

\$~

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

Reserved on: 14th November 2018

Decided on: 27th November 2018

+

W.P.(C) 2671/2016

R P SANWAL

.....Petitioner

Through: Mr. V.K. Garg, Sr. Advocate with
Mr. Ankur Chhibber, Ms. Noopur
Dubey & Mr. Bhanu Gupta,
Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Maninder Acharya, ASG with
Mr. Rakesh Kumar, CGSC for UOI.

+

W.P.(C) 2668/2016

PRAKHAR TRIVEDI

.....Petitioner

Through: Mr. V.K. Garg, Sr. Advocate with
Mr. Ankur Chhibber, Ms. Noopur
Dubey & Mr. Bhanu Gupta,
Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Maninder Acharya, ASG with
Mr. Rakesh Kumar, CGSC for UOI.

+

W.P.(C) 743/2015

MANJIT SINGH

.....Petitioner

Through: Mr. V.K. Garg, Sr. Advocate with

Mr. Ankur Chhibber, Ms. Noopur Dubey & Mr. Bhanu Gupta, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Barkha Babbar with Mr. Het Shah, Advocates for UOI.

+

W.P.(C) 2672/2016

C H SETHURAM

.....Petitioner

Through: Mr. V.K. Garg, Sr. Advocate with Mr. Ankur Chhibber, Ms. Noopur Dubey & Mr. Bhanu Gupta, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Maninder Acharya, ASG with Mr. Rakesh Kumar, CGSC for UOI.

+

W.P.(C) 2664/2016

GEORGE MANJURAN

.....Petitioner

Through: Mr. V.K. Garg, Sr. Advocate with Mr. Ankur Chhibber, Ms. Noopur Dubey & Mr. Bhanu Gupta, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Maninder Acharya, ASG with Mr. Rakesh Kumar, CGSC for UOI.

+

W.P.(C) 2653/2016

K S RATHORE

.....Petitioner

Through: Mr. V.K. Garg, Sr. Advocate with
Mr. Ankur Chhibber, Ms. Noopur
Dubey & Mr. Bhanu Gupta,
Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Maninder Acharya, ASG with
Mr. Rakesh Kumar, CGSC for UOI.

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

JUDGMENT

Dr. S. Muralidhar, J.:

1. All these petitions raise a common issue concerning the fixation of seniority in the post of Assistant Commandant ('AC') of the Border Security Force ('BSF').

2. The Court would like to deal with the facts in the case of Mr. R.P. Sanwal, the Petitioner in W.P.(C) 2671/2016. In 1984, Mr. Sanwal was selected for AC (DE) in the Sl.No.10 batch. Although he cleared all the requisite tests, i.e. the written examination, physical efficiency test, interview, and medical examination, the offer of appointment along with training batch No.10 could not be issued due to delay in verification of his character and antecedents by the District Authorities. However, by a letter

dated 24th June 1984, the PS Cantonment, Faizabad, Uttar Pradesh issued a report wherein there was nothing adverse against Mr. Sanwal. He was declared fit by the District Authorities.

3. By a letter dated 7th August 1984, Mr. Sanwal was informed by the Respondents, i.e. the BSF, that his verification report was awaited and on receipt thereof he would be sent for Medical Board and Training at the BSF Academy, Tekenpur, Gwalior, Madhya Pradesh on 1st September 1984. After coming to know that by a letter dated 24th June 1984 a verification report had already been sent by PS Cantonment in Faizabad, the Petitioner by a representation dated 29th January 1985 informed the Respondents that the verification report had already been sent to them more than a month and a half earlier.

4. By a letter dated 15th February 1985, the Respondents informed Mr. Sanwal that he would be called for medical/training when the training for the next batch would start, i.e. sometime during October-November 1985. Finally, on 12th March 1986, a letter was issued to Mr. Sanwal by the Respondents to appear before a medical board for detailed examination on 9th April 1986. He appeared as directed and was declared medically fit. On 26th May 1986, he was given an offer letter for post of AC in the BSF.

5. Thus, as a result of the above sequence of events, although Mr. Sanwal was selected for the appointment to the post of AC (DE) in the BSF along with the 10th batch of officers in 1984, he could be offered an appointment only at a later date and was made to undergo training along with the officers

of the next batch, i.e. the 11th batch, on 16th June 1986.

