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

RESERVED ON: 03.09.2015

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PRONOUNCED ON: 08.10.2015

+ **W.P.(C) 4698/2000**

P.L. VERMA

..... Petitioner

Through: Ms.Madhu Tewatia and Mr.Sachin Saini,
Advocates

versus

UOI & ORS.

..... Respondents

Through: Mr.Rajan Sabharwal and Mr.Raghav
Sabharwal, Advocates for railways.

W.P.(C) 1796/2011

ARJUN SINGH TANWAR

..... Petitioner

Through: Mr.Pawan K.Bahl and Mr.Vishesh Sharma,
Advocates

versus

UOI AND ORS.

..... Respondents

Through: Mr.Rajan Sabharwal and Mr.Raghav
Sabharwal, Advocates for railways.

W.P.(C) 10176/2009

MAHENDRA KUMAR SHARMA

..... Petitioner

Through: Mr.B.S.Mor, Advocate

versus

UOI & ORS.

..... Respondents

Through: Mr.Rajan Sabharwal and Mr.Raghav
Sabharwal, Advocates for railways.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J.

1. All the Petitioners in these writ proceedings seek directions for re-fixation of their seniority, pay scales and promotion to the higher grades in the Railway Protection Force (RPF) which they were entitled to, after reckoning the past military service.
2. The Brief facts of the case are that the Petitioner in W.P.(C) 4698/2000, (hereafter "P.L. Verma") was released from the Indian Army, as ECO (Emergency Commissioned Officer) on 26.08.1971 according to a phased programme on completion of his tenure. He completed 7 years and 295 days of approved military service. In W.P.(C)10176/2009, the Writ Petitioner, Shri Mahendra Sharma (hereafter "Sharma") joined the Indian Army as ECO on 30.08.1964 and was released in a phased program, on 01.08.1970. In W.P.(C) 1796/2011 the petitioner, Arjun Singh Tanwar, (hereafter "Tanwar") had originally joined the Indian Army as ECO with effect from 12.04.1963, in the wake of the Chinese aggression. He was released from the Army on 04.10.1967. In the meanwhile, the Released Emergency Commissioned officers and Short Service Commissioned Officers (Reservation of vacancies) Rules, 1967 [hereafter referred to as "ECO Rules, 1967"] were framed. These rules were replaced by Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1971 [hereafter referred to as "ECO Rules, 1971"]. All the Petitioners were employed in the Railway Protection Force after their commissions in the Indian Army ended. It is not in dispute that at the relevant time, the Recruitment Rules of the Railway Protection Force (first framed in 1968 and later, in 1974) enabled re-employment of released emergency officers of the Armed Forces, to the grade of Assistant

Security Officer Class II Gazetted post. The modes of filling the post as per the Recruitment Rules of 1974 were:

- (a) Promotion from amongst the grade of Inspectors/Company Commanders Grade I, failing which from Inspectors/Company Commanders Grade II, failing which from amongst Inspectors/Company Commanders Grade III;
- (b) By direct recruitment.
- (c) Deputation from State Police Officers, holding the rank of Deputy Superintendent of Police, or equivalent; Deputation from armed forces, from amongst persons holding the rank of Captain or equivalent; Deputation from officers of the Transportation (Traffic) and Commercial Department of Railways.
- (d) By re-employment.
- (e) By occasional admission of other qualified persons appointed by the Government on the recommendations of the UPSC.

The relevant condition/clause which enabled re-employment of military personnel, read as follows:

“Re-employment

Retired/Released Officers of the Armed Forces of the Union of the rank of Captain or equivalent and above. Age limit for employment- 38 years.”

We note that the Recruitment Rules of 1968 had similar stipulations, save that direct recruitment was not possible, and that no age limit is mentioned for re-employment of retired/released officers.

