



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

% **Reserved on: 15th March, 2023**
Pronounced on: 31st July, 2023

+ **W.P.(C) 13176/2019**

JAGMOHAN VISHWAKARMA AND ORS. Petitioners
 Through: Mr. Naushad Alam, Mr. Nihil
 Bhardwaj & Mr. Sandeep Pathak,
 Advocates.

versus

UNION OF INDIA AND ORS. Respondents
 Through: Mr. Vikrant N. Goyal, Mr. Tesu
 Gupta & Ms. Ayushi Garg,
 Advocates for R-1/UOI. Mr. Sagar
 Saxena & Mr. Parmeet Singh,
 Advocates for R-5, 11, 12, 18, 22,
 25, 32, 33, 34, 37, 38, 42, 43, 46 &
 50.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A petition under Article 226 of the Constitution of India has been filed on behalf of the petitioners for determining their seniority w.e.f. 04.10.2011, the date on which the result was declared and to place them senior to promotee Assistant Commandant, General Duty (*hereinafter referred to as "AC/GD"*) promoted against the vacancy year 2011-12 as well as AC/GD selected through LDCE 2010-11 and consequential reliefs.
2. The petitioners are the direct recruits working as AC/GD with



Indo-Tibetan Border Police (*hereinafter referred to as* “ITBP”) under the administrative control of Union of India, Ministry of Home Affairs, Government of India/respondent No.1.

3. The Indo-Tibetan Border Police Force was raised on 24.10.1962 under the CRPF Act, 1949. Thereafter, the Parliament of India enacted the Indo-Tibetan Border Police Force Act, 1992 (*hereinafter referred to as* “ITBP Act, 1992”) to provide for the constitution and regulation of the ITBP and for matter connected therewith. Section 153 of the ITBP Act, 1992 under Chapter XI provides for the classification of the officers and their rank and the manner in which their seniority has to be determined.

4. In exercise of the powers conferred under Section 156 of ITBP Act, 1992, the Central Government published the ITBP Rules, 1994 on 30.05.1994. Rule 12 provided for the appointment of Officers. This Rule nowhere provided for determination of *inter se* seniority of the ITBP Officers appointed from different sources. Rule 187 of the ITBP Rules, a transitory provision, provided that any Rule or Order applicable to the Force on commencement of these Rules, shall continue to apply unless repugnant to these Rules and until and unless abrogated or modified by the Central Government or any other competent authority. Since ITBP Act, 1992 and Rules thereunder only provided for *inter se* seniority amongst the officers from same source, the respondent applied CRPF Rules for fixation of seniority as contained in Rule 8(b) (ii) of CRPF Rules, 1955.

5. The Ministry of Home Affairs for the first time introduced the system of Limited Department Examination (LDCE) on 21.08.2000 for the appointment of Officers including AC/GD in the Para Military Force



to the extent of 17% of the total vacancies. Directions were accordingly issued to amend the Recruitment Rules. Standing Order No.6/2001 of February, 2001 issued by the Directorate General of the CRPF, provided that personnel recruited through LDCE shall be treated as part of promotion quota and their seniority will be with reference to the date of selection as per Department of Personnel and Training (*hereinafter referred to as "DoP&T"*) O.M. dated 24.06.1978.

6. Subsequently, on 05.10.2010, the Central Government in exercise of the power conferred by Sub-Section (1) read with Clause (b) of Sub-Section (2) of Section 156 of the ITBP Act, 1992, notified the *Indo-Tibetan Border Police Force, General Duty Cadre (Group-A posts) Recruitment Rules, 2010* which provided for mode of selection of AC/GD. According to these Rules, 33% of the vacancy was to be filled by promotion, 17% by LDCE failing which by promotion and 50% on the basis of All India Competitive Examination to be conducted by the Union Public Service Commission (*hereinafter referred to as "UPSC"*). These Rules, however, did not provide for *inter se* seniority of direct recruits, promotees and personnel appointed through LDCE. The mode of ascertaining the inter-se seniority was provided in proviso to Rule 8(3) (iv) of the *Central Reserve Police Force Group A (General Duty) Officers Recruitment Rules, 2001*. It stated that in case of direct entrants, the year of declaration of result shall be the year of seniority. Further, inter se seniority of the directly recruited ACs and promotees shall be decided as per the orders of DoP&T issued from time to time.

