



2025:DHC:1740-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19.12.2024
Pronounced on: 19.03.2025

+ **W.P.(C) 7007/2020**

DEVINDER SINGHPetitioner
Through: Mr. Shivanshu Bhardwaj and
Ms. Priyanshi Bhardwaj, Advs.
versus

UNION OF INDIARespondent
Through: Ms. Arti Bansal, SPC with Mr.
Kamal R. Dignpaul, Adv.

+ **W.P.(C) 8005/2020**

COMDT RAJ KUMAR ARORAPetitioner
Through: Mr. Shivanshu Bhardwaj and
Ms. Priyanshi Bhardwaj, Advs.
versus

UNION OF INDIA AND ANRRespondents
Through: Mr. Varun Chugh, Ms. Shagun
Shahi Chugh and Ms. Meera
Chugh, Advs. for UOI

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present petitions under Article 226 of the Constitution of India have been filed *inter alia*, seeking an issuance of a writ of



mandamus, commanding the respondents to fix the seniority of the petitioners in accordance with the Rule 3(3) (ii) of the Border Security Force (Seniority, Promotion and Superannuation of officers) Rules 1978, ("the Rules") by extending the benefit of the Judgment passed by this Court *in R.P. Sanwal v. Union of India & Ors.*, 2018 SCC OnLine Del 12582, along with other petitions in the batch, to them.

Brief Facts

2. For the sake of brevity, the petitioner in Writ Petition (Civil) No. 7007 of 2020 shall hereinafter be referred to as **petitioner no. 1**, and the petitioner in Writ Petition (Civil) No. 8005 of 2020 shall hereinafter be referred to as **petitioner no. 2**. As the facts of both the petitions are similar in nature, these are accordingly being dealt with together *vide* this common Judgment.

3. The petitions pertain to the selection and appointment of the petitioners to the post of Assistant Commandant, Group A post in the Border Security Force (BSF).

4. The petitioners, aspiring to join the said post, responded to an advertisement issued by the Government of India, Ministry of Home Affairs (MHA), Central Police Organization, in the year 1991. The petitioners duly participated in the selection process and successfully cleared the written examination conducted on 15.09.1991. Subsequently, they also qualified in the prescribed physical test and interview. Having remained successful at every stage of the selection process, the petitioners were duly included in the list of selected candidates. Thereafter, the Secretary, Special Selection Board (CPO-



91), forwarded the dossiers of the selected candidates, including the petitioners, for the post of Assistant Commandant to the Deputy Director (Personnel), Directorate General, BSF, New Delhi, through various lists.

5. The Assistant Commandants selected for appointment in the BSF were, for administrative reasons, divided into two batches for the purpose of undergoing the Basic Training Course (BTC). Accordingly, the 16th batch commenced its training on 01.02.1993, while the 17th batch commenced its training on 02.07.1993.

6. The petitioner no. 1 was initially declared medically 'unfit' for appointment and, as a result, was unable to commence the Basic Training Course with the 16th batch. However, upon undergoing a Review Medical Examination on 22/23.03.1993, he was declared medically 'fit' and was thereafter assigned to undergo training with the 17th batch.

7. Likewise, the petitioner no. 2, due to an administrative delay in the receipt of his Medical Fitness Report and Character Verification Report, was also assigned to the 17th batch for the BTC.

8. The names of the Assistant Commandants from the 16th and 17th batches were initially included in the gradation list dated 18.07.1995, on a provisional basis, with the petitioners being given the seniority along with officers who underwent training as the 17th Batch. However, pursuant to a clarification issued by the MHA, by the order dated 27.11.1995, the *inter-se* seniority of the officers from both the batches was clubbed and the petitioners were given notional seniority



along with the officers of the 16th Batch based on the aggregate marks obtained during the selection process and the passing-out examination at the BSF Academy, irrespective of the commencement dates of their respective training courses.

