

(2011) 09 DEL CK 0028
In the Delhi High Court
Case No : Writ Petition (C) 1385 of 1996

Ravi Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-09-2011

Acts Referred:

Border Security Force Act, 1968 — Section 141
Central Reserve Police Force Act, 1949 — Section 18
Central Reserve Police Force Rules, 1955 — Rule 105, 105(4), 8
Constitution of India, 1950 — Article 32

Citation : (2011) 09 DEL CK 0028

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : G.D. Gupta, S.R. Kalkal and Vandana Kumar, for the Appellant; Jyoti Singh, Sr Advocate and Saroj Bidawat, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—In exercise of the power conferred by the Central Reserve Police Force Act, 1949 the Central Government constituted Central Police Reserve Force (hereinafter referred to as the "CRPF"). By virtue of the provisions of Section 18 of the Central Police Reserve Force Act 1949, the Central Government made "Central Reserve Police Force Rules" 1955, (hereinafter referred to as the "CRPF Rules").

2. In the year 1965 the Central Government constituted Border Security Force (hereinafter referred to as "BSF") to guard the borders of the country during peace time. At the time of its constitution BSF was governed by CRPF Rules, and for purpose of which, Chapter XV titled "Special Provisions relating to Border Security Force" was inserted in the CRPF Rules. On 02.09.1968 the Parliament enacted the Border Security Force Act 1968, to provide for the constitution and Regulation of an Armed Force of the Union for ensuring the safety of the borders of India and the matters connected therewith. In exercise of the power conferred by Section 141 of the BSF Act, the Central Government promulgated the Border

Security Force Rules 1969, governing the conditions of service of the members of BSF.

3. In the wake of the Chinese aggression in the year 1962, in order to meet the shortage of Commissioned Officers in the Indian Army, the Government of India enrolled Emergency Commissioned Officers in the Indian Army for a limited duration and in the year 1965 enrolled Short Service Commissioned Officers for a limited duration. The initial period of such Commission was 5 years but it was extendable for another 5 years depending on the requirement/suitability of the officer and the requirement of the Indian Army.

4. Rule 105 of the CRPF Rules deal with appointment and promotion of officers in CRPF and needless to state before the BSF Act was promulgated and Rules thereunder were notified, upon initial constitution of BSF it was said Rule which governed appointment and promotion in BSF as well. Till the year 1966, when Rule 105 was amended, inter-alia, with the addition of Clause (iv-a) to Sub-rule (4), the only source of recruitment of superior officers in CRPF and thus BSF was the Indian Army and the Indian Police Force, including the retired or released army officers and retired police officers, besides direct recruitment from amongst the qualified candidates. As a result of the amendment to the Rule, the Emergency Commissioned Officers (hereinafter referred to as "ECOs") and the Short Service Commissioned Officers (hereinafter referred to as "SSCOs") of the army, who were commissioned on or after 1st November 1962, and were released at any time thereafter, became eligible for recruitment in CRPF as also BSF by virtue of newly inserted Clause (iv-a).

5. Rule 8(b)(i) of the CRPF Rules governs the seniority of the superior officers in the Force; and the same reads as under:

(b) The inter se seniority of superior officers shall be determined as under:

(i) An Army Officer shall maintain his seniority as between Army Officers, within a particular rank. Similarly, an Indian Police Service Officer shall maintain his seniority between himself and other Indian Police Service Officers. For purpose of inter se seniority between non-Army and Army Officers of equivalent rank, substantive incumbent shall be senior to officiating or temporary officers, their inter se seniority depending on the dates of their continued unbroken service in that rank. The inter se seniority of officiating or temporary officers shall be determined by their continuous length of service in that rank. An Army Officer re-employed in the Central Reserve Police Force shall maintain his Army seniority between Army Officers within a particular rank.

6. The Petitioner who was serving as an ECO in the Army was appointed to the post of Deputy Superintendent of Police in CRPF in the year 1970 after his release from the Army in the year 1964. It be highlighted that his induction in CRPF was with a break in service after being discharged from the Army.

