
(2016) 04 MAN CK 0005
In the Manipur High Court
Case No : Writ Petition (C) No. 322 of 2013

Shri S.A. Rojan Zimik Com. Dy Comdt.	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Citation : (2016) 3 GauLT 598 : (2016) 5 NEJ 218

Hon'ble Judges : Mr. N. Kotiswar Singh, J.

Bench : Single Bench

Advocate : Ms. H. Bisheshwari, Advocate, for the Appellant; Mr. S. Rupachandra, ASG, for the Respondent

Final Decision : Dismissed

Judgement

Mr. N. Kotiswar Singh, J.— Heard Ms. Bisheshwari Devi, learned counsel for the petitioner and also Mr. S. Rupachandra, learned ASG for the Union respondents.

2. In this petition, the petitioner who is presently serving as a Deputy Commandant in the Central Reserve Police Force (CRPF), has sought for re-fixing of seniority from the year of selection for appointment as Assistant Commandant by the Staff Selection Commission and not from the year of issuance of the appointment order in 2001 and completion of basic training course.

3. It is the case of the petitioner that the petitioner was selected for appointment to the post of Assistant Commandant in the CRPF in the year 1997 by the Staff Selection Board (CPO) as part of the 29th Batch of Directly appointed Gazetted Officers (DAGOs). According to the petitioner, though he was selected for appointment to the post of Assistant Commandant, CRPF in 1997, he was never called for basic training course for reasons best known to the respondents. Later, after waiting for about years, the petitioner was issued the appointment letter dated 16.10.2001 and the petitioner was directed to undergo the basic training course along with the 34th Batch of the DAGOs though he originally belonged to

the 29th Batch of DAGOs.

4. According to Ms. Bisheshori, learned counsel for the petitioner, the inter-se seniority position of direct recruits of the CRPF in the rank of Company Commander or Quarter Master or Assistant Principal, Central Training College shall be determined in accordance with the aggregate marks obtained by them before the Selection Board and at the passing out examinations conducted after their basic training at the Central Reserve Police Force as mentioned in Rule 8 (b) (ii) of the Central Reserve Police Force Rules, 1955, the relevant portions of which are reproduced here below:-

"8. Seniority.-

(a).....

(b) The inter-se seniority of Superior Officers shall be determined as under.

(i).....

(ii) The inter-se seniority of direct recruits to the Central Reserve Police Force in the rank of Company Commander or Quarter Master or Assistant Principal, Central Training College, shall be determined in accordance with the aggregate marks obtained by them before the selection board and at the passing out examinations conducted after their basic training at the Central Reserve Police Force, Internal Security Academy."

5. Ms. Bisheshori, learned counsel for the petitioner accordingly submits that in terms of the aforesaid Rule 8 (b) (ii), the petitioner is entitled to get his seniority from the date of recommendation/selection by the SSB(CPO). However, though he was selected in the year 1997 by the SSB(CPO), he has been given his seniority w.e.f. 2001 thus, depriving of 4(four) years of seniority. In the process, the petitioner was greatly prejudiced by the delayed subsequent promotion to the post of Deputy Commandant. The petitioner claims that if the petitioner had been given seniority w.e.f 1997 or 1998 as has been done to his batch mates belonging to the 29th Batch, the petitioner could have been considered for promotion to higher post of Deputy Commandant earlier.

6. The petitioner contends that the petitioner had been consistently and persistently submitting representations to the authorities since 2001 for giving seniority along with his batch mates of the 29th Batch after joining his service on completion of his basic training course in 2001. However, the authorities without due consideration of the case of the petitioner, had issued an order on 26.5.2008 by which the petitioner along with 12 others who were earlier selected by the SSB (CPOs) but undertook training later in 2001, were assigned seniority in order of merit in the year 2001, along with but above the 34th Batch. The petitioner states that even after promotion to higher post of Deputy Commandant in the year 2007 he continued to submit his representations for rectification of seniority to be assigned along with his 29th Batch mates. However, the authorities rejected his claim for assigning seniority along with his 29th Batch mates from

the year 1998 by the impugned letter dated 28th February, 2012, which has been challenged in the present writ petition.

