



2025:DHC:9744-DB



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

Date of decision: 06th NOVEMBER, 2025

IN THE MATTER OF:

+ **W.P.(C) 8195/2015**

RAJESH KUMAR AND ORS.

.....Petitioners

Through: Mr. Amrendra Kumar Jha and Mr.
S.N. Shukla, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Sushil Kumar Pandey, SPC

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The Petitioners have approached this Court challenging the Seniority List dated 30.03.2012 and for a consequential prayer of mandamus directing the Respondents to fix the Petitioners' seniority from the date of declaration of result of the Limited Departmental Competitive Examination ["LDCE"] 2008-09 for the post of Assistant Commandant in compliance with the Office Memorandum["OM"] dated 24.06.1978.
2. In order to appreciate the procedural history of the present writ petition, this Court at the very outset notes that by way of the order dated 01.09.2015, this Court had dismissed the present writ petition in light of the observations of the Apex Court in Rohitash Kumar v. Om Prakash Sharma, (2013) 11 SCC 451 stating as under:

"5. It is not in dispute that when the Petitioners joined the BSF as AC, the Border Security Force (General



Duty Officers) Recruitment Rules, 2001 were in force. Those rules had been amended from time to time-2003, 2004, 2009, 2010 and 2012. However, the basic scheme pertaining to seniority, whereby superior ranking officers would be senior to junior officers (Rule 7 (1)); the general rule that seniority of an officer would be from the date of selection (Rule 7(2)); inter se seniority of officers in a grade being determined in accordance with rules applicable to particular channel of entry (direct recruit/promotee etc.) - i.e. Rule 7 (3) remains. After delineating rules applicable to promotees, direct recruits and temporary officers, Rule 7 (3) (iv) prescribed that " 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." This Court notes that in Rohitash Kumar (supra) too, the rule was identical:

"(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. In Rohitash Kumar (supra), the Supreme Court rejected the claim of direct recruits in that case, who stated that their seniority should be determined on the basis that they too entered the cadre from a date anterior to what they actually did, because their batch had been bifurcated for training purposes, to suit the administrative convenience of BSF. The Court had rejected the contentions of the direct recruits, and stated as follows:

"26. 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.

27. 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."

7. In the present case too, a grievance - identical to the one articulated before the Supreme Court, in Rohitash Kumar (supra) - forms the basis of the Petitioners' argument. This Court is bound by authority of that precedent. The judgement of Rabindra Jha (supra) cited at the bar does not notice the judgement of the Supreme Court in Rohitash Kumar (supra). Even otherwise, the clear rule (as envisaged in Rule 7) for determining inter seniority is the date of continuous appointment. In this case, the petitioners' appointment was in 2010; therefore, others appointed prior to them, in different channels of recruitment would take precedence over them, in accordance with the rules prescribed for the purpose. The OM of 1978 cannot stand in the way of a clear Rule to the contrary.

8. In view of the above reasons, the Court finds no merit in the writ petition. It is accordingly dismissed without any order as to costs."

3. Aggrieved by the order dated 01.09.2015 passed by this Court, the Petitioners approached the Apex Court by way of a special leave petition



being SLP (C) No. 2514/2016. However, the petition was subsequently withdrawn on 04.07.2016 by the Petitioners and a liberty was granted by the Apex Court to the Petitioners to approach this Court again by way of a review petition.

4. *Vide* order dated 16.10.2019, this Court, while observing that the order dated 01.09.2015 did not take into account certain relevant rules and orders pointed out by the Petitioners, recalled the said order and directed the matter to be heard again on merits. The relevant extract of the order dated 16.10.2019 is reproduced below:

“4. The Court has heard the submissions of the learned counsel for the parties. It is noticed that on the very first hearing, the writ petition was disposed of without an opportunity to the Respondents to file a reply. It appears that certain relevant rules and orders pointed out by the Petitioners were also not considered.

