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

+ **W.P.(C) 8809/2017**

SATYA DEV YADAV AND ANR Petitioners
Through Ms. Saahila Lamba, Advocate

Versus

UNION OF INDIA AND ANR Respondents
Through Ms. Shiva Lakshmi, CGSC

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

14.11.2018

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1. The writ petition has been filed against the order dated 31st July, 2017 issued by the Secretary, Ministry of Home Affairs, Government of India and the signal dated 24th November, 2016 issued by the Directorate General, Border Security Force (BSF) declining the Petitioners' request for fixing their seniority and increments with effect from the changed date of their appointment i.e. 30th December, 2002.

2. The Petitioners applied for the post of Assistant Commandant and were selected and allotted BSF having cleared the written exams in May, 2002. On 22nd November, 2002 they were issued the offer of appointment asking to undergo basic training on 23rd December, 2002. The Petitioners reported at the BSF Academy, Takenpur, Gwalior on 28th December, 2002. The first training week was from 30th December, 2002 to 5th January, 2003 and this was known as the 'zero week'. The date of assumption of duties in the rank

of Assistant Commandant was taken as 6th January, 2003 which was the actual date of joining by the Petitioner in that post as per the official records.

3. The question that then arose was how this 'zero week' should be treated. Reference has been made to a letter dated 10th April, 2002 addressed to the DIG (Personnel) by the Senior Instructor of the AC (DE Course) pointing out that the expression 'zero week' was actually a misnomer and in fact "it is an essential constituent of the training curriculum of an officer training". This explains why the Directorate General, BSF (Personnel Directorate) issued a detailed order on 27th January, 2016 refixing the date of appointment of a large number of officers including the present Petitioners as the date on which they reported for training. In the case of the Petitioners this order clarified that his appointment would be treated as commencing on 30th December, 2002.

4. Both the Petitioners as well as the Respondents have referred to Rule 3 of the BSF (Seniority, Promotion and Superannuation of officers, Rules 1978) ('the 1978 rules') and in particular Rule 3 which pertains to 'seniority of officers'. Rule 3(3) (iv) reads as under:

"(3) subject to the provisions of sub rule (2) inter-seniority amongst officers holding the same rank shall 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 rank;

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.”

5. Therefore, Rule 3 (3) (iv) makes it clear that in case of direct entrants the date of appointment shall be the date of commencement of their training course at the BSF Academy. This explains why in the aforementioned order issued by the BSF Directorate Personnel the date of the appointment of the Petitioners has been re-fixed as 30th December, 2002.

6. The next question that arises is whether for the purposes of seniority and financial benefits the date of appointment of the Petitioners should be treated as 30th December, 2002? Here it must be noted that the Petitioners first approached this Court with WP(C) No. 11995/2016 which was disposed of by the Division Bench on 21st December, 2016 asking Respondent No.1 to treat the writ petition itself as a representation and dispose it of in accordance with law within three months. Thereafter the impugned order was passed by Respondent No.1 on 31st July, 2017.

7. Among the reasons given for rejecting the Petitioners' request is 'that Rule 3 of the BSF Rules is quite clear' and that "the seniority cannot be assigned prior to their birth in the cadre". The above conclusion is in fact contrary to Rule 3(3) (iv) which has been quoted hereinbefore which makes it clear that the seniority will count from the date when the direct entry officer reported for training. It also ignores the fact that the Directorate of BSF has itself re-assigned the date of appointment of the Petitioners from 6th January, 2003 to 30th December, 2002. Consequently, the Court is not in agreement with the reason given by Respondent No.1 for rejecting the Petitioners' request.

8. It must be clarified that counsel for the Petitioners has on instructions stated that the Petitioners are not claiming the actual financial emoluments for the zero week. They are only concerned that for the purposes of seniority and financial benefits their date of appointment should be treated as 30th December, 2002.

9. Accepting this request of the Petitioners, the writ petition is allowed and a direction is issued to the Respondent to treat the date of appointment of the Petitioners for the purposes of seniority and financial benefits as 30th December, 2002.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 14, 2018/mw