

\$~

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

%

RESERVED ON: 29.10.2015
PRONOUNCED ON: 27.11.2015

+

WP (C) 7939/2012,
CM APPL.19910/2012, 9632/2015,
12038/2015 & 14525/2015

B.S. JASWAL AND ORS.

..... Petitioner

Through: Mrs. Rekha Palli, Sr. Advocate with Ms. Ankita Patnaik, Ms. Punam Singh and Ms. Garima Sachdeva, Advocates.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Abhay Prakash Sahay, CGSC for UOI with Mr. Deepak Gupta, Advocate.

Mr. Sumit Kumar Khatri and Mr. Varun Kumar, Advocates for Resp-4&5.

Dr. Harsh Pathak with Mr. Siddhartha Shukla and Ms. Shweta Pathak, Advocates for Resp-8-11.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J.

1. In the present writ petition, the seniority list of Assistant Commandants in the Sashastra Seema Bal (the respondent), issued on 25.11.2011 has been challenged.

2. The Special Service Bureau [now Sashastra Seema Bal or “SSB”] was

set up in the year 1963 under the Cabinet Secretariat. In January 2001, the Administrative Control of the Force was transferred from the Cabinet Secretariat, to the Union Ministry of Home Affairs (MHA). The Central Reserve Police Force (CRPF) Rules, 1955 as amended from time to time were applicable to Battalions of SSB. Since the CRPF Act and Rules were applicable to SSB since inception, the post of Assistant Commandant was filled up in accordance with Rule 105 of CRPF Rules, 1955 i.e. by promotion, by direct recruitment and by deputation without any fixed percentage. From 6th November, 1986, the method of recruitment for the post of Assistant Commandant was subsequently amended in Rule 105 of CRPF Rule vide MHA notification by which appointment was to be i) By Direct recruitment: 50% ii) By promotion: 50% iii) Shortfall in direct recruitment or recruitment by promotion in the rank of Dy. SP (Coy Commander) could be filled by deputation or re-employment as classified in the rules. On 20.11.1996, the Cabinet Secretariat sought MHA's clarification with respect to norms for fixing *inter se* seniority as between direct recruits and promotees in the light of representations of 1987 and 1989 direct recruit Asst. Commandants.

3. All the petitioners joined the SSB after successfully competing for the post of Asst. Commandant, in the direct recruitment quota; they reported for training after having been required to do so, before 30th November, 1993. Since at that time, the SSB did not have its academy, they were sent for training to the Central Industrial Security Force (CISF) academy at Hyderabad. Upon completion of training, the petitioners were asked to join the SSB units and later were posted at different places. They aver that in

seniority lists published after their recruitment and appointment, the SSB placed them in positions having regard to their comparative merit, based on performance in the written test and interview marks secured by them in the recruitment process held by the Union Public Service Commission (UPSC). The petitioners submit that this was evident from the seniority lists published 30.03.1995 (which placed them at Sl. Nos. 127, 129 and 134 respectively) and 17.04.2000 (which placed them at Sl. Nos. 57, 58 and 60 respectively). They compare this with certain others- notably with the eleventh respondent who was shown as junior to the third respondent. The petitioners were subsequently promoted as Dy. Commandants (in 2004) and as Second in Command (2IC) on 01.04.2007. They were subsequently promoted to the cadre of Commandants, in November, 2009.

4. The petition alludes to an office memorandum (OM) dated 30.09.2002, which is in turn referred to by three other memoranda. These clarified that while fixing *inter se* seniority of direct recruits in SSB, the marks obtained by them in the direct recruitment test, the foundation course and basic professional courses had to be given weightage of 50%; 10% and 40% respectively. It is stated that, later, on 25.11.2002, the Central Government clarified that all CRPF Rules would be made applicable to the combatized units of the SSB. On 10.06.2003, Rules regulating the method of recruitment to the post of Assistant Commandant Group 'A' (GD) in the Special Service Bureau were brought in force. Rule 8 (3) (ii) of the Rules read as follows:

“(ii) Inter se seniority of direct recruits shall be determined by adding together the marks obtained by them in recruitment tests, the

Foundation Course, and the Basic Professional Courses in the ratio of 50:10:40”

