



2026:DHC:8-FB



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

Reserved on: 10 October 2025
Pronounced on: 5 January 2026

+ W.P.(C) 84/2019
JAI MANGAL RAI Petitioner

versus

UNION OF INDIA AND ORS Respondents

+ W.P.(C) 104/2019
INSPECTOR (GD) LAXMAN Petitioner

versus

UNION OF INDIA AND ORS Respondents

+ W.P.(C) 108/2019
INSPECTOR (GD) SANJAY
KUMAR PANDEY Petitioner

versus

UNION OF INDIA AND ORS Respondents

+ W.P.(C) 174/2019
INSPECTOR (GD) MANOJ KUMAR SINGH Petitioner

versus

UNION OF INDIA AND ORS Respondents

+ W.P.(C) 3425/2019

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INSP (GD) JYOTIRMOY PAUL

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 3448/2019

INSPECTOR (GD) RAM
CHANDRA CHAUDHARY

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 3464/2019

INSP (GD) AMBIKESH CHOUDHARY

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 368/2019

INSPECTOR (GD) MUKESH
KUMAR SINHA

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 372/2019

INSPECTOR (GD) NARSU NAIDU BHAIRI

.... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 381/2019

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INSPECTOR (GD) SANJAY KUMAR

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 382/2019

INSPECTOR (GD) SANDEEP SIYAG

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 383/2019

INSPECTOR (GD) RANJEET KUMAR

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 386/2019

INSPECTOR (GD) ASHISH KHARI

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 387/2019

INSPECTOR (GD) RAJENDRA SINGH

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 388/2019

INSPECTOR (GD) RAM PRAVESH SINGH

..... Petitioner

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versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 389/2019

INSPECTOR (GD) DHARAM PAL

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 390/2019

INSPECTOR (GD) ASHUTOSH OJHA

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 85/2019

INSPECTOR (GD) ARUN KUMAR SINGH

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 87/2019

INSPECTOR (GD) PRABHAT KR. SHAHI

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

+ W.P.(C) 3427/2019

INSPECTOR (GD) MAHENDRA MANDIWAL

..... Petitioner

versus

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UNION OF INDIA AND ORS

..... Respondents

Appearance for the Petitioners: Mr. Ankur Chhibber, Adv.

Appearance for the Respondents: Mr. Farman Ali, CGSC with
Ms. Usha Jamnal, Adv. for UOI

Mr. Ripudaman Bhardwaj,
CGSC, Mr. Kushagra Kumar
and Mr. Amit Kumar Rana in
WP(C) Nos. 104/2019 and
108/2019

Mr. Manish Kumar, Sr. PC for
UOI in WP(C) 84/2019, WP(C)
85/2019 & WP(C) 87/2019

Mr. Subhash Tanwar, CGSC
with Mr. Naveen and Ms. G
Thavi Garg, Advocates for UOI
in WP(C) 3448/2019 and
3427/2019

Mr. Manish Mohan CGSC and
Mr. Jatin Teotia Adv. for UOI in
WP(C) 108/2019

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MS. JUSTICE JYOTI SINGH
HON'BLE MR. JUSTICE AJAY DIGPAUL

%

JUDGMENT
05.01.2026

C. HARI SHANKAR, J.

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1. By order dated 25 February 2019, a Division Bench of this Court referred these matters to a Larger Bench of three Judges, as the Division Bench felt that, on the issue in controversy in these writ petitions, different Division Benches of this Court had ruled differently.

2. We have heard Mr. Ankur Chhibber, learned Counsel for the petitioners, and Mr. Farman Ali, Mr. Ripudaman Bharadwaj, Mr. Subhash Tanwar and Mr. Manish Mohan, learned CGSC for the respondents, at length.

3. To our mind, the issue in controversy can be decided by a mere reference to the applicable Rule.

4. Facts in these writ petitions being identical, we refer to the facts in WP (C) 84/2019¹.

5. Applications for direct recruitment to the post of Sub Inspector² in the Central Police Organizations were invited by the Staff Selection Commission in 2002. The petitioner applied, seeking appointment as SI in the Border Security Force³. Written examination was held on 12 January 2003, which the petitioner cleared. He also cleared the Physical Efficiency Test on 26 March 2003. However, in the Medical Examination which took place on 9 June 2003, he was declared unfit as suffering from Caries Teeth. The petitioner appealed against the decision on 12 June 2003, seeking reconsideration by a Review

¹ **Jai Mangal Rai v. Union of India**

² “SI” hereinafter

³ “BSF” hereinafter



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Medical Board⁴. While his appeal was pending, others, who had participated with him in the selection and had not been medically disqualified, were appointed and joined as SI. It was only on 19 December 2003 that the petitioner was called to attend the Review Medical Examination⁵, which took place on 1 January 2004. Though the RME declared the petitioner to be fit, the result was communicated to the petitioner only a year and five months later, on 24 January 2005. The petitioner was issued an appointment letter, appointing him as SI, on 3 March 2005, and he joined on 7 March 2005, nearly a year and seven months after his batchmates.