5. The Court notices that against the order under review, the Petitioners approached the Supreme Court in SLP (C) No. 2514/2016, which was dismissed on 4th July, 2016, granting liberty to the Petitioners to file the present review petition.

6. In that view of the matter, the Court is of the view that the writ petition should be heard again on merits. The order under review, dated 1st September, 2015, is hereby recalled. The writ petition is restored to file.”

5. With the aforesaid procedural background, this Court shall now turn to the facts germane to the adjudication of the instant writ petition which reveal the following:

- (i) The Petitioners joined the Border Security Force [“BSF”] as Sub-Inspector (Direct Entry / “DE”) in between 02.11.1998 to 27.01.2003 and reported to STS, Tekanpur, Gwalior.



- (ii) The Petitioners appeared in the LDCE for the post of Assistant Commandant (LDCE) [“AC (LDCE)”] in 2008, which was conducted in the following phases:
- (a) Written Examination,
 - (b) Physical Efficiency Test,
 - (c) Interview, and
 - (d) Medical Examination.
- (iii) Having successfully passed all the above four phases, the Petitioners were declared as selected by the BSF *vide* the Merit List dated 16.09.2009, which was published on 17.09.2009 *vide* Signal No. R-3264.
- (iv) The joining letters were issued to the Petitioners on 23.06.2010 and the candidates were asked to join by 25.07.2010, with a direction to report at the BSF Academy, Tekanpur, to undergo a prescribed course of basic training. It is stated that the said date was further extended, and ultimately all the officers joined by 09.08.2010.
- (v) Candidates who qualified through the direct recruitment process, that is, Assistant Commandant (DE) [“AC (DE)”] also joined in interregnum, primarily on 15.01.2010.
- (vi) Thereafter, the Petitioners underwent training at BSF Academy, Tekanpur in the AC (LDCE) Batch No. 5 between 09.08.2010 to 05.03.2011. The period from 09.08.2010 to 15.08.2010 was the ‘zero week’, meant for documentation, area familiarization, opening of bank accounts, etc. Thereafter, the basic training commenced on 16.08.2010. On the other hand, AC (DE) underwent training in Batch Nos. 29 to 35.



- (vii) Thereafter, the impugned Seniority List dated 30.03.2012 was released by the BSF.
- (viii) Opposing the fixation of seniority by way of Seniority List dated 30.03.2012, the Petitioner No. 24 submitted a representation before the Director General, BSF. *Vide* his representation letter dated 19.10.2012, Petitioner No. 24 contended that his name was found at Serial No. 4 in the Merit List dated 16.09.2009, however, *vide* the Seniority List dated 30.03.2012, his name was revised to Serial No. 19. He relied upon a judgment dated 22.07.2011 passed by a Coordinate Bench of this Court in the case titled “*Rabindra Jha v. Union of India and Others*,” bearing WP (C) No. 1255/2011 [“**Rabindra Jha**”], to state that counting seniority from the date of commencement of training on 09.08.2010 and not from the date of announcement of results of LDCE as provided for the in the 2001 Recruitment Rules, was contrary to the said judgment.
- (ix) Petitioner No. 24’s representation came to be rejected on 08.04.2013, since the 2010 Recruitment Rules came into force on 11.08.2010 and no training activity or test was conducted before the said date. Rather, the letter dated 08.04.2013 stated that in the said duration, the Petitioners were merely undergoing ‘zero week’, which was only meant for documentation, area familiarization, opening of bank accounts, etc. of the shortlisted candidates.
- (x) Further representations were also made by the other Petitioners, which came to be rejected in a manner similar to that contained in the letter dated 08.04.2013.



(xi) Subsequently, an order dated 28.10.2014 was passed by the Directorate General, BSF, which at the very outset stated that the for determining the inter-se seniority of AC (DE) batch no. 29 commenced on 07.02.2005 and subsequent batches up to AC (DE) batch no. 35, the Recruitment Rules 2001 as amended in 2003 were to be followed. This would have entailed the calculation of marks obtained in the Recruitment Test, Foundation Course and the Basic Professional Course in the ratio of 50:40:10. However, the same was not done and instead, the aggregate marks of Recruitment test and Basic Professional Courses were only considered.