7. The respondents have contested the claim of the petitioner by filing their affidavit-in-opposition.

The main grounds of objection may be stated as follows:-

(i) Though the petitioner was selected by the SSB(CPO) in 1997, no complete police verification report was forthcoming from the local authorities to the CRPF authorities. The police verification was to be conducted by the local police in Manipur where the petitioner was residing and serving in a Bank. It is the stand of the respondent authorities that the CRPF authorities had been sending frequent reminders on regular intervals to the concerned authorities in the State of Manipur to furnish the necessary police verification report. The police verification report was received by the CRPF authorities only in June, 2001, on the receipt of which, the petitioner was issued the offer of appointment on 16.10.2001 with the direction to him to join the basic training course along with the 34th Batch DAGOs which commenced from 9.11.2001.

(ii) After the petitioner completed his basic training course along with the 34th Batch, that the petitioner was assigned his seniority w.e.f. 2001. Since the petitioner could not complete his basic training course in 2001 due to belated receipt of police verification report, he could not be assigned seniority from the date of his recommendation/selection by the SSB(CPO) but only with effect from 2001.

(iii) It has been also stated by the respondent authorities that the issue of fixation of inter-se seniority was examined by the authorities especially with reference to those directly recruited officers who could not undertake the corresponding training course in time due to various reasons. It has been stated that the impugned order dated 28.02.2012 clearly indicates that there were certain categories of employees who could not undertake the corresponding training course in time because of late verification, extension cases, medical ground or other reasons and had to take the training course belatedly. The seniority of the officers belonging to these categories were examined thoroughly and after approval of the Ministry of Home Affairs, the Standing Order No.01 of 2009 was issued which mentioned how to reckon the inter-se seniority of the above categories of persons. It may be apposite at this stage to refer to the relevant portions of the said Standing Order which lays down the guidelines to fix the seniority in such situations, which are reproduced herein below :

"02. Rule 8(b)(ii) of "CRPF Rules, 1955" provides that the inter-se seniority of directly recruited AC shall be determined in accordance with the aggregate marks obtained by them before the selection board and at the passing out examination conducted after their basic training at the CRPF Academy.

3. There remains some grey area which needs to be clarified to regulate the

seniority of Assistant Commandants. Accordingly, following guidelines are issued with immediate effect:-

(i) Seniority of directly appointed Gazetted Officers through UPSC and direct entry Gazetted Officers (LDCE quoted) shall be reckoned with reference to their batch of Training from the date of appointment, irrespective of the batch in which they were selected. Date of appointment in respect of Directly appointed Gazetted Officers through UPSC shall ordinarily mean the date of commencement of training, unless the candidate had reported late but within 30 days of commencement of training.

(ii) Within a batch of training, whether directly appointed or through LDCE, the inter-se seniority shall be determined as per Rule 8(b)(ii) of "CRPF Rules, 1955" in the order or merit. Merit shall mean the aggregate of marks obtained at the time of selection and the marks obtained at the time of passing out examination at CRPF Academy.

(iii) Notwithstanding any thing contained in paras 1) and ii) above, within a Batch of training, a person selected earlier but could not join the training with his batch due to administrative reasons, e.g. delay in verification of character and antecedents, shall be senior to a person selected in a subsequent selection process. Inter se seniority among officers of each year of selection will be decided in the order of merit and placed accordingly en bloc at the top of the batch in which such candidates undergo training.

(iv) As far as directly appointed gazetted officers through UPSC are concerned, a candidate who is successful and is allotted to the Force for appointment shall, on receipt of intimation to that effect, submit an undertaking to report for the training programme scheduled the earliest or otherwise. If he exercises the former option, his failure to report for the training programme will automatically result in cancellation of the offer of appointment.

(v) A candidate selected through UPSC shall be allowed to join a batch of training within a month from the date of commencement of training without loss of seniority. Provided further that the candidate reporting after commencement of the basic training, but within 30 days from the date of commencement of such training, shall furnish sufficient proof to the effect that such late reporting is for reasons beyond his control and is not attributable to individual negligence/laxity or for reasons that are purely personal in nature.

(vi) Similarly, a trainee Officer who misses the training for more than 30 days for any reason shall forfeit his claim to inter se seniority amongst that batch. His inclusion in the subsequent batch on account of failure, relegation, absence, etc. shall depend on the recommendation of the Principal of the Academy.

