

Before : Hon'ble R. S. Mongia, J.

SHRI K. S. PANDHI AND OTHERS,—Petitioners.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ Petition No. 17234 of 1991.

September 28, 1992.

Constitution of India, 1950—Art. 226—Central Reserve Police Force Act, 1949 section 2(c)—Central Reserve Police Force Rules, 1955 2(B)—Superannuation—Petitioners promoted to rank of Commandants (Selection grade)—Ordered to be relieved on attaining 55 years—Representation that they were entitled to continue upto 58 years as they were holding 'Group A' posts of Central Government rejected—Action of respondents challenged—Whether age of superannuation of Commandant (Selection Grade) in Central Reserve Police Force is 58 years or 55 years—Held, that Commandant (Selection Grade) has right to continue in service upto 58 years.

Held, that it will be evident that the post of 'Commandant (Selection Grade) was a higher post in rank and status than that of an ordinary Commandant.

(Para 16)

Held, that there is no dispute on the fact that the Commandant (Selection Grade) is a Group A post under the Central Government and for Group A posts the age of Superannuation is 58 years. Consequently, the petitioners have a right to continue in service up to the age of 58 years.

(Para 18)

Civil Writ Petition under Articles 226 and 227 of the Constitution of India praying that the records of the case be sent for the after perusal of the same :—

- (i) Issue a writ in the nature of Certiorari quashing the order Annexure P-4 by which the petitioners have been ordered to retire on attaining the age of 55 years and the order Annexure P-2 by which the representations of the petitioners have been rejected.*
- (ii) Issue a writ in the nature of Mandamus directing the respondents to allow the petitioners to continue in service as Commandants Selection Grade in the Central Reserve Police Force, till they attain the age of 58 years with all consequential benefits of seniority, pay etc.*

-
- (iii) *Issue any other writ, order or direction that this Hon'ble Court deems fit under the peculiar facts and circumstances of the case;*
- (iv) *Filing of the certified copies of the Annexure P-1 to P-10 may kindly be dispensed with;*
- (v) *Service of advance notice on the respondents may also be dispensed with;*
- (vi) *Costs of the petition may also be awarded to the petitioner.*

It is still prayed that during the pendency of this writ petition the operation of the impugned order of Retirement Annexure P-4 may kindly be stayed and the petitioners be allowed to continue to work as Commandants Selection Grade.

P. S. Patwalia, Advocate, with H. S. Sethi, Advocate, for the Petitioners.

S. K. Pipat, Sr. Standing Counsel with D. D. Sharma, Addl. Std. counsel, for the Respondents.

JUDGMENT

R. S. Mongia, J.

(1) The vexed question of law that requires determination in this case is, whether the age of superannuation of Commandant (Selection Grade) in the Central Reserve Police Force, is 58 years or 55 years ?

(2) The above-mentioned question has arisen out of the following facts :—

(3) The Central Reserve Police Force (In short 'C.R.P.F.') has been constituted under the Central Reserve Police Force Act, 1949 (hereinafter called the Act). Section 2(c) of the Act defines 'the Force' to mean the Central Reserve Police Force. Section 2(d) of the Act defines 'Member of the Force' in the following terms :—

“ 'Member of the Force' means a person who has been appointed to the Force by the Commandant, whether before or after the Commencement of this Act, and in Sections 1, 3, 6, 7, 16, 17, 18 and 19 includes also a person appointed to the Force by the Central Government, whether before or after such commencement.”

(4) Sections 3 and 4 of the Act speak about the 'Constitution of the Force' and the 'Appointment and Powers of Superior Officers'. The same are reproduced as under :—

“3. *Constitution of the Force* : (1) There shall continue to be an armed force maintained by the Central Government and called the Central Reserve Police Force.

(2) The Force shall be constituted in such manner, and the members of the force shall receive such pay, pension and other remuneration, as may be prescribed.

4. *Appointment and Powers of Superior Officers* :—(1) The Central Government may appoint to the Force a Commandant and such other persons as it thinks fit to be Assistant Commandants any Company Officers.

(2) The Commandant and any other officer so appointed shall have, and may exercise; such powers and authority as may be provided by or under this Act.”

Section 18 gives the powers to the Central Government to make Rules for carrying out the purposes of the Act. Section 18(2) (a) particularly provides that such Rules may provide for regulating the conditions of service of the members of the Force.

