





Case No. WP(C) No. 39/2010

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<p style="text-align: center;">BEFORE</p> <p style="text-align: center;">HON'BLE THE CHIEF JUSTICE MR. JUSTICE P.D. DINAKARAN HON'BLE MR. JUSTICE S. P.WANGDI, JUDGE</p> <p>10. 20.06.11 Present: Mr. S.S. Hamal, Mr. Tashi Wongdi Bhutia and Ms. Sabina Chettri, Advocates for the Petitioners. (Dinakaran, CJ)</p> <p>Mr. Karma Thinlay, Central Govt. Advocate for official respondents No. 1 to 4.</p> <p>Mr. A. Moulik, Sr. Advocate with Mr. N.G. Sherpa, Ms. K.D. Bhutia and Mr. Leonard Gurung, Advocates for respondents No. 5, 6 and 7.</p> <p>...</p> <p>The writ petition is disposed of, vide detailed judgment delivered in separate sheets.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"><div style="text-align: center;"> Judge 20.06.2011</div><div style="text-align: center;"> Chief Justice 20.06.2011</div></div> <p>rsr/jk</p>



WP (C) No. 39 of 2010

judgment. dt. 20.6.2011



IN THE HIGH COURT OF SIKKIM AT GANGTOK
(CIVIL EXTRA ORDINARY JURISDICTION)

DATED : 20.06.2011

CORAM

HON'BLE MR. JUSTICE P.D. DINAKARAN, CHIEF JUSTICE

AND

HON'BLE MR. JUSTICE S.P. WANGDI

Writ Petition (C) No. 39 of 2010

1. No. 960150131
ASI/CM Mukesh Kumar Sharma
Sector Head Quarter
Indo-Tibetan Border Police Force
Bhubaneswar, Orissa.
2. No. 969980017
HC Manoj Chettri
Sector Head Quarter
Indo-Tibetan Border Police Force
Gangtok, Sikkim.
3. No. 970150115
HC Anath Bandhu Dey
Sector Head Quarter
Indo-Tibetan Border Police Force
Gangtok, Sikkim.

...Petitioners

-versus-

1. Union of India,
Through the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. The Director General,
Indo-Tibetan Border Police Force,



Ministry of Home Affairs,
Government of India,
Block No. 2, CGO Complex,
Lodhi Road, New Delhi-110003.

3. The Dy. Inspector General (Personnel-II),
Indo-Tibetan Border Police Force,
Ministry of Home Affairs,
Government of India,
Block No. 2, CGO Complex,
Lodhi Road, New Delhi-110003.
4. The Senior Administrative Officer (Personnel-II),
Indo-Tibetan Border Police Force,
Ministry of Home Affairs,
Government of India,
Block No. 2, CGO Complex,
Lodhi Road, New Delhi-110003.
5. No. 877030415 SI/CM Ram Singh
Sector Head Quarter
Indo-Tibetan Border Police Force
Gangtok, Sikkim.
6. No. 967020026 SI/CM Babita Negi
1st Battalion, Indo-Tibetan Border Police Force,
P.O. Joshimath, District Chamoli,
Uttarakhand.
7. No. 969970012 SI/CM Jai Kishan Bhargava,
Office of the Directorate General,
Indo-Tibetan Border Police Force,
Accounts Branch,
Block No. 2, CGO Complex,
Lodhi Road, New Delhi-110003.

...Respondents.

For the petitioners : Mr. S.S. Hamal and Mr. Tashi
Wangdi Bhutia, Advocates

For the respondents : Mr. Karma Thinlay Namgyal,
Central Government Counsel and
Mr. Thinlay Dorjee Bhutia,
Advocate for official respondents
No. 1, 2, 3 and 4.



Mr. A. Moulik, Sr. Advocate with
Mr. N.G. Sherpa, Ms. K.D. Bhutia
and Mr. Leonard Gurung,
Advocates for respondents No. 5,
6 and 7.