3. It is submitted that the petitioners were appointed under the Railway Protection Force (Superior Officers) Recruitment Rules - which were first formulated in 1968 and later replaced in 1974. They were repealed and new rules were brought into force, in 1981. The Petitioners rely on the terms of the ECO Rules, 1971 particularly Rules 4 and 6, which are extracted below:

“Rule-4 Reservation of vacancies: -

(1) Twenty per cent of the vacancies in the Indian Foreign Service, and 25 per cent of the vacancies in all the other Central Civil Services and posts, Class-I, to which these rules apply and which are to be filled by direct recruitment, and 27 percent of the vacancies which are to be filled by direct recruitment on the basis of open competition, and 25 per cent of the vacancies which are to be filled by direct recruitment otherwise than through open competition in all the Central Civil Services and posts, Class-II in any year, shall be reserved for being filled by the Emergency Commissioned Officers and the Short Service Commissioned Officers of the Armed Forces of the Union who were commissioned after the 1st November, 1962, but before the 10th January, 1968, and who -

- i) in the case of Emergency Commissioned Officers are released according to a phased programme; or*
- ii) in the case of Short Service Commissioned Officers are released on the expiry of the tenure of their service; or*
- iii) are invalided owing to a disability attributable to or aggravated by military services.*

NOTE: -

- a) Engineers and Doctors employed under the Central Government or State Government or Government owned industrial undertaking after 1963, who are required to serve in the Armed Forces for a minimum prescribed period under the Compulsory Liability Scheme and who are granted Short Service Commission under the rules during the period of such service, are no eligible for the vacancies reserved for the Emergency Commissioned Officers and the Short Service*

Commissioned Officers of the Armed Forces in the Services and posts, to which these rules apply.

b) Officers belonging to the volunteer Reserve Forces of the Armed Forces and called upon for temporary service are not eligible for the reserved vacancies.

c) The candidature of person is liable to be cancelled, if, after submitting his application, he is granted Permanent Commission in the Armed Forces, or he is released there from at his own request or on account of misconduct or inefficiency.

(2) The provisions of sub-rule (1) shall apply to –

i) permanent vacancies which are filled initially either on a temporary basis or on a permanent basis;

(ii) temporary vacancies which are likely to be made permanent or to continue on a long-term.

(3) Notwithstanding anything contained in these rules, a candidate kept on the waiting list or lists for appointment against the vacancies reserved for Emergency Commissioned Officers or Short Service Commissioned Officers under sub-rule (6) of rule 4 of the Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1967, shall be appointed against the vacancies reserved under sub-rule (1) of this rule before the candidates who qualify for appointment after the commencement of these rules.

(4) Of the vacancies reserved for the Emergency Commissioned Officers and the Short Service Commissioned Officers, vacancies shall be reserved for candidates belonging to the Scheduled Castes and the Scheduled Tribes in accordance with such orders as are issued in this behalf by the Central Government from time to time.

Provided that if any Emergency Commissioned Officers or Short Service Commissioned Officer, as the case may be, belonging to a Scheduled Caste or a Scheduled Tribe is selected, his selection shall be counted against the overall quota of reservations that shall be provided for the Scheduled Castes

or the Scheduled Tribes in accordance with the orders issued by the Central Government from time to time.

(5) Notwithstanding anything contained in these rules or in any other rules relating to the recruitment of persons for the Central Civil Services and posts, Class-I or Class-II, to which these rules apply, the total number of vacancies reserved for the Emergency Commissioned Officers and the Short Service Commissioned Officers of the Armed Forces of the Union and the Scheduled Castes and the Scheduled Tribes shall not exceed in any year 50 per cent of the total number of vacancies to be filled by direct recruitment in that year....

6.Seniority and pay: -

(1)Seniority and pay of these candidates who are appointed against the vacancies reserved under sub-rule (1) of rule 4 shall be determined on the assumption that they entered the Service or the post, as the case may be, at the first opportunity they had after joining the training prior to their Commission or the date of their Commission where there was only post-Commission training, that is –

(a)In the case of Services or posts recruitment to which is made on the results of competitive examination conducted by the Commission, the released Emergency Commissioned Officer or Short Service Commissioned Officer who competes successfully at the first or second available opportunity would be deemed to have passed the examination at the first or second occasion he could have appeared at the relevant examination had he not joined military service and shall be assigned the year of allotment correspondingly, and

(b)In the case of Services or posts recruitment to which is made otherwise than through a competitive examination conducted by the Commission, seniority shall be fixed on the assumption that the Emergency Commissioned Officers and the Short Service Commissioned Officers would have been appointed on the date arrived at after giving credit for the approved military service as Emergency Commissioned Officers or Short Service Commissioned Officers, as the case may be, including the period of training, if any, and shall be deemed to have been allotted the corresponding year for the purpose of fixation of seniority.

