

Sunil Kumar Singh & Ors vs.union of India & Anr.

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SooperKanoon Citation : sooperkanoon.com/1203571

Court : Delhi

Decided On : Feb-20-2017

Appellant : Sunil Kumar Singh & Ors

Respondent : Union of India & Anr.

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:
November 11, 2016 Judgment delivered on: February 20, 2017 + W.P.(C)
4810/2015, CM No.8700/2015 SUNIL KUMAR SINGH & ORS

... Petitioner

s Through: Ms. Rekha Palli, Sr. Adv. with Mrs. Punam Singh, Ms. Ankita Patnaik,
Ms. Garima Sachdeva and Ms. Shruti Munjal, Advs. versus UNION OF INDIA &
ANR.

... RESPONDENTS

Through: Ms. Bharathi Raju, CGSC for R1 and R2. CORAM: HONBLE MS
JUSTICE INDIRA BANERJEE HON'BLE MR JUSTICE V. KAMESWAR RAO

JUDGMENT

V. KAMESWAR RAO, J1 This writ petition has been filed by Ninety Five (95)
Assistant Commandants working in the Border Security Force under the
respondent No.2 with the following prayers:-

"A. Issue a writ of certiorari quashing the letter dated 27.6.2013 vide which the Commando Course has been made mandatory for promotion of Assistant W.P. (C) 4810/2015 Page 1 of 32 Commandants appointed through Limited Departmental Competitive Examination to the rank of Deputy Commandant; B. Pass any other order/direction as this Honble Court may deem fit. 2. It is the case of the petitioners that they have all joined BSF as Sub-Inspectors. Based on their merit, they were selected for the post of Assistant Commandants, by way of fast track promotion through the provision of Limited Departmental Competitive Examination (LDCE) and are presently working as such. The petitioners 1 to 56 were selected pursuant to LDCE held in 2014; petitioners 57 to 63 were selected pursuant to the LDCE held in 2013 whereas, petitioners 64 to 95 were selected pursuant to the LDCE held in 2012. It is their case that all are in the age group of 35 to 40 years and are aggrieved by letter dated June 27, 2013 issued by the office of the respondent No.2, vide which, it has been made mandatory for all Assistant Commandants promoted through LDCE to undergo the Young Officers Commando Course irrespective of their age at the time of promotion as Assistant Commandants through LDCE even though, there is no such requirement for Assistant Commandants promoted in normal course. It is their case that in the year 2001, Border Security Force (General Duty Officers) Recruitment Rules, 2001 were notified superseding the Border Security Force (Seniority, Promotion & Superannuation of Officers) Rules, 1978 and Border Security Force (Assistant Commandant Recruitment) Rules, 1985.

3. According to the petitioners, the Rules of 2001 provided that officers to the post of Assistant Commandants in the BSF shall be appointed in the following manner:-

"W.P. (C) 4810/2015 Page 2 of 32 (a) 50% by direct recruitment including 10% from amongst the released Short Service Commission Officers, failing which, by direct recruitment; (b) Promotion of 33% authorized posts from the feeder cadre of Inspector/Subedar/Subedar Major; (c) 17% by Limited Departmental Competitive Examination, failing which, by promotion.

4. As per the Rules of 2001, the eligibility age for direct entry candidates to the post of Assistant Commandants was between 19-25 years, whereas the upper age

limit for the candidates seeking promotion to the post of Assistant Commandants through LDCE was 35 years and there was no upper age limit for those seeking promotion in the regular course. According to them, the Recruitment Rules of 2001 also prescribed for filling up 33% posts by promotion from the rank of Subedar to Assistant Commandant; the candidates must have qualified the following BSF courses:-

"(i) Basic training course prescribe for the post/rank at the entry level. (ii) Platoon weapon/Weapon and tactics course. (iii) Platoon Commander (Tac) Course. (iv) Coy Commander (SOs) course. (v) Two years service in Service Coy for all Inspector/Subedar (General Duty) or two years service in a duty Battallion for Subedar (Communication); W.P. (C) 4810/2015 Page 3 of 32 Provided that the provision of two years tenure in Service Coy/Duty Battallion will not apply to certain category of Subedars/Inspectors.

5. As per the Rules of 2001 for promotion to the rank of Deputy Commandant, the eligibility for Direct Entry Officers and promotee officers was as under:-

"(I) By promotion of Assistant Commandant of the Border Security Force with six years regular service in the grade and having qualified following courses- A. For Director Entry Officers (i) Young Officers (Commando and Weapon Training) B. For Promotee Officers (i) Command & Logistic Course (II) Two years command experience as Company Commander of Service Coy in duty battalions or as Battery Commander in Border Security Force Artillery except for those officers who are in central sports team of Border Security Force. Medical Category SHAPE-I.

6. It is the case of the petitioners that the promotee officers were not required to undergo the Young Officers Course (Commando and Weapon Training) because of their age as well as their pre-existing experience in the BSF and similarly the officers selected through LDCE, who formed part of the promotee quota were also not required to undergo the Commando course. The Rules of 2001 underwent an Amendment in the year 2003 to the extent that the age limit for direct entrants was changed to 20-25 years from that of 19- W.P. (C) 4810/2015 Page 4 of 32 25 years and further the examination for recruitment of direct entrants was provided to be conducted by the UPSC. The Rules of 2001 were further amended in the

year 2004 to the extent that the LDCE examination for the 17% posts was to be conducted under the aegis of UPSC and further for 33% posts to be filled by promotion in lieu of courses prescribed in column (ii), (iii) and (iv) and were substituted by other courses/training as prescribed by the Director General, BSF from time to time. It is averred by the petitioners that the Assistant Commandants appointed through LDCE already have experience and having worked in the BSF and are even otherwise much older than the direct recruits. The Assistant Commandants appointed through LDCE from batches 2004 to 2010 were not required to undergo Young Officers Commando Course as an eligibility condition for promotion to the rank of Deputy Commandant. A notification dated August 11, 2010 was issued whereby, the Border Security Force Group A (General Duty Officers) Recruitment Rules, 2010 had been notified in supersession of the Recruitment Rules of 2001 and the Rules provided that 17% of the posts of Assistant Commandants shall be filled by LDCE to be conducted through BSF, CRPF, CISF, ITBP, SSB on rotation basis and failing which, by promotion. For filling up of the posts by LDCE the following criteria was prescribed:-

