

CWP No.13668 of 2000 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.13668 of 2000(O&M)
Date of Decision: 22.02.2017**

Dr. D.D. Gaur

... Petitioner

Vs.

Union of India & others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Dheeraj Chawla, Advocate
for the petitioner.

Mr.Vivek Singla, Advocate
for UOI-respondents.

RAJIV NARAIN RAINA, J. (Oral)

1. There is no dispute on facts that respondent No.3 was senior to the petitioner in Rajasthan Animal Husbandry Department. They were recruited in open competition for the same post and faced the same selection process. The third respondent was higher in merit than the petitioner and had they continued in service in Rajasthan Animal Husbandry Department, the third respondent would have been senior till the retirement of both, all things being equal.

2. It transpired that the petitioner and third respondent were declared surplus and because of unforeseen event they were left without jobs. However, by an administrative order, they were absorbed in the Border Security Force. Both of them served the BSF thereafter. The third respondent was a substantive Deputy Commandant while the petitioner was given the local rank of Deputy Commandant. They have both retired

from service many years ago.

3. It is not disputed that the recruitment rules in BSF were notified on 5th January, 1978. When the petitioner and third respondent migrated to BSF service in the 1970s, there were no rules prevailing governing service. After the decision was taken to send the two officers to BSF by an order passed by the parent department in Rajasthan and acceded to by the borrowing department BSF, the petitioner relinquished charge on 12th January, 1970 and joined BSF as a fresh appointee on 21st January, 1970 whereas the third respondent continued to serve BSF uninterruptedly but submitted his fresh joining report on 1st February, 1970. Which means he did not join BSF within the time stipulated in the appointment letter.

4. For the first time, a seniority list of BSF officers pertaining to the service of the present parties was published by the department in 1979. The petitioner was shown senior to the third respondent. Third respondent represented against the seniority list objecting that he was senior in Rajasthan Animal Husbandry Department service and therefore, the position should be maintained in the new Department. The objection was considered and parties were heard and a seniority list was issued in 1981 in consultation with the Ministry of Home Affairs, Government of India, New Delhi whereby the third respondent's name figured at Serial No.2 while the petitioner's name was at serial No.4. Third respondent was declared senior to his opponent.

5. Against the seniority list of 1981, the petitioner made a representation for correction of the seniority list by placing him higher

than the third respondent. The representation was made on 13th January, 1984 (Annex P.4) and the same was accepted on 21st May, 1985 vide Annex P.5. This position continued for 12 years when a fresh seniority list was issued by again showing the petitioner senior to the third respondent vide Annex P.6. This made the third respondent to represent to the Department for correction of the seniority list and to maintain his seniority from the parent department and reflected in the new Department. Accordingly, the amended seniority list was issued by the BSF on 26th May, 2000 placing the name of the petitioner at serial No.3 and the third respondent at serial No.2. Aggrieved against this seniority list, the petitioner has approached this Court.

6. In this see-saw of seniority dispute, the proper principle to adopt would be to maintain the seniority in the original cadre from where they came to BSF service in it Animal Husbandry Unit. This is for the reason that in 1970 the parties stood in “no-rule territory” meaning thereby that there was no statutory rule governing seniority or how it is to be determined. In absence of rules, Courts and administrators are guided that principles of justice, equity and good conscience should prevail in the consideration and to decide on what is fair and just. The mere fact that petitioner joined BSF on 21st January, 1970 and the third respondent joined nine days later on 1st February, 1970 is a fortuitous circumstance on which will much will not depend. In the merit list of the selection in Rajasthan service the third respondent was higher in merit. There is no explanation in the pleadings except for the phrase used by the BSF in its written statement [at page 39 of the paper-book] that the third respondent

continued to serve in BSF Battalion uninterruptedly till he joined as a fresh recruit on 1st February, 1970. The word 'uninterruptedly' appears to be inappropriate because it gives a feeling of distance in time. If the third respondent was serving uninterruptedly, then so was the petitioner. The difference in their induction in the BSF was separated by time of not more than a week. Even if the petitioner was regularised prior to the third respondent that too is not enough to erase the original seniority in Rajasthan Animal Husbandry Department. The decision to regularize the services of both were taken in the year 1970 without obviously much thought paid in the absence of guiding rules and instructions.

7. Those decisions will be taken as ad hoc measures and pending promulgation of rules. The parties are not at variance with respect to the recruitment Rules notified on 5th January, 1978. I would take it that there is nothing in the rule of seniority therein which will either come to the help or be adverse to the petitioner and the third respondent. I would take it that the rule of seniority when introduced is neutral to both as far as the seniority positions of the petitioner and third respondent are concerned. The seniority positions have shifted like a pendulum from 1979 till 2000 by accepting or rejecting one representation or the other and it would be difficult to conclude whether seniority should be rested to the positions obtaining in 1979, 1981, 1985 or 2000.

8. During the course of dictation of the order, Mr. Singla, learned counsel appearing on behalf of BSF intervenes, which I wish he had done in the beginning as it might have saved time, pointing out to

Office Memorandum dated 6th February, 1969 placed on record as Annex. R-3/7 with the written statement of BSF which answers the question as to whether the order of *inter se* seniority of two persons declared surplus in another office are selected for deployment in another office then how would the seniority *inter se* be determined. Then their *inter se* seniority as stood in their former office should be maintained in the new office. The OM clinches the whole issue and is a complete answer to the question to be read against the petitioner and is reproduced as follows:-

“The question as to whether the order of their inter-se seniority, as it stood in their former office, should be maintained in their new office has been under consideration in this Ministry for some time past. It has now been decided that when two or more such surplus persons of an office are selected on different dates for absorption in a grade in another office, their inter-se seniority as it existed in the office in which they worked before being rendered surplus, should be maintained in the grade in which they are absorbed in the new organization provided that

(i) no direct recruit has been selected for appointment to that grade in between these dates: and

(ii) If there are no fixed quotas for direct recruitment and promotion to the grade in question in the new office and no promotee has been approved for appointment to that grade in between these dates.

It has also been decided that when two or more surplus employees of a particular grade in an office, are simultaneously selected for redeployment in another office in a grade, their inter se seniority in the particular grade, on redeployment in the latter office

should be the same as it was in their pervious office.”

9. Nothing further remains to be examined or determined for the relief of seniority sought by the petitioner over his long standing opponent. The OM speaks for itself and covers the ground. The battle is lost. The *inter se* seniority as it existed in the office of Rajasthan Animal Husbandry Department has to be maintained in the new organization. The third respondent is declared senior to the hapless petitioner who was present in Court and insisted on final hearing of his case which I agreed with the consent of Mr. Singla and heard the case after Court hours and dictated the orders in open court. The petitioner's bovine-class arguments advanced in this Court are rejected as misconceived. It was the pious obligation of the petitioner to have produced Office Memorandum dated 6th February, 1969 in the petition and not leave it for the BSF to reveal and on which the case finally turns. The impugned seniority list qua the parties to the *lis* is upheld as legal and valid.

10. This petition is wholly devoid of merit and is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

22.02.2017
MFK/neeraj

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>