

(2011) 03 DEL CK 0014
In the Delhi High Court
Case No : Writ Petition (C) 15159 of 2006

R.K. Nimoria

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Central Reserve Police Force (Fourteenth Amendment) Rules, 1967 — Rule 123, 124, 136, 136(6)

Citation : (2011) 03 DEL CK 0014

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : H.K. Shekhar, for the Appellant; A.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—By way of instant writ petition, filed in the year 2006, the Petitioner claims that his right to be promoted to the rank of Inspector with effect from 12.12.1971 has been violated. He alleges that his batch mates who were of 1968 batch and junior to him as Sub-Inspectors were promoted on said date without his knowledge and behind his back. The Petitioner has also prayed for his further consequential promotions as Assistant Commandant, Deputy Commandant, Second in Command and Commandant with effect from 14.06.1976, 20.05.1986, 07.08.1984 and 23.10.1996 respectively.

2. It is obvious that said prayer is founded on his claim for promotion with effect from 12.12.1971. The further consequential prayer made by the Petitioner in the writ petition is for re-fixation of his pension accordingly. The Petitioner has also questioned the order No. 31/26/87-Pers/ BSF/2057, 058 dated 29.05.2001, by which his claim for ante-dating his promotions and hence re-fixation of pay has been rejected. The Petitioner has also asked for deletion of word notional from the orders dated 16.12.1998 and 24.03.1999 i.e. the orders under which he was promoted firstly as an Assistant Commandant with effect from 1.4.1987 and then as a Deputy Commandant with effect from 13.12.1993.

3. Briefly stated the relevant facts are that the Petitioner, a member of a Scheduled Caste was appointed as Sub-Inspector in Border Security Force with effect from 17.05.1968. After completing basic training conducted at BSF Academy, Takanpur from 17.05.1968 to 17.02.1969, he was posted to the 2nd Bn. BSF in Rajasthan and Gujarat Frontier till October 1970 and thereafter he was posted to the 103rd Bn. BSF, Hazari Bagh, Training Centre and School Hazari Bagh which was part of the Training Institution. He remained posted there till 18.10.1975. Up to 1974 he was not superseded by any person junior to him.

4. The Petitioner was considered for promotion as Inspector by DPC held in Srinagar Frontier on 09.10.1975. The said DPC recorded following remarks against the name of the Petitioner:

Fail In Records And In Aggregate Even After Relaxation As Scheduled Caste

5. Thus he was not empanelled by the said DPC. Some Sub-Inspectors got promotion as Subedar against existing vacancies in the Frontier where they were posted.

6. The Petitioner remained posted at the Training Institution from October 1970 till 1975 (103rd Bn. BSF) and was promoted as a Subedar thereafter with effect from 06.03.1978 against the vacancies existing in the Frontier/ Headquarter where he was posted at the time of DPC. As is stated by the Respondents in para 9 of their Counter Reply, in July 1971 the Petitioner was borne on the strength of the 103rd Bn. BSF which was part of Training Institution and as per record no DPC for promotion of Sub-Inspectors to the rank of Inspector was conducted by the Training Institution with effect from 1970 up till 18.10.1975.

7. Later, when it was decided by BSF for centralization of promotion/seniority of Sub-Inspectors and above, in order to extend same benefits to the Petitioner as given to S/Shri B.R. Yadav, P.C. Sharma & D.S. Ahluwalia and a few others, a review DPC was convened and seniority of 357 persons including the Petitioner in the rank of Inspector was revised vide order No. 17/49/94-Pers/BSF dated 09.11.1994. An attempt was made to hold review DP Cs to consider the Petitioner and others for promotion to the rank of Assistant Commandant and above. However, in view of the order dated 06.04.1995 passed by a High Court in TP No. 41-55/1995 filed by Direct Recruit Assistant Commandants, the recommendation of said review DPC in respect of the Petitioner and others could not be given effect.

