the department was also not to travel beyond the existing recruitment rules. The way we read the existing rules is that there is a ratio of 7:4 between the Commandants and Area Organizers insofar as promotion to the post of DIG is concerned. We do not consider the said note to be a relaxation in terms of rule 10 of the recruitment rules.

Consequently, no grounds have been made out for interference with the impugned order. The writ petition is dismissed. There shall be no order as to costs.