

SUPREME COURT OF INDIA

Bobindra Kumar

Vs.

Union of India

C.A.No.6642 of 2019

(Hemant Gupta and L.Nageshwaro,JJ.,)

27.08.2019

JUDGMENT

Hemant Gupta,J.,

SLP (Civil)No.8136 of 2019

1. Leave granted.

2. The order passed by the High Court of Delhi on November 28, 2018 is the subject matter of challenge in the present appeals, one preferred by the direct appointee Sub Inspectors (General Duty) of the Central Reserve Police Force and another by the Union of India. The High Court ordered that the promotee Sub Inspectors (General Duty) will rank senior to the direct appointee Sub Inspectors (General Duty) by quashing the order dated October 14, 2013 issued by the Directorate General of the CRPF and the seniority list dated February 27, 2012.

3. The direct recruits were appointed in pursuance of advertisement published in June, 2007. The result of the written examination was declared on July 21, 2009. It was on October 5, 2009, the Directorate General, CRPF communicated to its various units regarding allotment of 880 candidates to its units. The candidates were allotted to the units as per vacancies. The direction was issued to the Inspector Generals to issue offer of appointment to the candidates so allotted. One of the conditions in the said letter of allotment reads, thus: -

"g) Candidate may be given one-month time to join CRPF from the date of issue of offer of appointment, which should not be later than October 30, 2009 and should be sent by registered post with AD."

4. It is in pursuance of such allotment, the selected candidates were issued the letters of offer of appointment. The offer of appointment dated October 26, 2009 issued to Bobindra

Kumar, appellant No. 1 has been put on record by the respondents. The appellants have produced letter of appointment dated October 15, 2009 in respect of Ravinder Singh, one of the respondents in the High Court. The terms and conditions of letter of allotment are the same as are mentioned in letter of appointment of appellant No. 1. Some of the clauses from such letter read as under:

"1. It is to inform you that as a result of recruitment test conducted by SSC-2007, you have been provisionally selected for appointment to the post of Sub Inspector (General Duty) in CRPF against the existing vacancies (normal wastage) of M & N Sector. 3 (b). You shall be at liberty to resign your appointment before the expiry of first three months of your service provided three months pay or training charges whichever is higher is refunded.

(e). On joining the department, you will be governed by CRPF Act-1949 and CRPF Rules-1955 as amended from time to time.

(g) You will be required to undergo basic training as applicable for the post after reporting at this GC.

(h) In case you do not report by the stipulated date as mentioned at Para 4, offer of appointment made to you will be deemed to be lapsed automatically and no correspondence whatsoever on the subject will be entertained.

4. If you accept the offer of appointment on the terms and conditions mentioned above, you should report for duty in the DIGP, GROUP CENTRE, CRPF, LANGJING IMPHAL (Manipur) 795113 (Tel. No. 0385-2436140) on or before 26/11/2009 at 0900 Hrs. with the following documents...."

5. It is in pursuance of such terms and conditions in the letter of appointment, the direct recruits reported for training in January, 2010. On the other hand, the respondents who were the writ petitioners before the High Court came to be appointed in pursuance of recruitment process initiated in June, 2009. The result of examination was declared on October 20, 2009. The training commenced on November 23, 2009 as these candidates were already members of the Force.

6. After the appointments so made, seniority was finalised on February 27, 2012, whereby the direct recruits were placed senior to the promotee sub-inspectors.

7. The promotee sub-inspectors challenged the seniority placing the direct recruits senior to them, inter alia, on the ground that they were appointed earlier in point of time to the direct recruits and, therefore, in terms of Rule 8(e) of the Central Reserve Police Force Rules, 1955, the promotees should rank senior. The High Court accepted the claim of the promotee sub-inspectors relying upon judgment of this Court in *Rohitash Kumar & Ors. v. Om Prakash Sharma & Ors.* and also Office Memorandum dated November 4, 1992; and para 11.2(2)(iii)(e) of Chapter XI of the CRPF Establishment Manual.