JUDGMENT

Dinakaran, CJ

1. Heard Mr. S.S. Hamal, learned Counsel appearing for the petitioners, Mr. Karma Thinlay Namgyal, learned Central Government Counsel for Union of India, respondents No. 1 to 4 (Department) as well as Mr. A. Moulik, learned Senior Counsel appearing for respondents No. 5 to 7 (contesting respondents/individuals).

2. The petitioners No. 1, 2 and 3 were appointed as Naik/Combatant Ministerial (hereinafter referred to as 'Nk/CM') in the Indo-Tibetan Border Police Force (hereinafter referred to as 'ITBP') on 08.09.1996, 13.09.1996 and 03.05.1997 respectively and they were upgraded to the post of Head Constable/Combatant Ministerial (hereinafter referred to as 'HC/CM') in ITBP as per the recommendation of the 5th Pay Commission with effect from 10.10.1997. While the petitioners No. 2 and 3 continued to remain as



HC/CM, the first petitioner alone got promoted to the post of Assistant Sub-Inspector/ Combatant Ministerial (hereinafter referred to as 'ASI/CM') by an order dated 10.08.2010 but with retrospective effect from 31.12.2008.

3. The service conditions of the petitioners No. 1, 2 and 3 as well as the respondents No. 5, 6 and 7 were concededly governed by the Indo-Tibetan Border Police Force, Combatant Ministerial Cadre (Non-Gazetted) Recruitment Rules, 1999 (in short, referred to as 'the Recruitment Rules, 1999') which were made superseeding-

(i) Indo-Tibetan Border Police (Office Combatant non-Gazetted) Cadre Recruitment Rules, 1984; and

(ii) Indo-Tibetan Border Police Subedar Major (Accounts Officer) and Inspector (Accountant) Recruitment Rules, 1997.

4. Concededly, the petitioners as well as the respondents No. 5 to 7 were all considered for the next promotional post namely Sub-Inspector/Combatant Ministerial (hereinafter referred to as 'SI/CM') as per the Recruitment Rules, 1999 by conducting a Departmental Promotion Test and,



accordingly, a 'D List' was prepared and approved as early as on 24.07.2008. Out of the said approved 'D List - 2008' candidates whose names were appeared at Sl. No. 1 to 91 were promoted between 24.07.2008 and 21.07.2010.

5. In the meanwhile, the Central Government introduced Indo-Tibetan Border Police Force, Combatant Ministerial Cadre and Combatant Stenographer Cadre Group-B and Group-C posts Recruitment Rules, 2010 (hereinafter referred to as 'the Recruitment Rules, 2010') with effect from 06.04.2010. Even though the Recruitment Rules, 2010 came into effect from 06.04.2010, the respondents No. 1 to 4 promoted respondents No. 5 to 7, whose names were in Sl. No. 89, 90 and 91 in the approved 'D List' prepared on 24.07.2008 and promoted them as SI/CM, obviously, based on the approved 'D List' prepared on 24.07.2008, which was given effect to and acted upon till 21.07.2010 despite the Recruitment Rules, 2010 which came into effect from 06.04.2010 overlooking the test contemplated under the Recruitment Rules, 2010.

6. Placing reliance on the promotion given to the respondents No. 5 to 7 based on the 'D List' prepared on



24.07.2008, the petitioners approached this Court in the above writ petition seeking same treatment to them, based on the said approved 'D List' for the promotion to the post of SI/CM, as they cannot be discriminated from the respondents No. 5 to 7 and prayed for the following reliefs: -

- a) Issue a Rule calling upon the Respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof and/or any other Writ, Order or Direction shall not be issued against the Respondent Nos. 1 to 4 commanding them to abstain from giving any further effect to the impugned order.
- b) Issue a Rule calling upon the Respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof and/or any other Writ, Order or Direction be not issued against the Respondent Nos. 1 to 4 to set aside, quashed and cancelled the impugned order.
- c) Issue a Rule calling upon the Respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof and/or any other Writ, Order or Direction be not issued against the respondent Nos. 1 to 4 for setting aside the order of nomination of the Petitioner No. 1



whereby he was ordered to undergo a pre-promotional Refresher Course from 27-09-2010 to 1-10-2010 at the ITBP training School at SS Battalion at Saboli in Haryana.

