

ROHITASH KUMAR & ORS.
v.
OM PRAKASH SHARMA & ORS.
(Civil Appeal Nos. 2133-2134 of 2004)

NOVEMBER 6, 2012

[DR. B.S. CHAUHAN AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ.]

Service Law – Seniority – Inter-se seniority – Among officers holding the same rank – Selection of direct recruits in one selection process – However, given training in two separate batches (Batch Nos. 16 and 17) commencing on 1.2.1993 and 2.7.1993 respectively – Promotee joining the post on 15.3.1993 – Promotee placed in seniority list below the officers of Batch No. 17 – On challenging the seniority list, Courts below directed to place the promotee below officers of Batch No. 16 and above the officers of batch No. 17 as per proviso to rule 3 of the Rules – In appeal, direct recruits in Batch No. 17 taking the plea that officers selected through single selection process cannot be accorded seniority by bifurcating in different batches – Held: Fixing the seniority of the officers of 17th Batch from 1.2.1993 would amount to fixing their seniority from a date prior to their birth in the cadre as their training started on 2.7.1993 – Such a course is not permissible in law – Border Security Force (Seniority Promotion and Superannuation of Officers) Rules, 1978 – r. 3.

Interpretation of Statute:

Rule of Contemporanea exposition – Administrative interpretation/Executive Construction-Applicability – Held: The rule can be invoked, but it will not always be decisive with respect to question of construction – The Court may refuse to follow such a construction in a clear case of error, on the ground that wrong practice does not make the law.

A *Interpretation of proviso – The normal function of a proviso is to provide an exception – Usually, proviso cannot be interpreted as a general rule that has been provided for, nor can be interpreted in a manner that would nullify the enactment or take away a right conferred by the statute – If, upon plain and fair construction, the main provision is clear, a proviso cannot expand or limit its ambit or scope.*

C *Rule of interpretation – If the language of a statute is plain and allows only one meaning, it has to be given effect to, even if it causes hardship or possible injustice – If there is any hardship, it is for the legislature to amend the law – Court cannot be called upon to discard the cardinal rule of interpretation for the purpose of mitigating such hardship.*

D *Rule of interpretation – While interpreting provision of a statute, court can neither add nor subtract even a single word – It would not amount to interpretation, but legislation – Court cannot proceed with the assumption that legislature committed a mistake – Even if there is some defect in the phraseology used by legislature in framing the statute, it is not open to the court to add and amend, or by construction, make up for the deficiencies – The statute not to be construed in light of certain notions that the legislature might have had in mind or what the legislature is expected to have said.*

F *Maxims:*

'Dura Lex Sed Lex' – Applicability.

G *'A Verbis Legis Non Est Recedendum' – Meaning and applicability.*

H **154 persons were selected to be appointed as Asstt. Commandant (Direct Entry) in Border Security Force. They were sent for training in two separate batches. Batch No. 16 joined the training on 1.2.1993 while Batch**

No. 17 joined the training on 2.7.1993. Respondent No. 1, who was promoted from the feeding cadre, joined the post as Asstt. Commandant on 15.3.1993. In the seniority list, respondent No. 1 was placed below all the officers of Batch No. 17. A

Respondent No. 1 challenged the seniority list in a writ petition. Single Judge of High Court allowed the petition holding that he was entitled to be ranked in seniority above the officers of Batch No.17 and below the officers in Batch No. 16. The writ appeal, thereagainst was dismissed by Division Bench of the High Court. B C

The appellants, who were the officers in the Batch No. 17 approached this Court with the permission of the Court as they were not the parties before the High Court. They *inter alia* contended that the officers selected through single selection process, if have been given training in different batches cannot be accorded different seniority by bifurcating them; and that statutory authorities have previously always fixed seniority without taking note of the fact that training was conducted in different batches. D E

Dismissing the appeals, the Court

HELD: 1.1 *Contemporanea expositio* as expounded by administrative authorities, is a very useful and relevant guide to the interpretation of the expressions used in a statutory instrument. The words used in a statutory provision must be understood in the same way, in which they are usually understood, in ordinary common parlance with respect to the area in which, the said law is in force or, by the people who ordinarily deal with them. G
[Para 7] [62-H; 63-A]

K.P. Varghese v. Income-tax Officer, Ernakulam and Anr.
AIR 1981 SC 1922; 1982 (1) SCR 629 ; *Indian Metals and Ferro Alloys Ltd., Cuttack v. Collector of Central Excise,* H

- A *Bhubaneshwar* AIR 1991 SC 1028: 1990 (3) Suppl. SCR 329 ; *Y.P. Chawla and Ors. v. M.P. Tiwari and Anr.* AIR 1992 SC 1360: 1992 (2) SCR 440 – relied on.

