



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

% **Reserved on: April 24, 2023**

Pronounced on: July 07, 2023

+ **W.P.(C) 5441/2016**

KAVYANJALI DUBEY AND ORS. Petitioners

Through: Mr. Naveen R. Nath, Senior Advocate with Mr. Nalin Kohli, Ms. Nimisha Menon, Mr. Dinesh Yadav, Mr. Padma Kumar, Mr. Aastik Dhingra & Ms. Thithiksha Padmam, Advocates

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat & Mr. Alexander Mathai Paikaday, Advocates for respondent No.1

Mr. Ankur Chhibber, Mr. H.S. Tiwari, Mr. Anshuman Mehrotra, Ms. Shivani Rai, Mr. Nikunj Arora & Ms. Samriddhi Bhatt, Advocates for respondent No.4

Mr. Manish Paliwal & Ms. Megha Yadav, Advocates for respondents No.5 to 7

None for respondents No.8 to 18

Mr. Shashank Singh, Mr. Akash Alex & Ms. Yogyata Jhunjunwala, Advocates for respondents No.19 to 23



Mr. Ankit Panday, AC, Inspector
Anand Kumar & SI Prahlad
Devenda, CISF

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

JUDGMENT

SURESH KUMAR KAIT, J

1. Vide this petition, petitioners are seeking issuance of a Writ of Certiorari directing the respondents to quash the Gazette Notifications issued by the Ministry of Home Affairs for the years 2003, 2004, 2006, 2007, 2008 and 2009 to the extent it applies to Central Industrial Security Force (CISF) in respect of combined Central Police Forces (CPFs) recruitment examination wherein it is stipulated that the *inter se* seniority amongst direct recruits, shall be determined by adding together the marks obtained by them in Central Police Forces (Assistant Commandants) Examination conducted by the Union Public Service Commission (UPSC); in the foundation course in the BSF Academy; and the professional training course conducted by the Academy in the ratio of 50:10:40. In addition, quashing of Revised Seniority Lists dated 31.12.2015 and 10.03.2016 issued by the respondents with the modified criteria is also sought.

2. Petitioners claim to have joined CISF in the rank of Assistant Commandant in different years ranging from 2003 till 2011. Petitioners are aggrieved of unsettling their seniority vide Revised Seniority Lists



dated 31.12.2015 and 10.03.2016 issued by the respondents.

3. According to petitioners, Para-8 of the Gazette Notification dated 10.05.2003 notified that the criterion of seniority amongst the direct recruits shall be determined by adding together the marks obtained by them in Central Police Forces (Assistant Commandants) Examination conducted by the UPSC in the foundation courses; in the BSF Academy and the professional training course conducted by the academy of the respective Force in the ratio of 50:10:40.

4. Pursuant thereto other Central Police Forces (CPFs), excluding the CISF, modified their Recruitment Rules and seniority of Assistant Commandants was regulated as per merit list prepared upon the total marks obtained in the ratio of 50:10:40. However, in CISF no amendment was carried out to the recruitment rules to amalgamate the above-mentioned criterion. No foundation course was ever conducted by the CISF and so, 10% marks allotted for such a course could not be interpolated by the respondents. Also the professional training to the newly inducted Commandants at the Academy of CISF was also a qualifying training only. Accordingly, CISF Seniority List was prepared on the basis of marks achieved as per the Merit List of UPSC Examination only, which was the sole basis for establishing inter se seniority of newly inducted Assistant Commandants.

5. According to petitioners, the basis to prepare the Seniority List in CISF is DoPT O.M. dated 03.07.1986, further revised by DoPT vide O.M. dated 11.11.2010, which stipulates that the seniority of all direct recruits is determined by the order of merit in which they are appointed



after the recommendations of the UPSC.

6. In the year 2018, a writ petition being W.P. (C) No. 8070/2014 challenging the Seniority Lists dated 31.12.2010, 30.06.2013 and September 2014 issued by CISF was filed praying that the seniority lists should have been prepared on the basis of marks obtained in ratio of 50:10:40 in the UPSC examination, foundation course and professional training, as per the Gazette Notification of 2007. According to petitioners, they were not a party to the said petition and the respondent-CISF did not challenge petitioners' contention therein.

7. This Court vide order dated 06.05.2015 in W.P. (C) No. 8070/2014 directed the respondents to issue revised seniority list in terms of Gazette Notification of the year 2007. Thereafter, respondents issued seniority list dated 31.12.2015 revising *inter se* seniority of Assistant Commandants appointed in the CAPF Examination of the year 2007.

