



2025:DHC:11097-DB



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

Date of decision: 10th December, 2025

IN THE MATTER OF:

+ W.P.(C) 10726/2018

GP CAPT TARUN SAHA

.....Petitioner

Through: Mr. S.C. Malhotra and Mr. Kunal
Kishore, Advocates.

versus

DIRECTOR GENERAL BORDER SECURITY FORCE AND ORS.

.....Respondents

Through: Ms. Radhika Bishwajit Dubey, CGSC
with Ms. Gurleen Kaur Waraich and
Mr. Kritarth Upadhyay, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

ORDER

VIMAL KUMAR YADAV, J.

Review Petition No. 142/2020, CM APPLs. 23964/2020, 45413/2022 & 46120/2022

1. Lost in tinsel of the verdict, handed down by the Hon'ble Apex Court in *Union of India vs Atul Shukla*, 2014 (10) SCC 432, the Division Bench of the High Court failed to give a finding on the proposition as to whether the officer, who initially comes on deputation on a lower post, can be permanently absorbed in a higher post, for which post he applies for absorption, pursuant to an advertisement made in that regard, claim the review applicants in the review petition, which is under consideration herein.



2. Backdrop of the review petition is available in the facts that Group Captain Tarun Saha, serving as Wing Commander with Indian Air Force, Flying Branch, joined the post of Commandant/Pilot with the Border Security Force, Air Wing, on 24.02.2014 on deputation, in consonance with the terms of Memorandum of Understanding dated 08.11.2013, signed by Ministry of Defense and the Ministry of Home Affairs, Govt. of India, New Delhi. While serving as Commandant/Pilot with the Border Security Force (in short the BSF), he was given proforma promotion on the post of Group Captain by his parent organization on 14.06.2015. The BSF issued an advertisement to fill up seven vacancies to the post of Captain/Pilot (DIG) on 24.06.2016, to which advertisement Tarun Saha applied on permanent absorption basis, vide application dated 30.06.2017. He was informed that his application was examined and rejected, since it lacked merit. Aggrieved by the rejection of his candidature, he filed Writ Petition (C) No. 10726/2018, wherein the Division Bench issued a direction, vide judgment dated 12.09.2019, to the BSF to consider his application dated 30.06.2017 for absorption against available vacant post and issue consequential orders not later than four weeks, from the date of the order.

3. The present review petition, along with an application seeking condonation of delay, was moved by the review applicants.

4. Review applicants cried hoarse that despite the submissions made that Shri Saha, who was on deputation to the post of Commandant/Pilot, cannot be absorbed to the higher post of Captain/Pilot, the court opted not to decide the said proposition, when it handed down the judgement, on the writ petition moved by him. When the judgement is perused, it came to light that the said submission was detailed in para No. 24 of the judgment, however, no finding was recorded thereon.



5. Dealing with such a situation, the Hon'ble Apex Court in ***Mohd. Akram Ansari vs Chief Election Officer***, 2008 (2) SCC 95 ruled that a review petition is maintainable when a proposition is urged before a court of law but not addressed to in the judgement. The decision of the court was couched as follows:

“14. In this connection we would like to say that there is a presumption in law that a Judge deals with all the points which have been pressed before him. It often happens that in a petition or appeal several points are taken in the memorandum of the petition or appeal, but at the time of arguments only some of these points are pressed. Naturally a Judge will deal only with the points which are pressed before him in the arguments and it will be presumed that the appellant gave up the other points, otherwise he would have dealt with them also. If a point is not mentioned in the judgment of a Court, the presumption is that that point was never pressed before the learned Judge and it was given up. However, that is a rebuttable presumption. In case the petitioner contends that he had pressed that point also (which has not been dealt with in the impugned judgment), it is open to him to file an application before the same learned Judge (or Bench) which delivered the impugned judgment, and if he satisfies the Judge (or Bench) that the other points were in fact pressed, but were not dealt with in the impugned judgment, it is open to the concerned Court to pass appropriate orders, including an order of review....”

6. At a first blush, we find that the contention advanced by the review applicants is appreciable. Though the above contention was raised and noted down by the Division Bench, yet it was not addressed to when the judgement was delivered. We are constrained to take up the review petition and to answer the contention, so advanced.

7. Deputation refers to a temporary arrangement where an employee is transferred from his parent organisation or department to another organisation or department for a specified period. The employee on deputation retains his lien in the parent organisation, meaning thereby he can



return to his original post once the deputation period ends. This arrangement is often made to meet the requirements of a particular role, such as skill transfer, filling vacancies, and supporting organizational needs, which the borrowing organisation cannot fill internally or when there is a need for specialised expertise. The process involves specific guidelines and terms, such as the duration of the deputation and the nature of duties in the new post.

8. Office Memorandum No. 6/8/2009-Estt. (Pay II) dated 17th June, 2010, consolidates the guidelines relating to terms and conditions on which services of employee(s) are transferred on deputation from the Central Government/State Governments/Public Sector Undertakings/Autonomous Bodies, Universities/UT Administration, Local Bodies etc. The relevant portion, relating to fixation of pay of the deputationist, will help us for adjudication of the present controversy. The same is extracted therefrom thus:

“5.3 In cases of appointments to a second or subsequent ex-cadre post(s) in a higher pay scale/grade pay than that of the previous ex-cadre post, the pay may be fixed with reference to the pay drawn in the cadre post and if the pay so fixed happens to be less than the pay drawn in the previous ex-cadre post, the difference may be allowed as personal pay to be absorbed in future increases in pay. This is subject to the condition that on both the occasions, the employee should have opted to draw pay in the scales of pay/Grade Pay attached to the ex-cadre posts.”