8. Aggrieved against the order passed, the direct recruits and the Union of India are in appeal.

9. Before we proceed further, Rule 8(e) needs to be reproduced, which reads as under:

"8. Seniority. - (a) The seniority of Superior Officers shall be in the following order:-

(e). A person promoted to a higher rank and a person recruited direct to the same rank shall have their seniority from the date of appointment to that rank subject to the condition that if both were appointed on the same date, the former (promotee) shall be senior:

Provided further that if the date of confirmation is the same their seniority immediately before such confirmation shall remain unaffected."

10. Mr. K.M. Nataraj, learned Additional Solicitor General supported the seniority fixed relying upon the Office Memoranda dated June 24, 1978 and March 4, 2014. It is argued that the direct recruits are entitled to rank senior in view of letter of allotment dated 5th October 2009 as against the writ petitioners who are to be assigned seniority from the date of announcement of results. It was argued that seniority is to be determined according to rotation of vacancies between the direct recruits and the promotees relying upon Office Memorandum dated March 4, 2014. It is further argued that Office Memorandum dated November 4, 1992 has no applicability for determining of seniority of Sub Inspectors as such Office Memorandum contemplates that the seniority is delinked from confirmation. Such is not the issue in the present case. The Standing Order No. 1 of 2009 relied upon by the High Court relates to fixation of seniority in the cadre of Assistant Commandant in the CRPF, thus no applicability to the determination of seniority in the lower rank of sub-inspectors.

11. Mr. Nataraj referred to judgment of this Court in Amarjit Singh Ahiuwalia (Dr.) v. State of Punjab & Ors. to contend that present case is of second kind of order of appointment of appellants as held by this Court. Therefore, the date of allotment of the direct recruits to the units i.e. October 5, 2009 is the date of appointment in view of the aforesaid judgment. Learned counsel referred to the following paragraph from Amarjit Singh, wherein, this Court held as under:

"10. ...First let us see what the words "date of appointment" mean. Are they synonymous with "date of the order of appointment"? We think not. An order of appointment may be of three kinds. It may appoint a person with effect from the date he assumes charge of the post or it may appoint him with immediate effect or it may appoint him simpliciter without saying as to when the appointment shall take effect. Where the order of appointment is of the first kind, the appointment would be effective only when the person appointed assumes charge of the post and that would be the date of his appointment. It would be then that he is appointed. But in a

case of the second kind, which is the one with which we are concerned since the order dated April 8, 1964, appointed Respondents 3 to 19 to PCMS Class I "with immediate effect", the appointment would be effective immediately irrespective as to when the person appointed assumes charge of the post. The date of his appointment in such a case would be the same as the date of the order of appointment..."

12. Mr. Nataraj also relied upon another judgment in *Union of India & Ors. v. N.R. Parmar & Ors.* to contend that date of appointment would mean the date of first substantive appointment against the clear vacancy. Since the vacancies in the cadre were available when the direct recruits were allotted to different units, it is the date of allotment which has been rightly taken into consideration to fix the seniority.

13. Mr. Dhruv Mehta, learned senior counsel for the direct recruits submitted that date of allotment is the date of appointment, therefore, the appellants having been appointed on October 5, 2009 were rightly assigned seniority as against the writ petitioners who were appointed on October 20, 2009 in terms of Rule 8(e) of the Rules. He argued that the Standing Order No. 1 of 2009 cannot be relied upon to determine seniority of Sub Inspectors as it relates to Assistant Commandants of the CRPF. The selection process of Assistant Commandants is materially different from the Sub Inspectors, therefore, such Standing Order could not be taken into consideration by the High Court to determine the seniority on the basis of principles laid down in the said Standing Order. It is also contended that judgment in *Rohitash Kumar* relied upon by the High Court was in respect of seniority of Assistant Commandants in the Border Security Force where the Rule itself contemplates that in case of direct entrant, the date of appointment shall be the date of commencement of their training course. Therefore, the High Court was not justified in referring to *Rohitash Kumar* when the Rules applicable to CRPF do not contemplate determination of seniority from the date of commencement of training.