6. Mr. Sanwal made a representation to the Respondents about losing seniority with his batch-mates for no fault of his own. Finding force in his contention, by an order dated 6th September 1994, Mr. Sanwal was granted notional seniority with effect from 17th September 1984, i.e. the date of commencement of the training course for the 10th batch. It is stated that this re-fixed seniority of Mr. Sanwal with effect from 17th June 1984 was not challenged by anyone and attained finality. On this basis, after being dealt with by the Departmental Promotion Committee ('DPC'), Mr. Sanwal was promoted to higher ranks up to the rank of Deputy Inspector General ('DIG').

7. The facts in the cases of the other Petitioners are more or less similar. Mr. K.S. Rathore, the Petitioner in W.P.(C) 2653/2016 and Mr. George Manjuran, the Petitioner in W.P.(C) 2664/2016, both originally belonged to the 11th batch in the year 1986. In the case of Mr. Rathore, on account of the delay in granting age relaxation, and in the case of Mr. Manjuran, due to the initial erroneous adverse verification report from the District Collector which was later corrected on 24th February 1987, these two persons could not join training along with their batch-mates of the 11th batch. They were sent for training along with the 12th batch with effect from 5th October 1987. Just as in the case of Mr. Sanwal, they too represented to the Respondents about their loss of seniority and their notional seniority was re-fixed by orders dated 23rd June 1990 (in the case of Mr. Rathore) and 5th September 1994 (in the case of Mr. Manjuran) with effect from

16th June 1986. They too received promotions from time to time up to the rank of DIG.

8. Mr. C.H. Sethuram, the Petitioner in W.P.(C) 2672/2016, belonged to the 14th batch from 1989. On account of his medical unfitness, he was unable to be sent for training along with his batch but joined training along with the 16th batch with effect from 10th February 1993. Later, by an order dated 31st January 2001, he was given notional seniority along with the 14th batch. Subsequently, he earned promotions up to the rank of Commandant.

9. In the case of Mr. Prakhar Trivedi, the Petitioner in W.P.(C) 2668/2016, he belonged to the 15th batch from 1990. Initially, he was declared medically unfit but ultimately declared medically fit on 14th June 1993. Accordingly, he was sent for training along with the 17th batch with effect from 2nd July 1993. Aggrieved by the non-fixation of his seniority, he filed W.P.(C) 118/2001 before this Court. Prior to filing a counter-affidavit, the Respondents, of their own accord, reviewed his seniority by an order dated 14th April 2001 and informed the Court that he had been reassigned along with officers of his batch as per his merit. Finally, this Court disposed of the writ petition on 2nd January 2014, noting that his seniority had been correctly fixed and that he had been promoted to the next post with notional benefits. Mr. Trivedi subsequently earned promotions up to the rank of Commandant.

10. In the case of Mr. Manjit Singh, the Petitioner in W.P.(C) 743/2015, he was selected in the 16th batch in 1991 but could not be given an offer of appointment since he was declared medically unfit by the medical board. Ultimately, in July 1994, after being examined by a Special Selection

Medical Board, he was declared fit and was issued an offer of appointment by a letter dated 16th December 1994. He joined training with the 18th batch which commenced on 2nd January 1995. He was accordingly assigned seniority with ACs of the 18th batch.

11. On 3rd March 2001, Mr. Singh made a representation for re-fixation of his seniority along with the 16th batch as per the gradation list of July 2000. The competent authority then reassigned the seniority by an order dated 26th July 2001 along with the officers of the 16th batch with effect from 1st February 1993. The gradation list of Group 'A' GD officers circulated by a letter dated 30th June 1997 in which Mr. Singh figured at S.No.1829 was amended and he was assigned seniority at S.No.1518(A) below Mr. Shiv Murthy and above Mr. Suresh Kumar. The promotion to the rank of DC was notionally granted to him with effect from 7th October 1998 by the order dated 5th December 2001.

12. In Mr. Singh's case, the Respondents, by a letter dated 16th January 2007, was informed that in terms of the instructions of the Government of India dated 24th September 1997, it was proposed to review his case for promotion from AC to DC. By a subsequent office memorandum dated 24th September 2007, he was informed that as many as seven officers, including Mr. Singh, had been served with show cause notices and that all their cases were being processed by the Ministry of Home Affairs ('MHA').

