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

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RESERVED ON: 07.02.2013
PRONOUNCED ON: 04.03.2013

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W.P. (C) 6081/2012
CM APPL.16414/2012

P.S.RAWAL AND ORS Petitioners
Through: Mr. P.S. Patwalia, Sr. Advocate with
Mr. Ashok Mahajan and Ms. Kamlesh Mahajan,
Advocates.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr. V.S.R. Krishna with
Mr. Abhishek Yadav, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S.RAVINDRA BHAT

1. The petitioners (four in number) are working as Inspector Generals, Railway Protection Force (hereinafter referred to as "RPF" or "the Force"). The next higher post from the post of Inspector General is the post of Additional Director General, RPF. They seek directions to the respondents to consider them for promotion to the post of Additional Director General, (ADG) RPF, and further directions to restrain the respondents from filling up the post of ADG, by transfer/deputation.

2. The facts are that the RPF is an armed force of the Union, and governed by provisions of the Railway Protection Force Act (“the Act”). By notification issued on 8th May, 1981, the Railway Board framed rules governing the RPF (known as “the 1981 Rules”). The petitioners were appointed as members of the RPF in 1980-81. In terms of the Rules, the posts of Asst. Commandant, Commandant, Assistant Inspector General, Deputy Inspector General, and Inspector General are all Group- A posts. It is stated that the post of ADG, RPF was created in 2002, on the basis of the recommendations made by the Railway Board to the Fifth Central Pay Commission which recommended that the said post to be manned by the RPF Officers. The relevant extract of the said recommendation is as follows:

“Further, keeping in view the hierarchy and the working of the Indian Railway System and the peculiar nature of prevailing crimes of the Railway, this Force need be broadly manned by their own cadre officers who have grown with the organisation to do better justice to the system of Railways. Therefore, there is a complete justification for having a post at least at the level of Addl. DG level, earmarked for RPF officer. As on date, the post of DG/RPF which is in the pay scale of Rs.8000 (fixed) is being manned by an officer of IPS cadre.

While 80% of the posts in the RPF in the level of DIG and above are filled up on the basis of deputation, movement of RPF cadre officers to other Police Organisations under the Central Government does not take place to a corresponding extent. Thereby, the promotional prospects of the officer of the RPF cadre are greatly reduced. It is therefore suggested that more of the posts which are now being filled up on the basis of deputation should be made available to the RPF cadre officers or alternatively, there should be sufficient scope for RPF officers to move outside on deputation.”

3. The petitioners next rely on the terms of an office memorandum dated 24-3-2009 to say that the Department of Personnel and Training (DOP&T)

had generally directed all Central Ministries to carry out amendments to the existing recruitment rules, to bring them in line with recommendations of the Sixth Central Pay Commission, which resulted in upgrading pay scales or merging scales in existing posts. The relevant part of the Memorandum reads as follows:

“The recommendations of 6th CPC have been considered by the Government and the CCS (Revised Pay) Rules 2008 have since been notified on 29th August, 2008. Consequently, in place of the pre-revised pay scales, the revised pay structure comprising the Pay Band and Grade Pay/Pay Scale has come into effect. Some of the pre-revised pay scales have been merged and some others are upgraded/likely to be upgraded. In the light of these, it has been decided that the following consequential steps to amend the existing Service Rules / Recruitment Rules shall be undertaken on a priority basis:

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iii) Consequential changes

It is necessary to make consequential changes in the Recruitment Rules/Service Rules so as to prescribe eligibility conditions with reference to the revised Grade Pay/Pay scale. It is also necessary to review other columns of the Recruitment Rules/Service Rules, where some minimum service in a particular scale/grade is prescribed for consideration for appointment on deputation/absorption etc., keeping in view particularly the merger of a number of pre-revised scales, upgradation of some scales and the consequential changes in the minimum eligibility service in a grade.”

4. The petitioners also argue that that the Ministry of Railways, pursuant to the Office Memorandum dated 24.3.2009 (hereafter “the 2009 memorandum”) issued a resolution dated 11.6.2010 (“the 2010 resolution”) containing principles and procedures for making appointment to the posts carrying the pay-scale of Rs.67,000/- (annual increment @ 3%) - Rs.-

79,000/- in various Group 'A' Railway Services which include the post of Additional Director General, RPF. They claim to be eligible for consideration to the post of Additional Director General in terms of the 2010 resolution of the Ministry of Railways inasmuch as they have been working on Senior Administrative Grade posts for more than 3 years and they are less than 59 years of age. The relevant extract of that recommendation is as follows:

*“No. E(O)1JJ-93/PM/50
Rail Bhawan, New Delhi-110001, dated 11.06.2010.*

RESOLUTION

The Government of India have had under consideration the question of laying down principles and procedure for making appointment to the posts in scale Rs. 67,000 (annual increment(J3%)-.79,000/ - in various Group 'A' Railway Services under the Ministry of Railways. It has been decided that the method and eligibility criteria for the purpose of selection of officers for these posts will be as laid down hereunder: -

Method

Service-wise panels for appointment to the posts in scale Rs.67,000 (annual increment @ 3%)-79,000/- in Zonal Railways/Production Units/Railway Board/RDSO etc. shall be prepared by the Selection Committee consisting of Chairman, Railway Board as Chairman, Secretary to the Government of India in the Department of Personnel and Training and functioning Member in charge Railway Board (or Member Staff, Railway Board when Chairman, Railway Board is also the functional Member), as Members. The Selection Committee may also recommend the specific type/types of assignment for which a particul officer mentioned in the panel may be considered suitable. The panel, as prepared by the Selection Committee, and duly approved by the Minister of Railways, shall be submitted for approval of the Appointment Committee of the Cabinet and alter approval,

specific Postings will be ordered by the Minister of Railways.

