

CASE NO.:
Appeal (civil) 5353 of 2000

PETITIONER:
Union of India and Anr

RESPONDENT:
S.S. Gill

DATE OF JUDGMENT: 19/07/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

(With C.A. No. 3133 /2007 @ SLP (C) No.1961 of 2003)
Civil Appeal No. 5354 of 2000 and WP(C) No.596 of 2000)

Dr. ARIJIT PASAYAT, J.

1. Leave granted in SLP (C) No.1961 of 2003

2. In the appeal relating to SLP (C) No.1961 of 2003 challenge is to the judgment of the Division Bench of the Delhi High Court in Letters Patent Appeal No.702 of 2000. Civil Appeal No. 5353 of 2000 is directed against the judgment of the Jammu and Kashmir High Court in Letters Patent Appeal filed by the Union of India. Civil Appeal No.5354 of 2000 is filed by one R.K. Dua who was not a party in the Letters Patent Appeal before the Jammu and Kashmir High Court. Writ Petition No.596 of 2000 also involves the similar dispute.

3. The controversy relates to the interpretation of Rule 8(b) of Central Reserve Police Force Rules, 1955 (in short the 'Rules'). According to the Union of India, the Short Service Commissioned Officers (in short 'SSCOs') are not eligible to get their past service in Army counted in the Central Reserve Police Force (in short 'CRPF') for determining seniority, whereas according to the SSCOs the seniority is required to be determined after considering the unbroken service in the Armed Forces. While the SSCOs placed strong reliance on the decision of this Court dated 21.1.1986 in P.G. Shetty and Ors. v. Union of India upholding the decision of the Delhi High Court (UBS Teotia and Ors v. Union of India), the Union of India placed reliance on a decision of this Court in Ravi Paul and Ors. v. Union of India and Ors. (1995 (3) SCC 300)

4. The Delhi High Court has held that the SSCOs are not entitled to the benefit of past service in Army while the Jammu and Kashmir High Court has held otherwise.

5. At this juncture, in order to appreciate the rival submissions it is to be noted that there are some factual aspects which need to be noted. The SSCOs were appointed as Emergency Commissioned Officers on short service in the Army. They were offered appointments in the CRPF. In the offer of appointment in respect of appellant Nos. 4, 7, 10 and 11 before the Delhi High Court in LPA, the following terms are relevant:

"4. The other terms of appointment will be as follows:

(i) You are being appointed as direct officer under rule 105(4)(iv) and shall not be entitled to reckon your Army Service towards seniority in the CRPF except pay fixation in one increment for each completed year's commissioned service."

6. In R.C. Sahi & Ors. v. Union of India and Ors. (1999 (1) SCC 482) it was observed as follows:

"17. In view of the above observations, it is clear that in the absence of a provision to give benefit of the past service in army service to the ECOs in the main Rule, the Executive Instructions are permissible and the Executive Instructions dated 5.7.1972 were issued to achieve that object. Dr. Rajeev Dhavan, learned counsel could not seriously contend that if the Executive Instructions of 5.7.1972 are to be applied and the past army service of the ECOs is added, the private respondents will be senior to the petitioners. It is the specific case of respondents 1 and 2 that the impugned seniority list was prepared on the basis of the Executive Instructions dated 5.7.1972. Therefore, there is no room for doubt that the seniority list now prepared by respondents 1 and 2 is quite in accordance with law and in compliance with the directions of this Court in Sahi's case."

7. In Ravi Paul's case (supra) it was observed as follows:

"22. It would thus appear that Rule 8(b)(i) of the CRPF Rules only governs the seniority as between Army Officers inter se, Army Officers and re-employed Army Officers inter se, Indian Police Service Officers inter se, and non-Army and Army Officers of equivalent rank inter se. The expression 'rank' in this rule means the rank in CRPF. There is nothing in Rule 8(b) to indicate that the earlier Army service of an Army Officer or a re-employed Army Officer is to be counted for the purpose of seniority in CRPF. Since Rule 8(b)(i) is silent in this regard executive instructions can be issued by the Central Government for the purpose of giving benefit of Army service to Army Officers or re-employed Army Officers. With that end in view the Government of India, in its letter dated 5-7-1972 addressed to the Director General BSF and CRPF as well as IG (ITBP) and Secretary (Home), Arunachal Pradesh Administration, has laid down certain principles for the purpose of fixation of seniority of ex-ECOs appointed in the BSF, CRPF, ITBP and Assam Rifles. The said principles were, however, applicable only to ex-ECOs who were absorbed/appointed in these forces during the period 1967 to 1970. In U.B.S. Teotia v. Union of

India (supra) the Delhi High Court has construed Rule 8 of the CRPF Rules to mean that Army Officers who are re-employed or Army Officers who come on deputation have to retain their original seniority and will get the benefit of their Army service. We are unable to read Rule 8 as having such an effect. In our opinion, the said rule when it says that "an Army Officer shall maintain his seniority as between Army Officers within a particular rank and an Army Officer re-employed in the Central Reserve Police Force shall maintain his Army Service between Army Officers within a particular rank" only means that amongst Army Officers inter se and a re-employed Army Officer and an Army Officer inter se their seniority to a particular rank in the CRPF would be fixed on the basis of their seniority in the Army. We have not found any provision in Rule 8(b) which enables an Army Officer or a re-employed Army Officer to count his Army service for the purpose of seniority in the CRPF. We are, therefore, unable to uphold the decision of Delhi High Court in U.B.S. Teotia v. Union of India (supra). For the same reasons the observations in the order dated 21-1-1986 passed by this Court in special leave petitions arising out of Delhi High Court decision in U.B.S. Teotia case (supra) that "the respondents are the Army Officers within the meaning of Rule 8 of the CRPF Rules and they are entitled to add the length of their unbroken service as ECOs and SSCOs for the purpose of reckoning seniority" cannot be regarded as based on a correct interpretation of Rule 8 of the CRPF Rules. The said observations must, therefore, be confined to that particular case only".

8. In view of what is stated by this Court in the aforesaid two decisions, the inevitable conclusion is that the judgment of the Delhi High Court is in order and needs no interference while that of the Jammu and Kashmir High Court is indefensible and therefore is set aside. Civil Appeal No.5353 of 2000 is allowed while the other appeals are dismissed. No order need be passed in the writ petition.

9. There will be no order as to costs.