7. On 05.07.1972 the Ministry of Home Affairs, Government of India, issued an

Office Order dealing with the subject of fixation of seniority of ECOs appointed in the Para-Military Force, which office order reads as under:

I am directed to say that the question of fixation seniority of Ex-ECOs appointed as Dy. S.P./Coy Commdrs in the B.S.F., the CRP Forces, the ITBP and the Assam Rifles has been engaging the attention of the Government of India for some time past. It has now been decided that for the purposes of fixation of seniority Ex-ECOs appointed in the above-mentioned forces will be divided into the following categories:

(i) ECOs who were considered suitable at the first opportunity i.e. in the year of release from the Army viz. for ECI and EC II courses in 1967, EC III to EC v. courses in 1968, EC VII to EC IX courses in 1969 and EC X to EC XII courses in 1970.

(ii) ECOs who were not considered suitable at the first opportunity even though they offered their services. They were, however, subsequently selected by the special Selection Board.

(iii) ECOs who did not apply alongwith officers for appointment to the forces in the year of their release from the Army but did so later and were selected.

The following principles of seniority are laid down for guidance and necessary action:

(a) In the case of officers belonging to category (i) above, the inter seniority will be the same as determined by the Army authorities vide Army list i.e. the date of commissioning in the Army (and not from the date of joining the pre-commissioning training courses). However, in the case of ECOs who were relegated to subsequent courses, the crucial date shall be the official date of pre-commission training of that course to which the officer concerned was relegated.

Suppose 5 EC Officers A, B, C, D & E belonging to ECI course were appointed in the BSF in the same year in which they were released from the Army. The official date on which the pre-commissioning training commenced was 1.1.1963. However, for one reason or other, these officers joined the course on different dates as indicated below:

A -1.1.1963

B -2.1.1963

C -3.1.1963

D -4.1.1963

E -5.1.1963

At the time of commissioning, suppose these officers were given seniority by the Army Headquarters on the basis of merit in the order of C,D,A,E & B. The seniority of these officers on appointment in BSF etc. will be maintained in the

same order but all of them assigned same seniority from the official date of commencement of pre-commission training viz. 1.1.1963 as under:-

C-

D-

A -1.1.1963

E-

B-

Further suppose B was relegated to the next training course say EC II the training for which commenced on 1.4.1963. The Army seniority of B will be maintained alongwith other officers of EC II and he will be assigned the common seniority as above with effect from 1.4.1963.

(b) In the case of officers belonging to category (ii) above, the seniority will be reckoned from the date of their appointment in the force. No. benefit of ECO service will be given to them for the purpose of seniority.

(c) As for the officers belonging to category (iii) above, their seniority will be fixed by giving due weightage of EC service in the Army. For example, if an officer of this category with 4 years of EC service was appointed in the force on 1.1.1971 his seniority will be fixed from 1.1.1967 (The entire EC service including days will count for the purpose).

These orders will supersede all previous orders issued on the subject by the Government of India from time to time.

8. In June 1974 the Directorate General CRPF issued a memorandum circulating a provisional gradation list of the officers working on the post of Deputy Superintendent of Police in CRPF, which gradation list was prepared on the basis of the principles laid down in the Office Order dated 05.07.1972.

9. Since the Office Order dated 05.07.1972 affected the seniority of ECOs who fell in category (ii) prescribed therein, inasmuch as the said order provided that the service rendered by such ECOs in the Army would not be reckoned for the purposes of fixation of their seniority in CRPF/BSF, some ECOs assailed the validity of the said order, together with the gradation list circulated in June 1974, by filing a writ petition bearing No. 44/1975 titled "U.B.S. Teotia and Ors. v. Union of India and Ors." before this Court. They argued that inasmuch as the field pertaining to seniority was occupied by Rule 8 of the CRPF Rules, No. office order could be issued effect whereof would be to try and occupy an occupied field.

10. Vide judgment and order dated 02.09.1985, allowing the writ petition filed, it was held by a Division Bench of this Court that Rule 8 of the CRPF Rules envisages that the Army Officers, including ECOs, working in CRPF/BSF, after their release from the Army, would be entitled to the benefit of the service rendered by them in the Army and thus the Office Order dated 05.07.1972,

which denies the benefit of service rendered by in the Army to some ECOs re-engaged in CRPF after release from the Army is invalid and hence quashed the same. The contention urged by the writ Petitioners therein was accepted. It was directed that seniority be fixed as per Rule 8 (b) of the CRPF Rules after reckoning service rendered in the Army.

11. The decision of the Division Bench had an adverse impact on the seniority of the directly recruited persons to the post of Deputy Superintendent of Police and thus they as also the Union of India preferred Petitions for Special Leave to Appeal before the Supreme Court against the decision of the Division Bench. By a short and a cryptic order dated 21.1.1996, the Supreme Court did not grant Leave to Appeal and dismissed the Petitions seeking Special Leave to Appeal.

