



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

Reserved on: August 01, 2022

Pronounced on: August 23, 2022

+ W.P.(C) 11034/2018

ASI/PHARMA BISWA PRAKASH JENA

AND ORS.

.... Petitioners

Through: Ms. Ankita Patnaik,
Advocate

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajesh Kumar and
Ms. Mishika Pandita,
Advocates for UOI

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SAURABH BANERJEE, J

1. Pursuant to advertisement, the 11 petitioners before us applied for filling up vacancies to the post of Group 'C' Non-Ministerial, Non-



Gazetted and Combatized Para Medical Staff: Assistant Sub-Inspector (Pharmacist) in Central Reserve Police Force (hereinafter referred to as “**CRPF**”), issued in the Employment News from 29.11.2003 to 05.12.2003. Though the recruitment process of all petitioners was concluded by 26.02.2004, they were appointed as ASI(Pharmacists) later from 19.07.2004 to 17.09.2004.

2. Before the petitioners joining as ASI/ Pharmacist there was a disparity of rank structure and pay scale associated with it within the para-military force/CPOs. Thus, upon recommendation of the Vth Central Pay Commission in its Government Resolution dated 30.09.1997, the respondent no.1 issued an order dated 10.10.1997 wherein the President of India was pleased to rationalise the rank structure of pay scales of non-gazetted cadre of Central Police Organizations (hereinafter referred to as “**CPOs**”).

3. Despite thereto, as the respondents failed to bring parity of rank structure or pay scales between the CPOs, few combatized Pharmacists of CRPF filed SWP No. 186/1998 entitled as ***Naresh Kumar & Ors. vs. Union of India & Ors.*** before the Learned Single Judge, High Court of Jammu and Kashmir for grant of the said relief with their counterparts in the Indo Tibetan Border Police (hereinafter referred to as “**ITBP**”). The said writ petition was allowed vide judgment dated 19.04.2001 and the Pharmacists therein were uniformly extended the same benefit as those with ITBP. The said judgment of the Learned Single Judge was then upheld vide judgment dated 12.08.2015 by the Hon’ble Division Bench, High Court of Jammu and Kashmir in LPASW No. 228/2002 entitled as ***Union of India & Ors. vs. Naresh Kumar & Ors.*** The said judgment of



the Hon'ble Division Bench was also upheld vide judgment dated 16.01.2018 by the Hon'ble Supreme Court of India in SLP(C) 15552-15553/2016 entitled *Union of India & Ors. vs. Naresh Kumar & Ors.*. All of the said three judgments passed by the Learned Single Judge, Division Bench and the Hon'ble Supreme Court are (hereinafter collectively referred as "*judgments*").

4. In view of above, the respondents were to implement the outcome of the aforesaid judgment(s). As such respondent no.3 issued order dated 19.04.2018, but made it applicable to only such ASIs/Pharmacists who were enlisted as combatized pharmacists of CRPF with effect from 17.10.1989 to 28.03.2004 and not to petitioners herein, since according to respondents they were all appointed by the CRPF only after 29.03.2004. Meaning thereby, despite their recruitment process being complete during the above period, in February '04, much before the cut-off date of 29.03.2004, the petitioners were denied extension of the said benefit.

5. This prompted the petitioners to send a legal notice dated 25.06.2018 followed by an exchange of letters *inter-se* the petitioners and the respondent no. 3. Thereafter petitioners by way of the present writ petition have primarily sought issuance of a writ of Certiorari quashing replies dated 11.07.2018 and 29.08.2018 issued by respondent No. 3 in response to the legal notice dated 25.06.2018 sent by petitioners and issuance of a writ of Mandamus directing the respondents to extend the benefit of orders dated 19.04.2018 issued by respondent No. 3 to the petitioners, thereby granting pre-revised pay scale of Rs. 1400-2300 (Revised Rs.5500-9000) and the rank of SI/Pharmacist on the pattern and



analogy which is being given to the similarly situated Pharmacists in ITBP.