13. Meanwhile, Mr. Dinesh Kumar, who was also selected in 1991 (16th batch) filed W.P.(C) 19748/2005 (*Dinesh Kumar, Dy. Commandant v.*

Union of India). He complained to the Court that although he qualified with the 16th batch, on account of delay in his being declared medically fit, he joined training with the 18th batch with effect from 2nd January 1995 and his seniority was fixed with reference to the 18th batch. His writ petition came to be allowed by a Division Bench of this Court by an order dated 14th February 2011. In that order, reference was made to the fact that in the case of Mr. Singh, who also belonged to the same 16th batch, the Respondents had rectified the error and granted to him the correct seniority and, therefore, the Court found it strange that the Respondents had filed a counter-affidavit in the year 2006 in that case alleging that Mr. Singh was granted a wrong benefit.

14. This Court, in *Dinesh Kumar* (*supra*) noted in para 25 of its order “that the Respondents, having correctly granted the benefit to Manjeet Singh, have pleaded, what this Court would label as a mere ruse, to deny the claim of the Petitioners”. Accordingly, Mr. Dinesh Kumar’s writ petition was allowed with the direction to the Respondents to fix his seniority with reference to the seniority of persons junior to him in the same batch. It is not in dispute that the appeal by the Respondents against the aforementioned order in *Dinesh Kumar* (*supra*), i.e. SLP(C) 18484/2011, was dismissed by the Supreme Court on 25th July 2011.

15. Meanwhile, some promote ACs of the 16th batch challenged the seniority list dated 18th July 1985 by filing SWP 1393/1999 in the High Court of Jammu and Kashmir contending that certain persons who joined training with the 17th batch had been placed senior to them. The said writ petition

was allowed by an order dated 27th July 2001 wherein it was held that the said Petitioners were entitled to be ranked in the seniority above the officers of the 17th batch and below the officers of the 16th batch. The said judgment was challenged before the Supreme Court in ***Rohitash Kumar v. Om Prakash Sharma (2013) 11 SCC 451***. By the judgment dated 6th November 2012, the Supreme Court held that the seniority of the direct entry officers would be from the date of their appointment, i.e. the date of commencement of their training at the BSF Academy in Gwalior, Madhya Pradesh. It further opined that “there may be a statutory provision which causes great hardship or inconvenience to either the party concerned or to an individual but the Court has no choice but to enforce it in full rigour” if the language of the statute is plain.

16. Consequent to the above judgment dated 6th November 2012, the Respondents decided to undertake, on their own, an exercise to review the entire seniority list of the Group ‘A’ (GD officers). Two orders dated 28th November 2013 and 24th January 2014 were issued constituting a board of officers (hereinafter ‘Board’) to verify the records/files relating to fixation of seniority of Group ‘A’ officers and to arrange their *inter se* seniority. Interestingly, the order dated 24th January 2014 states that the board of officers were detailed “to verify the records/files relating to fixation of seniority of AC (DE) batches Srl.No.29 to 35 and AC (LDCE) batch Srl-05 and re-arrange the inter se seniority in accordance with BSF (GD Officers) Recruitment (Amendment) Rules 2003 and Rule 7(3)(2) of the BSF Group ‘A’ (GD Officers) Recruitment Rules 2010”.

17. In other words, it appears that what was intended to be reviewed by the aforementioned Board was the fixation of seniority of the direct entry AC officers of 29th to 35th batches and not other batches. It is an admitted position that no show cause notices were issued to any of the present Petitioners whose seniority would have been affected by the said review. A general signal was issued on 14th February 2014 stating that, pursuant to the aforementioned orders, the Board was considering review of seniority and that in case any other GD cadre officer was aggrieved with his seniority, he could forward his representation/grievance directly to the office of the Seniority Desk by 19th February 2014 for consideration.

18. On 8th May 2014, the Board submitted a report in which *inter alia* it was concluded as under:

“154 The Board has considered the cases of above officers as per the available records and factual position provided/reflected by various branches/documents. The Board has recommended re-assigning seniority to affected officers in the rank of Assistant Commandant with reference to BSF (Seniority Promotion and Superannuation of officers) Rules, 1978 and BSF (General Duty Officers) Recruitment Rules, 2001 and as per the law laid down by the Hon'ble Supreme Court of India vide judgment dated 6.11.2012. The due benefit of seniority as admissible to such officers may be considered after observing all requisite formalities. In case name of any officer is left out and later comes to the notice the same may be examined on case to case basis on similar analogy.

