

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

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Reserved on: 29.09.2015
Pronounced on: 06.01.2016

+ W.P.(C) No.4940/2011

KRISHNA KUMAR SINGH Petitioner
Through: Mr. Ankur Chhibber, Advocate.

Versus

UNION OF INDIA AND ORS. Respondents
Through: Ms. Jyoti Singh, Sr. Advocate with Sh.
Amandeep Joshi, Ms. Tinu Bajwa and Sh. Dinesh,
Advocates, for private respondents.
Sh. Arun Bhardwaj, CGSC, Sh. Rishi Kapoor and
Ms. Manpreet Kaur, Advocates, for UOI.
Sh. S.S. Sejwal, Law Officer and Sh. B.K. Raut,
Pairvi Officer, CRPF.

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

MR. JUSTICE S. RAVINDRA BHAT

1. The petitioners are aggrieved by their placement in the seniority list. They were promoted to the rank of Assistant Commandant [hereafter referred to as "AC"] on various dates beginning from August 2005. Their complaint is that their assignment of seniority, below the Direct Recruits [hereafter "DRs"], who entered the cadre, is contrary to law and in as much as it violates the relevant rules and prevailing executive instructions.

2. The Central Reserve Police Force [hereafter "CRPF"], a para-military organization, governed by the provisions of the CRPF Act, 1949 [hereafter "the Act"] and Rules framed there under, classified various cadres. One of these is the post of AC. The cadre is to be filled by direct recruitment to the extent of 50% - 30% by promotion on the basis of seniority in the feeder cadre, i.e. Inspector and 17% by the Limited Departmental Competitive Examination [hereafter "LDCE"]. According to the Rules and instructions, the LDCE appointees are also treated as DRs. The controversy in question pertains to the CRPF Rules, 1955 [hereafter "the 1955 Rule(s)"] which deals with the criteria for determining seniority of "Superior Officers" as well as "JCOs". Rules 8(b)(ii) and 8(e) which are relied upon in this case by the petitioners read as follows:

"(b) The inter-se seniority of Superior Officers shall be determined as under:-

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(ii) The inter-seniority of direct recruits to the Central Reserve Police Force in the rank of Company 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.

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 may have been appointed on the same date, the interse

seniority between local promotees and promotees from the State shall be determined with reference to their dates of birth.

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(e) A person promoted to a higher rank and a person recruited direct to the same rank shall have their seniority from the date of appointment to that rank subject to the condition that if both were appointed on the same date, the former (promotee) shall be senior:

Provided further that if the date of confirmation is the same their seniority immediately before such confirmation shall remain unaffected."

3. The petitioners contend that since they were promoted to the rank of ACs on 02.08.2005 and DRs- who have been impleaded as Respondent Nos. 4 to 184 [referred to as "the private respondents" hereafter] were appointed as direct recruit ACs on 08.10.2005, the assignment of their seniority over and above those of the petitioners is contrary to the rules. The petitioners argue that their representation, against the seniority list elicited unfavorable response and they were further aggrieved and wrote to the official respondents, demanding that their seniority should be regulated in terms of the guidelines issued in the Office Memorandum No.22011/5/86.Esst.D dated 03.07.1986. It is submitted that the petitioners did not receive any favorable response and consequently they have approached the Court.

4. Sh. Ankur Chhibber, learned counsel for the petitioners urges that the rejection of the representation by the CRPF on 30.07.2009 with a bald statement that according to the rules, the DRs are to be assigned seniority *en bloc* over the promotees is patently illegal. It is

submitted that in the present case, the DRs joined later; their service had to be reckoned only from the time and date they reported for training and not any previous date. Since this event occurred in October 2005, after the petitioners entered the AC cadre as promotees, the *en bloc* seniority assigned to the DRs was without authority of law. Learned counsel also relied upon instructions, i.e. Standing Order No. 1/2009 which stated that seniority of directly appointed officers through the Union Public Service Commission (UPSC) and those appointed through the LDCE quota would be reckoned with reference to their batch of training from the date of appointment regardless of the batch in which they were selected. The relevant part of the said instruction reads as follows:

**"DIRECTORATE GENERAL CENTRAL RESERVE
POLICE FORCE
CGO COMPLEX, LODHI ROAD, NEW DELHI-
110003**

(Ministry of Home Affairs)

No.A.VI-1/2008 Pers-I(AC) Dated, the 12 January 2009

STANDING ORDER NO.01/2009

Subject:- Fixation of seniority and inter-se-seniority of directly appointed Assistant Commandants and DEGOs in CRPF.

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02. Rule 9(b)(ii) of "CRPF Rules, 1955 provides that the inter-se seniority of directly recruited AC 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 Academy.