B 1.2 A construction, which is in consonance with long-standing practice prevailing in the concerned department in relation to which the law has been made, should be preferred. [Para 8] [63-C-D]

- C *N. Suresh Nathan and Anr. v. Union of India and Ors.* 1992 Supp (1) SCC 584: 1991 (2) Suppl. SCR 423; *M.B. Joshi and Ors. v. Satish Kumar Pandey and Ors.* 1993 Supp (2) SCC 419: 1992 (2) Suppl. SCR 1 – relied on.

D 1.3 While a maxim was applicable with respect to construing an ancient statute, the same could not be used to interpret Acts which are comparatively modern, and in relation to such Acts, interpretation should be given to the words used therein, in the context of new facts and the present situation, if the said words are in fact, capable of comprehending them. [Para 9] [63-D-F]

- E *Senior Electric Inspector and Ors. v. Laxminarayan Chopra and Anr.* AIR 1962 SC 159: 1962 SCR 146 ; *M/s. J.K. Cotton Spinning and Weaving Mills Ltd. and Anr. v. Union of India and Ors.* AIR 1988 SC 191: 1988 SCR 700 – relied on.

F 1.4 The principle of *contemporenea expositio*, i.e. interpreting a document with reference to the exposition that it has received from the Competent Authority, can be invoked though the same will not always be decisive with respect to questions of construction. Administrative construction, i.e., contemporaneous construction that is provided by administrative or executive officers who are responsible for the execution of the Act/Rules etc., should generally be clearly erroneous, before the same is over-turned. Such a construction, commonly referred to as practical construction although not controlling, is
G
H nevertheless entitled to be given considerable weightage

and is also, highly persuasive. It may, however, be disregarded for certain cogent reasons. In a clear case of error, the Court should, without hesitation, refuse to follow such a construction for the reason that, “wrong practice does not make the law.” “Past practice should not be upset provided such practice conforms to the rules” but must be ignored if it is found to be *de hors* the rules. [Para 10] [63-F-H; 64-A-B-C-D]

Desh Bandhu Gupta and Co. and Ors. v. Delhi Stock Exchange Association Ltd. AIR 1979 SC 1049: 1979 (3) SCR 373; *Municipal Corporation for City of Pune and Anr. v. Bharat Forge Co. Ltd. and Ors.* AIR 1996 SCR 2856: 1995 (2) SCR 716; *State of Rajasthan and Ors. v. Dev Ganga Enterprises* (2010) 1 SCC 505: 2009 (16) SCR 269; *Shiba Shankar Mohapatra v. State of Orissa and Ors.* (2010) 12 SCC 471: 2009 (15) SCR 866; *D. Stephen Joseph v. Union of India and Ors.* (1997) 4 SCC 753: 1997 (3) SCR 1040 – relied on.

1.5 “The manner in which a statutory authority understands the application of a statute, would not confer any legal right upon a party unless the same finds favour with the Court of law, dealing with the matter”. This principle has also been applied in judicial decisions, as it has been held consistently, that long standing settled practice of the Competent Authority should not normally be disturbed, unless the same is found to be manifestly wrong, ‘unfair’. [Paras 11 and 12] [64-D-F]

Laxminarayan R. Bhattad and Ors. v. State of Maharashtra and Anr. AIR 2003 SC 3502: 2003 (3) SCR 409; *Thamma Venkata Subbamma (dead) by LR. v. Thamma Rattamma and Ors.* AIR 1987 SC 1775: 1987 (3) SCR 236 ; *Assistant District Registrar, Co-operative Housing Society Ltd. v. Vikrambhai Ratilal Dalal and Ors.* 1987 (Supp) SCC 27; *Ajitsinh C. Gaekwad and Ors. v. Dileepsinh D. Gaekwad and Ors.* 1987 (Supp) SCC 439; *Collector of Central Excise, Madras v. M/s. Standard Motor Products etc.* AIR 1989 SC 1

A **298: 1989 (1) SCR 824; *Kattite Valappil Pathumma and Ors. v. Taluk Land Board and Ors.* AIR 1997 SC 1115: 1997 (2) SCR 175; *Hemalatha Gargya v. Commissioner of Income-tax, A.P. and Anr.* (2003) 9 SCC 510: 2002 (4) Suppl. SCR 382 – relied on.**

B **1.6 The rules of administrative interpretation/ executive construction, may be applied, either where a representation is made by the maker of a legislation, at the time of the introduction of the Bill itself, or if construction thereupon, is provided for by the executive,**
C **upon its coming into force, then also, the same carries great weightage. [Para 13] [65-A-B]**

Mahalakshmi Sugar Mills Co. Ltd. and Anr. v. Union of India and Ors. AIR 2009 SC 792: 2008 (5) SCR 793 – relied on.