- d) Issue a Rule calling upon the Respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof and/or any other Writ, Order or Direction be not issued against the Respondent No. 1 to 4 commanding them to give promotion to the Petitioners to the post of Sub-Inspector (Combatant Ministerial) Cadre post against available vacancies in terms of recruitment rule, 1999 read with Standing Order No. 01/2005 dated 17/01/2005 and the **"Approved List 'D'-2008"** as is given to the Respondent No. 5, 6 and 7 vide Office Order No. 11391-99 dated 21-07-2010 under signature of Respondent No.4 and/or in the alternative to set aside, quashed and cancelled the Office Order No. 11391-99 dated 21-07-2010 under signature of Respondent No. 4 vide which the Respondent No. 5, 6 and 7 have been promoted to post of Sub-Inspector (Combatant Ministerial).
- e) In the ad-interim and thereafter, on hearing the parties, in the interim, an order in terms



of prayers as contained in a), b), c) and d) above.

7. It is under this background, this Court passed a detailed interim order on 22.09.2010, which reads as hereunder:

"1. Heard Mr. S.S. Hamal, learned Counsel appearing for the petitioners as well as Mr. Karma Thinlay Namgyal, learned Central Government Counsel appearing for respondents No. 1 to 4.

2. It is not in dispute that the petitioners participated in the Departmental Test as contemplated under Indo-Tibetan Border Police Force, Combatant Ministerial Cadre (Non-Gazetted) Recruitment Rules, 1999, hereinafter called 'ITB Police Force Recruitment Rules, 1999', for consideration of promotion of qualified personnel from the post of Assistant Sub-Inspector (Combatant Ministerial) [for short, 'ASI (CM)'] to the posts of Sub-Inspector (Combatant Ministerial) [for short 'SI (CM)'] conducted on all India basis from 28.5.2008 to 30.05.2008 at Delhi.

3. The petitioners passed the test and got selected and their names are added in the approved 'D' list prepared by the Directorate General, I.T.B. Police Force, New Delhi by its proceedings dated 24.07.2008. The rank of the petitioners in the said 'D' list is stated as below:

Sl. No.	No.	Rank	Name	Cate.	Present Unit
1 to 98
99	960150131	HC	Mukesh Kumar	UR	SHQ(NE-2)
...
112	969980017	HC	Manoj Chhetri	UR	NE-2



...
119	970150115	HC	Anath Bandhu	UR	SHQ NE-2

..

4. But in meanwhile, the new Rules, the Indo-Tibetan Border Police Force, Combatant Ministerial Cadre and Combatant Stenographer Cadre Group-'B' and Group-'C' posts Recruitment Rules, 2010, hereinafter called as 'ITB Police Force Recruitment Rules, 2010', came into force with effect from 06.04.2010.

5.1 As per the said Notification dated 06.04.2010, ITB Police Force Recruitment Rules, 1999 are superseded, except as respects things done or omitted to be done before such supersession under ITB Police Force Recruitment Rules, 2010. The posts of SI (CM) are to be filled up by promotion. Therefore it is clear that the posts of SI (CM) are promotional posts and not selection posts nor direct recruitment posts.

5.2 As per the ITB Police Force Recruitment Rules, 2010, the promotion to the posts of SI (CM) has to be made as provided hereunder:

"By Promotion

From amongst Assistant Sub-Inspector (Combatant Ministerial) having six years regular service in the Grade or ten years combined regular service in the Grade of Assistant Sub-Inspector (Combatant Ministerial) and Head Constable (Combatant Ministerial) with minimum one year regular service in the grade of Assistant Sub-Inspector (Combatant Ministerial) and have qualified **pre-promotion course/ courses** prescribed by the Department."