6. The petitioner represented to the respondents, seeking seniority as SI along with those who had undertaken the selection along with him. The representation was rejected by the respondents on 31 May 2018, relying on the judgment of the Supreme Court in ***Rohitash Kumar v. Om Prakash Sharma***⁶.

7. When the writ petitions came up for hearing on 25 February 2019, the Division Bench noted that there appeared to be a cleavage of opinion on the issue, with the judgments in ***Naveen Kumar Jha v. Union of India***⁷, ***Avinash Singh v. Union of India***⁸, ***Ram Pal Deswal v. Union of India***⁹, ***M.V. Sheshagiri v. Union of India***¹⁰, ***Naresh Kumar v. Union of India***¹¹ and ***Dinesh Kumar v. Union of India***¹²

⁴ “RMB” hereinafter

⁵ “RME” hereinafter

⁶ (2013) 11 SCC 451

⁷ 2012 SCC OnLine Del 5606 (DB)

⁸ 2011 SCC OnLine Del 2432 (DB)

⁹ Judgment dated 7 March 2011 in WP (C) 393/2008

¹⁰ (2019) 173 DRJ 267 (DB)

¹¹ 2018 SCC OnLine Del 13015 (DB)

¹² Judgment dated 14 February 2011 in WP (C) 19748/2005



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favouring the case of the petitioner and the judgment in *Shoorvir Singh Negi v. Union of India*¹³ ruling *per contra*. It was further noticed that, in *Rohitash Kumar*, the Supreme Court had left undisturbed the decision in *Dinesh Kumar*, despite noticing it in para 35.

8. Paras 6 and 7 of the order dated 25 February 2019, in these writ petitions, therefore, conclude thus:

“6. Therefore, there is clear difference of opinions by different DBs of this Court on the issue of fixation of seniority of members of BSF along with those of the same batch with whom they sat for the written examination, but were declared qualified at a later date on account of the medical or other verifications being delayed.

7. Consequently, the Court considers it appropriate to direct that this entire batch of writ petitions be placed before the larger Bench of three Hon’ble Judges on 15th March 2019 for resolving the above difference, subject to the orders of the Hon’ble Chief Justice. It is left open to the parties to request the larger Bench to consider any other issues that may arise from the above conflicting decisions.”

9. Clearly, therefore, the writ petitions themselves stand referred to the Full Bench. We may note that no question, other than the question formulated in paras 6 and 7 of the order dated 25 February 2019, has been addressed or urged by either side.

10. Before adverting to the judicial authorities noted in the order dated 25 February 2019, we are of the view that Rule 8 of the BSF General Duty Cadre (Non-Gazetted) Recruitment Rules, 2002¹⁴ – which the petitioners themselves claim to be applicable to the case –

¹³ MANU/DE/3865/2015 (DB)

¹⁴ “the 2002 Rules” hereinafter



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is, in fact, dispositive of the issue in controversy. We have to bear in the mind the fact that we are concerned, here, with *inter se* seniority among direct recruits, and not between SIs appointed through different modes of recruitment. The only issue is whether the delay in the joining, by the petitioners, of the post of SI, owing to medical clearances, etc., would depress their seniority.

11. Rule 8 of the 2002 Rules reads thus:

“8. Seniority. –

(1) Persons holding a higher rank whether in an officiating or substantive capacity shall be senior to the persons holding a lower rank.

(2) Seniority in any rank shall be determined on the basis of continuous regular appointment in that rank.

Provided that the seniority of the personnel holding the same rank and promoted on the same day shall be determined in accordance with the order of selection for appointment to that post.

(3) Subject to the provisions of sub- rule (2) seniority of direct entry Sub- Inspector shall be determined in accordance with merit of their selection through Staff Selection Board:

Provided that the persons selected on an earlier batch will be senior to those selected in subsequent batches:

Provided further that the seniority of Constables/Head Constables selected under Limited Departmental Competitive Examination Scheme as Sub-Inspector against the reserved quota shall be determined in accordance with their merit of selection and shall be placed below the Sub- Inspector (Direct Entry) batch with whom they join for training.”



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12. When we apply Rule 8 of the 2002 Rules to the case of the petitioner, the consequence is self-evident. Rule 8(2) makes it perfectly clear that, within one rank, seniority would be determined on the basis of continuous regular appointment. “Continuous regular appointment”, in the case of the petitioner, would commence, at the earliest, when the petitioner was issued his appointment letter on 3 March 2005. Prior thereto, the petitioner had not been appointed as SI. *Inasmuch as persons who had undergone selection with him but did not have to await the outcome of any RME, or whose appointment was not delayed on any other ground, were appointed as SI prior to the petitioner, the petitioner would necessarily rank junior to them by operation of Rule 8(2) of the 2002 Rules.*

13. Rule 8(3) does not apply, as it is expressly subject to Rule 8(2). The fixation of *inter se* seniority among direct recruit SIs, on the basis of their comparative merit in the selection, as envisaged in Rule 8(3) would, therefore, be subject to Rule 8(2); in other words, if, among persons selected in one selection process, appointments did not take place at the same time, then, by virtue of Rule 8(2), those appointed later would be junior to those appointed earlier. It is only if all were appointed at the same time and, therefore, their dates of “continuous regular appointment” were the same, that, by operation of Rule 8(3), their *inter se* merit would determine their *inter se* seniority.

