

UNION OF INDIA AND ANR.

v.

S.S. RANADE

APRIL 25, 1995

[S.C. AGRAWAL AND SUJATA V. MANOHAR, JJ.]

Service Law :

Border Security Force (Seniority, Promotion and Superannuation of Officers) Rules, 1978.

Rule 9—Superannuation—Retirement age of officers—Commandant (Selection Grade)—Not a higher post than that of Commandant—Hence not entitled to higher age of superannuation.

The appellant in order to alleviate the degree and extent of stagnation among the officers' cadre by its letter dated 23rd February, 1991 gave its approval to the creation of 123 posts of Commandants in the Selection Grade of Rs. 1800 fixed which has been subsequently revised to Rs. 4100-5300 for Commandant and Rs. 4500-5700 for Commandant (Selection Grade).

The appellant by his communication dated 26th June 1990 set out in paragraph 2 the revised cadre strength of officers of the Border Security Force.

The respondent is an officer of the Border Security Force holding the post of Commandment (Selection Grade). The appellants sought to retire the respondent on his attaining the age of 55 years. This was challenged by the respondent before the High Court where he was successful. Aggrieved by the High Court's judgment, the appellants preferred the present appeal.

On behalf of the respondent it was contended that, at all material times, he was holding the post of Commandant (Selection Grade) which, is a rank higher than that of a Commandant vide Rule 9 of the Border Security Force (Seniority, Promotion and Superannuation of officers) Rules, 1978; that Rule 6 clearly provides that a Commandant (Selection Grade) alone is eligible for promotion to the rank of Additional Deputy

- A Inspector General; that Rule 7 provides for the constitution of a Departmental promotion committee; that both these provisions indicate that a Commandant (Selection Grade) is a higher post in the hierarchy of posts than a Commandant; and that Rule 3 provides that all Commandants (Selection Grade) are placed above Commandants which indicates that the Commandants (Selection Grade) hold a higher post than Commandants.
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On behalf of the appellants it was contended that a Commandant (Selection Grade) holds the same post as a Commandant. Hence the retirement age of the respondent is 55 years;

- C Allowing the appeal, this Court

- HELD : 1.1. The post of Commandant (Selection Grade) was introduced additional duties have been prescribed anywhere for a Commandant (Selection Grade) who performs the same duties as Commandants. Both the posts are put together at Serial No. 6 in paragraph 2 of the communication dated 26th June, 1990. [779-C, 778-D]
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- 1.2. For the purpose of Rule 9 of the Border Security Force (Seniority promotion and Superannuation of officers) Rules, the Respondent does not hold a post higher in rank than that of a Commandant in order to get the benefit of a higher age of superannuation. To attract rule 9, the post must be a post higher than that of a Commandant, with higher responsibilities and higher pay scale and not the same post with a higher pay scale. [779-G-H, 780-A]
- E

- 2.1. Undoubtedly, a Commandant (Selection Grade) secures a Promotion to a higher pay scale. But it is a higher pay scale in the same post. The use of the word 'promotion' in Rule 6 and the constitution of a Departmental Promotion Committee for selection of Commandant (Selection Grade) in Rule 7 do not necessarily lead to the conclusion that the promotion which is contemplated there is necessarily a promotion to a higher post. [780-H, 781-A]
- F
- G

- 2.2. In the seniority list, a higher rank may be allotted to an officer for various reasons. One cannot, however, say that a person who holds a higher rank in the seniority list thereby occupies a higher post. Rules 3, 6 and 7 may be read in the context of a selection grade providing promotion
- H

to a higher pay scale in the same post. [781-C]

A

2.3. Rule 9 provides a hierarchy of posts. Holders of all posts upto and including the level of Commandant retire at the age of 55 years. Holders of posts above that of Commandant retire at the age of 58 years. In order to decide whether a post is either equivalent or is higher or lower than another post, one cannot look only at the pay scale of the post. One must also look at the duties and responsibilities that attach to such posts. By its very nature a selection grade post cannot be considered as a higher post for the purposes of Rule 9. [781-E, 782-F]

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Lalit Mohan Deb and Ors. v. Union of India and Ors, [1973] 3 SCC 862, relied on.

