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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Decided on : 15.07.2015
+ **W.P.(C) 13354/2005**

BALIHAR SINGH VIRK & ORS Petitioner
Through: Mr.Mritunjay Kr. Singh, Advocate
alongwith Mr.Shantanu Kumar, Advocate.

versus

UOI & ANR Respondents
Through: Mr.Ripu Daman Bhardwaj, Advocate
alongwith Mr.T.P. Singh, Advocate
for R-2.
Mr.Sanjay K. Shandilya, Advocate
for R-3.

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

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioners complain that the seniority list issued by the respondents on 24.05.1999 and 01.01.2000 are contrary to the law; they seek appropriate directions that the said list should be quashed.
2. The brief facts are that the petitioners were selected for appointment to the post of Assistant Commandant through Special Selection Board process. Pursuant to the offers of appointment received by them, they joined the Central Reserve Police Force (CRPF) through employer and the respondent in these proceedings on 22.05.1999. Subsequently, on 1.1.1998,

9 other individuals were appointed as Assistant Commandants. They, infact, the petitioners, had participated in the same recruitment process that was conducted in 1994 (the 28th batch). The petitioners were asked to undergo training in terms of the CRPF Rules which they did and also completed period of probation prescribed under the Rules. At the end of these periods, they were confirmed in their service on 22.05.1999. In the case of the other 9 individuals namely S/Shri Yatindra Nath Rai, V.P. Singh, A.K. Chowdhary, Helal Feroz, Ajay Vibhanshu, Arvind Kumar, Feroz Kujur, V.Jai Sundaram and Pankaj Peter Shah, similar orders of confirmation were made on 31.12.1999. It was in this background that the two impugned lists were made. The petitioners claimed that they were wrongly shown as juniors in the list of 9 individuals. The petitioners' representations were of no avail; they have consequently approached this court.

3. Learned counsel for the petitioner relies upon Rule 8(b)(ii) of the CRPF Rules and states that inter se seniority of any group of direct recruits at any given point of time has to be in accordance with its mandate. Since the other 9 individuals had concededly joined later and also completed their probation period and were accordingly confirmed later, they could not have stolen the march in the seniority list. The respondents, on the other hand, emphasized that said rule categorically states that it is not only inter se merit but also the combined performance-i.e. the aggregate marks obtained before the selection board and in the passing out examination at the time of training which has to be taken into account while determining seniority. The CRPF rules highlights that the other 9 individuals were ranked higher than the present petitioners, they obtained better marks in orders in aggregate and therefore would be entitled to be given positions above all of them.

Secondly, it is also submitted that the said 9 individuals shown were senior to the petitioners, but could not report for duty earlier alongwith them because their offers of appointment were not ready. Though they were selected states Counsel, the pre-enrollment verification report and medical examination had not been conducted as a result of which, their appointments were delayed. Consequently, when they did join, they were made to report to the training centre and join a later batch. However, the overall grading in the aggregate was better than that of the petitioners.

4. Rule 8(b)(ii) of the CRPF Rules 1995 prescribes as follows:-

“...the inter-se-seniority of direct recruits to the Central Reserve Police Force in the rank of Company Commander or Quarter Master or Assistant Principle, Central Training College shall be determined in accordance with the aggregate marks obtained by them before the selection board and the passing out examination conducted after their basic training at the CRPF Internal Security Academy...”

5. During the course of hearing, the petitioners have relied upon para 4 of the DoPT Memorandum issued on 06.06.1998.

The relevant portions of the said memorandum are extracted below:-

“4. Seniority in cases of delay in reporting for duty after selection.-

Relative seniority of direct recruits appointed on the recommendations of the UPSC or any other

authority is determined by the order of merit in which they are selected for such appointment, the persons appointed as a result of an earlier selection being placed above those appointed as a result of the subsequent selection. It has come to the notice of the Government that in certain cases, the candidates recommended by them for appointment take long time to join and there have also been cases where offers of appointments were revived by the Departments after they had been cancelled and in spite of the long delay in joining, the candidates were allowed the benefit of seniority on the basis of their initial selection. The question whether in such cases it would not be desirable to depress the seniority of the candidates who are appointed on the result of the selections by the interviews/examinations was considered by the Government in consultation with the UPSC and it has now been decided that the following procedure may be adopted. This procedure will be applicable both in cases of (a) selection through interviews and (b) examinations-

(i) xxxx xxxxx xxxxx

(ii) If, however, within the specified period, a request is received from the candidate for extension of time, it may be considered by the

Ministries/Departments but extension beyond three months should not be granted liberally and it may be granted only as an exception where facts and circumstances so warrant and in any case only up to a maximum of six months from the date of issue of the original offer of appointment. An offer of appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment. The candidates who join within the above period of six months will have their seniority fixed under the seniority rules applicable to the service/post concerned to which they are appointed, without any depression of seniority.

(iii) If, even after the extensions(s), if any, granted by the Ministry/Departments, a candidate does not join within the stipulated time (which shall not exceed a period of six months), the order of appointment should laps.”

7. It is evident from combined reading of Rule 8(b)(ii) in the office memorandum dated 06.06.1998 that inter se merit of direct recruits to the Post of Assistant Commandants in the CRPF is determined not only on the basis of the performance in the recruitment process but it is also dependant on the performance that a candidate displays in the course of training, while she/he is on probation. In the present case, the fact that the 9 individuals

shown as senior to the petitioners, reported later cannot itself be itself a decisive factor. To that extent, the petitioners reliance on para 4 (ii) of the DoPT memorandum dated 06.06.1978 is not in order. Rather Rule 8(b)(ii), which has statutory force and determines the specific issue in question, is determinative in that regard. It clearly postulates that seniority is to be determined not on the basis of performance at the recruitment process alone but also on the basis of an overall assessment of the recruitment process and the performance through training. No doubt, in this case peculiarly the respondents could not issue the appointment letters to the said 9 individuals because of its own constraints given that the receipt of pre-enrolment verification and medical examination report had not been received by them. Having once received them, the offers of appointment were dispatched by them. The petitioners had already gone for training having accepted the appointments. Consequently, the other nine individuals were sent for training in the second batch. There is no dispute that the latter batch completed the training successfully. Since their seniority ought to be fixed on the basis of their recruitment order in respect of the vacancies to which they were selected and appointed to, naturally, i.e. the inter se seniority for the petitioners had to be worked for. The petitioners do not deny that the said individuals participated in the same recruitment process and were later confirmed after a completion of that probation although they participated in the next batch for training purposes.

8. Having regard to these circumstances, especially, the mandate of Rule 8(b)(ii), this Court is of the opinion that the inter se seniority of the parties and the said 9 individuals shown as senior to the petitioners, was correctly fixed.

For the above reasons, the writ petition fails and is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JULY 15, 2015
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