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UNION OF INDIA & ORS.

v.

S. RAVICHANDRAN & ORS.

(Civil Appeal No. 429 of 2017)

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AUGUST 11, 2017

**[MADAN B. LOKUR, PRAFULLA C. PANT
AND DEEPAK GUPTA, JJ.]**

Service law:

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Conditions of service – Cadre – Review of – Propriety – Respondents working in ministerial cadre of Border Security Force (BSF) – Appellant by letter dtd. 28.8.2000 sanctioned abolition of 10% of promotion quota for ministerial cadre to the posts of Asst. Commandant and for creation of 26 posts of Asst. Commandant and 8 posts of Deputy Commandant vide letter dtd. 31.08.2000 –

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However, though the promotion quota meant for ministerial cadre was abolished, but no benefit was given in terms of letter dtd. 31.8.2000 – In the meantime, in view of cadre review of BSF, appellant by sanction letter dtd. 28.11.2003 created 67 posts of

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Asst. Commandant for ministerial cadre – However, no post of Deputy Commandant was created – Writ petition by respondents contending that appellant cannot be permitted to only partially implement the decision dtd. 28.08.2000/31.08.2000 as the promotion

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quota was deleted but no benefit was provided to them and further that the subject matters of letters dtd. 28.8.2000/31.08.2000 and 28.11.2003 were totally different and they operate in different fields – Writ petition, allowed – Plea of appellants that order(s) dtd.

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28.08.2000/31.08.2000 stood superseded by the cadre review conveyed by letter dtd. 28.11.2003 – On appeal, held: Decision dtd. 28.08.2000/31.08.2000 was superseded by the cadre review which took place on 28.11.2003 – Though, subject matters of letters

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dtd. 31.08.2000 and 28.11.2003 are slightly different but letter dtd. 28.11.2003 deals with restructuring of all posts from Constable to DIG including the posts meant for ministerial cadre and was issued in supersession of all orders on the subject concerned – No legal infirmity in letter dtd. 28.11.2003 – Judgment of High Court set

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aside – Border Security Force (Assistant Commandant) Recruitment Rules, 1985 – BSF (General Duty Officers) Recruitment Rules, 2001.

Promotion – Avenues of – Interference by courts – Held: It is for the employer to decide how many avenues of promotion to give to which branch – BSF is mainly a combat force and it is for the employer to decide to which level the ministerial staff should be promoted – Court cannot by its decision change the opinion of expert bodies.

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Allowing the appeal, the Court

HELD: 1.1 After perusing the record, it is clear that the decision dated 28.08.2000/31.08.2000 was superseded by the cadre review which took place on 28.11.2003. It may be true that the subject matters of the two communications dated 31.08.2000 and 28.11.2003 were slightly different but the subject matter of the letter dated 28.11.2003 encompassed the entire supervisory and support infrastructure of BSF which included the ministerial cadre and was issued in supersession of all orders on the aforesaid subject matter. The argument of the respondents that since the subject headings of the two letters were different they operated in different fields, is without merit. The communication dated 28.11.2003 dealt with restructuring of all posts from Constable to DIG including the posts meant for the ministerial cadre. It may be true, as pointed out by the private respondents, that earlier they were entitled to promotion till higher levels and now they will be stuck at the levels of Assistant Commandant but that is a matter in which the court cannot interfere unless the decision of the employer is totally arbitrary or perverse. It is not as if the ministerial cadre has no avenues of promotion. They are normally recruited as clerk (Head Constable) and some at the level of inspector. They all have avenues of promotion to the post of Assistant Commandant. It is for the employer to decide how many avenues of promotion to give to which branch. The BSF is mainly a combat force and it is for the employer to decide to which level the ministerial staff should be promoted. It is for the authorities to carry out the cadre review and decide whether the ministerial employees working on the ministerial side should be given more avenues of promotion. The court cannot by its decision change the opinion of expert bodies. [Para 11] [605-C-G]

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A **1.2 Further, it appears that none from the ministerial cadre was eligible for promotion prior to November, 2003 when the cadre review took place. Admittedly, none of the appellants was eligible for promotion during this period. It has been pointed out that though the BSF had also proposed creation of posts of**
 B **Deputy Commandant (Ministerial) but these posts were not sanctioned since no Assistant Commandant (Ministerial) would be eligible for promotion for at least four to five years and the purpose of creating these posts would be defeated when there were no eligible candidates in the foreseeable future. In the meantime, the cadre review took place wherein it was decided**
 C **that there should be 67 posts of Assistant Commandants earmarked for ministerial cadre employees but no posts of Deputy Commandants were earmarked for them. This decision clearly superseded the decision taken on 28.08.2000/31.08.2000. [Para 12] [605-H; 606-A-C]**

D **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 429 of 2017.**

From the Judgment and Order dated 09.03.2015 of the High Court of Delhi in W.P (C) No. 1419 of 2014.