6. Learned counsel for the petitioners contends that the judgment(s) are now final and binding and thus the petitioners cannot be denied extension of the benefit thereof. He also contends that the order dated 19.04.2018 issued by the respondents is contrary thereto and prays for extension of the benefit of the said order. He further contends that as there is no cut-off date mentioned in the judgment(s) and even otherwise as the petitioners already stood recruited prior to 29.03.2004, they are all well and truly entitled to the benefit thereof. To buttress his argument, learned counsel for petitioners submits that for the purposes of the present petition the actual date of joining to reckon is the date of recruitment and not the date of appointment.

7. In rebuttal, learned counsel for the respondents contends that the petitioners are not entitled to the benefit of order dated 19.04.2018 and they have already been granted the rank of SI/ Pharmacist at par with their counterparts in ITBP. He further contends that the petitioners cannot be extended benefit as they were appointed after 29.03.2004 and the period from the date of advertisement, i.e., from 29.11.2003 to 05.12.2003 to the date of appointment, i.e., from 19.07.2004 to 17.09.2004 is considered as recruitment process. For this learned counsel for respondents relies upon a subsequent guideline dated 16.01.2019 issued by the Ministry of Home Affairs.

8. It is common knowledge from the above facts and circumstances that pursuant to the advertisement from 29.11.2003 to 05.12.2003, the recruitment process of all the petitioners stood completed in all respects



by 26.02.2004. As such the delay in appointment of petitioners later in point of time, i.e., from 19.07.2004 to 17.09.2004, cannot be attributable to them. The seniority of petitioners is to be reckoned from the date of their recruitment and not the date of their actual appointment.

9. Reliance is placed upon ***Parmanand Yadav & Ors. vs. Union of India & Ors.*** W.P.(C) 3834/2013 wherein a Division Bench of this Court has held as under: -

“8. In the case of BSF, of which petitioners are enrolled members of the Force, letters offering appointment were delayed by three months, a fact admitted by the respondents, and as to be found in the DG BSF admitting said fact in the counter affidavit filed.

9. Thus, for parity of reasons, same relief as was granted to Naveen Kumar Jha and Avinash Singh must flow to the writ petitioners, and thus we adopt the reasoning in the two decisions, and hence we have reproduced the same hereinabove.

10. The petition is allowed issuing a mandamus to the respondents to treat the petitioners as a member of the pension scheme which was in vogue till December 31, 2003 and not to treat them as members of the new pension contributory fund scheme.”



10. Reliance is placed upon *Avinash Singh & Ors. vs. Union of India & Ors.* W.P.(C) 5400/2010 wherein a Division Bench of this Court has held as under: -

“17. It is settled law that if appointment is by selection, seniority of the entire batch has to be reckoned with respect to the merit position obtained in the selection and not on the fortuitous circumstance on the date on which a person is made to join.

18. We highlight in the instant case the fortuitous circumstance of the petitioners being made to join as Assistant Commandant on 08.08.2005 is not the result of anything created by the petitioners but is a result of a supine indifference and negligence on the part of the ITBP officials.

19. Thus, petitioners would be entitled to their seniority as Assistant Commandant with respect to their batch-mates in the context of the merit position in the select panel. We make it clear, the seniority as Assistant Commandant of the entire batch would be a reflection of the merit position in the select list and not the date of joining.

20. It is trite that where a thing is deemed to come into existence everything which logically flows therefrom has to be followed and the imagination cannot boggle down. In other words, the effect of the petitioners' seniority



being reckoned with reference to the select panel would mean that the petitioners would come at par with their brethren who joined on 02.11.2004. Since their brethren were granted 1-year qualifying service relaxation, petitioners would be entitled to the same benefit and additionally for the reason the next below rule requires that if a person junior in the seniority position acquires the necessary qualifying service, the person above has also to be considered for promotion. ”

11. The respondents cannot change the terms and conditions of service which were applicable at the time of advertisement to the prejudice of the petitioners and that too after their recruitment process is long over. It is trite law that terms and conditions of service applicable at the time of notification of the post cannot be altered to the prejudice of the incumbents to the post after the selection process is completed, as in the instant case.

