

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) NO. 359 OF 2005

1. Sri Ashok Kumar Choudhury,
Son of Subedar Gurdep Chand Choudhury,
Permanent resident of House No. 191,
R/O Gobind Puram, Peer Baba Morh,
P.O.- Jammu Cantonment,
Jammu (J&K)- 180003.
Having his present address at
194 Bn. BSF, Gakulnagar,
P.O.-Harishnagar,
District-West Tripura.
Presently holding the substantive post of
Assistant Commandant of BSF.
2. Sri Prawin Kumar,
Son of Sri Ganesh Sharma,
Permanent resident of Gandhi Maidan(East),
Jehanabad, District-Jehanabad,
State-Bihar, Pin- 804408.
Having his present address at 192 Bn. BSF,
Gakulnagar, P.O.-Harishnagar,
District-West Tripura.
Presently holding the substantive post of
Assistant Commandant in BSF.
3. Sri Neeraj Dube,
Son of Sri L.P. Dube,
Permanent resident of 147, R.A. Bazar Cantt.
Allahabad (UP). Having his present address at
131 Bn. BSF, Nalkata,
District- North Tripura.
Presently holding the substantive post of
2nd in Command of BSF.
4. Sri H.S. Garcha,
Son of Sri Jagmal Singh Garcha,
Permanent resident of 1498, Urban Estate,
Phase-1, Dugri Road, Ludhiana, Punjab,
Having his present address at 21 Bn. BSF,
Gakulnagar, P.O.-Harishnagar,
District – West Tripura,
Presently holding the substantive post of
Commandant in BSF.

5. Sri S.K. Sood,
Son of Sri K.K. Sood,
Permanent resident of No. 1875,
Sector 9, Faridabad, Haryana.
Having his present address at
Additional DIG (Ops) HQ IG BSF Tripura,
Salbagan, Agartala, District-West Tripura,
Presently holding the substantive post of
Additional DIG in BSF.

..... Petitioners.

- V e r s u s -

1. The Union of India, represented by the
Secretary, Ministry of Home Affairs,
Government of India, North
Block, New Delhi.
2. The Director General,
Border Security Force,
Having his office at Block-10,
CGO Complex, Lodhi Road,
New Delhi-03.

..... Respondents.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioners : Mr. D.C. Kabir, Advocate,
Mr. Somik Deb, Advocate.

For the respondents : Mr. Harin P. Raval,
Sr. Advocate,
Mr. P.K. Biswas, Asstt. S.G.

Date of hearing : 15.07.2013.

Date of pronouncement : 30.08.2013.
of judgment & order

Whether fit for reporting: **YES / NO.**

JUDGMENT & ORDER

(Deepak Gupta, C.J.)

The petitioners are all officers in the Border Security Force (BSF). They were directly inducted as officers into the BSF. Their grievance is that the officers who are directly inducted to the BSF do not have any chance of reaching the higher echelons of their service. They are aggrieved by the provisions of the BSF (General Duty Officers) Recruitment Rules, 2010 which provide that a large number of posts at the higher levels are to be filled up from members of the Indian Police Service (IPS) by bringing them to the BSF on deputation. In fact, as far as the posts of Director General of BSF and Special Director General of BSF are concerned, these posts are to be filled up exclusively by IPS officers brought on deputation to the BSF.

2. Detailed facts shall be given in the later part of the judgment. Suffice to say that the main challenge of the petitioners is that the rules are ultra vires of the BSF Act and the Act does not permit any person to be brought on deputation to the BSF. There are many ancillary arguments, but this is the main submission. The petitioners have also alleged that there is invidious discrimination against the officers of the BSF insofar as the

medical condition of the officers and the training undergone by them is concerned. They also complain that the rules if permitted to continue will lead to stagnation in the Force and the rules are arbitrary and violative of Articles 14 and 16 of the Constitution of India and hence, liable to be struck down. It is also urged that whereas the members of the BSF are liable to stricter disciplinary action, the personnel from the IPS brought on deputation from the IAS are not subject to the strict discipline of the BSF.

3. The Union of India has contested the petition and it is submitted on behalf of the Union of India that the rules are in consonance with the provisions of the Act. It is urged that in case the background in which the BSF was created, the object and reasons of the BSF Act and other concerned matters are taken into consideration, it is apparent that the BSF was created to act as a police Force to be deployed on the borders of the country. The essential job of the BSF is to police the borders. It has also been submitted that the Union of India in its wisdom thought it fit to fill up the posts at the highest level by bringing in persons from the IPS. This was done with a view to broaden the field of choice and to get people who have much wider experience. It is also submitted that this

is a policy issue and this court should exercise judicial restraint and not interfere in such policy matters. It is further contended that the rules are well within the competence of the rule making authority and lastly, it is urged that there is no discrimination between the members of the BSF and the IPS. As far as avenues of promotion are concerned, it is submitted that out of a total strength of 4000 officers, now there are only 40 IPS Officers in the Force.

4. We have heard Mr. D.C. Kabir and Mr. Somik Deb, learned counsel for the petitioners as well as Mr. Harin P. Raval, learned Sr. Counsel on behalf of the Union of India.