D **1.7 Administrative interpretation may often provide the guidelines for interpreting a particular Rule or executive instruction, and the same may be accepted unless, of course, it is found to be in violation of the Rule itself. [Para 14] [65-C]**

F **2.1 The normal function of a proviso is generally, to provide for an exception i.e. exception of something that is outside the ambit of the usual intention of the enactment, or to qualify something enacted therein, which, but for the proviso would be within the purview of such enactment. Thus, its purpose is to exclude something which would otherwise fall squarely within the general language of the main enactment. Usually, a proviso cannot be interpreted as a general rule that has been provided for. Nor it can be interpreted in a manner that would nullify the enactment, or take away in entirety, a right that has been conferred by the statute. In case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on**

H

the interpretation of the main enactment, so as to exclude by implication, what clearly falls within its expressed terms. If, upon plain and fair construction, the main provision is clear, a proviso cannot expand or limit its ambit and scope. [Para 15] [65-D-G]

CIT, Mysore etc. v. Indo Mercantile Bank Ltd. AIR 1959 SC 713; 1959 Suppl. SCR 256; *Kush Sahgal and Ors. v. M.C. Mitter and Ors.* AIR 2000 SC 1390: 2000 (2) SCR 648; *Haryana State Cooperative Land Development Bank Ltd. v. Haryana State Cooperative Land Development Bank Employees Union and Anr.* (2004) 1 SCC 574: 2003 (6) Suppl. SCR 1039; *Nagar Palika Nigam v. Krishi Upaj Mandi Samiti and Ors.* AIR 2009 SC 187: 2008 (14) SCR 419; *State of Kerala and Anr. v. B. Six Holiday Resorts Private Limited and Ors.* (2010) 5 SCC 186: 2010 (3) SCR 1 – relied on.

2.2 The proviso to a particular provision of a statute, only embraces the field which is covered by the main provision, by carving out an exception to the said main provision. [Para 16] [66-B]

Ram Narain Sons Ltd. and Ors. v. Assistant Commissioner of Sales Tax and Ors. AIR 1955 SC 765: 1955 SCR 483; *A.N. Sehgal and Ors. v. Rajeram Sheoram and Ors.* AIR 1991 SC 1406: 1991 (2) SCR 198 – relied on.

2.3 In a normal course, proviso can be extinguished from an exception for the reason that exception is intended to restrain the enacting clause to a particular class of cases while the proviso is used to remove special cases from the general enactment provided for them specially. [Para 17] [66-C-D]

3.1 It is a well settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare

A perusal of the Statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice. [Para 18] [66-E-F]

B *Commissioner of Agricultural Income Tax, West Bengal v. Keshab Chandra Mandal* AIR 1950 SC 265: 1950 SCR 435 ; *D. D. Joshi and Ors. v. Union of India and Ors.* AIR 1983 SC 420: 1983 (2) SCR 448 - relied on.

C *Bengal Immunity Co. Ltd. v. State of Bihar and Ors.* AIR 1955 SC 661: 1955 SCR 603 – followed.

3.2 If there is any hardship, it is for the legislature to amend the law, and that the Court cannot be called upon, to discard the cardinal rule of interpretation for the purpose of mitigating such hardship. If the language of an Act is sufficiently clear, the Court has to give effect to it, however, inequitable or unjust the result may be. The words, '*dura lex sed lex*' which mean "the law is hard but it is the law" may be used to sum up the situation. Therefore, even if a statutory provision causes hardship to some people, it is not for the Court to amend the law. A legal enactment must be interpreted in its plain and literal sense, as that is the first principle of interpretation. "Inconvenience is not" a decisive factor to be considered while interpreting a statute. Therefore, it is evident that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein, is unequivocal. [Paras 19 and 21] [66-H; 67-A-B-F-G]

G *Mysore State Electricity Board v. Bangalore Woolen, Cotton and Silk Mills Ltd. and Ors.* AIR 1963 SC 1128: 1963 Suppl. SCR 127 – followed.

H *Martin Burn Ltd. v. The Corporation of Calcutta* AIR 1966 SC 529: 1966 SCR 543; *The Commissioner of Income Tax,*

West Bengal I, Calcutta v. M/s Vegetables Products Ltd. AIR 1973 SC 927: 1973 (3) SCR 448 ; *Tata Power Company Ltd. v. Reliance Energy Limited and Ors.* (2009) 16 SCC 659: 2009 (9) SCR 625 – relied on. A

4.1 While interpreting the provisions of a statute, it can neither add, nor subtract even a single word. The legal maxim “*A Verbis Legis Non Est Recedendum*” means, “From the words of law, there must be no departure”. A section is to be interpreted by reading all of its parts together, and it is not permissible, to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, cannot add words to a Statute, or read words into it which are not part of it, especially when a literal reading of the same, produces an intelligible result. [Para 22] [67-G-H; 68-A-C] B C D E