12. Complying with the decision of the Division Bench of this Court, on 26.02.1986 the Directorate General CRPF issued an office order circulating the provisional gradation list of officers working on the post of Deputy Superintendent of Police in CRPF, which list included the name of the Petitioner. The relevant portion of the said Office Order reads as under:

Subject: -GRADATION LIST of GOs in CRPF

A provisional gradation list was circulated during June, 1974 vide our letter No. F.7/24/74-Ests(CRPF). This Gradation List was challenged in the Delhi High Court by a batch of EC Officers who were denied benefit of EC Service for seniority in Writ Petition No. 44 of 1975. This case was finally decided by Delhi High Court on 2.9.1985 giving benefit of EC service to all the EC/SSC appointed in the Force as Dy SP under the provision of Rule 105(4) (iv-a) of CRPF Rules, 1955 for seniority under Rule 8(b)(i) of CRPF Rules treating them as Army Officers. The SLP filed by the Government as well as directly appointed officers was dismissed by the Supreme Court on 21.1.86.

The Provisional Gradation List of June, 1974 has accordingly been revised and brought upto date keeping in view the provisions of Rule 8 of CRPF rules and directions of the judgment of Delhi High Court and Supreme Court. The criteria adopted in revision of the Gradation List broadly as explained below:

i) The Ex-ECOs/SSCOs who on release from army in a particular year and also joined CRPF as DySP in the same year of release through the same selection board have been assigned seniority on the basis of date of commission in order of Army seniority.

ii) The Ex-ECOs/SSCOs who on release from army in a particular year, joined CRPF as DySP in subsequent year (s), have been assigned seniority as per their Army seniority within the batch with whom they were selected for appointment in CRPF.

(Emphasis Supplied)

13. As a result of the attempt to implement the judgment of this Court in

Teotia's case (supra), 37 officers who were directly recruited in CRPF and holding the post of Commandant were required to be reverted to the post of Assistant Commandant. It be noted here that in the interregnum the posts of Deputy Superintendent of Police and Superintendent of Police were re-designated with the nomenclature "Commandant". Legal proceedings initiated by the said 37 officers reach the Supreme Court in the form of CA No. 1909 10/89 titled UOI and Ors. v. N.S. Shekhawat and Ors., which was disposed of by the Supreme Court by a consent order dated 14.3.1989, relevant portion whereof reads as under:

7. We have considered the respective terms of settlement as put forward by the parties including the said two alternative suggestions. CRPF is a sensitive police force and there should not be any dispute and differences among the members of such force. It is the duty of the government to maintain peace and harmony in the Force by trying to resolve any dispute among the members of the Force in public interest.

8. After considering the facts and circumstances of the case including the impugned judgment of the High Court and the terms of settlement, as agreed to by the direct recruits and the ECOs, and also the alternative suggestions of the Union of India, we are of the view that the terms of settlement, as agreed to by the direct recruits and the ECOs, appear to be fair and reasonable and do not involve any additional financial liability of the Union of India for placing the 35 ECOs in the posts of Commandants (Selection Grade) with effect from the date they were promoted as Commandants (Non-Selection Grade), as provided in the agreed terms of settlement. On an examination of the two alternative suggestions made on behalf of the Union of India, we are of the view that they do not redress the grievances of the ECOs. In our opinion, while it may be desirable that the present position of the direct recruits should be protected, the giving of such protection should not be to the prejudice of the ECOs.

9. In the circumstances, in order to establish peace and amity between the contending parties and for ends of justice, we direct that in modification of the impugned judgment of the High Court, the appeals be disposed of in accordance with the terms of settlement, as agreed to by the direct recruits and the ECOs, as follows:

(1) The Union of India shall withdraw the order viz. Order No. F. 2/10/86-Estt (CRPF) PP IV dated 18-6-1986 with immediate effect. The order providing for upgradation of 88 posts of Assistant Commandant (second in-command) to the post of Commandants (Non-Selection Grade) shall thus stand rescinded. The DPC of 1986 and all consequential orders regarding promotion against upgraded posts shall also stand revoked.

(2) To protect the 37 direct recruits who were holding posts of Commandants, the Union of India shall create 37 supernumerary posts of Commandants (22 as Commandant Selection Grade and 15 as Commandant Non-Selection Grade),

which shall be held by the 37 direct recruits who were holding the said posts on the date of judgment dated 2-9-1985 passed by the High Court of Delhi.

