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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8046/2011 & CM No. 10100/2012

GHAMMAN SINGH Petitioner
Through: Mr. Ankur Chhibber, Adv.

versus

UOI AND ORS Respondent
Through: Mr. Rajinder Nischal, Adv.

WITH

+ W.P.(C) 107/2012

MAHAVAIR SINGH Petitioner
Through: Mr. Ankur Chhibber, Adv.

versus

UOI AND ORS Respondent
Through: Dr. Ashwani Bhardwaj, Adv.

AND

+ W.P.(C) 828/2012

K.ANGAMBOU Petitioner
Through: Mr. Ankur Chhibber, Adv.

versus

W.P.(C) Nos. 8046/2011, 107, 828, 1202, 1991, 82/2012

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UOI & ORS.

..... Respondent

Through: Dr. Ashwani Bhardwaj, Adv.

AND

+ W.P.(C) 1202/2012

J.DURAI MURUGAN

..... Petitioner

Through: Mr. Ankur Chhibber, Adv.

versus

UOI AND ORS

..... Respondent

Through: Dr. Ashwani Bhardwaj, Adv.

AND

+ W.P.(C) 1991/2012

KARAM JEET SINGH

..... Petitioner

Through: Mr. Ankur Chhibber, Adv.

versus

UOI AND ORS

..... Respondent

Through: Ms. Perna Shah Deo for
Ms. Anjana Gosain, Adv.

AND

+ W.P.(C) 82/2012

RAM NARESH TIWARI

..... Petitioner

Through: Mr. Ankur Chhibber, Adv.

versus

UOI AND ORS

Through: Respondent
Mr. Sachin Datta,
Mr. Ashok Kr. Singh and
Mr. Dinesh Sharma, Adv. for R-1

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER
27.09.2012

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1. The petitioners by way of the present writ petitions W.P.(C) Nos. 8046/2011; 107/2012; 828/2012 and 1202/2012 have assailed the action of the respondents in denying them consideration for promotion from the post of Sub-Inspector to Inspector; in W.P.(C) Nos. 1991/2012 from the post of Inspector to Asstt. Comdt. and in W.P.(C) No. 82/2012 from the post of Head Constable to Sub-Inspector in the Central Reserve Police Force ('CRPF' hereafter'). The sole ground for denying promotion to the petitioners is that they did not fulfil the mandatory requirement of two years service in duty battalion and have denied waiver of this condition. It is not disputed that the petitioners are otherwise eligible.

2. The petitioners seek a mandamus to the respondents to waive this condition and to consider them for such promotion.

3. This issue has not arisen before this court for the first time. This

question was agitated by persons who were denied promotions to different posts in the CRPF as well as Border Security Force prior hitherto by way of writ petitions which resulted in adjudication in favour of the writ petitioners. In this regard, the following judgments have been relied upon before this court:-

(i) The judgment dated **27th October, 2009** passed in **W.P.(C) No.21900/2005 Ashok Kumar vs. UOI & Ors.** as well as connected writ petitions. In this writ petition, the court was concerned with a prayer for a mandamus similar as that sought by the petitioners before us so far as the Border Security Force and Central Reserve Police Force is concerned.

In this judgment, the court had held as follows :-

“35. We may note that in all the cases, the authorities concerned i.e. BSF and CRPF have recommended to the Central Government that the rule requiring two years’ service in the duty battalion be relaxed due to the fact that all of a sudden a quantum jump in the cadre strength took place in the year 2004, which was not expected, and if the rule is strictly enforced, junior officers would steal promotion over the senior officers. Unfortunately, while exercising the power, the Central Government posed the wrong question by considering the adequacy or inadequacy of the number of officers in the feeder channel. The power was relaxed for such posts where officers in the feeder channel were less, denying similar benefit in the other posts. The correct question which need to be

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posed was, as noted by us in para 30 above; the backdrop in which the questions needed to be answered was as noted in WP(C) 22026/05 Page 27 of 30 para 31 above. The law applicable is the one as noted in paras 32 and 33 above.

36. We may note that with the increase in posts in the year 2004 and knowing fully well that the continued requirement of two years" service in a duty battalion would hamper the promotional career of the officers, the respondents have themselves, put on track mode, the identification of its officers in various non-duty posts because the respondents know and recognize that transfer/posting is not in the hands of the officers but is a prerogative of the department and the department has to ensure that it affords an opportunity to all its officers to become qualified by serving in duty battalions. This also highlights the fact that the sudden change in situation in the year 2004, being unexpected, required a proper administrative redressal.