6. In view of the above ITB Police Force Recruitment Rules, 2010, the respondents proposed to hold a pre-promotion course or courses prescribed by the Department for the purpose of promotion from the post of ASI (CM) to the post of SI (CM) and a test is scheduled to be held from 27.09.2010 to 01.10.2010 on all India basis.



7. It is in this background, Mr. S.S. Hamal, learned Counsel for the petitioners contends that the petitioners are also entitled for promotion to the post of SI (CM) for the following reasons: -

(i) the ITB Police Force Recruitment Rules, 2010 supersedes ITB Police Force Recruitment Rules, 1999, except as respects things done or omitted to be done before such supersession;

(ii) the petitioners have already passed their departmental test conducted for the purpose of promotion from the post of ASI (CM) to the post of SI (CM) as early as in 2008 and also got their names included in the 'D' list;

(iii) the said 'D' list is still continued to operate in spite of the new ITB Police Force Recruitment Rules, 2010, which came into force from 06.04.2010, because 3 more persons were also promoted from the said 'D' list by proceedings of the Directorate General, ITB Police Force dated 21.07.2010 as hereunder:

Sl. No.	Regtl. Rank/ Name	No./	Rank in the 'D' list dated 24.7.08	Present Unit	On promotion Allotted Ftr/ Unit To decide posting
1.	877030415 ASI/CM Ram Singh (Gen)		89	CRO	Eastern Ftr (Against SHQ (GTK))
2.	967020026 HC/CM Babita Negi (Gen)		90	SHQ (GTK)	Northern Ftr (Against 1 st Bn.)
3.	969970012 ASI/CM Jai Kishan Bhargava (Gen)		91	Dte. Gen., Trg. Br	Dte. Gen., IFD.

8. The said proceedings dated 21.07.2010 of the Directorate General, ITB Police Force reads as hereunder:



No. 1-19013/5/2009-Pers-II-11391-99
 Directorate General, ITB Police Force
 MHA/GOI
 CGO Complex, Lodhi Road
 New Delhi-110 003.

Dated: 21.07.2010.

ORDER

Following personnel, who on the basis of passing departmental test were brought in approved list 'D', are recommended to be promoted to the post of Sub- Insp/CM with Immediate effect in Pay Band-2 of Rs.9300-34,800/- with Grade Pay Rs.4200/-. The financial benefit of new post shall be allowed on the day of taking over the charge of new post. Concerned officer in-charge will pass their formal promotion order provided their present medical category is shape-I and no departmental enquiry or vigilance case is pending or contemplated against them. On promotion they are posted in earmarked Frontiers shown against their name to decided their further posting: -

Sl. No.	Regtl. No./ Rank/ Name	Present Unit	On promotion Allotted Ftr/Unit To decide posting
1.	877030415 ASI/CM Ram Singh (Gen)	CRO	Eastern Ftr (Against SHQ (GTK))
2.	967020026 HC/CM Babita Negi (Gen)	SHQ (GTK)	Northern Ftr (Against 1 st Bn.)
3.	969970012 ASI/CM Jai Kishan Bhargava (Gen)	Dte. Gen., Trg. Br	Dte. Gen., IFD.

2. Regtl. No. 910180154 SI/CM Budhi Singh Negi, SHQ(GTK) tfrd to 1st Bn under Northern Ftr to decide his further posting as it is a couple case because his wife HC/CM Babita Negi has also been tfrd on promotion to 1st Bn against the vacancy of Northern Ftr.
3. After deciding the posting of ASI/CM Ram Singh, HC/CM Babita Negi and SI/CM Budhi



Singh Negi by the concerned Ftr, compliance report would be submitted after relieving them for concerned formations.

4. Regtl. No. 95023045 HC/CM Ramesh Kanyal (8th Bn/1st Bn) who has been recommended to be promoted to the rank of SI/CM vide Dte. Gen. Order No. 16479-579 dated 30.03.2008, his promotion has been cancelled by Principal-cum-Pay & Accounts Officer, Ministry of New & Renewable Energy as the individual has been permanently absorbed.
5. This has the approval of IG (Pers & Admn) Dte. Gen.