(3) The vacancies of 13 posts occurring in the year 1986 of Commandant (Non-Selection Grade) shall be filled afresh by means of a DPC. The DPC shall make promotions in accordance with rules and shall operate upon the revised seniority list prepared by the department pursuant to the judgment of the High Court dated 2-9-1985 affirmed by this Court on 21-11-1986.

(4) The subsequent vacancies in the years 1987 and 1988 for the posts of Commandants (Non-Selection Grade) shall be filled in accordance with rules and the promotions shall be made through DPC in accordance with law/rules.

(5) The Union of India shall review the DPC of 1985 for the posts of Commandants and such review shall be completed as early as possible.

(6) Further, 35 ECOs who have already been promoted as Commandant (Non-Selection Grade) till today will hold the posts of Commandant (Selection Grade), from the date they were promoted as Commandant (Non-Selection Grade) with the condition that they will not be paid any salary for the post of Commandant (Selection Grade) till their turn comes for promotion to Commandant (Selection Grade) against regular vacancies, as per the seniority list.

14. Another problem arose. Another set of direct recruits appointed as Deputy Superintendent of Police in the year 1968 got adversely affected when the consent order in N.S. Shekhawat's case (supra) was sought to be implemented and they directly approached the Supreme Court under Article 32 of the Constitution of India; the writ petition of these officers being W.P.(C) No. 1177/1989 titled "R.C. Sahi and Ors. v. UOI and Ors." was disposed of on 18th July 1995. The order reads as under:

This is a dispute regarding seniority and consequent promotion between the direct recruits from open market to the Central Reserve Police Force (C.R.P.F.) and those appointed from amongst Emergency Commissioned Officers (E.C.O.) after release from Army. The Petitioners before us are the direct recruits. They were appointed as Deputy Superintendent of Police during the year 1968. Respondents 3-5 are E.C.Os who were appointed during the period 1969/1970.

The Petitioners state that they were promoted to the rank of Assistant Commandant in the year 1975, Second-in-Command in 1983 and Commandant in the year 1986.

Earlier there are similar dispute between the direct recruits and the E.C.Os in Union of India and Ors. v. N.S.Sekhawat and Ors. - C.A. No. 1909-10/89, which was decided by this Court on March 14, 1989 on the basis of settlement between the parties. The Petitioners were not a party in the said appeal.

As a result of the judgment of this Court in Sekhawat's case, the Respondents were given the benefit of their Army service towards fixation of their seniority in

the cadre of Deputy Superintendent of Police. Having gained enhanced seniority, they were considered and promoted to the cadre of Assistant Commandants, Second-in-Commands, Commandants (Non-selection grade) and Commandants (Selection grade). As a consequence the Petitioners were reverted by two steps to the cadre of Assistant Commandants. The challenge in this writ petition is to the order of reversion.

We have heard learned Counsel for the parties. Some of the officers on both sides are also present in Court. This Court has observed from time to time that C.R.P.F. being a sensitive service, the members of the service must be dealt with in just and fair manner. This was the consideration which weighed with this Court in Sekhawat's case while disposing of the appeal on the basis of settlement between the parties. We are further informed that as a consequence of Sekhawat's case, the direct recruits of the batches from 1968 to 1971 are likely to be affected. We direct the Government of India not to revert any of the direct recruits who are likely to be affected by Sekhawat's judgment. The reversion order already issued shall be deemed to have been withdrawn by the Government of India. The Government of India is further directed to create supernumerary posts to accommodate the Petitioners and other direct recruits belonging to 1968/1971 batches to the extent necessary. We make it clear that any further promotion amongst the two categories shall be made in accordance with law. If it is necessary to revise the seniority list, the Government of India shall do the same after hearing the officers concerned and in accordance with law. The Writ petition is disposed of. No. costs.

The application for impleadment is disposed of.

