

**HIGH COURT OF TRIPURA**  
**AGARTALA**

WP(C) No.1439/2019

Sri Abinash Nanda, S/o Sri Ambika Charan Nanda,  
Assistant Commandant(Electrical), C/o Inspector General,  
Border Security Force, Frontier Headquarter Tripura, P.O.  
Salbagan, P.S. Capital Complex, Salbagan, Agartala,  
Tripura 799012.

..... Petitioner(s).

Vs.

1. Union of India, represented by its Secretary, Ministry of Home Affairs, North Block, Central Secretariat, New Delhi – 110 001.
2. The Director General, BSF, CGO Complex, Lodhi Road, New Delhi – 110 003.
3. The Inspector General, Border Security Force, Frontier Headquarter Tripura, Salbagan, Agartala, Tripura 799 001.
4. Sri Yadav Kanhaiya Udairaj, IRLA No.11215738, Assistant Commandant (Electrical) DIG Headquarter, BSF, R K Puram, New Delhi – 110 066.
5. Sri Pradeep Suthar, IRLA No.11217305, Assistant Commandant (Electrical) SHQ BSF Ferozpur, Ferozpur Cantonment, Moga Road, Punjab – 152 001.

..... Respondent(s).

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**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**

For Petitioner(s) : Mrs. S Deb(Gupta), Advocate,  
Ms. S Nandy, Advocate.

For Respondent(s) : Mr. H Deb, Asstt. S G.

Date of Judgment : 20<sup>th</sup> December, 2019.

Whether fit for reporting : No.

**JUDGMENT(ORAL)**

Heard learned counsel for the parties for final disposal of the petition.

[2] The petitioner has challenged a draft seniority list published by the respondents on 21<sup>st</sup> January, 2019 and also challenged the decision of the department to proceed further with conducting the Departmental Promotion Committee ('DPC' for short) meetings on the basis of such draft seniority list for granting further promotion.

[3] Brief facts are as under :

The petitioner was appointed to the post of Sub-Inspector/Junior Engineer(Electrical), GDE-II under General Category on 26<sup>th</sup> September, 1996 in the Border Security Force ('BSF' for short). He was promoted to the post of Assistant Engineer(Electrical) on 30<sup>th</sup> December, 2011. According to the petitioner, respondents No.4 and 5 were directly recruited to the post of Assistant Engineer(Electrical)/Assistant Commandant on 24<sup>th</sup> April, 2012 and 9<sup>th</sup> May, 2012 respectively from general category candidates.

[4] The BSF published *inter se* seniority of Group - A Officers in the engineering set up on 9<sup>th</sup> October, 2013 where the name of the petitioner was shown at Sl. No.30 and those of the respondents No.4 and 5 at Sl. Nos.35 and 36 respectively. Yet another list was published on 8<sup>th</sup> May, 2014 where also the

petitioner was shown senior to the said respondents No.4 and 5. All subsequent lists published till the year 2019 maintained this seniority position.

[5] The BSF published a tentative seniority list on 21<sup>st</sup> January, 2019 of Assistant Engineers as on 15<sup>th</sup> December, 2018 in which the seniority position of the petitioner *vis-a-vis* the respondents No.4 and 5 was reversed. Both the respondents No.4 and 5 were shown senior to the petitioner. The respondent No.4 Yadav Kanhaiya Udairaj was pushed up from Sl. No.17 to 5 and Pradeep Suthar respondent No.5 was pushed up from Sl. No.18 to 9. As a consequence, the petitioner was pushed down from Sl. No.12 to 15. The petitioner raised objections to the said tentative seniority list under a detail representation dated 4<sup>th</sup> February, 2019. In such representation, the petitioner referred to various decisions of Supreme Court and contended that a direct recruit cannot claim seniority from a date earlier to when he was born in the cadre.

[6] On 21<sup>st</sup> October, 2019 the department responded to the said representation of the petitioner conveying that the case was taken up with the higher authorities. Department of Personnel Training ('DoPT' for short) has returned the same to Ministry of Home Affairs ('MHA' for short) for taking appropriate action at its end. The case is now being re-submitted to MHA.

[7] The case of the petitioner is that at that stage the BSF has initiated the process for conducting DPC for promotion from the post of Assistant Commandant (Electrical), (in the same cadre as Assistant Engineer) to Deputy Commandant (Electrical) which would be clear from the internal communication dated 9<sup>th</sup> December, 2019.