5. We may note that at the time of hearing, Mr. Kabir on behalf of the petitioners had only raised the following issues: that there was discrimination in respect of medical standards and a higher standard was prescribed for BSF officers; lack of training of IPS officers; the IAS officers not being subject to the discipline of the BSF; stagnation and arbitrariness. Mr. Somik Deb in rejoinder had raised the issue that deputation of IPS officers to the BSF was illegal. He had sought permission to file a synopsis of arguments to counter the written synopsis filed

by Mr. Harin P. Raval. However, in the garb of a synopsis, lengthy written submission running into 44 pages have been filed and as many as 25 more authorities have been cited which were not cited at the time of oral arguments. The Union of India has had no time to counter these arguments. Normally, we would have declined to entertain such additional submissions made without the permission of the court, but since the writ petition is 8 years old, we proceed to decide all the issues raised on merits.

6. To understand the issues raised, it would be pertinent to mention the factual background in which the BSF was created. The All India Police Officers' Act was enacted in the year 1951 and the IPS cadre was created in terms of this Act. The BSF was, in fact, initially established in December, 1965 under the Central Police Act as a paramilitary Force. The BSF is responsible for guarding the land borders of the country during peace time and preventing transnational crime. The war with Pakistan had just taken place and later it was felt that the Force should be regulated by a self-contained statute. In the statement of objects and reasons of the BSF Act, it is mentioned that that the BSF is charged with policing the borders of the country and the Act was enacted to ensure that the

standards of efficiency and the discipline of the Force are of a very high order.

7. Reference will have to be made to the following provisions of the BSF Act (hereinafter referred to as BSF Act):-

2(k):- "enrolled person" means an under-officer or other person enrolled under this Act;

2(o):- "member of the Force" means an officer, a subordinate officer, an under-officer or other enrolled person;

2(r):- "officer" means a person appointed or in pay as an officer of the Force, but does not include a subordinate officer or an under-officer;

2(v):- "subordinate officer" means a person appointed or in pay as a Subedar-Major, a Subedar or a Sub-Inspector of the Force;

2(x):- "under-officer" means a Head Constable, Naik and Lance Naik of the Force;

S.3:- Persons subject to this Act.- (1) The following persons shall be subject to this Act, wherever they may be, namely :-

(a) Officers and Subordinate Officers; and,

(b) Under-officers and other persons enrolled under this Act.

(2) Every person subject to this Act shall remain so subject until retired, discharged, released, removed or dismissed from the Force in accordance with the provisions of this Act and the rules.

S.4:- Constitution of the Force.- (1) There shall be an armed Force of the Union called the Border Security Force for ensuring the security of the borders of India.

(2) Subject to the provisions of this Act, the Force shall be constituted in such manner as may be prescribed and the conditions of service of the members of the Force shall be such as may be prescribed.

S.5:- Control, direction, etc.- (1) The general superintendence, direction and control of the Force shall vest in, and be exercised by, the Central Government and subject thereto and to the provisions of this Act and the rules, the command and supervision of the Force shall vest in an officer to be appointed by the Central Government as the Director-General of the Force.

(2) The Director-General shall, in the discharge of his duties under this Act, be assisted by such number of Inspectors-General, Deputy Inspectors-General, Commandants and other officers as may be prescribed by the Central Government.

S.6:- Enrolment.- (1) The persons to be enrolled to the Force, the mode of enrolment, and the procedure for enrolment shall be such as may be prescribed by the Central Government.

(2) Notwithstanding anything contained in this Act and the rules, every person who has, for a continuous period of three months, been in receipt of pay as a person enrolled under this Act and borne on the rolls of the Force shall be deemed to have been duly enrolled.

141. Power to make rules.- (1) The Central Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,-

(a) the constitution, governance, command and discipline of the Force;

(b) the enrolment of persons to the Force and the recruitment of other members of the Force;

x x x x x x x x

(o) any other matter which is to be, or may be prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary for the proper implementation of this Act.

141(3) :- Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or [in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without

prejudice to the validity of anything previously done under that rule.

8. Rules have been framed under the Act which are known as BSF Rules, 1969 (hereinafter referred to as BSF Rules) and reference to be made to the following rules:-

Rule 9:- Appointment of officers.- The Central Government may appoint such persons as it considers to be suitable as officers in the Force, and their conditions of service shall be such as may be provided in the rules made in this behalf by the Central Government.

Rule 11:- Appointment of subordinate officers and other officers.- Appointments to the posts of Subedars, Sub-Inspectors and Under Officers for the Force may be made by the Inspector-General, the Deputy Inspector-General and the Commandant respectively:

- (a) By direct recruitment;
- (b) By deputation from the Army, Navy, Air Force, State Police Force, or any other Department of the Central Government or of the State Government;
- (c) By promotion as may be prescribed from time to time.

Rule 12:- Enrolling officers.- For the purposes of enrolment of persons to the Force under section 6, the following persons shall be enrolling officers :-

- (a) Commandants of all battalions; and

(b) Any other officer of the Force who may be appointed as an enrolling officer by the Director-General.

Rule 14 A: - Ranks.- (1) The officers and other members of the Force shall be classified in accordance with their ranks in the following categories, namely :-

- (a) Officers:
 - (1) Director-General.
 - (2) Additional Director-General.
 - (3) Inspector General.
 - (4) Deputy Inspector-General.
 - (5) Additional Deputy Inspector-General.
 - (6) Commandant.
 - (7) Deputy Commandant.
 - (8) Assistant Commandant.
- (b) Subordinate Officers:
 - (9) Subedar-Major.
 - (10) Subedar.
 - (11) Sub-Inspector.
- (c) Under Officers:
 - (12) Head Constable.
 - (13) Naik.
 - (14) Lance Naik.
- (d) Enrolled persons other than Under Officers:
 - (15) Constables.
 - (16) Enrolled followers.

