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IN THE HIGH COURT OF DELHI AT NEW DELHI

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WP(C) No.980/2012

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Date of Decision: 17.02.2012

Ramphal, Store Petty officer

.... Petitioner

Through Mr. Sukhjinder Singh, Advocate

Versus

Union of India & Ors.

.... Respondents

Through Mr. Satya Saharawat, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

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1. The petitioner has challenged the order dated 22nd July, 2011 passed by the Armed Force Tribunal, Principal Bench, New Delhi in OA No.450/2010, titled as 'Ramphal, Store Petty Officer v. Union of India & Ors.', dismissing his application seeking the quashing of orders dated 12th June, 2009, 23rd September, 2009 and 29th January, 2010 and declining his prayer of declaring him to have passed out as Store Assistant-I (SA-I) instead of Store Assistant-II (SA-II) and allowing him to maintain his original seniority w.e.f. 19th May, 1988 when he had enrolled.

2. The Tribunal had held that since the petitioner had claimed the seniority viz-a-viz other persons, who had not been impleaded before the Tribunal, it could not examine the averments of the petitioner seeking seniority above them. The Tribunal had also declined to grant the petitioner seniority over the non-impleaded individuals, in view of the averments made by the respondents in their counter affidavit that the other individuals are direct entry MER Sailors while some of them had changed their branch later and were thus governed by NI 2/96. The prayer of the petitioner that he be granted seniority from his original date of enrollment i.e. 19th May, 1988 was declined also on the ground that it suffers from delay and laches. It was held that the petitioner had made various attempts to revise the date of seniority however at no point of time had the petitioner sought the date of seniority w.e.f. 19th May, 1988. In the circumstances, it was concluded that no injustice had been caused to the petitioner by fixing his basic seniority as 24th December, 1990 and that he had not been brought down by posting him out as SA-II and also that he was not given seniority incorrectly and thus, the Tribunal declined to interfere with orders of the respondents.

3. The brief relevant facts are that the petitioner was enrolled in the Indian Navy on 19th May, 1988. He became qualified after training to become a Cook I on 23rd May, 1990. Meanwhile, the petitioner had

asked for a change of his trade for becoming a Store Keeper. Consequently, the petitioner was detailed for the MER test for two weeks in December, 1989, which was required by all the sailors who had applied for the change of their branches.

4. The petitioner qualified the MER test and about it he was intimated by letter dated 30th December, 1989. He was thereafter sent for trial by letter dated 11th September, 1990 to assess his suitability as a Store Keeper which was carried out at INS Valsura. Ultimately, the petitioner was attached to the Ships Electrical Department from 27th March, to 30th June, 1990.

5. The petitioner again sought a change of branch on 20th August, 1990 which was countersigned by his Commanding Officer on 11th September, 1990. Thereafter, the petitioner was asked to attend the INS Hamla from 14th February, 1991 to 22nd June, 1991 for change of his trade to that of Store Keeper Assistant. As per Naval Instructions 2/S/1961 Para 20 (7) he was accorded eight weeks of antedated seniority.

6. Later on, the petitioner approached his unit on 8th January, 1993 for fixing of his seniority, as according to the petitioner his antedated seniority had not been granted. Pursuant to the representation made by the petitioner, he was given seniority w.e.f.

24th December, 1990.

7. From 12th February, 1993 when he was given the seniority from 24th December, 1990, up until he approached the Tribunal, the petitioner did not take any steps for further antedating his seniority to 9th July, 1990 instead of 24th December, 1990. The petitioner, thereafter, continued to make representations on failure to get any relief as claimed by him. He then filed an original application before the Armed Forces Tribunal, Principal Bench, New Delhi and raised three issues. The first being fixation of seniority on transfer. The contention of the petitioner was that he was governed by the Para 272 (5) of the Navy Regulation Part-III read with Para 22/7 of NI 2/S/61 and that he was entitled to get the basic date in the new branch from the date he qualified for the first course which was held in December, 1989.

8. The petitioner also agitated that he should have been declared passed out as SA Class I since there is no provision in the Navy to revert a Seaman to a lower grade from Sailor Class I to Sailor Class II. The petitioner also claimed that similarly situated batch mates i.e. No.174908W, 174696F and 174891F at INS Chilka were given basic seniority w.e.f. 9th July, 1990 whereas, the petitioner has been given seniority only w.e.f. 24th December, 1990.