15. It is apparent that the issue was becoming messy. Required to be implemented, decision in Teotia's case (supra), was creating a huge problem. This problem was not only affecting CRPF but even BSF for the reason till BSF Rules were promulgated after BSF Act was enacted, seniority in BSF was governed by CRPF Rules. A set of officers working in BSF whose seniority was adversely affected when Teotia's judgment was sought to be implemented by BSF also litigated on the subject before the Supreme Court by way of W.P.(C) No. 146/1992 and the decision dated 19th January 1995 was pronounced, which is reported as Ravi Paul and Others Vs. Union of India (UOI) and Others,

16. Two petitions were decided in Ravi Paul's case (supra). The facts pertaining to the first batch of the Petitioners were that the Respondents Nos. 3 to 445 of said petition were ECOs who were absorbed/appointed as Assistant Commandants in BSF between the years 1966-1971 and their seniority in the BSF was fixed by taking into account the length of their service and training period in the Army. The Petitioners were the officers who were directly recruited as Assistant Commandants in the BSF between the years 1966-1967. The Petitioners filed a writ petition before this Court assailing the fixation of seniority of ECOs in BSF, which petition was dismissed vide judgment and order dated 09.09.1983. Aggrieved by the judgment of this Court, the Petitions for Special

Leave to Appeal were filed before the Supreme Court. In the second batch of petitions, the Petitioners therein were SSCOs, who after being released from the Army were appointed as Assistant Commandants in BSF. The benefit of the service rendered in the Army was denied to them while fixing the seniority of Assistant Commandants and these persons directly approached the Supreme Court by way of a writ petition.

17. While adjudicating the two petitions, two questions were formulated by the Supreme Court; namely, (i) was the absorption/appointment of the Petitioners as Assistant Commandants in BSF in the years 1974-1978 under Rule 113(3)(iv-a) of the CRPF Rules? and, (ii) whether the seniority of the Petitioners was governed by Rule 8 of the CRPF Rules?

18. With respect to the first question, it was held by the Court that the absorption/appointment of the SSCOs as Assistant Commandants in the BSF during the period 1974-1978 was not made under the provisions of Rule 113(3)(iv-a) of the CRPF Rules but was made the provisions of BSF Act and the executive order of the Government of India dated 16.01.1974. As regards the applicability of Rule 8(b) of the CRPF Rules to the Petitioners it was held by the Court that the conditions of service, including seniority of members of the BSF, is to be governed by the provisions of the rules made under the BSF Act and not by the CRPF Rules and, therefore, Rule 8(b) of the CRPF Rules which governs seniority of superior officers in CRPF ceased to have application to the BSF on the enactment of the BSF Act and thereafter the seniority is to be governed by the rules made under the BSF Act and till such rules are made it was open to the Central Government to regulate the seniority of the members of the BSF by executive orders. It was further held that even if it is assumed that Rule 8(b) of the CRPF Rules was applicable it cannot be said that the said Rule was applicable, there was scope for an executive instruction to be issued in areas where the Rule was silent and thus the decision of this Court in Teotia's case was overruled as per which ECOs and SSCOs released from the Army and re-deployed in CRPF were to retain his seniority as in the Army. The relevant portion of the decision of the Supreme Court reads as under:

20. Even if we proceed on the basis that Rule 8(b) of the CRPF Rules was applicable to the Petitioners, we cannot say that the said Rule enables the Petitioners to count their service in the Army as SSCOs for the purpose of seniority in the BSF. The provisions governing seniority of superior officers are contained in Clause (b) of Rule 8 of the CRPF Rules and the relevant provision is that contained in Sub-clause (i) which was as follows:

....

21. The said provision is a composite provision governing seniority of various categories of officers. It can be split up into following components:

(1) An Army Officer shall maintain his seniority as between Army Officers within a particular rank.

(2) An Indian Police Service Officer shall maintain his seniority between himself and other Indian Police Service Officers.

(3) Between non-Army and Army Officers of equivalent rank inter se;

(a) substantive incumbent shall be senior to officiating or temporary officers.

(b) Amongst substantive incumbents inter se seniority shall depend on the dates of their continuous unbroken service in that rank.

(c) The inter se seniority of officiating or temporary officers shall be determined by their continuous length of service in that rank.

(4) Re-employed Army Officer shall maintain his Army seniority between Army Officers within a particular rank.

