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

Reserved on: 15th November, 2017
Date of Decision: 28th November, 2017

+ W.P.(C) 8546/2016

ANJAN KUMAR MANDAL Petitioner
Through Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS Respondent
Through Mr. Anuj Aggarwal with Ms.
Deboshree Mukherjee for
Respondent No.1,2 &3.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. By the present petition, filed under Article 226 of the Constitution of India, the petitioner, working on the post of Assistant Commandant in the respondent Nos.2 & 3/Central Reserve Police Force (hereinafter referred to as CRPF) has prayed for issuance of a writ of mandamus, directing the respondents to grant him seniority in the post of Assistant Commandant w.e.f. December, 2009, alongwith his batchmates of Batch No.41st and not with the Batch No.42nd, as has been granted to him. The petitioner has also prayed for all

consequential benefits upon restoration of his seniority alongwith his batchmates selected in Batch No.41st.

2. The brief facts of the case as set out in the petition are that on 05.05.2007, U.P.S.C. had issued an advertisement in the Employment News calling for applications for filling up of 334 vacant posts of Assistant Commandants in the Central Paramilitary Organisation through “Central Police Forces (Assistant Commandant) Examination, 2007” . In response to the above advertisement, the petitioner had applied for the said post and after successfully undergoing the written examination, Physical Efficiency Test and medical examination, he was declared as selected and was issued a call letter dated 12.08.2008, calling upon him to appear for the interview/personality test in the U.P.S.C.

3. The petitioner cleared the interview and vide letter dated 28.04.2009 issued on behalf of the Director General, CRPF/respondent No.2, was informed that on the basis of his performance in the written examination and the interview of CPFs (Assistant Commandant) Examination, 2007 conducted by the UPSC, he had been selected for appointment to the post of Assistant Commandant in CPFs in the pay scale of Rs.8000-275-13500 (Pre-revised). He was further informed that upon being found medically fit, he had been allotted to CRPF and his final appointment would be subject to satisfactory completion of the verification of his character and antecedents, for which verification rolls had been forwarded to the concerned District Magistrate of the places of his stay for the past five years.

4. The petitioner has contended that though all other selected candidates pursuant to the same examination and allotted to CRPF by way of the 41st Batch were issued letters of appointment in the month of November, 2009, calling upon them to report for training at CRPF Academy, Kadarapur, Gurgaon on 05.12.2009, he did not receive any appointment letter.

5. On the petitioner making enquiries from the office of the respondent No.2, he was informed that he had not been issued an appointment letter as the respondents had not received his Verification Report from the concerned District Magistrates. It appears that the Verification Report was finally received by the respondents in March, 2010 and the petitioner was issued an offer of appointment vide letter dated 02.04.2010 and asked to report for training at CRPF Academy, Kadarapur, Gurgaon on 15.05.2010. The petitioner had accordingly joined the training on 15.5.2010 and upon successful completion, was posted to the 47th battalion CRPF at Arra, Bihar on 29.8.2011.

6. However, when the seniority list of Assistant Commandants was issued by the respondents in the year 2012, the petitioner learnt that his name had appeared at the bottom of the 42nd Batch and not as per his merit position in the 41st Batch. Aggrieved thereby, he made various representations for correct fixation of his seniority alongwith candidates selected in the 41st Batch but no corrective action was taken by the respondents and even in the seniority list published in the year 2016, the petitioner was shown as junior to his batchmates of the 41st Batch. It is in these circumstances that the petitioner has approached this Court by way of the present petition.

7. Arguing on behalf of the petitioner, Mr. Ankur Chhibber, Advocate submits that the issue involved in the present case is squarely covered by the judgments of Coordinate Benches of this Court in ***W.P.(C)No.3827/2012, “Naveen Kumar Jha v. Union of India & Ors.”*** decided on 02.11.2012 & ***W.P.(C) No.3570/2013, “Gurnam Singh v. Union of India & Ors.”*** decided on 22.12.2014. He points out that the respondents had unsuccessfully assailed the decision in the case of ***Naveen Kumar (supra)*** before the Supreme Court and since the aforesaid decision has attained finality, the same are binding on them. He argued that the petitioner cannot be blamed in any way for not joining the service alongwith his batchmates of the Central Police Force (Assistant Commandant) Examination, 2007 as the delay was attributable entirely to the inaction on the part of the respondents. He submitted that having issued the offer of appointment to the petitioner on 28.04.2009, it was incumbent upon the respondents to ensure that his character verification is done in a time bound manner so that he could have joined the training alongwith all the other selected candidates in November, 2009 itself.

8. Learned counsel for the petitioner further submits that in any event, the *inter se* seniority of direct recruits to the CRPF has to be determined in accordance with Rule 8 of the CRPF Rules which clearly prescribes that the *inter se* seniority of direct recruits in the rank of Company Commander 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.