Nalinakhya Bysack v. Shyam Sunder Haldar and Ors. AIR 1953 SC 148: 1953 SCR 533 ; *Sri Ram Ram Narain Medhi v. State of Bombay* AIR 1959 SC 459: 1959 Suppl. SCR 489 ; *M. Pentiah and Ors. v. Muddala Veeramallappa and Ors.* AIR 1961 SC 1107: 1961 SCR 295 ; *The Balasinor Nagrik Co-operative Bank Ltd. v. Babubhai Shankerlal Pandya and Ors.* AIR 1987 SC 849; *Dadi Jagannadham v. Jammulu Ramulu and Ors.* (2001) 7 SCC 71: 2001 (2) Suppl. SCR 60 – relied on. F G

4.2 The statute is not to be construed in the light of certain notions that the legislature might have had in H

A mind, or what the legislature is expected to have said, or
 what the legislature might have done, or what the duty
 of the legislature to have said or done was. The Courts
 have to administer the law as they find it, and it is not
 permissible for the Court to twist the clear language of
 B the enactment, in order to avoid any real, or imaginary
 hardship which such literal interpretation may cause.
 Under the garb of interpreting the provision, the Court
 does not have the power to add or subtract even a single
 word, as it would not amount to interpretation, but
 C legislation. [Paras 23 and 24] [68-E-G]

5.1 The Service Selection Board selected 154
 persons to be appointed as Assistant Commandant
 (Direct Entry), and they were then sent for training in two
 separate batches. Batch No.16 consisted of 67 officers
 D who joined the training on 1.2.1993, while Batch No.17
 consisted of 87 officers who joined the training on
 2.7.1993. They could not be sent for training in one batch,
 even though they had been selected through the same
 competitive examination, due to administrative reasons
 E i.e., character verification etc. Respondent No.1, who was
 promoted from the feeding cadre, joined his post on
 15.3.1993. Thus, it is evident that he was placed in the
 promotional cadre, prior to the commencement of the
 training of Batch No.17 on 2.7.1993. [Para 25] [69-A-C]

F 5.2 The language of rule 3 is crystal clear. There is
 no ambiguity with respect to it. The validity of the rule is
 not under challenge. In such a fact-situation, it is not
 permissible for the court to interpret the rule otherwise.
 The said proviso will have application only in a case where
 G 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.
 [Para 27] [69-G-H; 70-A-B]

H

5.3 If the contention of the appellants is accepted, it would amount to fixing their seniority from a date prior, to their birth in the cadre. Admittedly, the appellants (17th batch), joined training on 2.7.1993 and their claim is to fix their seniority from the 1st of February, 1993 i.e. the date on which, the 16th batch joined training. Such a course is not permissible in law. The facts and circumstances of the case neither require any interpretation, nor reading down of the rule. [Para 28] [70-B-C]

Case Law Reference:

1982 (1) SCR 629	Relied on	Para 7	A
1990 (3) Suppl. SCR 329	Relied on	Para 7	
1992 (2) SCR 440	Relied on	Para 7	B
1991 (2) Suppl. SCR 423	Relied on	Para 8	D
1992 (2) Suppl. SCR 1	Relied on	Para 8	
1962 SCR 146	Relied on	Para 9	
1988 SCR 700	Relied on	Para 9	E
1979 (3) SCR 373	Relied on	Para 10	
1995 (2) SCR 716	Relied on	Para 10	
2009 (16) SCR 269	Relied on	Para 10	F
2009 (15) SCR 866	Relied on	Para 10	
1997 (3) SCR 1040	Relied on	Para 10	
2003 (3) SCR 409	Relied on	Para 11	
1987 (3) SCR 236	Relied on	Para 12	G
1987 (Supp) SCC 27	Relied on	Para 12	
1987 (Supp) SCC 439	Relied on	Para 12	H

A	1989 (1) SCR 824	Relied on	Para 12
	1997 (2) SCR 175	Relied on	Para 12
	2002 (4) Suppl. SCR 382	Relied on	Para 12
B	2008 (5) SCR 793	Relied on	Para 13
	1959 Suppl. SCR 256	Relied on	Para 15
	2000 (2) SCR 648	Relied on	Para 15
C	2003 (6) Suppl. SCR 1039	Relied on	Para 15
	2008 (14) SCR 419	Relied on	Para 15
	2010 (3) SCR 1	Relied on	Para 15
	1955 SCR 483	Relied on	Para 16
D	1991 (2) SCR 198	Relied on	Para 16
	1950 SCR 435	Relied on	Para 18
	1983 (2) SCR 448	Relied on	Para 18
E	1955 SCR 603	Followed	Para 19
	1963 Suppl. SCR 127	Followed	Para 20
	1966 SCR 543	Relied on	Para 21
F	1973 (3) SCR 448	Relied on	Para 21
	2009 (9) SCR 625	Relied on	Para 21
	1953 SCR 533	Relied on	Para 22
	1959 Suppl. SCR 489	Relied on	Para 22
G	1961 SCR 295	Relied on	Para 22
	AIR 1987 SC 849	Relied on	Para 22
	2001 (2) Suppl. SCR 60	Relied on	Para 22
H			