This basis was later changed (on 23.07.2010) whereby equal weightage (50% each, by way of 100 marks each) was to be given for marks obtained in the UPSC selection and the basic foundational course, to work out the criteria for fixing direct recruits’ *inter se* seniority. The Petitioners submit that in the seniority of Dy. Commandants a provisional seniority list was published on 07.02.2008. This could not be finalized because one Neeraj Chand, a serving Dy. Commandant approached the Himachal Pradesh High Court in writ proceedings. This writ petition was disposed of on 22.10.2010 with a direction to the SSB to consider all objections and finalize the seniority list of Dy. Commandants, in accordance with rules, within six months. This direction was followed by another similar order by the Gauhati High Court, on 05.08.2011 in WP 3937/2011. A seniority list- dated 25.11.2011 was published. This led to revision of seniority in the cadre of Assistant Commandant (which had attained finality in 2000). The petitioners impugn this because for the first time in 18 years, they have been shown in positions junior to their colleagues and batch mates. The said batch-mates (subsequently added as Respondent Nos. 6-11) were shown as junior to the petitioners at all relevant times, i.e. in the previous seniority lists published on 30.03.1995 and 17.04.2000, in the cadre of Asst. Commandants. The petitioners further argue that the revision of seniority is utterly arbitrary given not only the lapse of time, but also that no less than three promotions to higher cadre had taken place in the intervening period between 1993 and 2011. These promotions as Dy. Commandant, 2IC and Commandant were premised on the petitioners’ seniority in the two final seniority lists of 1995

and 2000.

5. The petitioners represented against the re-determined seniority assigned to them, to SSB on 18.12.2011 and 19.12.2011. They claimed that the marks obtained by them in the training had not been conveyed to them; besides, their information was that the result or marks secured in the “firing” test conducted had not been taken into account and furthermore, not all the 1993 batch recruits were trained at the same time but had to undergo training in 3 separate batches. These representations were however, rejected.

6. Ms. RekhaPalli, learned senior counsel for the petitioners, mainly advanced three arguments. It was submitted firstly that the question of including performance during training, for direct recruits, as a determinative criteria, to fix *inter se* seniority had not arisen till 30.9.2002, when the office memorandum was issued. Since this event occurred only a decade after the petitioners joined the service, the said norm could not have any retrospective operation. It was contended secondly that the SSB was clear about the criteria to be adopted for fixing *inter se* seniority at least with regard to the 1993 batch. It was exclusively based on performance in the direct recruitment (UPSC) process. Thus, two seniority lists were drawn up; they attained finality and no one, including those shown as the petitioners’ juniors objected against the seniority positions assigned to them, on any basis whatsoever. Therefore, the SSB could not have validly changed the criteria and, without any basis for doing so, revised the settled seniority which had held the field for 15 years. Thirdly, argued counsel, the petitioners earned at least three promotions- the last to the post of Commandant. These were based on the said settled seniority. The SSB could

not have legitimately revised the petitioners' seniority on the pretext of implementation of the rules. It was lastly submitted that none of the direct recruits appointed as Asst. Commandant along with the petitioners ever challenged the seniority assigned to them in the lists previously published, on 30.03.1995 and 17.04.2000. Therefore, the SSB could not have sought to unsettle any rights accrued after the lapse of over a decade and a half.

7. Learned counsel relied on the decisions reported as *Shiba Shankar Mohapatra & Ors. v State Of Orissa & Ors* AIR 2010 SC 706 and urged that though the context of the decision was where a direction to redraw seniority was rejected, the principle that any direction which seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period should not be given, was emphasized. She also relied on the decisions reported as *B.S. Bajwa v State of Punjab* 1998 (2) SCC 523, especially the observations that “*It is well settled that in service matters the question of seniority should not be re-opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance.*”

8. The SSB, in its reply submits that since its constitution, the CRPF Rules were made applicable to its personnel. The method of recruitment to the cadre of Asst. Commandant was changed; quotas were introduced for various streams; i.e. direct recruitment and promotion. The Cabinet Secretariat had sought clarification on the question of fixing *inter se* seniority in the SSB, because of representations received from Asst. Commandants.