7. The Notice *vide* Gazette Notification dated 29.05.2010, for competitive examination to be held by UPSC in 2010 for filling up



vacancies of Assistant Commandant in Central Police Force (CPF) viz. BSF, CRPF, ITBP, CISF and SSB was published by Ministry of Home Affairs, Government of India. Pursuant thereto, UPSC published Examination Notice on the same day i.e., 29.05.2010 called Central Police Force (Assistant Commandant) Examination, 2010 (hereinafter referred as “CAPF (AC) Exam-2010”).

8. The petitioners appeared in the CAPF (AC) Exam-2010 and the result was declared on 04.10.2011 in which they were found successful and they joined ITBP. Other successful candidates joined the other Paramilitary Forces.

9. In the meanwhile, an advertisement was issued in April, 2010 for selection to the post of AC/GD in Central Paramilitary Forces – CAPFs through LDCE 2010-11. The personnel already working as Sub-Inspector (GD)/Inspector (GD) with the Force and meeting with the eligibility criteria took the examination in August, 2011 and the result was declared on 02.03.2012.

10. Proviso to Rule 6(3) (ii) of the *Central Reserve Police Force Group A (General Duty) Officers Recruitment Rules, 2010* provides that:

“seniority of direct recruits will be determined w.e.f date of declaration of the result and for departmental candidates w.e.f date on which the DPC was held in which the name of such departmental candidate was considered”.

11. DoP&T issued a Clarification *vide* Memo dated 11.10.2010 that in view of O.M. dated 24.06.1978 the starting point in the recruitment roster for the purpose of inter se seniority of the Officers through direct recruitment, promotion, absorption etc. shall be as per OM dated 24.06.1978 and then DoP&T again issued an O.M. dated 04.03.2014



detailing the manner in which the *inter se* seniority had to be decided.

12. In **W.P.(C) 4940/2011**, *vide* Order dated 06.01.2016, this Court relying upon the Rule 8(3)(iv) of CRPF Recruitment Rules, 2001 upheld the determination of the seniority of the direct recruits selected through competitive examination conducted by UPSC from the date of declaration of result and for promotes from the date of promotion to AC/GD. This Order was unsuccessfully challenged before Supreme Court of India and has thus, attained finality.

13. It is stated that prior to 2010, ITBP used to maintain a separate seniority list of Group A direct recruit and the promote Officers of four specialist cadre (Telecom, Motor Transport, Armourer & EDP – Electronic Data Processing Cadre and General Duty Cadre). *Vide* Office Order dated 26.11.2010, ITBP merged the four specialist cadres and the seniority of the incumbents of the merged cadre were re-fixed and a new seniority list was issued on 01.12.2010. This merger list was challenged successfully in **W.P. (C) 7545/2011** before this Court leading to issuance of directions to ITBP *vide* Order dated 25.05.2015 to recast the seniority of four cadres separately. The Special Leave Petition converted to Civil Appeal bearing No.3689/2017 was withdrawn on 30.11.2018.

14. Pursuant to the directions of this Court, respondent Nos. 2 and 3 re-casted this entire seniority list of the GD Cadre Gazetted Officers. One of the petitioners made a Representation dated 26.03.2017 to the respondent No.2 requesting to re-fix his seniority and consider his name for the DPC to be held for promotion from AC/GD to DC/GD before the name of promotee officer promoted against the vacancy year 2011-12 and the officers selected through LDCE 2010-11. Several representations to



similar effect were made by direct recruits.