9. The gravamen of the guidelines, so issued, bring to light that an officer on deputation may apply for a higher post and on his appointment to such a higher post, his pay would be fixed as per guidelines detailed, herein above.



10. Question for consideration would be as to whether Shri Saha's application for appointment to the post of Captain/Pilot was not maintainable? Review applicants assert that an officer, who initially came on a deputation, may be permanently absorbed in the same post if recruitment rules prescribe for absorption as a mode of recruitment. Since he was not on deputation on the post of Caption/Pilot (DIG), he cannot apply for appointment to that post by way of absorption. To have support, reliance has been placed on contents of para 3.11.6 of O.M. No. AB.14017/48/2010-Estt. (RR) dated 31.12.2010, wherein difference between the terms "absorption" and "deputation" has been pointed out.

11. Para 3.11.5 of the above Office Memorandum explains that "absorption" and "short-term contract" may be kept as methods of recruitment to get services of a suitable officer, having requisite qualification and experience. Under the provision "absorption", the officer who will come, may be permanently absorbed in the post/grade. Such an "absorption" can be effected only in the "case of officers from the Central Government/State Government". Under "deputation including short-term contract", an officer from outside can come for a limited period, by the end of which will have to revert to his parent cadre, explains the provisions of para 3.11.6 of the above Office Memorandum.

12. BSF Air Wing (Group 'A' Officers Combatised Posts) Recruitment Rules, 2011 contemplate that 50 percent posts of Commandant/Pilot shall be filled by promotion and 50 percent by deputation (including short-term contract)/absorption. Post of Captain/Pilot shall be filled by promotion, failing which by deputation (including short-term contract)/absorption. Admittedly Shri Saha joined with the BSF as Commandant/Pilot on deputation, one of the modes for recruitment to the post. As detailed above,



an officer who joins a post on deputation shall have to revert back to his parent organization, after the specified period for which he remains on deputation, as detailed in para 3.11.6 of the Office Memorandum, referred above. Though one of the modes for recruitment to the post of Commandant/Pilot was on the basis of absorption also, but Shri Saha had applied to recruitment to that post by way of deputation only. It was neither incumbent on the BSF nor required of Shri Saha to apply for absorption on the post of Commandant/Pilot. On expiry of his period of deputation, after its extension twice, he was reverted back to his parent organization.

13. Absorption is one of the modes for recruitment to the post of Captain/Pilot, when it cannot be filled by way of promotion. When no officer for promotion to the post of Captain/Pilot was available, 7 posts were advertised for recruitment by way of deputation (including short-term contract)/absorption basis. Shri Saha applied to that post on absorption basis. His application was declined on mis-conception of fact that he was not absorbed on the post of Commandant/Pilot, on which he was serving on deputation. As pointed out above, there was no such situation which required of Shri Saha to seek absorption on the post of Commandant/Pilot and on being so absorbed, he could have applied to the post of Captain/Pilot. Had he been absorbed on the post of Commandant/Pilot, there would have been a case for consideration of his candidature for promotion to that post. Since Shri Saha had fulfilled the qualification, he rightly moved an application for being considered for the post of Captain/Pilot on absorption basis, one of the modes of recruitment advertised by the BSF. The review applicants failed to comprehend the contents of paras 3.11.5 and 3.11.6 of the above Office Memorandum.



14. The advertisement, issued by the BSF, nowhere classifies the officers of Indian Air Force into the categories of persons: (i) on deputation with the BSF, and (ii) serving with the parent cadre, for the purpose of making an application for appointment to the post of Captain/Pilot. However, while considering his application such a classification was there in the mind of the officers, who dealt with the application prior to filing of the writ petition and thereafter through Departmental Screening Committee. Such a classification, under which officer of the BSF were belabouring, was not based on any intelligible differentia, which distinguishes the officers of the two categories, referred above, and the differentia was not having a rationale relation with the object they sought to achieve. Therefore, the claim made by the review applicants, in the application, is found to be untenable to grant the review, claimed herein.

15. Review applicants assert that Wg Cdr Surendra Malik and Wg Cdr J.S. Sangwan were erroneously appointed directly on absorption basis in the rank of Commandant/Pilot, Shri Saha cannot claim negative equality with them, invoking the provisions of Article 14 of the Constitution of India. To substantiate their contention, an attempt has been made to place reliance on the precedent in *Fuljit Kaur vs State of Punjab*, 2010 (11) SCC 455.

16. The Division Bench, relying the precedent in *Atul Shukla (supra)*, ruled that Group Captain (Select) and Group Captain (Time Scale) cannot be treated in different categories and classification made on the ground of their selection to that post was not based on any intelligible differentia. No negative equality was given to Shri Saha. The Division Bench found that Group Captain of the above two categories stand on the same pedestal and cannot be differentiated in the matter of seeking appointment on the post of Captain/Pilot with the BSF.



2025:DHC:11097-DB



17. Above reasons persuade us to announce that no case for review is made out. Review petition as well as other applications is declined.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

DECEMBER 10, 2025

akc/NY