9. It is stated that the MHA by letter dated 01.08.1997 clarified that the seniority of officers in CRPF is governed by Rule 8 (b) (ii) of CRPF Rules, 1955, which prescribes the criteria for fixation of seniority in the rank of Dy. S.P. [Coy Commander]:

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

ii) An officer whether promoted locally in the Central Reserve Police Force or from a subordinate police service in the State shall take rank immediately below the entire batch of direct recruits, any officer of which appointed on the same date, the inter-seniority between local promotees and promotees from the States shall be determined with reference to their date of birth.

This led to the placement of direct recruits, *en bloc* above all promotees appointed during a particular year; a seniority list was published on 11-02-1998. The SSB submits that while drawing this seniority list, Rule 8 (b) (ii) was not followed, inasmuch as the marks secured by direct recruits during the training period were not given weightage, as required by the said rule.

10. Relying on the averments in the counter affidavit, Mr. Abhay Prakash Sahay, learned counsel, submits that in 2008, a promotee, Neeraj Chand, promoted as Dy. Commandant (and appointed as Asst. Commandant in 2001) filed a writ petition before the Himachal Pradesh High Court questioning the seniority list of Dy. Commandant. The writ petition was disposed of on 22.02.2010, with direction to prepare the final seniority list

within six months. It is stated that some direct recruit Asst. Commandants who joined in 1998 too represented stating that the *inter se* seniority of direct recruits should be fixed by giving the weightage mandated, for the performance during the training period. This included one Pramjeet Singh Salaria's representation to that effect.

11. Mr. Sahay relies on the decisions reported as *State of Uttaranchal v Archana Shukla* 2011 (15) 194 and *Bimlesh Tanwar v State of Bihar* 2003 (5) 604 to say that considerations of equity or sympathy cannot jettison provisions of law. He argued that the lapse of any length of time cannot override the duty of the executive to implement binding provisions of law. Mr. Sahay also produced tabular chart of the results received from the CISF academy, which were the basis for preparation of the impugned seniority list. It was submitted that while drawing the list, the weightage required to be given to performance during the petitioners' training period, was duly taken into account. Since the impugned action merely conforms to the command of the rules, submitted counsel, the petitioners cannot seek any relief.

12. Dr. Harsh Pathak appeared on behalf of the contesting respondent Nos 8 to 11 and Mr. Sumit Kumar Khatri appeared on behalf of the contesting respondent No. 4 and 5. These respondents too are directly recruited Asst. Commandants. They have now, for the first time, been shown at places above the petitioners in the impugned seniority list. It is urged by the said contesting respondents that no exception can be taken to the said impugned seniority list, given that it merely effectuates the mandate of the CRPF rules, which require weightage to be given to performance of an officer during

training. It is submitted that this is to assure a more consistent approach to judging the worth of a selected candidate, rather than grant seniority only on the basis of the marks obtained during the selection process. It is submitted that the aptitude and performance during training is a crucial component for drawing the seniority list. Since the petitioners do not impugn the rule, the consequences flowing from it cannot be challenged.

13. It was argued that the obligation of the SSB to follow the rules flows independently from the fact whether any officer demands adherence to it. The private respondents contested the fact that there was in fact no demand from other directly recruited officers to give weightage to the performance during training; they drew attention of the court to the representation of Neeraj Chand (dated 14th February, 2009) and that of Shri P.S. Slaria (dated 03.07.2010), especially the latter, whereby the officer had stated that he joined SSB pursuant to an offer of appointment dated 23.07.1998 and had stood first in the Basic training course. Mr. Slaria, urged counsel, also had relied on a previous representation of 2003 which pointed out that his weightage during training was not taken into account according to Rule 8 of the CRPF Rules. This, it was argued, constituted sufficient reason to trigger a revision of the seniority list, which had in any case been directed by directions of the Himachal Pradesh High Court.