9. At this stage, it would be pertinent to mention that the writ petition was filed in the year 2005 when the reliefs claimed were totally different. At the time when the petition was filed, the recruitment of officers was governed

by the BSF (General Duty Officers) Recruitment Rules, 2001. These rules were repealed and replaced by the BSF Group 'A' (General Duty Officers) Recruitment Rules, 2010 (hereinafter referred to as BSF Recruitment Rules). These rules were further amended in 2012 and it is these rules which are the subject matter of this petition. These rules apply to the posts mentioned in Schedule 1 and the posts of officers as classified in Rule 14A.

10. Induction to the officer cadre is done at the level of Assistant Commandant. 50% of the posts are to be filled up by direct recruitment, out of which 10% is direct entry to the Assistant Commandant from amongst Ex-Servicemen. 33% of the posts are filled in by promotion and these promotion vacancies are meant for Subedars, Inspectors, Subedar Majors of the Force having the necessary qualifications. 17% posts are filled in by Limited Departmental Competitive Examination to be conducted in all the Central Paramilitary Forces, i.e. BSF, Central Reserve Police Force (CRPF), Indo-Tibetan Border Police (ITBP), Sashastra Sima Bal (SSB) on rotation basis, failing which by promotion. The next higher level is that of Deputy Commandant and all posts have to be filled in by promotion from amongst the Assistant Commandants in the BSF. The next higher post is that of Second-in-

Command and again all posts are to be filled in by promotion from amongst the Deputy Commandants of the Force. Next comes the post of Commandant. This also to be filled in by promotion from amongst the Second-in-Commands of the BSF. However, there is a note that the Central Government by issuing a specific order may prescribe eligibility and number of posts meant to be filled in by IPS officers. The next post is that of Deputy Inspector General. 80% of the posts of DIG are to be filled in by promotion, 15% by deputation of IPS Officers and 5% by deputation of serving Army Officers or re-employment of Army Officers. The pyramid gets tighter as one reaches higher and at the next higher level of Inspector General, 50% posts are to be filled in by promotion from amongst DIGs of BSF and 50% by deputation from the IPS Officers empanelled to hold the posts of Inspector General in the Central Government. The next higher post is that of Additional Director General. At present, there are four posts and 75%, i.e. 3 posts are to be filled in by deputation from the IPS officers empanelled by the Central Government to hold the Additional Director General post in the Central Police Services and one post, i.e. 25% can be filled up by promotion from amongst the Inspector General of BSF. The two highest posts in the BSF are Special Director General and Director General which

are to be filled in by the officers of the IPS on deputation providing they have been empanelled to hold such posts. The grievance of the petitioners essentially is that though they belong to the BSF, they cannot aspire to become the Director General or Special Director General and their chances of being promoted to the posts of Additional Director General and Inspector General are also very remote. They are also aggrieved by the provision which provides that 20% posts of the level of Deputy Inspector General shall be filled in from members of the IPS and Army Officers on deputation.

11. The first submission made by the petitioners is that the filling up of the posts of Director General, Special Director General, Additional Director General, Inspector General, Deputy Inspector General and Commandant in the BSF by way of deputation is illegal and beyond the rule making powers conferred on the Central Government under section 141. In continuation of this submission, it has been urged that subordinate legislation could not have been made prescribing deputation as a means of appointment to a non member of the Force and in this behalf, it is also submitted that conditions of service and conditions of recruitment are two different things and cannot be read synonymously.

12. Before dealing with the submissions made by the petitioners, it would be pertinent to mention that the petitioners have neither challenged any provision of the BSF Act nor they have laid challenge to Rule 9 of the BSF Rules. The only issue is whether it was beyond the competence of the Central Government to frame Recruitment Rules which provided for deputation from the IPS as one of the methods of recruitment. In this behalf, it would also be pertinent to mention that the petitioners either inadvertently or by design did not draw the attention of the court to the fact that even at the induction stage at the level of Assistant Commandant, 50% posts are to be filled in by direct recruitment, 33% by promotion and 17% by Limited Departmental Competitive Examination amongst eligible members of the Central Paramilitary Forces. Even at the stage of induction some persons may be inducted as Assistant Commandants who may belong to the CRPF, the ITBP or the SSB. Hence, in our view, those persons who have been inducted from outside the BSF have no right to urge at a later stage that at the higher level there should be no induction by deputation from the IPS. We, however, proceed to deal with the issues raised by the petitioners since all the

petitioners were directly inducted as Assistant Commandants.

13. Section 4(2) of the Act provides that the Constitution of the Force and conditions of the service of the members of the Force will be such as may be prescribed. Both the phrases "constitution of the Force" and "conditions of service of the members of the Force" must be read together. The Central Government under section 4 has the authority to lay down the prescriptions for constitution of the Force and also the conditions of service. According to the petitioners, condition of service is different and distinct from conditions of recruitment. They contend that conditions of service do not include the power to make appointments and, therefore, they urge that the rules prescribing the methods of recruitment are not within the legal competence of the Central Government. In this behalf, the petitioners have placed reliance on the judgment of the Apex Court in ***Syed Khalid Rizvi and others v. Union of India and others, [1993 Supp (3) SCC 575]***, and especially the observations of the Apex Court in para 31 and 33 thereof. The issue before the Apex Court was entirely different. The issue in that case was whether the essential eligibility criteria provided for in the recruitment rules could be relaxed by taking benefit of the

