

# Wing Commander Hansa Dutt Lohani (Retd) vs Director General, Border Security ... on 27 July, 2020

**Author: Rajiv Sahai Endlaw**

**Bench: Rajiv Sahai Endlaw, Asha Menon**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P. (C) 4582/2020, C.M. Appl. Nos.16549/2020 (for exemption)  
& 16550/2020 (for ad-interim stay)

WING COMMANDER HANSA DUTT LOHANI (RETD)

.....Petitioner

Through: Mr. S.C. Malhotra, Advocate  
along with petitioner-in-person.

versus

DIRECTOR GENERAL, BORDER SECURITY FORCE & ANR.

.....Respondents

Through: Mr. Anurag Ahluwalia, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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27.07.2020

[VIA VIDEO CONFERENCING]

C.M. Appln. No. 16549/2020 (for exemption from filing the original annexure & improper margins of documents)

1. Allowed, subject to just exceptions and as per the extant rules.

2. The application is disposed of.

W.P. (C) 4582/2020, C.M. Appln. No. 16550/2020 (for ad- interim stay)

3. The petitioner, a Commandant/Pilot with the respondents BSF, has filed this petition seeking mandamus, directing the respondents BSF to constitute a Departmental Promotion Committee (DPC) for consideration of the petitioner for promotion to the rank of DIG/Captain Pilot, w.e.f. 1st April, 2018.

4. It is the case of the petitioner, (i) that the petitioner was commissioned in the Flying Branch of Indian Air Force on 16th December, 1995; (ii) that on 24th February, 2014, the petitioner joined the respondents BSF, on deputation, in the Air Wing, as Commandant/ Pilot; (iii) that on persuasion, the petitioner sought release from Air Force, for permanently joining the respondents BSF; (iv) that the petitioner was so released on 19th December, 2016 and on 20th December, 2016 was permanently absorbed in BSF as Commandant/ Pilot; (v) that the next higher rank in the BSF for the petitioner is of DIG/Captain Pilot and posts for which rank are to be filled up by promotion, failing which by deputation or absorption; (vi) that though on 1st April, 2018, there were vacancies in the post of DIG/Captain Pilot, but the petitioner was not considered for the reason of having not completed the qualifying residency period of two years in the post of Commandant/Pilot; (vii) that though the petitioner applied for waiver of the residency period and which waiver has been granted to others in the past, but was not granted the waiver; (viii) though the petitioner completed the qualifying residency period on 1 st April, 2019, but the DPC due, is being delayed; and, (ix) that the petitioner has learnt that the delay is on account of the respondents BSF seeking clarification, whether the stint of the petitioner in Indian Air Force is to be treated as a Group 'A' Officer of the Indian Air Force.

5. We have enquired from the counsel for the respondents BSF, whether the petitioner, on 20th December, 2016, was absorbed in the BSF treating the service of the petitioner in the Air Force as a Group 'A' service.

6. The counsel for the respondents BSF states that the BSF has sought clarification from the Ministry of Home Affairs in this regard and which is pending.

7. We may mention that as per the relevant rules of the respondents BSF, annexed at page 52 of the petition, for promotions to the post of DIG/Captain Pilot, besides the residency period of two years, service in the grade with the total of 20 years of Grade 'A' service is necessary.

8. We have enquired from the counsel for the petitioner, whether not it is necessary to implead Indian Air Force, to determine, how the Indian Air Force treats the commissioned service i.e., whether as Group 'A' service or not.

9. Counsel for the petitioner states that there is no need therefor, as there is already a judgment of this Court, being judgment dated 12th September, 2019 in WP(C) 10726 of 2018 titled Gp Capt Tarun Shah Vs Director General, BSF, holding commissioned service as equivalent to or rather better than Group 'A' service.

10. We have also asked the counsel for the petitioner, on what basis the petitioner is seeking promotion w.e.f. 1st April, 2018, inasmuch as the petitioner by then had not completed the residency period of two years in the post of Commandant/Pilot.

11. The counsel for the petitioner states that the petitioner has pleaded in this petition that waiver sought by him was wrongfully rejected.

12. However neither has the petitioner in the prayer paragraph of the petition impugned the rejection of the waiver nor sought any relief with respect to the rejection of waiver vide Annexure A-6, which is dated 18th January, 2018, nor is there any explanation for the delay therefrom in preferring the petition.

13. Be that as it may, issue notice.

14. Notice is accepted by the counsel for the respondents.

15. Ministry of Home Affairs is requested to issue the clarification sought from them, at the earliest, and in any case before the next date of hearing.

16. In the meanwhile, counter affidavit, if any, be also filed.

17. List on 4th September, 2020.

18. Counsel for the petitioner seeks interim relief stating that if the vacancies in the rank/post of DIG/Captain Pilot are filled up in the meanwhile, the petition would become infructuous.

19. Mr. Subhash Chand Verma, ACM, BSF present during the hearing confirms that there are vacancies.

20. It is deemed appropriate that one of the vacancies be not filled up till the next date of hearing.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JULY 27, 2020 ck/pkb