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ITEM NO.10

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No.12393/2013

(Arising out of impugned final judgment and order dated 04/12/2012 in WPC No. 6314/2012 passed by the High Court of Delhi at New Delhi)

UNION OF INDIA & ANR.

Petitioner(s)

VERSUS

SHRI HARANANDA & ORS.

Respondent(s)

WITH S.L.P.(C)...CC 5735/2016

(With appln.(s) for permission to file SLP and office report)

S.L.P.(C)...CC 5737/2016

(With appln.(s) for permission to file SLP and office report)

S.L.P.(C)...CC 5736/2016

(With appln.(s) for permission to file SLP and office report)

S.L.P.(C)...CC 5738/2016

(With appln.(s) for permission to file SLP and office report)

S.L.P.(C)...CC 5742/2016

(With appln.(s) for permission to file SLP and office report)

S.L.P.(C)...CC 5740/2016

(With appln.(s) for permission to file SLP and office report)

S.L.P.(C)...CC 5743/2016

(With appln.(s) for permission to file SLP and office report)

S.L.P.(C) No.13937/2016

S.L.P.(C) Nos.35548-35554/2015

(With appln.(s) for c/delay in filing substitution appln. and clarification/modification of court's order and impleadment and permission to file additional documents and setting aside an abatement and substitution and interim relief and office report)

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Date : 06/04/2017 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr. Ranjit Kumar, S.G.

Ms. Binu Tamta, Adv.

Ms. Asha G. Nair, Adv.

Ms. Rashmi Malhotra, Adv.

Mr. B. Krishna Prasad, AOR

Mr. Pankaj Pandey, Adv.

Mr. Sidharth Luthra, Sr. Adv.

Ms. Supriya Juneja, AOR

Mr. Sidharth Mehta, Adv.

Ms. Mehaak Jaggi, Adv.

Ms. Sushma Suri, AOR

For Respondent(s)

Mr. Amit Kumar, AOR

Mr. Rekah Palli, Sr. Adv.

Ms. Punam Singh, Adv.

Mr. Nikhil Palli, Adv.

Ms. Shruti Munjal, Adv.

Mr. Deepak Goel, AOR

Mr. Devashish Bharuka, AOR

Ms. Jyoti Singh, Sr. Adv.

Mr. Vabhar Kalra, Adv.

Mr. Jasbir Bidhuri, Adv.

Mr. Sudhanshu Kumar Choudhary, Adv.

Ms. N. Annapoorani, AOR

Mr. Ankur Chhibbar, Adv.

Mr. Anil Kumar Gautam, AOR

Mr. Gaurav Agrawal, AOR

Mr. Vivek Narayan Sharma, AOR

Mr. Sidharth Mahajan, Adv.

Ms. Nibita Singh, Adv.

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Ms. Ankita Singh, Adv.

Mr. Ajay Singh, Adv.

Mr. Rajeev Jha, Adv.

Mr. Nagendra Rai, Sr. Adv.

Mr. Vishwajit Singh, AOR

Mr. Gaurav Singh, Adv.

Mr. Abhijit Sunny, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Delay in filing the application for substitution is condoned.

Heard learned counsel for the parties.

The interlocutory applications for substitution and setting aside the abatement stand allowed. Let the cause title be rectified accordingly.

Though an adjournment was sought on behalf of the learned senior counsel appearing for the respondents in S.L.P.(C) No.35548-35554 of 2015, as the other counsel appearing in the other special leave petitions have submitted that they may be heard in the matter, we thought it appropriate to have an idea about the case.

It has been highlighted by Mr. Ranjit Kumar, learned Solicitor General of India appearing for the appellant, the Union of India and Mr. Sidharth Luthra, learned senior counsel appearing in S.L.P.(C) No.....CC 5738/2016, which has been preferred on behalf of the Indian Police Services Central Association, that the High Court could not have been able to create Organized Group "I" Services on the basis of certain notes, correspondences and the letters issued by the Department of Personnel and Training (DoPT), Government of

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India, for it is the Home Department which has the jurisdiction/authority under the Railway Protection Force Act, 1957, Border Security Force Act, 1968, Central Industrial Security Force Act, 1968, Central Reserve Police Force Act, 1949, Sashastra Seema Bal Act, 2007 and Indo Tibetan Border Police Force Act 1992.

