

PETITIONER:

R.C.SAHI & ORS., C.M. BAHUGUNA & ANR.

Vs.

RESPONDENT:

UNION OF INDIA & ORS., UNION OF INDIA & ORS.

DATE OF JUDGMENT: 10/11/1998

BENCH:

S. SAGHIR AHMAD. AND K. VENKATASWAMI.,

JUDGMENT:

DER-----

Writ Petition (c) No.211/97 under Article 32 of the Constitution of India has been filed with a prayer to issue a writ of mandamus to the respondents 1 and 2 to implement the judgment of this court dated January 19, 1995 in Ravi Paul and Ors. vs. Union of India and Ors. [(1995) 3 SCC 300] and also the Order dated July 18, 1995 of this Court in R.C. Sahi & Ors. vs. Union of India & Ors. and for other consequential reliefs as well.

It is the case of the petitioners that this Court in R.C. SAHI'S case had expressly directed the first respondent to revise the seniority list, if necessary, after hearing the officers concerned, in accordance with law. The first respondent, according to the petitioners, purporting to implement the order of this Court in Sahi's case, had prepared a seniority list ignoring the relevant provisions of law which had affected their seniority. It is to be noted, the petitioner were also parties in Sahi's case.

Though the issue lies in a narrow compass, wide ranging arguments were addressed by the learned counsel in this case.

The short question that arises for consideration is whether Respondents 1 and 2 are justified in taking into account the past services of the private respondents in the Army for the purpose of fixing seniority between the petitioners - direct - recruits and the respondents-Emergency Commissioned officers (for short 'ECOs').

At this stage, a brief recount of the facts relating to the issue is necessary. The Central Reserve Police Force (for short 'CRPF'), with which we are now concerned, came into existence under the Central reserve Police Force Act, 1949. The CRPF Rules were framed in the year 1955 to deal with various matters. Rule 105 related to appointment and promotion of superior officers. By Notification No. F/2/4/67.P-II dated May 11, 1967 issued by Ministry of Home Affairs, an amendment to Rule 105 was introduced by adding Clause (iv-A) to Rule 105. By the said amendment, appointment of emergency Commissioned Officers (ECOs) and Short-Service Commissioned Officers of the Armed forces of the Union was introduced as one of the modes of recruitment. Since then, dispute between the direct-recruits and the ECOs started in the matter of seniority and the consequential

promotions.

Initially, respondents 1 and 2 did not admit that the ECOs would come under the category of Army Officers. Later on, it was conceded that they would come under the category of Army Officers.

When the past service in the Army by the ECOs was ignored in the matter of seniority and promotion, they moved the Delhi High Court for necessary directions to the respondents 1 and 2 to include their past Army service for the purpose of seniority and consequential promotion. The Delhi High Court by its decision dated September 2, 1985 in C.W. No. 44/85 accepted the claim of the ECOs. Inter alia, the issue relating to the application of Emergency Commissioned Officers and Short-Service Commissioned Officers (Reservation and Vacancies) Rules, 1967 (for short '1967 Rules') was also considered by the Delhi High Court. The learned Judges categorically held as follows:-

"However, we think that these reservation Rules have no application to the case of petitioners (ECOs). The reason for this is that the petitioners have been treated as a separate source of recruitment for the Central Reserve Police Force, 1955 after their amendment. No question of reservation as such is involved in the recruitment of the petitioners. Once they are recruited, the next question is the seniority and pay they have to enjoy in the service after recruitment."

The above judgment of the Delhi High Court was challenged before this Court in S.L.P. (C) Nos. 1390/85 and 16911/85. This Court by a reasoned order dated January 21, 1986 dismissed the S.L.Ps upholding the judgment of the Delhi High Court. No doubt, a three Judge Bench of this Court in Ravi Paul's case and observed that the judgment of the Delhi High Court, as affirmed by this Court, had not laid down the correct law insofar as it held that Rule 8 of 1955 CRPF Rule enabled the ECOs to add their past Army services for the purposes of seniority in the CRPF. Only to that extent it can be taken that the judgment of the Delhi High Court, as affirmed by this Court, was not accepted. However, this Court in Ravi Paul's case held that the Executive Instructions issued on 5.7.72 enabled the ECOs to add their past Army service in the Service of CRPF.

As a result of the judgment dated 2.9.85 of the Delhi High Court in C.W.No. 44/85, U.B.S. Teotia & Ors. vs. U.O.I. & Ors., as confirmed by this Court on 21.1.86 as many as 37 direct-recruits, who were holding the posts of Commandant, were reverted. Aggrieved by that, the direct-recruits moved the High Court for recalling the earlier judgment in C.W. No. 44/85 (Teotia's case), inasmuch as those direct recruits were not parties and the ratio laid down in the judgment giving benefit of past Army service, prejudicially affected their interests. The Delhi High Court dismissed the petition of the direct-recruits. Thereafter, the Union of India and the direct-recruits moved this Court. In Civil Appeal Nos. 1909-1911/89. [vide U.O.I & Ors. vs. N.S. Sekhawat & Ors.] this Court considered the grievances of the direct-recruits. Even at that time, this Court had observed that the dispute between the direct-recruits and the ECOs over the question of seniority and been going on for a long

time and also noticed that the parties desired to settle the dispute amicably and for that purpose granted adjournments. After appreciating the terms of settlement given separately by the Union of India, direct-recruits and the ECOs, this Court by its order dated 14.3.89 protected the interests of direct-recruits by directing the Union Government to create 37 supernumerary posts. It must be noted that the right of adding past Army service of the ECOs was not disturbed.

