

\$~10

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

Decided on : 19.11.2015

+ **W.P.(C) 2356/2013**

TARENDRA KUMAR JAINPetitioner
Through: Sh. R.K. Shukla, Advocate.

Versus

UNION OF INDIA AND ORS.Respondents
Through: Sh. Manish Mohan, CGSC with Ms. Sidhi
Arora, Sh. Shivam Chanana and Ms. Pooja Mishra,
Advocates, for Respondent Nos. 1 to 3.

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

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. During the course of proceedings, the fourth respondent, though served, did not enter appearance.

2. The petitioner, a candidate to the post of Sub Inspector (General Duty) [hereafter "SI/GD"] in the Indo-Tibetan Border Police Force [hereafter "ITBP"], cleared the selection test but was not appointed on account of perceived medical condition. He had sought revision of his medical report; the Review Medical Board cleared the petitioner subsequently and he was appointed on 24.04.2004. In the meanwhile, other candidates who had participated in the Combined (Graduate) Level Examination, 2000 conducted by the Staff Selection Commission joined the

services. One amongst them was the fourth respondent, who joined on 15.03.2003.

3. The petitioner joined the ITBP as SI/GD on 24.04.2004. He was initially placed at S. No.712 in the seniority list as on 01.01.2006 whereas the fourth respondent was placed at S. No.256. Upon a clarification from the SSC, the seniority of the petitioner was corrected and he was placed at S. No.126 in seniority list of SI/GD as on 01.01.2007, above the fourth respondent, who was placed at S. No.127. On 04.08.2008, the petitioner was promoted as an Inspector (General Duty) [hereafter “Inspector/GD”] but was placed below the fourth respondent in the Seniority List of Inspector/GD on 13.12.2010. He represented to the ITBP, seeking correction of his seniority, responding to which the respondents issued an inter-departmental communication dated 07.10.2012.

4. In these circumstances, the petitioner approached this Court earlier by filing W.P.(C) 5586/2012 which was permitted to be withdrawn on 06.09.2012 with liberty to file fresh proceeding, which he utilized by filing the present petition.

5. It is contended that since the petitioner and the fourth respondent participated in the same recruitment process, and the petitioner was ranked higher than the said private respondent, he ought to have been placed at a slot above the fourth respondent in view of the conceded rule position which mandates such a result. The petitioner unfortunately was disqualified on medical grounds. By the time Review Medical Board examined and cleared him, the fourth respondent had joined ITBP in 2003. It was urged that these circumstances should not have prejudiced the petitioner because the date of

joining is not relevant while determining *inter-se* seniority of direct recruits and that the relevant criteria would be the merit based upon performance in the common recruitment process.

6. The respondents, in their counter affidavit, do not dispute the facts as urged in the writ petition. They also do not dispute that the petitioner was initially disqualified on medical grounds and that later upon review, he was selected and that both he and the fourth respondent participated in the same recruitment process. They also concede that the petitioner could not be nominated for the training course which was a prelude to the promotion to the post of Inspector/GD and that he attended it subsequently. On the other hand, the fourth respondent was nominated since he fulfilled the eligibility conditions which included the three year residency service stipulation. The respondents have placed on record the manner in which an identical claim had been dealt with, i.e. of one Abhijeet Kumar who too had participated in common recruitment process in 2000. The said letter reads as follows:

*“GOVERNMENT OF INDIA
STAFF SELECTION COMMISSION
DEPARTMENT OF PERSONNEL, PUBLIC GRIEVANCES &
PENSIONS
BLOCK NO.12,
KENDRIYA VIDYALAYA PARISAR
LODHI ROAD*

October 5, 2007

To,

Sh. Anil Tandon

*Senior Administrative Officer (Pers-2),
Directorate General, ITBP,
Block No.2, CGO Complex,
Lodhi Road, New Delhi*

*Subject: Combined Main (Graduate Level) Exam-2000- Case of
Shri Abhijeet Kumar, Roll No.2085461-Regarding-*

Sir,

I am directed to refer to your letter No.I-15012/1/2007/Pers-2/2370 dated 10.09.2007, on the subject mentioned above and say that the candidates who were declared fit by the review medical after qualifying the interview, were allocated to different CPOs according to the vacancy position. Their ranks were determined keeping in view their all India Merit position as well as their inter-se merit position in the respective service.

2. Accordingly, Shri Abhijeet Kumar Shri Abhijeet Kumar, Roll No.2085461, was selected for the post of SI/GD(DE) in ITBP and was placed in Rank No.SLB/00003A. Hence, though he joined ITBP as SI/GD (DE) on a later date, he should be placed amongst directly recruited SI/GD(DE). However, no monetary benefit will be given to him for that period. The qualifying service of two/three years for his next promotion also needs to be verified by the User Department.

Yours faithfully

Sd/-

(A.K. Sharma)

Under Secretary (C II)''

7. The petitioner relies upon Standing Order No. 1/1992 issued by ITBP dated 22.07.1992 which *inter alia* provides that seniority of personnel who were otherwise eligible but were not detailed to the requisite promotional course or could not appear in the promotional course due to unavoidable circumstances would be protected *vis-a-vis* their seniority. The said Standing Order is extracted below:

**“No.1,19014/7/91/Estt-B
Directorate General, ITB Police,
MHA, Govt. of India,
Block-2, CGO Complex,
Lodhi Road, New Delhi-3**

Dated 22.7.1992

STANDING ORDER NO.1/92

Subject:- Protection of Seniority of Combatised Personnel of the Force

It has been observed that due to circumstances beyond their control, owing to unavoidable Force commitments, many a times, Force personnel are unable to undergo promotional courses or appear in the promotion tests as per their seniority/turn. The question of laying down a uniform policy for Protection of seniority of such effected personnel has been engaging attention for some time at the Directorate General.

2. *After a careful examination of the matter, it has been decided that seniority of such personnel who are otherwise/eligible but could not be detailed on the requisite promotional Course or appear in the promotion test, due to their un-avoidable involvement in the under mentioned Force commitments will be protected, subject to the condition that they*

qualify in the concerned promotional course/promotion test in the first attempt. They will be allowed to claim their seniority from the dates on which their juniors are promoted. However, financial benefits will accrue to them only from the dates of taking over charge of the new posts.

(a) Force level/international mountaineering expeditions including detailment as xxx (not legible)O for Foreign Mountaineering Expeditions.

(b) Un-avoidable/un-foreseen/operational made scale deployment of the Force including during General Elections.

(c) West Zone Police Tournaments, All India Police Games, All India Police Duty Meet National/International Sports Meets.

(d) Postings/deployment at Indian missions abroad.

(e) Any other peculiar circumstances for which the matter will be decided on merits of the individual case at the Directorate General.

3. It will be ensured by all concerned that, as far as possible, such seniority protection cases are kept to the minimum and all efforts are made to put eligible candidate through promotional courses in their turn. For deputation of personnel to Ministry of External Affairs also, sincere endeavours should be made to see that, to the extent possible no personnel who are required to undergo promotional Course in the near future are detailed for such duties.

(R.K. Wadehra)

Director General, ITB Police”

8. In view of the clarification by the respondents in the letter dated 05.10.2007 extracted above as well as Standing Order No.1/1992, this Court is of the opinion that the petitioner is clearly entitled to be placed above the fourth respondent in the Seniority List and treated as senior to the fourth respondent in the cadre of SI/GD and Inspector/GD. Appropriate orders shall be issued in this regard within four weeks.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

NOVEMBER 19, 2015