Learned counsel for the respondents, per contra, would contend that the Union of India which was represented by the Department of Personnel Ms. Sushma Suri, AOR and Training in the matters relating to the cases which were filed on behalf of the BSF, CISF, CRPF, ITBP and SSB and the Railways, had entered appearance along with DoPT in the Railway Protection Force matter.

In the course of hearing, our attention has been drawn to the report filed by the Second Administrative Reforms Commission submitted in the year 2008. The said Commission after writing a preface on various aspects has emphasized on the need for reforms. Our attention has been drawn to paragraph 4.2.3. The said paragraph reads as follows:-

4.2.3. The various Civil Services at the Union and State levels can be classified in several different ways. Firstly, the Civil Services can be categorized into three broad groups - Central Civil Services, All India Services and the State Civil Services. The Central Services function under the Union government and are generally engaged in administering subjects which are assigned to the Union under the Constitution, whereas the All India Services are common to the Union and the States and the State Services function only under

the State Governments. Secondly, the Union and

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State Services can be classified into Group A, B and C categories based on their role and responsibilities. Thirdly, these services can also be classified into technical and non-technical services.

It has also been submitted that the said report states about a table which incorporates all the Organized Group "A" Central Civil Services in Government of India. In item Nos. 15, 22, 23, 24 and 25, the services which find place are Railway Protection Force, Border Security Force, Central Industrial Security Force, Central Reserve Police Force and Indo Tibetan Border Police respectively. We have also been shown that the said list was drawn having its source from DoPT.

Learned counsel for the respondents have also drawn our attention to the cadre review of Group "A" Central Civil Services done by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training in 2010. In the preface, it has been mentioned as follows:-

"The Department of Personnel & Training is the nodal agency of the Government of India for personnel management policies. One of the important functions envisaged for the Department concerns the periodical review of cadres and various organized Group "A" Central Services. It renders advice to cadre controlling authorities on the subject, processes cadre review proposals and functions as the Secretariat for the Cadre Review Committee.

This Department has issued guidelines for Cadre Review which were last updated in 1993. Since then, significant developments have taken place in the field of personnel management and functions of government are also undergoing

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change. A need was therefore felt for a review of these guidelines. Detailed deliberations were held with cadre controlling authorities to identify areas that need to be improved upon while conducting cadre reviews. Based on these discussions and also our experience of conducting cadre reviews, guidelines have been revised and a new Monograph on Cadre Management of Central Group "A" services has been prepared with the assistance of Centre for Good Governance, Hyderabad.

And again:-

"The revised Monograph on Cadre Review is issued with the hope that cadre controlling authorities would find it useful and there will be more effective and purposeful cadre reviews." We have also been commended to the O.M. dated 14 th

December, 2010, issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training. The subject as enumerated therein deals with consolidated guidelines on cadre review of Central Group "A" Services. The relevant part of which is as follows:-

"The undersigned is directed to say that provisions governing the process of cadre review of Central Group "A" Services are contained in various Office Memoranda issued by the Department

of Personnel and Training and the Department of Expenditure. As a part of this Department's endeavour to keep the personnel policies relevant to current and future needs, these provisions have been reviewed in consultation with various stakeholders and it has been decided to issue a consolidated and revised set of guidelines on cadre review. The revised guidelines are given below. Besides, the broad issues concerning cadre review have been elaborated in the revised Monograph on Cadre Review of Central Group & Services enclosed herewith.â\235

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Paragraph 4 of the said O.M. deals with financial implications. It is extracted below:-

â S 4. Financial Implications

(i) The proposal having additional financial implications would be entertained strictly on functional considerations like consistent increase in workload, horizontal expansion in activities etc.

(ii) While calculating the additional expenditure, the impact of Non-functional Upgradation may be taken into account. The calculation sheet must be enclosed with the proposal.â\235

Annexure 1 to the said O.M. gives list of Central Group â ªâ ª"! Services category wise. The first category is non-technical services, the second is technical services, the third is health service and the fourth one, other services. The other services include CRPF, CISF, BSF and ITBP and non-technical services includes Railway Protection force. According to the learned counsel appearing for the respondents, once an office memorandum has been issued accepting the position, it cannot be stated that it is based on office notes or a policy decision, as has been argued by the learned Solicitor General.

In essence, it is expounded that the High Court by issuing a writ of mandamus that the benefit of non-functional financial upgradation granted to the Organized Group â ªâ ª"! Services should be granted to the respondents as the cadre has been reviewed and the distinction between the organized and non-organized cadre has already melted.