22. It would thus appear that Rule 8(b)(i) of the CRPF Rules only governs the seniority as between Army Officers inter se, Army Officers and re-employed Army Officers inter se, Indian Police Service Officers inter se, and non-Army and Army Officers of equivalent rank inter se. The expression "rank" in this rule means the rank in CRPF. There is nothing in Rule 8(b) to indicate that the earlier Army service of an Army Officer or a re-employed Army Officer is to be counted for the purpose of seniority in CRPF. Since Rule 8(b)(i) is silent in this regard executive instructions can be issued by the Central Government for the purpose of giving benefit of Army service to Army Officers or reemployed Army Officers. With that end in view the Government of India, in its letter dated 5-7-1972 addressed to the Director General BSF and CRPF as well as IG (ITBP) and Secretary (Home), Arunachal Pradesh Administration, has laid down certain principles for the purpose of fixation of seniority of ex-ECOs appointed in the BSF, CRPF, ITBP and Assam Rifles. The said principles were, however, applicable only to ex-ECOs who were absorbed/appointed in these forces during the period 1967 to 1970. In *U.B.S. Teotia v. Union of India* (supra) the Delhi High Court has construed Rule 8 of the CRPF Rules to mean that Army Officers who are re-employed or Army Officers who come on deputation, have to retain their original seniority and will get the benefit of their Army service. We are unable to read Rule 8 as having such an effect. In our opinion, the said rule when it says that "an Army Officer shall maintain his seniority as between Army Officers within a particular rank and an Army Officer re-employed in the Central Reserve Police Force shall maintain his seniority between Army Officers within a particular rank" only means that amongst Army Officers inter se and a re-employed Army Officer and an Army Officer inter se their seniority to a particular rank in the CRPF would be fixed on the basis of their seniority in the Army. We have not found any provision in Rule 8(b) which enables an Army Officer or a re-employed Army Officer to count his Army service for the purpose of seniority in the CRPF. We are, therefore, unable to uphold the decision of Delhi High Court in *U.B.S. Teotia v. Union of India* (supra). For the same reasons the observations in the order dated 21-1-1986 passed by this Court in special leave petitions arising out of Delhi High Court decision in *U.B.S. Teotia case* (supra) that "the Respondents are the Army

Officers within the meaning of Rule 8 of the CRPF Rules and they are entitled to add the length of their unbroken service as ECOs and SSCOs for the purpose of reckoning their seniority" cannot be regarded as based on a correct interpretation of Rule 8 of the CRPF Rules. The said observations must, therefore, be confined to that particular case only. (Emphasis Supplied)

19. It may be highlighted that a few other persons holding the post of the Commandant filed a petition bearing W.P.(C) No. 1177/1989 under Article 32 of the Constitution of India before the Supreme Court challenging the order passed by the department reverting them to the post of the Assistant Commandant, which petition was also disposed in the similar terms as N.S. Sekhawat's case (supra) vide order dated 18.07.1995. The relevant portion of the decision in W.P. (C) No. 1177/1989, R.C. Sahi and Ors. v. UOI and Ors. reads as under:

We have heard learned Counsel for the parties. Some of the officers on both sides are also present in Court. This Court has observed from time to time that C.R.P.F. being a sensitive service, the members of the service must be dealt with in just and fair manner. This was the consideration which weighed with this Court in Sekhawat's case while disposing of the appeal on the basis of settlement between the parties. We are further informed that as a consequence of Sekhawat's case, the direct recruits of the batches from 1968 to 1971 are likely to be affected. We direct the Government of India not to revert any of the direct recruits who are likely to be affected by Sekhawat's judgment. The reversion order already issued shall be deemed to have been withdrawn by the Government of India. The Government of India is further directed to create supernumerary posts to accommodate the Petitioners and other direct recruits belonging to 1968/1971 batches to the extent necessary. We make it clear that any further promotion from amongst the two categories shall be made in accordance with law. If it is necessary to revise the seniority list, the Government of India shall do the same after hearing the officers concerned and in accordance with law.... (Emphasis Supplied)

20. We may highlight that the decision in R.C. Sahi's case is dated 18.7.1995 and that in Ravi Paul's case is dated 19.1.1995.

21. Before the decision in R.C. Sahi's case and Ravi Paul's case could be digested by the department and seniorities re-worked out, ignoring that the issue of seniority was in a state of flux, the department i.e. CRPC processed entitlement for promotion to the rank of Commandant and a Departmental Promotion Committee was convened in September 1995 to consider the suitability of Commandants, which included the Petitioner, for promotion to the post of Additional Deputy Inspector General. Petitioner was found suitable for promotion as were others.

22. On 14.02.1996 the Petitioner received a communication from the department whereunder he was informed that in view of the judgment of the Supreme Court in Ravi Paul's case (supra) his initial seniority in CRPF needs to be re-fixed.