(5) Under Section 18 of the Act, the Central Government made Rules, known as Central Reserve Police Force Rules, 1955 (hereinafter called the Rules). Rule 2(b) of the Rules, defines 'Commandant' to mean, the Commandant appointed to the Force. Rule 5 of the Rules deals with the composition of the Force and according to the said Rule a Battalion other than Singals Battalion, amongst others, would be constituted of the following Superior Officers :—

“(a) Superior Officer—

Commandant
Assistant Commandant
(Second-in-Command)
Assistant Commandant
(Adjutant)

} One for each Battalion.

Quarter Master

One for each Battalion.

Company Commander
Officer.

One per service Company Plus
leave and training reserve for
each Battallon.”

Rule 5(2) of the Rules gives powers to the Central Government to make such changes in the composition of the Force as it deems fit. The said sub-rule is in the following terms :—

“(2) Subject to the provisions contained in Section 4, the Central Government may make such changes in the composition of the Force as it thinks fit.”

Rule 6 of the Rules specifically provides that all the officers and men mentioned in Rule 5 shall be deemed to be the members of the Force. Rule 43 of the Rules tells us as to the age of superannuation of the members of the Force. Relevant portion of Rule 43 is quoted below :—

“43. *Superannuation* : (a)—Retirement of a member of the Force shall take effect from the afternoon of the last day of the month in which such member attains the age of 55 years. In case, the date of birth of a member of the Force falls on the first day of a month, his retirement shall take effect from the afternoon of the last day of the month preceding the month in which the member or Force attains the age of 55 years.”

The other Rule which is relevant for the purpose of this case, is Rule 104, which classifies different posts and the same is reproduced below for ready reference :—

“104. *Classification* : (1) The posts of Commandant, Assistant Commandant (Second-in-Command/Adjutant) and Company Commander/Quarter Master shall be the posts included in the General Central Service, Class-I.

(2) The posts of Principal, Vice-Principal and Assistant Principal of the Central Training College, Central Reserve Police Force, Neemuch, shall also be the posts included in the General Central Service, Class-I.”

(6) Dehors of the details of service career of the petitioners in this writ petition, suffice it to mention that prior to 17th October, 1991, all the petitioners were working as Commandants in the C.R.P.F. Petitioner No. 1 attained the age of 55 years on 1st January, 1992; while Petitioners Nos. 2 and 3 attained this age on 31st October, 1991. It may be observed here that civil posts under the Union, under Rule 6 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, were initially classified as Class I.

Class II, Class III and Class IV posts. However, with effect from November, 1976, these have been re-classified as Group A, Group B, Group C and Group D posts, respectively. On 16th July, 1983, the Government of India, Ministry of Home Affairs, issued a letter regarding the cadre review for Group 'A' posts in the C.R.P.F. This letter has been attached as Annexure P-5 to the writ petition. The relevant extract is quoted below :—

“Subject : CADRE REVIEW FOR GROUP 'A' POSTS IN THE C.R.P.F.”

Sir,

Consequent on the approval of the Cadre Review proposals for 'Group 'A' posts in the C.R.P.F. by the Government of India, I am directed to convey the sanction of the President to the :—

(i) Upgradation of 20 posts of Commandants (Rs. 1200—1700 plus Special pay Rs. 100) 18 in group-centres and 2 in Central Training Colleges to the level of Addl. D.I.G. in the scale of pay of Rs. 1,800-100-2,000 plus a special pay of Rs. 100.

(ii) — — — — —

(iii) Creation of 73 posts of Commandants/ADs 69 Commandants in Battalions and 4 ADs in the Directorate General C.R.P.F. in the selection grade of Rs. 1,800 fixed from within the existing strength of Commandants in ordinary grade of Rs. 1,200—1,700 plus special pay of Rs. 100 p.m. the quantum of special pay and Compensatory allowance presently admissible and conditions therefore would remain unchanged. (The above posts are in lieu of the existing 73 ordinary posts of Commandants/ADs in the C.R.P.F.)

(iv) — — — — —

(v) — — — — —

2. The up-graded/newly created posts would come into existence from the date (3) these are filled-up till 29th February, 1984 in the first instance. The eligibility for promotion to the rank of Additional DIG/selection grade Commandants/Ads and Assistant Commandant Second-in-Command would be as under :—

(a) Only those C.R.P.F. officers who have served as Commandant for a minimum period of six years and have also completed 18 years of gazetted service shall be eligible for promotion to Additional D.I.G.

