

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

% *Judgment Reserved on : March 18, 2015*

Judgment Delivered on : March 23, 2015

+ **WP(C)No. 5934/2012**

SHRI HIMANSHU PANDE Petitioner

Represented by: Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA & ORS. Respondents

Represented by: Ms. Barkha Babbar, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Praying that the orders dated October 24, 2002, June 10, 2009, September 15, 2011 and September 07, 2012 be quashed. Mandamus sought by the petitioner is that the Central Reserve Police Force (CRPF) be directed to grant seniority to the petitioner along with the 32nd Batch based on petitioner's merit, or in the alternative the petitioner be at least placed above the entire 33rd Batch including Manish Kumar Bharti, Rajiv Kumar, Amit Kumar and Ramesh Chandra.

2. The four persons named above were not impleaded as a respondent in the writ petition when it was originally filed but, later on only three : Manish Kumar Bharti, Ramesh Chandra and Rajiv Kumar were impleaded as respondents No.4, 5 and 6.

3. In spite of being served they have chosen not to appear and contest the writ petition.

4. The case of the petitioner is that he was a successful candidate for appointment as an Assistant Commandant in a Central Para Military Force at the CPO-1998 examination and keeping in view his merit position and preference was allocated to the Central Reserve Police Force.

5. This was the 32nd Batch so recruited to the post of Assistant Commandant. Required to undergo training for 55 weeks before being deputed for field duty, the petitioner joined the 32nd Batch for training. In the 40th week of the training, on November 25, 2000 he sustained an injury at the obstacle course and was hospitalized. A Court of Inquiry was instituted on November 27, 2000 to find out the circumstance under which the petitioner sustained the injury and the report was that the injury was sustained while under training at the obstacle course and was attributable to government service. Recouping till January 23, 2001 under medical advice, the petitioner reported for training on January 24, 2001 when the 32nd Batch was at a jungle camp. The Senior Medical Officer of the Internal Security Academy examined the petitioner and advised rest for further 12 weeks. Thus, the petitioner could not undertake any further training. He reported back on April 30, 2001, by which date the 55 weeks' training period of the 32nd Batch was over. The trainees were deputed to the respective units, but the petitioner was not deputed to any unit because he had yet to complete the balance 15 weeks' training. The petitioner was told to await remaining training with the 33rd Batch, recruitment whereto was pursuant to CPO-1999. Accordingly, the petitioner completed remaining basic training with the 33rd Batch. He was then posted with the 109th Battalion of CRPF then stationed at Aizwal.

6. The seniority of Superior Officers, which would include Assistant Commandant, has to be fixed as per Rule 8 of the CRPF Rules, 1955. The inter-se seniority of direct recruits has to be fixed as per sub-Rule b(ii)

thereof, which requires the seniority to be determined in accordance with the aggregate marks obtained by them at the entrance examination and at the passing out examination conducted after their basic training.

7. While fixing the seniority the petitioner was relegated at the top of the 33rd Batch but below Manish Kumar Bharti, Rajiv Kumar, Amit Kumar and Ramesh Chandra for the reason, though selected for appointment as an Assistant Commandant pursuant to CPO-1998 and hence a part of the 32nd Batch, due to an injury suffered by him in the 40th week of the training he completed the remainder 15 weeks training along with the 33rd Batch. Simultaneously Manish Kumar Bharti who was selected at the CPO-1996 Examination and would have ordinarily joined the 30th Batch, as also Rajeev Kumar who was selected through CPO-1997 and would have ordinarily joined the 31st Batch, but had completed their training with the 33rd Batch, as did the petitioner, were also placed in the seniority list above the 33rd Batch but above the petitioner. Amit Kumar and Ramesh Chandra, who were also selected through CPO-1998, as was the petitioner, were placed above the petitioner because just as the petitioner even Amit Kumar was relegated to the 33rd Batch on medical grounds, but obtained more aggregate marks than the petitioner taking into account the marks obtained at the time of selection and at the time after completing the training at the passing out examination conducted thereafter. As regards Ramesh Chandra, he completed his training with the 32nd Batch but failed at the final test and was thus relegated for 3 months as per guideline dated March 08, 2001. He was retested by the Board after intensive training and cleared the same. Thus, whether we may say that he was placed at the bottom of the 32nd Batch or at the top of the 33rd Batch, the position would be the same. He would rank senior to the petitioner as per the policy guideline dated March 08, 2001.