9. The petition was contested by the respondents contending, inter-alia, that the petitioner was enrolled on 19th May, 1988 as a Cook in pay group C as a “Non Metric Entry Recruit” and that he had been upgraded as a Cook (O)-I on 23rd May 1990. For upgrading himself, the petitioner applied to become a “Metric Entry Recruit” for which he was required to qualify the Metric Entry Recruitment examination (MER) at INS Chilka. The petitioner qualified the MER test in December, 1989 and thereafter, he underwent a trade suitability trial at INS, Valsura from 27th March, 1990 to 30th June, 1990 whereafter the petitioner applied for a change of branch on 20th August, 1990 and thus he was detailed for the conversion course at INS Hamla on 18th February, 1991 to 22nd June, 1991 after which he was finally designated as SA-II. The respondents disclosed that since the petitioner was finally designated as SA-II, after giving 8 weeks of antedated seniority, it was fixed as from 24th December, 1990.

10. The pleas and contentions of the petitioner were also opposed on the ground that the petitioner cannot compare himself with the other persons as the individual named by the petitioner were direct entry “MER” recruits and they had not undergone any change of branch. While the other individuals referred to by the petitioner were those who had obtained transfer in 2003 and thus they were governed by NI

2/96.

11. The pleas and contentions of the petitioner were also objected on the ground that the petitioner was found guilty of misappropriation of Govt. property on 31st December, 2006 and as a punishment he had been reduced to rank, from Store Petty Officer (SPO) on 11th January, 2007 and was re-promoted as SPO only on 14th July, 2008.

12. After considering the pleas and contentions of the parties, the Tribunal held that the petitioner was not governed by the Instructions contained in NI 2/S/96 pursuant to which he was granted the antedated seniority w.e.f. 24th December, 1990 since he had attended the conversion course from 18th February, 1991 to 22nd June, 1991. The plea of the petitioner regarding the date of calculation of antedated seniority from the date of MER test or trade of suitability trial was not found to be logical and repelled especially since the petitioner had formally applied for conversion only on 20th August, 1990 after having successfully completed the MER test and the Trade suitability trial.

13. The petitioner has challenged the order of the Tribunal by raising similar grounds as were raised by the petitioner before the

Tribunal. The learned counsel for the respondents Sh.Satya Saharawat, Advocate, who has appeared on advance notice has contended that the Tribunal has also declined to grant any relief to the petitioner on the ground of delay and laches and also since the petitioner had not been able to give any satisfactory explanation explaining the delay.

14. This is not disputed that the petitioner had sought for a change of the branch and had undergone SA-II “Q” course from 14th February, 1991 to 22nd June, 1991 and had subsequently qualified as SA-II. Consequently, on becoming entitled for antedated seniority, the petitioner had made a representation on 8th January, 1993.

15. The petitioner was thereafter, given the new basic date as 24th December, 1990 pursuant to signal dated 12th February, 1993. From the record, it is apparent that thereafter the petitioner did not raise any plea of antedating from 9th July, 1990 till 2008 when pursuant to the representations made by the petitioner, a letter dated 1st August, 2008 addressed by the Lt. Commandant to the Commodore directed a reconciliation of the basic date and rating of the petitioner as SA-I on passing out SA-II “Q” course. The petitioner thereafter made a detailed representation again on 11th November, 2009 and referred to the

various correspondences made by him to the authorities from time to time in para 6 of the said representation which are as under:-

- “(a) INS Guldar letter 203 dated 08 Jan 1993 (Appendix-I)
- (b) INS Guldar DTG 061305/Feb 1993 (Appendix-II)
- (c) CABS DTG 111959/Feb 1993 (Appendix-III)
- (d) BLO (V) letter 100/Div dated 01 Aug 08 (Appendix-IV)
- (e) CABS letter DV/152072/Log dated 23 Oct 08 (Appendix-V)
- (f) BLO (V) letter 258 dated 19 Nov 08 (Appendix-VI)
- (g) CABS letter PR/0301/LOG dated 07 an 09 (Appendix-VII)
- (h) BLO (V) letter 251 dated 30 Jan 09 (Appendix-VIII)
- (j) CABS letter PR/0301/152072/LOG dated 31 Mar 09 (Appendix-IX)
- (k) BLO (V) letter 251 27 Aug 09 (Appendix-X)
- (l) CABS letter PR/0301/152072/LOG dated 12 Jun 09 (Appendix-XI)
- (m) BLO (V) letter 251 dated 04 Aug 09 (Appendix-XII)
- (n) HQENC letter RP/1408/PC dated 24 Aug 09 (Appendix-XIII)
- (p) CABS letter PR/0301/152072/Log dated 07 Sep 09 (Appendix-XIV)
- (q) HQENC letter RP/1408/PC dated 23 Sep 09 (Appendix-XV)”

The petitioner also placed reliance on Regulation 273. Para 5 of Section II to Chapter XII of the Regulations Navy Part III, and thereby sought a change of the basic date and date of promotion to SA-I from 24th December, 1993 to 18th February, 1991.