14. The letter of appointment offered to the Sub Inspectors selected through limited departmental examination has also been produced by the appellants. Such letter of appointment was issued in November, 2009 and contemplates that the selected candidates will be required to undergo basic training of 20 weeks and, in case, they do not report by the stipulated date, the offer of appointment will be deemed to be lapsed. Thus, the terms of appointment of the direct recruits and that of promotee Sub Inspectors are different.

15. On the other hand, Mr. Guru Krishnakumar, learned senior counsel appearing for the respondents/promotees, argued that the contentions raised by the appellants are factually and legally not sustainable. It is argued that date of allotment cannot be treated to be the date of appointment which is the basis of determination of seniority in terms of Rule 8(e) of the Rules. It is argued that before direct recruit is appointed as a member of the CRPF, he has to read the statement contained in the Recruitment Roll set out in the Schedule in terms of Section 5 of the Act. The expression 'Member of the Force' is defined in Section 2(d) of the Central Reserve Police Force Act, 1949 and also Rule 6 of the Rules. Rule 6 contemplates that all the officers and men mentioned in Rule 5 shall be deemed to be the

members of the Force. Rule 5 has two categories; first is Superior Officers and second is Rank and File for a Battalion of four companies. The Sub Inspector falls within the second category. It is contended that a direct recruit does not become a member of the Force unless he takes an oath of affirmation as per Appendix C set out in Rule 9 of the Rules and also furnishes Health Certificate in terms of Rule 12. It is pointed out that the letter of allotment of units dated October 5, 2009 was the communication to the Inspector Generals of Police of the various units of CRPF giving names of the selected candidates with the stipulation that letter of appointment will be issued by them. Such letter was not issued to any of the direct recruits. In pursuance of the directions contained, the letter of offer of appointment was issued to the Appellants and thereafter on completion of medical test and other requirements, the training started in January, 2010. It is argued that after taking various steps such as Health Certificate, reporting for duty, oath of affirmation as per recruitment rules, the direct recruits became members of the Force and, therefore, in terms of Rule 8(e) of the Rules, their seniority is to be determined from the date of appointment which is incidentally close to the date of starting training. Such appointment is after the promotees who commenced their training.

16. Some of the relevant conditions from the Act and Rules referred to by Mr. Guru Krishnakumar read as under:

"The CENTRAL RESERVE POLICE FORCE ACT, 1949 2(d). "member of the force" means a person who has been appointed to the Force by the Commandant, whether before or after the commencement of this Act, and in section 1,3,6,7,16,17,18, and 19 includes also a person appointed to the force by the Central Government whether before or after such commencement;

5. Enrolment. - Before a person is appointed to be a member of the force, the statement contained in the recruiting roll set out in the Schedule shall be read out and if necessary, explained to him in the presence of an officer appointed under sub-section (1) of section 4 and shall be signed by such person in acknowledgement of its having been so read out to him; Provided that any person who has for a period of six months served with the force shall on appointment to the force thereafter, be deemed to be a member of the force notwithstanding that provisions of this section have not been complied with in his case.

THE CENTRAL RESERVE POLICE FORCE RULES, 1955

5. Composition of the Force. - A. Battalion other than Signals Battalion

(1) The Force shall be constituted as follows:

(a) Superior Officers:

(b) Rank and file for a Battalion of four companies..."

12. Health Certificate. - No candidate shall be enrolled unless he obtains a health certificate in the prescribed form CRP-I signed by Medical Supdt. and Staff Surgeon, Central Reserve Police Hospital, Neemuch, or by a Civil Surgeon or by a Recruiting Medical officer."

17. Mr. Balasubramaniam, learned senior counsel appearing on behalf of Union of India, submitted that Section 5 relates to enrollment of Constables alone and the enrollment of Sub Inspectors is not covered by Section 5 of the Act.

18. We do not find any merit in the arguments raised by learned counsel for the appellants and Mr. Balasubramaniam. Section 4 of the Act provides for appointment of superior officers by the Central Government, whereas the members of the Force other than superior officers fall within Section 5 alone. Section 5 contemplates that before a person is appointed to be a member of the Force, he shall sign the statement contained in the recruitment roll set out in the Schedule. Section 5 does not restrict its scope and applicability only to the Constables and to the persons appointed by the Commandant. In terms of Section 2(d) of the Act, it includes a person who has been appointed by the Commandant and also a person appointed by the Central Government. Still further, Rule 6 contemplates that all officers and men mentioned in Rule 5 shall be deemed to be the members of the Force. The Sub Inspectors are part of Rank and File for a Battalion of four companies. Therefore, the argument that Section 5 of the Act is not applicable to the direct recruits is patently untenable.