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2133-2134 of 2004. A

From the Judgment & Order of the High Court of Jammu and Kashmir at Jammu dated 27.07.2001 in SWP No. 1393 of 1999 and dated 01.08.2002 in LPA No. 275 of 2002. B

R. Venkataramani, Kumar Parimal, Aljo K. Joseph, P.V. Yogeswaran, Supriya Garg, Neelam Singh, Shodham Babu for the Appellants.

P.P. Malhotra, ASG, Dr. Rajeev Dhavan, Gaurav Sharma, Shailendra Saini, B.K. Prasad, Sushma Suri, Jaya Goyal, Nikhil Nayyar, T.V.S. Raghavendra Sreyas, Naveen R. Nath for the Respondents. C

The Judgment of the Court was delivered by D

DR. B.S. CHAUHAN, J. 1. These appeals have been preferred against the impugned judgment and order dated 22.7.2001, passed by the High Court of Jammu & Kashmir at Jammu in SWP No. 1393 of 1999, and judgment and order dated 1.8.2002 passed in LPA No. 275 of 2002. E

2. The facts and circumstances giving rise to these appeals are mentioned as under:

A. The appellants and contestant respondents are Assistant Commandants in the Border Security Force (hereinafter referred to as, 'BSF'). The appellants and respondent nos. 4 and 5 are direct recruits, while respondent no.1 has been promoted against the quota of 10 per cent posts, that are reserved for Ministerial Cadre posts. F

B. The Union of India – respondent no.2, issued a seniority list dated 18.7.1995, placing respondent no. 1 at Serial No. 1863, below all the officers of Batch No.17 and thereafter, a final seniority list of Assistant Commandants was published on 5.7.1996. G

H

A C. Respondent no.1 challenged the said seniority list in which he was ranked below the officers of Batch No. 17, by filing Writ Petition No. 1393 of 1999, on the ground that with effect from 15.3.1993, he stood promoted as Assistant Commandant, and that he had also completed all requisite training for the same at the B.S.F. Academy, Tekanpur, which had commenced on 1.2.1993. There was another batch that undertook training on 2.7.1993. However, the said officers of the second batch, who had joined such training on 2.7.1993, could not be ranked higher than him, in the seniority list.

B
C D. The said writ petition filed by respondent no.1, was contested by the Union of India. The learned single judge allowed the writ petition vide impugned judgment and order dated 27.7.2001, wherein it was held that respondent no.1/ petitioner therein, was, in fact, entitled to be ranked in seniority above the officers of Batch No.17, and below the officers of Batch No.16.

E E. The Union of India challenged the aforementioned impugned judgment and order dated 27.7.2001, by filing a Letters Patent Appeal which was dismissed vide impugned judgment and order dated 1.8.2002.

F F. The appellants, though had not been impleaded as parties before the High Court, sought permission to file special leave petitions with respect to the said matter, and the same was granted by this Court. Hence, these appeals.

G 3. Shri R. Venkataramani, learned senior counsel appearing on behalf of the appellants, has submitted that officers that are selected in response to a single advertisement, and through the same selection process, if have been given training in two separate batches, for administrative reasons i.e. police verification, medical examination etc., cannot be accorded different seniority by bifurcating them into two or more separate batches. The High Court therefore, committed an error
H by allowing the claim of respondent no.1, which opposed the

seniority of the officers, for the reason that, if Batch Nos. 16 and 17 are taken together, the officers who, in terms of seniority, were placed at Serial No.5, would be moved to Serial No. 60, if treated separately. For instance, the person placed at Serial No. 8 had moved to Serial No. 62, and the one placed at Serial No. 11 had moved to Serial No. 64. Thus, such an act has materially adversely affected the seniority of officers even though they were duly selected in the same batch. The provisions of Rule 3 of the Border Security Force (Seniority, Promotion and Superannuation of Officers) Rules, 1978 (hereinafter referred to as the, 'Rules 1978'), have been wrongly interpreted. The Statutory authorities have previously, always fixed seniority without taking note of the fact that training of officers was conducted in different batches. Thus, appeals deserve to be allowed.