8. Thereafter, the respondents floated a proposal dated 14.01.2016 to carry out amendment in the Recruitment Rules for preparing the seniority list based upon the marks obtained in the UPSC Examination and professional training course in the ratio of 50:50. A seniority list dated 10.03.2016, for the batches of 2003 to 2009, based upon the criteria of marks obtained in the UPSC examination and professional training course were also notified. However, no foundation course was conducted. Hence, 10% marks allotted were amalgamated with the 40% marks of professional training course. Thereby, the revised merit list was prepared in the ratio of marks obtained in UPSC Examination and professional training course in the ratio of 50:50.



10. During the course of hearing, learned counsel for petitioners submitted that by doing so, respondents have caused irreparable loss to the petitioners as their seniority of past many years has been revised to the detriment of their interest. It was further submitted by learned counsel for petitioners that the seniority list has been revised by interpolating marks obtained by them in their professional training whereas no such criteria was mentioned during the conduct of their professional training.

11. Against the proposal dated 14.01.2016 of respondents to carry out amendment in the Recruitment Rules for preparing the seniority list based upon the marks obtained in the UPSC Examination and professional training course in the ratio of 50:50, petitioners submitted representations dated 12.12.2016, 27.01.2016, 19.03.2016 and 07.04.2016, however, the same were turned down by the respondents in view of order dated 06.05.2015 of this Court in W.P.(C) 8070/2014.

12. Being aggrieved petitioners filed a Review Petition No.273/2016 for review of order dated 06.05.2015 which was disposed of vide order dated 27.05.2016 stipulating that the Court had not issued any direction as reflected by the respondents in their Letter dated 31.12.2015 and as the Court had never directed to issue revised seniority list taking into account the marks obtained in competitive examination and basic course in the ratio of 50:50. It was pointed out by the respondents that respondents had arbitrarily assumed the incorrect methodology of preparing the revised impugned seniority list which was not as per directions of this Court.



13. Reliance was placed upon Hon'ble Supreme Court's decision in ***B.S. Bajwa and Anr. Vs. State of Punjab and Others*** (1998) 2 SCC 523 to submit that after an inordinate delay, the seniority dispute should not be opened, because that results in disturbing the position which is not proper and justifiable.

14. Learned counsel for petitioners also relied upon decision of this Court in ***B.S. Jaswal Vs. Union of India & Ors.*** 2015 SCC OnLine Del 13724, wherein the officers, the petitioners therein were directly recruited Assistant Commandants in Seema Suraksha Bal (SSB) in the year 1993. They were subsequently promoted to the rank of Deputy Commandants, Second in Command and Commandants, subsequent upon issuance of comparative merit based upon performance in the written test and interview held by the UPSC. However, subsequent upon notification OM dated 30.09.2002; 25.11.2002 and 10.06.2003, rules regarding methodology for recruitment were changed and SSB notified that inter se seniority of recruited Assistant Commandants shall be determined by addition of the marks obtained by them in recruitment tests, the foundation course and the basic professional course in the ratio of 50:10:40. However, the criteria was later changed vide Notification dated 23.07.2010 and equal weightage was given to the marks obtained in the UPSC selection and basic foundational course. This led to revision of seniority lists in the cadre of Assistant Commandants after 18 years, which was challenged. This Court observed that seniority position was settled for last over 15-20 years cannot be disturbed, especially when the parties have been promoted to three promotions above the post and held that action of SSB was arbitrary to the extent it revised the seniority of



petitioners therein and direction was issued to SSB to revise the seniority list of the said batch.

15. Learned counsel for petitioners also submitted that in the absence of amended Recruitment Rules, the seniority in CISF would be governed by OM dated 03.07.1986 and 11.11.2010 and seniority list would also be governed by the established norms and past practice. Any revision in seniority list would be based upon the criteria of marks obtained in competitive examination and the basic training course. Hence, the prayer is made to quash the Gazette Notifications for the years 2003, 2004, 2006, 2007, 2008 and 2009.

16. On the other hand, learned Central Government Standing Counsel appearing on behalf of the respondents submitted that earlier the Assistant Commandant (Executive) were appointed in CISF through Civil Service Examinations and no direct recruitment was made in the year 2002. As per CAPF Examination Rules notified in the MHA Gazette notification dated 10.05.2003, *inter-se* seniority amongst direct recruits shall be determined by adding together the marks obtained by them in Central Police Forces (Assistant Commandants) Examination conducted by the UPSC, in the Foundation course in the BSF Academy and the Professional Training Course in the ratio of 50:10:40.

17. Learned CGSC submitted that the seniority of direct recruits Assistant Commandants (Exe) was determined in accordance with DOP&T instructions dated 03.07.1986, however, subsequent upon MHA Gazette notification of the year 2003, the said instructions were superseded and so, it was decided to re-fix the seniority of Assistant



Commandants appointed through CAPF Examination-2007 as per Gazette notification dated 05.05.2007.