14. Rule 8(2) is, therefore, dispositive of the controversy in issue.

15. We now proceed to refer to the various authorities noted in the referral order dated 25 February 2019, for the sake of completion.



16. *Rohitash Kumar*

16.1 We commence with the judgment of the Supreme Court in *Rohitash Kumar*. In that case, in fact, the plea of seniority on the basis of the selection process was negated by the Supreme Court as Rule 3 of the BSF (Seniority, Promotion and Superannuation of Officers) Rules, 1978¹⁵, which applied in that case, in its proviso, specifically required that, among direct recruits, the date of appointment “shall be the date of commencement of their training course” at the BSF Academy. If, therefore, there was delay in commencement of training, it would necessarily affect seniority, as the date of appointment would also be delayed.

16.2 The decision is, quite clearly, of no application to the facts before us, as Rule 8 of the 2002 Rules does not contain any provision akin, or even similar, to the proviso to Rule 3 of the 1978 Rules which applied in *Rohitash Kumar*.

16.3 The referral order, however, notes that the earlier judgment of a Division Bench of this Court in *Dinesh Kumar* was noted in para 35 of *Rohitash Kumar*, and left undisturbed. We may, therefore, reproduce para 35 of *Rohitash Kumar*, thus, before proceeding to deal with *Dinesh Kumar*:

“35. Shri R. Venkataramani, learned Senior Counsel for the appellants, has placed very heavy reliance upon the judgment of the Delhi High Court (*Dinesh Kumar v. Union of India*) dated 14-2-2011 wherein, certain relief was granted to the petitioner therein, in view of the fact that there was some delay in joining training, in



relation to passing the fitness test set by the Review Medical Board. The Court granted relief, in light of the facts and circumstances of the case, without interpreting Rule 3 of the 1978 Rules. *Thus, the said judgment, in fact, does not lay down any law.* The case at hand is easily distinguishable from the above, as that was a case where seniority and promotion had been granted on a notional basis, with retrospective effect and it was held that the person to whom the same had been granted, was entitled to all consequential benefits.”

(Emphasis supplied)

17. **Dinesh Kumar**

17.1 In view of the observation, in para 35 of **Rohitash Kumar**, that **Dinesh Kumar** does not lay down any law, it is clear that the decision cannot be said to have precedential value.

17.2 Besides, the issue in controversy in **Dinesh Kumar** was altogether different. Like the petitioner before us, the appointment of Dinesh Kumar as Assistant Commandant was delayed owing to his having been initially medically disqualified and having had to undertake an RME. There, however, the similarity ceases. *Dinesh Kumar's representation, seeking ante-dated seniority along with those who had appeared in the selection process with him, and whose appointment was not delayed, was allowed by the department itself, and the seniority refixed accordingly. That issue did not, therefore, arise for consideration before this Court.*

17.3 The dispute in **Dinesh Kumar** arose because the order re-fixing his seniority, consequent on allowing of his representation, was issued several years after the representation was made, on 31 December 2001, during which period persons who had undergone the selection



process with him, and who were below him in seniority as per the decision taken on 31 December 2001, had already been promoted as Deputy Commandants. Dinesh Kumar's prayer was that he be promoted as Deputy Commandant along with them, on the ground that a senior was entitled to be promoted with effect from the date of promotion of his junior; even if he did not have, to his credit, the requisite qualifying service. This, therefore, was the dispute before this Court, which was ultimately decided in favour of Dinesh Kumar.

17.4 The issue which is before us, therefore, never arose for consideration before the Division Bench of this Court in *Dinesh Kumar*.

18. Ram Pal Deswal

18.1 The facts in this case, and the issue in controversy, undoubtedly parallel the case before us.

18.2 Ram Pal Deswal¹⁶, like the present petitioner, participated in the selection for recruitment to the post of SI in the BSF, consequent to an advertisement issued by the Staff Selection Commission. He was initially declared medically unfit on 22 October 1998. He sought an RMB. On 25 July 1999, he was declared medically unfit by the RMB. He challenged his declaration as medically unfit before this Court by way of WP (C) 6079/2000. This Court, by order dated 18 October 2004, directed Deswal to be re-examined, including a Cardiologist in the Board. The fresh medical examination of Deswal did not find him



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unfit for recruitment as SI. He was, therefore, issued an order of appointment dated 23 November 2004.

18.3 In the meanwhile, other candidates who had participated with him for recruitment as SI had been appointed and had joined.