"(a) Sub-Inspector/Inspector having four years regular service including training. (b) The upper age limit for appearance in the LDCE will be thirty-five (35) years. The required educational qualification will be graduation as required for direct recruitment. (c) Must have good record of service. W.P. (C) 4810/2015 Page 5 of 32 (d) Physical standards will be same as applicable to Assistant Commandant (Direct Recruitment). (e) Medical Category SHAPE-I.

7. The eligibility criteria for promotion to the rank of Dy. Commandant from that of Assistant Commandant was six years of regular service as Assistant Commandant and having qualified courses/training as prescribed by Director General, BSF from time to time. On June 28, 2012, a Policy was issued by the Director General, BSF whereby various mandatory courses were prescribed for promotion to different posts. For promotion to the rank of Dy. Commandant from that of Assistant Commandant, following was the criteria:-

"A. For Direct Entry- (i) PW course; (ii) Commando Course. B. For (LDCE) below 35 years (i) New weapon and surveillance Equipment course; (ii) Commando

course. C. For (LDCE) above 35 years (i) New weapon and surveillance Equipment course; (ii) Command & Logistics course. D. For promotee officers (i) Command & Logistics Course. W.P. (C) 4810/2015 Page 6 of 32 8. It is the petitioners case that they being eligible applied against the advertisements in the years 2012/2013 and consequent to successfully qualifying the aforesaid examination of the LDCE, they were issued identical appointment letters and in the letters, it was categorically mentioned that the appointment of the petitioners forms part of the promotee quota. It is averred that as per the Policy, the petitioners who were all above the age of 35 years were not required to undergo the Commando Course for promotion to the post of Deputy Commandant and instead were required to undergo only the Command and Logistics Course, primarily for the reason that the said Course is very strenuous and physically demanding. It is their case in the writ petition that the LDCE is a kind of fast track promotion and cannot be equated with direct recruitment in view of the settled law. It is also averred that the promotees of LDCE between 2004-2010 were not asked to undergo the said Commando Course but it was only in 2013 that the respondents issued the impugned letter making it mandatory for all Assistant Commandants promoted through LDCE to undergo the said Commando Course as an eligibility condition for promotion to the post of Dy. Commandant irrespective of their age and therefore removed even the distinction of being below or above 35 years and therefore for the first time in July/August, 2013 the batch of Assistant Commandants appointed through LDCE held in the year 2011, were asked to undergo the Young Commando Course irrespective of whether they were below or above 35 years of age. The petitioners have also referred to a writ petition filed by the Assistant Commandants appointed through LDCE in the year 2011, which was disposed W.P. (C) 4810/2015 Page 7 of 32 of as infructuous as by that time, the Assistant Commandants appointed through LDCE in the year 2011 have undergone the Commando Course.

9. It is their case that they cannot be discriminated, inasmuch as, the regular promotees to the rank of Assistant Commandants are not required to undergo the same Commando Course, which resulted in two sets of conditions for two sets of promotees ignoring the fact that the promotees through LDCE are also serving employees of the force and the comparison of the LDCE with the Direct Entry

Officers in the rank of Assistant Commandant by ignoring the fact that Direct Entry Officers in normal course join the force as Assistant Commandant by the age of 25 years and therefore, complete their Commando Course by the age of 28 years whereas, the LDCE promotees get promotion to the rank of Assistant Commandant only after the age of 35 years and therefore it is not feasible for them to undergo a strenuous course like the Commando Course after the age of 35 years.

10. The respondents in their counter affidavit have referred to the Mandatory Course Policy dated June 28, 2012, which has already been reflected above in para 7. It is their case that in view of the changing operational scenario and requirement of the force, the department has decided that LDCE officers should also get the benefit of Commando training and Tactical module in commanding the troops in very sensitive areas, hence the age bar of 35 years for commando course was removed. This step was taken to facilitate LDCE officers also to command Company in sensitive areas like Assistant Commandant (Direct Entry) officers. Accordingly, the Department constituted a High Power Committee W.P. (C) 4810/2015 Page 8 of 32 under the Chairmanship of Additional DG (Director of BSF Academy) to review and redesign the syllabus of courses for officers of the rank of AC/2 I/C which encompassed Commando course for Assistant Commandants. It is also submitted that under the High Power Committee, various sub-committees were formed to review course syllabus for each rank. In this regard, it has been pointed that a massive exercise of Training Need Analysis was conducted by IIM. Several brain storming sessions at Sector, Frontier level etc. were organized to review and redesign syllabus of courses for officers. After detailed discussion, deliberation and exhaustive examination, the syllabus of Commando course was framed as per operational requirement to suit the training of need of both Assistant Commandants (DE) and Assistant Commandants (LDCE) officers as well as the requirement of the force. The conventional commando training with prime emphasis on physical endurance and excessive physical training has considerably been reduced to provide space for various inputs on operations of war, explosives, Map reading and GPS, Border Management Intelligence, Personality Development, Leadership and Management, Service Writing etc. Subsequently, duration of Young Officers

