

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 5TH DAY OF JULY 2018 / 14TH ASHADHA, 1940

WP(C).No. 25431 of 2015

PETITIONER(S) :

EX-BSF PERSONNEL WELFARE ASSOCIATION  
REGD NO.910/2002, KARTHIAYANI BHAWAN,  
SURABHI NAGAR, PAYYANNUR, KANNUR, PIN - 670 307,  
REPRESENTED BY ITS SECRETARY M.K.RAVI.

BY ADVS.SRI.ANIL KUMAR M.SIVARAMAN  
SRI.K.NARAYANAN NAIR (NDD)

RESPONDENT(S) :

1. UNION OF INDIA,  
REPRESENTED BY THE SECRETARY,  
MINISTRY OF HOME AFFAIRS, NORTH BLOCK,  
NEW DELHI - 110 001.
2. THE DIRECTOR GENERAL,  
BORDER SECURITY FORCE, BLOCK NO.10,  
CGO COMPLEX, LODHI ROAD, NEW DELHI- 110 003.
3. THE DIRECTOR GENERAL,  
MILITARY OPERATIONS, ARMY HQ,  
SOUTH BLOCK, NEW DELHI - 110 011.
4. THE ADJUTANT GENERAL,  
ARMY HQ, SOUTH BLOCK, NEW DELHI - 110 011.
5. THE DIRECTOR GENERAL,  
ASSAM RIFLES, SHILLONG, MEGHALAYA, PIN - 793 001.
6. THE DIRECTOR GENERAL,  
NATIONAL SECURITY GUARD, MEHRAM NAGAR,  
PALAM AIRPORT, NEW DELHI, PIN - 110 037.

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL  
ADV. SRI.JAISHANKAR V.NAIR, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 05-07-2018, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:

Msd.  
19.07.2018

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1: MHA O.M.NO.I-45020/2/2011-PERS-II DATED 18.03.2011.
- EXHIBIT P2: MHA O.M.NO.27011/100/2012-R&W DATED 23.11.2012.
- EXHIBIT P3: GOVT. OF KERALA LETTER NO.100577/SC1/12/HOME  
DATED 21.05.2013 TO THE UNION HOME SECRETARY.
- EXHIBIT P4: LETTER NO.EX-BSFPWA/REP/2015 DATED 03.06.2015 BY  
THE PETITIONERS ASSOCIATION TO UNION HOME SECRETARY.

RESPONDENT(S) ' EXHIBITS :

- EXHIBIT R1(A): TRUE COPY OF THE COMMUNICATION DATED 17.01.2014.

//TRUE COPY//

P.S.TO JUDGE

**Msd.**  
19.07.2018

**P.V.ASHA, J.**

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**W.P.(C) No.25431 of 2015**  
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**Dated this the 5<sup>th</sup> day of July, 2018**

**JUDGMENT**

Ex.BSF Personnel Welfare Association has filed this writ petition aggrieved by Ext.P1 office memorandum by which the Director (Personnel) has informed that Ministry of Home Affairs has decided to adopt a uniform nomenclature of Central Armed Police Force (CAPF) while referring to Boarder Security Force (BSF), Central Reserve Police Force (CRPF), Central Industrial Security Force (CISF), Indo-Tibetan Border Police (ITBP) and Sashastra Seema Bal (SSB). It is stated that reference of these Forces as Armed Forces of the Union creates an incorrect perception about these Forces and expectations from the Force become unrealistic. Even in the international references such incorrect nomenclature cause confusion regarding the role of such Forces, especially during elections, maintaining law and order etc.

2. The petitioner Association represents personnel from BSF who retired from the BSF on various dates. It is their case that the Border Security Force Act, 1968 provides for the Constitution of the Force under section 4, according to which there shall be an armed force of the Union called the Border Security Force for ensuring the security of the borders of India. Therefore it is stated that unless the provisions under the Act are amended the nomenclature cannot be changed and

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the BSF cannot be described as a police force. It is also their case that BSF which has been entrusted with the duties of protecting the borders of the nation, cannot be compared with CISF, CRPF etc. which does not have any such duties while CISF deals with the industrial security and CRPF deals with reserve police. It is also pointed out that ITBP which is also grouped along with BSF is already described as police force and the statutes governing them do not provide for constitution of an Armed Force as contained in section 4 of the BSF Act. According to them Ext.P1 order is in violation of the BSF Act. While Armed Forces of the Union is a subject coming under entry 2 of List I, Police is coming in entry 2 in List II. Entry 2 in List I is "Naval, military and air forces; any other armed forces of the Union". Entry 2 in List II is "Police (including railway and village police) subject to the provisions of entry 2A of List I". Entry 2A in List I provides for deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment. According to the petitioner while describing the BSF as Police Force the Government of India has in effect amended the statute by an executive order even in the absence of a policy decision of

Government of India. They also pointed out that the Government of Kerala had rejected their representation for extending the benefit available to the ex-servicemen of the Armed Force saying that in the event of granting such benefits demands would be raised by Motor Vehicles Department, State Police Department etc.