provision which provided that the Central Government with a view to relieve undue hardship incurred due to unforeseen or unmerited circumstances could relax the rules. It was in this context that the Apex Court drew a distinction between conditions of service and conditions of recruitment. It held that the conditions of recruitment being the essential criteria for recruitment could not be relaxed, but if after recruitment some hardship had been caused, the conditions of service could be relaxed. We fail to understand how this judgment is of any help to the petitioners in the present case. There are only three provisions in the Act which relate to the appointment/enrolment/recruitment of the members of the Force of the BSF. Section 4(2) empowers the Central Government to prescribe the conditions of service. Section 5(1) lays down that the control of the BSF shall vest in an officer to be appointed by the Central Government as the Director General of the Force. Section 6(1) lays down that the Central Government shall prescribe the mode of enrolment and the procedure for enrolment. There is no other provision under the Act that has been brought to our notice. Section 5 is only applicable in the case of appointment of Director General. In all other cases, it will either be Section 4 or Section 6. Whichever Section may apply, the power only lies with the Central Government to

prescribe the conditions of service and the procedure for enrolment. These rules obviously empower the Central Government to lay down the conditions of recruitment because there is no other provision relating to recruitment in the Act. Conditions of service in the context in which it has been used will include the method of recruitment.

14. Section 4 of the Act clearly empowers the Central Government to constitute the Force in such manner as may be prescribed. The word "constitute" in the context in which it has been used means "to establish" or "to set up". One of the synonyms of the word "constitute" is "appoint" and it is thus obvious that appointment is also a part of constitution of the Force. How is a new Force established or set up? It is obvious that it will be established and set up by prescribing the conditions relating to the infrastructure and manpower of the institution/Force. Manpower is an integral part of the Force and in this context, the word "conditions of service" will include the right to prescribe the conditions of recruitment to the service.

15. Who will prescribe the essential eligibility qualifications for each of the posts? Who will lay down the age limits? Who will lay down the educational qualification?

Who will prescribe who are the persons eligible to be appointed to the posts? Who will prescribe the method and procedure of appointment? Obviously, these will have to be provided for by the Central Government. Both Section 4 and 6 empower the Central Government to lay down the conditions of service or the procedure for enrolment and these powers must necessarily include the powers to lay down the conditions of initial employment and the method of appointment and the eligibility for appointment. The argument raised by the petitioners is totally misconceived and is accordingly rejected. It does not lie in the mouth of the petitioners to raise such an argument because they have been appointed under same or similar rules enacted by the Central Government. How can they claim that their appointment is valid and the Central Government can lay down the conditions of their appointment, but not the conditions of appointment of others?

16. As far as the provisions of Section 6(1) of the Act are concerned, these relate to enrolment and procedure for enrolment. In our view, this section is not applicable since enrolment is of under-officers or other persons of similar rank and not officers. Section 2(k) defines "enrolled person" to mean an under-officer or other person enrolled under the Act. An "under-officer" has

been defined as a Head Constable, Naik and Lance Naik. Rule 12 quoted hereinabove lays down that for the purposes of enrolment of persons to the Force under section 6, the Commandants of all battalions shall be the Enrolling Officers. Rule 14 A (d) lays down the ranks provides that Constables and Enrolled followers shall be treated as enrolled persons other than Under Officers. A combined reading of the definition of enrolled persons along with Rule 14 A clearly indicates that only Head Constable, Naik, Lance Naik, Constables and Enrolled followers are Enrolled persons. Therefore, Section 6 only deals with these persons and does not deal with officers who have to be appointed as per the procedure prescribed in Section 4.

17. We are, therefore, of the considered view that the power to frame the rules of recruitment flows from Section 4 of the Act which empowers the Central Government to prescribe conditions of service. The phrase "conditions of service" in the context in which it has been made includes the conditions of appointment.

18. Assuming for the sake of appreciating the argument that conditions of service does not include condition of recruitment, then also recourse can be taken

to the rule making power vested in the Central Government under section 141 of the Act. Rule 141 (2)(b) empowers the Central Government to make rules for the enrolment of persons to the Force and the recruitment of other members of the Force. This supports what we have said earlier that enrolment is of under-officers and ranks below that and recruitment is of the other members of the Force. Force is the BSF and the member of the Force may include an officer, a subordinate officer and under-officer or other enrolled person. Therefore, when we read Section 4(1) along with Section 141(2)(b), there is no manner of doubt that the Central Government is empowered to lay down the criteria for enrolment and recruitment of members of the Force. Rule 141(2)(b) can be divided into two portions. The first part of this rule deals with enrolment to the posts of Head Constable, Naik and Lance Naik etc. The second part deals with recruitment of other members of the Force, i.e. Officers and Under-officers. Therefore, the Central Government definitely has the power to frame Recruitment Rules.

19. It is next contended on behalf of the petitioners that the rules do not envisage the recruitment by way of recruitment/appointment by way of deputation. This argument is totally misconceived.

20. The Apex Court in ***K. Narayanan and others vs. State of Karnataka and others, [1994 Supp. (1) SCC 44]*** held as follows :-

"Article 309 of the Constitution empowers the appropriate Legislature to frame rules to regulate recruitment to public services and the post. 'Recruitment' according to the dictionary means 'enlist'. It is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well-known methods of recruitment. Even appointment by transfer is not unknown."