(2) Seniority inter se of candidates who are appointed against the vacancies reserved under sub-rule (1) of rule 4 and allotted to a particular year shall be determined according to the merit list prepared by the Commission on the basis of the results of their performance at the examination or test or interview.

(3) All the candidates who have been appointed against the vacancies reserved under sub-rule (1) of rule 4 shall rank below the candidates who were appointed against unreserved vacancies in the Services or posts through the competitive examination or test or interview conducted by the Commission corresponding to the year to which the former candidates are allotted.”

5. The Petitioners' complaint is that despite the mandate of the 1971 ECO Rules, especially Rule 6, they have been denied seniority. It is urged that they were clearly entitled to seniority on the basis that they had entered the service from the date they obtained their emergency commission or short service commission, as the case may be. It is submitted that the RPF kept postponing consideration of their claims and eventually, they were driven to approach the Court. In this regard, it is submitted that one of the Petitioners had approached the Allahabad High Court, and the other had filed a writ petition before the Supreme Court. A transfer petition was filed in respect of the Allahabad High Court proceeding. That petition as well as the Article 32 writ petition were allowed to be withdrawn and the petitioners were asked to represent to the RPF; they did so. However, the RPF did not give any response. In the meanwhile, the petitioners retired.

6. P.L. Verma's petition refers to the fact that after the judgment of the Supreme Court, dated 27th August, 1997, a seniority list was issued on 28.08.1998. This did not reflect the correct seniority, by giving weightage to military service. It is submitted that the Petitioners' entry into RPF under the Emergency Service Rules cannot be disputed, because of the nature of recruitment rules and the fact that their names were present in the list forwarded to the Union Public Service

Commission. The letters written by the RPF to the UPSC and the replies thereto are relied upon to say that there were vacancies that were in fact filled up from amongst eligible candidates who had undergone military service. Reliance is placed on certain documents, sourced through the Right to Information Act, 2005 (RTI) including file notings, to contend that the petitioners' claim for seniority is justified and that the RPF had in fact no opposition to it. It is also contended that the RPF fixed pay taking due note of the ECO Rules and gave benefit of past military service. Consequently, it was not open to the RPF to deny seniority benefits.

7. The contention of the other petitioners is much the same as in the case of P.L. Verma. In Mahendra Sharma's case, it is stated that the petitioner was continuously in contact with the respondents, who had even as late as in 2009, considered his case for *antedated* seniority in proper perspective. Reliance is placed on file notings to substantiate the argument. In the case of A.K. Tanwar too, similar arguments and averments have been advanced.

8. The RPF in its replies in all these petitions, argues that the petitioners have approached this court after an inordinate delay. It is submitted that having been released from the Army in the early nineteen seventies and later appointed on various dates between 1972 and 1975, they cannot now agitate the issue of seniority. It is submitted that whenever the petitioners were promoted, they knew their exact placement in the seniority vis-à-vis other officers, including those joining RPF from different sources at various stages, who were also promoted to higher positions or posts. Not having challenged their seniority, the petitioners cannot be allowed to agitate their claim to *antedated* seniority, based on the Rules. It is also submitted that in any case, the petitioners cannot lay claim to such *antedated* seniority because they have nowhere established that they were initially recruited or appointed against the said quota, earmarked in terms of the 1968 or

even later, 1971 Rules. Mr. Rajan Sabharwal, learned counsel also pointed out that the RPF has consistently maintained that all these petitioners were appointed to the said Force *after* the said Emergency Commissioned Officers' Rules had ceased to operate. Therefore, they cannot claim any benefit from the said rules.