In reply to the submissions advanced by the learned

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counsel for the respondents, it is urged by Mr. Ranjit Kumar, learned Solicitor General that Section 3 of the Railway Protection Force Act, 1957, which deals with constitution of the force may be referred to as an example. The said provision reads as follows:-

â S 3. Constitution of the Force .â (1) There shall be constituted and maintained by the Central Government an armed force of the Union to be called the Railway Protection Force for the better protection and security of railway property.

(2) The Force shall be constituted in such manner, shall consist of such number of superior officers, subordinate officers, under officers and other enrolled members of the Force and shall receive such pay and other remuneration as may prescribed.â\235

Section 8 provides for superintendence and administration of the Force. Relying on the same, it is submitted by learned Solicitor General that once the Railway

Protection Force is an armed force of the Union, any decision that has to be taken, is required to be taken by the Home Department and, ultimately it has to travel to the Cabinet for its acceptance and notification.

At this juncture, learned counsel for the respondents have drawn our attention to Section 10 of the said Act. The said provision reads as follows:-

â- S 10. Officers and members of the force to be deemed to be railway servants .â- Director-General and every member of the Force shall for all purposes be regarded as railway servants within the meaning of the Indian Railways Act, 1890 (9 of 1890) other than Chapter VIA thereof, and shall be entitled to exercise the powers

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conferred on railway servants by or under that Act.â- \235

The said provision has been taken aid of to buttress the submission that the Director-General is the competent authority to determine and not the Ministry of Home Affairs. Learned counsel has also referred to the rules of convenience to show that the Home Department does not deal with the Railway Protection Force Act.

We have recorded the submissions advanced at the Bar in seriatim to understand the controversy. The three issues that emerged for consideration are:-

(i) Whether by virtue of issuing the office memorandum by the DoPT classifying the categories with regard to Centralized Group â- ÜAâ- "! Services, as a natural corollary, the respondents can have the similar benefits with the Organized Group â- ÜAâ- "! Services, for Group â- ÜAâ- "! Organized Services has drawn from the Central Group â- ÜAâ- "! Services and their attributes thereof are provided for in the O.M. dated 20 th November, 2009?

(ii) Whether the Home Department alone responsible to take the decision or other departments can confer the benefit of equivalence subject to approval by the Cabinet?

(iii) Whether as has been projected before us, the nature of work of the persons who are engaged in this services would be a factor to extend the benefit by the Union of India on the principle of parity.

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Apart from the aforesaid issues which merge another aspects need to be addressed. It is submitted by Mr. Ranjit Kumar, learned Solicitor General and Mr. Luthra, learned senior counsel that if the cadres to which the respondents belong are declared as Organized Group â- ÜAâ- "! Services, then there cannot be any deputation and no one from the cadre of Indian Police Services can come on deputation and it is likely to give parallel hand system within the force establishment. The said submission is seriously disputed by the learned counsel for the respondents.

We will be failing in our duty if we do not take note of another aspect of the matter. The respondents, as we perceive, are grieved by non-grant of equal pay for equal work, that is, benefit that has been granted to the organized services. If that is the case, we would like the respondents to file their duty chart in respect of each of the forces. The petitioners shall also file the duty chart and the job allocation so that a comparison can be made that can render assistance in the process of adjudication. In the ultimate eventuate, we think it apt to say that if the conferment of monetary benefit can assuage the grievance of the

respondents, the Union of India may rethink over the matter without disturbing its sense of discipline as it conceives. The personnel of BSF, CRPF, CISF, ITBP, RPF and SSB are to play their role in their duties. Though we have framed the issues that will be required to be addressed, yet we would like the Union of India to take a decision, as advised, so that the respondents may feel that their grievances have been appositely addressed.

In view of the aforesaid, on being asked to

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consider, Mr. Ranjit Kumar, learned Solicitor General of India, prays for eight weeksâ"! time so that a decision can be taken at the end of the Union of India. Though eight weeksâ"! time has been prayed for, we think it appropriate to grant twelve weeks so that it can be really deliberated upon and a decision is taken so that the respondent may not feel that they are not been appositely dealt with.

Let the matter be listed on 9 th

August, 2017.

(Chetan Kumar)

Court Master (Madhu Narula)

Court Master