21. Deputation is one of the known methods of appointment and the rule making authority, i.e. the Central Government has chosen this mode of appointment which is permissible under law. Moreover, as pointed out earlier, there is no challenge to Rule 9 of the BSF Rules which clearly provides that the Central Government may appoint such persons as it considers to be suitable as officers of the Force and their conditions of service shall be provided in the rules to be framed by the Central Government. The contention of the petitioners that the Act does not envisage appointment by way of deputation is

totally misconceived. As pointed out above, conditions of service would include condition of appointment. In light of the view which we have taken above, there is no conflict between the Recruitment Rules, the Rules and the Act. The rule making authority has acted well within its rights. Therefore, the contention of the learned counsel for the petitioners relying on ***Harishankar Bagla and another vs. The State of Madhya Pradesh, [AIR 1954 SC 465]***, ***Vasanlal Maganbhai and another vs. State of Bombay, [AIR 1961 SC 4]***, ***Kunj Behari Lal Butail and others vs. State of H.P. and others, [AIR 2000 SC 1069]***, and ***Naraindas Indurkhya vs. the State of Madhya Pradesh and others, [(1974) 4 SCC 788]*** is totally misplaced and these judgments have no applicability to the facts of the present case.

22. The petitioners in their written submissions have contended that the rules curtail the power of the Central Government under section 5(1) of the BSF Act. According to the petitioners, whereas Section 5(1) enables the Central Government to appoint any person as Director General, the rule narrows down the choice to an IPS officer only. There is not a whisper of such submission in the pleadings nor was such submission made when the petition was heard. The other side has got no chance to

counter the submission. Be that as it may, it is Central Government which is empowered to make the appointment of any person in terms of Section 5(1). Both the Rules and the Recruitment Rules have been framed by the Central Government itself whereby only IPS officers can be brought on deputation to the BSF. These are guidelines laid down by the Central Government and they act as a guide to the very wide discretionary powers granted under section 5(1) of the Act. This objection is, therefore, without any merit and is accordingly rejected.

23. The next contention is that subordinate legislation can neither enlarge nor reduce the scope of the provisions of the parent Act is also without any merit. The parent Act in terms of Section 4 and Section 141 empowers the Central Government to frame rules as dealt with us in detail hereinabove. The Central Government framed the rules including Rule 9 which is not under challenge and thereafter, the Recruitment Rules have been framed. The Rules fall within the scope and ambit of the rule making power. Rule 141(1) empowers the Central Government to make rules for the purpose of carrying into effect the provisions of the Act. This is the plenary rule making power. Sub-rule (2) makes it clear that it is giving examples of certain rules which can be made, but these

are without prejudice to the generality of the plenary rule making power vested in the Central Government under section 141(1). We are of the considered view that it cannot be argued that when the Central Government has the authority to make appointments, make recruitments and lay down the conditions of service, it does not have the power to frame the eligibility criteria or source of recruitment. We fail to understand how it can be argued that the power to frame rules for recruitment is not covered under sections 141(1), 141(2)(b) and lastly under the residuary rule making power, i.e. 141(2)(o).

24. The petitioners attempt at quibbling on each word of the rules is only an argument of desperation. The contention that difference should be made between enrolment of persons to the Force and recruitment of other members of the Force on the ground that enrolment is **to** the Force and recruitment is **of** other members is only a play of words. When the legislative intent is clear, no amount of play with semantics shall be entertained by the court. The petitioners forgot that the first part reads enrolment of persons to the Force and the second part reads recruitment of other members of the Force. Enrolment takes place at the initial stage whereas recruitment can also be by way of promotion. Therefore,

there is no merit in this submission made by the petitioners.

25. Learned counsel for the petitioners in support of his submissions has relied upon the observation of the Apex Court in para-24 of the judgment reported in ***Keshav Chandra Joshi and others vs. Union of India and others, [1992 Supp (1) SCC 272]***. We have carefully gone through the entire paragraph and find nothing in this paragraph which would support this contention of the petitioners. The crux of what is stated by the Apex Court is that the rules must be carefully applied in such a manner as not to violate the rules or equality ensured under Article 14 of the Constitution. The Apex Court also held that when employees are drawn from different sources, disparity is inherent in the system of working out integration. We, therefore, find no merit in the contention of the petitioners that the Central Government has no power to make the rules for recruitment of non-cadre officers to a cadre post of the BSF.

26. On behalf of the petitioners, it is urged that since in Rule 141(2)(n) of the Act, the Central Government has used both the words "recruitment" and "conditions of service", it can be presumed that Parliament was alive of

the distinction between these two provisions and, therefore, they cannot be used in the same sense. A number of judgments has been relied upon by the petitioners in support of their submission. These are **1891 (1) QB 156, *The Member, Board of Revenue vs. Arthur Paul Benthall*, [AIR 1956 SC 35], *Commissioner of Income Tax, New Delhi vs. M/s East West Import and Export (P) Ltd.*, [(1989) 1 SCC 760], *B.R. Enterprises vs. State of U.P. and others*, [(1999) 9 SCC 700]**. All these matters relate to taxing or revenue statutes where distinction between items is very important. In the context of the BSF Act and the Rules made thereunder, especially in view of the interpretation given by us to Sections 4, 5 and 6, and Sections 141(1), 141(2)(b) and 141(2)(o), there can be no manner of doubt that the Central Government had the power to make the rules for recruitment of members of the Force. The argument that members of the Force means only in-service members and does not deal with any other persons is too farfetched. When the rules talk of recruitment of the members of the Force, it is talking of recruitment as members of the BSF. All officers, under-officers and enrolled persons are members of the Force. Enrolment has been dealt with differently and, therefore, recruitment of members of the Force means recruitment to the Force.