155 It is noted that maximum of the above officers were originally assigned correct seniority but in due course of time the rule was misinterpreted and these officers have been granted notional seniority. It is also noted that in many of such cases the approval of MHA/DoP&T was also taken. As the rule has now

been defined clearly by the Hon'ble Supreme Court vide judgment dated 6.11.2012 and the seniority of AC/DE batch 16 & 17 has been held w.r.t. their commencement of training, the Board views that its recommendations may be got vetted/concurred from MHA & DoP&T. The administrative orders of review of seniority issued by FHQ (Pers Dte) in respect of officers as mentioned under the sub head/column. Change in seniority, if any needs to be cancelled even if these are implemented or otherwise.”

19. The report noted that the decision of this Court in Mr. Prakhar Trivedi's (Petitioner in W.P.(C) 2668/2016) case was in conflict with the decision of the Supreme Court in **Rohitash Kumar** (*supra*). By the letters dated 12th and 17th December 2014, Mr. Trivedi was informed by the Respondents that his seniority had been reassigned and he could represent against it if he wished to do so. Certain others also made representations knowing of the recommendation of the Board to again down grade their seniority.

20. Ultimately, by the order dated 27th January 2016, the seniority of all the present Petitioners was downgraded, cancelling the earlier orders issued whereby their respective seniority had been re-fixed along with their respective batches. It is this order which is under challenge in all these petitions.

21. It must be mentioned that Mr. Manjit Singh (Petitioner in W.P.(C) 743/2015) stood already aggrieved by the gradation list dated 8th September 2014 whereby his seniority was being reconsidered by the Board. On 22nd October 2014, Mr. Dinesh Kumar was promoted to the rank of Commandant superseding Mr. Singh. The review petition filed by the Respondents in **Dinesh Kumar** (*supra*), i.e. Review Petition No. 524/2014,

wherein they mentioned that the judgment dated 14th February 2011 of this Court would be subject to the judgment dated 6th November 2012 passed in **Rohitash Kumar** (*supra*) was rejected by this Court by dismissing the Review Petition on 12th December 2014. Therefore, anticipating the downgrading of his seniority as a result of the above, Mr. Singh filed W.P.(C) 743/2015 on 19th January 2015 seeking the quashing of the gradation list issued in his case on 8th September 2014.

22. This Court has heard the submissions of the learned counsel for the parties. The main plank of the arguments on behalf of the Respondents is the judgment of the Supreme Court in **Rohitash Kumar** (*supra*). The Appellants before the Supreme Court in that case, were the direct recruits ACs in the BSF. Om Prakash Sharma and others, the Respondents, were promotees. The 16th batch consisted of 67 officers who joined the training on 1st February 1993 while the 17th batch consisted of 87 officers who joined the training on 2nd July 1993. Due to administrative reasons such as character verification, they could not be sent for training in one batch even though they had been selected through the same competitive examination. It was noted that Om Prakash was promoted from the feeder cadre and joined his post on 15th March 1993 and, therefore, was placed in the promotional cadre prior to the commencement of the training of the 17th batch on 2nd July 1993. The Court interpreted Rule 3 of the BSF Rules 1978 ('1978 Rules') which reads as under:

“(3) Subject to the provisions of Sub-Rule (2) inter-se 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 Border Security Force 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 on an earlier batch will be senior to officers selected in subsequent 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 Tank.

Provided that in case of direct entrants the date of **appointment shall be the date of commencement of their training course** at the Border Security Force Academy.”

23. The Supreme Court then noted the interpretation placed on the said rule by the learned Single Judge of the Jammu and Kashmir High Court which reads as under:

“A perusal of the above makes it apparent that in the case of the officers who have been promoted their seniority is to be determined on the basis of continuous appointment on a day in which they are selected for promoted to that rank. In case of direct entrants their inter-se seniority is to be determined on the basis of aggregate marks obtained by them. Inter-se seniority of the officers mentioned at serial No. (1) (ii) and (iii) is to be determined according to the date of their continuous appointment in the rank. Proviso to the rule is clear. It is specifically mentioned that in the case of direct entrants, the

date of appointment shall be the date of commencement of their training course at the Border Security Force Academy.”