4. Per contra, Shri P.P. Malhotra, learned ASG and Dr. Rajeev Dhavan, learned senior counsel appearing on behalf of respondent nos. 4 and 5, have vehemently opposed the appeals, contending that the said Rule is not ambiguous in any manner and thus, the same must be given a literal interpretation and that if, as a result of this, any hardship is caused to anyone, the same cannot be a valid ground for interpreting the statutory rule in a different manner. The said rules are not under challenge. The rule of contemporanea expositio does not apply in contravention of statutory provisions. The proviso to Rule 3 provides for the bifurcation of officers of the same batch in the event of a contingency which is exactly what has taken place in the instant case. The High Court has only applied the said provisions. Thus, no interference is called for and the present appeals are liable to be rejected.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. The relevant Rule 3 of the Rules, 1978, reads as under:

"(3) Subject to the provisions of Sub-Rule (2) inter - se

A seniority amongst officers holding the same rank shall be as follows namely:

B (i) Seniority of Officers promoted on the same day shall be determined in the order in which they are selected for promotion to that rank.

C (ii) Seniority of direct entrants shall be determined in accordance with the aggregate marks obtained by them before the Selection Board and at the passing out examination conducted at the Border Security Force Academy.

D (iii) Seniority of temporary officers subject to the provisions of clauses (i) and (ii) shall be determined on the basis of the order of merit at the time of their selection and officers selected on an earlier batch will be senior to officers selected in subsequent batches.

E (iv) Seniority of officers subject to the provisions of clauses (i) (ii) and (iii) shall be determined according to the date of their continuous appointment in that rank.

Provided that in case of direct entrants the date of appointment shall be the date of commencement of their training course at the Border Security Force Academy." (Emphasis added)

F **Rule of Contemporanea Expositio:**

G 7. This Court applied the rule of contemporanea expositio, as the Court found that the same is a well established rule of the interpretation of a statute, with reference to the exposition that it has received from contemporary authorities. However, while doing so, the Court added words of caution to the effect that such a rule must give way, where the language of the statute is plain and unambiguous., This Court applied the said rule of interpretation by holding that contemporanea expositio as expounded by administrative authorities, is a very useful and

H

relevant guide to the interpretation of the expressions used in a statutory instrument. The words used in a statutory provision must be understood in the same way, in which they are usually understood, in ordinary common parlance with respect to the area in which, the said law is in force or, by the people who ordinarily deal with them. (Vide: *K.P. Varghese v. Income-tax Officer, Emakulam & Anr.*, AIR 1981 SC 1922; *Indian Metals and Ferro Alloys Ltd., Cuttack v. Collector of Central Excise, Bhubaneshwar*, AIR 1991 SC 1028; and *Y.P. Chawla & Ors. v. M.P. Tiwari & Anr.*, AIR 1992 SC 1360).

8. In *N. Suresh Nathan & Anr. v. Union of India & Ors.*, 1992 Supp (1) SCC 584; and *M.B. Joshi & Ors. v. Satish Kumar Pandey & Ors.*, 1993 Supp (2) SCC 419, this Court observed that such construction, which is in consonance with long-standing practice prevailing in the concerned department in relation to which the law has been made, should be preferred.

9. In *Senior Electric Inspector & Ors. v. Laxminarayan Chopra & Anr.*, AIR 1962 SC 159; and *M/s. J.K. Cotton Spinning & Weaving Mills Ltd. & Anr. v. Union of India & Ors.*, AIR 1988 SC 191, it was held that while a maxim was applicable with respect to construing an ancient statute, the same could not be used to interpret Acts which are comparatively modern, and in relation to such Acts, interpretation should be given to the words used therein, in the context of new facts and the present situation, if the said words are in fact, capable of comprehending them.

10. In *Desh Bandhu Gupta and Co. & Ors. v. Delhi Stock Exchange Association Ltd.*, AIR 1979 SC 1049, this Court observed that the principle of *contemporenea expositio*, i.e. interpreting a document with reference to the exposition that it has received from the Competent Authority, can be invoked though the same will not always be decisive with respect to questions of construction. Administrative construction, i.e., contemporaneous construction that is provided by administrative or executive officers who are responsible for the

A execution of the Act/Rules etc., should generally be clearly
 erroneous, before the same is over-turned. Such a construction,
 commonly referred to as practical construction although not
 controlling, is nevertheless entitled to be given considerable
 weightage and is also, highly persuasive. It may however, be
 B disregarded for certain cogent reasons. In a clear case of error,
 the Court should, without hesitation, refuse to follow such a
 construction for the reason that, "wrong practice does not make
 the law." (Vide : *Municipal Corporation for City of Pune & Anr.*
v. Bharat Forge Co. Ltd. & Ors., AIR 1996 SC 2856). (See
 C also: *State of Rajasthan & Ors. v. Dev Ganga Enterprises*,
 (2010) 1 SCC 505; and *Shiba Shankar Mohapatra v. State*
of Orissa & Ors., (2010) 12 SCC 471).