23. Aggrieved by the decision of the department to revise the gradation list of Deputy Superintendents of Police circulated in the year 1986 and re-fix the seniority which obviously had the effect of doing away with the select panel prepared and needless to state the decision in Ravi Paul's case (supra), staring the Petitioner in his face with the consequence of lowering his seniority, instant writ petition was filed in the year 1996 and unfortunately has remained pending in the record room of this Court for 15 years before it came to heard for final disposal before us on 25.7.2011.

24. In support of the petition, the learned senior counsel for the Petitioners firstly contended that the action of the department of revising the gradation list circulated in the year 1986 with regard to the ECOs appointed in the post of Deputy Superintendent of Police in the CRPF under the garb of the decision of Supreme Court in Ravi Paul's case (supra) is mala fide. Counsel submitted that in Ravi Paul's case (supra) it was held by the Supreme Court that there is nothing in Rule 8(b)(i) of the CRPF Rules which enables the ECOs appointed in the CRPF after their release from the Army to count the length of service rendered by them in the Army towards fixation of their seniority in the CRPF, which ratio had No. effect on the seniority of the ECOs appointed in the post of Deputy Superintendent of Police fixed in the gradation list circulated in the year 1986 as the said gradation list determined the inter-se seniority of the said ECOs in line with the provisions of Rule 8(b)(i) of the CRPF Rules. Counsel further submitted that in Ravi Paul's case (supra) it was submitted that Rule 8(b)(i) of the CRPF Rules governs the inter-se seniority of the ECOs appointed in the CRPF after their release from the Army and thus No. fault can be found with the gradation list circulated in the year 1986 which determined the inter-se seniority of the said ECOs in line with the provisions of Rule 8(b)(i) of the CRPF Rules. Counsel was at pains to urge that two officers Sh.G.S. Tiwani and Jai Prakash who were at serial No. 6 and 8 of the select panel prepared in September 1995 were promoted and Petitioner who was at serial No. 5 was denied the benefit of promotion.

25. Per contra, learned senior counsel for the Respondents justified the action of the department in revising the gradation list circulated in the year 1986 with regard to the ECOs appointed to the post of Deputy Superintendent of Police in the CRPF and re-fixation of the initial seniority of the Petitioner and other in CRPF.

26. Now, Rule 8(b)(i) of the CRPF Rule provides that "Army Officers shall maintain their seniority between the Army Officers in a particular rank". The Office Order dated 05.07.1972 divides the ECOs appointed in the CRPF after their release from the Army in three categories for the purpose of fixation of their seniority in the CRPF. The first category was of the ECOs who joined CRPF in the year of their release from the Army. The second category was of the ECOs who were not selected for appointment in CRPF at the first instance but were subsequently appointed in CRPF. The third category was of the ECOs who joined CRPF in the year subsequent to the year of their release from the Army.

27. In respect of the first category of the ECOs, it was prescribed that the inter-se seniority of the ECOs will be same as determined by the Army authorities vide Army list i.e. the date of commissioning in the Army. Suppose 3 ECOs A, B and C were commissioned in the Army on 01.01.1963 and assigned seniority in the Army in the order C, B and A. These 3 officers got released from the Army in the year 1967 and got appointed in the CRPF in the year 1967 itself. As per the office order dated 05.07.1972, these 3 ECOs will be assigned seniority in the CRPF from 01.01.1963 i.e. from the date of their commissioning in the Army in the order C, B and A. Be it noted here that the past service of the ECOs falling in the first category was required to be taken into account for determining their seniority in CRPF.

28. In respect of the second category of the ECOs, it was prescribed that the past service of the ECOs shall not be taken into account for determining their seniority in CRPF.

29. In respect of the third category of the ECOs, it was prescribed that their seniority will be fixed by giving due weightage to the past service rendered by them in the Army. Suppose an ECO A who had rendered 4 years service in the Army was appointed in the CRPF on 01.01.1971 his seniority was required to be fixed from 01.01.1967. Thus, the past service of the ECOs falling in the third category was also required to be taken into account for determining their seniority in CRPF.

30. As per the judgment of this Court in Teotia's case (supra) wherein it was held that in view of the provisions of Rule 8(b)(i) of CRPF Rules the benefit of past service rendered by them in the Army is to be given to all the ECOs who were appointed in CRPF after their release from the Army for the purpose of fixation of their seniority in CRPF which is in direct conflict with the mandate of the Office Order, which office order found to be contrary to law was opined to be in conformity with law in Ravi Paul's case.