8. A DPC held on 11/13.06.1986 considered the Petitioner for his promotion to the rank of Assistant Commandant in BSF and graded him good. Treating him in General Category, he was not promoted. On being revealed that the Petitioner hails from SC category, his case was reviewed by Review DPC and he was given notional promotion as Assistant Commandant with effect from 01.04.1987 i.e. from the date persons junior to him were promoted. By order No. C-17011/2001/CC/Pers/BSF dated 24.03.2005 the Petitioner was given arrear of pay and allowances for the said period. The amount of arrear was paid to him vide

cheque No. 248674 dated 19.05.2005. The arrear was an amount representing the difference of pay for the period from 01.04.1987 to 01.04.1988 i.e. `74,472/- (Rupees Seventy Four Thousand and Four Hundred Seventy Two).

9. As initially the Petitioner was promoted as Assistant Commandant with effect from 01.04.1988, thus he could not be considered for his promotion to the rank of Deputy Commandant by the DPC held in 1992. However, on revision of his seniority and antedating of date of his promotion as Assistant Commandant as 01.04.1987, a review DPC was held on 24.11.1992 and on the basis of the recommendation of said DPC, the Petitioner was promoted as Deputy Commandant with effect from 13.02.1993. Since he was promoted as Deputy Commandant on 13.02.1993, he could not be promoted as Second in Command in the year 1994, as he was not in the zone of consideration for such promotion. As a result he was not promoted as Commandant in the year 1996. The Petitioner retired in the rank of Deputy Commandant on 30.04.1998 and is being paid pension accordingly.

10. The Petitioner had filed WP(C) No. 7631/2001 before this Court seeking direction for his promotion to the rank of Inspector with effect from 2.1972, Assistant Commandant with effect from 14.06.1976, Deputy Commandant with effect from 06.07.1986, Second in Command with effect from 01.01.1994 and Commandant with effect from 25.10.1996 and for re-fixation of his pension in the rank of Commandant. The said writ petition was disposed of vide order dated 19.12.2005 directing a reasoned order to be passed pertaining to Petitioner's claim.

11. In compliance of the said order, Respondents have passed a detailed order dated 05.05.2006 which reads as under:

Whereas, IRLA No. 38331 R.K. Nimoria, Dy Commandant (since retired w.e.f. 30.04.1998), had filed a writ petition WP (C) No. 7639/2001 before the High Court of Delhi soliciting direction to promote him to the rank of Inspector w.e.f. 01.12.1972. Assistant Commandant w.e.f. 14.06.1976. Dy Commandant w.e.f. 06/1986. Second-in Commandant w.e.f. 01.01.1994 and Commandant w.e.f. 25.10.1996 and re-fix his pension in the rank of Commandant wherein MHA as impleaded first Respondent.

2. Whereas, the Hon"ble Court has decided the said writ petition vide judgment and order dated 19.12.2005. The operative portion of the judgment read as under:

It is not in dispute that the dispute involved in this writ petition is covered by the judgment titled as B.S. Narula and Ors. v. UOI CWP No. 1673/1992 rendered by Division Bench of this Court. Accordingly the representation made by the Petitioner dated 18.04.1987 shall be considered in accordance with the above judgment. In case the Petitioner is aggrieved by the disposal of the representation it is open to him to challenge the same in appropriate proceedings.

The writ petition stands disposed of.

3. Whereas, pursuant to the above judgment of the Hon''ble Court, the Petitioner had submitted a representation dated 16.01.2006 along with copy of the order dated 20.07.2005 passed by the Hon''ble High Court of Delhi in the case of re-examination of the case regarding relief sought for antedated promotion and copy of his representation dated 18.04.1987. The grievances submitted by the Petitioner in his representation dated 16.01.2006 are summarized as under:

That his batch mate namely Shri B.R. Yadav (since retired as Commandant) who was junior to Petitioner in enrolment as Platoon Commander (Direct Entry) got regular promotion up to the rank of Commandant whereas he (the Petitioner) retired as Dy Commandant on 30.04.1998. He was not given timely promotion to the rank of subedar due to which he was not given further promotions like his batch mates/ juniors. In the representation dated 18.04.1987, he has also mentioned that he was due for promotion to the rank of Assistant Commandant along with Subedar Office Seniority who were promoted as Assistant Commandant vide order dated 31.03.1987 being his seniority in the rank of Subedar w.e.f. 07.03.1978 but he was not considered for promotion. He has also stated that he has never communicated any adverse/ advisory remarks during the period from 1978 to 1987.

