

\$~4

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

% **Date of Decision: 1st March, 2021**

+ **W.P. (C) 924/2021**

VINOD KUMAR AND ORSPetitioners

Through: Mr.M.D.Jangra, Advocate

Versus

UNION OF INDIA AND ORSRespondents

Through: Mr.Sushil Kumar Pandey,
Mr.Sahaj Garg and Mr.Rahul
Mourya, Advocates

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

ASHA MENON, J: (Oral)

CM No.2510/2020

Exemption allowed, subject to all just exceptions.

W.P. (C) 924/2021 & CM APPL. 2509/2021

1. The petition has been heard by way of video conferencing.
2. The seven petitioners have filed this petition being aggrieved by the issuance of the Seniority List dated 24th April, 2020 and the order dated 12th October, 2020 whereby their objections to it, taken in their Legal Notice dated 6th August, 2020, were rejected. The petition has been filed with the following prayers: -

“(i) To quash and set aside the impugned order No. I.15013/01/2013/PERS-1029 dated 12.10.2020 (Annexure P-1) and impugned seniority list issued vide No. I-15013/ 2/ 2020/ PERS-5802-35 dated 24.04.2020 (Annexure P-2) for the post of Asst. Comdt. /GD (LDCE) and re-fix the inter-se-seniority of the petitioners accordingly with all consequential benefits.

(ii) To declare the action of the respondents in issuing impugned order No. I.15013/01/2013/PERS-1029 dated 12.10.2020 and impugned seniority list issued vide No. I-15013/ 2/ 2020/ PERS 5802-35 dated 24.04.2020 for the post of Asst. Comdt. /GD (LDCE) as arbitrary and illegal and re-fix the inter-se-seniority of the petitioners accordingly with all consequential benefits.

(iii) To direct the respondents to amend the recruitment rules for the post of General Duty Cadre (Group 'A' Posts) Recruitment Rules, 2010 (Annexure P-3) to the extent it does not provide the word 'LDCE' under 'Seniority' clause as provided in other sister services recruitment rules.

(iv) To allow the writ petition with cost. ”

3. The petitioners are presently working at the post of Assistant Commandant/GD(LDCE) having cleared the Limited Departmental Competitive Examination (for short, “LDCE”) on 4th December, 2012. Their grievance is that till the year 2018, their *inter se* seniority had not yet been determined and when the respondents issued the impugned Seniority List on 24th April, 2020, it was in gross violation of the Scheme for LDCE promotion brought into effect in the year 2000, as well as the previous practice and against the Recruitment Rules (RRs). According to the petitioners, the *inter se* seniority had to be fixed as per the marks

obtained in the Exam but the impugned Seniority List was drawn up on the basis of the total marks obtained not only in the LDCE but also in the Basic Professional Course.

4. Sh. M.D.Jangra, learned counsel for the petitioners, submitted that it was only in the year 2000 vide the communication of the Ministry of Home Affairs bearing No. MHA UO No.I-45022/83/2000-Pers.I dated 21st August, 2000 that it was decided to introduce a system of Limited Departmental Examination for promotion to the rank of AC(GD) to the extent of 17% of the vacancies in the promotion quota. The learned counsel submitted that though vide this communication (Annexure P-10 to the petition) the RRs were also to be amended, but till date, the RRs have not been amended. The learned counsel also submitted that as per the Scheme for the Central Police Organisations, seniority was to be fixed in the following manner: -

“9. Seniority:

The personnel recruited through Ltd. Departmental Competitive Examination will be treated as part of promotions quota and their seniority will be with reference to the date of selection as per DOP&T's OM NO. 22011/5/76-Estt.'D' dated 24.6.78. Within the candidates selected through LDCE the inter-se-seniority will be as per their position in the merit list of LDCE.”

5. According to the learned counsel, “the merit” meant the marks obtained in the exam. To bolster this argument, he submitted that the seniority list published on 5th February, 2014 was drawn up only on the basis of the marks obtained in the exam. However, on perusal, this list (placed as Annexure P-5 to the petition) does not seem to have been

drawn up solely on the basis of the marks obtained in the LDCE as it is not so mentioned.