9. In *interregnum*, before the commencement of the 16th and 17th batches, various personnels who were already working in the rank of Inspectors, were promoted to the rank of Assistant Commandant with effect from 15.03.1993. As per the administrative directions, by the order dated 27.11.1995 referred to hereinabove, the officers promoted to the rank of Assistant Commandant during this period were placed *en bloc* junior to the officers of both the 16th and 17th batches.

10. Mr. Om Prakash Sharma, a promotee officer to the post of Assistant Commandant, being aggrieved by such fixation of seniority, wherein promotee officers were placed below the officers of the 17th batch, filed a Writ Petition before the High Court of Jammu and Kashmir, bearing SWP No. 1393/1999.

11. The High Court, *vide* the Order dated 27.07.2001, allowed the said petition, holding that the promotee officers were entitled to have their seniority determined based on the date of their continuous appointment in the said rank, in accordance with Rule 3(3)(iv) of the Rules.

12. The Order dated 27.07.2001 was unsuccessfully challenged *vide* a Letter Patent Appeal, being LPA (SN) No. 275/2002, which was dismissed by the High Court of Jammu and Kashmir *vide* the Order dated 01.08.2002.



13. Pursuant to the dismissal of the Appeal, and in compliance with the Order dated 27.07.2001, the seniority list was revised, and the promotee officers were placed between the 16th and 17th batches, pursuant to Pers Dte. Order dated 24.08.2004. Notably, before the pronouncement of the said judgment, Mr. Om Prakash Sharma and the other promotee officers who had joined before 01.07.1993, had superannuated prior to the final determination of their seniority.

14. Dissatisfied by the revision of seniority, the officers of the 17th batch filed a Special Leave Petition, being ***Rohitash Kumar & Ors. v. Om Prakash Sharma & Ors.***, (2013) 11 SCC 451. The Supreme Court, *vide* the Judgment dated 06.11.2012, dismissed the said Special Leave Petition.

15. Meanwhile, one Dinesh Kumar, a batchmate of the petitioners, who was also selected as Assistant Commandant through the same examination, was initially declared 'unfit' in the Medical Board Examination held on 04.12.1992, consequently, he was assigned to the 18th batch for training. Dinesh Kumar filed a Writ Petition before this Court, being W.P. (C) No. 19748/2005, titled ***Dinesh Kumar vs. Union of India & Ors.***, seeking promotion ahead of certain officers assigned to the 16th batch, which was allowed by this Court *vide* the Judgment dated 14.02.2011.

16. Subsequent thereto, a Board of Officers was constituted to examine the issue of seniority. Upon its recommendation, which proposed reassigning the seniority of 53 affected officers of Assistant Commandant (Direct Entry) batches based on the date of



commencement of their respective training batches, the Directorate General of BSF issued Order No. 17/157/2013-Pers/BSF/8100-8450, dated 27.01.2016, thereby revising the seniority of the affected officers. As per the said order, the seniority previously determined under Rule 3(3)(ii) was modified. Consequently, officers who had joined at a later date were assigned seniority based on the date of their continuous appointment to the rank, rather than the aggregate marks obtained during the selection process and the final examination conducted at the Border Security Force Academy.

17. Aggrieved by the Order dated 27.01.2016, many officers assailed it by means of various petitions, including WP(C) 2671/2016 titled *R.P. Sanwal vs Union of India & Ors*, WP(C) NO. 2668/2016 titled *Prakhar Trivedi vs Union of India & Ors*, WP(C) No. 743/2015 titled *Manjit Singh vs Union of India & Ors*. This Court, *vide* its common Judgment dated 27.11.2018, decided these petitions in favor of the petitioners. Consequently, in compliance with the said Judgment, the Order dated 27.01.2016 was rescinded by the respondents through subsequent Orders.

18. Further, as per the Gradation List of Group 'A' GD Officers for 2019, issued through Order No. 17/147/2012-Pers/BSF/1456-805 dated 14.01.2020, several candidates who participated in the same selection process as the petitioners and secured lower aggregate marks, both before the Selection Board and in the passing-out examination at the BSF Academy, have nevertheless been placed above petitioners in the seniority list. It is the case of the petitioners



that despite participating in the same selection, the petitioners along with a few others have been denied this benefit, as their seniority has been determined based on the date of their continuous appointment rather than their merit-based ranking.

