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IN THE HIGH COURT OF MANIPUR
AT IMPHAL

Rev. Petn. No. 13 of 2017
(~~Ref:-~~ W.P. (C) No. 322 of 2013)

Shri S.A. Rojan Zimik, aged about 50 years, 2nd in Command (IRLA-5485) now posted at 24 Bn. CRPF, Yatri Niwas, Jawahar Tunnel, District Kulgam in South Kashmir of Jammu and Kashmir, a permanent resident of Manipur Village, P.O., P.S. & District, Ukhrul, Manipur.

... Petitioner

-Versus-

1. The Union of India represented by the Secretary (Home), Govt. of India, New Delhi – 110003.
2. Director General, CRPF, CGO Complex, Lodhi Road, New Delhi-110003.

... Respondents

-AND-

IN THE MATTER OF:

WP(C) No. 322 of 2013

Shri S.A. Rojan Zimik, aged about 50 years, Com. Dy. Comdt. (IRLA-5485) now posted at 155 Bn. Bocajan, permanent resident of Mapum Village, P.O. & P.S. Ukhrul, District-Ukhrul, Manipur.

...Petitioner

-Versus-

1. The Union of India represented by the Secretary (Home), Govt. of India, New Delhi – 110003.
2. Director General, CRPF, CGO Complex, Lodhi Road, New Delhi-110003

... Respondents

B E F O R E
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the Petitioner :: Mr. Serto T. Kom, Advocate
For the respondents :: Mr. S. Samarjeet, Sr. Panel counsel
Date of Hearing :: **07-12-2023**
Date of Judgment & Order :: **11-01-2024**

JUDGMENT & ORDER

[1] Heard Mr Serto T. Kom, learned counsel appearing for the petitioner and Mr. S. Samarjeet, learned senior panel counsel appearing for the respondents.

The present petition had been filed with the prayer for reviewing the judgment and order dated 21-04-2016 passed by this court in WP(C) No. 322 of 2013 and to allow the writ petition filed by the petitioner.

[2] The undisputed facts of the present case, in a nutshell, are that the petitioner was selected for appointment to the post of Assistant Commandant in the CRPF through CPO-1995 of which final result was declared by the Staff Selection Board (SSB) during the month of March, 1997 as a part of the 29th batch of Directly Appointed Gazetted Officers (DAGOs). The verification roll of the petitioner was sent by the SSB to the concerned District Magistrate-Ukhrul (Manipur) and Deputy Commissioner, Makokchung (Nagaland), etc., on 13-03-1997. Various efforts to obtain verifications rolls duly verified from the concerned Districts authorities were made by the SSB and the CRPF and despite all possible efforts, verification roll of the petitioner could not be obtained from the concerned District of Manipur/ Nagaland State till the month of June, 2021.

On receipt of the verification report on 16-06-2021, the offer of appointment was issued to the petitioner under the letter dated 16-10-2021 with direction to join for basic training along with 34th batch DAGOs, which commenced from 09-11-2021. The petitioner joined as Assistant Commandant on 01-12-2001 vide Notification dated 31-12-2021. Subsequently, the inter-se seniority of the petitioner was determined by placing him above the officers of the 34th batch along with whom the petitioner had undergone his training in accordance with the provisions of Rule 8(b)(ii) of the CRPF Rules, 1955 read with Standing Order No. 1 of 2009, vide order dated 26-05-2008. Having been not satisfied, the petitioner submitted separate representations to the concerned authorities for re-fixation of his seniority along with the officers of the 29th batch, however, such representations were rejected by the authorities after due consideration by an order dated 28-02-2012 issued by the DIG (PERS), CRPF. Having been aggrieved, the petitioner approached this court by filing WP(C) 322 of 2013 with the prayer for quashing and setting aside the said order/ letter dated 28-02-2012 and for directing the respondents to re-fix his inter-se seniority by placing along with 29th batch DAGOs with whom he was selected.

[3] At the time of hearing of the writ petition, many grounds were raised on behalf of the petitioner before this court and one of the grounds raised by the petitioner is that there has been discrimination in fixation of seniority, inasmuch as, persons who were selected earlier but undergone basic training course in subsequent years have been given seniority with effect from the year of their selection. By way of an example, it was

submitted that one Dharam Prakash at Sl. No. 204 of the Gradation list of 21/Cs in the CRPF as on 01-01-2012 was selected along with the petitioner and had undergone training with the 30th batch and not with the 29th batch was given seniority with effect from the date of his selection in 1998 along with other DAGOs of the 29th batch and that similar benefits ought to be extended to the petitioner.