15. The representation dated 26.03.2017 was rejected by respondent No.2 on 11.04.2017 stating that the principle for determination of inter se seniority of AC(GD)-DE, LDCE and promotees was in accordance with Rule 8(b)(ii) of CRPF Rules 1955 and CRPF Standing Order No.1/2009 dated 12th January 2009.

16. Another petitioner had also made a similar representation seeking re-fixation of his seniority. Signal No.1631 dated 11.03.2019 was issued by ITBP asking the Officers not to make any further representations regarding correction in the seniority list of 2019 as the matter was under examination and was also *sub judice*. The Representation dated 19.02.2019 was rejected *vide* Officer Order dated 10.07.2019 in the light of Rule 8 (b) (ii) and (e) of CRPF Rules as O.Ms. dated 07.02.1986 and 03.07.1986 as referred to in DoP&T O.M. dated 04.03.2014, were not applicable to ITBP.

17. It is submitted by the petitioners that in the seniority list of the year 2017 promotee AC/GD against the vacancy year 2011-12 and AC/GD selected through LDCE 2010-11 were placed senior to the petitioners and have been promoted to the rank of Deputy Commandant (DC/GD) on different dates in the year 2018. The promotee AC/GD and AC/GD selected through LDCE 2010-11 have now been included in the Seniority List of DC/GD-2019.

18. The CRPF *vide* Office Order dated 14.10.2019 clarified that the Office Order No.1/2009 was applicable to *inter se* seniority or within a batch seniority of AC/GD. The seniority of Direct Entry Officers, officers promoted and selected through LDCE shall be determined as per Rule



6(3)(ii) of CRPF Group A (General Duty) Officers Recruitment Rules, 2010 as per which seniority of directly appointed Gazetted Officers and directly enlisted Gazetted Officers shall be reckoned from the date of declaration of result and that of promotees from the date of DPC by which they were empanelled.

19. It is asserted that the date of appointment of an Officer is not a deciding factor either in case of determination of *inter se* seniority or Gradation List seniority. Seniority of all ACs has to be determined as per the provisions contained in the Departmental Standing Orders and Rules as mentioned above.

20. The petitioners have thus sought for directions to be issued to the respondent to set-aside/quash Letter/Reply dated 11.04.2017 and Office Order dated 10.07.2019 issued by respondent No.2 and to direct the respondents to recast the seniority of the petitioners vis-a-vis respondent Nos. 4 to 50 in the Seniority List dated 01.01.2019 treating the date of effective service of the petitioners with ITBP w.e.f. 04.10.2011 (i.e., the date of declaration of result) and be placed senior to the promote AC/GD against the vacancy year 2011-12 as well as AC/GD selected through LDCE 2010-11 (respondent Nos.4 to 50). Further, it is claimed that they be given notional promotion to the rank of Deputy Commandant with consequential benefits.

21. The **respondent Nos.1 to 3 in their counter-affidavit** took the preliminary objection that the petitioners had joined ITBP Force through direct appointment to the post of AC in the month of May and June, 2012. The maximum candidates amongst respondent Nos.4 to 50 were appointed through LDCE and promotion and had joined prior to the petitioners. The



inter se seniority of petitioners in the rank of AC was finalized long back in the year subsequent to the year of their joining ITBP Force physically.

22. It has been explained that the ITBP has been deciding the seniority of Gazetted Officers in terms of CRPF Rules, 1955 since it was established in 1962. Therefore, the principles issued by DoP&T *vide* O.M. dated 07.02.1986 and 03.07.1986 are not being followed. The seniority of AC/GD in ITBP is being determined in terms of Rule 8(b)(ii) & (e) of CRPF Rules, 1955, in the light of Transitory Provision contained in Rule 187 of ITBP Rules, 1994. The CRPF has also issued broad Guidelines for determining the seniority in respect of directly appointed Gazetted Officers through UPSC *vide* Standing Order No.01/2009.