19. Subsequent thereto, the petitioners seeking the fixation of their seniority along with their batchmates based on the aggregate marks, submitted a joint representation dated 01.05.2020.

20. Aggrieved by the lack of response to their representation, the petitioners have approached this Court by way of the present petitions, invoking its writ jurisdiction under Article 226 of the Constitution of India.

Submissions on behalf of the petitioner

21. The learned counsel for the petitioners submitted that the case of the petitioners is similar to that of *Dinesh Kumar* (supra) and, therefore, the seniority of the petitioners must be determined along with the officers of the 16th Batch as it was the respondents who, for their own reasons and default, had delayed sending the petitioners for training.

22. He submits that this Court in a Writ Petition bearing No. W.P.(C) 743 of 2015 titled *Manjit Singh v. Union of India*, who was selected pursuant to the same examination, that is, SSB (CPO) 1991, but had joined his training with the 18th batch as he was declared medically 'unfit' by Medical Board, and a batch of other petitions, *vide* Judgment dated 27.11.2018, distinguished the Judgment of the Supreme Court in *Rohitash Kumar* (supra), and directed for



restoration of his seniority as it was before the issuance of the Order dated 27.01.2016, that is, as had been fixed by the respondents initially.

23. He contended that this position was again reiterated in *Naresh Kumar v. Union of India & Ors.*, 2018 SCC OnLine Del 13015, whereby, this Court ruled that the petitioner who could not join the basic training along with his batchmates cannot be denied fixation of seniority with his batch mates.

24. Placing reliance on the judgment of *Avinash Singh & Ors. v. Union of India & Ors.*, 2011 SCC OnLine Del 2432, he submitted that the seniority of the Assistant Commandants has to be drawn with reference to the merit position in the Select List, irrespective of the date on which the person is made to join the training. He submitted that the same view was reiterated in *Naveen Kumar Jha v. Union of India & Ors.*, 2012 SCC OnLine Del 5606.

25. The learned counsel submitted that the petitioners must be extended the benefit of the Judgment passed by this Court in the case *R P Sanwal* (supra). Placing reliance on the judgment in *Lt. Col. Suprita Chandel v. Union of India & Ors.*, 2024 SCC OnLine SC 3664, the learned counsel for the petitioner submitted that the law is well settled that where a citizen aggrieved by an action of government department has approached the Court and obtained declaration of law in his/her favour, others similarly situated ought to be extended the benefit without need for them to go to court.



26. The learned counsel vehemently contended that the clause (ii) of sub-rule 3 of Rule 3 of the Rules is unfettered, while the clause (iii) & (iv) are subject to the clause (ii), thus controlled by the provisions of said Clause. The proviso to Clause (iv) serves only to clarify the appointment dates for direct entrants. Thus, in case of there being any conflict between the clauses, the clause (ii) of the Rules should prevail upon Clause (iii) & (iv).

27. The learned counsel further emphasized that despite the relative position of Clause (ii) *vis-à-vis* Clauses (iii) and (iv), each of these provisions govern distinct categories of officers. The seniority of direct entrants is determined according to Clause (ii), while the seniority of direct entrants who are selected through separate selection processes is regulated by Clause (iii). Additionally, the seniority of officers who are promoted, follow the guidelines set out in Clause (i). Thus, the learned counsel submitted that the Rules function within their specific domains, ensuring clarity and consistency in the determination of seniority.

Submissions on behalf of the respondent

28. While seeking dismissal of the petitions, the learned counsel for the respondents urged that the case of the petitioners is not distinguishable from that of the officers of the 17th batch, which has already been settled through the Supreme Court's judgment in *Rohitash* (supra). One of the petitioner(s) was also a party to the said case. In the said Judgment dated 06.11.2012, the Supreme Court, while interpreting Rule 3(3)(ii) of the Rules, 1978, upheld the decision



of the Single Bench of the Jammu and Kashmir High Court that for direct recruits, the date of appointment would be considered as the date of commencement of their training course at the BSF Academy. This Rule remained applicable until its supersession in 2001. The seniority of the 17th batch was, therefore, segregated from that of the 16th batch and was placed *en bloc* below the 16th batch and promotee officers.