9. Various file notings which formed part of the official records were produced as part of the record; the petitioners have also relied on information and many notings of the Central Government, sourced through the Right to Information Act (RTI).

Analysis and Conclusions

10. The 1971 rules provided that 25% of vacancies in all Central Civil Services Post Class-I which were to be filled by direct recruitment, were to be reserved for being filled by Emergency/SSC Officers. These rules further stipulate that on appointment of such officers to Class-I post their seniority and pay and the services rendered by them as Emergency/SSC Officers were to be taken into consideration.

11. Before proceeding to discuss the merits of the cases, it would be useful to notice the service particulars of each of the petitioners before this Court. The same is produced in the form of a tabular chart:

Entry post/ Promotion/ retirement	Date(s)of entry, promotion and retirement of each petitioner		
	<i>M.K. Sharma</i>	<i>P.L. Verma</i>	<i>A.K. Tanwar</i>
<i>Asst. Security Officer/Asst. Commander (entry)</i>	26-07-1972	24-02-1975	22-01-1975
<i>Security Officer/Commander</i>	05-03-1979	22-01-1982	18-11-1980

<i>Security Commissioner/ Sr. Commander</i>	18-05-1994	20-05-1994	
<i>Date of retirement</i>	31-08-1997	31-07-2001	31-07-1998

12. The respondents' uniform stand in all these petitions is that though the petitioners were given the benefit of past, military service for the purpose of pay fixation, such benefit was inadmissible for seniority purposes. The argument made in this regard is twofold: firstly that there is nothing to show that these petitioners were recruited against reserved vacancies under the said Rules; and secondly, that they- or at least two of them were appointed to RPF *after* the rules ceased to be operative.

13. The ECO Rules, 1967, were brought into force and were in effect from 29.01.1996 till 28.01.1971. The ECO Rules, 1971 were brought into force with effect from 29.01.1971 till 28.01.1974.

14. To determine the correctness of the respondents' plea, it is essential to consider the materials placed on the record. The first note is by the Deputy Inspector General, RPF, of 02.09.1972. This recollects an earlier note dated 04.04.1972 which in turn refers to the 4 modes of recruitment to the post of Assistant Security Officer, including through reemployment of retired/released Officers of the Armed Forces. It then goes on to say that a total 128 posts were vacant in the cadre of Assistant Security Officer (Class II); the proposal was noted to recruit 9 released ECOs as Assistant Commandants/Adjutants and further proposed that the UPSC could be approached for selecting suitable officers. This note significantly mentioned that:

"3. It may be mentioned that we have already recruited 8 ECO's to the post of ASO/Assistant Commandant/Adjutants Class II in 1969. Recently, we have recruited 8 more ECO's. 6 of them have since joined the Rlys in June

1972 and 2 more are expected to join shortly. They will undergo training for 6 months after which they will either be posted to RPF or RP SF. Therefore, on that coming to working posts, the shortage in the cadre will come down from 17 to 9."

The noting of 12.12.1972 by the Deputy Inspector General of the RPF stated *inter alia*, as follows:

"

2. *In this connection it may be mentioned that as per the extant rules, 50 per cent of the posts in the rank of Assistant Security Officers are to be filled up by promotion from the rank of inspector and the balance 50 per cent by taking Police Officers on deputation,, reemployment of ex-Army Officers and occasional admission with the approval of the UPSC. The present position of ASOs in the Zonal Railways including the RPSF has been worked out and the position may be seen at F/A. It would be seen therefrom that out of the total strength of 129 ASOs excluding ASO [Fire] but including Asstt. Commandants of the RPSF, 61 are present filled up by departmental candidates. There are 57 Police Officers and ex-Army Officers. The rest of the posts are temporarily filled up by ad hoc promotes (departmental).*

3. *Our experience in recent times has been that it is becoming increasingly difficult to get suitable Dy. Superintendents of Police on deputation as ASOs. Consequently, more and more posts which are meant for the Police quota are remaining vacant for want of suitable Police Officers. At the same time, it may not be possible to fill up all these vacancies by promotion of Departmental inspectors as it is necessary that the quota of departmental promotion has to be restricted to 50% of the total number of posts. In order to make up the balance of 50%, it is, perhaps, necessary that we should take more released ECOs directly as ASOs. It is immaterial whether they are to be posted in RPSF or in the RPF on the Zonal Railways. I, therefore, propose that we should immediately take action for placing a requisition with the Directorate of Resettlement in the Min of Defence, to send us a panel of names for filling up 8 posts of ECOs for appointment as ASOs."*