6. Learned Counsel appearing for the Petitioners submits as under:

- (i) By applying the DOPT's OM dated 24.06.1978, the Petitioners' seniority must be reckoned from 17.09.2009, which is the date on which the results for LDCE were published, and therefore, they ought to retain seniority over 34th and 35th batch of AC (DE), at least, who have joined after the pronouncement of the Petitioners' result on 17.09.2009.
- (ii) Petitioners' delayed joining was done in circumstances beyond their control, and due to admitted delay on the part of the Department and therefore it should not affect their seniority.
- (iii) Representations were made by the petitioners on various dates starting from 19.10.2012, however, were not accepted. Thus, it resulted in the preparation of impugned Seniority List on 30.03.2012, where the date of seniority of the petitioners have been reckoned from the date of which they joined their respective post pursuant to letter of joining dated 23.06.2010.



This impugned Seniority List is in contravention to the rules, regulations, circulars and the terms and conditions of advertisement for appointment to the post of AC in BSF.

- (iv) The impugned Seniority List dated 30.03.2012 is also in contravention to the judgment passed by a Co-ordinate Bench of this Court in Rabindra Jha (supra), wherein this Court had explicitly opined that seniority of officers appointed through LDCE is to be determined in accordance with DoPT OM dated 24.06.1978.
- (v) There is an order dated 28.10.2014 passed by the Respondent/BSF wherein the inter-se-seniority of the LDCE batch-5 commenced from 09.08.2010 and which was supposed to be fixed as per the scheme of LDCE circulated *vide* MHA UO dated 21.08.2000, but the same was not followed. Instead, the same was fixed on the basis of aggregate of 50% marks of recruitment test.

7. *Per contra*, the learned SPC for the Union of India submits as under:

- (i) The appointment of personnel through LDCE is governed by the BSF Act, 1968 and the BSF Rules, 1969 as amended from time to time.
- (ii) The order of appointment dated 23.06.2010 of the Petitioners to the post of Assistant Commandant in BSF through LDCE itself indicates that the appointment through LDCE is treated as a part of promotion quota for the year 2008 and the seniority is fixed as per the recruitment rules.
- (iii) Rule 7 of the BSF (General Duty Officer) Recruitment Rules, 2001 directly applies to the Petitioners and that the date of their



joining as Assistant Commandant would be the date to govern their seniority and their seniority cannot be given anterior to the date of their joining. He also relies on the judgment of Apex Court in Rohitash Kumar (supra). Attention has been drawn to paragraph no. 23, 24 and 25 of the said judgment, wherein the Apex Court had held that the Rule must be literally applied for fitment of seniority. It is also contended that the petitioners have left their post only after 03.08.2010 and they were working in the feeder post till that date and therefore their seniority cannot be reckoned any date prior to the date on which they were serving in the unit.

8. Material on record indicates that the Ministry of Home Affairs [“MHA”] vide MHA UO bearing no. 1-45022/83/2000 dated 21.08.2000 decided to introduce the system of LCDE for promotion to the rank of Assistant Commandant (General Duty), as a part of promotion quota within the central police organizations. A scheme was enclosed with the aforesaid MHA UO, which prescribed as follows, as far as the aspect of seniority is concerned:

“9. Seniority:

The personnel recruited through Ltd. Department 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 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.”

(emphasis supplied)



9. A perusal of the above Scheme indicates that seniority was decided as per the date of selection as per the Department of Personnel & Training's Office Memorandum ["OM"] bearing No. 22011/5/76-Estt. 'D' dated 24.6.1978. The OM dated 24.06.1978 reads as under:

"Subject: Starting point in the recruitment roster for the purpose of seniority --procedure regarding.

