
(1994) 07 DEL CK 0068

In the Delhi High Court

Case No : Civil Writ Appeal No. 885 of 1989 and Civil Miscellaneous Appeal No. 2922 of 1994

A.S. Pathania and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-07-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1994) 3 AD 872 : (1994) 55 DLT 468 : (1994) 30 DRJ 362 : (1994) LabIC 2520

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : P.N. Tiwari, A.K. Pathak, S.K. Mahajan and Neerja Datta, for the Appellant;

Judgement

Jaspal Singh, J.

(1) Here is yet another writ petition making a grievance of the promotions made and the seniority fixed.

(2) First, the bird eye view of the facts. By order dated June 12, 1980 the petitioners were directly appointed to the Gazetted post of Assistant Company Commander in the Indo-Tibetan Border Police on temporary basis with effect from June 2, 1980 "until further orders". On February 20, 1984, they were promoted on ad hoc basis to the post of Company Commanders Gazetted Group A and on September 1, 1988 their ad-hoc promotion was regularised with effect from the date of their promotion on ad-hoc basis. On the surface, it all appears to be so orderly and smooth. Reality has been far from so. Soon after the appointment of the petitioners as Assistant Commanders, Respondents 3 to 15 who, at that time, were working as non-Gazetted Subedars/Inspectors were promoted as Company Commanders. This was on October 24, 1980. And, on December 1, 1983 respondents 6 to 24 were also similarly promoted. Like respondents 3 to 15 they too were, at the time of promotion, working as non-

Gazetted Subedars/Inspectors. As if all this was not enough, on May 6, 1988 respondents 3 to 13 and 15 were further promoted to the next rank of Assistant Commandant.

(3) The grievance of the petitioners is that they having been directly recruited to the Gazetted post of Assistant Commander, Respondents 3 to 24 who were holding a non-Gazetted post with a lower scale of pay and who had been working under their control and supervision, could not be promoted to a rank higher than the one which the petitioners were holding without even considering them for such promotion and that the Union of India and the Director General, Indo Tibetan Border Police (Respondents 1 and 2 respectively) have thereby not only violated the law in the matter of their promotions but also by disturbing their seniority.

(4) Before I proceed to deal with the contentions raised, a brief resume" of what the respondents have stated may also be given.

(5) It is not disputed that the petitioners were directly recruited to the post of Gazetted Assistant Company Commander which is superior to the non gazette post of Subedar/Inspector and that the promotions of respondents 3 to 24 were actually made as alleged by the petitioners. It is also not disputed that at no stage were the petitioners considered for promotion. Why? The respondents claim that the petitioners could not be considered for promotion Along with Respondents 3 to 15 as the vacancies against which Respondents 3 to 15 were promoted had occurred sometime in the year 1976. The second line of defense is that, in any case, on October 24, 1980 when Respondents 3 to 13 were promoted, the petitioners were still on probation and had not yet put in the required three years of service.

(6) With regard to the promotion of Respondents 16 to 24, the defense is that since the vacancies which were filled up by their promotion related to the year 1978, Therefore, the petitioners were rightly not considered.

(7) Coming to the promotion of Respondents 3 to 13 and 15 to the post of Assistant Commandant, it is claimed that the petitioners were again not considered as at the relevant time they had not yet completed five years of service as Company Commanders which was the minimum qualifying period required.

(8) Time now to come face to face with the contentions raised.

(9) It was first contended, and as would be apparent from above, that as on October 24, 1980 when respondents 3 to 15 were promoted to the post of Company Commanders, the petitioners were working as Assistant Company Commanders, a position admittedly senior in all respects to the post of Subedar/Inspector from which rank respondents 3 to 15 were promoted, they ought to have been considered for promotion at least Along with the said respondents and as they were not so considered, the promotion of the said respondents was bad

or in any case, the supersession of the petitioners could not be taken as justified.

(10) Before I proceed to examine the point so raised on behalf of the petitioners it may be noticed that though the Indo-Tibetan Border Police is governed by the Central Reserve Police Force. Rules with regard to service matters, unfortunately there were and still are no rules pertaining to seniority etc. of the persons directly recruited as Assistant Company Commanders, As per the said Rules, and as far as they are relevant for our purposes, the original hierarchy of officers was Subedar/Inspector then Company Commander and thereafter Assistant Commandant. I am informed that after the recruitment of the petitioners, no further recruitment was made directly or by promotion to the rank of Assistant Commander and that in fact, that post now stands abolished reverting thereby to the old system of having only Company Commanders above the Subedars/Inspectors.