On 06.03.1973, the Directorate General, Resettlement, in reply to an earlier letter of the Indian Railway's dated 26.02.1973, enclosed a list of names and particulars of eligible ex-military service officers. The Railway Board's letter of 04.06.1973 reveals that UPSC was requested to select suitable officers for appointment from amongst 74 names. These included P.L. Verma's name. UPSC's subsequent letter of 02.08.1973 also contained these names. The further noting of 10.07.1974 shows that the RPF had decided that "*8 vacancies of Asst. Security Officers/Asst. Commandants/Adjuncts, Class II in Railway Protection Force should be filled by absorption of released ECOs/SSCOs.*" The RPF was of the opinion that a special procedure should be adopted to induct them because of acute shortage of staff of that level. However, UPSC did not agree; a list of names was consequently forwarded. UPSC was of opinion that piecemeal forwarding of names was not correct and insisted that all eligible ECOs/SSCOs names and particulars should be sent to it. 75 such officers were available; however particulars of all were not available. Consequently, 51 of such former ECOs/SSCOs whose particulars were available were interviewed between 29.07.1974 and 31.07.1974. The eight selected candidates joined the RPF on various dates between February and March, 1975. Two of these officers, A.K. Tanwar and P.L. Verma, were part of those eight officers who joined as Asst. Commandant. As regards M.K. Sharma, he had already joined RPF in 1972. The record also shows that in all 24 ECOs/SSCOs had joined the RPF after being duly interviewed and cleared by the UPSC.

15. The petitioners and other personnel were awaiting promotion to the post of Security Officer/Commander, the higher post, when a fresh set of recruitment rules was brought into force, in 1981. This led to a spate of litigation, which was ultimately settled by the Supreme Court. Two issues had to be decided in those proceedings, i.e. the claim of Asst. Security Officers who had been recruited prior to 1981's contention that they promoted to the post of Security

Officer/Commander, notwithstanding the creation of a new intermediate promotional post, i.e. Asst. Security Officer Class I. The other issue was seniority. Two of the present petitioners were party to those proceedings: one had filed a writ petition before the Allahabad High Court and the other had preferred Transfer Petition against other pending proceedings. The Supreme Court decided the matters before it in the decision reported as *H.S. Grewal v Union of India* 1997 (11) SCC 758. It held that the new rules were applicable and that those occupying the post of Asst. Security Officer Class II had to first be promoted to the post of Asst. Security Officer, Class I. The court held, *inter alia*, that:

“There is no question here of giving retrospective effect to 1981 Rules. It is, in our opinion, open to the employer, namely, Union of India and it is its prerogative, as a matter of policy, to introduce an intermediate post and lay down the conditions of eligibility of Group-B officer in Class-II for promotion to such intermediate post of Group-A in Class-I (Junior Scale). Such an introduction of an intermediate post does not, in our opinion, amount to interfering with any vested rights cannot be interfered with, is to be accepted as correct. What all has happened here is that an intermediate post has been created prospectively for future promotions from Group-B Class-II to Group-A Class-I. If, before these rules of 1981 came into force, these officers were eligible to be directly promoted as Commandant under the 1974 rules but before they got any such promotions, the 1981 Rules came in obliging them to go through an intermediate post, this does not amount to interfering with any vested rights.”

16. In the light of the above directions, the RPF had to decide the issue of *inter se* seniority afresh. Consequently, the issue of granting seniority was discussed again within the department; the question of according *antedated* seniority came up for consideration. In a file noting of 1998, the list of 24 RPF officers who had been drawn from amongst former ECOs/SSCOs. This list contains the names of all petitioners. The notings on the file, of December, 1998 are extracted below:

“Ref Note
(E)/SR/2/5

On Pre-page

File No.96/Sec

As indicated on pre-page, Released Emergency Commissioned Officers and Short Service Commissioned Officers (Reservation of Vacancies) Rules 1971 ceased to be in force on and from 29.01.1974. 8 Emergency Commissioned Officers who joined RPF on 10.02.1975 or later on are not covered under these rules.