The undersigned is directed to say that from the reference received in the Department and the representations made by the affected individuals, it has been noticed that there is no uniform practice in regard to the starting point in the recruitment roster when recruitment is made by more than one method, namely, direct recruitment/ promotion/ transfer on deputation etc.

The following are the among the diverse methods being adopted by various departments in regard to the starting point of the roster.

(a) the mode of recruitment for which action has been initiated first;

(b) the mode of recruitment through which first appointment was made after the notification of the recruitment rules,

(c) the mode of recruitment mentioned first in the recruitment rules for the post concerned.

(d) the mode of recruitment, which is the most predominant.



In some other cases, the roster has been maintained according to the illustration given in "General principle (6)" in the annexure to M.H.A.O.M.No.9/11/55-RPS dated 22.12.1959.

*2. This question has been examined in detail by this Department in consultation with the UPSC and it has now been decided that the starting point in the roster should be that mode of recruitment prescribed in the Recruitment Rules for which the selection process had been completed first. For this purpose, **the date of completion of the selection process** will be determined as follows:*

<u>Direct Recruitment</u>	<u>Date of completion of selection process</u>
<i>(a) Through examination conducted by UPSC or any other authorities</i>	<i>Date of publication/ announcement of results.</i>
<i>(b) Through interview conducted by UPSC or any other interviews</i>	<i>Date of Commission's letter containing their observations</i>

Promotion

<i>(a) Where UPSC is associated</i>	<i>Date of UPSC's letter containing their recommendations ratifying the promotion</i>
<i>(b) Where UPSC is not associated or</i>	<i>Last date of DPC meeting</i>



<i>its associated formal concurrence is not required</i>	
(c) Limited Departmental Examination	<i>Date of announcement of results</i>

[Emphasis Supplied]

3. A new roster will have to be started in the following cases:

- (i) From the date the recruitment rules are notified in the gazette.
- (ii) When there is an amendment to the Recruitment Rules which changes the percentage allotted for the various modes of recruitment.

4. These instructions shall come into force with effect from the date of issue of this Office Memorandum in recruitment rosters already maintained/started need not be reviewed on the basis of the above instructions. However, where the persons concerned have been approved for appointment but the Recruitment roster has not been started this may be started in the light of the instructions.”

10. The relevant rules that were applicable to determine the seniority at the time when the Petitioners appeared for the LDCE, were the BSF (General Duty Officers) Recruitment Rules, 2001 [**“2001 Recruitment Rules”**] as amended in 2003. Under the 2001 Recruitment Rules, seniority quotas were fixed for the direct recruits and promotees. This Court deems it appropriate to turn to Rule 7 of the 2001 Recruitment Rules, which dealt with the fitment of seniority as it existed at the time when the Petitioners



appeared for the LDCE, that is, in 2008. Rule 7 of the 2001 Recruitment Rules reads as under:

"7. 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 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 the provisions of clause (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 subsequent batches;

(iv) Seniority of officers, subject to the provisions of clauses (i), (i) and (ii) 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;



(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 a particular rank.

(vii) Inter-se seniority amongst officers of the Indian Police Service, the Army and the Border Security Force shall be determined according to the date of continuous service in that rank.

Provided that where the seniority has already been determined and fixed shall not be affected.”

11. It is pertinent to mention that when the Recruitment Rules 2001 were framed, there was no provision for seniority on the basis of LDCE. However, it cannot be lost sight that the scheme of LDCE was introduced in 2000, by way of the MHA UO dated 21.08.2000.