Commando Course has also been increased by two weeks i.e from 8 to 10 weeks with the aim to train the young officers of the rank of Assistant Commandant (Direct Entry) and Assistant Commandant (LDCE) for effective execution of small team operations such as proficient Company Commanders. The respondents have referred to the impugned decision dated June 27, 2013 whereby the age limit to undergo Commando course was removed, wherein it was stated there will be no W.P. (C) 4810/2015 Page 9 of 32 distinction based on age for undergoing the Commando Course by Assistant Commandant (LDCE) officers. Moreover, as per the joining instructions of the course, no age limit has been prescribed. They referred to the Amendment Rules of 2012, which empowers the Director General, BSF to prescribe course or courses from time to time for each rank. It is their case that the major objectives of the course are as under:-

"(i) By physically fit, mentally robust with strong leadership qualities. (ii) Undertake independent small team operations and explosive handling in Low Intensity Counter/or Counter Insurgency/Anti Infiltration and Anti/Naxal Operations role. (iii) Be able to execute combat drill in Line of Control environment, No war No Peace and hot war scenario. (iv) Have skills and confidence to lead tps and operate in all scenario of BSF Deployment. (v) Be efficient in border management in all matters at Coy level. (vi) Efficiently deal with counter part at Coy level and perform duties in flag meetings and border conferences. (vii) Efficiently perform the staff duties at various levels. (viii) Assist the Unit Commandant in the borders management.

11. Similarly, they have also highlighted the salient features of the newly approved Commando course as under:-

"(i) Out of 650 periods, physical portion constitutes 131 pds only i.e 20% of the total allotted periods. Rest of the syllabus is meant to have up the skills of Coy Comdr. (ii) Emphasis is laid on conduct of various operations in anti Naxal, Counters Insurgency and Border Management scenario. In ANO scenario, almost all Coy Comdrs are generally from Asstt. Comdt. (Direct Entry or LDCE Officers) who have to carry out W.P. (C) 4810/2015 Page 10 of 32 operations 25-30 kms away from Company Operating Base (COB). Thus, the present syllabus caters for the Ops, requirements also. (iii) New Syllabus also covers leadership and

personality development (87 periods) which has been identified as grey area for young BSF officers in the Training Need Analysis report. (iv) These are separate timings/different parameters for officers above 35 years of age in physical events. (v) 10, 20, 30 and 40 kms route marches have now been replaced with the 15 & 25 kms spewed marches along with operational exercises. Time consideration of age has been kept in new syllabus, 30 seconds for each Km has been given to trainees above 35 years age and on experiencing the outcome same will further be adjusted on need basis. (vi) Major portion of the course i.e course is focused on imparting training in various kind of operations and Management theories/principles. (vii) FPET which is a physical demanding activity has now been omitted from the syllabus.

12. They have summed up their stand by stating that the Commando course, besides being a mandatory course for Assistant Commandant (DE) and Assistant Commandant (LDCE) also fulfils the organizational need of the force as it enhances the professional efficiency of the Assistant Commandant (DE/LDCE) as Company Commander to discharge the duties in the assigned area of deployment. It is stated that the job profile of young Assistant Commandants require command of a Company in difficult and remote places at exterior and interiors of the Nation, where as a Coy Commander, he has to lead his men on W.P. (C) 4810/2015 Page 11 of 32 strenuous operations. This course is made mandatory in national and public interest and also in the interest of the force.

13. Ms. Rekha Palli, learned Senior counsel for the petitioners would contend that the respondents have, without any reason created distinct criteria for promotion of officers who were promoted from Inspector to Assistant Commandant, by way of regular promotion who do not have to undergo the said Commando Course, whereas petitioners and other officers who have earned fast track promotion to the post of Assistant Commandant, are now being asked to attend the said Commando Course as a mandatory condition for promotion to the post of Dy. Commandant. According to her, the respondents have ignored the fact that the Direct Entry Officers, in the normal course join in the age bracket of 20-25 years and finish their Young Officers Commando course in the next 2-3 years but Assistant Commandants promoted through LDCE generally will get/are getting

detailed for the strenuous Young Officers Commando Course after completing the age of 35 years. She states, that such a stipulation has not been put as a pre-condition for regular promotees, which is contrary to the ratio of the judgment passed by this Court in the case of Ravindra Lamba vs. Union of India and others W.P.(C) No.5421/2011 decided on July 28, 2014, wherein this Court has held that there is no logic or rationale in prescription of different medical standards for those recruited by regular promotion and those recruited through LDCE and also held that for the existing force personnel who apply for recruitment through LDCE the medical shape category prescribed in the case of recruitment by promotion shall apply. W.P. (C) 4810/2015 Page 12 of 32 14. She would also submit that the respondents have overlooked the ratio of the judgment of the Supreme Court in Roshan Lal Tandon v. Union of India (196) 1 SCR185 wherein it is clearly opined that once the direct recruits and promotees were absorbed in one cadre, they form one class and cannot be discriminated for the purpose of further promotion. She states that the said ratio was followed by the Supreme Court in the case of S.M. Pandit & ors v. State of Gujarat and ors (1972) 4 SCC778 wherein the Supreme Court observed that the directly recruited Mamlatdars as well as promotee Mamlatdars are designated as Mamlatdars, they have the same pay scale, they discharge the same functions, the posts held by them are interchangeable and that there was nothing to show that the two groups were kept apart. It is her submission that it can be clearly deduced from the facts in the present petition that the petitioners who were promoted through fast track promotion and form the promotion quota cannot be discriminated against, making them undergo a course when the petitioners also perform the same functions and duties as the promotees. She states that the respondents have failed to give any valid justification for treating the Assistant Commandants promoted by way of LDCE in a manner different from Assistant Commandants promoted by way of regular promotion and have merely stated that the threshold level for undergoing the Commando training have been liberalized for those above 35 years of age without answering the basic issue raised by the petitioners. She would state that though initially the respondents who were detailing even those Assistant Commandants who had already undergone the Commando course as Sub- W.P. (C) 4810/2015 Page 13 of 32 Inspector/Inspector, for this Young Officers Commando course but

after filing of the present petition, the respondents have exempted only those petitioners from one module of the course, which according to them relates to physical training.