18.4 Deswal sought seniority along with the said candidates.

18.5 Clearly, therefore, the issue before the Division Bench of this Court in *Ram Pal Deswal* was identical to that which is before us. The applicable Rule was also the same, i.e., Rule 8 of the 2002 Rules, which stands extracted in para 1 of the decision in *Ram Pal Deswal*.

18.6 The Division Bench allowed Deswal's writ petition, reasoning as under:

“14. Suffice would it be to state that sub-rule (2) would apply in case of promotion and where the promotion is ad-hoc, temporary or stop-gap i.e., fortuitous, seniority would rank on the basis of continuous regular employment. The proviso to sub-rule (2) makes clear the ambit of the sub-rule. The proviso deals with promotions and carves out an exception to what is contemplated by sub-rule (2). The proviso, therefore, highlights the ambit of sub-rule (2).

15. Sub-rule (3) deals with seniority by way of direct entry to the post of Sub-Inspector and mandates the same to be determined with respect to the merit position at the selection conducted through the Staff Selection Board.

16. That apart, the peculiar facts of the instant case have to be noted. For no fault of his, and at Medical Boards improperly constituted, excluding cardiologists, petitioner was repeatedly declared unfit with reference to a stated cardiological problem. We may highlight that subjecting the petitioner to a clinical examination and without subjecting the petitioner to the procedures of medical jurisprudence required to be followed to confirm a cardiological problem, he was being rendered unfit. It was only



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through judicial intervention that a properly constituted Medical Board was constituted. Needless to state, this properly constituted Medical Board found the petitioner fit.

17. Petitioner cannot be made to suffer for no fault of his.”

18.7 We are, with greatest respect, unable to agree with the view expressed by the Division Bench in paras 14 and 15 of *Ram Pal Deswal*. The Division Bench has understood Rule 8(2) as applicable in cases of promotion and Rule 8(3) as applicable in cases of direct recruitment. With respect, we are unable to agree with this reasoning.

18.8 Rule 8(2) expressly covers all *appointments*. It does not restrict its application only to *promotion*. It specifically states that “seniority in any rank shall be determined on the basis of continuous regular *appointment* in that rank”. In *Dr. Harkishan Singh v. State of Punjab*¹⁷ and *Chander Bhan v. Hoti Lal Gupta*¹⁸, the Supreme Court has held that the word “appointment” would cover direct recruitment as well as promotion. In fact, it would cover all kinds of recruitment, including, for example, deputation, where deputation is provided as a mode of recruitment. Recruitment, by whichever mode, culminates in appointment.

18.9 It is well settled that, where the legislature uses a deliberately wide expression, there is no justification for courts to narrow its scope. The proviso to Rule 8(2) of the 2002 Rules uses the expression “promotion”. If the framers of the Rule wanted to restrict the main part of Rule 8(2) only to promotion, there was no reason why they

¹⁷ (1971) 2 SCC 58

¹⁸ 1991 Supl 2 SCC 156



would not expressly have so provided. The use of the word “appointment” is *ex facie* deliberate.

18.10 The Division Bench has, in ***Ram Pal Deswal***, restricted the scope of the main part of Rule 8(2) of the 2002 Rules to the scope of the proviso. Such a mode of interpretation, with greatest respect to the learned authors of the decision, is unknown to law. In fact, in para 20 of ***Rohitash Kumar***, it is specifically ruled, with respect to the scope of a proviso, thus:

“20. *The normal function of a proviso is generally to provide for an exception i.e. exception of something that is outside the ambit of the usual intention of the enactment, or to qualify something enacted therein, which, but for the proviso would be within the purview of such enactment. Thus, its purpose is to exclude something which would otherwise fall squarely within the general language of the main enactment. Usually, a proviso cannot be interpreted as a general rule that has been provided for. Nor it can be interpreted in a manner that would nullify the enactment, or take away in entirety, a right that has been conferred by the statute. In case the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude by implication, what clearly falls within its expressed terms. If, upon plain and fair construction, the main provision is clear, a proviso cannot expand or limit its ambit and scope. [Vide ***CIT v. Indo Mercantile Bank Ltd***¹⁹, ***Kush Saigal v. M.C. Mitter***²⁰, ***Haryana State Coop. Land Development Bank Ltd. v. Employees Union***²¹, ***Nagar Palika Nigam v. Krishi Upaj Mandi Samiti***²² and ***State of Kerala v. B. Six Holiday Resorts (P) Ltd***²³].”*

A proviso cannot, therefore, be used to restrict the scope of the main Rule.

¹⁹ AIR 1959 SC 713

²⁰ (2000) 4 SCC 526

²¹ (2004) 1 SCC 574

²² (2008) 12 SCC 364

²³ (2010) 5 SCC 186



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18.11 We, therefore, are unable to sustain the finding, of the Division Bench, that Rule 8(2) applies exclusively to promotion and Rule 8(3) applies to direct recruitment.

18.12 We are, therefore, of the view that the decision in ***Ram Pal Deswal*** does not correctly declare the law, insofar as interpretation of Rule 8 is concerned.