29. The learned counsel for the respondents submitted that Mr. Manjit Singh's seniority was fixed above Mr. Suresh Kumar (17th batch). Clubbing him with the promotee officers and placing him below Mr. S. Shiv Moorty (16th batch) would result in an inconsistent fixation of seniority above the promotee officers and between the two batches, a matter already settled by the Supreme Court in its Judgment in ***Rohitash Kumar*** (supra). Consequently, his seniority was determined above Mr. Suresh Kumar of 17th batch, by order no. 25516-23 dated 28.08.2019.

30. The learned counsel further contended that the petitioners cannot rely on the case of Mr. Dinesh Kumar, who was granted notional seniority and promotion alongside the officers of the 16th batch, as per the directions of this Court. The relief granted to Mr. Dinesh Kumar was based on the specific facts and circumstances of his case, whereas the seniority of the petitioners, along with that of other officers, was fixed with the 17th batch in accordance with Rule 3 of the Rules.



31. He submitted that the other cases cited by the learned counsel for the petitioners were also decided on their individual facts and circumstances, without interpreting Rule 3 of the Rules, as the interpretation of the said Rules was not at issue in those cases.

32. The learned counsel further contended that granting of such a relief to the petitioners at this stage will affect the right of the other personnels. He places reliance on *Rahul Sharma v. Delhi Metro Rail Corporation & Ors.*, 2024 SCC OnLine Del 2345, wherein this court has held that, it is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. The learned counsel also relied on the decision in *B.S. Bajwa & Anr. v. State of Punjab & Ors.*, (1998) 2 SCC 523, and submitted that in service matters, the question of seniority should not be re-opened after the lapse of a reasonable period because that results in disturbing the settled position, which is not justifiable. He submitted that the same position of law has been reiterated in *Shiba Shankar Mohapatra & Ors. vs State of Orissa & Ors.*, (2010) 12 SCC 471.

33. To conclude, the learned counsel contended that the petitioners are attempting to unsettle the Judgment of the Supreme Court in *Rohitash* (supra) after a considerable lapse of time. Furthermore, under Article 226 of the Constitution of India, the settled legal position cannot be challenged.



Analysis and Findings

34. We have considered the submissions made by the learned counsels for the parties.

35. From a bare perusal of the aforementioned submissions, it is clear that the entire dispute regarding the seniority has arisen because of the delay caused by the respondent due to administrative reasons, including delays in constituting the Review Medical Examination Board, delays in character verification, and other similar issues. Even though the candidates were selected through the same competitive examination, these administrative delays have resulted in the candidates being placed in different batches for training purposes, which has led to disputes over the seniority, both in relation to direct entrants and promotees.

36. It is undisputed, as detailed in the preceding facts, that the petitioners were direct entrants, selected as Assistant Commandants in the BSF through the SSB (CPOs-1991), however, due to administrative delays, particularly in the Review Medical Examination process, the petitioners were not issued an offer of appointment to undergo the basic course with Assistant Commandant (DE) Batch No. 16, which commenced on 01.02.1993, at the BSF Academy, Tekanpur. Once the petitioners were declared medically fit, they were issued an offer of appointment to undergo the basic course with Assistant Commandant (DE) Batch No. 17, which commenced on 02.07.1993, also at the BSF Academy, Tekanpur. Consequently, the petitioners were appointed as Assistant Commandants (DE) on



02.07.1993, even though they had been selected through the same competitive examination as the officers of Batch No. 16. It is further acknowledged that the delay in their appointment was attributable to administrative actions of the respondents. The 16th batch consisted of 67 officers who commenced their training on 01.02.1993, whereas the 17th batch, including the petitioners, consisted of 87 officers and began their training on 02.07.1993.