4. Whereas, the brief facts and history of the litigation commencing with WP No. 257/80 filed by Shri Babu Joseph before the Hon''ble High Court of Madhya Pradesh and culminating in WP No. 1673/1992 titled B.S. Narula and Ors. v. UOI and Ors. disposed of by the Hon''ble High Court of Delhi vide judgment dated 27.09.2002 are as under:

(a) that from 1967 to July 1975, promotions from Sub Inspectors to Subedars were made Frontier wise with reference to the vacancies existing in the concerned Frontiers, as per provisions of CRPF 14th Amendment Rules. 1967. As a result, some S Is posted in a Frontier got promotion as Subedar early, while other S Is of same seniority posted in other Frontier got their promotion late.

(b) that during 1980. Sh Babu Joseph filed a Writ Petition No. 257/80 before the Hon''ble High Court of Madhya Pradesh at Gwalior and claimed promotion as Subedar w.e.f. the date of promotion of his junior posted in other Frontiers. The said WP was decided in his favour. The Hon''ble Court had directed to consider his entitlement for promotion as Subedar after completion of 3 years service as Sub Inspector. The Deptt filed SLP against this order of Hon''ble High Court but it was dismissed. Accordingly, the judgment was implemented and Sh. Babu Joseph was given retrospective promotion from SI to Subedar and onward.

(c) that subsequently, some more officers filed W Ps No. 2840/90 (Puran Singh & Ors) before Gwalior High Court and claimed similar benefits as granted to Sh. Babu Joseph in the matter of promotion and seniority. This case was also decided in their favour.

(d) that Shri Babu Joseph and Puran Singh & six others were given promotion from SI to Subedar with reference to the Force level seniority of S Is and also given further promotions.

(e) that while implementing the judgment in the case of Shri Puran Singh and others, seniority of 357 personnel was revised in the rank of Subedar from various dates on the basis of Force level seniority.

(f) that meanwhile, the Hon"ble High Court of Madhya Pradesh at Gwalior had stayed further promotion of Sh. Babu Joseph vide order dated 04.11.1993 in the M.P No. 316/93 filed by Sh. M. Damodaram and Ors v. UOI and Ors.

(g) that in the meantime, some more promotee officers had filed Writ Petitions before various High Court of the Country claiming similar relief as granted to Sh. Babu Joseph. Some Direct Entry officers (Mohan Lal & Ors) filed Transfer Petition No. 41-55/95 before the Hon"ble Supreme Court praying for transfer of all the similar cases to one High Court. Accordingly all the cases were transferred to Delhi High Court by Hon"ble Supreme Court order dated 06.04.1995. While passing order dated 06.04.1995 Hon"ble Supreme Court had granted a stay order regarding seniority between Direct Entry and promotee officers. It was further directed by the Hon"ble Court that those Writ Petition which have been decided by the High Courts can be given effect to, subject to final outcome of writ petition being transferred to Delhi High Court. It means the seniority re-assigned to Sh. Babu Joseph and Puran Singh and Ors. in various ranks was also made subject to final outcome of the cases transferred to Delhi High Court.

(h) that upon transfer of cases to Delhi High Court, the cases were titled as Shri B.S. Narula and Ors v. UOI and Ors. The said case has since been decided finally by the Hon"ble High Court of Delhi vide judgment and order dated 27.09.2002.

5. Whereas, as per the said judgment of Hon"ble High Court of Delhi no law has been laid down in Babu Joseph's and Puran Singh's case and the promotion from SI to Subedar is to be made as per old rules which inter-alia provide promotion within the concerned Frontiers; and

6. Whereas, while complying with the judgment, the crucial point to be examined was to ensure that whether the said Petitioners had suffered supersession in promotion from SI to Subedar within their own Frontiers or otherwise. It was established that they had got promotion from SI to Subedar correctly in their Frontiers and also that the promotion given to Sh. Babu Joseph and Puran Singh and Ors. with reference to Force level seniority was incorrect. Accordingly, after holding review DP Cs with the permission of the MHA and subsequent approval of the MHA thereon, all the orders giving retrospective promotions to Sh. Babu Joseph and Sh. Puran Singh and Ors. in various ranks were cancelled and they were given promotion w.r.t. their original seniority in the rank of Subedar; and