15. It is her case that even otherwise while removing the age bar of 35 years for undergoing Young Officers Commando course, the respondents have overlooked the fact that undergoing the Commando course will affect the health of the petitioners in the long run due to the strenuous activities to be carried out during the course such as carrying 20 kg weight while running 15-25 kms and also the fact that the Assistant Commandants appointed through LDCE already have experience of working in the BSF and even otherwise are much older than the direct recruits. She would submit, the respondents have in a malafide manner only revealed the statistics of those officers who participated and completed the course and have not disclosed those number of officers who were badly injured during the course and were then asked to attend the next course. It is evident that those officers who were not able to complete the course No.36 were detailed for the next course No.38. She states that for the first time LDCE officers Commando course was conducted from November 2015 to January 2016 in which, 93 officers had participated and none of them were able to secure above C grading or a higher grading and were not eligible for being posted in training centres i.e peace postings. She would state that it has been learnt that officers above 35 years of age are not made to undergo Young Officers Commando course in CRPF, CISR, ITBP and in the Army. She would state, on a perusal of W.P. (C) 4810/2015 Page 14 of 32 the note sheets produced in the Court, at every stage the removal of age limit was opposed and it was even pointed out that there are only 12 officers who are presently below 35 years of age. It is submitted that various officials had opined that removing the age bar of 35 years for the course is unfeasible and without any reasoning the DIG (Training) proposed an amendment removing the age bar which was approved by the Special DG without giving any reasonable explanation. She would state, that the relief as prayed for, be granted.

16. On the other hand, Ms. Bharathi Raju, learned counsel appearing for the respondents would reiterate the stand taken by the respondents in their counter affidavit. The details have already been referred to above. That apart, it is her case

that a provision has been kept to exempt those Assistant Commandant (LDCE) officers who have already done Commando Course in subordinate officers rank (Sub Inspector/Inspector) from Module-I (Commando Training). However, they will be required to undergo Module-II and III of the Combat & Leadership course as the training inputs of Module-II (Border Management & Coy Comdr. Duties) and Module-III (Leadership and Personality Development) are not covered in Commando course prescribed for Subordinate Officers. She would state, so far 128 Assistant Commandants (LDCE) officers have undergone Young Officers Commando and Combat and Leadership Course and successfully qualified the course. The details of the Assistant Commandant (LDCE) officers attended Young Officers Commando and Combat & Leadership Courses since 2013 are as under:-

"W.P. (C) 4810/2015 Page 15 of 32 S.No.Name of Course Rank Total Attended Passed Failed 1. 2.

3.

4. YOs Commando Course Srl. No.36 YOs Commando Course Srl. No.38 Combat Leadership Course No.41 Combat Leadership Course No.44 Srl. & & Srl. AC(DE) AC(LDCE) AC(DE) AC(LDCE) AC(LDCE) AC(LDCE) 41 28 48 07 93 41 28 48 07 93 AC(LDCE) are the 80 Officers undergoing course 00 00 01 00 00 17. She states that the important points which needs to be considered after conduct of above courses are as under:-

"(i) The YOs Commando Course Srl. No.36 was attended by 69 officers (AC/DE-41 & AC/LDCE-28) out of which 1st and 2nd position was obtained by Assistant Commandant (LDCE) Officer Sh. Gopal Singh Rathore, AC(LDCE) and Sh.Rakesh Kumar, AC(LDCE) respectively; (ii) Sh. Gopal Singh Rathore, AC(LDCE) on the basis of his performance in YOs Commando Course Srl. No.36 was selected as Security In-Charge of High Commission of India in Sri Lanka and presently officer is deployed in Sri Lanka with BSF contingent. (iii) The performance of Assistant Commandant (DLCE) officers in Commando Courses has remained better in comparison to Assistant Commandant (DE) Officers as no Assistant Commandant (LDCE) officer have failed so far. However, 05 Assistant Commandant (DE) officers failed in YOs Commando Course Srl. No.40.

18. She states that following facts are pertinent to note in respect to writ petition filed by the 95 petitioners:-

"W.P. (C) 4810/2015 Page 16 of 32 (i) Out of 95 petitioners, 56 petitioners have already attended the Combat & Leadership Course Srl. No.41 conducted at BSF Academy Tekanpur w.e.f. 9/11/2015 to 16/01/2016 and have successfully completed the course. (ii) 17 Assistant Commandant (LDCE) officers including 10 petitioners were exempted from the Module-I (Commando Training) as they had already undergone the Commando Course during Sub Inspector rank. (iii) 100 Assistant Commandant (LDCE) officers including remaining 39 petitioners have been detailed for Combat & Leadership Course Srl. No.44 w.e.f 7/11/2016 to 14/01/2017 and they have already joined the course on 7/11/2016. (iv) 10 Assistant Commandant (LDCE) officers including 03 petitioners have been exempted from Module-I (Commando Training) of Combat & Leadership Course Srl. No.44. (v) Sh. Sunil Kumar, AC(LDCE) who filed WP along with others has also been exempted for Module-I (Commando Training) of Combat & Leadership Course Srl. No.44 started w.e.f 7/11/2016. He will attend Module-II and Module-III of the course starting w.e.f 10/12/2016.