C

Dayaram Asanand Gursahani v. State of Maharashtra and Ors, [1984] 3 SCC 36, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5110 of 1995.

D

From the Judgment and Order dated 25.8.94 of the Delhi High Court in C.W.P. No.5042 of 1993.

K.T.S. Tulsi, Additional Solicitor General, P. Parmeswaran and A.S.Bhamse for the Appellants.

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K.B. Rohtgi and K.K. Rohatgi and Ms. Aparna Rohatgi (Cav) for the Respondent.

S.S. Ranade, Caveator in Person.

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The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. Leave granted.

This is an appeal filed by the Union of India and the Director General, Border Security Force, New Delhi against a decision of the Delhi High Court dated 25.8.1994 in CWP No. 5042 of 1993 which was filed by the respondent against the appellants. The point in issue between the parties relates to the age of retirement of a Commandant (Selection Grade) in the Border Security Force.

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H

A The constitution and regulation of an Armed Force of the Union for ensuring the security of the borders of India and matters connected therewith, are governed by the provisions of the Border Security Force Act, 1968. Section 141 of the Border Security Force Act enables the Central Government, by notification, to make rules for the purpose of carrying into effect the provisions of this Act as set out in that section. In exercise of that power, the Central Government has notified the Border Security Force (Seniority, Promotion and Superannuation of officers) Rules, 1978. It has also notified the Border Security Force Rules of 1969. Under Rule 9 of the Border Security Force (Seniority, Promotion and Superannuation of officers) Rules, 1978, it is provided as follows:-

C "9. (*Superannuation*) - Retirement age of officers holding a rank higher than that of Commandant shall be fifty eight years; and for officers of the other rank it shall be fifty five years.

D Provided that.....".

E It is contended by the respondent that at all material times, he was holding the post of Commandant (Selection Grade) which, according to him, is a rank higher than that of a Commandant. Hence his age of retirement is 58 years under Rule 9. On the other hand, the appellants contend that a Commandant (Selection Grade) holds the same post as a Commandant. Hence the retirement age for the respondent is 55 years. Accordingly, the appellants sought to retire the respondent on his attaining the age of 55 years. This was challenged by the respondent in the above writ petition where his contentions have been upheld.

F We have to consider whether a Commandant (Selection Grade) can be considered as holding a "rank" higher than that of a Commandant for the purposes of Rule 9 of the Border Security Force (Seniority, Promotion and Superannuation of officers) Rules, 1978. Since Rule 9 uses the term "rank", we can examine, at the outset, the list of "ranks" under the Border Security Force Rules, 1969. Under Rule 14A of the Border Security Force Rules, 1969 the ranks of officers and other members of the Border Security Force are classified into various categories. This Rule provides as follows:-

G "14A Ranks:

H (1) The officers and other members of the Force shall be classified

in accordance with their ranks in the following categories, namely:- A

(a) Officers

(1) Director General

(2) Addl. Director General B

(3) Inspector General

(4) Deputy Inspector General

(5) Additional Deputy Inspector General C

(6) Commandant

(7) Deputy Commandant

(8) Assistant Commandant D

(b) Subordinate Officers

....."

There is no separate category of Commandant (Selection Grade). It is an accepted position that till 1981 there were no posts of Commandant (Selection Grade). In a Confidential Note which was prepared in 1981 by the Directorate General of the Border Security Force in connection with cadre review of the gazetted establishment in the Border Security Force, it was pointed out that for historical reasons, the Border Security Force had to induct *en masse* Ex-emergency Commission Officers and other Service Commission Officers released from the Army. As many as 448 officers of about the same seniority and age group joined the Border Security Force practically together, upsetting normal recruitment plans of a duly organised service which would normally recruit about 30/40 Officers per year. This sudden recruitment of a large number of officers of the same seniority had caused unprecedented stagnation in the category, *inter alia*, of Commandants. The Directorate, therefore, recommended some interim measures to alleviate the degree and extent of stagnation among the officers, cadre of this force. One of the measures which was recommended and subsequently adopted was creation of a selection grade for Commandants. H