23. This Rule was interpreted in the matter of *Shri Tarsem Singh* (one of the local promote officer) and it was observed that since the promotee Shri Satbir Singh had been promoted to the post on 18.08.1987, while the entire batch of 1987 of DRs was appointed subsequent to 18.08.1987, the entire batch of 1987 DRs could not have been placed above Shri Satbir Singh and the seniority of Shri Tarsem Singh was directed to be re-examined.

24. It is claimed that the Seniority List of Gazetted Officers including AC/GD has been done from time to time according to the Rules and the Office Orders since the date of appointment of the petitioners in ITBP physically. Their seniority has been fixed according to the Rules and merits no interference.

25. Reliance has been placed on the principles for fixation of *inter se* seniority as has been laid down by the Apex Court in the case of *K. Meghachandra Singh & Ors. vs. Nigam Siro & Ors.* in Civil Appeal



No.8833 of 2019 decided on 19.11.2019. **On merits**, it is claimed that the Seniority List has been prepared in accordance with rules and there is nothing wrong with the seniority for which reason the present petition is liable to be dismissed.

26. The **respondent Nos. 5, 11, 12, 18, 22, 25, 32, 33, 34, 37, 38, 42, 43, 46 and 50 in their counter-affidavit** have taken a stand similar to respondent Nos.1 to 3 and have asserted that their seniority has been fixed in accordance with Rules and does not need any interference.

27. **Submissions heard** and the written submissions filed on behalf of the parties have been perused.

28. In the present case, the contention is in regard to fixation of inter se seniority between direct appointees and the promotees/LDCE promotees. The controversy revolves around the date of promotion/induction which should be reckoned as the date for fixation of seniority.

29. The Indo-Tibetan Border Police Force, a Central Armed Police Force functioning under the respondent No. 1/ Ministry of Home Affairs, Government of India was raised on 24.10.1962 under the *Central Reserve Police Force Act, 1949* for re-organising the frontier intelligence and security setup along the Indo-Tibetan Border. It was deployed for border guarding duties from the Karakoram Pass in Ladakh to Jelep La in Arunachal Pradesh covering 3488 kms of the Indo-China Border.

30. CRPF Act continued to be applicable to ITBP for about thirty years, till Indo-Tibetan Border Police Force Act, 1992 (ITBP Act) was enacted w.e.f 01.09.1992. In the Statement of Objects and Reasons, it was observed that considering the nature and purpose of the Force and experience gained during the last three decades since it was raised in



October, 1962, it was felt that the Force should be regulated by a separate self-contained statute which will provide for its special needs, especially the needs of efficiency and discipline.

31. Section 157 of the ITBP Act, 1992 provides that provisions of this Act shall be applicable to the ITBP Force which was in existence at the time of commencement of this Act and personnel shall be deemed to have been appointed as the case may, as such under this Act.

32. *ITBP Force Rules, 1994* were formulated in exercise of powers under Section 156 of ITBP Act, 1992 w.e.f. 30.05.1994. **Rule 186** provided for repeal and savings and it stated that all Rules and Orders relating to the matters covered by these Rules shall stand repealed in so far as they are inconsistent with any of the provisions of these Rules. **Rule 187** of ITBP Rules is the transitory provision which states that any Rule or Order that was applicable to the Force on the date of commencement of these Rules shall, unless repugnant to these Rules, continue to apply unless and until abrogated or modified by the Central Government or any other competent authority.

33. From the scheme of two Acts i.e., CRPF Act, 1949 and the ITBP Act, 1992 and the Rules notified thereunder, it is evident that ITBP was created in the year 1962 under the CRPF Act, 1949 and was applicable to the recruitments made in the ITBP Force. Since the promulgation of Indo-Tibetan Force Act, 1992 w.e.f. 01.09.1992, the said Act became applicable to the ITBP Force and the CRPF Act ceased to be applicable. However, Rules 186 and 187 of ITBP Force Rules, 1994 make it amply clear that the CRPF Act, 1949 and Rules, 1955 to the extent it was not repugnant to the express ITBP Rules, 1994 or repealed shall continue to



be applicable.