24. The Supreme Court then proceeded to observe as under:

“27. If we apply the settled legal propositions referred to hereinabove, no other interpretation is permissible. The language of the said rule is crystal clear. There is no ambiguity with respect to it. The validity of the rule is not under challenge. In such a fact-situation, it is not permissible for the court to interpret the rule otherwise. The said proviso will have application only in a case where officers who have been selected in pursuance of the same selection process are split into separate batches. Interpreting the rule otherwise, would amount to adding words to the proviso, which the law does not permit.

28. If the contention of the appellants is accepted, it would amount to fixing their seniority from a date prior, to their birth in the cadre. Admittedly, the appellants (17th batch), joined training on 2.7.1993 and their claim is to fix their seniority from the 1st of February, 1993 i.e. the date on which, the 16th batch joined training. Such a course is not permissible in law.

The facts and circumstances of the case neither require any interpretation, nor reading down of the rule.”

25. There are certain features of the above case that require elucidation. One is that it was a dispute essentially between promotees and direct entrants where the promotees, relying on the main part of Rule 3 reproduced hereinabove, claimed that since they were inducted into the cadre by their appointment on an earlier date, they were senior to the direct entrants. This was accepted particularly since the validity of the rule was not under challenge. Secondly, it was clarified that the proviso to Rule 3 would have application “only in a case where officers who have been selected in pursuance of the same selection process are split into separate batches.

Interpreting the rule otherwise would amount to adding words to the proviso, which the law does not permit”. Thirdly, the 17th batch, having joined training on 2nd July 1993, could not claim seniority from the date on which the 16th batch joined training, i.e. 27th March 1993. In other words, those of an earlier batch who joined training earlier would be senior to those who joined training later.

26. Interestingly, however, the Supreme Court had no occasion to deal with the cases of all whose seniority had already been re-fixed, such as the present Petitioners, with the Respondents accepting their plea that their failure to join training was not on occasion of any fault of theirs. In fact, the Appellants in **Rohitash Kumar** (*supra*) placed reliance on the decision dated 14th February 2011 in **Dinesh Kumar** (*supra*) and it was observed in para 29 as under:

“29. Shri R. Venkataramani, learned Senior counsel for the appellants, has placed very heavy reliance upon, the judgment of the Delhi High Court (**Dinesh Kumar v. UOI & Ors.**) dated 14.2.2011 wherein, certain relief was granted to the petitioner therein, in view of the fact that there was some delay in joining training, in relation to passing the fitness test set by the Review Medical Board. The court granted relief, in light of the facts and circumstances of the case, without interpreting Rule 3 of the Rules 1978. Thus, the said judgment, in fact, does not lay down any law. The case at hand is easily distinguishable from the above, as that was a case where seniority and promotion had been granted on a notional basis, with retrospective effect and it was held that the person to whom the same had been granted, was entitled to all consequential benefits.”

27. Therefore, the Supreme Court was not prepared to disturb the judgment of this Court in **Dinesh Kumar** (*supra*) by observing that it was a case where

“seniority and promotion had been granted at a notional basis with retrospective effect”. The fact of the matter, therefore, is that even according to the Supreme Court, as a result of its decision, the position as far as the decision in ***Dinesh Kumar*** (*supra*) is concerned, would not be affected.

28. Interestingly, Mr. Dinesh Kumar was a 1991 officer like Mr. Singh. If ***Rohitash Kumar*** (*supra*) was intended to disturb their cases, then clearly the Supreme Court would have recorded its finding to that effect. However, the Supreme Court considered the case of ***Rohitash Kumar*** (*supra*) as an inter se dispute between promotees and direct entrants and, therefore, declined to vary its order. It noted that this Court had granted relief in light of the facts and circumstances of the case without interpreting Rule 3 of the 1978 Rules and thus, was of the view that ***Dinesh Kumar*** (*supra*) had, in fact, not laid down any law.

29. Interestingly, even in the order passed by this Court in the review petition filed in ***Dinesh Kumar*** (*supra*), this Court observed that the facts in ***Rohitash Kumar*** (*supra*) were distinguishable. The interpretation placed by the Division Bench of this Court of ***Rohitash Kumar*** (*supra*) and what the issue in ***Dinesh Kumar*** (*supra*) was is evident from a reading of the entire order dated 12th December 2014, which reads as under:

“Review Pet.No.524/2014

1. The review petition is entirely misconceived. The decision of the Supreme Court pronounced on November 06, 2012 in CA No.2133-2134/2004 on which the review is predicated is not applicable to the facts of the instant case.

