

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

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**CWP-6825-2011 (O&M)
Date of decision: 27.09.2017**

Neelam Kumari

....Petitioner

Versus

Union of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Rajeev Anand, Advocate for the petitioner.

Mr. Arun Gosain, Advocate for the respondents.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, the petitioner has challenged the order dated 07.04.2011 (Annexure P-4).

2. The petitioner was appointed as a Constable (G.D.) on 15.09.1990. While discharging the duties of the post of Constable (G.D.) she was eligible for radio training. Thus her services were drafted to undergo training during the month of February 1992 to November 1992 and she was successful in the radio training. With reference to her passing out from the training whether she is entitled for Naik Radio Operator as and when she has completed her training or not? For want of vacancies the respondents appointed the petitioner as Naik Radio Operator on 19.01.1996. The petitioner is stated to have submitted representation to the extent that

petitioner is entitled for date of entry into service to the cadre of Naik Radio Operator with effect from 06.01.1993. Accordingly, the respondents have extended the benefit of date of entry into service as 06.01.1993 to the cadre of Naik Radio Operator. The petitioner was assigned eligibility in the cadre of Naik Radio Operator w.e.f. 06.01.1993. In the year 2008, respondents noticed that assigning such date of entry into service to the petitioner was contrary to factual aspects like vacancies were not available in the Mahila Battalion. Thus, notice was issued to the petitioner seeking her explanation as to why the date of eligibility granted to the petitioner as 06.01.1993 shall not be altered to 19.01.1996. Petitioner submitted her reply, the same was not satisfied by the respondents. Consequently, proceeded to pass order of withdrawing the date of eligibility to the post of Naik Radio Operator as 06.01.1993 while restoring the date of entry into the cadre as on 19.01.1996. Thus, the present petition.

3. Learned counsel for the petitioner submitted that petitioner was sent in the 182 batch. The persons who were in the 183 batch their names have been recommended for the purpose of determining their status with reference to remustering prior to 19.01.1996. Question of reserving vacancies to Mahila Battalion is impermissible in view of the standing order 4 of 1979. Therefore exclusively reserving vacancies for Mahilla Battalion is impermissible and contrary to standing order 4 of 1979 passed in CRPF Rules, 61 to 72. Therefore impugned action is illegal and arbitrary.

4. Per contra, learned counsel for the respondents who was assisted by Mr. P.C.Jha, DIG (Communication) Directorate General CRPF HQR,

New Delhi submitted that there was a communication from Ministry of Home Affairs on 15.05.1986 with subject as communication-Mahila Battalion. With reference to the said communication the respondents set apart 30 vacancies to Mahila Naik Radio Operator. As on 06.01.1993, 27 Mahila Naik Radio Operator were working consequently only 3 vacancies were left to fill up. With reference to the petitioner's eligibility in the 182 batch petitioner stood at serial no. 5 in the Mahila Wing therefore, as on 06.01.1993 for want of vacancy the petitioner could not be accommodated. By oversight petitioner has been extended the benefit of date of entry into service to the cadre of Naik Radio Operator as 06.01.1993. The same has been rectified after due notice to the petitioner. Thus, the petitioner has not made out a case so as to interfere with the impugned order dated 07.04.2011 (Annexure P-4). Learned counsel for the respondents further submitted that Annexure P4 dated 07.04.2011 is pursuant to the order passed by Delhi High Court in WP(C) 8750 of 2010 titled as ***Laxmi Patwan versus Union of India***

5. Heard learned counsel for the parties.

6. The petitioner's entitlement of date of entry into the cadre of Naik Radio Operator as 06.01.1993 is required to be examined with reference to standing order 4 of 1979 passed under the CRPF Rules 61 to 72. The respondents' contention that by means of communication from Ministry of Home Affairs dated 15.05.1986 the respondents are resorting to fill up the posts of Naik Radio Operator to the extent of 30 vacancies only from Mahila Constable who have undergone training. Reserving certain

vacancies or earmarking to Mahila Battalion by means of a communication is impermissible when the mode to fill up of Naik Radio Operator is by standing order 4 of 1979 passed under Rule 61 to 72 of CRPF Rules. Therefore, the communication of Ministry of Home Affairs dated 15.05.1986 will not prevail over standing order 4 of 1979 and if it is not amended properly while set apart certain vacancies for Mahila Battalion. The respondents action in set apart 30 vacancies for Mahila battalion with reference to communication dated 15.5.1986 is illegal and contrary so also contrary to standing order 4 of 1979. Insofar as decision in *Laxmi Patwan's* case (supra) is concerned, it is to be noted that interpretation of Standing order 4 of 1979 passed under Rule 61 to 72 of CRPF Rules read with communication dated 15.05.1986 was not the subject matter. Hence the aforesaid judgment would not come in the way of deciding the present matter.

7. In view of above lacunas the concerned respondent is hereby directed to under take the review of filling up of vacancies of Naik Radio Operator from 06.01.1993 re-classifying the reserved 30 vacancies of Naik Radio Operator for mahila battalion into the general pool and reassign the date of entry into the cadre of Naik Radio Operator. If the respondents faces any difficulty like alteration of service conditions of the persons who are already working and if they are already promoted in that event necessary notice shall be issued to likely to be affected persons after receipt of the reply from them proceed for undertaking review of reassigning the date of entry into the cadre of Naik Radio Operator. If such exercise is undertaken

in that event if the petitioner is entitled to any vacancy as on 06.01.1993 in that event the petitioner shall be adjusted accordingly. If the petitioner do not get the eligibility as on 06.01.1993 with reference to general vacancy in that event she may be allotted appropriate date of entry into the cadre of Naik Radio Operator depending upon vacancy with reference to general pool. In view of these facts and circumstances, order dated 07.04.2011 (Annexure P4) is hereby set aside. The respondents are hereby directed to undertake the above direction and comply within a period of 6 months from today and communicate the decision taken to the petitioner.

27.09.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No