

Deveinder Singh & Ors. Vs.union of India & Ors.

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Court : Delhi

Decided On : Apr-30-2019

Appellant : Deveinder Singh & Ors.

Respondent : Union of India & Ors.

Advocate for Def. : Mr. Manish Mohan, Ms. Manisha Saroha, Mr. Praveen Kumar

Advocate for Pet/Ap. : Ms. Saahila Lamba

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P. (C) No.5429/2017
Reserved on:

10. h April, 2019 Pronounced on:

30. h April, 2019

... Petitioner

s Through: Ms Saahila Lamba, Advocate. DEVEINDER SINGH & ORS. UNION
OF INDIA & ORS. versus Through: Mr. Manish Mohan, CGSC

... RESPONDENTS

for UOI/R-1 to R-3 with Ms Manisha Saroha, Advocates. Mr Praveen Kumar,
Advocates for Respondent Nos. 4 to 56. CORAM: JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA %

JUDGMENT

Dr. S. Muralidhar, J.:

1. The three

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s who were all appointed as Assistant Commandants (ACs) in the Central Reserve Police Force (CRPF) through a Limited Departmental Competitive Examinations mode (LDCE) are in this petition seeking a direction to the

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to re-fix their seniority in the rank of ACs by placing them above the Respondent Nos. 4 to 56 in the seniority list dated 1st January, 2016. W.P. (C) No.5429/2017
Page 1 of 12 2. The facts which are not in dispute are that each of the three

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s was initially appointed in the CRPF in the rank of Sub Inspector /General Duty (SI/GD).

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No.1 was appointed on 3rd March, 2003, the

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No.2 on 18th December, 2003 and the

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No.3 on 28th February, 2003. They sat for the LDCE8h Direct Entry Gazetted Officers (DEGO) Batch for the post of AC and successfully qualified the same on 16th September, 2009. They underwent the basic training with the DEGO (8th Batch) conducted at the CRPF Academy, Kadarapur with effect from November, 2009 to mid 2010. Each of the

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s was appointed thereafter as AC on 25th November, 2009.

3. As far as the Respondent Nos. 4 to 56 were concerned, they qualified with the 41st batch of Directly Appointed Gazetted Officers (DAGOs) batch, result for which were declared on 27th October, 2008. Their dates of appointments were on various dates beginning 4th December, 2009.

4. The stand of the

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in the counter affidavit filed in the present petition to justify the placing of the three

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s below the Respondent Nos. 4 to 56 in the seniority list of 1st January, 2016 is that in case of DAGOs and DEGOs, the year of declaration of results shall be the year of seniority as per the proviso below Rule 8 (3) (iv) of the CRPF Group A (General Duty) Officers Recruitment Rules, 2001 (2001 Rules). It is accordingly contended that since the Respondent Nos. 4 to 56 belonging to the 41st batch DAGOs were selected on an earlier date, regardless of the fact that they were appointed by the CRPF as ACs later than the

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s, they would be considered senior to the

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s. It is further pointed out that W.P. (C) No.5429/2017 Page 2 of 12 the appointment of the

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s through LDCE mode, has been treated as part of promotion quota for the year 2008-09 and the seniority has been fixed with reference to the date of publication of the result in terms of the OM dated 24th June, 1978 of the Department of Personnel and Training (Do PT), Government of India.

5. A separate counter affidavit has been filed by the Respondent Nos. 4 to 56. Apart from relying on the decision of this Court dated 6th January, 2016 in W.P.(C) No.4940/2011 (Krishna Kumar Singh v. Union of India), Respondent Nos. 4 to 56 also rely on the proviso to Rule 8 (3) (iv) of the 2001 Rules which states that in the

case of direct entrants, the year of declaration of results shall be the year of seniority and further that the inter se seniority of the directly recruited ACs and promotees will be decided as per orders or Do PT issued from time to time.