In the light of the judgment of this Court in Civil Appeal Nos. 1909-1911/89, the Union of India carried out the directions given therein.

Another set of direct-recruits of different year moved this Court by filing W.P.(C) No. 1177/89 under Article 32 of the Constitution of India stating that they were not parties to the earlier decision of this Court and, therefore, the decision of this Court in C.W. No. 1909-1911/89 prejudicially affected their interests. This Court again considered the issue and by decision dated July 18, 1995 directed the Union of India to create necessary supernumerary posts to safeguard the interests of direct-recruits. It is again to be noted that the question of adding past Army service in the case of ECOs was not raised and that matter was taken as concluded. While disposing of the writ petition, this Court observed as follows:-

"We make it clear that any further promotion from amongst the two categories shall be made in accordance with law. If it is necessary to revise the seniority list, the Govt. of India shall do the same after hearing the officers concerned and in accordance with law."

It is under these circumstances, the seniority list was revised by the Respondents 1 and 2. Aggrieved by that again, the direct-recruits have moved this Court by filing Writ Petition (c) No. 211/97 besides I.A. No.4 in Writ Petition (c) No. 1177/89 for the relief already noticed.

The arguments of Dr. Rajeev Dhawan, learned senior counsel for the petitioners, is that the Rules framed under Article 309 of the Constitution of India in the year 1967 do apply to the facts of the case and the seniority as well as promotion to the respondents must be made with reference to those Rules. The finalisation of impugned seniority list, according to the learned senior counsel, by referring to Executive Instructions issued on 5.7.72 is contrary to well-settled principles that the Executive Instructions cannot supersede the Rules framed under Article 309 of the Constitution of India.

Though Dr. Rajeev Dhawan, learned senior counsel initially resisted the contention advanced on behalf of the respondents that 1967 Rules will have no application to the facts of the case, ultimately he has to give up that argument and in our view rightly, in view of the fact that those Rules were intended to be applied in central Civil Services. We have earlier noticed the observations of the Delhi High Court on this very issue and the conclusion reached by it. We are in agreement with those observations.

The result is that the only issue to be decided is

whether the application of Executive Instructions issued on 5.7.72 for fixing the seniority between the direct recruits and ECOs is permissible or not.

In Ravi Paul's case, the Executive Instructions of 5.7.72 came up for consideration, while considering a case under Border Security Force Rules 1969. This Court in that case 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."

(Emphasis supplied)

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 5.7.72 were issued to achieve that object. Dr. Rajeev Dhawan, learned counsel, could not seriously contend that if the Executive Instructions of 5.7.72 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 the respondents 1 and 2 that the impugned seniority list was prepared on the basis of the Executive Instructions dated 5.7.72. Therefore, there is no room for doubt that the seniority list now prepared by the respondents 1 and 2 is quite in accordance with law and in compliance with the directions of this Court in Sahi's case.

Before concluding, we may also point out that the petitioners before filing writ Petition (c) No.211/97, sought for a review of the judgment in R.C. Sahi's case but withdrew the same. Similarly, they filed a petition for contempt on the ground that this Court's order was not implemented and subsequently withdrew the same. They have also filed I.A. No. 4 for clarification besides filing this Writ Petition for implementation of the order of this Court in Sahi's case.

As noticed earlier, the petitioners could not

establish that 1967 Rules are applicable to the private respondents and that Executive Instructions dated 5.7.1972 will not apply to the respondents. We do not think that the petitioners have made out any case for making the rule absolute nor for any clarification of the Order of this Court in Sahi's case.

Before parting with this case in order to do complete justice and having regard to precedents in the earlier connected disposed of matters, we make the following directions.

There are two petitioners in W.P. (C) No. 211/97. Out of these two, it is stated that one has already retired from the service. In the light of the interim orders dated 19.1.98 and 27.1.98, the first petitioner (C.M. Bahuguna) is still in service in the promoted post. In the circumstances, we are of the view that, notwithstanding the dismissal of the Writ Petition, the petitioner, viz. C.M. Bahuguna, who is still in service in the promoted post, should be allowed to continue in the said promoted post, if necessary, by creating a supernumerary post. However, we make it clear that all further promotions shall be made in the light of this Order.

The Writ Petition (C) No.211/97 fails and is accordingly dismissed. I.A. No.4 will also stand dismissed. There will no order as to costs.