12. Be that as it may, the 2001 Recruitment Rules were subsequently on 11.08.2010, by way of the BSF Group ‘A’ (General Duty Officers) Recruitment Rules, 2010 [**“2010 Recruitment Rules”**], which took into consideration the *inter-se* seniority of the direct recruits and those recruited through LDCE to be determined after adding together the marks obtained by them in the Recruitment Test and the Basic Professional Course in the ratio of 50:50. Rule 7 of the 2010 Recruitment Rules is extracted below:

“7. Seniority - (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:

(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) Inter-se-seniority of direct recruits and Assistant Commandant/Limited Departmental Competitive Examination shall be determined after adding together the marks obtained by them in the Recruitment Test, and the Basic Professional Course in the ratio of 50:50.

(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 the officers selected in 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 which includes zero week of the training at the Border Security Force Academy;

(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 between himself and other Army Officers within a particular rank and a Serving Officer of the Indian Police Service shall maintain his seniority between himself and other officers of the Indian Police Service within a particular rank;”

13. In view of the above background, the short question which arises herein for this Court’s adjudication is whether the Petitioners’ seniority must be determined from 17.09.2009, in view of the 2001 Recruitment Rules read with the OM dated 24.06.1978, or whether their seniority would be governed by the 2010 Recruitment Rules.

14. Timeline of events in the present case reveal that LDCE as a procedure of promotion was introduced back in 2000 *vide* MHA UO bearing no. 1-45022/83/2000 dated 21.08.2000. Paragraph 9 of the MHA UO bearing no. 1-45022/83/2000 dated 21.08.2000 specifies that the personnel recruited through LDCE would be treated as part of promotion quota and their seniority will be in accordance with the date of selection as per OM dated 24.6.1978. The Petitioners appeared for the LDCE in 2008, at the time which the 2001 Recruitment Rules were in force, which did not prescribe for fixation of seniority on the basis of LDCE. Results of the LDCE were published on 17.09.2009, while the joining letters were issued to the Petitioners on 23.06.2010. Thereafter, the zero-week training commenced for the Petitioners on 09.08.2010, *albeit*, after some delay. It was subsequent to the commencement of the zero-week training, that the 2010 Recruitment Rules came into force on 11.08.2010.

15. It is noteworthy that the MHA UO of 2000 did not specifically state anything regarding *inter-se* seniority between the direct recruits and the



promotees recruited through LDCE or the 2001 Recruitment Rules stipulated anything with regard to *inter-se* seniority between the direct recruits and the promotees. Therefore, to determine the *inter se* seniority between the direct recruits and the Promotees, the MHA UO dated 21.08.2000, OM dated 24.6.1978 and 2001 Recruitment Rules would have to be read harmoniously. Reading them as such, the position which emerges is that as far as the AC (LDCE) candidates are concerned, their seniority would be considered from the date of announcement of their examination results as per the OM dated 24.06.1978. The date of appointment of direct recruits would be the date of commencement of their training courses, which includes the zero week of the training at the BSF academy. Therefore, the dates of recruitment through LDCE and appointment through direct recruitment are different and the dates on which they all enter the cadre would determine the seniority. Meaning thereby, as far as AC (LDCE) candidates are concerned, the date of commencement of training becomes irrelevant for determining the seniority and the date of announcement of results would reckon their seniority.

16. Results of the LDCE in which the Petitioners had appeared were declared in September 2009 and in June 2010, appointment letters were issued to the Petitioners, thereafter, and they were asked to report to the BSF Academy on 25.07.2010 for training. The appointment letters clearly specified that the appointment was on a temporary basis and the appointee would be on probation for a period of two years from the date of appointment. However, this date was later extended and the Petitioners were asked to report at the BSF Academy for training on 09.08.2010. It was directed that the candidates would undergo a 7-day long zero week of training at the BSF Academy from 09.08.2010 to 15.08.2010 and thereafter,



they would undergo basic training till 05.03.2011. In the interregnum, candidates who had qualified for the AC (DE) position also joined somewhere in January 2010. In between, on 11.08.2010, the 2010 Recruitment Rules came into force. On 30.03.2012, BSF released the impugned Seniority List, by way of which the seniority of the Petitioners was fixed from the date of commencement of zero-week training at BSF Academy, Tekanpur, instead of the date of announcement of the LDCE result. Aggrieved by the same, several representations were sent by the Petitioners to BSF, which were rejected. Yet, since a large number of representations had been received by BSF, an order dated 27.10.2014 was passed by the Directorate General, BSF directing the rearranging of *inter-se* seniority between the AC (DE) batch Nos. 29 to 35 and AC (LDCE) batch no. 5.