37. In **R P Sanwal** (supra), which involved the same batch of officers raising similar grievance with respect to the same seniority list, this Court, relying upon the earlier judgment in **Dinesh Kumar** (supra) and after taking into consideration the judgment of the Supreme Court in **Rohitash Kumar** (supra), held as under:

"25. There are certain features of the above case that require elucidation. One is that it was a dispute essentially between promotees and direct entrants where the promotees, relying on the main part of Rule 3 reproduced hereinabove, claimed that since they were inducted into the cadre by their appointment on an earlier date, they were senior to the direct entrants. This was accepted particularly since the validity of the rule was not under challenge. Secondly, it was clarified that the proviso to Rule 3 would have application "only in a case where officers who have been selected in pursuance of the same selection process are split into separate batches. Interpreting the rule otherwise would amount to adding words to the proviso, which the law does not permit". Thirdly, the 17th batch, having joined training on 2nd July 1993, could not claim seniority from the date on which the 16th batch joined training, i.e. 27th March 1993. In other words, those of an earlier batch



who joined training earlier would be senior to those who joined training later.

26. Interestingly, however, the Supreme Court had no occasion to deal with the cases of all whose seniority had already been re-fixed, such as the present Petitioners, with the Respondents accepting their plea that their failure to join training was not on occasion of any fault of theirs. In fact, the Appellants in Rohitash Kumar (supra) placed reliance on the decision dated 14th February 2011 in Dinesh Kumar (supra) and it was observed in para 29 as under:

“29. Shri R. Venkataramani, learned Senior counsel for the appellants, has placed very heavy reliance upon, the judgment of the Delhi High Court (Dinesh Kumar v. UOI) dated 14.2.2011 wherein, certain relief was granted to the petitioner therein, in view of the fact that there was some delay in joining training, in relation to passing the fitness test set by the Review Medical Board. The court granted relief, in light of the facts and circumstances of the case, without interpreting Rule 3 of the Rules 1978. Thus, the said judgment, in fact, does not lay down any law. The case at hand is easily distinguishable from the above, as that was a case where seniority and promotion had been granted on a notional basis, with retrospective effect and it was held that the person to whom the same had been granted, was entitled to all consequential benefits.”

27. Therefore, the Supreme Court was not prepared to disturb the judgment of this Court in Dinesh Kumar (supra) by observing that it was a case where “seniority and promotion had been granted at a notional basis with retrospective effect”. The fact of the matter, therefore, is that even according to the



Supreme Court, as a result of its decision, the position as far as the decision in Dinesh Kumar (supra) is concerned, would not be affected.

28. Interestingly, Mr. Dinesh Kumar was a 1991 officer like Mr. Singh. If Rohitash Kumar (supra) was intended to disturb their cases, then clearly the Supreme Court would have recorded its finding to that effect. However, the Supreme Court considered the case of Rohitash Kumar (supra) as an inter se dispute between promotees and direct entrants and, therefore, declined to vary its order. It noted that this Court had granted relief in light of the facts and circumstances of the case without interpreting Rule 3 of the 1978 Rules and thus, was of the view that Dinesh Kumar (supra) had, in fact, not laid down any law.

29. Interestingly, even in the order passed by this Court in the review petition filed in Dinesh Kumar (supra), this Court observed that the facts in Rohitash Kumar (supra) were distinguishable. The interpretation placed by the Division Bench of this Court of Rohitash Kumar (supra) and what the issue in Dinesh Kumar (supra) was is evident from a reading of the entire order dated 12th December 2014, which reads as under:

“Review Pet. No. 524/2014

1. The review petition is entirely misconceived. The decision of the Supreme Court pronounced on November 06, 2012 in CA No. 2133-2134/2004 on which the review is predicated is not applicable to the facts of the instant case.

2. Said decision holds that in view of Rule 3 of the BSF (Seniority, Promotion and Superannuation of Officers) Rules, 1978, the seniority of the directly recruited officers has not to be with respect to the merit position secured at the competitive examination. The decision notes that as per the Rule, the



final merit position is with reference to the aggregate of the marks obtained at the competitive examination and at the induction course.