(vii) The principle as stipulated vide Paras (i), (ii) &(iii) above in respect of candidates selected through UPSC shall apply, mutatis mutandis, to such candidate who could not join the training programme having been declared

temporary unfit/unfit and are declared fit subsequently by a re medical/review medical board as well to such trainees who were relegated from the previous batch on medical grounds. Such candidates shall be permitted to join or rejoin the subsequent batch of training, as the case may be, only if their fitness is certified by the competent medical authority of the Force and such certificate not being more than an year old.

(viii) A candidate selected through UPSC, for any valid ground, can seek extension to undergo training in the next batch of training and if so permitted by the competent authority, shall forfeit his seniority and notwithstanding anything stated in the preceding paras shall be placed at the bottom of the batch with whom he undergoes the training.

(ix) No extension in joining the force shall be granted exceeding one year or till the next batch of basic training, whichever is later. Such candidate shall be liable to undergo medical examination afresh to be carried out by the competent medical authority of the Force to be notified by CRPF Academy before joining, if the period exceeds one year from the previous medical examination.

(x) Notwithstanding anything contained in the preceding paras seniority of Short Service Commissioned Officers shall be reckoned from the date of their joining/appointment."

(iv) It is, thus, the case of the respondent authorities that it was decided on the basis of the aforesaid Standing Order to fix the seniority of the petitioner from the date of joining/appointment on completion of basic training course irrespective of the date of recommendation/selection by the SSB.

8. On the other hand, Ms. Bisheshori, learned counsel for the petitioner submits that the Standing Order No.01 of 2009 cannot given retrospective effect as it will have only prospective effect and as such, the case of the petitioner cannot be decided on the basis of the Standing Order No.01 of 2009 as the petitioner had been claiming seniority since 2001 after he joined service, which was prior to the issue of the Standing Order.

9. Ms. Bisheshori Devi, learned counsel for the petitioner further submits that the delay in getting the police verification cannot be attributed to the petitioner and as such, the petitioner could not be made to suffer with the loss of seniority due to delayed police verification and consequential delayed appointment. Ms. Bisheshori submits that Rule 8(b)(ii) clearly mentions that seniority has to be considered in accordance with the aggregate marks obtained by the candidate before the Selection Board and at the passing out examinations which clearly indicates that the seniority of the candidate has to be reckoned from the date of selection by Selection Board. However, by fixing the seniority of the petitioner from a later date and below other officers who were selected subsequent to the petitioner, the said Rule has been infringed. Apart from it, it has been submitted by the learned counsel for the petitioner that there has been discrimination in fixation of seniority inasmuch as persons who were selected along with the

petitioner and though had subsequently undergone basic training course later had been given seniority with effect from the year of their selection. In this regard, Ms. Bisheshori, learned counsel has referred to a case of one Dharam Prakash at Sl.No.204 of the Gradation List of 2 I/Cs in the CRPF as on 01.01.2012. According to Ms. Bisheshori, learned counsel, the said Dharam Prakash was selected along with the petitioner and had undergone training with the 30th Batch and not with the 29th Batch but was given the seniority with effect from the date of his selection in 1998 along with others of the 29th Batch. Ms. Bisheshori, learned counsel, accordingly, submits that similar benefit ought to be extended to the petitioner.

10. Mr. S. Rupachandra, learned ASG, however has stated that the delay in completion of the police verification cannot be attributed to the CRPF authorities as the authorities had been sending numerous reminders frequently to the State authorities as can be seen from the documents annexed at Annexure-N/1 (Collectively) and the appointment order could not be issued to the petitioner in absence of the police verification report. The police verification report was received sometime in June 2001, and soon on receipt of the same, offer of appointment was issued to the petitioner with the further direction to undergo the basic training course, and hence, the respondent authorities could not be faulted for the delay. It has been submitted by Mr. Rupachandra, learned ASG that the petitioner can be deemed to be a member of the service only after he undertakes the basic training course which he had completed only in the year 2001 and accordingly, the seniority position of the petitioner has been given after he completed his training course as has been clearly mentioned in Rule 8(b) (ii) of the Rules which provides for fixation of seniority taking into account the passing out the examinations conducted after their basic training course. It has been also submitted by the learned counsel for the respondents that other candidates who were selected earlier but had undertaken basic training course belatedly along with the petitioner with the 34th Batch due to various reasons had been given the same benefit of seniority by placing them in the year 2001 but above the 34th Batch as clearly mentioned in office order dated 26.5.2008. It has been therefore, submitted that fixing of seniority of the petitioner is in accordance with the Standing Order No.01 of 2001 and there has not been any irregularity or illegality in the fixation of the seniority.