- A The Government of India by its letter dated 23rd February, 1981 conveyed to the Director General of the Border Security Force, in connection with cadre review for Group 'A' posts in the Border Security Force, its approval, *inter alia*, to the creation of 123 posts of Commandants in the Selection Grade of Rs. 1800 fixed; the quantum of special pay and compensatory allowance then admissible and conditions therefor would remain unchanged. The above 123 posts were in lieu of the existing 123 ordinary posts of Commandant in the Border Security Force. The letter also accepted upgradation of various other posts which are not relevant here. As a result, instead of the existing 123 ordinary posts of Commandants, 123 posts of Commandants (Selection Grade) came into existence. The pay scale which was sanctioned was a fixed pay of Rs. 1800 as against the pay scale of Rs. 1200-1700 fixed for a Commandant. The pay scale has been subsequently revised to Rs. 4100-5300 for a Commandant and Rs. 4500-5700 for a Commandant (Selection Grade).

- D In 1990 there was a second cadre review for Group 'A' posts as a result of which the number of posts of Commandant (Selection Grade) were increased to 185. The revised cadre strength is set out in paragraph 2 of the communication dated 26 of June, 1990 from the Government of India, Ministry of Home Affairs to the Director General, Border Security Force. The material portions of paragraph 2 are as follows:-

Sl. No.	Name of the post/Rank	No. of posts sanctioned
1.	Director General (Rs. 8000 fixed)	1
2.	Additional Director General (Rs. 7300-7600)	1
3.	Inspector General (Rs. 5900-6700)	13
4.	Deputy Inspector General/Deputy Director (Rs. 5100-6150)	46
5.	Additional Deputy Inspector General/Additional Deputy Director (Rs. 4500-5700 + Special pay of Rs. 200)	38
6.	Commandant/Assistant Director :	
	Selection Grade - 185 (Rs. 4500-5700)	223
	Ordinary Grade - 38 (Rs. 4100-5300)	
7.	Second-in-Command (Rs. 4100-5300)	139

8.	Deputy Commandant/Joint Assistant Director (Rs. 3000-4500)	785	A
9.	Assistant Commandant (duty posts) (Rs. 2200-4000)	1111	
10.	Deputation Reserve in the rank of Assistant Commandant	96	
11.	Probationers Reserve in the rank of Assistant Commandant	93	B
	Total	2546	

From the above documents it is clear that the post of Commandant (Selection Grade) was introduced with a view to prevent stagnation of a large number of officers in the post of Commandant and to give them a higher scale of pay. No additional duties have been prescribed anywhere for a Commandant (Selection Grade). Commandants (Selection Grade) perform the same duties as Commandants. Both the posts are put together at serial no. 6 above in the same category.

A Commandant is defined under Section 2(f) of the Border Security Force Act, 1968 to mean "the officer whose duty it is under the rules to discharge with respect to that unit, (any unit of the Force) the functions of a Commandant in regard to matters of description referred to in that provision". The Border Security Force Manual, Volume-IV prescribes in paragraph 45(a) the duties of a Commandant. It sets out that a Commandant is responsible for the sound administration, economy, training, welfare, conduct, upkeep of morale and efficiency of all ranks under command. He is responsible for the upkeep and security of confidential correspondence, correspondence with higher headquarter, through second-in-command control and audit of accounts, management of Regimental Institutions; through Adjutant maintenance of discipline, utilisation of manpower, office management and so on. No separate duties are provided for Commandant (Selection Grade). Commandant and Commandant (Selection Grade), therefore, perform the same functions. If this is so, it is not possible to hold that for the purpose of Rule 9 of the Border Security Force (Seniority, Promotion and Superannuation of officers) Rules, 1978, a Commandant (Selection Grade) holds a post higher in rank than that of a Commandant in order to get the benefit of a higher age of superannuation. To attract Rule 9, the post must be a post higher than that of a Commandant, with higher responsibilities and higher pay scale and

A not the same post with a higher pay scale.