Sd/- 21.07.10
(M.L. Meena)
Sr. Administrative Officer
(Pers-2) "

9. The rank of the said 3 promotees, namely, (i) Ram Singh, (ii) Babita Negi and (iii) Jai Kishan Bhargava are in the said 'D' list dated 24.07.2008 is at Sl. Nos. 89, 90, 91 respectively.

10. Mr. S.S. Hamal, learned Counsel for the petitioners also submits that but for the proceedings dated 21.07.2010, promoting the 3 ASI (CM) to the post of SI (CM) out of the 'D' list dated 24.07.2008, the matter would be different. Since the respondents promoted the aforesaid 3 ASI (CM) from the 'D' list dated 24.07.2008 in spite of the new ITB Police Force Recruitment Rules, 2010, it is evident that the respondents are still acted upon the said 'D' list dated 24.07.2008 after the new ITB Police Force Recruitment Rules, 2010 came into force from 06.04.2010 and therefore, the petitioners are also entitled for the same treatment, otherwise it will be arbitrary, discriminatory, unreasonable and violative of Article 14 of the Constitution of India.

11. Mr. Karma Thinlay, learned Central Government Counsel appearing for the respondents, in spite of notice to the respondents yesterday and adjourning the matter today, submits that he could not get instructions from the respondent Department. Therefore, the learned Central Government Counsel seeks one week's time to get instructions.



12. We are prima facie convinced that grievance of the petitioners are genuine and bonafide. Therefore, while adjourning the matter by one week at the request of the learned Central Government Counsel, we also direct the respondents to keep 3 posts vacant in the cadre of Sub-Inspector (Combatant Ministerial) for the petitioners until further orders of this Court. However, the respondents are at liberty to take appropriate decision in the case of the petitioners also taking note of the proceedings dated 21.07.2010.

List it on 29.09.2010.

Sd/-
Judge
22.09.10

Sd/-
Chief Justice
22.09.10

"

8. Pursuant to the said interim order dated 22.09.2010, the petitioners filed a Civil Miscellaneous Application No. 47 of 2011 in the above writ petition No. 39 of 2010 bringing to our notice a Notification dated 20.05.2011 of the Ministry of Home Affairs, Government of India published in the Government of India Gazette dated 20.05.2011, which is called as Indo-Tibetan Border Police Force, Combatant Ministerial and Combatant Stenographer Cadre Group-'B' and Group-'C' posts Recruitment (Amendment) Rules, 2011, obviously substituting some of the provisions relating to the promotions in the Recruitment Rules, 2010 as referred to above, which are also directly related to the case of the petitioners, impugned in the above writ petition.



8.1 The Notification dated 20.05.2011, referred to above reads as hereunder:

"MINISTRY OF HOME AFFAIRS
NOTIFICATION

New Delhi, the 20th May, 2011

G.S.R. 392 (E).- In exercise of the powers conferred by sub-section (1) read with clause (b) of sub-section (2) of section 156 of the Indo-Tibetan, Border Police Force Act, 1992 (35 of 1992), the Central Government hereby makes the following rules to amend the Indo-Tibetan Border Police Force, Combatant Ministerial and Combatant Stenographer Cadre Group 'B' and Group 'C' posts Recruitment Rules, 2010 namely: -

1. Short title and commencement. - (1) These rules may be called the Indo-Tibetan -Border Police Force, Combatant Ministerial and Combatant Stenographer Cadre Group-'B' and Group-'C' posts Recruitment (Amendment) Rules, 2011.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Schedule to -the Indo-Tibetan Border Police Force, Combatant Ministerial and Combatant Stenographer Cadre Group 'B' and Group 'C' posts Recruitment Rules, 2010 -

(a) against serial number 1, relating to the post of Inspector (Combatant Ministerial), in column 12, for the existing entries, the following shall be substituted, namely: -

"By promotion:

From amongst Sub-Inspectors (Combatant Ministerial) having five years regular service in the grade rendered after appointment thereto on regular basis and have qualified pre promotion Course/Courses prescribed by the department.