11. Mr. Rupachandra, learned ASG has also submitted that this petition has been filed belatedly after about 8 years of the appointment of the petitioner and if at this stage the seniority position is disturbed, it will cause serious repercussions in the hierarchy of the force and accordingly, it has been submitted that the present writ petition is liable to be dismissed on the ground of delay and laches.

Mr. Rupachandra, Ld. ASG has relied on the decisions of the Hon'ble Supreme Court in K.R. Mudgal and others v. R.P. Singh, (1986)4 SCC 531 and B.S. Bajwa and another v. State of Punjab and others, AIR 1999 SC 1510, to contend that the writ petition which was filed belatedly after about 8 years from the date of

appointment, is liable to be dismissed on the ground of delay.

12. Heard the learned counsel for the parties and also perused the records.

13. This Court before touching on the merit of the case, will deal with the issue of delay raised by the respondent.

As regards this contention, it may be observed that though the petitioner was appointed in 2001, his seniority was assigned only in the year 2008 vide order dated 26.5.2008. To that extent there was some delay on the part of the petitioner to move the Court. However, the respondents rejected the claim of seniority of the petitioner only on 28.2.2012. In view of the aforesaid rejection of the claim of the petitioner on 28.2.2012, a part of the cause of action arose on that day and hence, it cannot be said that the writ petition is hit by delay.

14. As far as determination of seniority is concerned, it is now well settled that normally the length of service in any particular grade would be the basis for determining seniority unless rules specifically provides otherwise for the same, as observed by the Hon^{ble} Supreme Court in H.V. Pardasani v. Union of India, (1985) 2 SCC 468 as follows :

"6. There is no dispute that in the absence of any special provision regulating determination of seniority, length of continuous service in any particular grade would be the basis for determining seniority in that grade. The legal position is equally settled that if a rule prescribes a method of fixation of inter se seniority, the normal practise would not apply and the rule shall prevail, obviously subject to its constitutionality....."

The obvious corollary is that the length of service will be reckoned from the date of entry in the service. In respect of direct recruits, it will be normally from the date when the appointment order is issued or when the person joins service but not from the date of selection. Thus, in respect of direct recruits like the petitioner, seniority will be counted from the date of appointment or joining, subject to any provisions under the relevant rules.

15. We, therefore, would examine if there are any rules which govern the inter se seniority of the officers. Both the parties have referred to Rule 8 (b) (ii) of the Central Reserve Police Force Rules, 1955 to substantiate their respective pleas. Rule 8(b)(ii) as quoted above clearly provides that in respect of direct recruits, the determining factors would be :

(i) the aggregate marks obtained by them before the selection board and

(ii) at the passing out examinations conducted after the basic training.

Thus, the overall merit in terms of the marks obtained by the candidates awarded by the Selection Board and at the passing out examinations conducted after the basic will determine the inter-se-seniority amongst the direct recruits. However, the Rules are silent as to the effective date from which the seniority is to be reckoned. Therefore, the normal rule of determining seniority from the date

of issue of appointment order is to be adopted, subject to completion of the training, as no one could become a member of the service unless the basic training course is successfully completed. It seems the authorities were aware of certain situations where there was delay in completing the basic training course for various reasons like submission of late verification reports, medical cases etc. which resulted in delayed completion/undertaking of the basic training courses. As Rule 8 or any other rule did not specifically deal with such situations, the authorities after due consultation with the competent authority formulated the guidelines to fix seniority by issuing the Standing Order No.1/2009.

The guidelines laid down in the Standing Order make it clear that seniority of directly appointed Gazetted Officers through the UPSC and direct entry Gazetted Officers shall be reckoned with reference to their batch from the date of appointment, irrespective of the batch in which they were selected and the date of appointment in respect of directly appointed gazetted officers shall ordinarily mean the date of commencement of training unless the candidate had reported late but within 30 days of the commencement of the training.

It has been further provided that inter se seniority among officers of each year of selection will be decided in the order of merit and placed accordingly en bloc at the top of the batch in which such candidates undergo training. It has been also provided that if a person selected earlier could not join the training with his batch due to administrative reasons, e.g., delay in verification of character and antecedents, he shall be senior to the person in the subsequent selection.