[4] The writ petition was dismissed by the judgment and order dated 21-04-2016 impugned herein on the ground, inter alia, that the petitioner failed to make out any case warranting interference with the fixation of seniority of the petitioner. This court also held that fixation of seniority, if it does not contravene any rules or executive instructions, and in absence of any such rules or executive instructions, is based on just and reasonable principle, would not warrant interference in exercise of Judicial Review and that the fixation of seniority of the petitioner was in conformity with the Standing Order No. 1 of 2009 as the appointment order was issued in 2001. It was also held that even if the said Standing Order is held to be inapplicable to the petitioner, the fixation of seniority cannot be said to be unjust, capricious or not equitable and that seniority fixation also does not involve violation of any existing rules. However, this court was not inclined to examine the contention of the petitioner about meting out discriminatory treatment to him in the matter of fixation of his seniority. The relevant paragraph of the judgment are reproduced hereunder for easy reference:-

“19. As regards the issue of discrimination or claim for similar benefit or seniority given to Sri Dharam Prakash and others,

the respondents have stated that the fact situations of these persons are different. The petitioner has also failed to demonstrate with cogent materials any such discrimination and how he is similarly placed with those persons. Hence in absence of adequate materials, this Court is not inclined to examine this contention of the petitioner.”

Having been aggrieved the petitioner approached this court again by filing the present review petition.

[5] The present review petition had been filed only on the ground that despite due diligence, the petitioner was not able to produce important documents which will support his contention that discriminatory treatment had been meted out to the petitioner at the time of fixation of his seniority. The learned counsel for the petitioner submitted that in the absence of such documents, this court declined to examine the issue of discrimination raised by the petitioner and that if the said documents were produced before this court at the time of hearing the writ petition, this court would not have passed the judgment and order impugned herein. The learned counsel, accordingly, submitted that it is a good ground for filing the present review petition. In support of his contention, the learned counsel for the petitioner relied on the principle of law laid down by the Hon'ble Apex Court in the case of “**Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma & ors.**” reported in (1979) 4 SCC 389, wherein it has been laid down that the power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the

knowledge of the person seeking the review or could not be produced by him at the time when the order was made.

[6] In connection with the discovery of new and important documents, the submissions of the learned counsel for the petitioner are as under:-

- (a) Under Rule 8 of the Central Reserve Police Force Group 'A' (General Duty) Officers Recruitment Rules, 2001 (at Annexure - R/7), there is provision for fixation of seniority and that under the proviso to clause (i) Sub-Rule (3) of Rule 8, it is provided that in case of direct entrants, the year of declaration of results shall be the year of seniority. Rule 8 of the said rule is reproduced hereunder for ready reference:

"8. Seniority. – (1) ...

(2) ...

(3) ...

(i) ...

(ii) ...

(iii) ...

(iv) ...

Provided that in case of direct entrants, the year of declaration of results shall be the year of seniority. Inter-se seniority of the directly recruited ACs and promotees will be decided as per orders of DOP & T issued from time to time."

- (b) Many DAGOs who were selected earlier but joined the basic training course along with subsequent/ later batch of DAGOs were allowed to enjoy their seniority from the date of their selection and their inter-se seniority were fixed along with

DAGOs selected in the same year and not with the officers selected later on. A list of 36 DAGOs in CRPF whose seniority were determined on the basis of date of selection and not on the basis of joining of their basic training is enclosed as Annexure-R/8 to the present review petition, the correctness or existence of which the respondents did not deny.

- (c) The learned counsel for the petitioner submitted that the issue as to whether DAGO, who jointed their basic training along with subsequent batch of DAGOs and who is similarly situated with the petitioner, is entitled or not to fix his seniority with effect from the date of his selection and fixation of his inter-se seniority along with his batchmates selected in the same year has been already decided by the High Court of Delhi in its various judgment and orders dated 28-11-2017 passed in WP(C) No. 8546 of 2016 (Anjan Kumar Mandal Vs. Union of India), dated 06-12-2018 passed in WP(C) No. 6275 of 2016 (MV Seshagiri Vs. Union of India), WP(C) No. 6312 of 2016 (K. Bhaskara Rao Vs. Union of India), common order dated 18-12-2019 passed in WP(C) No. 1425 of 2019, WP(C) No. 4504 of 2019, WP(C) No. 8017 of 2019, WP(C) No. 8018 of 2019 and WP(C) No. 11972 of 2019 by holding that the date/ year of selection will be treated as the date of appointment of these petitioners for the purpose of their notional seniority and pay fixation from the respective dates and by directing the respondents to treat each of the petitioners as