[8] Learned counsel for the petitioner submitted that the respondents have applied wrong principles in preparing the tentative seniority list. The private respondents No.4 and 5 are given seniority from a date anterior to their date of recruitment which is wholly impermissible. Series of decisions of Supreme Court have laid down such principles. She placed heavy reliance on a recent decision of Supreme Court in case of **K Meghachandra Singh and Ors. Vs. Ningam Siro and Ors** dated 19<sup>th</sup> November, 2019 in which three-Judge Bench of Supreme Court overruled the earlier decision of two-Judge Bench in case of **Union of India and Ors. Vs. N R Parmar and Ors.** reported in **(2012) 13 SCC 340** making somewhat different observations.

[9] Learned counsel for the BSF pointed out that similar issue was raised by some other employees before Delhi High Court. The petition was disposed of by an order dated 7<sup>th</sup> March, 2019 giving certain directions to the BSF.

[10] Having heard learned counsel for the parties, I find that in the order dated 7<sup>th</sup> March, 2019 Delhi High Court had in this very context given following directions:

“ .....

3. Considering that without finalizing the seniority list, the cases of the Petitioners and other similarly placed persons for promotion cannot be taken up, it is imperative that time bound directions are issued to the Respondents to complete the exercise.

4. Accordingly, it is directed that the Director General, Border Security Force(BSF) will, after examining the representations of the ACs, send the modified seniority list to the MHA/DoPT for approval not later than 31<sup>st</sup> May, 2019. The MHA/DoPT will give their concurrence/approval/comments thereon to the BSF not later than 31<sup>st</sup> May, 2019. Thereafter the final seniority list will be published not later than 9<sup>th</sup> August, 2019 and cases of the Petitioners and others similarly placed be taken up for promotion and the decision thereon communicated to the Petitioners not later than 31<sup>st</sup> December, 2019. If the above time schedule is not adhered to, it will be open to the Petitioners to seek appropriate remedies in accordance with law.

5. The petition is disposed of in the above terms.”

[11] Subsequently, on 4<sup>th</sup> December, 2019 the Delhi High Court was apprised that the different stages prescribed in the earlier order dated 7<sup>th</sup> March, 2019 have not been adhered to. The

Court, therefore, on 4<sup>th</sup> December, 2019 passed further following order:

“ .....

3. All of this does not help the Court to understand why its order has not been implemented.

4. Notices are issued to the IG(Pers) Border Security Force(BSF), Joint Secretary(Police) in the MHA and the Director of DoPT to explain why they should not be proceeded against for wilful disobedience of the order dated 7<sup>th</sup> March, 2019 of this Court. All the three officers will remain present in person with the concerned records on the next date. Each of them will file an affidavit in response to the notice by the next date.

5. In case, there is a compliance with the directions issued on 7<sup>th</sup> March, 2019 by the date the officers need not be present to proceed with the matter. However, a compliance report shall be filed before the next date.

6. List on 15<sup>th</sup> January, 2020. A certified copy of this order be delivered by Special Messenger forthwith to the IG(Pers) Border Security Force(BSF), Joint Secretary (Police) in the MHA and the Director of DoPT for compliance.”

[12] Few things immediately become clear. Firstly, the Division Bench of Delhi High Court has already directed the department to dispose of the representations of the aggrieved Assistant Engineers against the tentative seniority list. In the same order dated 7<sup>th</sup> March, 2019 the Court also opined that without finalising the seniority list the case of the petitioners and other

similarly situated persons for promotion cannot be taken up. Despite this, if the department is drawing a DPC for further promotions without finalizing the seniority list, the same would be wholly impermissible. In any case, the tentative seniority list to which objections are raised by several employees in the cadre and which objections are not yet disposed of, cannot be the basis for granting promotions, particularly when the tentative seniority list upsets largely the previous seniority position which had survived for several years.

[13] Under the circumstances, the petition is disposed of with following directions:

- (a) The official respondents shall dispose of the objections of the petitioner to the tentative seniority list expeditiously. If any general timelines are prescribed by Delhi High Court in the above noted pending litigation, the same would apply to the case of the petitioner also.
- (b) In any case, till such objections are disposed and seniority list is finalised, the tentative seniority list shall not be utilised for the purpose of granting promotions. In other words, the DPC shall not proceed to consider the cases of the eligible officers for promotion on the basis of

such tentative seniority list till final seniority list is published.

- (c) Needless to add, if the petitioner's objections are rejected and the petitioner is aggrieved by the seniority list which may be finalised by the department it would be open for him to take his legal recourse.

Petition is disposed of accordingly.

Pending application(s), if any also stands disposed of.

**( AKIL KURESHI ), CJ**