8. The case of the petitioner pleaded in the writ petition is that due to no fault of his, having sustained the injury during training, he could not be relegated for purposes of seniority after fixing seniority of the 32nd Batch and would thus urge that his seniority should be fixed with the 32nd Batch as per the aggregate marks obtained by him at the selection and at the passing out examination conducted after his basic training.

9. Regarding Manish Kumar Bharti, the petitioner claims that notwithstanding Manish Kumar Bharti being selected at CPO-1996, and notwithstanding he not being able to join the 30th Batch due to character verification being delayed by the police authorities, he was allowed to join with the 32nd Batch, but at his request was allowed to complete training with the 33rd Batch and thus he should be relegated below the petitioner. Regarding Rajiv Kumar, who was selected through CPO-1997 but could not join the 31st Batch due to character verification being delayed by the police authorities and was allowed to join the 32nd Batch, but at his request his training was deferred to the 33rd Batch, on parity of reasoning with his comparison with Manish Kumar Bharti, the petitioner claimed that even Rajiv Kumar was liable to be placed in the seniority list after him. Regarding Amit Kumar, the petitioner simply claims that since like the petitioner he was relegated to the 33rd Batch, for reasons unknown, the petitioner claims that Amit Kumar should be relegated below him in seniority. As regards Ramesh Chandra, the petitioner pleads that since he failed at the post training examination conducted for the 32nd Batch, and he was declared passed at the retest, his seniority should be below that of the petitioner, and for which no apparent logical argument is advanced.

10. As regards Manish Kumar Bharti, Rajiv Kumar, Amit Kumar and Ramesh Chandra, the respondents have explained as under:-

a) Manish Kumar Bharti was selected through CPO-1996 examination but he could not receive the offer letter on time due to non receipt of verification report of character and antecedents from civil authorities. On receiving the same he was issued offer appointment with the direction to join basic training along with 32nd Batch of DAGOs which commenced from February 25, 2000. However, he failed to join the basic training with 32nd Batch of DAGOs and he himself made a request for extending the date of joining due to some personal problems. His request was considered and he was allowed to join basic training along with 33rd Batch of DAGOs that commenced on October 14, 2000. Had he join the basic training at the first instance, his seniority would have been reckoned with his batch-mates i.e. 31st Batch, but it got delayed due to the late receipt of verification. Since the officer himself made the above request of extension, his seniority was depressed and determined at the top of batch in which he had undergone training i.e. 33rd Batch. Therefore, the respondents have rightly placed the officer of CPO-1996 exam above the petitioner of CPO-1998.

b) Rajeev Kumar was selected through CPO-1997 examination. He received the appointment letter on January 28, 2000 to report for basic training starting from February 25, 2000. However, instead of joining for basic training with 32nd Batch, he himself made a request to extend his joining in next batch due to domestic problems. His request was considered and he was granted permission to join basic training along with 33rd Batch subject to depression in seniority. Therefore, Rajeev was also rightly placed above the petitioner as the former was selected through CPO-1997 examination while the later was selected through CPO-1998 examination.

c) Amit Kumar like the petitioner was selected through CPO-1998 examination and he joined basic training on February 25, 2000 i.e. 32nd

Batch. However, due to injury during training he was relegated to the next batch i.e. 33rd. Though both Amit Kumar and the petitioner belonged to CPO-1998 and joined 32nd Batch for basic training. Both were relegated to 33rd Batch on medical grounds. Since Amit's aggregate marks was 1277.50 while the petitioner's aggregate marks was 1246.50. Rule 8 (b) (ii) of CRPC 1955 Act shall apply i.e. the candidate who has greater aggregate marks is placed above in the seniority list than the one scoring less marks.