The respondent has, however, relied upon certain other provisions of the said Rules in support of his contention that Commandant (Selection Grade) is a post which is higher in rank than that of a Commandant. He has drawn our attention to Rule 6 of the Border Security Force (Seniority, Promotion and Superannuation of officers) Rules, 1978 as amended by the Border Security Force (Seniority, Promotion and Superannuation of Officers) Amendment Rules, 1989. Rule 6 deals with the eligibility of officers of promotion. Sub-rules (4) and (5) of Rule 6 are as follows :-

C "6(4) - A Commandant, who has put a minimum of two years service in the rank of Commandant and has put in a minimum sixteen years Group 'A' service, shall be eligible for promotion to the rank of Commandant (Selection Grade).

D (5) A Commandant (Selection Grade) who has put in a minimum of eighteen years group 'A' service out of which a minimum of two years as a Commandant (Selection Grade), shall be eligible for promotion to the rank of Additional Deputy Inspector General."

E It is submitted by learned Advocate for the respondent that this Rule clearly provides that a Commandant is eligible for promotion to the ranks of Commandant (Selection Grade) and a Commandant (Selection Grade) alone is eligible for promotion to the rank of Additional Deputy Inspector General. Rule 7 provides for the constitution of a Committee to make selections or promotions under Rule 6. Rule 7 as amended in 1989 provides for the constitution of a Departmental Promotion Committee for selection of officers to the rank of Deputy Commandant, Second-in-Command, Commandant, Commandant (Selection Grade), Additional Deputy Inspector General and Deputy Inspector General. Both these provisions are strongly relied upon by the respondent as indicating that a Commandant (Selection Grade) is a higher post in the hierarchy of posts than a Commandant.

G This submission is based on a misunderstanding of what is meant by Selection Grade. Undoubtedly, a Commandant who becomes a Commandant (Selection Grade) secures a promotion to a higher pay scale. But it is a higher pay scale in the same post. The use of the word 'promotion' in H Rule 6 and the constitution of a Departmental Promotion Committee for

selection of Commandant (Selection Grade) in Rule 7, do not necessarily lead to the conclusion that the promotion which is contemplated there is necessarily a promotion to a higher post. Promotion can be either to a higher pay scale or to a higher post. These two Rules and the use of the word 'promotion' there do not conclude the issue. A

The respondent has also relied upon Rule 3 of the said Rules dealing with the seniority of officers. In the seniority all Commandants (Selection Grade) are placed above Commandants. According to the respondent, this would indicate that the Commandants (Selection Grade) hold a higher post than Commandants. This submission also must be rejected. In the seniority list, a higher rank may be allotted to an officer for various reasons. One cannot, however, say that a person who holds a higher rank in the seniority list thereby occupies a higher post. In our view, Rules 3, 6 and 7 must be read in the context of a selection grade providing promotion to a higher pay scale in the same post. These Rules are consistent with the interpretation of a Selection Grade post as granting the benefit of higher pay to the officers holding the same post. B C D

Rule 9 provides a hierarchy of posts. Holders of all posts upto and including the level of Commandant retire at the age of 55 years. Holders of posts above that of a Commandant retire at the age of 58 years. In order to decide whether a post is either equivalent or is higher or lower than another post, one cannot look only at the pay scale for that post. One must also look at the duties and responsibilities that attach to such posts. E

In the case of *Lalit Mohan Deb and Ors. v. Union of India and Ors.*, [1963] 3 SCC 862 this Court considered the position of Assistant in the Civil Secretariat, Tripura as against the position of Assistant (Selection Grade). This Court held that the administration can provide two scales of pay in the same category of posts. Provision of Selection Grade in the same category of posts is not a new thing. It is normally done with the object of providing incentive to employees who have no outlets or very limited outlets for promotion to higher posts. It has observed (at page 866) :- F G

"It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the H

- A selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency."