Sd 07.12.1998

Vacancies for ECOs under 1971 rules are reserved only for those ECOs who had been Commissioned between 01st Nov.1962 and 10th Jan.1968 subject to Para-4 of the rules and whether they have come against vacancies reserved for ECOs. It has also to be ascertained as to whether their names were forwarded from Defence Ministry to UPSC for appointment against reserved vacancies for ECOs. The aforesaid information may kindly be furnished before the case is channeled further.

Sd. 11.12.1998

SO/E (GR) I

Sd 14.12.1998

DDE (GR) Sd/14.12.1998

'A' the benefit is clearly due to those who joined up to 28.01.1974 & may be permitted for 15 Officers listed page 3/N ante.

Sd EDE (GC)

Sd DG (RPF)

Sd IG (HQ) 16/12"

17. Apparently the seniority list prepared triggered another spate of litigation. Before all this could be settled, the petitioners retired from service. One of them approached this court in 2000 (P.L. Verma). The others however continued to repose their faith in departmental relief. In the meanwhile, a judgment was delivered by the Calcutta High Court, which led to re-casting of the seniority list. One of the petitioners sought information under the RTI and was furnished with it, relating to the official notings in connection with grant of *antedated* seniority. The

said noting, dated 10.01.2007 deals with representations of two petitioners. It reads as follows:

“Placed below are representations from (1) Shri A.S. Tanwar, Sr. Security Commissioner (Retd.) and Shri M.K. Sharma, Senior Security Commissioner/NR (Retd.) Both are ex.ECO officers and they want to know whether the decision to grant them benefits of army service has been finalized.

The list furnished by EDE (GC) at page 19 n/ante indicates that 22 ECOs were re-employed as Assistant Security Officers. The names of Shri M.K. Sharma and Shri A.S. Tanwar are at S.No. (12) and (16). In terms of the Cabinet.Sectt’s notification No.9/20/69/ESTS (C) dated 26.8.71 (F/X), the benefit of approved military service for the purpose of seniority is admissible to those ECOs/SSCOs recruited against the post reserved for them subject to certain conditions.

In one of their remarks (f/z), it is mentioned that the benefit is clearly due to those who joined RPF up to 28.1.74 and may be permitted for 15 officers.

The representations placed at F/A and F/B may please be examined. May please also advise (1) whether they were recruited against the vacancies reserved for ECOs/SSCOs and (2) whether they are eligible for the benefit of army service in terms of the Cabinet Sectt.’s orders at (F/X).”

The above notings were made available to the petitioners on 14.01.2009. After waiting futilely, the Petitioners M.K. Sharma and Tanwar approached this court for relief. Also on the record are minutes of the meeting of the DPC held in 1980, which decided to recommend the claim of the Petitioners for regularization of their posting/promotion as Security Officer/Commandant in 1980. The issue was pending consideration when the following noting was made:

“No.92-Sec.(E)PM-2/3

*Sub: - Regularisation of Security Commissioners/RPF in Sr. Scale
Ref: - DS (E) II’s note No.E (O)1/93/SR-6/1 pt.*

Dated 22.7.94

The eligibility criteria followed in regularizing the services of Security Commissioners in Sr. Scale is as under: -

- 1. 1. In the case of direct recruits Group-A Jr. Scale officers their services as DSC in Sr. Scale were regularized from the date they had completed 5 years in Jr. Scale. However, those who were promoted after their completion of 5 years in Jr. Scale they were regularized from the actual date of promotion.*
- 2. 2. In the case of ECOs who joined in Group 'B' their services as DSC in Sr. scale were regularized from the date they had completed 8 years in Group 'B'. Those who were promoted after completion of 8 years they were regularized from the date of their actual promotion.*
- 3. 3. In the case of Group 'B' and promotee officers their services as DSC in Sr. Scale were regularized as per a cut-off date and that date was taken as 14.5.89. As their seniority is still to be finalized, this arrangement was made so that these officers may be considered for promotion to JA Grade on ad hoc basis.*

Before regularizing the services of Group –A Jr. Scale Direct Recruits ECOs Group-F and promote officers their ACRs for the 5 years from the date they were considered for regularization in Sr. Scale were relied upon and they were regularized depending on their good service record.