37. We accordingly quash the decision of the Central Government declining to relax the eligibility condition of two years" service in a duty battalion for promotion to the post of Inspector and 2 IC under BSF as also the post of Inspector under CRPF."

4. The court finally issued the following mandamus :-

"38. A mandamus is issued to the Central Government to reconsider the issue pertaining to the promotions to the posts of 2 IC and Inspector under BSF and the post of Inspector under CRPF; the issue being exercising the power of relaxation vested under the Rules, to be exercised by the Central Government. While reconsidering the matter, the questions framed by us would be kept in mind while deciding the issue and the backdrop circumstances would be kept in mind while deciding the issue. Needless to state the decision of the Central Government would be a reasoned

decision evidencing the application of mind with reference to the questions and the backdrop circumstances. The decision would be taken within a period of 8 weeks from date of receipt of this decision in the Ministry of Home Affairs i.e. the Nodal Ministry of the Central Government. We further mandate that if the decision taken is in favour of the petitioners, they would be promoted with effect from the date, persons junior to the petitioners were promoted and in said eventuality, the petitioners would be entitled to all consequential benefits such as seniority, pay fixation and arrears of pay."

5. A detailed reference to the above decision has been made for the reason that the respondents were fully aware of the adjudication by this court inasmuch as the judgment dated 20th October, 2009 was not assailed and stands implemented.

(ii) The issue was again agitated before this court by way of **W.P.(C) No.8974/2008 Vinod Kumar vs. UOI & Ors.** wherein the court was concerned with a similar prayer against the Central Reserve Police Force.

In view of the judgment of 20th October, 2009, the respondents promoted Vinod Kumar-the writ petitioner and re-assigned his seniority. In this matter, all consequential benefits seeking seniority, next rank, pay etc. were granted to the petitioner with effect from 6th September, 2007 which was the date on which his juniors were promoted.

(iii) We find that two more writ petitions bearing no. **W.P.(C)**

No.2724/2010 Virendra Singh Rajput v. UOI & Ors. and 2433/2010 Rajesh Kumar v. UOI & Ors. had sought a similar prayer against the CRPF. By the decision dated 25th October, 2010, placing reliance on the pronouncement in Ashok Kumar (supra), it was again held that the petitioners could not be denied promotion for the reason that they had not served in a duty battalion and a mandamus was issued to the Central Government in terms of the judgment dated 20th October, 2009. In this case, a mandamus was issued to reconsider the case of the petitioners after relaxing the eligibility condition of two years service in the duty battalion and to pass appropriate orders with regard to the promotion with effect from the date persons immediately junior to the petitioner were promoted. It was directed that in such eventuality, the petitioner would be entitled to consequential benefits including seniority, pay fixation and arrears of pay. It is not disputed before us that this decision has also not been assailed by the respondents. On the contrary, the same stands duly implemented.

6. So far as the petitioners in the present writ petitions are concerned, the petitioners are aggrieved by the fact that their juniors stand promoted and that the respondents have wrongfully denied them the benefit of promotion from the post of sub-inspector to inspectors; from inspectors to Asstt. Comdt and from Head Constable to Sub-Inspector respectively on

the ground that they have failed to fulfil the eligibility requirement of not having served in a duty battalion.

7. It is also the grievance of the petitioners that despite the adjudication by this court as back as on 20th October, 2009 and repeatedly thereafter, the petitioners have been constrained to approach this court.

8. For the sake of convenience, we are hereafter setting out the writ petition no., name of the petitioner, date of filing the writ petition and date on which juniors to the writ petition -stand promoted :-

Writ Petition No.	Name of Petitioner	Date of filing the writ petition	Date on which juniors stand promoted	Next promotion
8046/2011	Ghamman Singh	14 th November, 2011	28 th September, 2011	to the post of Inspector
107/2012	Mahavir Singh	5 th January, 2012	July, 2010	to the post of Inspector
828/2012	K. Angambou	8 th February, 2012	8 th January, 2007	to the post of Inspector
1202/2012	J. Durai Murugan	27 th February, 2012	6 th September, 2007	to the post of Inspector
1991/2012	Karam Jeet Singh	9 th April, 2012	January, 2012	to the post of Asstt. Commdt.
82/2012	Ram Naresh Tiwari	5 th January, 2012	July, 2011	to the post of Sin-inspector

9. The above tabulation would show that the first writ petition out of this batch of six was filed on 14th November, 2011 after the respondents failed to give the benefit of the waiver of the eligibility conditions to Ghamman Singh and denied promotion to him when his juniors were

promoted on 28th September, 2011 to the post of inspector. The other writ petitions have also been necessitated thereafter.