(11) Coming back to the contention raised by the learned counsel for the petitioners, two things are certain, First, that the petitioners belonged to a higher service carrying a higher scale and secondly that they were appointed in or against substantive posts and that at the time of promotion of respondents 3 to 15 the petitioners had not yet completed the period of probation. It was contended on behalf of the petitioners that since the petitioners had been appointed in substantive vacancies to higher service with higher scale of pay, therefore, they ought to have been considered for promotion if not over and above respondents 3 to 15 then, at least, Along with them and since this was not done they were thereby discriminated against on the ground that Article 14 or 16) had been violated. In support the learned counsel had leaned very heavily on judgment of the Supreme Court reported as State of Uttar Pradesh and Another Vs. Dr. M.J. Siddiqui and Others, . But then, it was a case leased entirely on different facts. In the said matter the appellants had been appointed to the Provincial Medical Service. The petitioners who belonged to the lower service were also promoted to the Provincial Medical Service but subsequent only to the appointment of the appellants to the said service. Later both the services were merged. It was held that the direct recruits were entitled on merger of the two services to be ranked senior than the persons promoted subsequently and that the mere fact. that the appellants were put on probation not immediately on their appointment but much thereafter but shortly before their confirmation, could not give "any special advantage to the petitioners" who were themselves drawn from a lower service and even if they held a substantive post in such service, they Could not, by virtue of promotion to the higher service after the appellants, claim seniority over the latter. It was further observed:

"THE petitioners also cannot claim of any discrimination on the ground that Articles 14 or 16 of the Constitution was violated because a person who is appointed to a higher service carrying a higher scale must ordinarily be deemed to be senior to an employee who is promoted from a lower service to the higher service even though his appointment may have been substantive in the lower

service "

(12) However, the present is not a case of merger of two services involving the question of inter se seniority. The objection is that though the petitioners were occupying senior post with higher pay scale, yet they were not considered at all for promotion to the higher post Along with respondents 3 to 15 though they were holding lower ranked posts with lower scale of pay.

(13) Respondents 1 and 2 claim that since respondents 3 to 15 were promoted on October 24, 1980 against the vacancies which had fallen vacant in the year 1976 and with regard to which the Departmental Promotion Committee had prepared a panel in the year 1979 the petitioners could not be considered with regard to those vacancies as they were appointed only in June. 1980. The question is: Could the petitioners be ignored with regard to the promotions made after their appointment on the ground that the vacancies" so tilled up by promotions had occurred before their appointment? True, before the promotion of Respondents 3 to 15 the scenario had changed to some extent on account of the direct recruitment of the petitioners to higher posts with higher scale of pay but then they were still under training and had hardly put in about three months service when Respondents 3 to 15 were promoted and that too with regard to vacancies which had occurred way back in the year 1976. What is more, even the Departmental Promotion Committee with regard to these promotions had made the recommendation before the appointment of the petitioners. How could the petitioners have any claim with regard to the vacancies which had occurred about four years before even their initial appointment? No illegality whatever was involved in adopting the principle of reckoning eligibility on the basis of the year seeing the vacancy falling due. The approach, to my mind, is neither arbitrary nor vocative of equality enshrined in Articles 14 and 16 of the Constitution. Surely, the petitioners cannot have any grievance against those promotions.

(14) It is next the case of Respondents 1 and 2 that the petitioners also could not be considered for promotion Along with respondents 3 to 15 as at the relevant time they had not yet completed three years of qualifying service for promotion from one grade to another. In .support, my attention was drawn to Office Memorandum which runs as under: "Extracts from Guidelines on Priming/ Amendment/ Relaxation of Recruitment Rules issued vide Om No. 14017/24/86-Estt. (RR) dated 22.5.79 and later on revised vide Om dated 18.3.88 Qualifying 3.13.2 service for promotion: The Qualifying service for promotion from one grade to another is necessary so that there is no premature promotion or undue jump in pay and also to ensure that the officer has sufficient opportunity to demonstrate his competence/ potential for holding the higher post. The period of qualifying service varies from post to post depending upon the scale of pay and the experience, required for manning the higher post. Broadly, the following qualifying service for promotion from one grade to another may be followed as a guide.