7. Whereas, ultimate result of implementation of the judgment dated 27.09.2002 titled Shri B.S. Narula and Ors. v. UOI and Ors. was that the benefit of

retrospective promotion given in various ranks to eight others as a result of the judgments passed by the Hon"ble High Court of MP was cancelled; and

8. Whereas, the order No. 17/499/94-Pers/BSF dated 09.11.1994 vide which seniority of 357 personnel was revised in the rank of Subedars from various dates was also cancelled; and

9. Whereas, in the judgment dated 27.09.2002, the Hon"ble Court has held that promotion from Sub-Inspector to be made as per old rules and that no law has been laid down in the judgment of the Hon"ble Court of MP in MP No. 257/80 Babu Joseph v. UOI dated 08.02.1990 and 2840/90 Puran Singh and Ors dated 02.07.1992. The court has further directed the department to carry out re-fixation of seniority as per old rules.

10. Whereas, the Petitioner being a bonafide Scheduled Caste candidate, enrolled in BSF as Sub-Inspector (Direct Entry) on 17.05.1968 and after completion of basic training conducted at BSF Academy, Tekanpur w.e.f. 17.05.1968 to 17.02.1969 he was posted to 02 Bn BSF under Rajasthan and Gujarat Frontier till Oct 1970. Thereafter he was posted to 103 Bn BSF, Hazaribagh under Training Centre and School Hazaribagh. As per records, the DP Cs were held in Rajasthan and Gujarat Frontier during 1972 and onward. In the DPC held in the year 1972 in the R&G Frontier. Sub Inspectors of seniority up to 20.05.1986 only were considered for promotion to the rank of Subedar. Since the Petitioner was not borne on the strength of Rajasthan and Gujarat Frontier during 1972, he was not considered for promotion by the said DPC. The details of DP Cs held for the candidates of Training Institutions after posting of the Petitioner to 103 Bn BSF are given below:

Srl	No.	Date of DPC	Seniority of Sub-Insprs up to which considered/ empanelled	Remarks
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01	22/23 July 1971	06.04.1968	Not in the zone of consideration being date of appointment as on 17.05.1968.
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02	27 to 29 July 1972	17.01.1968	-do-
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03	30/31 Jan & 1 Feb 1974	27.04.1968	-do-
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04	15 Sept 1975	15.07.1968	Unfit
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Since the Petitioner was holding the rank of SI w.e.f. 17.05.1968, he was not eligible for consideration by the DP Cs held up to 1974 and hence, not considered by the said DP Cs. He was considered for empanelment by the DPC held on 15.09.1975 but graded as "Unfit" due to inadequate confidential record of service and

11. Whereas, the Petitioner was posted to 52 Bn BSF in Oct 1975 and further posted to 47 Bn BSF in 1976 under erstwhile North West Frontier (Now Srinagar Fronteir) and in the subsequent DPC held in the NW, Frontier during Oct 1975, the Petitioner was considered for empanelment for promotion to the rank of

Subedar but he could not secure the minimum prescribed marks based on his performance in the tests conducted for the purpose of empanelment for promotion to the rank of Subedar besides his confidential record of service and hence, he could not get promotion with reference to the said DPC of 1975 even after relaxation given in the case of Scheduled Caste candidate; and

12. Whereas, he was also considered by the subsequent DPC held in 1976 on 25.11.1976 and empanelled and promoted to the rank of Subedar w.e.f. 06.03.1978; and

13. Whereas, since the Petitioner was not in the zone of consideration for promotion from SI to Subedar during the years 1971 to 1974 being SI of 17.05.1968 and not empanelled by the DPC's for promotion during 1975 but empanelled / promoted as Subedar with reference to the next DPC held in 1976 w.e.f. 06.03.1978 and his said date of promotion as Subedar is correct as per the record; and

14. Whereas, as per the seniority of Subedar w.e.f. 06.03.1978 the Petitioner was promoted to the rank of Asstt. Commandant w.e.f. 01.04.1988 which was revised w.e.f. 01.04.1987 vide order dated 16.12.1992 and Dy Commandant w.e.f. 13.02.1993; and