3. On facts, in said decision, persons who took the competitive examination for appointment as an Assistant Commandant in BSF could not join in the same year due to administrative exigencies. Character verification for some were received and for others it was not received. The result was that some underwent the training/induction course earlier and the remainder with the next batch. Officers who underwent training in the next batch wanted seniority to be determined on the basis of the aggregate of the marks obtained in the competitive examination and at the induction course. The department took the view that the prospective appointees at the competitive examination did not undergo training in the same batches and thus those who took training at the latter batch would rank junior to those who underwent training in the earlier batch. The Supreme Court accepted the view taken by the department.

4. In the instant case the issue was not that of seniority. The writ petitioner undertook the competitive examination but his appointment as an Assistant Commandant got delayed due to late convening of a review medical board by BSF. Realizing this, BSF itself granted seniority to the appellant as an Assistant Commandant with reference to his merit position at the competitive examination held on September 15, 1991.

5. There was no issue on said account.

6. The issue which arose was when promotion to the post of Deputy Commandant became due. As per the service rule, six years service in the



grade of Assistant Commandant was the eligibility condition. The juniors who had been inducted earlier rendered six years service and thus were being considered for promotion as Deputy Commandant. The Petitioner relied upon para 3.1.2 of the Office Memorandum dated March 25, 1996, relevant portion whereof has been noted in paragraph 15 of the decision dated February 14, 2011. As per the same, if juniors had become eligible for being considered for promotion, eligibility norm for the senior officer had to be half the number of years of service otherwise required.

7. The writ petition which was decided by us interpreted the Office Memorandum in question and its effect. The petitioner had rendered three years and six months service as an Assistant Commandant. This was more than half the eligibility service of six years. Admittedly, persons junior to the petitioner had rendered more than six years of service and had become eligible for being considered to be promoted as an Assistant Commandant. In said fact, applying para 3.1.2 of the Office Memorandum dated March 25, 1996, relief was granted to the petitioner.

8. The review petition is dismissed.

9. No costs.”

30. *In one sense, the order passed in the review petition in Dinesh Kumar (supra) on 12th December 2014 is consistent with what the Supreme Court itself observed as regards the decision of this Court in Dinesh Kumar (supra) in its decision dated 6th November 2012 in Rohitash Kumar (supra).*

31. *The net result is that there was no requirement for the BSF to have undertaken a review of the seniority positions of all officers pursuant to the judgment in Rohitash Kumar (supra). This Court has not been told why,*



despite the order dated 24th January 2014 clearly stating that the review was to be confined to the 29th to 35th batches, the Respondents desired to open up a Pandora's box. It was contended by Ms. Maninder Acharya, learned ASG appearing for the Respondents, that there were already grievances expressed about the re-fixation of seniority. She referred to what was noticed by this Court in its order in Dinesh Kumar (*supra*) about the re-fixation of Mr. Singh's seniority.

32. However, as has already been noted hereinbefore, this Court in Dinesh Kumar (*supra*) was of the view that there was no justification in reviewing Mr. Manjit Singh's seniority. The order in Dinesh Kumar (*supra*) attained finality with the dismissal of the SLP of the Union of India. The decision of this Court in Dinesh Kumar (*supra*) also found mention in the judgment in Rohitash Kumar (*supra*) and was not disturbed. The net result would be that although both belong to the 1991 batch, because of the disinclination of the Supreme Court in Rohitash Kumar (*supra*) to disturb the position vis-à-vis Dinesh Kumar (*supra*), the case of Mr. Manjit Singh would also stand on the same footing as Mr. Dinesh Kumar. In other words, the seniority earlier re-fixed in his case (prior to the impugned orders) would not be disturbed.