E **Maninder Singh, ASG, R. Balasubramaniam, Nalin Kohli, Ritesh Kumar, Akshay Amritanshu, Prabhas Bajaj, Ankit Roy, Ms. Sushma Suri, Advs. for the Appellants.**

Sanjay K. Shondilya, Apporva Agrawal, Abhishek K. Singh, Hemant Sharma, Mushtaq Ahmad, Advs. for the Respondents.

F **The Judgment of the Court was delivered by**

DEEPAK GUPTA, J. 1. The private respondents are working in the ministerial cadre of the Border Security Force ('BSF' for short). They joined different posts in the ministerial cadre on different dates, which factual assertions are not denied by the appellants. There are two cadres in the BSF – (i) the General Duty cadre and (ii) the Ministerial cadre. They have different recruitment processes. The merger of the
 G **cadre takes place at the level of Assistant Commandant.**

2. The Border Security Force (Assistant Commandant) Recruitment Rules, 1985, were promulgated on 28.01.1985. These rules provide that at the level of Assistant Commandant 50% of the posts
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would be filled up by direct recruitment and 50% of the posts would be filled up by promotion. Out of the 50% quota meant for promotion, 10% of the vacant posts were to be filled in from the combatised ministerial staff failing which entire 50% to be filled in from general duty cadre. A

3. On 29.04.1998, a proposal was mooted for deleting the 10% quota for promotion of combatised ministerial officers, but, at the same time, it was also proposed that some posts from the general duty cadre should be diverted exclusively to the ministerial cadre to provide them better promotional avenues. On this proposal a note was prepared on 28.08.2000, which sanctioned the creation of 26 posts of Assistant Commandant and 8 posts of Deputy Commandant for the ministerial cadre. The Government of India conveyed the sanction for abolition of 10% of promotion quota from ministerial cadre to the post of Assistant Commandant and for creation of 26 posts of Assistant Commandant and 8 posts of Deputy Commandant for the ministerial cadre of BSF as part of the restructuring of combatised ministerial cadre vide letter dated 31.08.2000. The subject heading of the letter reads as follows: B C D

“Restructuring of combatised ministerial cadre of Border Security Force.”

Some conditions were laid down with regard to the manner in which these posts were to be filled up, with which we are not concerned. In this communication it was also mentioned that the proposal to merge the grades of S.Os, AOs and Subedar Majors with Inspectors in the ministerial cadre may be considered at the time of overall cadre review of BSF. E

4. Though these posts were sanctioned, this decision was, in fact, not implemented. Though, the promotion quota meant for the ministerial cadre was deleted, but no benefit was given to them in terms of the letter dated 31.08.2000. F

5. On 28.06.2001, the BSF (General Duty Officers) Recruitment Rules, 2001 were notified in which also there was no provision for promotion of ministerial cadre staff to the post of Assistant Commandant and above. A lot of correspondence was exchanged between the BSF and the Government and the authorities in the BSF supported the case of ministerial cadre. Mention was made that on abolition of 10% quota of posts of Assistant Commandant, it would be appropriate to create 14 posts of Deputy Commandant and 14 posts of Assistant Commandant for the ministerial staff. G H

A 6. In the meantime, a cadre review of the BSF was being conducted and, in this context, the Director General, BSF sent a communication on 16.12.2002 recommending to the Government of India for restructuring the cadres in the BSF keeping in view the fact that the BSF had to establish new frontier Headquarters and sector headquarters.

B 7. These proposals were duly considered by the Government of India and the decision in this regard was conveyed vide memo dated 28.11.2003, the subject matter and opening portion of which reads as follows:

C “Subject: RESTRUCTURING OF SUPERVISORY AND SUPPORT INFRASTRUCTURE IN THE BORDER SECURITY FORCE

Sir,

In super session of all orders on the subject cited above....”