2.1 While preparing Service.-wise panels, in addition to vacancies arising in the cadre of each Service due to superannuation, promotion, etc., during the panel year, vacancies anticipated as a result of postings/promotion to general posts determined for each cadre/service on the basis of experience of preceding five years, shall be taken into account.

3. Eligibility Criteria.

(a) Officers to be considered for empanelment should have worked in Senior Administrative Grade for a minimum period of 3 years on regular basis and should be less than 59 years of age as on the 31st April, of the year for which the panel is made, as referred to in para 4 of this Resolution.

(b) Only such of the empanelled officers would be appointed to these posts who had a year or more of service left on the date of occurrence of vacancy falling in their turn....

ORDER

Ordered that a copy of the resolution be circulated among the members of various Group 'A' Railway services. Ordered also that the Resolution be published in the Gazette of India for general information.

Sd/

11/6/10

(Shivaji Rakshit)

Secretary, Railway Board."

5. The petitioners were promoted to the rank of Inspector General, RPF with effect from 12.3.2010. However, a later Office order dated 11.5.2012 by the Ministry of Railways revised their seniority; they were given notional promotion to the said post (as Inspector Generals) with effect from 1.7.2002,

1.7.2003, 1.7.2003 and 1.7.2004 respectively. It is also stated that their seniority was revised as a consequence of the judgment dated 19.3.2003 of the Calcutta High Court (in W.P. No.6880 of 1998). The appeal against the judgment dated 19.3.2003 was dismissed by the Division Bench of the Calcutta High Court, and the Special Leave Petition too was dismissed by the Supreme Court. The retrospective dates of promotion to the post of Inspector General assigned to them, contend the petitioners, also entitles them to seniority and the other entitlements, including the right to be considered for further promotion.

6. The post of ADG fell vacant on 19th May, 2011. It is an undeniable fact that at the time the 1981 Recruitment Rules were framed, that post was not in existence; apparently, one post of Inspector General was up-graded as ADG, in 2002. Since then, the post has been manned by deputation from amongst members of the Indian Police Service (IPS). Upon the appointment/promotion of the incumbent ADG to the post of Director General, the former post fell vacant. The petitioners rely on a proposal/noting made by the Inspector General (Administration) dated 17-11-2011 forwarding the name of the first petitioner for consideration – for promotion as ADG. The relevant extract of that proposal is as follows:

“This post of ADG/RPF (Post Code — 7450) was brought in the years 2005. In the past this post was being filled by IPS Officer on deputation as there were no eligible cadre officers. However, Shri P.S. Rawal who got promoted in SAG on 12.03.2010 has completed the eligible criteria for promotion to the rank of HAG as prescribed by DOP&Ts OM No. AB. 14017/61 /2008-Estt (RR)/Pt dated 18.01.2011 (copy enclosed).

Secretary’s Branch may kindly undertake empanelment and promotion of Shri P.S. Rawal to the ADG in HAG.”

7. On 23-1-2012, the first petitioner, Shri P.S. Rawal addressed a representation to the Chairman, Railway Board, requesting that his name be considered for promotion as ADG. Reliance is next placed on a noting dated 23-2-2012 in the file of the Railway authorities, recommending the case of the first petitioner, for promotion as ADG. This noting recollected the background for creation of the said post, especially the recommendation of the Fifth Pay Commission, which was accepted in 2002 and stated that since the first petitioner had attained eligibility in terms of the DOPT's Memorandum dated 18-01-2011 for manning the HAG (Higher Administrative Grade) post, i.e. that of ADG, he ought to be considered for that post. The first petitioner also relies on two representations made to the Railway Board, on 8-6-2012 and 30-08-2012, requesting that he should be considered for promotion to ADG. In the background of these circumstances, the petitioners have sought the reliefs described earlier in this judgment, by filing the present proceeding under Article 226 of the Constitution of India.

8. It is submitted by Mr. Patwalia, learned senior counsel for the petitioners that the obdurate refusal of the respondents to consider the petitioners for promotion as ADG is arbitrary. It is further submitted that the background of the facts in this case reveals that the said post was created at the recommendation of the Fifth Pay Commission, and with the express intention of catering to the aspirations and promotional needs of the members of the Force. The 1981 Rules, it is submitted, do not provide for appointment to the post of Director General or Additional Director General. However, the recommendations of the Pay Commission, if read together with the Office memorandum of 2009, issued by the DOP&T, and the

Railway Board's 2010 resolution clarify absolutely that for promotion to the HAG, Inspector Generals who fulfill the age and service criteria have to be considered.

9. Learned counsel submitted that unlike in the past, i.e. from the time of creation of the post of ADG in 2002 onwards, when, of necessity, outside officers had to be drafted in on deputation, because none of the in house candidates within the RPF fulfilled the eligibility conditions, there is a radical change now. Several officers in the cadre of Inspector General are now eligible, because they have been holders of that post with effect for nearly a decade or so. In these circumstances, the respondents, especially the Ministry of Railways, and the Home Ministry cannot shut them out of consideration, on the ground that there is a policy decision only to bring in officers from the IPS or other outside services to man the said post of ADG.