Note 1.- The eligibility condition for promotion in respect of Sub-Inspector (Combatant Ministerial), who are holding the post on regular basis, on the date of the notification of these Rules shall continue to be 3 years.

Note 2.- The service rendered on a regular basis by an officer prior to 1st January, 2006/ the date from which the revised pay structure based on the sixth Central Pay Commission recommendations has been extended, shall be



deemed to be service rendered in the corresponding grade pay/pay scale extended based on the recommendations of the Commission.

Note 3.- Where juniors who have completed their qualifying or eligibility service are being considered for promotion their senior would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying or eligibility service.";

(b) against serial number 2, relating to the post of Sub-Inspector (Combatant Ministerial), in column 12, for the existing entries, the following shall be substituted, namely: -

"By promotion:

From amongst Assistant Sub-Inspector (Combatant Ministerial) having six years regular service in the grade or ten years combined regular service in the grade of Assistant Sub-Inspector (Combatant Ministerial) and Head Constable (Combatant Ministerial) with minimum one year regular service in the grade of Assistant Sub-Inspector (Combatant Ministerial) and have qualified pre promotion Course/Courses prescribed by the department.

Note 1.- The eligibility service for promotion to the rank of Sub-Inspector (Combatant Ministerial) in respect of Assistant Sub-Inspector (Combatant Ministerial) and Head Constable (Combatant Ministerial), who are holding the post on regular basis, on the date of the notification of these Rules shall continue to be 5 years/10 years respectively.

Note 2.- The service rendered on a regular basis by an officer prior to 1st January, 2006/the date from which the revised pay structure based on the Sixth Central Pay Commission recommendations has been extended, shall be deemed to be service rendered in the corresponding grade pay/ pay scale extended based on the recommendations of the Commission.

Note 3.- Where juniors who have completed their qualifying or eligibility service are being considered for promotion their senior would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever



is less, and have successfully completed, their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying or eligibility service.";

- (c) against serial number 4, relating to the post of Inspector (Stenographer), in column 12, for the existing entries, the following shall be substituted, namely: -

"By promotion:

From amongst Sub-Inspector (Stenographer) who have rendered five years regular service in the grade and have qualified pre promotion Course or Courses prescribed by the department.

Note 1.- The eligibility condition for promotion in respect of Sub--Inspector (Stenographer), who are holding the post on regular basis, on the date of the notification of these Rules shall continue to be three years.

Note 2.- The service rendered on a regular basis by an officer prior to 1st January, 2006/ the date from which the revised pay structure based on the Sixth Central Pay Commission recommendations has been extended, shall be deemed to be service rendered in the corresponding grade pay/pay scale extended based on the recommendations of the Commission.

Note 3.- Where juniors who have completed their qualifying, or eligibility service are being considered for promotion their senior would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying or eligibility service.

By deputation:

Officials of the Central or State Government Department holding analogous post on regular basis in the grade.

Note. 1- (The period of deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organization or department of the Central Government shall ordinarily not exceed three years. The maximum age limit for appointment by deputation shall be not



exceeding fifty-two years as on the closing date of receipt of application).

Note. 2- (The departmental officers in the feeder categories who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment on promotion.)

Note 3.-The service rendered on a regular basis by an officer prior to 1st January, 2006/ the date from which the revised pay structure based on the Sixth Central Pay Commission recommendations has been extended, shall be deemed to be service rendered in the corresponding grade pay/ pay scale extended based on the recommendations of the Commission.

By re-employment:

Officials holding analogous post in the Armed Forces viz. Army/Navy/ Air Force having minimum five years experience in the line, having break in service not more than two years.