27. The petitioners have made reference to the judgment of the Apex Court in ***Kunj Behari Lal Butail and others vs. State of H.P. and others, [(2000) 3 SCC 40]***, especially the observation of the Apex Court in para-14 which reads as follows :-

"We are also of the opinion that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself."

The petitioners very conveniently did not make reference to para-13 which clearly lays down that when a general rule making power is given to carry out the purposes of the Act, it is permissible for the court to find out the object of the enactment and then see if the rules framed satisfy the test of following within the scope of such general power confirmed. In the present case, as already held by us, the rules further the object of the Act. Reliance placed by the petitioners on the judgment of the Apex Court reported in ***Ramesh Birch and others vs. Union of India and others, [1989 Supp (1) SCC 430]***, ***State of Kerala and others vs. Unni and Another,***

[(2007) 2 SCC 365], and Global Energy Limited and another vs. Central Electricity Regulatory Commission, [(2009) 15 SCC 570] is totally misplaced.

28. The BSF is constituted, managed and run by the Central Government. It is for the Central Government to decide how to run the Force. Who shall head the Force is a matter for the Central Government to decide. When the Force was created in 1966 or when the Act came into Force in the year 1968, obviously all the persons who were recruited to the Force would either be new recruits or drawn from other services. At that time, probably all the higher posts were manned by either IPS officers or officers drawn from the other Central Police Organization. If all the officers were to be drawn from the BSF itself, then nobody would have been eligible. The rules have to be read in this context and spirit.

29. The respondent, Union of India, has filed affidavit-in-opposition to the rejoinder of the writ petitioners. Para-23 of the same is as under :-

"The contents of para-10 are denied to the extent they allege that there is no rationale for reserving posts for IPS officers in the BSF. The policy of the Central Government has been reflected in the Rules

of making an appointment of IPS Officer on deputation as Director General of BSF reflects rationality as well as nexus to the object sought to be achieved which can be enumerated as under :-

(i) To prove a leader to the organization to head the Force who is having vast experience.

(ii) To have a large area of selection of a deputations from amongst all eligible IPS Officers of D.G. rank from All India Services instead of limiting the area of selection to one or two individuals.

(iii) To secure officers having higher levels of administrative abilities.

(iv) If an incumbent is not found suitable after appointment or his continuance is not found desirable in public interest, then such incumbent can be sent back at any time, which may not be possible in selection or promotion modes.

Further, as stated earlier, the IPS officers possess expertise and experience in the area of maintenance of law and order and security, crime prevention, investigation, and detection, collection of intelligence, border policing, smuggling etc. Thus, these officers bring forth a truckload of experience and dynamism in the Force, which in turn, aids in promoting security and peace along the nation's borders."

30. This is a policy matter and it is well settled law that unless the policy is arbitrary or violative of Article 14 and 16 of the Constitution, the courts should not step in. It is a well-known axiom that fools rush in where angels fear to tread. There is no material placed on record to support the submission of the petitioners that the policy framed by the government is illegal or arbitrary. We also find no relevance of the decisions reported in ***J.K. Industries Limited and another vs. Union of India and others, [(2007) 13 SCC 673]***, and ***Gulam Mohammed alias Gulal Shaikh vs. State of Gujarat, [(2008) 15 SCC 416]***. In the written arguments, reference has been made to some decisions reported in ***(2008) 15 SCC 416***, but we could find no decision at this page.

31. The next argument of the petitioners is that in public departments, merit and efficiency are of paramount consideration and this should not be lowered by way of reservation except in favour of socially and economically backward classes. According to the petitioners, there is reservation in favour of the IPS officers in the Recruitment Rules and, therefore, the rules are arbitrary and violative of Article 14. This is an argument of desperation and deserves to be rejected outright. The rules do not provide for reservation, but only provide for different sources of

recruitment. There is a lot of difference between reservation and different sources of recruitment. The reliance placed by the petitioners on the judgment of the Apex Court in ***AIIMS Students' Union vs. AIIMS and others, [(2002) 1 SCC 428]*** is totally misplaced. In that case, 33% of the available Postgraduate seats in the All India Institute of Medical Sciences and 50% seats discipline wise were reserved for alumni of the All India Institute of Medical Sciences. This was struck down by the Apex Court. We fail to understand how that judgment has any relevance to the present case.

32. We are also not oblivious of the fact that officers of the BSF carry out very important functions. They police our borders during peace time. They are part of an important paramilitary organization and a disciplined Force. This court does not have the wherewithal or the necessary qualification or expertise to decide how this important Force is to be run. That is a policy matter to be decided by the Central Government. A decision was taken at the highest levels that the Senior Officers of the BSF should be drawn from the IPS cadre. Other than urging that the promotional avenues of the BSF officers are affected, not one averment has been made nor any evidence placed before us to show that because of the

induction of the IAS officers by deputation to the Force, the effectiveness of the Force has in any manner been adversely affected. We find no merit in the submission that the appointment of IAS officers by deputation has the effect of diminishing or lowering the efficiency of administration.