9. The aforesaid arguments raised on behalf of the petitioner were refuted by Mr. Anuj Aggarwal, learned counsel appearing for the respondents. While not disputing the fact that the petitioner was selected in the 41st Batch, he submitted that the respondents had made all possible efforts to procure his Verification Report timely from the State Authorities by sending several reminders and by detailing special representatives of the concerned authorities, but the delay that took place was for reasons not at all attributable to them. He submitted that the respondents have acted in a very fair manner and have on their own rectified the fixation of *inter se* seniority of the petitioner by placing him at the top of the list of candidates of the 42nd Batch. Since the petitioner had joined the training w.e.f. 15.05.2010 and had undergone basic training only with the 42nd Batch, the respondents cannot grant him seniority alongwith the 41st Batch who had undergone training in November, 2009. He relied on the judgment of the Supreme Court in the case of **Rohitash Kumar & Ors. V. Om Prakash Sharma & Ors.**, reported as [(2013) 11 SCC 451] to contend that seniority of a Government servant cannot be fixed from the date prior to his birth in the cadre. It was urged that if the contention of the petitioner is accepted, it would amount to fixing his seniority from a date prior of his even joining the CRPF, which is not permissible.

10. We have considered the rival submissions of the learned counsel for the parties and carefully examined the judgments cited by them.

11. The undisputed position which emerges from the record is that the petitioner had participated in the selection process initiated vide “Central Police Forces (Assistant Commandant) Examination, 2007” and was issued an offer of appointment on 28.04.2009, which offer of appointment was only subject to the satisfactory completion of verification of his character and antecedents. The said Verification Report was however, received by the respondents only in March, 2010 i.e. after a lapse of over ten months, by which time, other candidates selected alongwith the petitioner for appointment as Assistant Commandants in the CRPF had already undergone their training.

12. At this stage, it may be appropriate to refer to the statutory rules dealing with *inter se* seniority of direct recruits of the CRPF in the rank of Company Commander (Assistant Commandant). Rule 8 (b) (2) of the CRPF Rules, 1955 which is the relevant rule dealing with fixation of *inter se* seniority of direct recruits, reads as under:-

“The interse-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 States shall be determined with reference to their dates of birth. (Substituted vide GSR

1242 dated 14.9.1962 and re-substituted vide GSR-388 dated 6.7.91).”

13. As per the aforesaid provision, seniority of the petitioner had to be determined in accordance with the aggregate marks obtained by him before the selection board and obtained at the passing out examination conducted after his basic training at the CRPF Academy.

14. We are of the considered view that the reason for the petitioner to have joined as an Assistant Commandant on 15.05.2010 and not in November, 2009 alongwith other candidates selected pursuant to the same Central Police Forces (Assistant Commandant) Examination, 2007, is not because of any fault on his part, but only a result of the inaction on the part of the local authorities as well as the respondents in failing to obtain his Verification Report for over ten months, from April, 2009 till March, 2010.

15. We have also considered the judgments cited by learned counsel for the petitioner and find that even though the said cases relate to delay in holding Review Medical Board in respect of the selected candidates, the underlying principle that runs through the said decisions is that once joining of a candidate is delayed for reasons that are not attributable to him but to the employer, he cannot be deprived of his seniority.

16. We have also considered the judgment of the Supreme Court in the case of **Rohitash Kumar** (*supra*), relied upon by the respondents, and find that the same does not apply to the facts of the present case. In the said case, the Supreme Court was dealing with the question of the date of appointment of persons selected for appointment as

Assistant Commandants in the BSF, where there was a special proviso in Rule 3 of the BSF Rules that contemplated that in case of direct entrance, the date of appointment shall only be the date of commencement of their training course at the BSF Academy. Even otherwise, the said decision did not deal with a case where the appointment of one particular candidate had been delayed for reasons attributable squarely to the respondents, as is the position in the present case, where the petitioner was unable to join alongwith his batchmates only because of failure on the part of the respondents, to obtain his Verification Report.

17. In our opinion, the ratio of the judgments relied upon by learned counsel for the petitioner squarely applies to facts of the present case. In view of the undisputed position that the petitioner's appointment/joining was delayed due to failure on the part of the respondents in obtaining the Verification Report in a timely manner, the petitioner is justified in claiming his seniority at par with his batchmates who had been appointed as Assistant Commandants in November, 2009. We see no reason as to why the petitioner should be deprived of his seniority as an Assistant Commandant.

18. For the aforesaid reasons, the present petition is allowed. A writ of mandamus is issued to the respondents, directing them to refix the seniority of the petitioner as an Assistant Commandant, in accordance with Rule 8 (b) (2) of the CRPF Rules by granting him seniority with reference to those Assistant Commandants who had joined CRPF as members of the 41st Batch. The petitioner shall also be entitled to all

consequential benefits except for back wages, on the principle of not having shouldered the responsibilities of the higher post.

19. The petition is allowed in the above terms with no order as to costs.

REKHA PALLI, J

HIMA KOHLI, J

NOVEMBER 28th, 2017

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