34. In the present case, the petitioners are the direct recruits to the post of AC/GD with Indo-Tibetan Border Police (ITBP), having qualified “CAPF(AC) Exam-2010”, the result of which was declared on 04.10.2011 and they joined the ITBP Force on various dates between May-June 2012.

35. In the meanwhile, an advertisement was issued in April, 2010 for the selection to the post of AC/GD in CAPF through LDCE 2010-2011. The Sub-Inspector (GD)/ Inspector (GD) who were already working in the Force and meeting the eligibility criteria took the examination in August, 2011 for which the result was declared on 02.03.2012. The petitioners who are direct Recruits *en bloc* have been placed below the officers promoted through Limited Departmental Competitive Examination. Aggrieved by the *inter se* seniority so fixed, the petitioners have claimed that their seniority be fixed from the date of declaration of Result on 04.10.2011 and they are entitled to be placed above the promotee officers.

36. The petitioners who are direct recruits *en bloc* have been placed below the officers promoted through Limited Departmental Competitive Examination. Aggrieved by the *inter se* seniority so fixed, the petitioners have claimed that their seniority be fixed from the date of declaration of result on 4.10.2011 and they are entitled to be placed above the promote officers.

37. While considering the issue of fixation of *inter se* seniority of the officers from the direct recruitment and promotion, the general principles for determination of seniority were summarised by the Apex court in the case of Amit Singh vs. Ravindra Nath Pandey and Others 2022 SCC OnLine SC 1559 as under:



“(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

*(ii) Inter se seniority in a particular service has to be determined as per the service rules. **The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources.** Any departure there from in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.*

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

38. It was thus, explained in Amit Singh (supra) that the effective date of selection has to be understood in the context of Service Rules under which the appointment is made. It further held that any departure there from in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution of India. It has been explained further that the seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given



retrospectively unless, it is so expressly provided by the relevant Service Rules. The seniority cannot be given retrospectively when an employee has not even been borne in the cadre and by doing so, it may adversely affect the employees who have been appointed validly in the meantime.

39. In Ashok Ram Parhad and Others vs. State of Maharashtra and Others 2023 SCC OnLine SC 265, the Apex Court explained that in service jurisprudence, the Service Rules are liable to prevail. There can be Government Resolutions being in consonance with or expounding the Rules, but they cannot be in conflict with the same. *The Government Resolutions issued by the Administrative Department cannot have the status of a statutory rule although such resolutions may have their own effect.*

40. The statutory provisions, Rules and Office Memorandums as applicable to the parties, thus need to be examined to determine the inter-se seniority.

41. **Rule 12, ITBP Force Rules, 1994**, deals with the appointment of Officers, which reads as under: -

“12. Appointment of officers.- *The Central Government may appoint such persons as it considers to be suitable as officers in the Force in the following manner, and their conditions of service shall be such as may be provided in the rules made in this behalf by the Central Government:*

(a) *by direct recruitment;*

(b) *by transfer on deputation from the All India Services. Defence Forces; any other armed forces of the Union, State Police, any other department of the Central Government or of the State Government or autonomous bodies;*

(c) *by promotion as may be prescribed from time to*



- time;*
(d) by transfer;
(e) by re-employment.”

42. **Rule 13** deals with appointment of Subordinate Officer and Enrolled Persons. **Rule 14** deals with Probation.

43. The ITBP Rules deals with seniority of the direct entrants but they do not contain any provision for determination of *inter se* seniority between the direct recruits and the promotees, whether by seniority or Limited Departmental Competitive Examination (LDCE). So being the case, it is the CRPF Act, 1949 and the Rules formulated thereunder that would become applicable to the present case for the determination of inter se seniority, in terms of the transitory provision as contained in the Rule 187 of ITBP Rules.

