

Shri K.S. Pandhi and Others Vs Union of India (UOI) and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 28, 1992

Acts Referred: Central Civil Services (Classification, Control and Appeal) Rules, 1965 " Rule 6

Central Reserve Police Force Act, 1949 " Section 1, 16, 17, 18, 18(2)

Central Reserve Police Force Rules, 1955 " Rule 104, 2, 43, 5, 5(2)

Citation: (1994) 1 ILR (P&H) 149

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

Bench: Single Bench

Advocate: P.S. Patwalia and H.S. Sethi, for the Appellant; S.K. Pipat, Senior Standing Counsel and D.D. Sharma, Addl. Std. Counsel, for the Respondent

Final Decision: Allowed

Judgement

R.S. Mongia, J.

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. u/s 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 One for each Battalion.

Commandant (Second-in-

Command) Assistant

Commandant (Adjutant)

Quarter Master One for each Battalion.

Company Commander One per service

Officer. Company Plus leave and

training reserve for each

Battalion.

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, 1975, 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:

Eligibility for promotion Conditions of Eligibility

(1) From Deputy Superintendent of X XXXXXXX

Police Assistant Commandant.

(2) From Assistant Commandant to X XXXXXX

Second-in-Command.

(3) From Second-in-Command to X XXXXXX

Commandant (Ordinary Grade)

(4) From Commandant (Ordinary 16 years Group "A" service of which Grade) to Commandant (Selection atleast 2 years should be as Grade). Commandant (Ordinary Grade).

(5) From Commandant (Selection Commandant (Selection Grade) with Grade) to Additional DIG. 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 XXXXXX

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/Company 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 up to 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 ti, 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 cost 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 un-revised 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 latter 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 Petitioners 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 there from. I make no

order as to costs.