12. Reliance is placed upon the case of ***Inspector Rajendra Singh & Ors. vs. UOI & Ors.*** W.P.(C) 2810/2016 wherein a Division Bench of this Court has held as under:-

“18. In our view, basic terms and conditions of service, such as the right to receive pension upon superannuation, as applicable at the time of notification of the posts, cannot later be altered to the prejudice of the incumbents to the post, after commencement of the selection process”



13. It is a matter of record that the respondent no. 3 issued order dated 19.04.2018 for implementation of the judgment(s) passed by the Learned Single Judge and the Division Bench of the High Court of Jammu and Kashmir and the Hon'ble Supreme Court. The aforesaid judgment(s) are a *judgment in rem* which have granted parity to all those belonging to CRPF with all those belonging to ITBP and further there is no prescribed timeline therein. The said judgment(s) do not restrict such grant of parity to any particular type of person or to any particular date. The respondents are bound to follow and adhere to the said judgment(s) in letter and in spirit. More so when the Central Industrial Security Force, the Border Security Force, the CRPF, the ITBP, the Sashastra Seema Bal, the National Security Guard and like became armed forces of the union by Acts of Parliament and they are all part of the CPOs. They are all governed by the same rules and regulations and follow the similar procedure of examination and appointment, with hardly any difference. There is no denial of the fact that the qualification required at the entry level of Pharmacists in CRPF and ITBP are the same and such Pharmacists in CRPF and ITBP perform similar functions and identical duties. Thus, there can be no disparity of rank structure and the pay scale *inter-se* them. There is no plausible reason to deny extension of similar benefits to the petitioners as their counterparts in ITBP and from those who have already been extended benefits vide the judgement(s). Such act(s) of discrimination *inter-se* CRPF and ITBP by respondents are violative of Articles 14 and 16 of The Constitution of India and ought not to be permitted.



14. The alleged cut-off date of 29.03.2004 prescribed by respondent no.3 vide its order dated 19.04.2018 is farce and without any basis, more so, as it is in contravention to the judgment(s). It is but strange that the respondent no.3 has come out with a time period and cut-off date by itself whence there is nothing of such kind is mentioned anywhere in any of the judgment(s) passed by either the Learned Single Judge or the Division Bench of the High Court of Jammu and Kashmir or the Hon'ble Supreme Court of India. There can be no discrimination between the petitioners with those who were extended parity by virtue of the said earlier judgment(s).

15. In the case on hand before us, admittedly, the advertisement was issued much prior to the alleged cut-off date, i.e., 29.03.2004 and the recruitment process of the aforesaid petitioners already stood concluded on 26.02.2004 prior thereto. Further the petitioners cannot be penalized for the delay in their appointment after the alleged cut-off date. Furthermore, the petitioners will not and in fact should not lose their seniority because of the lethargy of the respondents when they cannot be blamed for it and therefore the respondents cannot take benefit of their own wrong.

16. Accordingly, we hold that the denial of the extension of the benefits by the respondents to the petitioners is discriminatory and arbitrary and thus violative of Articles 14 and 16 of The Constitution of India.



17. Consequently, we allow this writ petition in favour of the petitioners by issuing a writ of mandamus directing the respondents to extend the benefit of order dated 19.04.2018 issued by respondent No. 3 to the petitioners, thereby granting pre-revised pay scale of Rs. 1400-2300 (Revised Rs.5500-9000) and the rank of SI/Pharmacist on the pattern and analogy which is being given to the similarly situated Pharmacists in ITBP.

(SAURABH BANERJEE)
(JUDGE)

(SURESH KUMAR KAIT)
(JUDGE)

AUGUST 23, 2022/rr