33. As far as the five other Petitioners are concerned, Ms. Acharya was not able to justify why, without any complaint being made by anyone, their seniority was re-fixed. The only justification revealed was the judgment in Rohitash Kumar (*supra*) but, as already pointed out, it was actually a case of inter se seniority between a promotee and a direct recruit. The promotee there had taken training earlier with the 16th batch whereas the Appellants joined training with the 17th batch which took the training later. Therefore, the promotee's seniority over the direct recruit



entrants was affirmed by following Rule 3. It was not a case of inter se seniority in the same batch of direct recruits. In any event, the judgment in Rohitash Kumar (supra) was not meant to apply retrospectively. It was incumbent upon the Respondents to point out to the Supreme Court, if they were intending to apply the judgment retrospectively, the consequences of such retrospective application.

34. The decision of the Supreme Court in Rohitash Kumar (supra) was not meant to reopen the seniority of all officers of all batches. The Supreme Court was, in fact, not disturbing the status quo when it affirmed the judgment of the Jammu and Kashmir High Court. If after nearly two decades seniority has to be re-fixed all of a sudden as a result of a judgment of the Supreme Court, it would alter the status quo to the severe detriment of many despite that there being no complaint at all from any quarter. This was an unwarranted problem unnecessarily brought about by the Respondents themselves.

37. Therefore, in view of the decisions referred to hereinabove, we are of the opinion that a meaningful interpretation of the ratio of the Supreme Court's decision in Rohitash Kumar (supra) would result in the conclusion that 'settled seniority' should be preserved. The retrospective application of the said judgment would be inconsistent with the ratio of the judgements referred to hereinabove. The manner in which the Respondents are seeking to apply the judgment would lead to a reopening of the question of seniority which has been settled of several years. An interpretation that is harmonious with the well-settled principle of 'settled seniority' would be most suitable and any other exposition would cause administrative chaos and lead to situations that would result in



grave injustice to persons who are already settled in their positions."

38. From the aforesaid, it emerges that this Court held that due to the peculiar facts wherein the petitioners had been denied joining the basic course no. 16 due to the defaults of the respondents, their settled seniority along with the 16th Batch could not be disturbed based on the judgment of the Supreme Court in **Rohitash Kumar** (supra); the seniority list dated 27.01.2016 downgrading their seniority was accordingly set aside.

39. This Court again in the **Naresh Kumar** (supra), reiterated its earlier view in **R P Sanwal** (supra), and relying upon **Naveen Kumar Jha** (supra), **Avinash Singh** (supra) and **Anjan Kumar Mandal v. Union of India & Ors.**, 2017 SCC OnLine Del 12028, held that where the appointment/joining was delayed due to the failure on part of the respondents, the petitioners were justified in claiming seniority at par with the candidates selected in the same selection process. It was held that for the said reason the judgment of the Supreme Court in **Rohitash Kumar** (supra) was also distinguishable as being not applicable to the facts of these cases.

40. In light of the Judgments discussed herein, it is evident that the issue of seniority within the BSF has been consistently impacted by administrative delays, including delays in medical examinations, character verification, and other procedural matters. These delays have resulted in candidates, despite being selected through the same competitive examination, being placed in different training batches,



thereby giving rise to disputes concerning their seniority. This Court has consistently held, as demonstrated in the cases referred to above, that the respondents could not, on their own, re-fix the seniority solely based on the case of **Rohitash Kumar** (Supra). The petitioners cannot be penalized for any administrative inefficiencies.

41. As far as the plea of the learned counsel for the respondents that there is a delay in filing of the present petitions, we are of the opinion that the same has been adequately explained by the petitioners. The petitioners should have been accorded the benefit of the Judgment of this Court in **R.P. Sanwal** (supra).

42. Therefore, we hold that the petitioners are entitled to have their seniority notionally re-fixed, placing them at par with their batch mates from the 16th batch. We therefore, direct the respondents to notionally re-fix the seniority of the petitioners only, in accordance with their merit position, alongside those who joined the BSF through SSB (CPO-91), without disturbing the seniority of Om Prakash Sharma. The petitioners are also entitled to all consequential benefits.

43. The present petitions are, accordingly, disposed of.

SHALINDER KAUR, J

NAVIN CHAWLA, J

MARCH 19, 2025/ab/KP

[Click here to check corrigendum, if any](#)