In *D. Stephen Joseph v. Union of India & Ors.*, (1997) 4
 SCC 753, the Court held that, "past practice should not be upset
 D provided such practice conforms to the rules" but must be
 ignored if it is found to be de hors the rules.

11. However, in *Laxminarayan R. Bhattad & Ors. v. State*
of Maharashtra & Anr., AIR 2003 SC 3502, this Court held that,
 "the manner in which a statutory authority understands the
 E application of a statute, would not confer any legal right upon a
 party unless the same finds favour with the Court of law, dealing
 with the matter".

12. This principle has also been applied in judicial
 F decisions, as it has been held consistently, that long standing
 settled practice of the Competent Authority should not normally
 be disturbed, unless the same is found to be manifestly wrong,
 'unfair'. (Vide: *Thamma Venkata Subbamma (dead) by LR.*
v. Thamma Rattamma & Ors., AIR 1987 SC 1775; *Assistant*
 G *District Registrar, Co-operative Housing Society Ltd. v.*
Vikrambhai Ratilal Dalal & Ors., 1987 (Supp) SCC 27; *Ajitsinh*
C. Gaekwad & Ors. v. Dileepsinh D. Gaekwad & Ors., 1987
 (Supp) SCC 439; *Collector of Central Excise, Madras v. M/s.*
Standard Motor Products etc., AIR 1989 SC 1298; *Kattite*
 H *Valappil Pathumma & Ors. v. Taluk Land Board & Ors.*, AIR

1997 SC 1115; and *Hemalatha Gargya v. Commissioner of Income-tax, A.P. & Anr.*, (2003) 9 SCC 510). A

13. The rules of administrative interpretation/executive construction, may be applied, either where a representation is made by the maker of a legislation, at the time of the introduction of the Bill itself, or if construction thereupon, is provided for by the executive, upon its coming into force, then also, the same carries great weightage. (Vide : *Mahalakshmi Sugar Mills Co. Ltd. & Anr. v. Union of India & Ors.*, AIR 2009 SC 792). B

14. In view of the above, one may reach the conclusion that administrative interpretation may often provide the guidelines for interpreting a particular Rule or executive instruction, and the same may be accepted unless, of course, it is found to be in violation of the Rule itself. C

Interpretation of the proviso: D

15. The normal function of a proviso is generally, to provide for an exception i.e. exception of something that is outside the ambit of the usual intention of the enactment, or to qualify something enacted therein, which, but for the proviso would be within the purview of such enactment. Thus, its purpose is to exclude something which would otherwise fall squarely within the general language of the main enactment. Usually, a proviso cannot be interpreted as a general rule that has been provided for. Nor it can be interpreted in a manner that would nullify the enactment, or take away in entirety, a right that has been conferred by the statute. In case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude by implication, what clearly falls within its expressed terms. If, upon plain and fair construction, the main provision is clear, a proviso cannot expand or limit its ambit and scope. (Vide: *CIT, Mysore etc. v. Indo Mercantile Bank Ltd.*, AIR 1959 SC 713; *Kush Sahgal & Ors. v. M.C. Mitter & Ors.*, AIR 2000 SC 1390; *Haryana State Cooperative Land* E F G H

A *Development Bank Ltd. v. Haryana State Cooperative Land Development Bank Employees Union & Anr.*, (2004) 1 SCC 574; *Nagar Palika Nigam v. Krishi Upaj Mandi Samiti & Ors.*, AIR 2009 SC 187; and *State of Kerala & Anr. v B. Six Holiday Resorts Private Limited & Ors.*, (2010) 5 SCC 186).

B 16. The proviso to a particular provision of a statute, only embraces the field which is covered by the main provision, by carving out an exception to the said main provision. (Vide: *Ram Narain Sons Ltd. & Ors. v. Assistant Commissioner of Sales Tax & Ors.*, AIR 1955 SC 765; and *A.N. Sehgal & Ors. v. Rajeram Sheoram & Ors.*, AIR 1991 SC 1406).

C 17. In a normal course, proviso can be extinguished from an exception for the reason that exception is intended to restrain the enacting clause to a particular class of cases while the proviso is used to remove special cases from the general enactment provided for them specially.

D **Hardship of an individual:**

E 18. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigor.

F It is a well settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the Statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice. (Vide: *Commissioner of Agricultural Income Tax, West Bengal v. Keshab Chandra Mandal*, AIR 1950 SC 265; and *D. D. Joshi & Ors. v. Union of India & Ors.*, AIR 1983 SC 420).

G 19. In *Bengal Immunity Co. Ltd. v. State of Bihar & Ors.*, AIR 1955 SC 661 it was observed by a Constitution Bench of this Court that, if there is any hardship, it is for the legislature

H

to amend the law, and that the Court cannot be called upon, to discard the cardinal rule of interpretation for the purpose of mitigating such hardship. If the language of an Act is sufficiently clear, the Court has to give effect to it, however, inequitable or unjust the result may be. The words, 'dura lex sed lex' which mean "the law is hard but it is the law." may be used to sum up the situation. Therefore, even if a statutory provision causes hardship to some people, it is not for the Court to amend the law. A legal enactment must be interpreted in its plain and literal sense, as that is the first principle of interpretation.