having been appointed notionally along with their batchmates and to re-fix their inter-se seniority along with their batchmates in accordance with the Rule 8(b)(ii) of the CRPF Rules. It has also been directed that all the petitioners shall also be entitled to all consequential benefits except for backwages, on the principle of not having shouldered the responsibilities of the higher posts.

[7] The learned counsel also submitted that all the SLPs filed by the Union of India against the aforesaid judgments of the Delhi High Court have been dismissed and thereafter, the Directorate General, CRPF issued an order dated 26-07-2022 in compliance with the direction given by the Delhi High Court in the aforesaid writ petitions re-fixing the inter-se seniority of those petitioners along with other DAGOs selected in the same year by treating those petitioners as having been appointed notionally from the year of their selection. A copy of the said order dated 26-07-2022 issued by the Directorate General, CRPF is placed before this court and the existence of the said order is admitted by the counsel for the respondents. The relevant portion of the said order are as under:-

“5. Keeping in view the dismissal of SLP, Law Dte referred the case to MHA for decision of competent authority. Now as conveyed vide Law Dte Signal No. J.II-62/2019-LWP-1 (S/C) dated 04/07/2022, MHA vide approved note dated 01/07/2022 accorded approval to implement the common court order dated 18/12/2019 passed by Hon'ble High Court of Delhi in WP(C) No. 1425/2019 (Vinod Kumar Trivedi), 4584/2019 (Kamlesh Kumar Sahu), 8017/2019 (Gopal Kumar Gupta), 8018/2019 (Mukesh Kumar Singh) and WP(C) No. 11972/2019 (Indranil Dutta and others).”

“6. From the *ibid* common order dated 18/12/2019 of Hon'ble High Court of Delhi, it is evident that the Hon'ble Court specifically ordered date/ year of selection which will be treated as the date of appointment of the petitioners for the purpose of their notional seniority and pay fixation from the respective dates. Keeping in view the fact that these officers (petitioners) were actually not borne on the strength of the cadre on the date from which their notional seniority/ notional date of appointment are to be fixed and such fixation of seniority may not disturb the well settled inter-se-seniority of the Asstt. Comdt, who had actually joined in the Force and undergone basic training prior to these petitioners. Thus, it may only be proper that without disturbing the already fixed inter-se-seniority of the Assit. Comdt. of concerned batches of DAGOs as well as obviating future complications, seniority of these petitioners are proposed to be placed alongwith concerned batches for which they were actually selected, as per direction of the Hon'ble High Court. Accordingly, inter-se-seniority and notional date of appointment of the petitioners of *ibid* WPCs are hereby re-fixed as under:-

- (i) Inter-se-seniority of Sh. Vinod Kumar Trivedi, Dy. Comdt. (IRLA-7540) of PDG, i.e. the petitioner of W.P.(C) No. 1425/2019, who had actually undergone basic training with 39th batch DAGOs, is hereby re-fixed in the rank of Asstt. Comdt. below Sh. Rakesh Kumar, AC (now DC) (IRLA-7161) of 38th batch DAGOs (DOE-26/12/2006, G/List No.233 of DC as on 01/01/2022). Further, Sh. Vinod Kumar Trivedi, DC (IRLA-7540) will be considered as having been appointed in CRPF wef 26/12/2006 (i.e. DOE of Sh. Rakesh Kumar, AC (now DC) IRLA-7161) instead of 14/01/2008 for the purpose of notional seniority, pay fixation and other consequential benefits. However, he will not be entitled to any arrears of pay & allowances.
- (ii) Inter-se-seniority of Sh. Kamlesh Kumar Sahu, AC (IRLA-8848) of 174 Bn, i.e. the petitioner of W.P.(C) No.4584/2019, who had actually undergone basic training with 43rd batch DAGOs, it is hereby re-fixed in the rank of Asstt. Comdt. below Sh. Pratap Kumar Behera, AC (IRLA-8461) of 42nd batch DAGOs (DOE-15/05/2010, G/List No. 34 of AC as on 01/01/2022). Further, as

ordered by the Hon'ble Court, Sh. Kamlesh Kumar Sahu, AC (IRLA-8848) will be considered as having been appointed in CRPF wef 15/05/2010 instead of 12/10/2011 for the purpose of notional seniority, pay fixation and other consequential benefits. However, he will not be entitled to any arrears of pay & allowances.