44. The Ministry of Home Affairs, Government of India issued *CRPF Group “A” (General Duty) Officers Recruitment Rules*, 2001 through a Notification dated 12.09.2001 for regulating the method of recruitment to Group “A” in posts in Central Reserve Police Force. **Rule 8** deals with the seniority which reads as under: -

“8. Seniority –

- (1) *All officers holding a higher rank shall be senior to 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 shall be as follows: –*
 - (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 Internal Security 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 in an earlier batch will be senior to officers selected in subsequently 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 year of declaration of results shall be the year of seniority Inter se seniority of the directly recruited ACs and promotees will be decided as per orders DOP&T issued from time to time.

(v) Seniority of re-employed officers in a particular rank shall be determined from the date of their re-employment in that rank.

(vi) A serving Army officer shall maintain his seniority as between himself and other Army Officers within a particular rank and a serving officer of the Indian Police Service shall maintain his seniority as between himself and other officers of the Indian Police Service within particular rank.”

45. Thereafter, ***Standing Order 1/2009 dated 12.01.2009*** was issued by Directorate General, Central Reserve Police Force, CGO Complex, New Delhi (Ministry of Home Affairs), in regard to fixation of seniority and directly appointed Assistant Commanders and DEGO's in CRPF. The relevant part of the Circular reads as under :

“The recruitment of Assistant Commandants in CRPF is by the following methods:

01. by direct recruitment through competitive examination by



UPSC for 50% posts, including 10% posts for re-employed Short Service Commissioned Officers selected through interview. By local promotion from eligible Inspectors/SMs in the Force, after DPC for 33% posts. By Limited Departmental Competitive Examination from SI/Inspectors of Force for 17% posts. This LDCE has been introduced in the Force w.e.f 23.02.2001 (S.O. 06/2001).

02. Rule 8(b)(ii) of "CRPF Rules, 1955" provides that the inter-se seniority of directly recruited AC shall be determined in accordance with the aggregate marks obtained by them before the selection board and at the passing out examination conducted after their basic training at the CRPF Academy.

03. There remains some grey area which needs to be clarified to regulate the seniority of Assistant Commandants. Accordingly, following guidelines are issued with immediate effect:-

Seniority of directly appointed Gazetted Officers through UPSC and direct entry Gazetted Officers (LDCE quota) shall be reckoned with reference to their batch of Training from the date of appointment, irrespective of the batch in which they were selected. Date of appointment in respect of Directly Appointed Gazetted officers through UPSC shall ordinarily mean the date of commencement of training, unless the candidate had reported late but within 30 days of commencement of training."

46. Therefore, by way of Standing Order No.1/2009 the requisite date for reckoning the seniority was the date of appointment which was to be reckoned with reference to their batch of training irrespective of the batch in which they were selected.

47. The Ministry of Home Affairs modified/substituted these Recruitment Rules, 2001 by CRPF Group "A" (General Duty) Officers Recruitment Rules 2010 to the extent as specified therein. The Standing Order No.1/2009 was incorporated vide Notification G.S.R 679(E) dated 10.08.2010 into these *Recruitment Rules 2010*. **Rule 6** of the newly



formulated *Recruitment Rules 2010*, provided for the determination of seniority which reads as under:

“Seniority –

(1) *All Officers holding a higher rank shall be senior to 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 the post.*

(3) *Subject to the provision of sub-rule (2), inter-se seniority amongst officers holding the same rank shall be as stipulated in the Central Reserve Police Force Standing Order No. 1/2009 dated the 12th January, 2009.*