Field of Promotion	From_	_____	to_	_____
Qualifying service	1_	_____	2	_____

3. _____ 1 to 15...***** 16. Rs.2000-3500
 Rs.2200-4000 3 years Field of promotion was as under before revision of said
 instruction From _____ to _____ Qualifying service
 _ 1 _____ 2. _ 3 _____ 1 to 14...***** 15.
 Rs.650-1200 Rs.700-1300 3 years Rs.840-1200" However, on the other hand, it
 was argued on behalf of the petitioners that there being admittedly no statutory
 Rule requiring any qualifying period of service, mere administrative guidelines
 could not effect the promotional avenues of the petitioners.

(15) True, what is being propounded by the respondents is not on account of any
 statutory rule but on the basis of administrative instructions ,but then in the
 absence of statutory rules, such instructions are to lie followed as a guideline on
 the basis of executive policy. In Sant Ram Sharma Vs. State of Rajasthan and
 Another, the Supreme Court clearly laid down that till statutory rules are framed
 the Government can issue administrative instructions regarding the principles to
 be followed in promotions. The Court further observed

"IT is true that Government cannot amend or supersede statutory Rules by
 administrative instructions, but if the rules are silent on any particular point
 Government can fill up the gaps and supplement the rules and issue instructions
 not in consistent with the rules already framed."

(16) As would be borne out from the perusal of the administrative fiat
 reproduced above, a uniform eligibility qualification of three years service is
 required before coming within the zone of consideration for promotion to the
 higher grade and it can neither be said to be arbitrary nor unreasonable as it has
 direct nexus to suitability for promotion to the higher post. When such an
 eligibility condition is laid down, it cannot be said that merely because the
 petitioners happened to be recruited directly to a higher post with higher scale of
 pay they were above that condition or that, for that reason, had a right to be
 considered for promotion to the higher post merely because their juniors were
 being considered for such promotion. The Supreme Court laid down in R. Prabha
 Devi Vs. G.O.I. 1988 (2) S L R 110.

THE prescribing of an eligibility condition for entitlement for consideration for
 promotion is within the competence of the rule- making authority. This- eligibility
 condition has to be fulfilled by the Section officers including senior direct recruits
 in order to be eligible for being considered for promotion. A person must be
 eligible for promotion having regard to the qualifications prescribed for the post
 before he can be considered for promotion -Seniority will be relevant only
 amongst persons eligible. Seniority cannot be substituted for eligibility nor can it
 override it in the matter of promotion to the next higher post. The rule in
 question which prescribes an uniform period qualified service cannot be said to
 be arbitrary or unjust vocative of Article 14 or 16 of the Constitution."

(17) Thus, to be eligible for consideration at the time of promotion of
 respondents 3 to 15, the petitioners were required to satisfy two conditions.

First, they must have been within the prescribed zone for consideration by the Departmental Promotion Committee and secondly, they must also have rendered the qualifying period of service. Both these conditions were required to be satisfied. Satisfaction of one condition could not be taken to be sufficient. And, since at the time of promotion of respondents 3 to 15 both these conditions had not been fulfilled, the petitioners were rightly ignored.

(18) The petition must also fail so far as it relates to the challenge to the promotion of Respondents 16 to 24. The vacancies to which they were promoted related to the year 1978. True, with regard to them the Departmental Promotion Committee had met on July 25, 1983 and they were promoted on December 1, 1983 when the petitioners had already fulfilled the qualifying period of three years service but then, having been appointed in June, 1980, they could not be considered for promotion with regard to the vacancies which related to a period when they were not even born in the service.