15. Whereas, the Petitioner was assigned the revised seniority of Subedar w.e.f. 12.04.1973 vide FHQ BSF order No. 17/49/94-Pers/ BSF dated 09.11.1994, the order was subsequently treated as cancelled as a result of implication of the judgment dated 27.09.2002 titled B.S. Narula and Ors. v. UOI & Ors; and

16. Whereas, the revised seniority granted to the Petitioner in the rank of Subedar as on 12.04.1973 was on the basis of Force level (Central) Seniority and such Central Seniority is not contemplated in the old Recruitment Rules; and

17. Whereas, as per the old Rules i.e. 123 & 124 of CRPF (Fourteenth Amendment) Rules, the seniority of Sub-Inspectors was to be maintained state (Sector) wise and DP Cs for promotion of Sub-Inspectors to the rank of Subedar were to be held by the respective Frontiers, Training Institutions; and

18. Whereas, as per the old rules some Sub-Inspectors got promotion to the rank of Subedar early with reference to number of vacancies existing in that particular Frontier/Sector whereas the others including the Petitioner could not get promotion due to lack of vacancies in their Frontier/ Sectors. Since the Petitioner remained posted in Training Institution for the period from Oct 1970 to 1975 (103 Bn BSF), he got promotion as Subedar late as compared to his batch mates, Shri B.R. Yadav Commandant. Therefore, the grievances put forth by the Petitioner through his representation dated 18.04.1987 does not hold any ground and rejected being devoid of merits.

19. In view of the above, the case of the Petitioner has been carefully considered in the light of the decision of Hon"ble Delhi High Court in the case of B.S. Narula and Ors. and it is found that his seniority as Subedar is correctly fixed as per old

rules and he earned subsequently promotion on that basis. He was superseded in promotion to the rank of Subedar and Deputy Commandant due to inadequate confidential record of service. Therefore, the Petitioner is neither entitled to any benefit in the matter of promotion/seniority nor entitled to any additional service/financial benefits other than what has already been allowed to him as per rules.

20. That this order is issued in compliance of the order dated 19.12.2005 passed by the Hon"ble High Court of Delhi.

13. In the instant writ petition, the Petitioner saliently contended:

(i) His batch mates of 1968 were promoted as Inspector with effect from 12.12.1971, 1972, 1973 & 1974 while he was not so promoted. In para 30 of his petition he mention the names of S/Shri B.R. Yadav, D.S. Ahluwalia, P.C. Sharma, Hoshiyar Singh Dahiya, R.S. Negi, S.S. Chahar & R.K. Singh, who according to him were his batch mates and were promoted ahead of him.

(ii) No common seniority list of Sub-Inspector was maintained Centrally at Headquarters of BSF.

(iii) His service record was not placed before DPC held to consider him for his promotion as Assistant Commandant.

14. Contesting the aforementioned issues raised by the Petitioner, Respondents filed their counter reply. In para 3 of the reply, the Respondents have mentioned that S/Shri B.R. Yadav, P.C. Sharma, R.S. Negi, Hoshiyar Singh, R.P. Singh, N.K. Rampal, S.C. Pandey, C.B. Shashi, D.S. Ahluwalia and S.S. Chahar were appointed as Sub-Inspector in the year 1968 along with the Petitioner, but after passing out the basic training they were posted to different Frontier. Admittedly till July 1975 the promotion from Sub-Inspector (Platoon Commandant) to Subedar in BSF was regulated by CRPF (14th Amendment) Rule 1967. In terms of Rule 123 & 124 of said rules, the list of seniority of Sub-Inspectors was to be maintained State wise and the list of Inspectors was to be maintained Frontier wise. The said rules read as under:

123. List of Seniority of Sub-Inspectors:

The list of seniority of Sub-Inspectors shall be maintained state-wise. Explanation- For the purposes of this rule, the Border Security Force Academy, Tekanpur, Border Security Force Training Centre and School, Hazaribagh, Central School of Weapons and Tactics and Battalions in the Headquarters reserve shall be construed as a state.

124. List of seniority of Inspectors:

The list of seniority of Inspectors shall be maintained Frontier wise. Explanation- For the purposes of this rule, the Border Security Force Academy, Tekanpur, Border Security Force Training Centre and School, Hazaribagh, Central School of Weapons and Tactics, Indore, and Battalions in the Headquarters in the Headquarters reserve shall be construed as a Frontier.