SD/22-7-94

DD/Security

IG/Hqrs SD/22-7

DG/RPF SD

DS/(E) II – With regard to 'B' Group officers as discussed in para No.3 above, while regularization in Sr. Scale, Rules of 1981 has been followed. However, their seniority has not yet been decided, as it is still to be decided by the Board adhering to the direction of Hon'ble High Court of Calcutta.

SD/'

18. A peculiar feature of these proceedings is that almost from inception, the recruitment rules concerning the RPF - framed initially in 1968, later replaced by the 1974 rules had identified ex-ECOs/SSCOs as a separate source or channel of

recruitment - apart from another channel of recruitment from amongst serving armed forces personnel. These rules had a higher maximum age- 38 years- naturally, because previous army service was factored in. However, the Central Government framed separate rules to ensure that such ECOs/ SSCOs who had responded to the call of duty during national emergencies get their dues. The *rationale* for denying seniority benefit to such officers is twofold, i.e. that induction was not on the basis of the quota set apart for the ECO/SSCOs and secondly, that the petitioners were recruited after the 1971 rules pertaining to induction of such ex-military personnel ceased to operate.

19. A reading of the Rules governing recruitment to the post of Asst. Security officer of the RPF would show that re-appointment was one of the regular modes of recruitment. This position existed under both the 1968 and the 1974 Rules. If this fact were to be kept in mind, it would be apparent that the quota prescribed by the ECO Rules of 1971 was adhered to. Rule 4 talks of reservation of 25% vacancies of posts if it were to be in services other than those specified (“otherwise”) were earmarked for being filled by ECOS/SSCOs. The outer limit under Rule 4 (5) was not more than 50% of the vacancies falling to the share of direct recruits. This would mean that ECOs were entitled to be recruited against 25% of the existing vacancies. In the present case, even at the stage of initial recruitment, the UPSC had sought clarification to ensure that those recommended, like the petitioners, were within and not in excess of their quota. The Railway Board’s noting dated 28.06.1974 would reveal that a reply was given to the UPSC; it is only thereafter that appointments were finalized. This is strong evidence of the fact that the petitioners were in fact appointed against the quota set apart for this purpose. There is another way of looking at the matter. The correspondence between RPF and UPSC continued for at least 3 years. It is a matter of fact that the

petitioners did not participate in any direct recruitment process but nevertheless the UPSC was consulted at the stage of considering suitability of the ECOs; their names were recommended for appointment. In these circumstances, and in the absence of any evidence to show that there were insufficient vacancies – or to put it differently, a clear list of the number of vacancies available at the relevant time, the irresistible inference that this court would draw is that the petitioners were appointed against the quota carved out by the ECO rules. The application of Rule 6 of the ECO Rules and pay fixation taking into account the military service of the petitioners is not disputed at all. As a matter of fact the 1968 Rules governing the recruitment to the post of Asst. Security Officers fixed the cadre strength at 109. The records and materials produced before the court also nowhere show any distinct quota for deputationists from civilian departments, or armed forces. Similarly, the breakup of direct recruit vacancies has not been shown. On the other hand, the materials shown to the court would reveal that there was a demand for filling up of vacancies; 24 ECOs/SSCOs were appointed after UPSC conducted interview and recommended their names. These 24 officers were appointed over a period of 6 years (1969, 1970, 1972 and 1975). The court therefore holds that the RPF's submission that the petitioners were not appointed under the quota earmarked for the ECOs/SSCOs under the ECO Rules, is without basis and erroneous; they were in fact appointed in terms of the quota earmarked under Rule 6.