(b) Only those C.R.P.F. Commandants who have completed 16 years of gazetted service would be eligible for promotion to the selection grade."

(7) *Vide* communication, dated 29th October, 1987, Annexure R-III with the written statement, the Government of India laid down the eligibility conditions for promotion of Cadre Officers to various ranks. The relevant extract is quoted below :—

"Government of India/Bharat Sarkar, Ministry of Home Affairs/Griah Mantralaya.

Dated : 29th October, 1987.

To

The Director General,
Central Reserve Police Force,
New Delhi.

Sub :—*Eligibility conditions for promotion of Cadre Officers to various ranks.*

Sir,

I am directed to say that the question of prescribing eligibility conditions for promotion of Cadre Officers to the various ranks has recently been considered and it has been decided that these conditions will be as under :—

<i>Eligibility for promotion</i>	<i>Conditions of Eligibility</i>
(1) From Deputy Superintendent of Police Assistant Commandant.	x x x x x x x
(2) From Assistant Commandant to Second-in-Command.	x x x x x x x
(3) From Second-in-Command to Commandant (Ordinary Grade)	x x x x x x x
(4) From Commandant (Ordinary Grade) to Commandant (Selection Grade).	16 years Group 'A' service of which atleast 2 years should be as Commandant (Ordinary Grade).
(5) From Commandant (Selection Grade) to Additional/DIG.	Commandant (Selection Grade) with 18 years Group 'A' service of which atleast 2 years should be in the rank of Commandant (Selection Grade).
(6) From Additional DIG to DIG.	x x x x x x x"

(8) The petitioners were promoted to the rank of Commandants (Selection Grade) in officiating capacity on 17th October, 1991. The order of promotion has been attached as Annexure P-10, the relevant portion of which reads as under :—

“U/Co. Government have approved promotion of following Commandant (NGS) as Commandant (SG) in the pay scale of Rs. 4,500-150-5,700 in Officiating capacity with immediate effect on deputation they are allowed to continue in same unit.”

The above promotion is subject to their being free from vigilance angle and no DE is pending against them. They will exercise option for pay fixation within one month as per existing orders.”

(9) While the petitioners were working as Commandants (SG), they were ordered to be retired on attaining the age of 55 years. Their representation to the Authorities that they were entitled to continue upto the age of 58 years, on the ground that they were holding Group ‘A’ posts of the Central Government, for which the age of retirement is 58 years, was also rejected. Aggrieved by the same, the petitioners filed the present writ petition.

(10) The learned counsel for the petitioners contended that there is no dispute on the point that all officers holding Group ‘A’ posts in the Central Government retire on attaining the age of 58 years. According to the learned counsel, if some Group ‘A’ posts were included under Rule 5 of the Rules, which tells us as to what will be the constitution of the Force, then of course even though such officers may be Group ‘A’ Officers under the Central Government, yet they would retire at the age of 55 years under Rule 43 of the Rules, as all members of the Force are to retire at the age of 55 years under the said Rule. The contention of the learned counsel was that the post of Commandant (Selection Grade) is a higher post than an ordinary Commandant and Rule 5 of the Rules had not been amended to include the post of Commandant (Selection Grade) in the constitution of the Force. Accordingly, the learned counsel went on to submit that the Commandant, (Selection Grade), is not the member of the Force and he being an officer of Group ‘A’ under the Central Government, would retire at the age of 58 years.

(11) On the other hand, learned counsel for the respondents, submitted that a Commandant, (Selection Grade), remains a Commandant, and, therefore, *ipso facto* he is a member of the Force under Rule 5 read with Rule 6, and as such under Rule 43(a) of the Rules, Commandant (Selection Grade) being a Commandant would retire at the age of 55 years.

(12) From the rival contentions of the parties, as noticed above, the question for consideration that emerges is, is the post of Commandant (Selection Grade) a higher and distinct post than the Commandant. If the answer is in the affirmative, then the petitioners must succeed.