(i) *Seniority of directly appointed Gazetted Officers through UPSC and direct entry Gazetted Officers (LDCE quota) shall be reckoned with reference to their batch of Training from the date of appointment, irrespective of the batch in which they were selected. Date of appointment in respect of Directly Appointed Gazetted officers through UPSC shall ordinarily mean the date of commencement of training, unless the candidate had reported late but within 30 days of commencement of training.*

(ii) *Within a batch of training, whether directly appointed or through LDCE, the inter-se seniority shall be determined as per Rule 8(b)(ii) of “CRPF Rules, 1955” in the order of merit. Merit shall mean the aggregate of marks obtained at the time of selection and the marks obtained at the time of passing out examination at CRPF Academy.*

Provided that the seniority of directly appointed gazetted officers and direct entry gazetted officers shall be reckoned from the date of declaration of results and that of the local promotes from the date of departmental promotion committee by whom they were empanelled.



48. It is clearly stated in the aforementioned Rule that the seniority of directly appointed Group A (General Duty) Gazetted Officers through Union Public Service Commission and entry of gazetted officers through Limited Departmental Competitive Examination quota shall be reckoned “*from the date of appointment*”, irrespective of the batch in which they were selected and the date of appointment in respect of directly appointed gazetted officers through Union Public Service Commission shall ordinarily mean “*the date of commencement of training*”.

49. The petitioners have relied upon the Office Memorandums of 1978 and thereafter of 1986 and 2014 DoP&T to claim that the relevant date for reckoning the seniority is the date of declaration of result. However, it was clearly stipulated in all these Notifications that they were applicable to the services/post under the Central Government where there were no independent Recruitment Rules. There were specific CRPF Group (General Duty) Officers Recruitment Rules formulated in 2001 and thereafter Rules, 2010 in suppression of 2001 Rules. It has been rightly contended on behalf of the respondents that in view of the specific Recruitment Rules of 2010 as applicable to CRPF/ITBP, the Government Notifications of 1978, 1986 and 2008 were not applicable to the petitioners.

50. In the case of K. Meghachandra Singh and Others vs. Ningam Siro and Others (2020) 5 SCC 689, it was held that there may be administrative delay and the gap between initiation of process and appointment, but benefit of the same cannot be given to the candidate who is aspiring to be appointed to a vacancy. On that day, the persons aspiring to be appointed to the vacancy intended for direct recruits were not in



existence. The persons may have responded to the advertisement, but they cannot have service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. It is only on completion of the process; the applicant morphs into a selected candidate and would be entitled to all the rights under the service. This was also the ratio in Shankarsan Dash vs. Union of India (1991) 3 SCC 47, wherein it was held that even upon empanelment, an appointee does not acquire any right.

51. In Subodh Rokade vs. Union of India Through Its Secretary & Ors. 2021 SCC OnLine Del 2012, the Co-ordinate Bench of this reaffirmed all the aforementioned judgments that under service jurisprudence, seniority cannot be claimed from the date when the incumbent is yet to be borne in the cadre. Similar observations were made by the Co-ordinate Bench of this Court in the case of Yash Rattan & Ors. vs. Union of India and Ors. 2021 SCC OnLine Del 1598.

52. The principle of determination of *inter se* seniority amongst direct recruits & promote officers that emerge from the aforesaid discussion of Rules and Notifications makes it clear that for the purpose of fixation of *inter se* seniority, the date to be reckoned for the direct recruits is “*the date of appointment*”.

53. It is not disputed herein that all the petitioners who are Direct Recruits, had joined the service had got promoted in the months of May and June of 2012, while all the respondents had assumed their position on promotion through LDCE/promotion prior to the petitioners in the year 2011-12. The *inter se* seniority of the petitioners has been fixed correctly in accordance with the CRPF Act, CRPF Group “A” General Cadre



Recruitment Rules, 2010 and relevant Office Memorandums.

54. Accordingly, we find no merit in the present petition, and the same is accordingly dismissed along with the pending application, if any.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

JULY 31, 2023
S.Sharma