15. Rule 136 of said rules regulate procedure of selection of Sub-Inspectors (Platoon Commandant) for list E and promotion from Sub-Inspector (Platoon Commandant) to Inspector (Company 2 I / CS). The said rule read as under:

136. Procedure of selection Sub-Inspectors (Platoon Commanders) for list "E" and promotion from Sub-Inspectors (Platoon Commanders) to Inspector (Company 2 I/ CS).

(1) Once every year the Commandant shall recommend to the Inspector General, through the Deputy Inspector General concerned, such Sub-Inspectors (Platoon Commanders) whom he considers suitable for promotion to the rank of Inspectors (Company 2 I/C).

(2) The Inspector General of the Frontier shall constitute a Board of consisting of himself and all the Deputy Inspector General under him and two Commandants of Battalions.

Provided that in respect of the Frontier referred to in the Explanation to Rule 124 the Board shall consist of the Director General, Border Security Force, the Commandants of the Border Security Force Academy, Tekanpur, Border Security Force Training Centre and School Hazaribagh, and Central School of Weapons and Tactics, Indore and two Commandants of the Battalions in the Headquarters Reserve and when the Director General Border Security Force is unable to preside over the Board, he shall nominate, an officer not below the rank of the Deputy Inspector General to preside.

(3) The Board shall consider the record of service of the nominees, their performance in the courses, and seniority, and test them on parade and interview them.

(4) The Board shall prepare a list of names of officers found fit for inclusion in list "E".

(5) The name will be arranged in the order of seniority

Provided that in case where the Board considers the performance merit and record of service of an officer of outstanding merit, the Board may place his name above his seniors. (6) A gradation list of Sub-Inspectors (Platoon Commanders) approved for inclusion in the list "E" shall be maintained at the Headquarters of the Border Security Force.

16. From the aforementioned rules, it is clear that the promotion from the post of Sub-Inspector to Inspector was made on Frontier/ State basis against the vacancies available in the respective Frontier/ States. Such position was approved by a Division Bench of this Court in order dated 27.09.2002, while deciding a batch of petitions including CWP 1673/1992 B.S. Narula and Ors. v. UOI etc etc. In the said petition it was held that the promotion of a person at times may depend upon fortuitous circumstances, but it is trite that nobody can having regard to specific rules of seniority contend that despite the fact that the

seniority list are required to be maintained state wise and Frontier wise, they can claim automatic promotion although no vacancy had arisen within a State or within a Frontier. The Relevant portion of the said judgment read as under:

Rule 136(6) itself is not a rule specifying as to how seniority is to be maintained. If such the intention of the Central Government. There was absolutely no reason as to why the provisions like Rules 122, 123 & 124 had to be made which specifically deal with the subject of seniority.

It is not correct to contend that Rule 123 and 124 are merely procedural in nature. The same, in our opinion, are substantive. Ex facie there appears to be a conflict but the same is not unexplainable. Sub rule (6) of Rule 136 speaks of a gradation list. Such gradation list is to be prepared only in respect of Sub Inspectors to be selected for list "E" and promotion from Sub Inspector to Inspector. Such gradation list is confirmed only to the persons appointed. The same, however, would not govern the seniority list which would vary from time to time having regard to the provision of accelerated promotion and supersession. Such a gradation list is required to be maintained for the purposes of inclusion in list "E". Promotion of a person at times may depend upon fortuitous circumstances but it is trite that nobody can, having regard to the specific rules of seniority, contend that despite the fact that seniority lists are required to be maintained State-wise and Frontier wise, they can claim automatic promotion although no vacancy had arisen within a State of within a frontier.

We, therefore, with utmost respect to the learned Judges, are of the opinion that Babu Joseph and Puran Singh cases" (supra) were decided in the facts of that case. In those judgments no law has been laid down nor any finding to the effect that the promotion would be automatic had been arrived at. Case of each person, therefore, has to be considered separately. It is held that by reason of the said judgment to the effect that irrespective of merit the writ Petitioners are entitled to automatic promotion the same would lead to a situation which is not contemplated by the statutory rules. By reason of such interpretation the seniority of the official in the rank of Assistant Commandant and Deputy Commandant and Second in Command would be required to be re-fixed. Such re-fixation of seniority would unsettle the settled position at the level of Assistant Commandant and Deputy Commandant which is wholly unwarranted.