(19) In fact it is the Memorandum of Department of Personnel and A. R. O. M, No.22011/3/76-Estt.(D) dated 24.12.1980 on the subject "Principles for promotion to "Selection" post which holds the key. The relevant portion of it is reproduced below: "Large number of clarifications are being sought by the various Ministries/ Departments on various aspects while preparing a panel for posts to be filled on the basis of Selection. The various points raised are as below:- (1) The absence of clearly defined limits in the matter of fixation of the zone of consideration has led to lack of uniformity of practice between the various DPCs, (2) In a number of cases the meetings of the DPCs are not held annually as required even though there were vacancies resulting to the bundling of vacancies which in turn enlarged the field of choice and upset the relative seniority positions in the higher grade on account of supersessions. 2. All the above aspects have been carefully considered and the following instructions are issued for the guidance of all Ministries. 3. Zone of consideration for promotion to posts filled by Selection. Reference is invited to the Ministry to Home Affairs (now Department of Personnel & A.R.) O.M. No.1/4/55.RPS dated 16.5.57 laying down certain principles for promotion. In the operation of these principles it has been observed that the absence of clearly defined limits on the extent of the field of choice has led to lack of uniformity in the practices being followed by the DPCs. Similarly it is felt that a large field of choice might result in excessive supervision. Again despite repeated instructions of the Government to hold DPCs annually there have been quite a few cases of delays resulting in vacancies being bundled. This would enlarge the field of choice and upset the relative seniority positions in the higher post with reference to the positions which would not have resulted had the DPCs met in the appropriate time. In view of these considerations it has been decided in consultation with the UPSC as under in supersession of this Department's O.M. No. 1/4/55.RPS dated 16.5.57 and all other memoranda having any bearing on the matter herein dealt with. (a) The Departmental Promotion Committee (DPC) shall for the purpose of determining the number of officers who should be considered from out of those eligible

officers in the feeder grade(s) restrict the field of choice as under, with reference to the number of clear regular vacancies proposed to be filled in the year. No. of vacancies No. of officers to be considered
----- (1) (2)

----- 1 5 2 8 3 10 4 or more

three times the no. of vacancies. (b) Where, however, the number of eligible officers in the feeder grade(s) is less than the number in Col. (2) above, all the officers so eligible should be considered. (c) Where adequate number of SC/ST candidates are not available within the normal field of choice as above, the field of choice may be extended to 5 times the number of vacancies and the SC/ST candidates (and not any other) coming within the extended field of choice, should also be considered against the vacancies reserved for them. Officers belonging to SC/ST selected for promotion against vacancies reserved for them from out of the extended field of choice under sub para (c) above, would, however be placed on bloc below all the other officers selected from within the normal field of choice. 4. Preparation of year-wise planets by Dpc where they have not met for a number of years - (a) Instructions already exist that lists should meet at regular annual intervals for the preparation of selected lists and where no such meeting is held in any year, the appointing Authority should record a certificate that there were no vacancies to be filled during the year. Administrative Ministries should obtain periodical information/certificates on (lie regular holding of Dpcs (b) Where, however, for reasons beyond control, Dpc could not be held in any year(s) even though the vacancies arise during that year (or years), the first Dpc that meets thereafter should follow the follow- ing procedure: (i) [determine the actual number of regular vacancies that arose in each of the previous years immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately .(ii) Consider in respect of each of lh years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards. (iii) Prepare a "select list" for each of the years starting with tile earliest year onwards. (iv) Prepare a consolidated "select list" by placing the select list of tile earlier year above (lie one for the next and so on. Illustration : Dpc meets in 1990. Number of vacancies in the year 1978 and 1979 were 8 and 7 respectively. It is proposed to fill also 9 more vacancies during 1980. There are 100 eligible officers. Panel for 1978 No. of vacancies8 Field of choice24 Take officers1 to 24 Dpc classified SI. No. 20 as" outstanding "and SI. Nos.7, and 15 "not fit" and rest "Very Good" Panel list will he SI. No. 20, 1,2, 3, 4, 5, 6, 8. Panel for 1979 No. of vacancies 7, field of choice 21. This Comprises officers No.7, 9 to 19, 21 to 29 (total21). The Dpc classified No.7 as "not yet fit" and rest "Very Good." Panel will comprise of SI. No.s 9 to 15. Panel for 1980 No. of vacancies 9 - Field of choice 27. This will comprise No.s 7, 16 to 19,21 to 42. No. 40 is graded "Very Good" and the rest as "Good". Consolidated Select List - SI. No.s 20, 1 to 6,8, 9 to 15, 40, 7, 16 to19,21 to 23." The record bears testimony to the fact that these instructions were followed in letter and spirit.