33. The next submission of the petitioners is that the 6th Pay Commission headed by Justice B.N. Srikrishna had suggested that the posts up to the level of DIGs in the Central Paramilitary Force (including the BSF) should be allowed to be filled up wholly by the Cadre Officers and above that level 50% of these posts should be filled up by Cadre Officers. As submitted by the petitioners themselves this was a suggestion of the Pay Commission. The Central Government is not bound to accept each and every suggestion of the Pay Commission. Furthermore, this argument is a double edged sword and cuts at the very root of the argument of the petitioners. If the suggestions of the 6th Pay Commission are acceptable to the petitioners, then according to them, 50% of the posts above the level of DIG could be filled in by non BSF officers. In the present case, 50% of the IGs posts are filled in from the cadre of the BSF officers and only in case of the post of Additional Director General, 25% is by

promotion and 75% by direct recruitment. The two highest posts are single posts and rule of 50% cannot be applied to them. We, therefore, find no merit in this submission nor do we find anything in the decision of the Apex Court in ***Kerala State Electricity Board vs. The Indian Aluminium Co. Ltd., [(1976) 1 SCC 466]***, relevant to present case.

34. The next contention of the petitioners is that admittedly the posts created under the schedule to the Recruitment Rules are civil posts and in terms of Article 321, these posts can be filled in only by the Union Public Service Commission (UPSC). Article 320(3)(A) also provides that the UPSC must be consulted on all matters relating to methods of recruitment of civil services and the principles to be followed for such appointments. It is urged that the rules have been framed without consulting the UPSC and the IPS officers are inducted without an examination being conducted by the UPSC and, therefore, their appointments on deputation is illegal.

35. Respondents have placed on record a letter of the UPSC dated August 6, 1969. This letter is written by the Deputy Secretary, Union Public Service Commission and addressed to the Secretary to the Government of

India, Ministry of Home Affairs. The subject reads as follows:-

" Sub :- Exclusion of the posts in the Border Security Force, the Central Reserve Police Force, the Indo-Tibetan Border Police and the Central Industrial Security Force, from the purview of the Union Public Service Commission."

It appears that the Government was of the view that the posts in this Central Police Forces including the BSF were not civil posts and outside the purview of the Commission. It was also urged by the Central Government that keeping in view the nature of this Forces and the nature of duties to be performed by the Forces, they should be excluded from the purview of the Public Service Commission. The Public Service Commission by the impugned letter did not accept the first contention and held that the posts were civil posts, but accepted the second contention of the Union. The UPSC replied as follows:-

" However, having regard to the nature of duties to be performed by the Central Reserve Police, the Indo-Tibetan Border Police and the Border Security Force, and the special conditions of service of persons belonging to these Forces the Commission is of the view that the posts in

the Armed Forces may be excluded from their purview on a permanent basis under regulation 2 of the Union Public Service Commission (Exemption from Consultation) Regulations, 1958. I am accordingly to request that formal amendments to the Schedule to the Regulation may kindly be notified in due course."

36. It is thus apparent that the Union of India consulted the UPSC which gave assent to the posts in the BSF being placed outside the purview of the UPSC. This permission has been granted under Regulation 2 of the UPSC (Exemption from Consultation) Regulations, 1958. The contention of the petitioners is that there is no specific notification by the President taking the BSF outside the ambit of Article 320 of the Constitution, is totally misplaced.

37. The UPSC was consulted before framing the rules and in terms of the exemption regulations which have been approved by the President of India, the UPSC gave its assent and agreed with the Central Government that the recruitment to the BSF should be outside the purview of the Public Service Commission. Therefore, this contention is totally without merit and is accordingly rejected. If this argument of the petitioners was to be

accepted, then their appointment as officers to the civil posts without consultation with the UPSC would also be bad and liable to be set aside. The reliance placed on the judgments of the Apex Court in ***Md. Israil and others vs. State of W.B. and others, [(2002) 2 SCC 306]***, ***State of Uttaranchal and others vs. Sidharth Srivastava and others, [(2003) 9 SCC 336]***, and ***State of Bihar vs. Upendra Narayan Singh and others, [(2009) 5 SCC 65]*** is totally misconceived.

38. Though we have upheld the power of the Central Government to frame the rules and have also upheld the provisions which provide for inducting IPS officers at the highest levels, we are not oblivious to the heartburn which such appointments will cause to the petitioners. Though we are not in agreement with the petitioners that they have a fundamental right to be considered for promotion up to the highest level, we do feel that there should be sufficient avenues of promotion available to them. They joined the Force as Assistant Commandants. The entry level for officers is Assistant Commandant. Promotion to the post of Deputy Commandant and Commandant is only from officers of the BSF. At the level of Deputy Inspector General, 80% promotions are from the BSF and 20% by lateral induction

from IPS and the Army. At the level of Inspector General, it is 50-50 and thereafter, it reduces to 25% and then nil. As the BSF is now 45 years old, now there shall be officers who can reach higher levels. Though the policy has to be decided by the State, we are of the view that every 5 years, there should be a cadre review and keeping in view the number of officers serving, sufficient provision for promotions should be made for the BSF officers. At this stage, we may point out that according to the Union of India, out of the total posts of 4000 officers, 40 alone are being manned by IPS officers. It is not disputed that the percentage of BSF officers has increased over period of time, but if possible this needs to be increased even further.