18.13 We may note, in this context, that the subsequent Division Bench of this Court, in ***Shoorvir Singh Negi***, also adopted the same view, i.e. that ***Ram Pal Deswal*** was not correctly decided. We would be adverting to the decision in ***Shoorvir Singh Negi*** in somewhat more detail hereinafter.

19. *Avinash Singh*

19.1 The decision in ***Avinash Singh***, on facts, is clearly distinguishable, as has also been noted in the subsequent decision in ***Shoorvir Singh Negi***. ***Avinash Singh*** was a case in which the petitioners before this Court had been declared fit by the review medical board *before other candidates who had participated in the selection process along with them were appointed* and made to join the service. The Division Bench, therefore, found it unacceptable that, even after the petitioners had been declared fit, their appointment was postponed to a date beyond that on which other candidates who had participated in the selection after them had been appointed. This is apparent from paras 7, 8, 16 and 18 of the decision in ***Avinash Singh***, which may be reproduced thus:

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“7. On 02.11.2004, a date which is after 18 days of the date 14.10.2004 when petitioners were declared medically fit, those persons who were declared fit at the first instance joined ITBP as Assistant Commandant.

8. For unexplainable reasons, why petitioners who were declared medically fit on 14.10.2004 were not issued appointment letters by 2.11.2004 remains a mystery. Their appointment process got delayed till 08.08.2005 on which date even they were appointed as Assistant Commandant.

16. Facts noted hereinabove make it plain clear that by 14.10.2004 the petitioners were declared fit. By that date nobody from amongst the merit list had joined as an Assistant Commandant and that a few out of the list joined as Assistant Commandant on 02.11.2004. We see no reason as to why the petitioners were not made to join as Assistant Commandant on 02.11.2004.

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.”

19.2 In para 17, however, the Division Bench has observed thus:

“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.”

The statement of law contained in para 17 of *Avinash Singh* is made without reference to any Rule. It cannot, therefore, be treated as an omnibus declaration of the legal position, which would apply even where the rule position is such as is contained in Rule 8 of the 2002 Rules with which we are concerned.



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19.3 *Avinash Singh* is, therefore, clearly distinguishable from the issue before us.

20. *Naveen Kumar Jha*

20.1 The facts and the issue in *Naveen Kumar Jha* are, like *Ram Pal Deswal*, the same to those which are before us. The petitioner had initially been declared unfit by the Medical Board on 4 February 2002. He appealed. He was examined by the RMB only on 18 January 2003. On being found fit, he was interviewed in July 2003 and was appointed as SI in the CRPF in April 2004.

20.2 In the meanwhile, other successful candidates, who had participated in the selection with him, joined their respective para military forces.

20.3 The Division Bench upheld the entitlement of *Naveen Kumar Jha* to be granted seniority along with those who had participated in the selection process with him and had been appointed while the results of the RMB which had examined him was still pending.

20.4 There is, however, no reference, in *Naveen Kumar Jha*, to any applicable Rule or Regulation. The appointment was to posts in the CRPF. We are unaware as to whether the Rule position in the CRPF was comparable to Rule 8 of the 2002 Rules applicable to the BSF. Inasmuch as the decision in *Naveen Kumar Jha* has been rendered without reference to any Rule or Regulation, it cannot be regarded as declaring the law on the issue.



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21. *Shoorvir Singh Negi*

21.1 *Shoorvir Singh Negi* also dealt with persons who were seeking appointment to the BSF. As in the present case, they were initially declared unfit. They were subjected to RME. By the time they were declared fit in the RME, others who had participated in the selection with them were appointed. The petitioners, therefore, contended that, on account of the fault of the respondents, they were unable to join and that their seniority could not be prejudiced for that reason.

21.2 Reliance was placed, by the petitioners, on the decisions in *Naveen Kumar Jha*, *Avinash Singh* and *Ram Pal Deswal*.

21.3 As against this, the Union of India, contesting the petition, relied on an earlier Division Bench ruling of this Court in *Roop Ram Kundu v Union of India*²⁴, in which, dealing with Rule 19 of the BSF (Subordinate Officers and Under Officers) Promotion and Seniority Rules 1975, which was *pari materia* with Rule 8 of the 2002 Rules, the Division Bench held as under:

“6. Thus any challenge to petitioner's temporary medical unfitness as per the review medical board became a matter which no longer is capable of being adjudicated upon by any Court.

7. However, taking into account that the petitioner was being declared temporarily medically unfit, the authorities subjected the petitioner to another medical examination which was conducted in July 19, 1996. The petitioner had overcome the medical problem from which he was temporarily suffering. He was opined to be medically fit and accordingly an appointment letter dated September 17, 1996 was issued.



8. Now, the petitioner prays that he be accorded seniority as per his merit position obtained at the examination with all consequential benefits.