10. It is argued that in terms of the judgment of this Court dated 4th December, 2012, in *Harananda & Others v Union of India & Ors* (WP No. 6314/2012) the respondents cannot even say that the RPF is not a Group A service. Particular reliance is placed on the following extracts of that judgment:

“6. Respondent No.2 i.e. the Ministry of Personnel, Public Grievances and Pension (Government of India) looked into the grievance and took a conscious decision that the recommendations of the Ministry of Railways made in the year 2001 to constitute Railway Protection Force as an ‘Organized Group A Central Service’ merited approval resulting in an Office Memorandum dated November 20, 2003 being issued, which reads as under: -

“OFFICE MEMORANDUM

Subject : Constitution of Railway Protection Force as an Organized Service.

The undersigned is directed to refer to the Ministry of Railways' OM No 96/E(GR)/I/16/I dated 8-5-2003 on the above subject and to say that this Department agrees, in principle, to the proposed constitution of the Railway Protection Force as an organized Group 'A' Central Service.

2. The proposal will have to be placed before the Cadre Review Committee for its approval just like a normal cadre review proposal. Ministry of Railways are requested to send a detailed proposal for the purpose to this Department for further processing.

3. This has the approval of MOS (PP).”

7. Suffice would it be to state that DOPT accorded approval for constitution of the Railway Protection Force as an Organised Group A Central Service and the matter had thereafter to proceed ahead by looking at the cadre structure with the object to find out whether any cadre review was required keeping in view the cadre structure of Organized Group A Central Service.

8. The Ministry of Railways looked into the matter and prepared the draft service rules keeping in view the cadre structure required for Organized Group A Central Service and way back on March 1 , 2005 sent the necessary grade wise cadre structure as also the draft service rules to DOPT and regrettably we find that for over seven years the matter has been put in a slumber by DOPT.

9. Learned counsel for DOPT states that inter departmental communications and notes are being exchanged.

10. Suffice would it be to state that life keeps on moving and does not stagnant. Officers who have joined service in Railway Protection Force would continue to retire on attaining the age of superannuation and God knows how many of them have superannuated in the last seven years.

11 . *It is unfortunate that an in principle decision which was taken way back in the year 2003 and found a manifestation in the Office Memorandum dated November 20, 2003 has not reached its terminal destination inspite of nine years having gone by. Nine years is too long period to keep on exchanging notes.*

12. *The task at hand is simple. The in principle decision taken to constitute Railway Protection Force as an Organized Group A Central Service simply requires a cadre structure of similar Group A Services to be kept in mind as also service rules of the said organization and put in place the cadre structure and service rules for Railway Protection Force and for which we would highlight that way back on March 1 , 2005, the necessary grade wise cadre structure as also the draft service rules were prepared by the Ministry of Railways, meaning thereby, the launching pad has already been prepared.*

13. *The position which therefore emerges is that an in principle decision exists with a consent of all stakeholders that Railway Protection Force has to be constituted as an Organized Group A Central Civil Service.*

14. *If this be so, and noting that the matter has been languishing for over nine years, we dispose of the writ petition issuing a mandamus that within the next six months the necessary cadre structure of Railway Protection Force as also the service rules would be finalized with reference to Railway Protection Force being an Organized Group A Central Civil Service.*

15 . *Since the documents filed would reveal to us that three bodies have to interact i.e. UPSC DOPT and Ministry of Railways, we direct that the Cabinet Secretary would nominate a Nodal Officer to co-ordinate within the 3 bodies: and for his guidance we may indicate that the Nodal Officer should be the senior most Secretary in either of the two Ministries or UPSC. The said Officer designated would function as the Nodal Officer to inter se co-ordinate the working of the two ministries and UPSC and it would be his duty to ensure that the mandamus is complied within the next six months. We make it*

clear that over nine years have elapsed and if within six months supine indifference is shown towards the mandamus issued, the same would be viewed as constituting an act of contempt of this Court.

16. The petition stands disposed of.”

Respondent's contentions

11. The respondents contend that the claim in the present petition for directions that they should be considered for promotion to the post of ADG (RPF), and further restraining the respondents from filling up that post by way of transfer/deputation has been made without any sustainable cause of action. It is contended, in the counter affidavit - and by Counsel, Shri Krishna, that the basic premise of petition - evident from the order dated 25.9.2012 by this Court - is that since there are no Recruitment Rules for the post of ADG (RPF); and that it has to be filled up on the basis of the 2010 Resolution as no other policy criteria has been prescribed. It is submitted that this contention and premise is devoid of merit.

12. It is submitted that the single post of ADG was for the first time created as a result of a Cabinet decision by order dated 19.4.2002. The background for creation of the post of ADG is that the incumbent has to coordinate with different states and also with the Ministry of Home Affairs for Manpower Planning, Law & Order, Railway Security and other matters which required operating at a higher level. It is submitted that at the time of creation of the post of ADG (RPF) on 19.4.2002, it was decided that post being in Higher Administrative Grade, should be filled by calling for a panel of suitable IPS officers from the Department of Personnel & Training (DOP&T) and making appointment with the approval of the Appointments

Committee of the Cabinet (ACC). Accordingly, the single post of ADG has consistently been filled by calling for names of suitable IPS officers of appropriate seniority, eligible for appointment at Additional DG's level at the Centre, from DOP&T, and on approval of such appointments by the ACC.