39. On behalf of the petitioners, it was urged that the IPS officers are not amenable to the strict discipline of the BSF. Mr. H.P. Raval appearing for the respondents has informed us that even the officers who are on deputation to the BSF are subject to the provision of Section 3 of the Act and, therefore, they are bound by the same rules and level of discipline as the officers who originally belong to the BSF. We may make it clear that in case of any infraction or violation of the BSF Act and Rules, it will not be open to any IPS officer to take a defence that such

conduct is not an offence under the rules by which he is otherwise governed. As long as the IPS officer is on deputation to the BSF, he is governed by the provision of the BSF Act and the Rules framed therein. The only difference is that as far as the final disciplinary action is concerned, the same may have to be taken by the disciplinary authority which governs the IPS officer. But the inquiry and other proceedings shall be governed by the BSF Act and Rules.

40. The next argument of the petitioners is that the members of the BSF are required to have a much higher level of medical fitness than the IPS officers. It has been pointed out that when the BSF officers are to be promoted to the higher levels, the Recruitment Rules provide that they should be SHAPE-1 whereas no such condition is provided for IPS officers. Even when the Army Officers have to come on deputation/reemployment, their medical category is required to be SHAPE-1, but there is no such similar prescription for IPS officers. On behalf of the respondents, it is submitted that the IPS officers have to go through strenuous annual medical checkups and before they are empanelled for being brought into the Central Police Forces, they are subjected to many tests and it was submitted by Mr. Raval before us that the IPS officers are

supposed to be of similar medical category. We are not willing to accept this submission, in view of the stand taken by the respondents in their affidavit-in-opposition dated 02-08-2012 wherein in para-(XXVI) it is urged as follows :-

" It is respectfully submitted that the contention that there is discrimination in so far as prescribing the eligibility criteria of Shape 1, medical category is in the humble submission of the Respondent, a submission which is stated to be rejected. The answering respondents so submits because the Rules prescribed possessing of SHAPE 1 category is only for BSF Officers. It is an eligibility criteria/bench mark/condition for promotion of BSF Officers for being considered to the next promotional post. Any IPS officer on deputation is not entitled to earn any promotion in the BSF while on deputation and therefore, the question of their possessing such eligibility criteria for promotion does not arise. Secondly, the IPS Officers are separately governed by the IPS Cadre Rules, 1954 and other service conditions mentioned in the Rules applicable to IPS Officers and it will be wrong to suggest that any IPS officer meeting with more stringent criteria prescribed in such Rules as well as who undergoes a rigorous empanelment process as the officer in the

Central Government would be in any manner less fit than a BSF Cadre officer."

41. We have gone through the entire pleadings and find that the stand of Union of India appears to be that since BSF officers had to be promoted in BSF, they are required to be SHAPE-1 and this provision has no applicability to IPS officers. We have no doubt in our mind that once the officers are to be appointed in the same posts even if they be sourced from different feeder categories, their physical conditions should be identical. We see no reason why IPS officers should not also meet the same stringent requirements of medical fitness and categorization as BSF officers. The rules specifically provide that even Army Officers who are brought on deputation or on reemployment to the BSF must be SHAPE-1. The IPS officers shall also perform same and similar functions as the BSF officers. Therefore, the same medical criteria which is applicable to BSF officers for their promotion to the higher level should apply to IPS officers when they are brought on deputation. Thus, when in the rules for promotion of BSF officers it is mentioned that they must be SHAPE-1, it shall be read into the rules that the IPS officers who are brought on deputation shall also fulfill the requirements of being SHAPE-1.

42. It was also urged on behalf of the petitioners that whereas the officers in the BSF undergo long drawn out training, the IPS officers are not trained in a similar manner. We are unable to accept this contention in toto. IPS officers also undergo long training after selection and they also are trained in policing. There are, however, some unique attributes of the BSF. The stand of the Union Government is that now by a letter dated 20-03-2012 it has been laid down that IPS officers/Army Officers appointed on deputation to the BSF will undergo induction/orientation/familiarization training. Mr. Harin Raval stated before us that though the officers may be appointed to the BSF, they will not be deputed on active duty till they have completed their induction training. We may point out that we are disheartened by the fact that in previous years we found that IPS officers were exempted from undergoing this induction training on many occasions and we found from the material on record that sometimes the training programme insofar as the IPS officers are concerned were postponed only to accommodate them to play in Golf tournaments. We are clearly of the view that Golf or for that matter any other game cannot take precedence over training and the security of the nation. In view of the fair submission of Mr. Raval and the letter dated 20-03-2012 which has been placed on record we

direct that no IPS officer on deputation shall actually start functioning in the BSF till he has undergone the training mentioned in the letter.

43. In view of the above discussions, we reject all other prayers made by the petitioners, but partly accept two prayers of the petitioners and dispose of the petition with the following directions:-

(i) That, all IPS officers before they are actually inducted into the BSF on deputation must meet the same medical requirements of medical categorization of SHAPE-1 as are prescribed for BSF officers for that particular post.

(ii) That, the IPS officers on deputation shall not actually start functioning in the BSF till they have undergone the induction training as detailed hereinabove. Under no circumstances, shall any exception be made in this regard. No other relief is granted to the petitioners.

44. Before parting with the case, we are forced to observe that in the garb of filing a synopsis of arguments what has been hurled at the court are detailed written arguments running into 44 pages and citing 25 authorities. We have dealt with all the issues and have gone through a large number of books, some of which have no relevance

to the present case. Normally, we would have imposed very heavy costs, but the only reason why we have desisted from doing so is that the petitioners themselves are not at fault and since the petitioners are serving our country at the borders, we would not like to burden them with costs.

45. The petition is disposed of on contest.

JUDGE

CHIEF JUSTICE