17. It is pertinent to note that be it the 2001 Recruitment Rules or the 2010 Recruitment Rules, there is no ambiguity in the fact that as per Rule 7(3)(iii), the seniority of temporary officers shall be determined on the basis of order of merit at the time of their selection and that officers selected in an earlier batch shall be senior to those select in subsequent batches. There is also no denial to the contents of the OM dated 24.06.1978 which clearly provided that the conclusion of the process of selection for promotion through LDCE was the date of announcement of results.

18. Since the process of recruitment of the Petitioners commenced in 2001, the applicable rules are the 2001 Recruitment Rules. The date of conclusion of the selection process for AC (LDCE) would be 16.09.2009, i.e., the date on which the results were announced. Moreover, the 2010 Recruitment Rules came into force on 11.08.2010, which is in the midst of the zero-week training of the Petitioners. These 2010 Recruitment Rules,



having introduced *inter-se* seniority between direct recruits and AC (LDCE) for the first time, could not be applied retrospectively to those candidates already undergoing zero-week training, as the amendment cannot be said to be merely clarificatory in nature [Ref: Sunder v. Shyam Kumar, (2001) 8 SCC 24 Zile Singh v. State of Haryana, (2004) 8 SCC 1]. Thus, a combined reading of Rule 7(3)(iii) of the 2001 Recruitment Rules and the OM dated 24.06.1978 would undoubtedly indicate that the seniority of the Petitioners would be reckoned from 16.09.2009, that is, the date of announcement of results of the LDCE.

19. There is also no conflict in the determination of seniority of the direct recruits of AC (DE), being from the date of commencement of their training course at the BSF Academy.

20. As to the applicability of Rule 7 of the 2010 Recruitment Rules is concerned, which states that *inter-se* seniority of direct recruits and AC (LDCE) shall be determined after adding together the marks obtained by them in the Recruitment Test, and the Basic Professional Course in the ratio of 50:50, the same provides for the determination of *inter se* seniority amongst the LDCE candidates or amongst the direct recruits, and is not to determine the *inter-se-seniority* between the direct recruits and the LDCE candidates.

21. Now, since the judgment of the Apex Court in Rohitash Kumar (supra) has been abundantly discussed in the present case, this Court shall now analyze the applicability of the observations contained therein to the factual matrix of the present case. Certain observations of the Apex Court in the Rohitash Kumar (supra) judgment are being reproduced hereunder:



“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 or 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 Nos. (1)(ii) and (1)(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 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.”



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22. Akin to the contents of the aforesaid extract, the Petitioners have not challenged the validity of the Recruitment Rules. Rather, their case revolves around a literal interpretation of the 2001 Recruitment Rules, since there is no ambiguity whatsoever contained therein. For that matter, even if the 2001 Recruitment Rules are read with the OM dated 24.06.1978 as well as the MHA UO bearing no. 1-45022/83/2000 dated 21.08.2000, there is no doubt that the determination of seniority for the AC (LDCE) candidates was from the date of announcement of results of the LDCE.

23. With the aforesaid observations, the present writ petition is allowed and accordingly, the Seniority List dated 30.03.2012 is hereby quashed. The Respondent-BSF is directed to grant seniority to the Petitioners from the date of the result of the LDCE 2008-09 for the post of Assistant Commandant, in compliance with the OM dated 24.06.1978.

24. Pending application(s), if any, are also disposed of.

SUBRAMONIUM PRASAD, J

SAURABH BANERJEE, J

NOVEMBER 06, 2025
AP