13. The respondents underline that the previous history of creation of posts, the manner it was filled all this while for over 10 years, and the procedure for filling it, have all been admitted in the writ petition. Therefore, since from its inception, the post of ADG was filled by the transfer/deputation, there was no question of applicability of the 2010 Resolution. The respondents argue that the petitioners' contention that as they have rendered three years of service in the Senior Administrative Grade and, the post of ADG should be filled by them on the basis of Resolution of 2010 is misconceived.

14. It is argued that the Resolution dated 11.6.2010 is meant for Group 'A' Railway services which have identical Recruitment Rules, that is to say that the eligibility service for promotion from their recruitment level, i.e. Junior Scale to Senior Scale and so on till SA Grade is the same. The eligibility service in the case of RPF officers, as prescribed in their recruitment rules, is different. Further, unlike other Group 'A' Railway services, the RPF is an Armed Force of the Union under the Ministry of Railways and is governed by Rules which are separate from the other Group 'A' services. Therefore, the contention that the Resolution dated 11.6.2010 be made applicable to the RPF officers is misplaced.

15. It is contended that as far as the recommendations made by the Railway authorities to the Central Pay Commission, and other file notings

relied on by the petitioners go, they cannot be said to vest them with any entitlement for consideration to the post of ADG. It is argued that at best these inter departmental communications with the Railways, and letters written to the Government only reflect thinking in some sections of the establishment. The resolution of the Railway Board, of August, 2012, on the other hand, is clear, that recruitment rules have to be framed after due consideration of all factors. In these circumstances, the current situation is that there is no entitlement or indefeasible right with the petitioners to claim that they can be considered, much less to the exclusion of others, to be appointed or promoted to the post of ADG.

16. It was argued that the post of ADG cannot be characterized as part of a Group 'A' services, to attract the resolution of 11-6-2010, and that the declaration of this court has granted the Railway authorities time to take steps to make consequential changes. In these circumstances, the existing arrangement of filling the post from amongst eligible officers of IPS and other forces would continue; nothing arbitrary or unreasonable has been shown by the petitioners, to compel this court to intervene in exercise of its judicial review power under Article 226 of the Constitution.

17. During the hearings, the respondents also produced the concerned files. This Court had occasion to go through them. Apart from the Resolution of 11-6-2010, the notings extracted above, the recommendations made to the Fifth Central Pay Commission etc., the file also contained the following notings, reflecting the position in the Railways. The first relevant document is the order of the Railways, upgrading an existing IG level post to that of ADG, in 2002. That document is extracted below:

“No.2000E (GC) 8-4 (67)

New Delhi, dt.19.4.2002

Sub: Upgradation of the Sa Grade post of Inspector General/HQ to HA Grade as Addl. Director General, Headquarters in RPF, Railway Board.

Sanction of the Ministry of Railways is hereby accorded to the upgradation of the SA Grade post of IG/RPF/HQ (Postcode 7540) in Railway Board to HA Grade (Rs.22400-24500) as Addl. Director General/RPF/HQ/Railway Board. Additional expenditure arising out of the above upgradation will be met from the savings on account of posts surrendered in the Fire Wing of RPF.

2. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

*Sd/-
(Ms. B.K. Minz)
Joint Director, Estt. Gaz. (Cadre)
Railway Board*

No.2000E(GC) 8-4 (67)

New Delhi, dt. 19.4.2002”

On 12-6-2012, the Directorate’s (Security) of the Railways, analyzing the proposal to consider RPF officers for the post of ADG, reflects as follows:

“Sub: Promotion of Shri PS Rawal, DIG/RPF to the post of ADG/Railway Protection Force.

Ref: Noting on Pages 2-3/n ante.

DG/RPF, on pre-pages, has requested that Shri PS Rawal, presently working as IG/RPF may be promoted to HAG and posted as ADG/RPF. It has been mentioned that the post of ADG/RPF was created as per the recommendations of the Fifth Central Pay Commission. The Memorandum submitted to the

5th CPC inter alia recommended that the “....this Force need be broadly manned by their own cadre officers who have grown with the organization to do better justice to the system of Railways. Therefore, there is a complete justification for having a post at least at level of Addl. DG level, earmarked for RPF officers.” Board (MS) has minuted that this may be examined.

2. Recruitment Rules of RPF 1981 contain provisions for filling up posts in RPF upto the SA Grade level i.e. IG/RPF. Recruitment Rules for the post of ADG/RPF are yet to be framed. In the past, this post was manned by IPS officers on deputation.

3. Security Directorate have quoted DOP&T's letter dated 18.01.11 regarding qualifying service in Organized Group 'A' Engineering Services. In terms of this letter, for promotion to HAG, the eligibility requirement shall be “officers in the SAG (PB-4 Grade Pay Rs.10000/-) with 3 years' regular service in the grade OR officers with 25 years' regular service in Group 'A' posts in the service out of which at least 1 year' regular service should be in the SAG.” It has been mentioned that Shri PS Rawal who got promoted to SAG on 12.03.10 has completed this eligibility criteria and hence he may be promoted to HAG.