Note.- The Armed Force personnel due to retire or who are to be transferred to reserve with in a period of one year and having requisite experience and qualifications prescribed if any, shall also be considered. Such person would be given deputation terms upto the date on which they are due to release from Armed Forces; thereafter they may be continued on re-employment. The maximum age limit for eligibility for re-employment shall be not exceeding fifty two years on the date of receipt of application.";

(d) against serial number 5, relating to the post of Sub-Inspector (Stenographer), in column 12, for the existing entries, the following shall be substituted, namely: -

"By Promotion:

From amongst the Assistant Sub-Inspector (Stenographer) who have rendered six years regular service in the grade and have qualified pre promotion Course or Courses prescribed by the department.

Note 1. - Where juniors who have completed their qualifying or eligibility service are being considered for promotion their senior would be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying or eligibility service.



Note 2. – The service rendered on a regular basis by an officer prior to 1st January, 2006/ the date from, which the revised pay structure based on the Sixth Central Pay Commission recommendations has been extended, shall be deemed to be service rendered in the corresponding grade pay or pay scale extended based, on the recommendations of the Commission.";

(e) against serial number 6, relating to the post of Head Constable (Combatant Ministerial),-

(i) for existing entries in column 8, the following shall be substituted, namely: -

- "1. Senior Secondary Certificate from a recognized Board or equivalent.
2. English Typing @ 35 w.p.m. on computer; or Hindi Typing @ 30 w.p.m. on computer.
(Time allowed- 10 min.)
(35 w.p.m. and 30 w.p.m. correspond to 10500 Key Depressions Per Hour (KDPH)/9000 Key Depressions Per Hour (KDPH) on an average of 5 key depressions for each word)".

[F. No. I - 12013/3/2010-Org.]
HARISH CHANDER, Dy. Secy."

9. In the light of the above subsequent development, referred to above, this Court heard learned counsel for the petitioners as well as learned Central Government Counsel on 30.05.2011 and recorded the statement of the learned Central Government Counsel and passed the following order:

"Heard Mr. S. S. Hamal, learned counsel appearing on behalf of the petitioners and Mr. Karma Thinlay, appearing on behalf of the learned Central Government counsel for the official respondents no.1 to 4. Also heard Mr. A. Moulik, learned senior counsel appearing on behalf of the respondents no.5 to 7.



The petitioners brought to our notice the Notification dated 20-05-2011 of the Ministry of Home Affairs, Government of India, which partially redressed the grievances of the petitioners, according to the learned counsel for the petitioners.

It is further contended by the learned counsel for the petitioners that both the 'D' List and the 'C' List relied upon by the petitioners ought to have been restored for filling up the existing 4 (four) vacancies in the post of Sub-Inspector.

On the other hand, the learned Central Government counsel, seeks time to get clarification from the Central Government as to the manner by which the notification dated 20-05-2011 has to be implemented.

In this regard, we adjourn the matter by 3 (three) weeks with specific directions to the respondents

- (i) to clarify the manner in which the impugned notification dated 20-05-2011 proposed to be given effect to the case of the petitioners; and
- (ii) to how much time the respondents would be requiring to fill up the existing 4 (four) vacancies in the cadre of Sub-Inspector in the light of the notification dated 20-05-2011, if they proposed to fill up the same in the near future.

Post on 20-06-2011.

Sd/-
Judge
30-05-2011

Sd/-
Chief Justice
30-05-2011

”

10.1 Pursuant to the said order dated 30.05.2011, the respondents No. 1 to 4 filed a fax copy of the affidavit dated 17.06.2011 and sought the leave of this Court to file the original affidavit in due course.



10.2 The relevant portion of which reads as hereunder:

"IN THE MATTER OF: Short reply affidavit in reply to the application No.....dated

IN THE MATTER OF: No. 960150131 ASI/CM Mukesh Kumar Sharma & Ors
...Petitioner

VERSES

Union of India through the Secretary Ministry of Home Affairs & ors.