(20) It was contended on behalf of the petitioners that the Office Memorandum referred to above deserved to be ignored as in effect it made unequals more than equal and was highly discriminatory to the petitioners who belonged to a class distinct from the respondents. However, I find myself unable to subscribe to this view. The promotions made are not contrary to any Rule or Administrative instruction governing the parties. The Office-Memorandum lays down water-tight classification of persons to be taken within the consideration zone. Instead of treating unequals as equals its vital feature is that it advances justice and the bare reading of it would go to show that it spells out clearly and loudly the intelligent ground for the approach. One must never forget that the question of a proper promotion policy depends upon various conflicting factors and I do feel that the policy of limiting the choice to only such officers who fall within the consideration zone of a particular year takes note of all the aspects and is pre-eminent just and stands justified on grounds enumerated in the Memorandum which appear to me to be rational. Even the senior-most must possess the prescribed qualifications tailing which he must give way to his juniors who are eligible. Seniority is relevant only among persons eligible. It is no substitute for eligibility.

(21) It may also be noticed that what is provided in the Office Memorandum is universal in its application. It does not create classes nor demolishes any. Anyhow, the Memorandum does not totally deprive (the direct recruits of their right to be considered for promotion, it only postpones it to a point of time when they fall within the zone of consideration and in this it makes no distinction between a direct recruit and a promotee.

(22) For what has been recorded above, I find no fault with the action taken by respondents 1 and 2.

(23) There is, however, yet another reason which impels me to throw out the case of the petitioners as far as it relates first to the promotion of respondents 3 to 15 in the year 1980 and then to the promotion of Respondents 16 to 24 towards the far end of 1983. The writ petition was filed in April 1989, that is, about nine years after the first promotions and nearly six years after the second. The petitioners had two opportunities to approach the court. Once in 1980 when respondents 3 to 15 were promoted and secondly in the year 1983 which saw the promotion of respondents 16 to 24. They, however, slept over the matter. The Supreme Court has held in *P.S. Sadasivaswamy Vs. State of Tamil Nadu*, that a person aggrieved by an order promoting a junior over his head should approach the court within six months or at the most a year of such promotion and the High Court can refuse to exercise its extraordinary powers under Article 226 in the case of persons who do not approach expeditiously for relief and put forward stale claim and try to unsettle settled matters. The dictum applies fully to the above noted two promotions which are under challenge and since no cogent Explanation has been given for the delay I do refuse to exercise extraordinary powers u/s 226 with regard to the said two promotions as, in effect, the

petitioners want to "unscramble a scrambled egg".

(24) I may, however, hasten to add that the learned counsel for the petitioners had referred to P.D. Aggarwal and Others Vs. State of U.P. and Others, in support of his contention that delay should not be treated as fatal. I fail to see how the judgment helps him. In the said case delay was on account of long drawn litigations. There was thus some Explanation .

(25) True, the rule which says that the court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion and surely also there is no inviolable rule that whenever there is delay, the court must necessarily refuse to entertain the petition. Each case must depend on its own facts for, as pointed out in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, "there is no lower limit and there is no upper limit". However, the principle on which the court proceeds in refusing relief to the petitioner on ground of laches or delay is, as pointed out in Shri Satya Brata Ghose Vs. Mr. Arif Ali, District Magistrate, Sibasagar, Jorhat and Others, , that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable Explanation for the delay. This very principle was stated by Sikri J. (as he then was) in Rabindranath Bose and Others Vs. The Union of India (UOI) and Others, in the following terms : "It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years." The same principle flowed from the pen of Hidayatullah, C.J. in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , as follows "The party claiming Fundamental Rights must move the court before other rights come into existence .The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the court." And, in Gian Singh Mann Vs. High Court of Punjab and Haryana and Another, , the Apex Court made it clear that the mere fact that the petitioner had made some representations can hardly justify overlooking delay.

(26) This leads me to May 6, 1988 when Respondents 3 to 13 and 15 were promoted to the post of Assistant Commandant. Admittedly in case of these promotions also the petitioners were not considered.