2. Said decision holds that in view of Rule 3 of the BSF (Seniority, Promotion and Superannuation of Officers) Rules,

1978, the seniority of the directly recruited officers has not to be with respect to the merit position secured at the competitive examination. The decision notes that as per the Rule, the final merit position is with reference to the aggregate of the marks obtained at the competitive examination and at the induction course.

3. On facts, in said decision, persons who took the competitive examination for appointment as an Assistant Commandant in BSF could not join in the same year due to administrative exigencies. Character verification for some were received and for others it was not received. The result was that some underwent the training/induction course earlier and the remainder with the next batch. Officers who underwent training in the next batch wanted seniority to be determined on the basis of the aggregate of the marks obtained in the competitive examination and at the induction course. The department took the view that the prospective appointees at the competitive examination did not undergo training in the same batches and thus those who took training at the latter batch would rank junior to those who underwent training in the earlier batch. The Supreme Court accepted the view taken by the department.

4. In the instant case the issue was not that of seniority. The writ petitioner undertook the competitive examination but his appointment as an Assistant Commandant got delayed due to late convening of a review medical board by BSF. Realizing this, BSF itself granted seniority to the appellant as an Assistant Commandant with reference to his merit position at the competitive examination held on September 15, 1991.

5. There was no issue on said account.

6. The issue which arose was when promotion to the post of Deputy Commandant became due. As per the service rule, six years service in the grade of Assistant Commandant was the eligibility condition. The juniors who had been inducted earlier rendered six years service and thus were being considered for

promotion as Deputy Commandant. The Petitioner relied upon para 3.1.2 of the Office Memorandum dated March 25, 1996, relevant portion whereof has been noted in paragraph 15 of the decision dated February 14, 2011. As per the same, if juniors had become eligible for being considered for promotion, eligibility norm for the senior officer had to be half the number of years of service otherwise required.

7. The writ petition which was decided by us interpreted the Office Memorandum in question and its effect. The petitioner had rendered three years and six months service as an Assistant Commandant. This was more than half the eligibility service of six years. Admittedly, persons junior to the petitioner had rendered more than six years of service and had become eligible for being considered to be promoted as an Assistant Commandant. In said fact, applying para 3.1.2 of the Office Memorandum dated March 25, 1996, relief was granted to the petitioner.

8. The review petition is dismissed.

9. No costs.”

30. In one sense, the order passed in the review petition in ***Dinesh Kumar*** (*supra*) on 12th December 2014 is consistent with what the Supreme Court itself observed as regards the decision of this Court in ***Dinesh Kumar*** (*supra*) in its decision dated 6th November 2012 in ***Rohitash Kumar*** (*supra*).

31. The net result is that there was no requirement for the BSF to have undertaken a review of the seniority positions of all officers pursuant to the judgment in ***Rohitash Kumar*** (*supra*). This Court has not been told why, despite the order dated 24th January 2014 clearly stating that the review was to be confined to the 29th to 35th batches, the Respondents desired to open up a Pandora’s box. It was contended by Ms. Maninder Acharya, learned ASG

appearing for the Respondents, that there were already grievances expressed about the re-fixation of seniority. She referred to what was noticed by this Court in its order in **Dinesh Kumar** (*supra*) about the re-fixation of Mr. Singh's seniority.

32. However, as has already been noted hereinbefore, this Court in **Dinesh Kumar** (*supra*) was of the view that there was no justification in reviewing Mr. Manjit Singh's seniority. The order in **Dinesh Kumar** (*supra*) attained finality with the dismissal of the SLP of the Union of India. The decision of this Court in **Dinesh Kumar** (*supra*) also found mention in the judgment in **Rohitash Kumar** (*supra*) and was not disturbed. The net result would be that although both belong to the 1991 batch, because of the disinclination of the Supreme Court in **Rohitash Kumar** (*supra*) to disturb the position vis-à-vis **Dinesh Kumar** (*supra*), the case of Mr. Manjit Singh would also stand on the same footing as Mr. Dinesh Kumar. In other words, the seniority earlier re-fixed in his case (prior to the impugned orders) would not be disturbed.