20. The second substantial argument of the RPF to deny the benefit of the ECO Rules is that the appointment of the petitioners was made after the ECO Rules ceased to be in force. There is no doubt that two of the petitioners were appointed after the date the ECO Rules ceased to be in force. However, equally there is overwhelming material on the record showing (1) that they had left the army after

completing the emergency commissions within the time contemplated by the ECO Rules; (2) the process of selection culminating in their appointment was considerably delayed- it took over two years. The Director General, Rehabilitation, RPF and UPSC corresponded with each other right from the beginning of 1973; the petitioner's names figured in the list with the UPSC, dated 02.08.1973. The delay which occurred at the end of the authorities cannot therefore, be the ground to deny the advantage of Rule 6, which was intended for individuals like the petitioner. This court is also of the opinion that once the selection process began, the fact that rules ceased to operate, or a new *regime* was brought into existence, would not efface the circumstance that the officers- in the present case, the petitioners were eventually appointed pursuant to and in culmination of the process which began earlier. This contention too, therefore, deserves to be rejected.

21. In *Union of India v. Dr. S. Krishna Murthy* 1989 (4) SCC 689 the Supreme Court had occasion to consider the *vires* of provisions *in parimateria* with Rule 6 of the ECO Rules. Its observations on its efficacy are quoted below:

“The impugned rules have been framed with a view to giving weightage to the ECOs and SSCOs in recognition of their past services in the army during the period of emergency. We fail to understand why the classification has no rational relation to the objects sought to be achieved by the impugned rules. The classification has been made only for the purpose of compensating the ECOs and SSCOs for their lost opportunity because of their joining the army service and the impugned rules best subserve the purpose. Accordingly, we do not think that there is any merit in the finding of the Tribunal and also in the contention of the respondents that the impugned rules are violative of the provisions of Articles 14 and 16 of the Constitution.”[para 13]

In the present case too, this Court holds that the petitioners' claim to *antedated* seniority on the basis of Rule 6 of the ECO Rules could not have been rejected. After all, they are beneficiaries of pay fixation in terms of that provision. They

participated in at least one- if not two wars for the defense of the country. They gave up the opportunity of joining public service at an earlier age. To compensate such lost opportunity, the ECO Rules were framed. Clearly, they are entitled to seniority from the date of their Army commissions.

22. This court is conscious of the fact that considerable time has lapsed between the claim and the time the petitioners' entitlements have been upheld. Although seemingly they approached the court after a delay, the reality appears to be otherwise. Two of the petitioners had approached the Supreme Court; when *H.S. Grewal's* judgment was delivered, they were permitted to represent to the authorities, which they did. After the judgment, in 1998 a gradation list was published, which too denied them relief. In 2000, P.L. Verma approached this court. The others, notably Tanwar, continued to represent. Even in 2007, the RPF was in doubt and was veering to the possibility of granting benefit to the petitioners. Having regard to all these factors, delay cannot be a factor to deny relief in this case; it is however a relevant circumstance for moulding the relief to be given, appropriately.

23. Before the petitioners' retirement, they had agitated about denial of promotion. Considering these facts, the petitioners are held entitled to reckon their seniority from the date of each of them secured commission in the army. That would mean that the RPF would have to review promotions appropriately to see if any of their juniors got promotions before them (i.e. reckoned after granting seniority as if they had joined RPF from the date of their original commission as ECOs/SSCOs). Consequent action by way of holding review DPCs for all higher promotional ranks shall be undertaken. However, that should not disturb any promotions earned by other personnel over the years, as they are not parties before this Court. In case the petitioners' records are such that they have to be promoted

to posts higher than those they superannuated from, notional benefit of promotion shall be accorded to them; this shall also entail consequent pay and pension fixation. Arrears of pension (i.e. differential between what they got and what they would be entitled to on account of notional fixation) shall be calculated; actual arrears shall be limited to period commencing from the date of filing of the petitions in each case. The entire process shall be completed within four months, and orders as well as amounts issued directly to the petitioners, and disbursed to them.

24. All the writ petitions succeed and are allowed in the above terms, without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

OCTOBER 08, 2015