6. Ms Saahila Lamba, learned counsel appearing for the

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s, points out the distinction between those recruited through the LDCE mode and those that have been promoted as ACs. She points out that Rule 8 (3) (iv) only talks of inter se seniority between direct recruits and promotees whereas those selected through the LDCE mode cannot be treated as direct recruits. She points to the fact that the

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contradict themselves in stating that the LDCes have to be treated as part of the promotion quota on the one hand, and at the same time, maintaining that they would be treated as direct entrants for the purposes of the proviso to Rule 8 (3) (iv) of the 2001 Rules. According to her, the correct position is that there is nothing in the 2001 Rules that applies to the seniority of ACs appointed through the W.P. (C) No.5429/2017 Page 3 of 12 mode of LDCE. Since this was a grey area, Standing Order (S.O.) No.1 of 2009 dated 12th January, 2009 was issued which clearly states that the inter se seniority of the officers appointed through the LDCE mode (DEGO), such as the

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s, and those directly recruited (DAGOs) has to be reckoned with reference to the date of commencement of their training. She points out that in the instance case, the seniority of the private Respondent Nos. 4 to 56 has been fixed from a date when they were not even born in the cadre and this is impermissible in law. She refers to the decision dated 28th November, 2018 of this Court in W.P.(C) No.2197/2014 (SI/GD Pramod Yadav v. Union of India) in support of her contentions.

7. Mr Manish Mohan, learned CGSC appearing for the Union of India supported the seniority list that is under challenge. According to him, the proviso to Rule 8 (3)

(iv) of the 2001 Rules provided the answer and in terms thereof, the Respondent Nos. 4 to 56 had to be placed senior to the present

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s. He refers to Rule 105 (4B) of the CRPF Rules, 1955 read with Standing Order 6 of 2001 and states that the

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s had to be treated as direct entry officers. The stand of the Union of India is that S.O. 1 of 2009 is mainly for determining the within-batch/inter-se-seniority of ACs 'within a batch of training' and has nothing to do as regards determination of relative seniority of DAGOs and DEGOs through LDCE appointed during a same year. 8. Extensive arguments have been addressed by Mr Praveen Kumar, learned counsel for the private Respondent Nos. 4 to 56. He placed before the Court a compilation of all the relevant OMs, office notes and rules. He also made a W.P. (C) No.5429/2017 Page 4 of 12 reference to a decision dated 12th February, 2015 of this Court in W.P.(C) No.1315/2015 (Satbir Singh v. Union of India). He also made a reference to the Central Reserve Police Force, Group A (General Duty) Officers Recruitment Rules, 2010 (2010 Rules).

9. The above submissions have been considered.

10. It is not in dispute that there are three modes of appointment to the post of AC - one is by way of promotion from amongst the SIs, the second is LDCE again among the SIs and the third is direct recruitment. Those directly recruited are termed as DAGOs whereas those appointed through the LDCE mode, are termed DEGOs. The problem of fixation of inter se seniority in these three modes appears to be a vexed one.

11. Very early on, an OM dated 24th June, 1978 was issued by the MHA, to address the issue. For both the direct recruits appointed through exam conducted by the UPSC as well as those appointed through LDCE mode, the date of completion of the selection process would be the date of announcement of results. For direct recruitment through interviews conducted by the UPSC it would be the date of UPSC's letter containing its recommendations. As regards promotion where