3. Respondents 1 and 2 have filed separate counter affidavits. According to the 1<sup>st</sup> respondent, the Ministry of Home Affairs had as per its memorandum dated 23.11.2012 intimated that Cabinet Committee on Security had approved the proposal to declare retired Central Armed Police Force Personnel from Central Reserve Police Force (CRPF), Border Security Force (BSF), Central Industrial Security Force (CISF) Indo-Tibetan Border Police (ITBP) and Sashastra Seema Bal (SSB) as Ex-Central Armed Police Force Personnel and requested to extend suitable benefits to Ex-CAPF personnel on the lines of the benefits extended by the State/UT Government to the Ex-Servicemen of Defense Forces. But the Government of Kerala expressed its inability for extending the benefits and it is stated that the writ petition is filed by the Association because of that. It is stated that the terms like Central Police Organisation (CPOs), Central Para Military Forces (CPMFs), Para Military Forces (PMFs), Central Police Forces (CPFs) etc have been interchangeably used while referring to the Central Police

Force and it was stated that use of the term "Military" for central forces was not appropriate and therefore it was decided to adopt a uniform nomenclature of Central Armed Police Force while referring to BSF, CRPF, CISF, ITBP etc in the year 2011.

4. The petitioners had raised a claim that Assam Rifles & National Security Guard have not been included in CAPF. It is stated that Assam Rifles is under operational control of Indian Army and National Security Guard is established on 100% deputation basis, in which CAPF personnel are also deployed and hence those two forces were not included in CAPF. It is further stated that none of the benefits available to BSF personnel is reduced or affected by way of nomenclature. It is only for administrative purpose that Ext.P1 order is issued.

5. In the counter affidavit filed on behalf of the 2<sup>nd</sup> respondent, the Director General of BSF, it is stated that under Article 246 of the Constitution of India read with entry no.2 of List I (Union list) of seventh schedule, the BSF was raised as an Armed Force of the Union. The Central Government cannot raise a police force as Police is a State subject as listed at entry 2 of list II (State list). The Boarder Security Force Act received the assent of President of India and it is modeled on the lines of Army Act and it comes under the Other Armed Forces of the union in entry no.2 along with Naval, Military and Airforces. It is

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stated that under the Constitution of India, status of BSF is that of an Armed Force of the Union and not as Police Force. It is further stated that the name of BSF has not been changed and Ext.P1 is issued without making any amendment to the BSF Act and therefore by referring BSF along with other forces as CAPF does not change the nature of BSF and it remains as Armed force of the Union of India and its nomenclature continues to be BSF. It is also stated that retired personnel of BSF continues to have the same status i.e as retired members of Armed Force of the Union. In effect it is stated that the status of the BSF personnel as well as ex-BSF personnel continues to be the same despite Ext.P1.

I heard the learned Counsel appearing on both sides. The learned counsel for the petitioner submitted that Ext.P1 is resulted on the basis of an article published at the instance of an Army Officer. In the light of the averments in the counter affidavit that none of the benefits or even the status of BSF personnel are altered and that it is only for the purpose of correspondence that the nomenclature has been adopted in Ext.P1, petitioner cannot have any grievance over Ext.P1. Even otherwise grievance of the petitioner is that it has affected their reputation by the issuance of Ext.P1 order by the Government of India; there is nothing to suggest that reputation of

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BSF personnel has been reduced. As pointed out by the the 2<sup>nd</sup> respondent, who is the head of BSF, the status of BSF as well as ex-BSF personnel continues to be the same. The BSF continues to be an Armed Force as long as the Act is not amended. Provisions under section 4 are also not seen amended. In the above circumstances, I find that no interference is required in this case.

The writ petition is dismissed as above.

Sd/-

**P.V.ASHA  
JUDGE**

rkc