4. The eligibility condition quoted by Security Directorate is applicable to Engineering Services. The post of ADG comes under the Ministry of Railways and the norms followed for other Services cannot be applied to posts under the Ministry of Railways.

5. For making appointment to posts in Grade Rs.67000-79000/- in various Group 'A' Railway Services under the Ministry of Railways, principles and procedure have been laid down in Resolution No.E (O) III-93/PM/50 dated 11.6.2010 (F/A) notified by Ministry of Railways after approval of the ACC.

6. *The following eligibility criteria have been laid down in the said Resolution: -*

(i) *Officers to be considered for empanelment should have worked in Senior Administrative Grade for a minimum period of 3 years on regular basis and should be less than 59 years of age on the 1st April of the year for which the panel is made.*

(ii) *Only such of the empanelled officers would be appointed to these posts who had a year or more service left on the date of occurrence of vacancy falling in their turn.*

Empanelment/appointment to HAG of Railway Services is done after approval of the Appointments Committee of the Cabinet (ACC).

7. *Board (MS & CRB) may kindly see for orders whether the eligibility condition for HAG i.e. 3 years service in SAG as laid down in Resolution dated 11.06.10 and followed for Railway Services should also be made applicable in case of Shri Rawal/IG/RPF.*

8. *Submitted please.*

*Sd/- 12.6.12
US (C)''*

The Railway Board's resolution of 29th August 2012, to the extent it is relevant, reads as follows:

"B2. Norms for filling up the post of Addl.

Adv/Confdl

*Director General/RPF (Rs.67000-79000).
DG/RPF
No.2012/SCC/17/10*

Board decided that DG/RPF should propose Recruitment Rules for filling up the post of Additional Director General/RPF which will be finalized after inter-ministerial consultation and approval of the Competent Authority”.

18. The respondents have also placed on record the decision whereby the post of ADG was converted in the RPF into a HAG grade position. It is a Railway Board letter, dated 15-3-2010, written to the General Manager, Northern Railways, on the subject “*Operation of posts in RPF.*” The relevant extract of that letter is as follows:

“It has been decided by the Board to transfer the HA Grade element of the post of ADG/RPF/Railway Board to Northern Railway for upgradation of the SA Grade post of CSC/RPF/Northern Railway to HA Grade and for its operation as Additional Director General (ADG), RPF, Northern Railway.

2. *Accordingly, sanction of the Ministry of Railways is hereby accorded to transfer the HA Grade element of the post of Additional Director General/RPF/Railway Board (Postcode: 7540) to Northern Railway for upgradation of the SA Grade post of CSC/RPF/Northern Railway (Postcode: 6501) to HA Grade and for its operation as Additional Director General (ADG), RPF, Northern Railway.*

3. *The operation of the HA Grade post at Northern Railway will be effective from the date the element is released by Railway Board or the post is operated at Northern Railway in the higher grade, whichever is later.*

4. *Consequently, the HA Grade post of ADG/RPF/Railway Board (Postcode 7540) will be downgraded and operated in SA Grade.*

5. This issues with the concurrence of the Finance Directorate of the Ministry of Railways.

(V. Vaidehi)
Director, Estt. (Gaz. Cadre)
Railway Board
New Delhi, dated 15.03.2010”

The respondents also rely on an office Memorandum, dated 18th January, 2011 which talks of eligibility of SAG officers to HAG posts. It reads as follows:

“Dated 18th January, 2011

OFFICE MEMORANDUM

Subject: - Qualifying service for promotion to SAG/HAG Grades in Organised Group A Engineering Services – regarding

This Department vide OM of even No. dated 15.12.2009 had issued guidelines for amendment of Service Rules for incorporating the eligibility requirements for promotion to SAG and HAG level in Organized Group A Services.

2. *The matter has been examined in respect of the Organized Engineering Services where the functional JAG is at Grade Pay of Rs.8700/- and the eligibility requirement for SAG level is 3 years in the JAG grade.*

Accordingly for promotion to SAG (PB 4 Grade Pay Rs.10000/-) Level in Organized Engineering Services, the eligibility requirement shall be

‘Officers in the grade of Superintending Engineer and equivalent (PB 4 Grade Pay of Rs.87000/-) with 3 years regular service in the grade or officers in the grade of Superintending Engineer/Equivalent with 17 years regular service in Group A posts in the service out of which at least 1 year of regular service should be in the PB-4 Grade Pay of Rs.8700.’

For promotion to HAG (Rs.67000-79000/-) level, the eligibility requirement shall be

- *Officers in the SAG (PB-4 Grade Pay Rs.10000/-) with 3 year's regular service in the grade OR Officers with 25 years' regular service an Group A posts in the service out of which atleast 1 year' regular service should be in the SAG*

3. *The cadre controlling authorities of the various Organized Group A Engineering Services may initiate action for appropriate amendments in the Service Rules.*

4. *Hindi version will follow.*

*Sd/-
(Dinesh Kapila)
Director”*

19. The Petitioners also relied on an amendment to the Railway Protection Force Act, made in 1985. This amendment placed restrictions upon the respondents from bringing officers on deputation to the Force; the relevant amendment, i.e. Section 19, reads as follows:

“19 (1) . The Force constituted under the principal Act as functioning immediately before the commencement of this Act (hereafter in this section referred to as the existing Fore) shall, on such commencement, be deemed to be the Force constituted under the principal Act as amended by this Act, and every member of the existing Force holding immediately before such commencement an office mentioned in column (1) of the Table below shall, on such commencement, be deemed to have been appointed to the office mentioned in the corresponding entry in column (2) of the said Table.

xxx

xxx

xxx

(2) Notwithstanding anything contained in sub-section (1), any member of the existing Force may, within thirty days from the commencement of this act, exercise his option by notice in writing to the Director General-

(a) if such member has been on deputation to the existing Force from any other service, to revert to such other service, and

(b) in any other case, to retire from service, and an option so

exercised shall be final, and a member exercising such option such be permitted, within thirty days from the date on which he exercises such option to revert to the service from which he had been on deputation or, as the case may be, to retire from service.

Explanation. For the purposes of this section, the expression “member” includes an officer, and the expression “Director General” shall have the same meaning as in the Principal Act, as amended by this Act.”

20. The preceding discussion would reveal that till 2002, the RPF did not have the post of ADG; an existing IG level post was upgraded on 19-4-2002 to the HAG (Higher Administrative Grade) pay band. The subject heading of that order itself clearly specifies the nature of the post – i.e. that it is in the HAG band (*Upgradation of the SA Grade post of Inspector General/HQ to HA Grade as Addl. Director General, Headquarters in RPF, Railway Board*). Consequently, there is no dispute about the fact that the post is a HAG post. In line with this decision is the further order of the Railway Board dated 15-3-2010 directing an administrative arrangement whereby the SAG element of an existing IG level post was upgraded in the Northern Railway, into the post of ADG; the HA element of the existing Railway Board post was downgraded into an SAG post. This arrangement was perhaps for convenience; it retained the existing ADG level post within the Railways. Thus, the post of ADG in the Higher Administrative Grade has been in existence for over ten years, i.e., from 19-04-2002.

21. The next question is regarding the rules of recruitment. There is no dispute that the Railway Protection Force is an armed force of the Union; the controlling statute, i.e. the Railway Protection Force Act 1957 says as much.

The recruitment rules were framed in 1981; obviously, they do not speak of appointment to the post of ADG. These rules, *inter alia*, provide as follows:

“Cadre of superior officers of the Force:

54.1 The cadre of superior officers of the Force shall be manned by-

(a) direct recruits through the Civil Services Examination conducted by the Union Public Service Commission,

(b) Promoted from lower ranks or the Force,

(c) Deputationists from Indian Police Service and other State Police Services,

(d) Occasional admission of other qualified persons on the recommendation of the Union Public Service Commission, who would enter laterally as considered necessary from time to time.

54.2 The strength of the cadre and its composition shall be such as may be determined by the Central Government from time to time.

55. Recruitment and promotion of superior officers:

55.1 Subject to these rules, recruitment of superior officers and promotion to the rank of Assistant Commandants and from one rank of superior officer to the other rank of superior officers shall be made in accordance with the Railway Protection Force (Group ‘A’ and ‘B’ Posts) Recruitments Rules, 1981, as amended from time to time.

55.2 confirmation and regularization in each rank shall be made on all India availability of the posts in that rank.

56. Appointment to the Force :

All appointments to the Force –

(a) in respect of Group ‘A’ shall be made by the Central Government, and

(b) in respect of enrolled members shall be made by the authorities as specified in Schedule II.”

22. The respondents admit that the post of ADG was created in 2002; they have produced the relevant Memorandum, which upgraded an existing IG level post to that of ADG. However, they contend that mere recommendation by the Central Pay Commission that the post should be exclusively manned by the RPF cadre officers is not enough; the Central Government has to accept that recommendation, and further act on it by framing rules for filling that post. Till then, the policy would continue to be what has been followed for more than a decade, which is transferring or deputing suitably ranked officers from other services such as IPS officers. In support of this, the resolution of the Railway Board of August, 2012 is relied on. The respondents also contend that till the rules are framed, or the posts are actually reserved for RPF cadre officers, they cannot claim any entitlement to be considered for the post of ADG. In tune with this argument, it is also contended that the 2010 resolution does not apply to the post of ADG, RPF, but to Engineering Cadres in the Railways. On the other hand, the petitioners rely on the terms of the recommendation of the Pay Commission to argue that the Central Government accepted the suggestion, resulting in creation of an ADG's post. No eligible officer existed till 2010, from amongst RPF cadre officers. That year, several officers were promoted as IGs; what is more, their promotions were given retrospective effect. The resolution of 2010 cannot be restricted in its application to Engineering Cadres. Thus, the RPF officers of appropriate SAG level are entitled to be considered for the HAG post of ADG. The petitioners also rely on the amendment to the Act, whereby deputationists cannot continue; consequently, IPS or outside cadre officers cannot be appointed to the post of ADG.