03. There remains some grey area which needs to be clarified to regulate the seniority of Assistant Commandants. Accordingly, following guidelines are issued with immediate effect:-

Seniority of directly appointed Gazetted Officer through UPSC and direct entry Gazetted Officers (LDCE quota) shall be reckoned with reference to their batch of training from the date of appointment, irrespective of the batch in which they were selected. Date of appointment in respect of Directly Appointed Gazetted Officers through UPSC shall ordinarily mean the date of commencement of training, unless the candidate had reported late but within 30 days of commencement of training. With a batch of training, whether directly appointed or through LDCE, the inter-se seniority shall be determined as per Rule 8(b)(ii) of "CRPF Rules, 1955" in the order of merit. Merit shall mean the aggregate of marks obtained at the time of selection and the marks obtained at the time of passing out examination at CRPF Academy.

Notwithstanding any thing contained in para i) and ii) above, within a Batch of training, **a person selected earlier but who could not join the training with his batch due to administrative reasons e.g. delay in verification of character and antecedents, shall be senior to a person selected in a subsequent selection process.** Inter se seniority among officers of each year of selection will be decided in the order of merit and placed accordingly en bloc at the top of the batch in which such candidates undergo training. As far as directly appointed gazetted officers through UPSC are concerned, a candidate who is successful and allotted to the Force for appointment shall, on receipt of information to that effect, submit an undertaking to report for the training programme scheduled the earliest or otherwise. If he

exercises the former option, his failure to report for the training programme will automatically result in cancellation of the offer of appointment.

A candidate selected through UPSC shall be allowed to join a batch of training within a month from the date of commencement of training without loss of seniority. Provided further that the candidate reporting after commencement of the basic training, but within 30 days from the date of commencement of such training, shall furnish sufficient proof to the effect that such late reporting is for reasons beyond his control and is not attributable to individual negligence/laxity or for reasons that are purely personal in nature.

Similarly, a trainee Officer who misses the training for more than 30 days for any reason shall forfeit his claim to inter se seniority amongst that batch. His inclusion in the subsequent batch on account of failure, relegation, absence etc., shall depend on the recommendation of the Principal of the Academy. The principle as stipulated vide Paras (i), (ii) & (iii) above in respect of candidates selected through UPSC shall apply, mutatis mutandis, to such candidates who could not join the training programme having been declared temporary unfit/unfit and are declared fit subsequently by a re medical/review medical board as well to such trainees who were relegated from the previous batch on medical grounds. Such candidates shall be permitted to join or rejoin the subsequent batch of training, as the case may be, only if their fitness is certified by the competent medical authority of the Force and such certificate not being more than an year old."

5. The official position - of the CRPF -is of denial of the claim. The CRPF points out that the recruitment rules underwent a change with the framing of the *Central Reserve Police Force Group "A" (General Duty) Officers Recruitment Rules, 2001* [hereafter referred to

as "the 2001 Rules") - the concerned Rule for regulating the seniority.

It is pointed out as follows:

*"8. **Seniority-** (1) All officers holding a higher rank shall be senior to officers holding a lower rank.*

(2) In a particular rank seniority of officers appointed to any post shall be determined in accordance with the order of selection for appointment to that post.

(3) Subject to the provisions of sub-rule (2) inter-seniority amongst officers holding the same rank shall be as follows namely:-

(i) Seniority of officers promoted on the same day shall be determined in the order in which they are selected for promotion to that rank.

(ii) Seniority of direct entrants shall be determined in accordance with the aggregate marks obtained by them before the selection board and at the passing out examination conducted at the Internal Security Academy.

(iii) Seniority of temporary officers, subject to the provisions of clauses (i) and (ii) shall be determined on the basis of the order of merit at the time of their selection and officers selected in an earlier batch will be senior to officers selected in subsequently batches.

(iv) Seniority of officers, subject to the provisions of clauses (i), (ii) and (iii) shall be determined according to the date of their continuous appointment in that rank;

Provided that in the case of direct entrants, the year of declaration of results shall be the year of seniority. Inter se-seniority of the directly recruited ACs and promotees will be decided as per orders of DOP&T issued from time to time.

(v) Seniority of re-employed officers in a particular rank shall be determined from the date of their re-employment in that rank.

(vi) A serving Army officer shall maintain his seniority as between himself and other Army Officers within a particular rank and a serving officer of the Indian Police Service shall maintain his seniority as between himself and other officers of the Indian Police Service within particular rank."

6. It is submitted that in the present case, the results of the DRs (to which class the private respondents belonged) were declared in 2004; they were also allotted to the CRPF on 16.02.2005. As a consequence, they would reckon their seniority earlier to that of the petitioners who were concededly promoted as ACs in August 2005. The respondents also rely upon an Office Memorandum [No.28011/6/76-Estt] dated 24.06.1978 which elaborately dealt with the question as to when for the purpose of determining a roster of seniority of various officials (who are directly recruited), the date of completion of selection process had to be reckoned. The said Office Memorandum states as follows:

*"No.28011/6/76-Estt
Government of India
Ministry of Home Affairs
Department of Personnel and Adm. Reforms
North Block, New Delhi the 28th June, 1978*

OFFICE MEMORANDUM

Subject: Starting Point in the recruitment roster for the purpose of seniority-procedure regarding.