19. She would submit that BSF is an armed force of the Union and has been given mandate to guard International Border during peace time and assist Army during War time. The professional efficiency of a force like a Border Security Force is directly related to standard of training. BSF has established credibility in its past operational commitments and maintaining the high standard of the training to meet the present and future security challenges of the country. It is expected from young officers to maintain the high standard of physical fitness and acquire the professional skills so that they can command the troops effectively and efficiently during peace as well as in war. She states that in view of the W.P. (C) 4810/2015 Page 17 of 32 above, the Combat & Leadership course prescribed for the Assistant Commandant (LDCE) officers is as per the operational requirements of the Border Security Force and it should not be compromised in the overall interest of the nation, force and the individual.

20. Ms. Bharathi Raju, during the course of her submissions, has drawn our attention to the additional affidavit filed on behalf of the respondents on April 19, 2016. She would state that para 6 onwards details the mandatory courses (earlier and present courses) with duration for promotion from Assistant Commandant to Dy. Commandant. She, apart from other submissions, would submit that different thresholds have been prescribed for officers who are below 35 years; officers between 35 to 40 years and officers between 40 to 45 years. It is her submission that having prescribed different thresholds for officers having different age groups, the submission on behalf of the petitioners that they are being compared with the Assistant Commandants (Direct Entry), who joined the service between 20-25 years of age and undergo the Commando Course within 2-3 years, needs to be rejected. She would also state that the Assistant Commandants who have undergone PW course earlier in the Subordinate Officers Rank, are not required to undergo the said Course. In the end, it is the submission of learned counsel for the respondents that the writ petition be dismissed.

21. Having heard the learned counsel for the parties, the only issue which arises for consideration is whether the respondents could have decided that there will be no distinction based on age for undergoing the Commando Course by the Assistant Commandants W.P. (C) 4810/2015 Page 18 of 32 (LDCE), which has resulted in all the Assistant Commandants (LDCE) to undergo the Commando Course mandatorily. At the outset, we may state the BSF Group A (General Duty Officers) Recruitment Amendment Rules, 2012 published in the official Gazette on June 6, 2012, empowers the Director General, BSF to prescribe course or courses from time to time for each rank. If that be so, admittedly the petitioners have not challenged the power of the Director General to prescribe course or courses for each rank. The impugned letter issued on June 27, 2013 being in exercise of the power by the Director General, BSF, the petitioners are estopped from challenging the same. Even otherwise, what is sought to be done by the respondents through the letter dated June 27, 2013, is to remove the age bar of 35 years in the case of Assistant Commandants (LDCE) for undergoing Commando Course by them. All the petitioners are of the age of 35 years or above. They have earned their promotion as Assistant Commandant through fast track promotion from the post of Sub-Inspectors having eligibility condition of four years. The submission of Ms.

Palli that such a stipulation i.e Assistant Commandants (LDCE) above the age of 35 years sought to be compared with Assistant Commandants (DE), who entered the force between the years 20-25 and undergo the training within 2-3 years and such a course shall affect the health of the petitioners in the long run due to the strenuous activities to be carried out during the course such as carrying 20 kg weight while running 15-25 kms and also the fact that the Assistant Commandants appointed through LDCE already have experience of working in the BSF and even otherwise are much older than the direct recruits is concerned, suffice to W.P. (C) 4810/2015 Page 19 of 32 state that, as noted above, the purpose for issuing the letter dated June 27, 2013 was primarily to train officers so as to prepare them to discharge their duties, which are essential for small team operations in hazardous and difficult terrain under life threatening situation. That apart, the course also fulfils the organizational need of the force as it enhances professional efficiency of the Company Commander to discharge duties in the assigned area of deployment. It is stated that the course is mandatory in national interest and also in the interest of the force. Surely, such being the underlying object for imparting course more specifically to the Assistant Commandants (LDCE), who being young in age and are to be given the charge of Company Commander in discharge of their duties, which requires efficiency, the pleas are not sustainable. It is for the Authorities to decide, the nature of courses/training that is required. The Court does not have the expertise to determine such issues. In any case, this Court is not oblivious to the fact that fitter the person, more capable he is to undertake onerous duties.

22. That apart, we note, in the additional affidavit filed by the respondents on April 19, 2016, in para 6 and 12, which we reproduce as under, the respondents have highlighted the type of course need to be undertaken by the Direct Entry and the LDCE officers and the parameters for the officers below 35 years and above 35 years. 6. The details of the mandatory courses (earlier and present courses) with duration for promotion from Assistant Commandants to Deputy Commandant are as under:-

Name/Type of Earlier Courses	Name/Type of Present Courses	Remarks
W.P. (C) 4810/2015 Page 20 of 32 Asstt. Commdt. (Director Entry) (a) PW Course (only for direct entry officers) for 9 weeks	(b) Commando Course (10 weeks)	Asstt. Comdt.