19. The letter dated October 5, 2009 is not addressed to the appellants- direct recruits. It is addressed to Inspector General of Police of the various units of CRPF. By such communication, the selected candidates have been allotted to various units to facilitate issue of letter of appointment by the respective units. Some of the appellants were given letter of appointment on October 15, 2009 whereas appellant No. 1 have been given letter of appointment on October 26, 2009. This is a letter of offer of appointment which is required to be accepted by the candidates in terms of clause 4 as reproduced above. The offer of letter of appointment further contemplates that on joining, they would be governed by the Act and the Rules, therefore, till such time they join in pursuance of the offer of appointment, the appellants are not subject to the provisions of the Act and the Rules. As per Rule 12 of the Rules, no candidate shall be enrolled unless he obtains a Health Certificate in the prescribed form. The Health Certificate was called upon from the appellants in the letter of offer of appointment. Therefore, they will be deemed to be members of the Force only on furnishing of Health Certificate and acceptance of the offer of appointment before they proceed for training.

20. The judgment in Rohitash Kumar relied upon by the High Court is not applicable to the members of the CRPF as the date of appointment is not the date of commencement of training in the Rules. The BSF Rules are materially different from the Rules applicable to the members of CRPF. Rule 8(e) of the Rules clearly stipulates that a person promoted to a higher rank and a person recruited direct to the same rank shall have their seniority from the date of appointment. Therefore, a person appointed by way of direct recruitment or promotion to the post of Sub Inspector, his seniority will be fixed as per the date of appointment. Only in the case that both direct recruits and promotees are appointed on the same date, promotees were to rank senior. Since, the date of appointment is not 5th October, 2009 but the date they completed the formalities after accepting the offer of

appointment, their date of appointment is later than the date of promotion of the promotee sub-inspectors.

21. The Standing Order No. 1 of 2009 deals with seniority of Assistant Commandants. Such Standing Order is in relation to Rule 8(b) of the Rules. It may be stated that Rule 8(a) deals with seniority of Superior Officers; Rule 8(b) deals with inter se seniority of Superior Officers; whereas Rule 8(c) deals with seniority of person promoted to the rank of subordinate or under officer. It is Rule 8(e) of the Rules which is applicable in the present case where the direct recruits are appointed to the same rank as also by the candidates by way of limited competitive examination. Therefore, such Standing Order could not be relied upon to determine the different set of members of the Force. We also find that the Office Memorandum dated June 24, 1978 referred to by Mr. Nataraj is not applicable to the members of the Force as admittedly, there is no roster for the purpose of recruitment and seniority. Such Office Memorandum deals with starting point in the recruitment roster for the purpose of seniority. Still further, the Office Memorandum dated March 4, 2014 again deals with fixation of seniority where there is roster of vacancies.

22. We also find that the second kind of appointment as explained in Amarjit Singh has no application in the facts of the present case. In fact, it is the first kind where a person is appointed with effect from the date he assumes charge of the post, would be applicable in the case in hand. The offer of appointment was not with the immediate effect but, the candidate was required to convey their acceptance and also furnishing of medical certificate. Similarly, N.R. Parmar is a case of roster and the rules contemplating year of recruiting. However, there is no such pari materia rule which may make the ratio of the said judgment relevant in the present case.

23. The judgment in *P. Sudhakar Rao & Ors. v. U. Govinda Rao & Ors.* is not applicable in the facts of the present case as in view of Rule 8(e) of the Rules, the seniority is required to be determined from the date of appointment alone. The judgments referred to by the learned counsel for the parties are not applicable to the issues raised in the present appeals in view of the fact that such judgments are interpreting different set of rules.

24. In view of the discussion above, we do not find any merit in the present set of appeals. The same are dismissed but for the reasons other than that which weighed with the High Court.