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

+ W.P.(C) 3912/2021, C.M. Appl. No. 11754/2021

SUBODH ROKADE

..... Petitioner

Through: Mr. Udian Sharma, Advocate

versus

UNION OF INDIA THROUGH ITS SECRETARY & ORS.

..... Respondents

Through: None.

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Date of Decision: 24th March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the letter dated 14th January 2020 and/or prior and post seniority lists issued by Personnel Directorate, BSF. Petitioner seeks direction to the Respondents to re-draw the seniority list and grant seniority to the Petitioner/Petitioner's batch over the promoted inspectors/ Promotee Officers.
2. Learned counsel for the Petitioner states that the Petitioner was declared successful for appointment to the post of Assistant Commandant on 02nd November 2004 when the final result of the UPSC CPF (Assistant Commandants) Examination- 2003 was declared. He, however, states that the Petitioner was offered appointment to the post of Assistant Commandant in BSF in 2005. He states that in the interregnum, around 102 Inspectors

were promoted to the rank of Assistant Commandant on 10th August 2005 against the promotion quota for which DPC was conducted on 26th May 2005.

3. Learned counsel for the petitioner points out that even though the Petitioner's selection was prior to the promotion of the promotee Inspectors/ promotee Officers, yet they were placed above the Petitioner's batch in the seniority list circulated by Personnel Directorate, BSF, as circulated vide the impugned letter. He emphasises that these Promotee Officers have been placed from seniority No. 1477 to 1527, whereas the Petitioner's seniority No. is 1561 in the said list.

4. He states that the Petitioner sent a representation to the Director General, BSF requesting re-examination of the matter of fixation of inter-se seniority of direct recruits of AC (DE) Batch Srl. No. 30 and Promotee Officers appointed on 10th August 2005 which was rejected by the Respondent holding that the inter se seniority has been correctly assigned by the department.

5. Learned counsel for the Petitioner submits that bare perusal of the Rule 7(2) of BSF Recruitment Rules, 2001 shows that the rank seniority of officers appointed to any post shall be determined in accordance with the order of selection for appointment to that post. The said Rule 7 of BSF (General Duty Officer) Recruitment Rules, 2001 is reproduced hereinbelow:

- "(1) All officers holding a higher rank shall be senior to the officers holding a lower rank.*
- (2) In a particular rank seniority of Officers appointed to any post shall be determined in accordance with the order of selection for appointment to that post.*
- (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 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."

6. Learned counsel for the petitioner emphasises that the Petitioner herein was selected on 02nd November 2004, even though the appointment date was September 2005, and therefore the Petitioner's rank of seniority will commence from the date of selection, i.e. 02nd November 2004.

7. In ground 'N' of the writ petition, the petitioner relies upon the judgment of the Supreme Court in ***Union of India vs. N.R. Parmar & Ors. (2012) 13 SCC 340*** wherein it was held that the date of appointment would mean the date of first substantive appointment against the clear vacancy. According to the learned counsel for the Petitioner, in the present case, since the vacancies were available when the direct recruits were selected, the direct recruits attain seniority against the promotees.

8. Having heard the learned counsel for the petitioner, this Court finds that Rule 7 of the BSF Recruitment Rules, 2001 has been interpreted by the J&K High Court and the Supreme Court to mean that in the case of direct entrants, the date of appointment shall be the date of commencement of their training course at Border Security Force Academy. The relevant portion of the judgment in **Rohitash Kumar & Ors. vs. Om Prakash Sharma & Ors. (2013) 11 SCC 451**, which is reproduced hereinbelow:

“32. The learned Single Judge dealt with the statutory provisions contained in Rule 3 and held 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.(I) (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.”

In light of the above, relief had been granted to respondent no.1. The Division Bench concurred with the said interpretation.

33. 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.

34. 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.

(emphasis supplied)

9. Further the judgment of **N.R. Parmar** (supra) has been subsequently overruled in **K. Meghachandra Singh & Ors. vs. Ningam Siro & Ors., (2020) 5 SCC 689** wherein, it has been held as under:

“38. At this stage, we must also emphasise that the Court in N.R. Parmar need not have observed that the selected candidate cannot be blamed for administrative delay and the gap between initiation of process and appointment. Such observation is fallacious inasmuch as none can be identified as being a selected candidate on the date when the process of recruitment had commenced. On that day, a body of persons aspiring to be appointed to the vacancy intended for direct recruits was not in existence. The persons who might respond to an advertisement cannot have any service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. In other words, only on completion of the process, the applicant morphs into a selected candidate and, therefore, unnecessary observation was made in N.R. Parmar to the effect that the selected candidate cannot be blamed for the administrative delay. In the same context, we may usefully refer to the ratio in Shankarsan Dash v. Union of India, where it was held that even upon empanelment, an appointee does not acquire any right.

39. The judgment in N.R. Parmar relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers,

governed by the MPS Rules, 1965. We also feel that N.R. Parmar had incorrectly distinguished the long-standing seniority determination principles propounded in, inter alia, Jagdish Ch. Patnaik, Suraj Parkash Gupta v. State of J&K and Pawan Pratap Singh v. Reevan Singh. These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in Jagdish Ch. Patnaik and consequently we disapprove the norms on assessment of inter se seniority, suggested in N.R. Parmar. Accordingly, the decision in N.R. Parmar is overruled. However, it is made clear that this decision will not affect the inter se seniority already based on N.R. Parmar and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant rules from the date of vacancy/the date of advertisement.”

(emphasis supplied)

10. Keeping in view the aforesaid, the present writ petition along with pending application being bereft of merits is dismissed.

MANMOHAN, J

ASHA MENON, J

MARCH 24, 2021

Pkb/KA