(iii) Inter-se-seniority of Sh. Gopal Kumar Gupta, 2-1/C (IRLA-5684) of 07 Bn, i.e. the petitioner of W.P.(C) No.8017/2019, who had actually undergone basic training with 35th batch DAGOs, is hereby re-fixed in the rank of Asstt. Comdt. below Sh. Neetindra Nath, AC (now 2-1/C) (IRLA-5436) of 34th batch DAGOs (DOE-08/11/2001, G/List No.138 of 2-1/C as on 01/01/2022). Further, as ordered by the Hon'ble Court, Sh. Gopal Kumar Gupta, 2-1/C (IRLA-5684) will be considered as having been appointed in CRPF wef 08/11/2001 instead of 28/12/2002 for the purpose of notional seniority, pay fixation and other consequential benefits. However, he will not be entitled to any arrears of pay & allowances.

(iv) Inter-se-seniority of Sh Indranil Dutta, 2-1/C (IRLA-6319) of 102 RAF, Sh. Bishnu Charan Muankhla, DC (now 2-1/C) (IRLA-6306) of 151 Bn, Sh. Abhinav Anand, 2-1/C (IRLA-6318) of 214 Bn and Sh. Pramod Chaudhary, 2-1/C (IRLA-6316) of 208 CoBRA, i.e. the petitioners of W.P.(C) No.11972/2019, who had actually undergone basic training with 36th batch DAGOs, are hereby re-fixed in the rank of Asstt. Comdt. below Sh. Prem Kumar, AC (now 2-1/C) (IRLA-5636) of 35th batch DAGOs (DOE- 28/12/2002, G/List No. 228 of 2-1/C as on 01/01/2022) in the following order/ sequence:-

- 1. Sh. Indranil Dutta, AC (now 2-1/C) (IRLA-6319)*
- 2. Sh. Abhinav Anand, AC (now 2-1/C) (IRLA-6318)*
- 3. Sh. Bishnu Charan Maunkhia, AC (now 2-1/C) (IRLA-6306)*
- 4. Sh. Pramod Choudhary, AC (now 2-VC) (IRLA-6316)*

Further, as ordered by the Hon'ble Court, above officers (petitioners) will be considered as having been appointed in CRPF wef 28/12/2002 (i.c. DOE of Sh Prem Kumar, AC (now 2-1/C) IRLA-5636) instead of 01/11/2004 for the purpose of notional seniority, pay

fixation and other consequential benefits. However, he will not be entitled to any arrears of pay & allowances.

(v) Inter-se-seniority of Sh. Mukesh Kumar Singh, 2-1/C (IRLA-5690), i.e. the petitioner of W.P.(C) No.8018/2019, who had actually undergone basic training with 35th batch DAGOs, is hereby re-fixed in the rank of Asstt. Comdt. below Sh. Gopal Kumar Gupta, AC (now 2-1/C) (IRLA-5684) who is being re-fixed seniority vide this order below Sh. Neetindra Nath, AC (now 2-1/C) (IRLA-5436) of 34th batch DAGOs (DOE-08/11/2001, G/List No.138 of 2-1/C as on 01/01/2022). Further, as ordered by the Hon'ble Court, Sh. Mukesh Kumar Singh, 2-1/C (IRLA-5690) will be considered as having been appointed in CRPF wef 08/11/2001 instead of 28/12/2002 for the purpose of notional seniority, pay fixation and other consequential benefits. However, he will not be entitled to any arrears of pay & allowances."

"7. As per ibid common court order dated 18/12/2019 passed by the Hon'ble High Court of Delhi, the Petitioners' notional seniority and pay fixation is to be reckoned from the aforesaid dates with all consequential benefits, however, they will not be entitled to any arrears of pay and allowances. This issues with the approval of DG."

[8] It has been strenuously submitted by the counsel appearing for the petitioner that the petitioner could not produce the above mentioned documents before this court at the time of hearing of the writ petition and that if such documents were produced at the time of hearing the writ petition, the impugned judgment and order would not have been passed by this court and the relief sought for in the said writ petition would have been granted by this court. The learned counsel further submitted that the respondents have treated the petitioner discriminatorily in the matter of fixation of his seniority and the petitioner has not been treated equally with his equals and that the petitioner is entitled to re-fix his seniority along with

his batchmates selected in the same year and not with the 34th batch of DAGOs.