B The ratio of this case applies directly to the present case where the *raison d'être* for creating selection grade posts in the cadre of Commandants is identical, namely, prevention of stagnation and providing an incentive to employees or officers who do not have any outlet or have very limited outlets for promotion to higher posts because of the special circumstances set out earlier.

C In the case of *Dayaram Asanand Gursahani v. State of Maharashtra and Ors.*, [1984] 3 SCC 36 this Court was required to consider, *inter alia*, the position of District Judge (Selection Grade) in the cadre of District Judges in the State of Maharashtra. This Court held that the selection grade post did not constitute a separate cadre from that of the District Judge, nor was it a post to which promotion had to be made, nor did it involve an element of selection.

E In the present case, an element of selection is involved in granting selection grade because there is no automatic promotion to the selection grade pay scale. But this factor is not decisive. In the present case also, as in the above cases, Selection Grade posts are created entirely for the purpose of granting some relief to those who have very limited avenues of getting promotion to a higher post. That is why a higher pay or pay scale is granted in the same post. Thus, by its very nature, a selection grade post cannot be considered as a higher post for the purposes of Rule 9.

F The High Court in its impugned judgment has referred to Article 311(2) of the Constitution. It has considered how different posts in the Civil service of the Union or the States or All-India services are compared or ranked with reference to one another in order to ascertain whether, in a given case, there is reduction in rank under Article 311(2) by transfer from one post to another post. In this connection the High Court has emphasised that posts carrying different designations and different duties may be considered equivalent in rank if they are in the same pay scale. In this context pay scale may be a good yardstick for measuring ranks. But this has no application to selection grade posts. Because the creation of a selection grade in the same post stands on a very different footing. By its very nature a selection grade provides a higher pay or a higher pay scale

in the same post. The beneficiary of a selection grade does not thereby occupy a post which is higher in rank than the post earlier occupied by him. A

It is also pointed out by the appellants that if a selection grade is considered as a different post of a higher rank, and a higher age of retirement is prescribed for a Selection Grade post, that would defeat the very purpose of creating such posts. A higher retirement age would add to stagnation at that level and block promotions for others. The appellants have also relied upon a direction issued by them on 17th of September, 1981 in which it is pointed out that an officer of the rank of Commandant (Selection Grade) is entitled to wear the State Emblem with one star and not with two stars. So is a Commandant. We are informed that in this connection, litigation is pending in the J & K High Court. Pursuant to certain interim orders, a Commandant (Selection Grade) is permitted to wear two stars. In the Border Security Force Manual for 1991, paragraph 26 which deals with badges of rank, provides as follows:- B C D

"26. Badges of Ranks.

.....

(d) Ads, HQ The State Emblem and two stars
DG BSF
Frontiers and
DISG and Comdts
(SG) of BNs (Entitled to wear)

....."

The appellants have explained that only those Commandants (Selection Grade) are permitted to wear two stars who are entitled to wear the same. The appellants have explained that officers from the Army, Indian Police Service and State Police were taken on deputation for manning senior posts in the Border Security Force. Those officers who were entitled to wear two stars and State Emblem in their parent organisation are permitted to wear them. The Manual does not provide for the wearing of two stars and the State Emblem by Commandants (Selection Grade) who are otherwise not entitled to do so. In any event, looking to the instructions issued as far back as in 1981 and the resultant litigation, this aspect throws little light on the H

A question before us.

In the premises, for the reasons which we have set out above, a Commandant (Selection Grade) does not get the benefit of a higher age of retirement under Rule 9. The appeal is allowed. The judgment and order of the High Court dated 25.8.1994 is set aside. The appellants are entitled to retire the respondent on his completing the age of 55 years. The appellants, however, shall not recover from the respondent any emoluments received by him during his continuance beyond the age of 55 years as a result of any orders of this Court or the Delhi High Court. There will be no order as to costs.

C V.S.S.

Appeal allowed.