9. *Suffice would it be to state that as per Rule 19 of the BSF (Subordinate Officers and Under Officers) Promotion and Seniority Rules 1975, seniority in any rank has to be determined on the basis of continuous regular appointment in that rank.*

10. Being repeatedly declared temporarily medical unfit, till he was declared fit in September, 1996 resulting in appointment letter being issued on September 17, 1996, would require petitioner to be placed with respect to seniority, not with reference to the merit position which he had obtained when the examination was conducted in the year 1992 more so for the reason W.P.(C) No. 149/1996 filed by the petitioner stands dismissed in default and revival whereof has not been prayed for.”

(Emphasis supplied)

21.4 *Shoorvir Singh Negi* was also directly concerned with Rule 8 of the 2002 Rules, which stands extracted in *extenso* in para 8 of the decision. In the paragraphs which follow para 8, the Division Bench has held as under:

“9. The petitioners highlight Rule 8(3) to say that seniority of direct entry Sub-Inspector would be determined in accordance with the merit of their selection through Staff Selection Board. Although this argument is attractive, the fact remains *Rule 8(3) expressly states that it is “subject to provisions of sub-rule (2)”*. This in turn means that the primary rule is “continuous regular appointment in that rank”. This Court is of the opinion that the question of an individual being “appointed to the rank” would imply his joining the cadre. In all these cases, the petitioners do not dispute that they had joined the cadre or the concerned post only after they were declared medically fit by the Review Medical Board—in 2003. Though they were initially declared successful in the recruitment process, their medical conditions constituted a barrier for their entry into the service. That barrier was lifted on account of their overcoming unfitness and the subsequent determination of the Review Medical Board. Obviously, therefore, they joined and started continuously working in the post of Sub-Inspector from the later dates. This interpretation is supported by the judgment in ***Roop Ram Kundu*** (*supra*) – a proceeding initiated as far back as in 1999 when the petitioner claimed seniority of merely three months.



He was initially declared temporary unfit in July, 1999, but was subsequently declared successful in September, 1999. In the interregnum in **Roop Ram Kundu** (*supra*), the original batch to which he belonged had already joined the training. He was, therefore, directed to join the subsequent batch. *This Court is of the opinion that the BSF's position cannot be faulted given the fact that he entered the cadre or joined the post subsequently.*

10. At some stage, counsel in one of the proceedings W.P. (C) No.163/2014, relied upon the order in **Ram Pal Deswal v. UOI & Ors.** W.P.(C) No.393/2008 (decided on 07.03.2011) to state that Rule 8(2) is really meant for regulating seniority of promotees. In **Ram Pal Deswal** (*supra*), the Court observed as follows:-

“14. Suffice would it be to state that sub-rule (2) would apply in case of promotion and where the promotion is ad-hoc, temporary or stop-gap i.e. fortuitous, seniority would rank on the basis of continuous regular employment. The proviso to sub-rule (2) makes clear the ambit of the sub-rule. The proviso deals with promotions and carves out an exception to what is contemplated by sub-rule (2). The proviso, therefore, highlights the ambit of sub-rule (2).”

11. This Court is of the opinion that Rule 8(1) firstly states a general principle, i.e., those holding higher rank whether in an officiating or substantive capacity would be senior to persons those holding a lower rank. Rule 8(2) then prescribes a principle of universal application. i.e., the seniority in any rank “shall” be determined on the basis of continuous regular appointment in that rank. Thirdly, the proviso of Rule 8(2) states that the seniority of the two individuals holding the same rank “and promoted on the same day” shall be determined in accordance with the order of selection for appointment to that post. *In other words, the provision carves out an exception from the general rule prescribed in Rule 8(2) of seniority on the basis of the regular appointment to the rank. The exception is that in case of promotees, the seniority is to be determined “in accordance with the order of selection for appointment to that post”.* However, the proviso is silent as to the matters left out which are part of the main provision, i.e., Rule 8(2). The corollary irresistibly, therefore is that Rule 8(2) applies for other categories, i.e., direct recruits. If one were to construe Rule 8(2) in this manner, the mandate of Rule 8(3), i.e., that seniority of direct entry Sub Inspector would be determined in accordance with the merit of their selection, is a rule to guide inter se merit of those who are appointed in the same selection process. However, *it would not in any way disturb or detract from the application of Rule 8(2), i.e., the seniority in the rank has to be determined on the basis of continuous regular appointment.*



12. This Court does not read proviso to Rule 8(2) in the manner sought to be urged or as appears to have been read in **Ram Pal Deswal** (*supra*). This is for the simple reason that the provision carves out an exception only for promotees and its intendment cannot be extended beyond what is prescribed. (see **S. Sundaram Pillai v. V.R. Pattabiraman**²⁵, for the effect of operation of proviso).

13. Respectfully, we differ from **Naveen Kumar Jha** (*supra*) and **Avinash Singh** (*supra*) as we find that no discussion of a rule akin to Rule 8 has been made in these judgments. In our opinion Rule 8 is determinative of the question of how seniority must be calculated for the present petitioners. We are also mindful that interfering in the manner sought will upset already settled seniority lists and affect persons who are not parties before us. We prefer instead the view taken in **Roop Ram Kundu** (*supra*), a decision that was not brought to the notice of the court in either **Naveen Kumar Jha** (*supra*) or **Avinash Singh** (*supra*).

