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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 15th November 2018

Decided on: 28th November, 2018

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W.P.(C) 2197/2014

SI /GD PRAMOD YADAV & ORS.

.....Petitioners

Through: Mr. Ankur Chibber, Advocate.

versus

UNION OF INDIA & ORS.

....Respondents

Through: Mr. Rajesh Kumar Gogna, CGSC
with Mr. Upendra Sai & Mr. Akhilesh
Kumar, Advocates.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA**

JUDGMENT

Dr. S. Muralidhar, J.:

1. The present writ petition has been filed by 33 Sub Inspectors/General Duty ('SI/GD') of the Central Reserve Police Force ('CRPF') against the Director General of the CRPF (Respondent No.2), the Inspector General (Personnel) of the CRPF (Respondent No.3), and 634 private Respondents (arrayed as Respondent Nos.4 to 637). It is prayed that the order dated 14th October 2013 issued by the Directorate General of the CRPF, whereby the claims of the Petitioners in relation to their seniority in the rank of SI/GD were rejected, as well as the seniority list dated 27th February 2012 be quashed.

2. The background facts are that the Petitioners were appointed to the post of SI/GD pursuant to the Limited Departmental Competitive Examination ('LDCE') from amongst eligible candidates of the department. They cleared the exams and were declared successful on 20th October 2009 as per the approved seniority list.

3. Illustratively, the Court would like to set out the facts concerning Petitioner No.1. He was issued an offer of appointment to the post of SI/GD and was directed to report at CTC-2, Coimbatore on or before 23rd November 2009 for his basic training. He joined the training which commenced on 23rd November 2009 and concluded on 18th May 2010. Upon successful completion of the training, he was appointed to the post of SI/GD in the CRPF.

4. In the meanwhile, in 2007, the department had advertised for posts of SI to be filled up in the CRPF by direct recruitment through the Staff Selection Commission ('SSC'). The result of said recruitment process was declared by the SSC on 21st July 2009. Those who were successful were directed to report for training in January 2010. They completed their training successfully in January 2011 and joined their posts thereafter. However, their seniority by the impugned seniority list was given with effect from 5th October 2009.

5. The claim of the Petitioners is that since they had started functioning as SIs before the direct recruits could join, they would have to be shown senior to the direct recruits.

6. It was further pointed out that the said seniority list was not immediately made available to the Petitioners. No objections were called for from them. The list was finally published on 1st May 2013 showing the direct recruits senior to the Petitioners. The Petitioners contend that this is contrary to the Standing Order No.1 of 2009 in relation to fixing of *inter se* seniority of Assistant Commandants in the CRPF.

7. Mr. Ankur Chhibber, learned counsel appearing for the Petitioners, draws attention to Rule 8(e) of the CRPF Rules 1955 which states that “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”. The proviso to the said clause states that “if the date of confirmation is the same, their seniority immediately before such confirmation shall remain unaffected”.

8. Mr. Chhibber contends that the Petitioners who were joined as SIs on 23rd November 2009 would be senior to the Respondent Nos. 4 to 637 who joined only on 23rd January 2010. Additionally, according to him, as per the Standing Order No.1 of 2009, the *inter se* seniority between direct recruits and the LDCE candidates “shall be determined on the basis of date on which their training commences and the date of appointment in respect of Direct Appointed Gazetted Officers through UPSC shall ordinarily mean the date of commencement of training”.

9. It is pointed out here that the training of the Petitioners commenced on 23rd November 2009 whereas that of the Respondents Nos. 4 to 637

commenced in January 2010. He further pointed out that the judgment of the Jammu & Kashmir High Court in the matter concerning the Border Security Force ('BSF') upholding a similar contention was upheld by the Supreme Court in ***Rohitash Kumar v. Om Prakash Sharma 2013 (11) SCC 451.***

10. In response to the notice issued in the writ petition, the Respondents have filed a counter-affidavit referring, *inter alia*, to an OM dated 4th November 1992 in terms of which the seniority of personnel appointed to the post had to be determined "by the order of merit indicated at the time of initial appointment and not from the date of reporting/confirmation".