(LDCE) Officers (a) Commando Course (10 weeks) (b) New Weapon and Equipment Surveillance Course (4 weeks) training, Direct Entry & LDCE Officers (a) PW course with 8 weeks duration. New Weapons & Surveillance Eqpts will also be part of PW Course. Since sufficient inputs in all the platoon weapons are given during basic therefore, focus will only be on advance training and training methodology should be Progressive Weapon Training (PWT). Efforts should be made to graduate Integrated Weapon Training method (IWT). (b) Combat & Leadership Course (10 weeks) for which module will be as under: (i) Module-I (Cdo Trg & Tactical Ops-05 weeks) - CI Urban & Rural - ANO in LWE areas - Explosives - Confidence trg - Combat firing (ii) Module-II (Border Mgmt & Coy Comdr Duties -3 & weeks) - Border Mgmt.-. Minor Tactics & Ops of War - Map Reader & GPS - I S Duty - Service Writing (iii) Module -III (Leadership & Personality Development- 1 & weeks) -Moral motivation - Intelligence Promotee Offrs Orientation Course (6 weeks) not courses having potential rank will (a) The Asstt. Comdts who has undergone PW courses earlier in SOs require undergoing this course. (b) Commando course to be renamed as Combat & Leadership Course. Offrs who have done Cdo in SOs ranks will not require undergoing Cdo module of Combat Course. (c) Specialized to be undergone only by the selected Asstt. Comdts and aptitude for these courses. (d) This should also be ensured that any ACs undergoes only one type of specialized course and his service are utilized for that task within reasonable time frame. (e) Asstt. Comdts should be allowed to for multiskilling of his role as trainer but more than 2 courses should not be allowed. (f) Orientation Course will have more emphasis on service writing, custom & etiquettes, Office Management, IT. undergo 2 courses 12. The salient features of the new approved Combat & Leadership Course are as under:-

"W.P. (C) 4810/2015 Page 21 of 32 (i) Out of 650 periods, physical portion constitutes 131 pds only i.e 20% of the total allotted periods. Rest of the syllabus is meant to hone the skills of Coy Comdr. (ii) Emphasis is laid on conduct of various operations in anti Naxal, Counters Insurgency and Border Management scenario. In ANO scenario, almost all Coy Comdrs are generally from Asstt. Comdt. (Direct Entry or LDCE Officers) who have to carry out operations 25-30 kms away from Company Operating Base (COB). Thus, the present syllabus caters for the Ops, requirements also. (iii) New Syllabus also covers leadership

and personality development (87 periods) which has been identified as grey area for young BSF officers in the Training Need Analysis report. (iv) These are separate timings/different parameters for officers above 35 years of age in physical events. The details of parameters are as under:-

EVENT	STANDARD	15Kms	25 Kms	Weekly Physical Test	Kms	3.2	Confidence
Course Assault	Excellent	Very Good	Good	Satisfactory	Excellent	Very Good	Good
Satisfactory	Excellent	Very Good	Good	Satisfactory	Excellent	Very Good	Good
Satisfactory	Excellent	Very Good	Good	Satisfactory	Excellent	Very Good	Good
AGE	BELOW 35 YEARS	109 Min	116.5 Min	124 Min	131.5 Min	195.5 Min	208 Min
		220.5 Min	233 Min	13.5 Min	14.5 Min	15.5 Min	16.5 Min
		15 Min	17 Min	19 Min	21 Min	08 Min	09 Min
		10 Min	11 Min	AGE 35	40 YEARS	AGE 40	45 YEARS
		116.5 Min	124 Min	131.5 Min	139 Min	208 Min	220.5 Min
		233 Min	245.5 Min	15 Min	16 Min	17 Min	18 Min
		16 Min	18 Min	20 Min	22 Min	9 Min	10 Min
		11 Min	12 Min	124 Min	131.5 Min	139 Min	146.5 Min
		220.5 Min	233 Min	245.5 Min	248 Min	16.5 Min	17.5 Min
		18.5 Min	19.5 Min	17 Min	19 Min	21 Min	23 Min
		10 Min	11 Min	12 Min	13 Min	W.P. (C)	4810/2015

Page 22 of 32 (v) 10, 20, 30 and 40 kms route marches have now been replaced with the 15 & 25 kms spewed marches along with operational exercises. Time consideration of age has been kept in new syllabus, 30 seconds for each Km has been given to trainees above 35 years age and on experiencing the outcome same will further be adjusted on need basis. (vi) Major portion of the course i.e course is focused on imparting training in various kind of operations and Management theories/principles. (vii) FPET which is a physical demanding activity has now been omitted from the syllabus. 23. The aforesaid would reveal that the respondents are conscious of the age difference between an Assistant Commandant (DE) and Assistant Commandant (LDCE) and has accordingly prescribed different thresholds/standards. So, the comparison as sought to be made by Ms. Palli is totally unsustainable.

24. Insofar as the plea of Ms. Palli that the respondents have in a malafide manner revealed the statistics of those officers who participated and completed the course and have not disclosed those number of officers who were badly injured during the course and were then asked to attend the next course and that apart, that 93 officers had participated and none of them was able to secure above C grading or

a higher grading and they are not eligible for being posted in training centres i.e peace postings is concerned, suffice to state, from the contention of Ms. Bharathi Raju, it is noted that it is the Assistant Commandants (LDCE) who have topped the position in the course and have been given onerous duties including protecting the High Commission of India abroad. In any case, if in such kind of a W.P. (C) 4810/2015 Page 23 of 32 course, injury occurs, that would not be a ground to set aside the Policy, which is a well considered decision. Further, the members of the force including the petitioners are deployed at the international boundaries to guard the country, the courses prescribed for them must be held be in a larger public interest. Not able to secure above C grading or higher grading and would not be eligible for peace postings, is not a ground to set aside the impugned order.