(13) The petitioners' counsel, to substantiate that the post of Commandant (Selection Grade) is a higher and a distinct post than the post of a Commandant, urged that the following factors should be taken into consideration to come to the above conclusion :—

- (1) The post of Commandant (Selection Grade) was and is in a higher pay scale than the Commandant. The unrevised pay-scale of Commandant was Rs. 1,200—1,700 plus Rs. 100 as Special Pay; whereas the pay of the Commandant (Selection Grade) was Rs. 1,800 Fixed plus Rs. 100 Special Pay. The same was revised in pursuance of the recommendations of the 4th Pay Commission to Rs. 4,100—5,300 for the Commandant and Rs. 4,500—5,700 for the Commandant (Selection Grade).
- (2) *Vide* order dated 16th July, 1983 (to which reference has already been made above) 69 posts of Commandants (Selection Grade) and 4 Assistant Directors, were created from the existing strength of the Commandants and the said posts were created in lieu of existing 73 ordinary posts of Commandants/ADs. in the C.R.P.F. It was not a case that out of total strength of the Commandants, a certain percentage of the officers, by virtue of seniority, were to get higher pay scale known as 'Selection Grade'.
- (3) The post of Commandant (Selection Grade) was a promotional post from the rank of Commandant and, therefore, has to be higher in rank and status than that of a Commandant. Para 2 of the letter dated 16th July, 1983 (to which reference has already been made above) creating posts of Commandants (Selection Grade) lays down the *eligibility for promotion* to the rank of Commandant (Selection Grade) and it has been mentioned therein that

only those C.R.P.F. Commandants who have completed 16 years of Gazetted service, would be *eligible for promotion* to the Selection Grade.

Even the Government,—*vide* its communication dated 29th October, 1987, Annexure R-III with the written statement (to which reference has already been made above) mentions the eligibility conditions for *promotion of Cadre Officers to various ranks*. The emphasises being that this communication laid down eligibility for promotion to different ranks, meaning thereby the Commandant and the Commandant (Selection Grade) were different ranks. This communication lays down as to what are the eligibility conditions for promotion from Commandant ordinary grade to Commandant (Selection Grade) and from Commandant (Selection Grade) to Additional D.I.G. The learned counsel stressed that it is in the hierarchy that after Commandant there is a promotional post of Commandant (Selection Grade) and then Additional D.I.G. and then D.I.G. The posts of Commandant and Commandant (Selection Grade) are not the same as it is from the post of Commandant that one gets promoted to the post of Commandant (Selection Grade) and then only the Commandant (Selection Grade) gets promotion to D.I.G. No Commandant can straightaway be promoted as D.I.G. If both posts of Commandant and Commandant (Selection Grade) were the same, and of the same rank and status, then both should have been eligible for promotion to the post of Additional D.I.G.

- (4) The order appointing the petitioners as Commandants (Selection Grade) uses the expression that petitioners have been promoted to the rank of Commandants Selection Grade.
- (5) The promotion of the petitioners as Commandants (Selection Grade) was made subject to their being free from Vigilance angle and no departmental enquiry was pending against them. If, according to the learned counsel, it was not a promotion, then the question of their being free from Vigilance angle and pendency of departmental enquiry, did not arise.
- (6) The petitioners were promoted to officiate as Commandants (Selection Grade). If it was just a grant of the

selection grade, the question of putting the petitioners on officiating basis, would not arise. It is only on a particular promotional rank that a person is put on officiating basis.

- (7) The post of Additional D.I.G., which was also created,—*vide* letter dated 16th July, 1983, which is a Group 'A' post, the age of superannuation has been prescribed as 58 years,—*vide* order dated 20th March, 1984 (Annexure P-6 to the writ petition). It was further clarified,—*vide* order dated 17th January, 1984 that the Additional D.I.Gs. in the C.R.P.F. would be Commandants of their Group Centres and shall continue to perform the functions and exercise the powers vested in a Commandant under the Act. If an Additional D.I.G. was also exercising the powers of a Commandant, there was no reason not to have 58 years as the age of superannuation of Commandant (Selection Grade) who also exercised the powers of the Commandant.

(14) From the above factors, the petitioner's counsel submitted that there was no escape from the conclusion that the post of Commandant (Selection Grade) was higher in rank and status than the post of a Commandant. Further since Rule 5 of the Rules dealing with the constitution of the Force had not been amended to include the post of Commandant (Selection Grade), therefore, the Commandant (Selection Grade) was not a member of the Force and would not be governed by Rule 43(a) of the Rules, which prescribes 55 years as the age of superannuation. According to the learned counsel, it was open to the Government to amend Rule 5 of the Rules to include the post of Commandant (Selection Grade) in the constitution of the Force, but the same had not been done. Consequently, for the post of Commandant (Selection Grade), which is a Group A post under the Central Government, the age of retirement would be 58 years.