14. In view of the above discussion, we are of the opinion that the petitioners claim for seniority from the date their batch mates or original batch mates who were otherwise appointed in the normal circumstances in 2000-2001 cannot succeed.”

21.5 Thus, in paras 9 to 12 of **Shoorvir Singh Negi**, the Division Bench has clearly disagreed with the interpretation of Rule 8 of the 2002 Rules as propounded in **Ram Pal Deswal**. For this purpose, the Division Bench has also relied on the judgment of the Supreme Court in **S. Sundaram Pillai**, which clearly holds that a proviso only carves out an exception and that its intendment cannot extend beyond what is prescribed in the main provision. Equally, as we have already held, a proviso cannot operate to restrict the scope of the main provision, especially where the main provision is couched in wide and compendious terms.



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21.6 We, therefore, express our wholehearted concurrence with the exposition of the law by the Division Bench of this Court in *Shoorvir Singh Negi*, to the extent it holds that the interpretation of Rule 8 in *Ram Pal Deswal* is not correct, and that *inter se* seniority among direct recruits would have to be determined on the basis of the date when they joined the service or, at the earliest, the date of their appointment order. Once we interpret Rule 8 thus, the petitioners before us really have no case.

22. Naresh Kumar

22.1 Naresh Kumar, again, involved a similar issue. We do not deem it necessary to enter into the specifics of the decision. However, in paras 12 to 14 of the *Naresh Kumar*, the Division Bench has held as under:

“12. Before we proceed to decide this issue, we feel it would be worthwhile to first discuss the decision of this Court in **W.P. (C) No. 19748/2005**, decided on 14th February, 2011, titled as *Dinesh Kumar Dy. Commandant v. Union of India*. The facts of the said case are quite similar to the case in hand. Dinesh Kumar successfully qualified the examination for the post of Assistant Commandant on 15th September 1991. He was declared unfit during Medical Board Examination held on 4th December 1992. He then made an application for his fitness being reconsidered by constituting a Review Medical Board (RMB). RMB met on 13th July 1994 and declared Dinesh Kumar to be medically fit and thus he became eligible for appointment to the post of Assistant Commandant. In the meantime, the batches of the Assistant Commandant who had successfully undergone the training course were inducted on regular basis as Assistant Commandant. Dinesh Kumar was made to join with the 18th batch (2nd January 1995) and given seniority with reference to the date of joining. Since he was not given seniority with reference to 16th batch, he made several representations to the Respondents. Ultimately, his seniority was re-fixed as per the merit position in the examination held on 15th January 1991. Dinesh Kumar was then constrained to approach



the Court on account of Respondents' denial to give him consequential benefits by re-fixing his seniority on the promotional post of Deputy Commandant. This Court allowed the writ petition and granted promotion with consequential benefits, except back wages. The aforesaid decision was challenged by the Respondents before the Supreme Court. However, the SLP was dismissed.

13. Now, we proceed to note the judgment of the Supreme Court in **Rohitash Kumar** (*supra*). In the said case, the Supreme Court was dealing with the interpretation of proviso to Rule 3 of BSF Rules, in calculating the seniority of direct recruits selected through the same selection process, but bifurcated into different batches (Batch 16 and Batch 17) for administrative reasons. The Respondent no. 1 therein, was a promotee and had joined training with the 16th batch i.e prior to the 17th batch, but was placed below the 17th batch in the seniority list. The Supreme Court held that the language of the rule is clear and seniority cannot be calculated from a date prior to birth in a cadre. Hence, it was held that seniority of the officials would be from the date of commencement of training, giving effect to the proviso to Rule 3. Supreme Court further held that the said proviso will have application only in case officers who have been selected in pursuance of the same selection process are split into separate batches. In **Rohitash Kumar** (*supra*), the Supreme Court also noted the decision of **Dinesh Kumar** (*supra*) and differentiated the said decision, which is evident from para 29 of the said judgment which reads as under:

“29. Shri. R. Venkataramani, learned senior counsel for the Appellants, has placed very heavy reliance upon the judgment of the Delhi High Court (**Dinesh Kumar v. UOI**) dated 14.2.2011 wherein, certain relief was granted to the Petitioner therein, in view of the fact that there was some delay in joining training, in relation to passing the fitness test set by the Review Medical Board. The court granted relief, in light of the facts and circumstances of the case, without interpreting Rule 3 of the Rules 1978. Thus, the said judgment, in fact, does not lay down any law. The case at hand is easily distinguishable from the above, as that was a case where seniority and promotion had been granted on a notional basis, with retrospective effect and it was held that the person to whom the same had been granted, was entitled to all consequential benefits.”

14. It is therefore interesting to note that the Supreme Court did not interfere with the decision of this Court in **Dinesh Kumar** (*supra*). In our opinion, this clearly indicates that the judgment of Supreme Court in **Rohitash Kumar** (*supra*) has to be



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understood and appreciated in the context of the facts of the said case.”