[9] Mr. S. Samarjeet, learned senior panel counsel appearing for the respondents submitted that the 36 DAGOs, whose names are listed at Annexure-R/8 of the review petition, joined their basic training course after a gap of about only one or two years from the date of their selection and as such, their seniority have been fixed from the year of their selection, whereas the petitioner joined his basic training after a gap of four years from the date of his selection and therefore, the case of the petitioner is not similarly situated with the case of those 36 DAGOs and he cannot be treated equally with those 36 DAGOs in the matter of fixation of seniority.

The learned senior panel counsel appearing for the respondents also submitted that the present review petition is not maintainable in view of the principle laid down by the Hon'ble High Court/ Apex Court in the following cases:-

- (i) 2013 SCC Online All. 14129 **“Alok Saini Vs. Remote Sensing Applications Centre, UP through its Director & anr.”** wherein it has been held as under:-

“5. Now the question that arise for consideration of this Court is whether the subsequent judgment passed by a Co-ordinate Bench of the same Court or by a superior Court would be a ground for review of the judgment passed on merits.”

“17. Keeping in view the law on this point, this Court is of the considered view that the subsequent decision of a Co-ordinate

Bench would not be a ground to review the judgment, which is the scope of appeal.”

“18. Accordingly, the review on the basis of a subsequent judgment of a Co-ordinate Bench deciding the controversy otherwise cannot be a ground to allow the review petition.”

(ii) (2013) 8 SCC 320 **“Kamlesh Verma Vs. Mayawati & ors.”**

wherein it has been held that –

“20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
- (vi) The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”*

[10] The present review petition had been filed only on the ground that at the time of hearing of the writ petition, the petitioner, despite due diligence, could not produce important documents in support of his plea that he has been treated discriminatorily in the matter of fixation of seniority and as such, this court declined to consider such plea raised by the petitioner, as clearly reflected in para. 19 of the impugned judgment. It is the case of the petitioner that had he been able to produce the documents mentioned hereinabove before this court at the time of hearing the writ petition, this

court would not have passed the impugned judgment and order. In view of the above ground taken by the petitioner for filing the present review petition, this court is of the considered view that the case laws cited by the counsel for the respondents are not applicable at all and that the present review petition is maintainable in view of the principle laid down by the Hon'ble Apex Court in the case of Aribam Tuleshwar Sharma (*supra*).

[11] I have carefully examined all the documents mentioned hereinabove including the Central Reserve Police Force Group 'A' (General Duty) Officers Recruitment Rules, 2001 and the list of 36 DAGOs in CRPF, who were given seniority from the date of their selection despite the fact that they joined their basic training subsequent to their selection and along with subsequent batch of DAGOs. I have also examined the order dated 26-07-2022 issued by the Directorate General of CRPF re-fixing the inter-se seniority of DAGOs, who are similarly situated with the petitioner with effect from the date of their selection. Taking into consideration such undisputed facts and also taking into account that this court has not considered the plea of the petitioner that he has not been treated equally with other DAGOs, who are similarly situated with him, in the matter of fixation of seniority, this court did not find any ground or reason for rejecting the claim of the petitioner for giving equal treatment in the matter of fixation of his seniority and this court is also of the considered view that refusing to grant the relief sought for by the petitioner in his writ petition will cause a grave miscarriage of justice. Accordingly, this court is inclined to allow the present review petition with the following directions:-

- (a) The impugned judgment and order dated 21-04-2016 passed by this court in WP(C) No. 322 of 2023 is hereby recalled;
- (b) The impugned letter dated 28-02-2012 issued by the DIG (PERS), CRPF is hereby quashed and set aside;
- (c) The respondents are directed to re-fix the inter-se seniority of the petitioner along with those DAGOs of the 29th batch in accordance with Rule 8(b)(ii) of the CRPF Rules; and
- (d) The petitioner shall also be entitled to all consequential benefits, except for backwages;
- (e) The whole process should be completed within a period of three months from the date of receipt of a certified copy of this order.

With the aforesaid directions, the present review petition is disposed of. Parties are to bear their own costs.

JUDGE

FR / NFR

Devananda