16. Leaned counsel for the petitioner is unable to give any satisfactory reason for not impleading the other persons, over whom and in parity with them, seniority has been claimed by the petitioner. The petitioner has also not been able to refute the fact that the other individuals were either the direct entry MER sailors or those who had changed the branch later and were thus governed by the NI 2/96. Consequently, the learned counsel for the petitioner has not been able

to make out any ground satisfactorily impugning the observations and decision of the Tribunal. Learned counsel for the petitioner has further referred to Regulation 273 regarding the Transfer between the branches which is as under:-

SECTION III. – TRANSFER BETWEEN BRANCHES

273.Transfer of men from one Branch to another.- (1) Transfer from one Branch to another may be allowed only subject to the approval of the Chief of the Naval Staff, who will however, not consider such applications unless: -

(a) there are vacancies in the branch to which transfer is desired, and the training of the applicant for the new branch can be arranged;

(b) the applicant is recommended by his Captain and possess the prescribed educational qualifications and medical standard for the new rate; and

(c) the transfer is otherwise in the interest of the Service.

(2) All candidates for entry in the Indian Navy shall be required to sign an acknowledgement that they have not been induced to enter by the prospect of being transferred to another rank at their own request. No application for transfer shall be entertained if made on the ground of such alleged inducement.

(3) All Applications submitted to the Chief of the Naval Staff under these regulations must be accompanied by the sailor's Service Documents.

(4) Applications from sailors for transfer from one rate to another shall be submitted through proper channels to the Captain Naval Barracks for onward transmission to the Chief of the Naval Staff. Applications shall be forwarded only when the man concerned is considered to possess particular aptitude for the new rate or where there are exceptional circumstances known to his

Captain, and in any case the transfer must be recommended as being clearly in the interests of the Service and of the man. The final decision shall depend upon the requirements of the Service in the branches to which transfer is desired.

(5) Where necessary, the Chief of the Naval Staff shall issue instructions for the man to undergo a course of trial in the proposed new branch, the nature and duration of which shall be as directed by the chief of the Naval Staff. Based on the results of the course and the other conditions in sub-regulation (4) being fulfilled, a final decision shall be conveyed by the Chief of the Naval Staff. Transfer shall generally be to the lowest rate in which men are normally entered in the new branch by this may be relaxed at the discretion of the Chief of the Naval Staff. If transferred in equivalent rate (but above O.D. rate) the effective date of transfer shall be the date of commencement of the Conversion Course. The effective date of transfer if in O.D. rate shall be the basic date of training of the batch with which a transferee is conjoined.”

The above Regulation, however, does not negate the plea of delay and laches.

17. This cannot be disputed that belated service claim is liable to be rejected on the ground of delay and laches. In *Shiv Dass v. Union of India* (2007) 9 SCC 274 the Supreme Court had held at page 277 in paras 8 as under:

“8. ... The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised

after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

It has been held in a number of cases by the Supreme Court as also this Court that stale claims should not be entertained by the Courts and failure to make out grounds to condone the delay in seeking remedy in law is sufficient in itself to oust the petitioner. In this connection, reference can be made to the following precedents:

- (i) Rajalakshmiah v. State of Mysore AIR 1967 SC 993
- (ii) J.N. Maltiar v. State of Bihar
MANU/SC/0382/1973
- (iii) C.B.S.E. v. B.R. Uppal and Ors.
MANU/DE/8142/2006
- (iv) Savitri Sahni v. Lt. Governor, NCT of Delhi and Ors. MANU/DE/8673/2006

18. This also cannot be disputed by the learned counsel for the petitioner that the belated claim cannot be entertained unless sufficient grounds are made out by the petitioner to condone the delay in seeking remedy in law. Consequently, the decision of the Tribunal

in rejecting the relief claimed by the petitioner on the ground of delay and laches can also be not faulted by the petitioner.

19. For the foregoing reasons and in the facts and circumstances, the learned counsel for the petitioner has not been able to make out any illegality, irregularity or perversity in the order of the Tribunal which shall entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit, and it is, therefore, dismissed.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

FEBRUARY 17, 2012

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