31. Facts noted hereinabove would evidence that in the year 1986 the department circulated the gradation list of the Deputy Superintendent of Police in CRPF. For the ECOs who were appointed in CRPF in the same year in which they were released from the Army the criteria adopted for fixation of their inter-se seniority in CRPF was that they would be assign seniority on the basis of date of their commissioning in the Army in order of Army seniority. Suppose 3 ECOs A, B and C were commissioned in the Army on 01.01.1963 and were assigned seniority in the order C, B and A. These 3 officers were released from the Army in the year 1967 and got appointed in the CRPF in the year 1967 itself. As per the criteria laid down in the gradation list circulated in the year 1986 these 3 officers were to assigned seniority in the CRPF from 01.01.1963 i.e. the date of their commissioning in the Army in the order C, B and A. Thus, it is clear that the benefit of past service rendered by the ECOs who were appointed in the CRPF in the same year was granted to them while fixing their inter-se seniority in CRPF.

32. For the ECOs who were appointed in CRPF in a year subsequent to the year of their release from the Army, the criteria adopted for fixation of their inter-se seniority in CRPF was that they would be assigned seniority as per their Army seniority within the batch with whom they were selected for appointment in CRPF. Suppose 3 ECOs A, B and C were commissioned in the Army in the year 1963 and got released from the Army in the years 1968, 1969 and 1970 respectively. Whereas A and C joined CRPF in the year of their release from the Army i.e. years 1968 and 1970 respectively B joined CRPF in the year 1970 i.e. in a year subsequent to the year of his release from the Army, as per the criteria laid down in the gradation list circulated in the year 1986 these 3 officers were to assigned seniority in CRPF in the order: A, B and C. Thus, it is clear that the benefit of past service rendered by the ECOs who were appointed in CRPF in a year subsequent to the year in which they were released to the Army was granted to them while fixing their inter-se seniority in CRPF.

33. Since such inter-se fixation of the seniority of the ECOs adversely affected the seniority of the officers directly recruited in CRPF the directly recruited officers instituted various litigations in the Supreme Court which resulted in the judgments and orders being passed in N.S. Shekhawat,s case (supra), Ravi Paul's case (supra) and R.C. Sahi's case (supra). In Ravi Paul's case (supra), it was held by the Supreme Court that the view taken by this Court in Teotia's case (supra) that in view of the provisions of Rule 8(b)(i) of CRPF Rules the benefit of past service rendered by them in the Army is to be given to all the ECOs who were appointed in the CRPF after their release from the Army for the purpose of fixation of their seniority in the CRPF is an incorrect view.

34. Above being the position, the learned senior counsel for the Petitioner is wrong in contending that the judgment of the Supreme Court in Ravi Paul's case (supra) has No. effect on the seniority of the ECOs fixed in the gradation list circulated in the year 1986. The above factual narration clearly brings out that seniority of the ECOs fixed in the gradation list circulated in the year 1986 by taking into account the past service rendered by them in the Army, in view of the ratio of law laid down by this Court in Teotia's case (supra), which ratio was held to be incorrect by the Supreme Court in Ravi Paul's case (supra) was wrong. When the very basis of determination of the seniority of the ECOs in the gradation list circulated in the year 1986 was held to be incorrect by the Supreme Court in Ravi Paul's case (supra), the department was justified in revising the said gradation list to bring it line with the judgment of the Supreme Court in Ravi Paul's case (supra). Even in R.C. Sahi's case (supra), it was observed by the Supreme Court that the department may revise the seniority list of the ECOs in CRPF if it finds it necessary to do so, so as to protect the officers directly recruited in CRPF.

35. Nothing much turns on the argument that the officers junior to the Petitioner in the panel prepared by the Departmental Promotion Committee for promotion to the post of Additional Deputy Inspector General were promoted to the said

post, for it is a fortuitous circumstance that the officers junior to the Petitioner in the panel got promotion to the post of Additional Deputy Inspector General prior to the initiation of the revision of gradation list circulated in the year 1986 by the department. Why this happened is a mystery. But it is apparent that same was a wrong. Two wrongs cannot make a right and thus we cannot compel the department to commit another wrong. It is settled law that there cannot be equality in the negative.

36. In view of above discussion, we find No. merits in the writ petition which is dismissed but without any orders as to costs.