(27) Before I proceed to deal with the arguments advanced, a few facts need to be noticed After the promotion of respondents 16 to 24 as Company Commanders, yet another Departmental Promotion Committee was held on December 30, 1983 by which time number of vacancies of Company Commanders had risen to 27. Out of these 27 vacancies 19 were allocated to the direct recruits and remaining 8 were left to be filled by promotion from Subedars, Inspectors. Thus, in February, 1984 on that basis the petitioners were promoted to the post of Company Commander on ad hoc basis. However, later their promotion was regularised from the date of their initial ad hoc appointment after

obtaining the one-time relaxation of Rule 105 (4) (iii) (a) of Central Reserve Police Force Rules. What is further required to be noticed is that respondents 16 to 24 and the 19 persons promoted in 1984 were also treated to have been promoted on ad hoc basis, pending relaxation of Rule 105 (4) (iii) (a) of Central Reserve police force Rules, 1955. Respondents 1 and 2 claim that while fixing the seniority of respondents 16 to 24 and the 19 officers promoted thereafter vis-a-vis respondents 3 to 15 who had been promoted as Company Commanders in the year 1980, the petitioners were given seniority "at appropriate place irrespective of the fact that they were promoted on ad hoc basis as Company Commanders", and that as on circulation of the seniority list first on February 14, 1986 and then on March 25, 1987 no representation was received from any of the petitioners, Therefore, the same was treated as final. As per respondents 1 and 2 since respondents 3 to 15 had been promoted as Company Commanders earlier than the petitioners, Therefore, they ranked senior to the petitioners and it was on account of this seniority that promotions to the next rank of Assistant Commandant were made.

(28) During arguments the promotion on May 6, 1988 of respondents 3 to 13 and 15 and non-consideration of the petitioners for promotion had been sought to be justified on the ground that at the relevant time the petitioners were not even qualified to be considered for promotion to the post of Assistant Commandant and in support my attention was drawn to sub clause (6) in sub-rule (3-A) in clause (iii) of sub Rule 105 of the Central Reserve Police Force Rules, 1955 as substituted with effect from April 6, 1985 by Central Reserve Police Force (2nd Amendment) Rule, 1985 and which speaks of the requirement of 5 years of gazetted service of certain categories of officers for being considered for promotion to the post of Assistant Commandant. The so substituted sub-clause (6) runs as under:

"(3-A)The posts of Assistant Commandants, shall be filled (i) (ii) (iii) by promotion: (a) (b) from amongst Company Commanders or Quarter Masters or Assistant Principals Central Training College of the Central Reserve Police Force who have completed 5 years gazetted service in the Force."

(29) It was contended on behalf of the Respondents that since on May 6, 1988 when Respondents 3 to 13 and 15 were considered for and promoted to the post of Assistant Commandant (lie petitioners had not completed 5 years of gazetted service

"AS Company Commanders", Therefore, they were not eligible to be considered for promotion to the said post. It may be recalled that the petitioners were promoted as Company Commanders on February 20, 1984. Undoubtedly, as on May 6, 1988 they had not yet completed five years of service as "Company Commanders". Were they, Therefore, not eligible? This is the question and the answer lies hidden within the words "who have completed 5 years gazetted service in the Force."

(30) The learned counsel for Respondents 1 and 2 submitted that the words "who have completed 5 years gazetted service in the Force" are restricted to gazetted service put in conjointly in all the three posts referred to or either in one or two of those posts. In other words, the argument was that the period of gazetted service though rendered in the Force would not be counted if it was on a post other than the post of Company Commander, Quarter Masters or Assistant Principal, Central Training Colleges of the Central Reserve Police Force. I feel no hesitation in rejecting it. The Rule does not say so either directly or by implication. It is wide, enough and lays down only two restrictions. First, completion of 5 years gazetted service and secondly completion of such service "in the Force". What Respondents 1 and 2 are seeking to do is to scuttle the words "in the Force" and to confine them to only the three posts. Had such been the intention, the words, "in the Force" which are wide enough to include all gazetted posts in the Indo-Tibetan Border Police, would have given place to some other words, like "on those or either of those posts".

(31) It may be recalled that the petitioners were directly recruited to the post of Assistant Company Commanders on June 12, 1980. Those were admittedly gazetted posts and "in the Force" too. Thus, on May 6, 1988 when Respondents 3 to 15 were considered for promotion, the petitioners had already put in nearly 8 years of gazetted service in the Force. Their claim for being considered for promotion to the post of Assistant Commandant could not thus be ignored.

(32) What should then be done?

(33) Since the petitioners had rendered qualifying period of gazetted service in the Force, they ought to have been considered for promotion to the post of Assistant Commandant. As this was not done. Respondents 1 and 2 are directed to consider them for promotion on their record as on the date when they ought to have been considered and if selected their position will be adjusted in the seniority list.

(34) No order is made as to costs