...Respondents

I, M.L. Meena, S/o Sh. G.R. Meena, age 57 years, by occupation a Government Servant presently residing at Delhi do hereby solemnly affirm and state as follows:-

1. That I am the Senior Administrative Officer (Estt.), Dte. Gen., ITBPF, Delhi, Respondent No. 4 in the writ petition. I am subordinate to respondents Nos. 1, 2 and 3 and have been duly authorised to make, swear and affirm this affidavit on their behalf. Therefore, I am fit and competent to make, swear and affirm this affidavit on their behalf also.

2. That I have perused a copy of the writ petition and have understood the intent and purport thereof.

3. That the aforesaid matter was listed on 30.05.2011 and the Hon'ble High Court, after hearing the parties directed the respondents to reply the following points: -

- i) To clarify the applicability as to in what manner the Notification dated 20th May, 2011 is to be given effect to in case of the petitioner.
- ii) If so, how much time would respondents require for promotion of the petitioners to the vacancies to the post of SI/CM in the light of the aforesaid notification.

4. That the respondents have considered the matter of giving benefits to the petitioners and reply to the queries posed by the Hon'ble Court in order to finish off with the matter is as under:

- i) **That the respondents, consequent upon notification of GSR 392(E) dated 20.5.2011, wherein amendment has been made in the Indo-Tibetan Border Police**



Force, Combatant Ministerial and Combatant Stenographer Cadre Group 'B' and Group 'C' posts Recruitment Rules, 2010, petitioner and similarly placed personnel are being considered for promotion to the rank of SI/CM, under these rules, so that their seniority is protected.

- ii) That three months' time is considered necessary for promotion of the petitioners to the post of Sub Inspector (Combatant Ministerial) in the light of the aforesaid notification, subject to their being in Medical Category SHAPE-I and clear from DE & Vigilance angle.

(emphasis supplied)

Prayer:

In view of the foregoing, this Hon'ble Court may be graciously pleased to dismiss the writ petition and vacate the interim orders.

Sd/-

M.L. Meena

Sr. Adm. Officer (Pers.-II)

Dte. Genl. I.T.B. Police

Block-2, C.G.O. Complex
New Delhi.

Date: 17 JUN 2011

VERIFICATION

I, the above name deponent verify and say that the statement made in paragraph 1 and 2 are true to my knowledge and those contained in paragraphs 3-4 are derived from the official record and nothing material is concealed wherefrom.

Affirmed on this the 17 JUN 2011 at New Delhi.

Sd/-

M.L. Meena

Sr. Adm. Officer (Pers. II)

Dte Genl. I.T.B. Police

Block-2, C.G.O. Complex
New Delhi."

11. In paragraph 4 (i) of the affidavit dated 17.06.2011, the respondents No. 1 to 4 have clearly stated that the case



of the petitioners and similarly placed personnel are being considered for promotion to the rank of SI/CM, under these rules, namely Recruitment Rules, 2010 **as amended by the Recruitment Rules 2011** dated 20.05.2011, so that their **seniority is protected**; and in paragraph 4(ii), the respondents No. 1 to 4 seek 3 (three) months' time to complete the above exercise, apparently agreeing to consider the case of the petitioners and the similarly placed personnel based on the approved 'D List' prepared and approved on 24.07.2008 under the Recruitment Rules, 1999, which was given effect to till 21.07.2010, as in the case of the respondents No. 5 to 7 who were promoted to the post of SI/CM by order dated 21.07.2010 based on the 'D List' dated 24.07.2008 without subjecting them (Respondents No. 5 to 7) to any test, contemplated under the Recruitment Rules, 2010, in order to avoid any discrimination between the case of the respondents No. 5 to 7 and to the case of the petitioners.

12. We are, therefore, of the considered opinion that suffice it to record the affidavit dated 17.06.2011 referred to above and to dispose of the above writ petition accordingly,



making it clear that the respondents No. 1 to 4 shall proceed further in the matter and pass appropriate orders as undertaken in their affidavit dated 17.06.2011, referred to above. No cost.

(S.P. Wangdi, J)
20.06.2011

(P.D. Dinakaran, CJ)
20.06.2011

Index : Yes/No

Internet: Yes/No

rsr/jk