14. It was submitted that wrongful placement in a seniority list, or the framing of a seniority list, contrary to rules or applicable legal principle, never confers any right to one not entitled to a particular position, especially if that slot or position is itself the result of illegality. Thus, that the petitioners occupied slots above the contesting respondents, (who were their

batch mates, having been similarly appointed in 1993) only on the basis of their UPSC performance, without giving weightage to marks obtained in the training period did not result in any equity, much less a right. It was submitted in this context, that petitioners were always aware that CRPF Rules were applicable. Thus, they cannot now complain about alleged wrongful placement in the seniority list. Dr. Harsh Pathak relied on the judgments of the Supreme Court, reported as *Dhole GobindSahebrao&Ors v Union of India* 2015 (6) SCC 727.

Analysis and conclusions

15. In this case, all officers - the petitioners and the contesting respondents, i.e. the fourth to the eleventh respondents, were directly recruited as Asst. Commandant, by the SSB. That public employer did not have its independent rules; those of the CRPF were made applicable. The *inter se* seniority of directly recruited Assistant Commandants in the CRPF was regulated by Rule 8 (b). It undoubtedly required that the performance during the selection (direct recruitment process) i.e. the merit position in the UPSC selection *and the performance during the training* had to be given equal weightage. Now it is a matter of record that two seniority lists were drawn by SSB after the appointment of the petitioners and the contesting respondents: the first on 30.03.1995, and the second, on 17.04.2000. The petitioners were promoted later as Dy. Commandant (2004); 2IC (2007) and as Commandant (2010). At none of these points in time did the contesting respondents- (who are the petitioners' colleagues and were appointed along with them in 1993) complain that *their position in the gradation list was wrongly assigned*. The said respondents do not refer to any representation, to

the authorities articulating any grievance that their seniority was wrongly determined, without giving effect to the rule, or that they should have been shown as senior to the petitioners. In other words, the seniority position of the two sets of officers in this proceeding was settled about 15 years ago, without any dispute on anyone's part.

16. SSB- and for that matter, the case of the private respondents is that in 2010, Mr. Slaria, a 1998 direct recruit, for the first time, urged that his performance in the training period had not been factored in while finalizing the seniority. It is not disputed that both the petitioners and the respondents were promoted to the post of Deputy Commandant. The petitioners were promoted earlier to the respondents, on the strength of their seniority in the cadre of Asst. Commandant. Such being the case, the question of revision of seniority could not have been validly made, since it negates the length of continuous officiation of the petitioners, in the said higher cadre.

17. During the course of hearing, the SSB had produced the file to show that the petitioners' fresh seniority positions were determined after taking into account their performance and giving due weightage to the marks obtained in the training period. These materials were in the form of tabular compilation of the results obtained from the CISF Academy. The forms and tables were compiled apparently in 2010/2011. That meant that the SSB itself was unaware of the result of the directly recruited candidates of the 1993 batch- quite apart from the fact that it never took the results into consideration.

18. All the above facts, in the opinion of the court clearly establish that whatever be the rule position about the determination of seniority, SSB

never interpreted the norms to mean that the performance of direct recruit Asst. Commandants during the training period had to be taken into consideration and given due weightage; possibly this was because the SSB never had its own recruitment and promotion rules and had merely adopted those of the CRPF. Whatever be the position, this was never objected to by the contesting respondents, ever; nor did their representation or objection – or indeed any court litigation initiated at their behest or at the behest of any other 1993 direct recruit – result in the re-drawing of the seniority list. It is from these admitted facts that the court has to consider the petitioners' submission that the seniority position having been settled over 15-20 years ago, cannot now be disturbed- also given that the parties have been promoted to three positions above the post to which they were recruited. It is also significant that the order of the Himachal Pradesh High Court did not discuss any facts or direct that the SSB had to revise the seniority in a particular manner- it did not return any finding that the existing seniority list was in any way irregular or flawed. The context of the directions was a demand by a subsequent direct recruit to finalize the seniority list.

19. Emphasizing the importance of not disturbing seniority lists which have become final, the Supreme Court, in *Malcom Lawrence Cecil D'Souza v Union of India* [1975] Supp. S.C.R. 409 held that:

"Although security of service cannot be used as a shield against administrative action for lapse of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult to doubt to guarantee such security in all its varied aspects. It should at least be possible to ensure that matters like one's position in the seniority list after having

been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."

This view was echoed in *K.R. Mudgal v R.P Singh* AIR 1986 SC 2086, in the following words:

"It is essential that any one who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties."