18. It was brought to the notice of this Court that vide order dated 06.05.2015 in W.P.(C) 8070/2014, this Court had directed that respondents shall re-fix the seniority of the Assistant Commandants of 2007 batch in terms of Gazette notification dated 05.05.2007 and in compliance of the said order, an opinion from Ministry of Home Affairs was sought in order to clarify as to whether seniority of petitioners in the said petition was to be refixed in the ratio of 50:50 or 50:10:40.

19. The Ministry of Home Affairs vide ID dated 09.10.2015 and 29.12.2015 approved re-fixation of seniority of petitioners in the said petition by adding the marks obtained by them in CAPF (AC) Examination conducted by UPSC and the Professional Training Course conducted in CISF Academy in the ratio of 50:50 and on the said basis, the seniority list dated 31.12.2015 was notified. Thereafter, vide letter dated 10.03.2016, seniority of 2003, 2004, 2006, 2008 and 2009 batch were also issued (*there were no appointments in the year 2005*).

20. Learned CGSC further submitted that the averments made on behalf of the petitioners that the professional training carried out by CISF for the newly inducted Assistant Commandants at its Academy was in the nature of a qualifying training only and not a professionally regulated training, is not correct. It was submitted by learned CGSC that the marks obtained by Assistant Commandants during professional Academy are properly recorded in their Course record and on the basis of evaluation, rewards are granted. Learned CGSC fairly admitted that prior to filing of



W.P.(C) 8070/2014, the seniority of Assistant Commandants was determined as per Gazette notification of 2003, however, pursuant to order of this Court dated 06.05.2015, the seniority list has been fixed in the ratio of 50:50 on the basis of marks obtained by them in the competitive examination and professional training.

21. Learned counsel also submitted that it is only after obtaining approval from Ministry of Home Affairs, the revised inter-se seniority list of Assistant Commandants appointed through CAPF Examination-2007 and LDCE-2007 was issued vide letter dated 31.12.2015 and based thereupon, subsequent, revised inter-se seniority lists for the Assistant Commandants appointed in the years 2003, 2004, 2006, 2008 and 2009 was issued vide letter dated 10.03.2016.

22. Learned CGSC also submitted that the decision of this Court in **B.S.Jaswal & Ors. (Supra)** relied upon by the petitioners is under challenge before the Hon'ble Supreme Court and hence, reliance placed upon it by the petitioners is entirely misplaced.

23. Lastly, learned CGSC submitted that the seniority lists challenged by the petitioners have been prepared in terms of directions of this Court vide order dated 06.05.2015 in W.P.(C) 8070/2014 and after taking necessary approval from Ministry of Home Affairs and so, the present petition lacks merit and deserves to be dismissed.

24. The arguments advanced by learned counsel representing both the sides were heard at length and the material placed on record as well as decisions cited have been considered by this Court. This Court finds that the petitioners before this Court have been recruited in different years, spanning from 2003 till 2013. The Ministry of Home Affairs in the



Notification dated 10.05.2003 published in the Gazette of India, noted as under:-

“No.1-45023/26/2002-Per.II- The Rules for competitive examination to be held by the Union Public Service Commission in 2003 for the purpose of filling vacancies of Assistant Commandants in Central Police Forces (CPF) viz Border Security Force (BSF), Central Reserve Police Force (CRPF), Indo Tibetan Border Police (ITBP), Central Industrial Security Force (CISF) and Special Services Bureau (SSB) are published for general information.

Annexure-III

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8. The seniority amongst direct/ recruits, inter-se shall be determined by adding together the marks obtained by them in Central Police Forces (Assistant Commander) Examination conducted by the Union Public Service Commission in the Foundation Course in the BSF Academy, Tekanpur and the Professional Training Course conducted in the Academy of the respective Force in the ratio of 50:10:40.”

25. Thereafter, the Ministry of Home Affairs in the Gazette of India published on 05.05.2007 notified as under:-

“8. The seniority amongst direct/ recruits, inter-se shall be determined by adding together the marks obtained by them in Central Police Forces (Assistant Commander) Examination conducted by the Union Public Service Commission, in the



Foundation Course in the BSF Academy, Tekanpur and the Professional Training Course conducted in the Academy of the respective Force in the ratio of 50:10:40.”

26. Subsequent upon the aforesaid Notification dated 05.05.2007, the criteria for consideration of seniority was changed and it was notified that the merit shall be based upon the marks obtained together in examination conducted by the UPSC and the professional training course conducted in the academy.

27. Thereafter, a petition being W.P.(C) No. 8070/2014 was filed in this Court by an Assistant Commandant of the Batch year 2007, who claimed that his seniority has to be fixed as per Gazette Notification dated 05.05.2007. This Court vide order dated 06.05.2015 in W.P.(C) No. 8070/2014 directed the respondents as under:-

“2.The counter affidavit is in fact an affidavit filed by the respondents conceding to the point urged by the writ petitioner that his seniority as an Assistant Commandant has to be fixed with the batch of the year 2007 in terms of the Gazette Notification dated May 05, 2007 published by the Ministry of Home Affairs, Government of India, as per which inter se seniority of direct recruits has to be fixed on the basis of the aggregate marks obtained at the competitive examination and as awarded by the training institute after training.