20. In *Mysore State Electricity Board v. Bangalore Woolen, Cotton & Silk Mills Ltd. & Ors.*, AIR 1963 SC 1128 a Constitution Bench of this Court held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

21. In *Martin Burn Ltd. v. The Corporation of Calcutta*, AIR 1966 SC 529, this Court, while dealing with the same issue observed as under:—

"A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not."

(See also: *The Commissioner of Income Tax, West Bengal I, Calcutta v. M/s Vegetables Products Ltd.*, AIR 1973 SC 927; and *Tata Power Company Ltd. v. Reliance Energy Limited & Ors.*, (2009) 16 SCC 659).

Therefore, it is evident that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein, is unequivocal.

Addition and Subtraction of words:

22. The Court has to keep in mind the fact that, while interpreting the provisions of a Statute, it can neither add, nor subtract even a single word. The legal maxim "A Verbis Legis

- A Non 'Est Recedendum" means, "From the words of law, there must be no departure". A section is to be interpreted by reading all of its parts together, and it is not permissible, to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a
- B mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act. The Court can
- C only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, cannot add words to a Statute, or read words into it which are not part of it, especially when a literal reading of the same, produces an intelligible result. (Vide:
- D *Nalinakhya Bysack v. Shyam Sunder Haldar & Ors.*, AIR 1953 SC 148; *Sri Ram Ram Narain Medhi v. State of Bombay*, AIR 1959 SC 459; *M. Pentiah & Ors. v. Muddala Veeramallappa & Ors.*, AIR 1961 SC 1107; *The Balasinor Nagrik Co-operative Bank Ltd. v. Babubhai Shankerlal Pandya & Ors.*, AIR 1987 SC 849; and *Dadi Jagannadham v. Jammulu Ramulu & Ors.*, (2001) 7 SCC 71).
- E

F 23. The Statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The Courts have to administer the law as they find it, and it is not permissible for the Court to twist the clear language of the enactment, in order to avoid any real, or imaginary hardship which such literal interpretation may cause.

G 24. In view of the above, it becomes crystal clear that, under the garb of interpreting the provision, the Court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation.

H 25. The matter requires to be considered in the light of the aforesaid settled legal propositions.

The Service Selection Board (CPOs) 91, selected 154 persons to be appointed as Assistant Commandant (Direct Entry), and they were then sent for training in two separate batches. Batch No.16 consisted of 67 officers who joined the training on 1.2.1993, while Batch No.17 consisted of 87 officers who joined the training on 2.7.1993. They could not be sent for training in one batch, even though they had been selected through the same competitive examination, due to administrative reasons i.e., character verification etc. Respondent no.1, who was promoted from the feeding cadre, joined his post on 15.3.1993. Thus, it is evident that he was placed in the promotional cadre, prior to the commencement of the training of Batch No.17 on 2.7.1993.

26. The learned Single Judge dealt with the statutory provisions contained in Rule 3 and held as under:

“A perusal of the above makes it apparent that in the case of the officers who have been promoted their seniority is to be determined on the basis of continuous appointment on a day in which they are selected for promoted to that rank. In case of direct entrants their inter-se seniority is to be determined on the basis of aggregate marks obtained by them. Inter-se seniority of the officers mentioned at serial No.(I) (ii) and (iii) is to be determined according to the date of their continuous appointment in the rank. Proviso to the rule is clear. It is specifically mentioned that in the case of direct entrants, the date of appointment shall be the date of commencement of their training course at the Border Security Force Academy.”

In light of the above, relief had been granted to respondent no.1. The Division Bench concurred with the said interpretation.

27. If we apply the settled legal propositions referred to hereinabove, no other interpretation is permissible. The language of the said rule is crystal clear. There is no ambiguity with respect to it. The validity of the rule is not under challenge. In such a fact-situation, it is not permissible for the court to

A interpret the rule otherwise. The said proviso will 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.

B 28. If the contention of the appellants is accepted, it would amount to fixing their seniority from a date prior, to their birth in the cadre. Admittedly, the appellants (17th batch), joined training on 2.7.1993 and their claim is to fix their seniority from the 1st of February, 1993 i.e. the date on which, the 16th batch joined training. Such a course is not permissible in law.

C The facts and circumstances of the case neither require any interpretation, nor reading down of the rule.

D 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 & Ors.*) 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.

F 30. Thus, in view of the above, the appeals lack merit and therefore, are accordingly dismissed.

G K.K.T.

Appeals dismissed.