In *H.S. Vankani v State of Gujarat* AIR 2010 SC 1714 it was held that:

"23. We are of the view that the Government has committed a grave error in unsettling the inter se seniority of the graduates and non-graduates which was settled as early as in the year 1982. The State Government in its letter dated 12.10.1982 had taken the view that two years' training was imparted to non-graduates of 1979-81 batch and one year training was imparted only to graduates of 1980-81 batch since candidates with lesser qualification required through training compared to the candidates with higher qualification. Due to this basic difference in the educational qualification between the 1979-81 and 1980-81 batches, the Government took a conscious decision that it was not proper to unsettle the settled seniority even if there was delay in the appointment of non-graduates. Subsequent to that decision, three gradation lists were published, recognizing the seniority of the respondents over the appellants. Neither the Government order dated 12.10.1982 nor the Gradation lists were challenged before any forum which in our view had attained finality.

After a period of two years yet another representation was submitted which was rejected by the Conservator of Forests vide his communication dated 5.3.1987 referring to the earlier Government order dated 12.01.1982. Fresh gradation list was published on 1.1.1989 where also respondent's seniority was recognized. Representations dated 23.05.1989 and 03.05.1990 preferred by the appellants were also not favourably considered by the Government or the Chief Conservator of Forests. The Under Secretary of the Forest and Environment-Department had however put up a note on 29.09.1993 evidently under pressure from the candidates of the 1979-81 batch misinterpreting rule 14 of the 1969 Rules, stating the candidates of 1979-81 batch should be placed above the candidates of 1980-81 batch. Rule 14 of the Rules determines the inter se seniority of the candidates of a particular batch and does not determine the inter-se seniority between two batches, whose educational qualification, years of training and the date of joining, etc. differ. Rule 14 of 1969 Rules and Rule 22 of 1974 Rules also further re-emphasise that fact. The note put up by the Under Secretary on 29.09.1993 is, therefore, contrary to Rule 14 of 1969 Rules and Rule 22 of the 1974 Rules.”

Crucially, the court outlined the correct approach in such cases, in the following terms:

“25. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility

among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among parties at the cost of sound administration affecting public interest. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action.”

In *Bimlesh Tanwar*(supra) the Supreme Court observed that “it is now well settled that a settled seniority position should not be unsettled...” The SSB had strongly relied on the decision of the Supreme Court in *Archana Shukla* (supra) especially, the observation that “Equity can only supplement the law, but it cannot supplant or override it.” In this court’s opinion, the observation in the course of the judgment cannot be torn out of context; *ad-hoc* employees’ period of officiation (16 years, between 1988 and 2004) was sought to be counted for purposes of seniority. The Court repelled the claim. However, the petitioners are on far stronger ground; they were directly recruited on the basis of their merit and had a right to the post occupied by them, unlike in *Archana Shukla*, where the right was tenuous. Similarly, the court is of opinion that the reliance placed by the private respondents, on the

decision in *Dhole Gobind Sahebrao* (supra) is of no assistance to them. In that case, a cadre bifurcation resulted in swifter career advancement of one category of employees as opposed to another. The court held in that context, that the change in conditions of service and change in promotional avenues, *per se* could not be characterized as arbitrary. This court is of opinion that the backdrop of the observations relied on by the private respondents, was entirely different from the circumstances of this case. That decision, therefore, is of no assistance to the private respondents.

20. In view of the above discussion, it is held that the respondent SSB acted arbitrarily to the extent that it revised the petitioners' seniority so as to adversely affect them, vis-à-vis other direct recruits of the 1993 batch, in reflecting their positions in the impugned list of 25.11.2011. The SSB is therefore, directed to revise the said list and ensure that the pre-existing position (so far as the *inter se* seniority of the direct recruits of the same batch to which the petitioners belong) is maintained. At the same time, it is clarified that the court has not pronounced upon the *inter se* seniority of direct recruit Asst. Commandants of later batches. The SSB shall carry out the necessary corrections and issue the revised final seniority list, within eight weeks from today. The writ petition is allowed in the above terms, without order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

NOVEMBER 27, 2015