D 8. By this sanction letter 67 posts of Assistant Commandant were created for the ministerial cadre. However, no post of Deputy Commandant was created for the ministerial cadre. We may add that by this memo the staffing pattern was restructured right from the post of Constable to the post of DIG.

E 9. In the year 2014, the private respondents filed a writ petition in which they prayed that the decision taken on 28.08.2000/31.08.2000, creating 26 posts of Assistant Commandant and 8 posts of Deputy Commandant in the ministerial cadre should be implemented. The stand of the Union of India was that the order(s) dated 28.08.2000/31.08.2000 stood superseded by the cadre review conveyed by letter dated F 28.11.2003. The High Court allowed the writ petition on the ground that once the right of the ministerial cadre to be promoted against 10% of the promotion quota to the post of Assistant Commandant had been taken away, the department was under an obligation to give effect to the decision taken by the Ministry of Finance on 28.08.2000 and conveyed G on 31.08.2000. Therefore, a mandamus was issued to give effect to the decision within six months.

H 10. Aggrieved by the judgment, the Union of India filed this appeal. The contention of the appellants is that the decision taken on 28.08.2000/31.08.2000 stands superseded by the cadre review which took place on 28.11.2003. It is also urged that during the period 28.08.2000/31.08.2000

to 28.11.2003, none from the ministerial cadre was eligible to be promoted either as Assistant Commandant or Deputy Commandant. On the other hand, on behalf of the private respondents, it is urged that the subject matters of the communications dated 28.08.2000/31.08.2000 and 28.11.2003 are totally different. It has been contended that the appellants cannot be permitted to only partially implement the decision dated 28.08.2000/31.08.2000. On the one hand, the promotion quota has been deleted and, on the other hand, the ministerial cadre has been left high and dry without providing any benefit to it.

11. After hearing arguments and perusing the record, we are clearly of the view that the decision dated 28.08.2000/31.08.2000 was superseded by the cadre review which took place on 28.11.2003. It may be true that the subject matters of the two communications dated 31.08.2000 and 28.11.2003 are slightly different but the subject matter of the letter dated 28.11.2003 encompasses the entire supervisory and support infrastructure of BSF which will include the ministerial cadre and has been issued in supersession of all orders on the aforesaid subject matter. The argument of the learned counsel for the private respondents that since the subject headings of the two letters are different they operate in different fields, in our opinion, is without merit. The communication dated 28.11.2003 deals with restructuring of all posts from Constable to DIG including the posts meant for the ministerial cadre. It may be true, as pointed out by the private respondents, that earlier they were entitled to promotion till higher levels and now they will be stuck at the levels of Assistant Commandant but that is a matter in which the court cannot interfere unless the decision of the employer is totally arbitrary or perverse. It is not as if the ministerial cadre has no avenues of promotion. They are normally recruited as clerk (Head Constable) and some at the level of inspector. They all have avenues of promotion to the post of Assistant Commandant. It is for the employer to decide how many avenues of promotion to give to which branch. The BSF is mainly a combat force and it is for the employer to decide to which level the ministerial staff should be promoted. It is for the authorities to carry out the cadre review and decide whether the ministerial employees working on the ministerial side should be given more avenues of promotion. The court cannot by its decision change the opinion of expert bodies.

12. It appears none from the ministerial cadre was eligible for promotion prior to November, 2003 when the cadre review took place.

- A Admittedly, none of the respondents was eligible for promotion during this period. It has been pointed out that though the BSF had also proposed creation of posts of Deputy Commandant (Ministerial) but these posts were not sanctioned since no Assistant Commandant (Ministerial) would be eligible for promotion for at least four to five years and the purpose of creating these posts would be defeated when there were no eligible candidates in the foreseeable future. In the meantime, the cadre review took place and in the cadre review it was decided that there should be 67 posts of Assistant Commandants earmarked for ministerial cadre employees but no posts of Deputy Commandants were earmarked for them. This decision clearly supersedes the decision taken on 28.08.2000/31.08.2000.
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13. We, therefore, find no legal infirmity in the communication dated 28.11.2003, which in our opinion, supersedes the decision dated 28.08.2000/31.08.2000. We accordingly allow the appeal and set aside the judgment of the High Court of Delhi. Consequently, the writ petition filed by the private respondents also stands dismissed. No order as to costs. Pending application(s), if any, stand(s) disposed of.

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