(15) On the other hand, learned counsel for the respondents, submitted that in the communication dated 18th April, 1991 (Annexure R-VI to the written statement) from the Government of India, Ministry of Home Affairs to the Director General, Central Reserve Police Force, New Delhi, regarding the second cadre review of Group A posts, under the head 'Commandant', 140 posts are mentioned, which include the Commandants Ordinary Grade as well as Commandants (Selection Grade). According to the learned counsel, from this it was amply clear that non-Selection Grade as well as Selection Grade Commandants, were considered as Commandants,

and, therefore, the Commandant (Selection Grade) would fall under the definition of 'Commandant' and would be part and parcel of Rule 5 of the Rules and would, consequently, retire at the age of 55 years under Rule 43(a).

(16) After considering the rival contentions of the counsel for the parties, I am inclined to agree with the learned counsel for the petitioners. From the various factors, which have been reproduced above, (it will be evident that the post of Commandant (Selection Grade) was a higher post in rank and status than that of an ordinary Commandant). Apart from the letter creating the posts where it had been mentioned that the eligibility criteria for promotion has to be fulfilled for the post of Commandant (Selection Grade) it was specifically laid down by the Government itself,—*vide* communication dated 29th October, 1987 (Annexure R-III with the written statement) as to what are the eligibility conditions for promotion of Cadre Officers to various ranks. In the said letter the hierarchy is given and it is only a Commandant who is promoted to the post of Commandant (Selection Grade) and then only Commandant (Selection Grade) is promoted to the post of Additional D.I.G. Promotion has always to be to a higher rank and not to an equivalent rank.

(17) Apart from the above, the order appointing the petitioners as Commandants (Selection Grade) mentions that they were being promoted and were being made to officiate against the posts of Commandants (Selection Grade). The grant of selection grade is never subject to Vigilance clearance. Only promotion can be made subject to clearance by Vigilance. If both posts of Commandant and Commandant (Selection Grade) were of the same rank and status, then both would have been eligible for promotion as Additional D.I.G. However, it is not so. Even the pay scale of Commandant (Selection Grade) is higher than that of an ordinary Commandant. Though this consideration by itself may in some circumstances be not sufficient to hold that a post in a higher pay scale is a promotional post. Simply because while giving the total number of Commandants in the letter dated 18th April, 1991 (Annexure R-VI with the written statement) the Selection Grade and the non-Selection Grade Commandants have been clubbed, would not go to show that Commandant (Selection Grade) is not higher in rank and status than an ordinary Commandant. I am of the considered view that the post of Commandant (Selection Grade) is a higher and distinct post than that of a Commandant.

(18) There is no dispute on the fact that the Commandant (Selection Grade) is a Group A post under the Central Government and for Group 'A' posts the age of Superannuation is 58 years. Consequently, the petitioners have a right to continue in service up to the age of 58 years.

For the foregoing reasons, this writ petition is allowed and the order retiring the petitioners at the age of 55 years is set aside. The petitioners should be, forthwith taken back in service as Commandants, (Selection Grade) and they would be deemed to have continued in service in that rank from the date they were retired. Needless to mention that they would be entitled to all consequential benefits flowing therefrom. I make no order as to costs.

J.S.T.

Before : A. P. Chowdhri, J.

SAMITI KHANNA,—Petitioner.

versus

AROON KHANNA,—Respondent.

First Appeal from Order No. 14-M of 1991

April 9, 1992.

Hindu Marriage Act of 1955—Sections 13 & 13B—Application for divorce by mutual consent filed before District Judge—Statements of parties recorded—Wife withdrawing petition under section 13B claiming signature on petition obtained under threat—Said petition dismissed—Husband filing for divorce on ground of cruelty and desertion—Withdrawal of petition for mutual consent—Effect of on divorce proceedings stated—Decree of divorce granted by District Judge is unexceptionable—Denial of sex amounts to cruelty—In absence of evidence, wild and reckless allegations of fraud, coercion and undue influence made by wife cannot be relied upon—Findings of cruelty upheld—However, findings on desertion reversed—Decree of divorce upheld.

Held, that it was contended that withdrawal of the petition under section 13-B could not give rise to any adverse inference as the statute itself provides for a waiting period and it was open to either or both the parties to withdraw the petition. I am unable to accept the contention. The learned trial Court has duly considered the evidence on record and has supported the findings on issues Nos. 1 and 2 with independent reasons. Certain material admissions made in the application under section 13-B of the Act by the appellant have been taken to lend necessary corroboration to the findings which, as stated above, have been reached on the basis of the material on record.

(Para 8)