23. The up-gradation of an IG level post to that of ADG took place by order dated 19-04-2002. That order does not expressly talk of the Central Pay Commission recommendation. Yet, there cannot be any dispute that the Railways itself mooted the proposal, and even said that such posts should be manned solely from RPF cadre officers. Therefore, the background which led to the creation of the post appears to have been the suggestion made to the Central Pay Commission by the Railways itself. It is also a fact, not denied by the petitioners, that the post was till 2011 filled exclusively by deputationists. Two events took place in 2010. The first was that the petitioners were promoted as IGs; this was later given retrospective effect, resulting in their occupying the post with effect from 8-10 years back onwards. The second – and perhaps more important event - was the 2010 resolution. Here, the respondents' contention that the resolution does not apply, is without substance. The resolution, in fact, states that:

“The Government of India have had under consideration the question of laying down principles and procedure for making appointment to the posts in scale Rs. 67, 0000 (annual increment(@3%)-.79,000/- in various Group ‘A’ Railway Services under the Ministry of Railways.”

The respondents' contention that the resolution applies only for Engineering services, and promotion to HAG posts in such services, is not correct, because there is no such limitation in the 2010 circular itself. In fact, the terms of the resolution are that each Railway Group 'A' service has to take action in drawing panels of eligible officers for promotion to Higher Administrative Grade. That the post of ADG is a HAG post is clear from the order of 19-04-2002, creating it, by up-gradation. So far as to whether the cadre of RPF is a Group 'A' service, even though counsel had sought to urge

that the post of ADG was a Group 'A' one, but the cadre was not, this Court holds that the argument is devoid of merit. Each of the posts encadred by the Recruitment Rules, of 1981 is a Group 'A' post. Moreover, the decision in *Harananda & Others* has based the declaration that RPF is a Group 'A' Central Service upon an Office Memorandum of 08-05-2003 of the Railway Board, constituting the service as a Group 'A' service. In the circumstances, it is held that the 2010 resolution squarely applies, for filling the HAG post of ADG.

24. It is interesting to mention here, at this stage that the note put up to the Union Cabinet, (dated 6th March, 2002) for the proposal to create the post of ADG, by upgrading an existing IG level Senior Administrative Grade post, stated that:

“Keeping in view the additional responsibilities being shouldered by IG/Hqrs who assists DG in all matters pertaining to Establishment and who has to co-ordinate with different States and also with the Ministry of Home Affairs for manpower planning, law and order, Railway Security and other matters, it is proposed that the post of IG/Hqrs, presently being operated in SA grade should be operated in the rank of Additional Director General (scale of pay Rs. 22,400/- - 24,500/-). At present, in the cadre of RPF, there is no such grade. With the proposed upgradation of one SA Grade post to HA Grade, one post will be reduced in SA Grade post to HA Grade, one post will be reduced in SA Grade and the cadre will be provided with one post in HA Grade.”

25. To complete the narrative, it would also be important to notice that the memorandum for the Railway Board meeting (the decision of which in August, 2012 has been extracted above) stated that the recruitment rules for RPF prescribed the method of appointment only up to the post of IG and that no rules for filling the post of ADG, RPF existed. It also stated that the RPF

is an armed force of the Union, under the administrative control of the Railways and proposed that promotion to the rank of ADG, RPF, should be compared with promotion in other such Central Police Organizations and other Group 'A' Railway services. The Memorandum went on to say further that:

“Recruitment Rules of BSF notified as recently as in June 2012 may be taken for comparison (Annexure II). In case of BSF, for promotion to the rank of Additional Director General (HAG) the eligibility condition is that the officers should have rendered a minimum of thirty years' Group A service including three years as Inspector General (SAG).”

After showing the relevant criteria for promotion, and spelling out eligibility conditions, in a comparative chart, the Memorandum proposed that the Railway Board may consider *“Whether the existing resolution dated 11-6-2010 containing principles and procedure for appointment to HAG posts in Railway Services may be adopted for the post of Additional Director General/RPF;”*. It was in this background that the Board decided that *“DG/RPF should propose Recruitment Rules for filling up the post of Additional Director General/RPF which will be finalized after inter-ministerial consultation and approval of the Competent Authority”*.

26. That there is a need to amend the rules to appropriately incorporate the conditions spelling out the terms governing promotions for ADG is indisputable. However, it is not as if in the absence of such rules, the Railways are denuded the power to make appointments. It is also an undeniable fact that prior to 11-6-2010 there were no uniform norms which governed promotions to HAG posts. ADG posts are HAG posts; this is evident from the note put up to the Cabinet on 6-3-2002, and the order

up-grading one post of IG to that of ADG. In the absence of such common norms for filling HAG governing Group 'A' Railway services, what norms existed, did not entitle any RPF official to be considered for the post of ADG, all the while. Consequently, IPS cadre officers were repeatedly appointed on deputation basis (in 2002, 2005, 2007 and thereafter till 2011, when the post was vacated by a deputationist). The stand of the respondents – first articulated in their Office Memorandum of 18-11-2011, and repeated later in the memorandum of 12-06-2012 (which also gets reflected in the Memorandum proposed to the Board, in August 2012) that the norms of the 11-6-2010 memorandum applicable to Railway Group 'A' services may not apply, is illogical. The mere fact that RPF is an armed force of the Union does not undermine the fact that its cadre of officers belong to a Group 'A' Railway services; this court has recognized and declared as much, in *Harananda & Others* (supra). Even if any other norms were to be adopted, either by comparison, or through some other manner, the fact remains that SAG cadre officers with 30 years' service, and more than 7-9 years in the SA Grade, exist within the RPF. Therefore, the petitioners' contention that unlike previous occasions when the post of ADG fell vacant, this time there are eligible officers, who fulfill the general norms applicable, is well founded, and merited. The object of up-gradation, spelt out in the proposal mooted to the Central Pay Commission, was clearly to ensure career opportunities to RPF level officers. The note put up to the Cabinet, in fact in some ways supports this; it clearly states that the IG level officer (who can be from RPF) used to discharge all the functions which were eventually upgraded to ADG level responsibilities.