the UPSC was associated, the date of completion of the selection process would be the date of the UPSC's letter containing its recommendations ratifying the promotion and where the UPSC is not associated or its formal consent was not required, the last date of the DPC meeting. This was to form the basis for fixing the seniority. The principle was that of being born in the cadre. It was W.P. (C) No.5429/2017 Page 5 of 12 acknowledged that there could be different dates on which those appointed as ACs could be said to be born in the cadre. 12. By a note dated 21st August, 2000 issued by the MHA, it was stated that it had been decided to introduce a system of LDCE as one of the modes of promotion to the post of AC/GD to the extent of 17% of the vacancies, as per the scheme enclosed with the said note. It was further stated that the appointments through LDCE would be part of the promotion quota. The document enclosed with the note was titled scheme for Assistant Commandant/GD Limited Competitive Departmental Examination for Central Police Organizations. Paragraph 9 of the said scheme reads as under: recruited The personnel through Ltd. Departmental Competitive Examination will be treated as part of promotion quota and their seniority will be with reference to the date of selection as per DOP&Ts OM No.22011/5/76-Estt. D dated 24.06.78. Within the candidates selected through LDCE the inter-se-seniority will be as per their position in the merit list of LDCE. 13. However, when the 2001 Rules were made initially, the proviso to Rule 8 (3) (i) only talked of the inter se seniority of directly recruited ACs and promotees. The said Rule reads as under: (3) Subject to the provisions of sub-rule (2), inter se seniority amongst officers holding the same rank shall be as follows, namely: (i) Seniority of officers promoted in the same day shall be determined in the order in which they are selected for promotion in that rank; (ii) Seniority of direct entrants shall be determined in accordance with the aggregate W.P. (C) No.5429/2017 Page 6 of 12 marks obtained by them before the selection board and at the passing out examination conducted at the Internal Security Academy; (iii) Seniority of temporary officers, subject to the provisions of clauses (i) and (ii) shall be determined on the basis of the order of merit at the time of their selection and officers selected in an earlier batch will be senior to officers selected in subsequently batches; (iv) Seniority of officers, subject the provisions of clauses (i) and (ii) and (iii) shall be determined according to the date of their continuous

appointment in that rank. to Provided that in case of direct entrants, the year of declaration of results shall be the year of seniority. Inter se seniority of the directly recruited ACs and promotees will be decided as per order of DOP&T issued from time to time 14. It is seen that the above proviso uses the expression direct entrants lending some ambiguity whether it also includes LDCEs. The said proviso is silent of the inter se seniority between LDCEs and direct recruits.

15. Clarity was sought to be brought about by way of the Standing Order (S.O.) 1/2009 dated 12th January 2009 on the subject matter of fixation of seniority and inter se seniority of directly appointed ACs and DEGOs in the CRPF. It began by acknowledging that: The recruitment of Assistant Commandants in CRPF is by the following methods: by direct recruitment through competitive examination by UPSC for 50% posts, including 10% posts for re-employed Short Service Commissioned Officers selected through interview, W.P. (C) No.5429/2017 Page 7 of 12 by local promotion from eligible Inspectors/ SMs in the Force, after DPC for 33% posts. by limited Departmental Competitive Examination from SI/Inspectors of Force for 17% posts. The LDCE has been introduced in the Force w.e.f. 23.02.2001 (S.O. 06/2001). 16. The S.O.12009 referred to Rule 8 (b) (ii) of the CRPF Rules, 1955, which provided 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.

17. The said S.O. further acknowledged that there remains some grey area which needed to be clarified to regulate the seniority of ACs. In Para 3 then the following guidelines were introduced with immediate effect: Seniority of directly appointed Gazetted Officers through UPSC and direct entry Gazetted Officers (LDCE quota) 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. 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 of 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. Notwithstanding anything contained in paras (i) and (ii) above, within a Batch of training, a person selected earlier but who could not join the training with his batch due to administrative W.P. (C) No.5429/2017 Page 8 of 12 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 block at the top of the batch in which such candidates undergo training. 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 program 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.

18. When it came to incorporating the above in the Rules, the same language was used. Rule 6 (3) (i) of the CRPF Group 'A' (General Duty) Officers, Recruitment Rules, 2010 (2010 Rules) reads as under: (i) Seniority of directly appointed gazetted officers through Union Public Service Commission and direct entry gazetted officers (Limited Departmental Competitive examination quota) shall be reckoned with reference to their batch of training 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 through Union Public Service Commission shall ordinarily mean the date of commencement of training, unless the candidate had reported late but within thirty days of commencement of training.