25. The plea of Ms. Palli that the impugned order is discriminatory as the Assistant Commandant (Promotees) have been left out of the ambit of the course is concerned, such a plea would not help the case of the petitioners. The reason for the same is, a promotee becomes Assistant Commandant at a very advance age as compared to the Assistant Commandants (LDCE) and it was not considered viable to prescribe the said course for them. Even otherwise, if the plea of Ms. Palli is to be accepted then the Assistant Commandants (Promotees) may also have to undergo the said course. In other words, such a plea would not entail the setting aside the decision of the Competent Authority to direct the Assistant Commandants (LDCE) to undergo the said Course.

26. The plea that the officers above 35 years of age are not made to undergo the said Course in CRPF, CISF, ITBP and in the Army is concerned, the same is unsustainable as the petitioners are concerned with the Rules and the decision as applicable to the BSF.

27. That apart, insofar as the plea that note sheets depict that there was opposition for removing the age limit is concerned, the same would be unsustainable as the note sheets W.P. (C) 4810/2015 Page 24 of 32 reflects the view point of an individual officer but relevant shall be the ultimate decision taken by the Authority, who was competent to take it. The same having been reflected in the impugned letter, the same is justified.

28. That apart in the synopsis filed by the respondents, which aspect has been reflected above and also conceded by the learned Senior Counsel for the petitioners that all the petitioners have since been deployed for the course, would make the challenge to the impugned order, unsustainable and the present petition has become infructuous, in the same manner like the W.P.(C) No.6175/2013 filed by similarly placed Assistant Commandants (LDCE) of the year 2011, which was disposed of as infructuous as the said Assistant Commandants (LDCE) had undergone the Commando Course before the writ petition could be decided.

29. Insofar as the judgments relied upon by Ms. Rekha Palli in support of her contention are concerned, in the case of Ravindra Lamba v. UOI (supra), this Court was concerned with an issue, whether different medical standards can be prescribed by the respondents for those selected through LDCE and those promoted to the rank of Sub-Inspector from the feeder cadre in the same organization. This Court has held that the existing personnel who apply for recruitment through LDCE, the medical shape category determined for visual standard in the case of recruitment by promotion shall apply also to those who apply from the feeder cadre for promotion through competitive examination. Suffice to state, the issue, W.P. (C) 4810/2015 Page 25 of 32 which arose for consideration in the said case and the issue in hand are totally different and the said judgment has no applicability to the facts of this case.

30. Insofar as the judgment of the Supreme Court in the case of Roshan Lal Tandon v. Union of India (supra) is concerned, in the said case, the Supreme Court was concerned with facts wherein the vacancies in Grade D of Train Examiners were filled by (a) direct recruits i.e apprentice train examiners who had completed the prescribed period of training and (b) promotees from skilled artisans. Promotion from Grade D to C was on the basis of seniority cum suitability. In October 1965 the Railway Board issued a notification by which it was provided that eighty percent of the vacancies in Grade C were to be filled up from apprentice train examiners recruited on and after April 1, 1966 and the remaining twenty percent by train examiners from Grade D. The notification further provided that apprentice train examiners who had already been absorbed in Grade D before April 1966 should en block be accommodated in Grade C in the eighty percent of

the vacancies without undergoing any selection and with regard to twenty percent of the vacancies, reserved for the other class of promotion was to be on selection basis and not on the basis of seniority cum suitability. The petitioner in the said case entered Railway service in 1954 as a skilled artisan and was selected and confirmed in Grade D filed a writ petition in the Supreme Court challenging that part of the notification which gave favourable treatment to apprentice train examiners who had already been absorbed in Grade D as arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution. It was contended W.P. (C) 4810/2015 Page 26 of 32 that the earlier order laying down that promotion to Grade C was to be based on seniority cum suitability had become a contractual condition of service and could not be altered to the prejudice of the petitioner. The Supreme Court held that the impugned part of the notification violated the guarantee under Articles 14 and 16 of the Constitution. According to the Supreme Court, once the direct recruits and promotees were absorbed in one cadre, they formed one class and they could not be discriminated against for the purpose of further promotion to the higher grade C. Before the impugned notification was issued there was only one rule of promotion applicable to both direct recruits and promotees. By the impugned notification a discriminatory treatment was made in favour of the existing apprentice Train Examiners who had already been absorbed in Grade D because the notification provided that this group of apprentice train examiners should first be accommodated en block in Grade C up to eighty percent of the vacancies reserved for them without undergoing any selection, whereas in the twenty percent of the vacancies available to the category of Train Examiners to which the petitioner belonged the basis of recruitment was selection on merit and the previous test of seniority cum suitability was abandoned. Whereas in the case in hand, the Recruitment Rules as notified in 2012 prescribed the Rule for promotion as; (i) Assistant Commandant as five years the regular service; (ii) should have completed pre-promotional course or courses as prescribed by the Director General, BSF from time to time; (iii) 2 years Command experience as Company Commander of W.P. (C) 4810/2015 Page 27 of 32 service Company in duty battalion or has battery commander in BSF artillery; (iv) medical category SHAPE-I.