d) Ramesh Chandra like the petitioner was selected through CPO-1998 examination and he joined basic training on February 25, 2000 i.e. 32nd Batch. Since He did not clear final test, he was relegate for three months as par guidelines issued vide letter No.C.IX-1/98-Pers I dated March 08, 2001. He was retested by the board after intensive training and declared pass. Accordingly his inter-se seniority is fixed with 32nd Batch the one in which he was selected and undergone basic training. Thus, his in-se seniority was rightly placed.

11. In the counter affidavit, the respondents pleaded that as per para 3(vi) of SO-1/2009 the seniority of those who, due to injury, were relegated to the next batch had their seniority to be fixed with that of the next batch.

12. It is apparent that seniority of the petitioner, who completed his basic training with the 33rd Batch in the year 2001, could not be fixed with reference to SO-1/2009, a fact which was conceded to by learned counsel for the respondents.

13. The applicable policy guideline was No.C.IX-1/98-Pers dated March 08, 2001, vide para 2 whereof, a person who cannot complete training with his batch is required to complete the same with the next batch and in case of a person failing the test after the training can be subjected to a retest during mid-term course of the next batch.

14. During arguments of the writ petition on March 18, 2015, learned counsel for the petitioner gave up challenge to his seniority being depressed below the 32nd Batch which completed training without any interruption for the reason there is no challenge to the policy guideline, but pressed the writ petition qua Manish Kumar Bharti, Rajiv Kumar and Ramesh Chandra, who alone were impleaded as respondents, for the reason he realized that as regards Amit Kumar, the petitioner and Amit Kumar were at par. Both were selected through CPO-1998 and were a part of the 32nd Batch. Both could not complete their training due to injury. Both were relegated to the 33rd Batch. The aggregate marks obtained by Amit Kumar were 1277.50 and those of the petitioner were 1246.50.

15. Thus, we are left to consider petitioner's claim vis-à-vis Manish Kumar Bharti, Rajiv Kumar and Ramesh Chandra, all three being placed above the petitioner.

16. Now, Manish Kumar Bharti and Rajiv Kumar were selected through CPO-1996 and CPO-1997 respectively. The two could not join their respective batch, being the 30th and 31st Batch, respectively due to reasons beyond their control. Character and antecedent verification was delayed by the police authorities. By the time their police verification came the training for the 32nd Batch had commenced, in which batch the petitioner commenced his training. Manish Kumar Bharti, citing personal problems, requested that he be permitted to join basic training with the 33rd Batch. Rajiv Kumar also citing personal problems requested that he be permitted to complete basic training with the 33rd Batch. Merely because the two requested for deferment of their training, and the petitioner had his training deferred due to injury resulting in all three completing training with the 33rd Batch would not mean that the department by means of an executive order could not fill up the

lacunae in the rules which do not envisage a situation of the kind for purposes of inter-se fixation of seniority of three persons who are recruited through three different entrance examinations but complete the training together with a particular batch. That Manish Kumar Bharti was selected through CPO-1996 and Rajiv Kumar through CPO-1997 and the petitioner through CPO-1998 would justify, on principles of justice and equity, Manish Kumar Bharti and Rajiv Kumar being assigned seniority above the petitioner. As regards Ramesh Chandra, he as well as the petitioner were selected through CPO-1998. Both commenced training with the 32nd Batch. Whilst petitioner was relegated to the 33rd Batch on account of not being able to complete training of 55 weeks due to injuries sustained while on training in the 40th week, Ramesh Chandra completed training with the 32nd Batch but failed the examination conducted after the training. As per the policy in place being No.C.IX-1/98-Pers dated March 08, 2001 he was subjected to a retest and he cleared the same. Thus, his seniority was rightly fixed along with the 32nd Batch, but at the bottom of the batch.

17. The writ petition is accordingly dismissed.

18. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 23, 2015
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