3. Accordingly, nothing survives for adjudication. We hope and expect that needful shall be done by the respondents within 12 weeks from today. The revised seniority list shall be published”



28. Consequent upon passing of the aforesaid order dated 06.05.2015, the respondents notified the revised seniority list 31.12.2015, which was challenged in the Review Petition No.273/2016 preferred in W.P.(C) No. 8070/2014 on the ground that the respondents in the order dated 31.12.2015 have written that the revised seniority list is being issued in compliance of order dated 06.05.2015 passed by this Court and approval of MHA on the issue, after taking into account the marks obtained in competitive examination and basic course in the ratio of 50:50. Relevantly, the aforesaid Review Petition No.273/2016 was disposed of by this Court while clarifying that the Court had only noted the stand of respondents that the *inter se* seniority has to be fixed on the basis of Gazette Notification dated 05.05.2007. The Court in unequivocal terms clarified that issue with regard to the recruitment rules or the seniority rules were required to be decided and in the absence of any rules, the vacuum has to be filled up by office instructions, memorandums or past practice.

29. In the meanwhile, vide proposal dated 14.01.2016 respondents proposed to carry out amendment in the Recruitment Rules for preparing the seniority list based upon the marks obtained in the UPSC Examination and professional training course in the ratio of 50:50, since there was no foundation course and 10% marks allotted therefor were amalgamated with the 40% marks of professional training course.

30. The plea of the petitioners before this Court is that this Court vide orders dated 06.05.2015 and 27.05.2016 in W.P.(C) No. 8070/2014 had



never directed to issue revised seniority list taking into account the marks obtained in competitive examination and basic course in the ratio of 50:50, as has been given in respondents' order dated 31.12.2015. Pertinently, in the very order of respondents' dated 31.12.2015 it has been noted that the approval of the seniority list has been accorded by the MHA.

31. At this juncture it is relevant to note that the Ministry of Home Affairs vide ID dated 09.10.2015 and 29.12.2015, had accorded refixation of the seniority of Assistant Commandant Abhijeet Kumar (petitioner in W.P.(C) No. 8070/2014). Moreover, upon bare perusal of Gazette Notification dated 05.05.2007, we find that the criteria for seniority has been determined by adding the marks secured in the examination conducted by the UPSC, marks secured in the Foundation Course in the BSF Academy, Tekanpur and the Professional Training Course conducted in the Academy of the respective Force in the ratio of 50:10:40; though there was no foundational course. In the considered opinion of this Court, to fill up the vacuum, the respondents rightly merged the 10% marks allotted for foundational course with the 40% marks of professional training course and rightly put up the proposal dated 14.01.2016 to carry out amendment in the Recruitment Rules for preparing the seniority list based upon the marks obtained in the UPSC Examination and professional training course in the ratio of 50:50.

32. Petitioners have placed reliance upon decisions of this Court in **B.S. Jaswal (Supra)** wherein a direction has been issued to respondents to issue the revised list as per the pre-existing position. This Court is



informed that the said decision is subjudice before the Hon'ble Supreme Court. Since the decision in **B.S. Jaswal (Supra)** is under challenge and has not yet attained finality, reliance placed thereupon is of no assistance to the case of petitioners.

33. Also, petitioners have placed reliance upon decision in **B.S. Bajwa (Supra)**, wherein the Hon'ble Supreme Court has observed that the questions of seniority should not be opened after lapse of a reasonable period and after an inordinate delay. In the present case, the petitioners are affected due to decision of this Court in W.P.(C) 8070/2014, wherein the petitioner was appointed in the batch year 2007, who had relied upon Gazette Notification of the even year dated 05.05.2007 to claim his seniority. Pursuant to orders of this Court dated 06.05.2015 and 27.05.2016 in the said petition, the revised seniority lists have been issued. Moreover, by then the Gazette Notification dated 05.05.2007 has already come in force and so, there is no delay in the present case.

34. In the light of what has been observed above by us, this Court finds that the revised seniority list notified on 31.12.2015 in respect of direct recruits Assistant Commandants appointed through CAPF Examination, 2003 onwards; after adding together the marks obtained by them in CAPF (AC) Examination conducted by UPSC and the Professional Training Course conducted in CISF Academy in the ratio of 50:50; and premised thereupon, another merit list dated 10.03.2016 in respect of Assistant Commandants appointed through CAPFs Examination 2003, 2004, 2006, 2008, 2009 and LDC Examination 2008 & 2009; are well merited and do not call for any interference by this



Court.

35. Finding no merit in the present petition, it is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 07, 2023
rk/ab/r