33. As far as the five other Petitioners are concerned, Ms. Acharya was not able to justify why, without any complaint being made by anyone, their seniority was re-fixed. The only justification revealed was the judgment in **Rohitash Kumar** (*supra*) but, as already pointed out, it was actually a case of inter se seniority between a promotee and a direct recruit. The promotee there had taken training earlier with the 16th batch whereas the Appellants joined training with the 17th batch which took the training later. Therefore, the promotee's seniority over the direct recruit entrants was affirmed by following Rule 3. It was not a case of *inter se* seniority in the same batch of

direct recruits. In any event, the judgment in ***Rohitash Kumar*** (*supra*) was not meant to apply retrospectively. It was incumbent upon the Respondents to point out to the Supreme Court, if they were intending to apply the judgment retrospectively, the consequences of such retrospective application.

34. The decision of the Supreme Court in ***Rohitash Kumar*** (*supra*) was not meant to reopen the seniority of all officers of all batches. The Supreme Court was, in fact, not disturbing the status quo when it affirmed the judgment of the Jammu and Kashmir High Court. If after nearly two decades seniority has to be re-fixed all of a sudden as a result of a judgment of the Supreme Court, it would alter the status quo to the severe detriment of many despite that there being no complaint at all from any quarter. This was an unwarranted problem unnecessarily brought about by the Respondents themselves.

35. On the question of 'settled seniority', it would also be relevant to note that the Supreme Court, in ***H.S. Vankani v. State of Gujarat*** (2010) 4 SCC 301, held as under:

"38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility

among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.

39. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in *Union of India v. S.K. Goel* [(2007) 14 SCC 64], *T.R. Kapoor v. State of Haryana* [(1989) 4 SCC 71] and *Bimlesh Tanwar v. State of Haryana* [(2003) 5 SCC 604]. In view of the settled law the decisions cited by the appellants in *G.P. Doval case* [(1984) 4 SCC 329], *Prabhakar case* [(1976) 2 SCC 890], *G. Deendayalan* [(1997) 2 SCC 638] and *R.S. Ajara* [(1997) 3 SCC 641] are not applicable to the facts of the case.”

36. It is an equally well-settled principle of law that judgments of the courts are not to be interpreted as statutes. On this proposition, it is relevant to note that in *Union of India v. Dhanwanti Devi* (1996) 6 SCC 44, the Supreme Court observed as under:

“10. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and

therefore, Judges are to employ an intelligent technique in the use of precedents.”

37. Therefore, in view of the decisions referred to hereinabove, we are of the opinion that a meaningful interpretation of the ratio of the Supreme Court’s decision in ***Rohitash Kumar*** (*supra*) would result in the conclusion that ‘settled seniority’ should be preserved. The retrospective application of the said judgment would be inconsistent with the ratio of the judgements referred to hereinabove. The manner in which the Respondents are seeking to apply the judgment would lead to a reopening of the question of seniority which has been settled of several years. An interpretation that is harmonious with the well-settled principle of ‘settled seniority’ would be most suitable and any other exposition would cause administrative chaos and lead to situations that would result in grave injustice to persons who are already settled in their positions.

38. It was then contended by Ms. Acharya, learned ASG, that if they were to re-work the entire exercise as a result of the impugned order dated 27th January 2016 being set aside, then those other officers whose seniority would be affected thereby would also have to be made parties. She, however, does not dispute the fact that no such plea was taken by the Respondents in the counter affidavits filed in these petitions.

39. The situation was brought upon by the Respondents themselves without any complaint by any of others parties who benefitted from that exercise. As far as the present Petitioners are concerned, the Respondents are only required to restore the status quo ante the impugned order whereby they had

notionally fixed their seniority. In some cases this has been by indicating the position with alphabets like 'a' and 'b' alongside the Sl. No. The Respondents should be able to work out a solution without unduly affecting the rights of anyone.

40. The writ petitions are accordingly allowed and vis-à-vis these Petitioners, the impugned order dated 27th January 2016 to the extent it cancels the re-fixed seniority and downgrade the seniority of these Petitioners (as indicated in the last column of the table in para 6 of the order dated 27th January 2016) is hereby set aside. In other words, the seniority of these Petitioners as re-fixed initially by the Respondents as indicated in the fourth i.e. last but one column of the table in para 6 of the aforementioned order dated 27th January 2016 will be restored. No orders as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 27, 2018

tr