17. As can be seen from the order dated 19.12.2005, passed by a Division Bench of this Court in WP(C) No. 7639/2001 which petition was filed by the Petitioner, it is not in dispute that the issue raised by the Petitioner has to be decided in light of the law laid down by the Division Bench of this Court in the writ petition filed by B.S. Narula and others.

18. Thus there is no substance in the contention of the Petitioner that the seniority of Sub-Inspectors in BSF till July 1975 should not have been maintained on State wise (Frontier wise basis). Similarly there is no substance in his contention that when his batch mates were promoted against the vacancies in

their own Frontiers/ states against the vacancies available there, he should also have been automatically promoted. The controversy has already been set at rest in the case of B.S. Narula and others. Petitioner himself agreed that his representation dated 18.04.1987 should have been considered in terms of judgment in the case of B.S. Narula. The Respondents have passed order dated 05.05.2006 deciding his said representation, following the judgment in the case of B.S. Narula. The Petitioner has not even challenged the said order dated 05.05.2006. We find no reason to take a view different from what is already taken in the case of B.S. Narula on the issue of maintenance of Frontier / state wise seniority and promotion of Sub-Inspectors from such seniority against the vacancy available in the Frontier. In para 9 of the Counter Reply, the Respondents have categorically stated that the Petitioner remained / posted in Training Institution from Oct 1970 to Oct 1975. In para 8 of the Counter reply the Respondents have stated that the Petitioner was not superseded by his juniors posted in the Training Institution up to 1974. Thus the claim of the Petitioner for his promotion as Inspector from 12.12.1971 is not substantiated and is not tenable. As is stated by Respondents in para 9 of the counter reply, S/ Shri B.R. Yadav and P.C. Sharma and Ors Sub-Inspectors who were promoted as Inspector w.e.f. 12.12.1971 were posted in other Frontiers and got promotion against the vacancies available in their Frontiers/ Sectors. As has been pronounced upon in the case of B.S. Narula, the promotion of said Sub-Inspectors against the vacancies available in their Frontier does not give any right to Petitioner for automatic promotion, even when there was no vacancy in his Frontier.

19. Since the claim of the Petitioner for promotion as Sub-Inspector from 12.12.1971 is not substantiated, his claim for consequential promotions as Deputy Commandant, 2IC, and Commandant on the basis of claim for promotion as Sub-Inspector from 12.12.1971 from 14.06.1976, 20.05.1986, 07.08.1994 & 23.10.1996 can also be not accepted. Since the Petitioner retired as Deputy Commandant, he is entitled to pension as Deputy Commandant only and not as Commandant. Regarding claim of arrear of salary by the Petitioner as Assistant Commandant with effect from 01.04.1987, it has been stated in para 34 of the Counter Reply that he was given arrears with effect from 01.04.1987 and a cheque No. 248674 dated 19.05.2005 for `74, 472/- was given to him. Regarding the claim of the Petitioner for deletion of the word notional from orders dated 16.12.1998 and 24.03.1999, it is suffice to say that once the Respondents have stated that the Petitioner was given arrear of salary from 01.04.1987 as Assistant Commandant, nothing turn adverse to applicant by use of the word notional in order dated 16.12.1998. Moreover in the writ petition filed in the year 2006, the challenge to use of certain words in the orders passed on 16.12.1998 and 24.03.1999 would be barred by laches.

20. However, we are not dismissing the present writ petition on laches alone, but in view of the facts and circumstances noted hereinabove particularly the fact that no person junior to the Petitioner in the training institution was promoted

above the Petitioner and we reiterate by way of conclusion that till the Rules of 1975 came into force no integrated seniority list of Sub-Inspectors was maintained. Lists were maintained Frontier/State wise and howsoever absurd it may sound that persons joining together would reach different destinations on the fortuitous circumstance of the Frontier/State they were deputed, the issue stands concluded against the Petitioner in B.S. Narula's case (supra).

21. Thus, expressing sympathy with the Petitioner we can do no more but to relieve him of costs while dismissing the writ petition.

22. The writ petition is dismissed.

23. No costs.