11. Reference is also made to para 2.1 of an OM dated 3rd July 1986 which stated that relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment with those appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection. Reference is also made to para 11.2(2)(iii)(e) of Chapter XI of the CRPF Establishment Manual which states that in case the appointment of the directly appointed persons and promotees on the same date, the promotees shall be senior. Likewise, in case the date of appointment of a directly appointed person and the LDCE candidate is the same, the person appointed through LDCE will be senior.

12. It is further pointed out that in the present case, 880 candidates were selected in the CPO exams 2007 and 148 were selected against LDCE 2009 for the post of SI/GD. It is stated that SI/GD who sat in the 2007 exam had been given precedence over those who sat in the LDCE 2009. Reliance is also placed on the judgment dated 6th January 2016 by the Division Bench of

this Court in W.P.(C) 4940/2011 (*Krishna Kumar Singh v. Union of India*) and the decision of the Supreme Court in *State of UP v. Ashok Kumar Srivastava 2014 (14) SCC 720*.

13. Respondent Nos. 4 to 637 have also filed more or less similar affidavits in the present petition, adopting the stand of the CRPF. The offers of appointment were given to the Petitioners on 20th October 2009 whereas the direct recruits were given a letter of appointment on 17th July 2009. However, it is not disputed that direct recruits reported for training in January 2010 and completed the training in January 2011.

14. In the present case, it is apparent that Rule 8(e) of the CRPF Rules applies for fixing *inter se* seniority. There is also the Standing Order No.1 of 2009 for the fixation of *inter se* seniority of directly appointed SIs and DGOs (LDCE) in CRPF. It can certainly be taken as a guideline that when it comes to the seniority between direct recruits and LDCE candidates, the same shall be determined on the basis of the date on which the training commences. In other words, the batch for which training commenced earlier shall be senior to the batch for which training commenced later. Additionally, para 11.3.1 of Chapter XI of the CRPF Establishment Manual clearly states that “the eligibility period of service for further promotion/seniority in the cases of directly appointed Head Constables and Sub-Inspectors of the Force shall be counted from their respective dates of enlistment/appointment in the particular rank”.

15. Any doubt in this regard has been cleared after the judgment of the

Supreme Court in **Rohitash Kumar** (*supra*) where, in deciding the issue of the *inter se* seniority between a promotee AC and a directly recruited AC with the promotee AC going to training with an earlier batch of which the training commenced on 1st February 1993, the Supreme Court agreed with the High Court of Jammu & Kashmir and held that such person would be senior to a direct recruit AC who underwent training five months later, on 2nd July 1993. There, the Court was interpreting Rule 3 of the BSF Rules in terms of which the *inter se* seniority is to be determined according to “the date of continuous appointment in the rank”.

16. Factually there can be no doubt that in the present cases the Petitioners completed the training earlier than the Respondent Nos. 4 to 637.

17. The decision in **Krishna Kumar Singh** (*supra*) was a dispute between promotee ACs and direct recruit ACs. In the said judgment, it has been observed by this Court that “according to the rules and instructions, the LDCEs appointed are also treated as DRs”. It was pointed out that the results of the direct recruitment were declared in 2004 and they were allotted to the CRPF on 16th February 2005 and this was earlier than the date on which the promotees were promoted as ACs, i.e. in August 2005. The question of applying Rule 8 (e) or Standing Order No.1 of 2009 did not arise. In fact the latter document clinches the issue as far as the present case is concerned since it precisely answers the question of fixing the *inter se* seniority between the LDCEs and the direct entrants.

18. Here the admitted position is that the Petitioners were selected on 20th October 2009 and reported for training on 23rd November 2009. As far

as the private Respondents are concerned, the result of their direct recruitment by the SSC was declared on 21st July 2009 but their training commenced only in January 2010.

19. For the aforementioned reasons, the order dated 14th October 2013 issued by the Directorate General of the CRPF, whereby the claims of the Petitioners in relation to their seniority in the rank of SI/GD were rejected, as well as the seniority list dated 27th February 2012 are hereby quashed. A direction is issued to the Respondents to re-fix the seniority of the Petitioners consistent with Rule 8 (e) of the CRPF Rules 1955 and Standing Order No.1 of 2009.

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

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 28, 2018

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