19. Rule 6 (3) (i) of the 2010 Rules is specific to arranging the seniority between DAGOs and DEGOs (LDCE) and incorporates Standing Order No.1/2009 verbatim. The stand of the Union of India that the above SO is mainly for determining the within-batch/inter-se-seniority of ACs 'within a batch of training' and has nothing to do as regards determination of relative seniority of DAGOs and DEGOs through LDCE appointed during W.P. (C) No.5429/2017 Page 9 of 12 a same year is based on an incorrect reading of the S.O. This becomes even clearer when the 2010 Rules are examined. Rule 6 (3) (ii) of the 2001 Rules deals with the within the batch seniority and state that it shall be determined as per clause (ii) of

sub rule (b) of Rule 8 of the Central Reserve Police Force Rules, 1955 in the order of merit and the 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 the CRPF Academy. The proviso to Rule 6 (3) (ii) states that the seniority of DEGOs and DAGOs shall be reckoned from the date of declaration of results and that of the local promotees from the date of the departmental promotion committee by whom they were empanelled. While it could be argued that the 2010 Rules are prospective, they in fact encapsulate S.O. 1 of 2009 completely and the said S.O. does apply to the case on hand.

20. S.O. 1 of 2009 is specific to arranging the inter se seniority of DAGOs and DEGOs (LDCE). It does not supplant the 2001 Rules but supplements them since the 2001 Rules were ambiguous as regards the inter se seniority of DAGOs and DEGOs (LDCE).

21. In the present case we are not concerned with the same batch of training. The Union of India has in para 9 of its counter affidavit unambiguously stated that

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4 to 56 i.e. the private respondents were appointed a month after appointment of DEGO8h batch and also they commenced basic training a month after DEGO batch commenced their training. They were, therefore, not of the same batch for the purposes of W.P. (C) No.5429/2017 Page 10 of 12 training. In such circumstances S.O. 1 of 2009 (which is bodily inserted in Rule 6 (3) i) of the 2010 Rules) would squarely apply.

22. As far as the decisions are concerned, since considerable reliance has been placed on Krishna Kumar Singh v. Union of India (supra) it requires to be discussed detail. The

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s in the said case were promotees. The dispute was the placement of the promotees in the seniority list below the direct recruits. Therefore, unlike in the present case where the seniority dispute is between the DEGOs (LDCE) and the DAGOs (direct recruits), the dispute in Krishna Kumar Singh was between

promotees and direct recruits. Therefore, a different set of rules applied. The observations made in the said judgment in relation to S.O. No.1/2009 were obiter dicta and they were not required for the final decision in the case. The rules themselves were sufficiently clear as regards arranging the inter se seniority of promotees and direct recruits.

23. Consequently, this Court is of the view that the reliance on the decision in Krishna Kumar Singh by the

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is misplaced. Additionally in the said decision it was not noticed that the S.O. 1/2009 has been bodily lifted and made part of Rule 6 (3) (i) of the 2010 Rules in so far as arranging the inter-se seniority between LDCE and direct recruits is concerned.

24. The case in hand is closer to the decision in Pramod Yadav v. Union of India (supra). There the

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s were LDCE and the dispute was with direct recruits over seniority. This Court distinguished the decision in Krishna Kumar Singh and applied S.O. No.1/2009. The Court recognised W.P. (C) No.5429/2017 Page 11 of 12 that the LDCE recruits went for training earlier than direct recruits, although the results were declared subsequent to the results of direct recruits. It was held that they could be senior to the direct recruits.

25. In the present case also the

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s went for training earlier than the Respondent direct recruits and were born in the cadre of ACs earlier to the

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No.4 to 56. Consequently, their seniority as ACs should be fixed above the direct recruits.

26. In that view of the matter, the petition is allowed. A direction is issued to the

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to re-fix the seniority of the

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s above

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No.4 to 56 and issue a fresh seniority list within twelve weeks from today.

27. The petition is accordingly allowed. S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL30 2019 rd/mw W.P. (C) No.5429/2017 Page 12 of 12

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