6. Learned counsel for the petitioners further submitted that the Indo-Tibetan Border Police (ITBP), General Duty Cadre (Group 'A' Posts) Recruitment Rules, 2010 (for short, "the Rules") published on 5th October, 2010 provided only for the seniority of "direct entrants" in the following manner:-

"5. Seniority - The seniority of direct entrants shall be determined by adding together the marks obtained by them in the recruitment test and the basic Professional Courses in the ratio of 50:50."

He submitted that the same method should be adopted to determine the *inter se* seniority of the LDCE as well, since they were also coming pursuant an exam and are equivalent to 'direct recruits/entrants'. He further submitted that since the RRs of the Border Security Force (BSF) (placed as Annexure P-9 to the petition) provided for the fixing of seniority of those who cleared the LDCE namely, by adding together the marks obtained by the officers in the LDCE and the Basic Professional Course in the BSF training institution in the ratio of 50:50, the same Rule be made applicable to ITBP LDCE promotees as well to determine their *inter se* seniority.

7. The learned counsel then submitted that the Relegation Policy for Assistant Commandant/GD (LDCE) (placed as Annexure P-7 to the petition) on which the respondents were relying to draw up the seniority list impugned in this petition, was liable to be quashed as it did not follow the Scheme which prescribed that the *inter se* seniority would be

determined on merit nor did it follow the past practice and was arbitrary.

8. This Court is unable to accept these contentions of the learned counsel for the petitioners. It may be noted that what the Scheme provides for (para 9 at page 150 of the e-paperbook) is that the *inter se* seniority within the candidates selected through LDCE was to be “determined” as per the “position in the merit list” of the LDCE. The Relegation Policy for Assistant Commandant (GD/LDC) and Sub-Inspector (GD/LDCE) in the CAPFs (placed as Annexure P-7) in para 13 provides that the *inter se* seniority “would be arranged” in the “order of merit” and provides the manner in which that order of merit was to be drawn, i.e. after adding together the marks obtained by the candidates in the LDCE conducted by the CAPFs and the marks obtained by them in the Basic Professional Course held by their respective training institutions. There is no contradiction or disharmony between the two. Once the two sets of marks are added together, the one with higher marks will be placed senior to the one with lower marks and this order of merit will also determine the seniority in service *inter se* the LDCE candidates. Para 13 is reproduced below for ready reference:-

“13. *Inter-se-seniority-*

(a) *Inter-se-seniority of AC(GD/LDCE) & SI(GD/LDCE) shall be arranged in the order of merit which shall be determined after adding together the marks obtained by them in the Limited Department Competitive Examination conducted by the CAPF's, and the Basic Professional Course held at respective Training Institution as prescribed in the relevant Recruitment Rules.*

(b) *Whosoever, gets the highest marks as per the above*

criteria will be placed first in the batch and so on & so forth. If two or more trainee secure equal number of marks in the aggregate, their order of merit shall be in order of their dates of birth.

(c) The marks obtained by a trainee in regular course of Evaluation during basic training, only will count towards his inter-se-seniority.

(d) The marks obtained in re-test will only be considered towards qualifying/completion of training and will not be considered to determine merit and inter-se-seniority.”

9. The submission of the learned counsel for the petitioners that this determination of *inter se* seniority was subject to what has been provided in the relevant RRs and that since there was no such provision in the RRs in respect of ITBP personnel, therefore, the Rule governing LDCE in the BSF ought to be followed, has no force, as even in the absence of the RRs, the Scheme and the Policy declared by the government clearly stipulate that it is the merit which will determine *inter se* seniority and the method of calculating this order of merit has also been spelt out. The argument that the Rule 5 of the Rules providing for the *inter se* seniority of Direct Recruits ought to be applied to LDCE candidates because the latter also pass an exam and so should be “treated as Direct Entrants” militates against the Scheme which has carved out the LDCE from out of the “promotion quota”. Providing one method to draw up the *inter se* seniority of “Direct Recruits” and another method to draw up the *inter se* seniority of “LDCE promotees” cannot be considered discriminatory as they are two distinct classes.

10. In the circumstances, this Court finds no merit in the instant

petition which is, accordingly, dismissed along with the pending application.

11. The judgment be uploaded on the website forthwith. Copy of the judgment be also forwarded to the learned counsel through e-mail.

ASHA MENON, J

MANMOHAN, J

MARCH 01, 2021

s