31. The issue raised by the petitioners in the case in hand is with regard to a pre-promotional course. Before the impugned notification was issued the Assistant Commandants (LDCE) were segregated on the basis of age. For LDCE below 35 years the pre-promotional course prescribed was (i) New weapon and surveillance Equipment course; (ii) Commando course. For LDCE above 35 years, the pre-promotional course was; (i) New weapon and surveillance Equipment course; (ii) Command & Logistics course. As stated above by the impugned notification the age bar is sought to be removed and the Assistant Commandant (LDCE) is required to pass the pre-promotional course (i) Commando Course; (ii) New weapon and surveillance Equipment course. The substantive Rule does contemplate an Assistant Commandant (Direct Entry)/ Assistant Commandant (LDCE)/Assistant Commandant (Promotee), to complete pre-promotional course. In that regard, there is no discrimination. What the impugned notification contemplate is, only the type of course a particular Assistant Commandant based on source of entry/age, need to undergo. The Assistant Commandants (LDCE) who are above the age of 35 years like the petitioners, had no grievance when such a course was prescribed for LDCE below 35 years of age. Merely because the cap of 35 years has been removed, would not make the course discriminatory. Suffice to state, the purpose for removing the age bar was for achieving efficiency in the force. The tougher Commando course is presumptive of a better physical W.P. (C) 4810/2015 Page 28 of 32 health to take on more onerous duties. The classification being reasonable, cannot be said to be arbitrary.

32. The Supreme Court in the case of State of Mysore vs. P. Narasing Rao 1968 (1) SCR407 wherein, the Rules framed by the Government, the non-matriculate tracers formed a separate cadre from those who had passed the matriculation examination and had different pay scales were upheld. Similarly, in Union of India v. Dr. Mrs. S.B. Kohli AIR 1973 SC811 wherein the Supreme Court upheld the Central Health Service Rules requiring a Professor in Orthopedics to have a post graduate degree in a particular speciality was upheld on the ground that the classification made on the basis of such a requirement was not without reference to the objective sought to be achieved and there can be no question of discrimination. Suffice to state, in the aforesaid two judgments, the Supreme Court has upheld the Rules where a distinction was made on the basis of academic

qualifications. We may note here, the following observation of the Supreme Court in the case of Union of India v. Dr. Mrs. S.B. Kohli:-

"7. We also do not understand the argument advanced on behalf of the appellant that the interpretation placed by the High Court and accepted by us now on this part of the case would mean infraction of Article 16 of the Constitution. We do not agree that the decision of this Court in Roshan Lal v. Union, lays down any such principle. Professors and Additional Professors in teaching institutions do not stand in the same position as General Duty Officers. The argument that it would lead to discrimination in W.P. (C) 4810/2015 Page 29 of 32 the matter of promotion of specialist is also without substance. To say that to be appointed a Professor in Orthopaedics a person must have a post- graduate degree in Orthopaedics is not to make a classification without reference to the objectives sought to be achieved and there can be no question of discrimination. 33. Even in the case of P. Murgesan vs. State of Tamilnadu and others (1993) 2 SCC340 the Supreme Court held Rule making Authority is competent to impose complete bar as well as partial restriction on a category of promotees on the basis of an education qualification. The Supreme Court in para 13 has held as under:-

"13. The learned Judge held that judged from the above standpoint it was impossible to accept the proposition that the classification of assistant engineers into degreeholders and diplomaholders rests on any unreal or unreasonable basis. They accepted the plea that the said classification was brought about with a view to achieving administrative efficiency in the engineering services. The higher academic qualifications, the learned Judge held, is at least presumptive evidence of a higher mental equipment. The learned Judge said, what is relevant is that the object to be achieved here is not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend. The learned Judge referred to the earlier decision of this Court in State of Mysore v. P. Narasing Rao and Union of India v. Dr. (Mrs) S.B. Kohli to demonstrate that a distinction made on the basis of academic qualifications was always upheld by this Court. Ineed, in the latter case, the relevant rule required that a professor of orthopaedics must have a post-graduate degree in the particular speciality. It was upheld as a

relevant requirement. The learned W.P. (C) 4810/2015 Page 30 of 32 Judge the explained the decision in Roshan Lal Tandon v. Union of India (upon which substantial reliance was placed by the respondents in that case) as an authority certainly for the proposition that no discrimination could be made between promotees and direct recruits by reference to the source from which they were drawn but that it does not bar a classification based upon academic qualifications. In the words of Chandrachud, J.: Roshan Lal Tandon case is thus no authority for the proposition that if direct recruits and promotees are integrated into one class, they cannot be classified for purposes of promotion on a basis other than the one that they were drawn from different sources. Having thus distinguished Roshan Lal Tandon case and Mervyn Continho v. Collector of Customs, the learned Judge concluded: We are therefore of the opinion that though persons appointed directly and by promotion were integrate into a common class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualification. The rule providing that graduates shall be eligible for such promotion to the exclusion of diplomaholders does not violate Articles 14 and 16 of the Constitution and must be upheld. 34. That aforesaid being the position, we must hold that though persons appointed through LDCE and by promotion were integrated into a common class of Assistant Commandants, they could, for the purpose of promotion to the rank of Dy. Commandants be classified on the basis of a promotional course as there is an objective sought to be achieved. The Rule providing Assistant Commandants (LDCE) required to undergo W.P. (C) 4810/2015 Page 31 of 32 Commando Course to the exclusion of the Assistant Commandants (Promotee) does not violate Articles 14 & 16 of the Constitution of India and must be upheld.

35. In view of the above, the reliance placed by Ms. Palli on the judgment of S.M. Pandit (supra), would also not be applicable, as in the said case, the Supreme Court noted that the High Court relied upon the decision of the Supreme Court in Mervyn Continho v. Collector of Customs Bombay (1966) 3 SCC600 and Roshan Lal Tandon v. Union of India (supra), which have been distinguished in the later judgment of P. Murgesan (supra) (as noted above), which permit reasonable classification.

36. In view of the discussion above, the writ petition is dismissed. CM. No.8700/2015 (for Stay) Dismissed as infructuous. FEBRUARY20 2017/ak V. KAMESWAR RAO, J INDIRA BANERJEE, J W.P. (C) 4810/2015 Page 32 of 32

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