16. In the present case, the undisputed facts are that though the petitioner was selected in the year 1997 in the 39th Batch and was to undergo training along with his batch mates in 1998, because of delay in the verification process, he could not undertake training with his 29th Batch mates but could undertake the training only in the year 2001 along with the 34th Batch. Thus, his seniority was reckoned from the year 2001 though placed above the persons of the 34th Batch. Thus, this fixation of seniority is in conformity with the guidelines mentioned in the Standing Order 1 of 2009. There does not appear to be any arbitrariness while fixing the seniority.

17. At this stage this Court may deal with the contention of the petitioner that since the said Standing Order 1/2009 was issued only in 2009, the seniority of the petitioner which was to be fixed in 2001 could not be determined by referring to a subsequently issued executive instruction. Though this contention seems to be valid, yet it cannot be accepted as the fact remains that the rules as existing prior to 2009 were silent as regards such a situation in which the petitioner was placed. Rule 8 does not provide for dealing with such a situation, nor the petitioner has been able to bring to the notice of this Court any such rule or executive instructions which could cover the claim of the petitioner that in spite of delay in issuance of appointment order due to non availability of verification report and undergoing training on a later date, the petitioner would be entitled to count his seniority from the year of selection. In absence of such rules or

instructions, it cannot be said the action of the respondent authorities in fixing the seniority of the petitioner from the date of issue of appointment order and undertaking training in 2001 is per se illegal. Even if the Standing Order No. 1/2009 is held to be not applicable to the case of the petitioner as contended by the petitioner that it would have only prospective effect, yet the principle applied in fixing seniority of the petitioner by the authorities cannot be said to be unjust, unfair or arbitrary.

18. It is admitted by the parties that the verification of the antecedents of the petitioner was to be carried out by the authorities of the State under which the petitioner was domiciled and not by the CRPF authorities. The records clearly indicate that there was no lapse on the part of the CRPF authorities for the delayed verification. The delay had occasioned due to untimely action by the local authorities of the state Government in making the verification. If the delay was not attributable to the petitioner as claimed by the petitioner, the respondent authorities also could not be faulted for the delay. The belated issuance of appointment order to the petitioner could not be ascribed to the respondents. In such an event, the action of the respondent authorities in fixing the seniority of the petitioner from 2001 cannot be said to be unfair or unjust.

19. As regards the issue of discrimination or claim for similar benefit of seniority given to Sri Dharam Prakash and others, the respondents have stated that the fact situations of these persons are different. The petitioner has also failed to demonstrate with cogent materials any such discrimination and how he is similarly placed with those persons. Hence in absence of adequate materials, this Court is not inclined to examine this contention of the petitioner.

20. This Court has also noted from the Office Order dated 26.5.2008 that not only the petitioner, but twelve others who could not join their respective batches either on personal ground or being neglected due to insufficient attendance/ medical reasons as well as for delay in receipt of police verifications and thus had undergone training belatedly with the 34th Batch in 2001 were assigned seniority in order of merit in the year 2001 but above the 34th Batch. Hence the respondent authorities seem to be following a uniform principle to deal with such cases. This would dispel the notion of discrimination.

21. This Court would hold that fixation of seniority, if it does not contravene any rules or executive instructions, and in absence of any such rules or executive instructions, is based on just and reasonable principle, would not warrant interference by the Court in exercise of judicial review. In the present case, the fixation of seniority of the petitioner is in conformity with the Standing Order no. 1/2009 as the appointment order was issued in 2001 and his basic training course commenced in 2001, and even if the Standing Order is held to be inapplicable to the petitioner as claimed by him, the fixation cannot be said to be unjust, capricious or not equitable. This fixation also does not involve violation of any existing rules.

22. At this stage we may profitably refer to the observation of the Hon^{ble} Supreme Court in *Shitla Prasad Shukla v. State of U.P.*, 1986 Supp SCC 185 to the effect that:

".....in matters of seniority the court does not exercise jurisdiction akin to appellate jurisdiction against the determination by the competent authority, so long as the competent authority has acted bona fide and acted on principles of fairness and fair play. In a matter where there is no rule or regulation governing the situation or where there is one, but is not violated, the court will not overturn the determination unless it would be unfair not to do so."

The aforesaid observation aptly applies in the present case.

23. Accordingly, for the reasons discussed above, this Court is of the opinion that the petitioner has failed to make out any case warranting interference by this Court as regards fixation of seniority of the petitioner by the authorities.

24. The petition is accordingly, dismissed.