22.2 With greatest respect, we are unable to agree with the exposition of law in paras 12 to 14 of *Naresh Kumar*. We have already held, earlier in this judgment, that *Dinesh Kumar* dealt with an entirely different issue, as the petitioner in that case had already been granted the benefit of seniority with the persons who had undergone selection with him by the department itself, and the issue before this Court was the entitlement of the petitioner to promotion to the next grade at par with his juniors. We cannot, therefore, agree with the Division Bench in its view, contained in para 12 of *Naresh Kumar*, that the issue in *Dinesh Kumar* was similar to that before us – or, for that matter, before the Division Bench in *Naresh Kumar*.

22.3 For the reasons already provided earlier, we are also unable to subscribe with the view expressed in para 13 of *Naresh Kumar*, to the effect that the judgment of the Supreme Court in *Rohitash Kumar* was applicable. As we have pointed out, *Rohitash Kumar* dealt with a case in which there was a peculiar dispensation in the applicable Rule to the effect that appointment would only reckon from the date when the candidate joined training. In fact, based on that Rule, the Supreme Court rejected the claim for antedated seniority made by the petitioners before it.

22.4 Insofar as the reference to *Dinesh Kumar*, in *Rohitash Kumar*, is concerned, we have already extracted the relevant paragraph from *Rohitash Kumar supra*. From a bare reading of the paragraph, the



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Supreme Court has clearly held that ***Dinesh Kumar*** does not lay down any principle of law.

22.5 Moreover, we find that ***Shoorvir Singh Negi*** was not even brought to the notice of the Bench which decided ***Naresh Kumar***. We have no doubt, in our mind, that, if the Bench deciding ***Naresh Kumar*** had been apprised of the earlier decision in ***Shoorvir Singh Negi***, the outcome might have been different.

22.6 We cannot, therefore, subscribe to the view expressed in ***Naresh Kumar***.

23. ***M.V. Sheshagiri***

23.1 ***M.V. Sheshagiri*** is, again, a judgment which does not refer to the applicable Rules in that case. Appointment, in the case of ***M.V. Sheshagiri*** was to the post of SI in the CRPF. The Division Bench followed its earlier decision in ***Naveen Kumar Jha***. As we have noted, ***Naveen Kumar Jha*** also did not make any reference to the applicable Rules.

23.2 In the absence of any reference to the applicable rules, we are unable to regard the decision in ***M.V. Sheshagiri*** as a useful precedent for the controversy before us.

24. The sequitur



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24.1 We have, thus, peregrinated through the decisions which have been noted in the referral order of the Division Bench. It would be meaningless to advert to all decisions on the point, as there are many. The actual decisions which have a bearing on the controversy, in so far as we are concerned, are ***Ram Pal Deswal*** and ***Shoorvir Singh Negi***. Both these decisions dealt with Rule 8 of the 2002 Rules, with which we are concerned. They adopted diametrically opposite views of the said Rules. The Division Bench proceeded, in ***Ram Pal Deswal***, on the premise that Rule 8(2) applied only to promotion and Rule 8(3) applied to direct recruitment. We have already expressed our inability to agree with the said proposition. The subsequent Division Bench in ***Shoorvir Singh Negi*** also found it difficult to agree with the proposition and, therefore, chose to follow the contrary decision in ***Roop Ram Kundu***.

25. We express our concurrence with the decision of the Division Bench in ***Shoorvir Singh Negi*** and our respectful inability to concur with the view expressed in ***Ram Pal Deswal*** which, therefore, must be taken to have been wrongly decided.

Conclusion

26. In view of our aforesaid discussion, we are of the view that the petitioners in these writ petitions cannot claim seniority along with the persons who participated in the selection along with them but joined earlier, as the joining of the petitioners was delayed owing to their having to undertake the RME. The fact that this delay may not have been attributable to the petitioners cannot affect the legal position. It is



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equally not attributable to the persons who joined before the petitioners. The Rule must apply as it stands.

27. Rule 8(3) cannot, in our view, apply as it is subject to Rule 8(2). Where Rule 8(2) applies, therefore, Rule 8(3) would not apply. In our view, and as has been held in *Shoorvir Singh Negi*, Rule 8(2) would apply both to direct recruitment and promotion. In the case of any appointment, therefore, whether by direct recruitment or promotion, seniority would have to be based on the date of appointment. Inasmuch as the petitioners' date of appointment was after the dates when the others who had participated in the selection with them were appointed, they cannot seek antedating of the dates of appointment to be at par with such earlier appointees or seek any benefit in seniority on that ground.

28. The issue which stands referred to us by the order dated 25 February 2019 of the Division Bench is answered accordingly.

29. Resultantly, all these writ petitions are dismissed with no orders as to costs.

C. HARI SHANKAR, J.

JYOTI SINGH, J.

AJAY DIGPAUL, J.

JANUARY 5, 2026

dsn/ar

Signature Not Verified

Digitally Signed By: **AWP.(C) 84/2019 & other connected matters**
KUMAR
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