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2. *This question has been examined in detail by this Department in consultation with the UPSC and it has now been decided that the*

starting point in the roster should be that mode of recruitment prescribed in the recruitment Rules for which the selection process had been completed first. For this purpose, the date of the completion of the selection process will be of the completion of the selection process will be determined as follows:

Direct Recruitment

Date of completion of Selection Process

- (a) Through examination conducted by UPSC or any other authorities Date of publication announcement of results
- (b) Through interviews conducted by UPSC or any other authorities Date of Commission's letter containing their recommendations

Promotion

- (a) Where UPSC is associated Date of UPSC's letter containing their recommendations ratifying the promotion
- (b) Where UPSC is not associated of its formal concurrent is not required. Last date of DPC meeting.
- (c) Limited Departmental Examination Date of announcement of results

7. The private respondents who have also contested these proceedings more or less echo the position of the CRPF. They additionally point out that the CRPF published the Gradation List of ACs on 01.07.2007, placing them above the petitioners. The private respondents point out that the reliance upon the Standing Order 1/2009 is of no avail because those instructions were issued after both the

petitioners and the contesting respondents were appointed as ACs and *after the seniority list was published*. Not being statutory, such executive instructions could not be given retrospective effect as would undoubtedly be the case if the principles embodied therein were to be applied to those appointed in 2005. Learned senior counsel for the private respondents, Ms. Jyoti Singh further urges that even the parent enactment or the rules do not enable framing of any instruction which can be given retrospective effect. She also relies upon the proviso to Rule 8(iii) which clearly states that the year of declaration of results shall be determinative of the question of *inter se* seniority as between DRs and promotees. Learned counsel also places reliance upon the judgments of the Supreme Court in *UOI v. N.R. Parmar and Ors.* 2012 (13) SCC 340 and *Rohitash Kumar and Ors. v. Om Prakash Sharma and Ors.* 2013 (11) SCC 451.

Analysis and conclusions:

8. The factual matrix is not in dispute. UPSC advertised vacancies for the purpose of AC in 2003. Several individuals, including the private respondents applied for the post and were declared successful. The UPSC published the result on 30.09.2004. On 16.02.2005, the said private respondents were allocated to the cadre of AC in the CRPF [since the recruitment process was a comprehensive one and included selection for posts in other para-military Central Police Forces as well]. The appointment letter was issued on 09.09.2005 and the private respondents joined on 08.10.2005. The petitioners were promoted as ACs on 02.08.2005. The *inter se* seniority list was

published on 01.07.2007. The question then is whether the petitioners substantiated their grievance about wrongful assignment of their seniority below the private respondents/DRs.

9. The pleadings in the petition are premised upon the application of the CRPF Rules, 1955. The formulation of the 2001 Rules, in the opinion of the Court, renders that argument weak. The 2001 Rules apply clearly in the present case to regulate various aspects and especially the question of seniority of officers of the Group-A of the CRPF - to which the ACs belong. Now these Rules, particularly the proviso to Rule 8(3)(iv) specifically prescribe and indicate a criteria that the administrator has to follow, i.e. assign the seniority to DRs from the date of declaration of their results. That Rule is not in dispute. It has not even been questioned. Such being the case, the Court is left with little choice but to hold that the assignment of seniority to DRs in the present case, the private respondents was done properly.

10. As far as the reliance on Standing Order No.1/2009 goes, here again, the petitioners cannot argue of unjustified treatment. Clearly, those are executive instructions. They cannot be read so as to supplant prevailing statutory rules. They contain no indication (nor indeed can they contain such indication) that they are retrospective in character. Therefore, the assignment of seniority published in the list dated 01.01.2007 could not have been affected by the Standing Order even if it were to be made applicable until there was an explicit intendment to

do so, validly. This argument, therefore, has to fail and is rejected as meritless.

11. The petitioners, in our opinion, have approached the Court under a misguided notion that merely because they entered the cadre earlier than the private respondents, i.e. the DRs, by natural order of things, they are entitled to be treated as seniors. There is neither statutory basis for such assumption nor can a general notion of what is fair and just prevail in these circumstances given that both they and the private respondents entered the cadre of ACs after framing of the 2001 Rules. *Rohitash Kumar (supra)*, in our opinion, although rendered in slightly different - though analogous circumstances, clarifies that the claims such as those made in this case cannot prevail when the rule position does not support it.

12. For the foregoing reasons, we hold that the writ petition lacks merit. It is consequently dismissed without any order as to costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JANUARY 06, 2016