27. There is another reason why the petitioners' arguments are well

founded and substantial. There is no reservation or limitation in the 11-06-2010 Memorandum expressing its inapplicability or limited applicability to members of RPF. Later letters or memoranda are mere interpretations; even the reference to the Board sought an express decision on whether the memorandum should not be extended to RPF; the Board neither agreed, nor disagreed. Resultantly, the said 11-06-2010 Memorandum operates and binds the Railways and the respondents, in its own terms; the petitioners are eligible and have to be considered for promotion to the post of ADG.

28. *Roop Chand Adlakha and Ors. v. Delhi Development Authority and Ors.* [1988] Supp (3) SCR 253, a decision of the Supreme Court, deals with the process of classification and points out how classification itself can produce inequality:

“19.....The process would be constitutionally valid if it recognises a pre-existing inequality and acts in aid of amelioration of the effects of such pre-existent inequality. But the process cannot in itself generate or aggravate the inequality. The process cannot merely blow-up or magnify in-substantial or microscopic differences on merely meretricious or plausible differences. The over-emphasis on the doctrine of classification or any anxious and sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in replacing Doctrine of equality by the doctrine of classification. The presumption of goods faiths in and of constitutionality of a classification cannot be pushed to the point of predicating some possible or hypothetical but undisclosed and unknown reason for a classification rendering the precious guarantee of equality a mere rope of sand.”

The insistence, or rather the interpretation of the Railway authorities that RPF officers though belonging to a Group ‘A’ service within the

administrative control of the Railway Ministry, nevertheless not being governed by the memorandum of 11-6-2010 is on an artificial basis; it amounts to treating equals unequally.

29. It has also been held in *Mohammad Shujat, Ali & Ors. v Union Of India & Ors.* AIR 1974 SC 1631 and in *Comptroller And Auditor General v K.S. Jagannathan & Anr* AIR 1987 SC 537, that prescription or application of criteria for promotion or other conditions of service, based on irrelevant considerations cannot be justified. It is now well settled that public authorities and agencies are free to act, in regard to appointing officers and personnel, in furtherance of executive powers, in the absence of rules, having the force of law. This was recognized far back, in *B. N. Nagarajan And Ors vs State Of Mysore And Ors* 1966 (3) SCR 682 where the Supreme Court held as follows:

“6. In the background of this position we are unable to interpret r.3 of the General Recruitment Rules as suspending the executive power of the State till rules of recruitment of a service are specially made in that behalf. Rules usually take a long time to make; various authorities have to be consulted and it could not have been the intention of r. 3 of the General Recruitment Rules, 1957, to halt the working of the public departments till rules were framed. This Court considered a similar point in T. Cajee v. U. Jormanik Siem(AIR 1961 SC 276) and arrived at a similar conclusion.”

In the above view of the matter, there is no force in the submission that the respondents have to necessarily await framing of Recruitment rules, for filling the post of ADG, from amongst in house, eligible personnel.

30. The stand of the respondents, that the memorandum of 11-6-2010 does not apply to the RPF, though it is a Group ‘A’ Railway service,

because it is an armed force of the Union, is illogical and without basis. The terms of the said memorandum make no such exception or contain any restrictive condition. Though the Memorandum for the relevant Railway Board meeting elicited that decision, the Board did not agree and state that the said Memorandum of 11-6-2010 cannot apply to the RPF. In the absence of any such move, the respondents are putting forward an argument which amounts to a fetter on their power or manner of exercise of discretion. When no statutory provision, or binding rule or regulation, exists nor has been shown to the court to bar consideration of RPF officers who are eligible for consideration for promotion as ADG, in terms of the said Memorandum of 11-6-2010, the argument of the Railway authorities also amounts to denial of the consideration of the petitioner's name, for irrelevant considerations.

31. The Court is further of opinion that and the respondents' insistence on considering names of IPS and other outside officials despite the statutory bar, in terms of Section 19 of the Act, is a clear illegality. Section 19 (2) is cast in imperative terms, and notwithstanding that an existing member of the Railway Protection service may be a deputationist, he has to be repatriated. In other words, the choice of recruiting personnel on deputation is curtailed. The only possible exception is the post of Director General, who has to receive the option of others to repatriate. Implicit in the provision is the idea that the Director General can be a deputationist. Having regard to the terms of the said provision, which now binds the Railway authorities, and which appears to have been overlooked altogether, it is held that the post of ADG in the RPF has to be filled from amongst in-house IG level candidates of the RPF itself, in accordance with the memorandum of 11-06-2010.

Consequently, a direction is issued to the respondents to forthwith process the case of the petitioners, and start the process of promotion to the post of ADG, in line with the said memorandum of 11-06-2010. The entire process shall be completed within six weeks and the recommendations forwarded in that regard, to the ACC (Appointments Committee of the Cabinet) thereafter.

32. The writ petition has to, in view of the above discussion, succeed. It is allowed in terms of the above directions; there shall, however, be no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**SUDERSHAN KUMAR MISRA
(JUDGE)**

MARCH 04, 2013