10. Mr. Datta, learned Standing Counsel for the UOI has placed reliance on the judgment dated 17th August, 2012 passed in W.P.(C) No.4934/2012 Shaji. A vs. UOI & Ors. to strenuously urge that the arrears of pay ought not to be granted to the petitioners. We do not find any principle of law laid down in this judgment. The same has been rendered purely in the facts and circumstances of the case. The fact that this writ petitioner had been promoted to the higher post was the circumstance which had weighed with the court in denying the wages. It is not so in the instant case.

11. The respondents have not only failed to act in accordance with the principles laid down by this court in the judgment dated 27th October, 2009 in **Ashok Kumar (supra)** and the specific finding that the action of the respondents was unwarranted and arbitrary but the respondents have also not remedied the manner in which they have acted necessitating filing of these unwarranted writ petitions.

12. The wastage of judicial time which has been necessitated by this conduct of the respondents is only one aspect of the matter. It cannot be denied that the direct consequence of the failure to promote the petitioner is that they have not only been denied the fruits of the

promotion but juniors to them have been posted above them thereby resulting in the ignominy to the petitioners of serving under their juniors. The same would have certainly caused much anguish to the petitioners. There is no defence at all for this action other than a submission that the entire matter is even now pending with the Ministry of Home Affairs.

13. We are informed by Mr. Sachin Datta, learned Standing Counsel, Mr. Rajinder Nischal as well as Dr. Bhardwaj, learned counsel for the respondents that the respondents have now formulated a policy on 2nd June, 2012 whereby it has been set out that in case a person has not been posted to a duty battalion, he would be entitled to waiver of the requirement of such posting in order to render him eligible for promotion to the next post. This could have been done within a reasonable period of the judgment against the respondents so the precious judicial time would have saved the agony of the petitioners.

14. It was on a consideration of these aspects that while allowing the Writ Petition (C) No. 2427/2010 on 25th October, 2010 and while allowing the writ petition filed by **Vinod Kumar (supra)** and **Virendra Singh Rajput (supra)**, we had directed the payment of arrears of the wages as well. We see no reason as to why the present petitioners ought not to be granted the same benefit. The petitioners have been prevented from working at the higher post even though they were willing to do so for no

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fault attributable to them by the illegal and arbitrary action of the respondents alone.

15. The writ petitioner Karamjeet Singh (petitioner in W.P.(C) No.1991/2012) filed the petition on 9th April, 2012 who has been denied promotion to the post of Asstt. Comdt. even though his juniors were so promoted with effect from January, 2012 again for the reason that he did not satisfy the eligibility condition of two years service in a duty battalion.

16. W.P.(C) No.82/2012 has been filed by HC Ram Naresh Tiwari on 5th January, 2012 aggrieved by the fact that though his juniors stood promoted to the post of Sub-Inspector in July, 2011, he has been denied promotion again on the ground that he failed to fulfil the eligibility requirement of two years service in a duty battalion.

In view of the above, it is directed as follows :-

(i) The decision of the Central Government declining to relax the eligibility condition of two years service in duty battalion for promotion of the petitioners to the post of Sub-Inspector, Inspector and Head Constable respectively under the CRPF shall stand quashed.

(ii) A direction is issued to the Central Government to reconsider the cases of the petitioners, after the aforementioned relaxation, and to pass appropriate orders, if the decision is taken in their favour, for promotion with effect from the date persons immediately junior to the petitioners

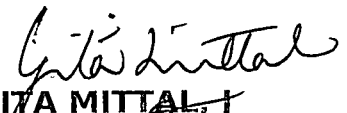
were promoted. In such eventuality, the petitioners would be entitled to all consequential benefits including seniority, pay fixation and arrears of pay.

(iii) The case of the petitioners shall be forwarded by the competent authority to the Ministry of Home Affairs positively within a period of four weeks from today. The consideration by the Ministry of Home Affairs shall be communicated to the petitioners within eight weeks thereafter.

17. Inasmuch as we have directed payment of arrears of pay, we are making no orders as to costs even though the petitioners deserve to be compensated for the litigation which has been generated by the failure of the respondents to act in accordance with law.

These writ petitions are allowed in the above terms.

SEPTEMBER 27, 2012
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GITA MITTAL, J

J.R. MIDHA, J