

GAHC020006722022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/258/2022

C.T.WENKHANG KONYAK
SUBEDAR MAJOR, VILLAGE GUARD,
MON, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY
TO THE GOVERNMENT OF NAGALAND,
NAGALAND, KOHIMA

2:THE PRINCIPAL SECRETARY

HOME DEPARTMENT

NAGALAND
KOHIMA

3:THE COMMISSIONER AND COMMANDANT GENERAL

NAGALAND VILLAGE GUARD ORGANIZATION

NAGALAND
KOHIMA

4:THE COMMANDANT

VILLAGE GUARD ORGANIZATION

TUENSANG
NAGALAND

5:THE DEPUTY COMMISSIONER AND EX-OFFICIO COMMANDANT

VILLAGE GUARD ORGANIZATION

MON
NAGALAND

6:THE DEPUTY COMMANDANT

VILLAGE GUARD ORGANIZATION

MON
NAGALAND

7:T. KIUSU TIKHIR

ASST. COMMANDANT

VILLAGE GUARDS
KIPHIRE
NAGALAN

Advocate for the Petitioner : WATI JAMIR

Advocate for the Respondent : GOVT ADV NL

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner	:	Mr. W. Jamir, Advocate
For the Respondents	:	Mr. E. Thiba Phom, Government Advocate, Nagaland. Mr. T. Pongener, Advocate for Respondent No.7.
Date of Hearing	:	22.04.2024.
Date of Judgment	:	24.04.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. W. Jamir, learned counsel appearing for the petitioner. Also heard Mr. E. Thiba Phom, learned Government Advocate, State of Nagaland representing the respective respondents. Mr. T. Pongener, learned counsel represents Respondent No.7.

2. This is an application under Article 226 of the Constitution of India challenging the Seniority List dated 14.09.2018 vide Memorandum No.CN/VG/SL/2018/125 (H3) of Subedar Major under Village Guards (V.G.) Organisation.

3. The petitioner is holding the post of Subedar Major under the Village Guards Organisation after his promotion to that post on 10th February, 2006.

4. On 30.11.2018, a Tentative Seniority List of all the Subedar Major under V.G. Organisation was published by the concerned authority. In this list, the petitioner who joined the service on 25.07.2000, was given the 8th position whereas the Respondent No.7 who joined the service on 14.05.2001, was given the 7th position. The petitioner claimed that he is senior to the Respondent No.7 as he joined the service earlier and therefore he should have been given the position above the Respondent No.7 in the seniority list. That is the reason why the petitioner has challenged the validity of the said tentative inter se Seniority List.

5. The State respondents have claimed that the said seniority list was published in the year 2018 and the same is challenged after four years i.e. in the year 2022. The State respondents claimed that at this stage any change in the said seniority list after so many years, would create confusions and difficulties in the administrative system.

6. The Respondent No.7 also took a similar stand as of the State respondents. The Respondent No.7 has claimed that the petitioner has

intentionally neglected everything that was going on in the service records and after an unexplained delay of four years, he has filed this writ petition.

7. In order to buttress his points Mr. Jamir has relied upon *D.P. Das v. Union of India*, (2011) 8 SCC 115. In this case, the Supreme Court has held as under :

“18. The law is clear that seniority is an incidence of service and where the service rules prescribe the method of its computation, it is squarely governed by such rules. In the absence of a provision ordinarily the length of service is taken into account. The Supreme Court in *M.B. Joshi v. Satish Kumar Pandey* [1993 Supp (2) SCC 419 : 1993 SCC (L&S) 810 : (1993) 24 ATC 688 : AIR 1993 SC 267] has laid down that it is the well-settled principle of service jurisprudence that in the absence of any specific rule the seniority amongst persons holding similar posts in the same cadre has to be determined on the basis of the length of the service and not on any other fortuitous circumstances.”

8. Mr. Jamir further relied upon *Dev Dutt v. Union of India*, (2008) 8 SCC 725. In this case, it is held as under:

“18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.

21. Learned counsel for the respondent also relied upon the decision of this Court in *Union of India v. S.K. Goel* [(2007) 14 SCC 641 : AIR 2007 SC 1199] and on the strength of the same submitted that only an adverse entry need be communicated to the incumbent. The aforesaid decision is a two-Judge Bench decision and hence cannot prevail over the seven-Judge Constitution Bench decision of this Court in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248 : AIR 1978 SC 597] in which it has been held that arbitrariness violates Article 14 of the Constitution. Since the aforesaid decision in *Union of India v. S.K. Goel* [(2007) 14 SCC 641: AIR 2007 SC 1199] has not considered the aforesaid Constitution Bench decision in *Maneka Gandhi* case [(1978) 1 SCC 248: AIR 1978 SC 597] , it cannot be said to have laid down the correct law. Moreover, this decision also cannot be treated as a Euclid's formula since there is no detailed discussion in it about the adverse consequences of non-communication of the entry, and the consequential denial of making a representation against it.”

9. Mr. F. Thiba has relied upon *Malcom Lawrence Cecil D'Souza v. Union of India*, (1976) 1 SCC 599. Here, the Supreme Court has held as follows:

“9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

10. Mr. T. Pongenter, the Id. counsel for the Respondent No.7, has relied upon *Shankara Coop. Housing Society Ltd. v. M. Prabhakar*, (2011) 5 SCC 607, where the Supreme court has held as under :

“50. In *Shiv Dass v. Union of India* [(2007) 9 SCC 274; (2007) 2 SCC (L&S) 395], this Court opined that: (SCC p. 277, para 8)

“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.”

64. In the present case, the respondents in the writ petition had raised a specific plea of delay, as a bar to grant relief to the petitioners. In our view, it was perhaps necessary for the Court to have specifically dealt with this issue. It is now well settled that a person who seeks the intervention of the High Court under Article 226, should give a satisfactory explanation of his failure to assert his claim at an earlier date. The excuse for procrastination should find a place in the petition filed before the Court and the facts

relied upon by him should be set out clearly in the body of the petition. An excuse that he was agitating his claims before the authorities by making repeated representations would not be satisfactory explanation for condoning the inordinate delay in approaching the Court. If a litigant runs after a remedy not provided in the statute or the statutory rules, it cannot be a satisfactory explanation for condoning the delay in approaching the Court.

67. It is now well settled that the power of the High Court under Article 226 of the Constitution to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the petitioner is guilty of delay and laches. Inordinate and unexplained delay in approaching the Court in a writ is indeed an adequate ground for refusing to exercise discretion in favour of the petitioners therein. The unexplained delay on the part of the petitioner in approaching the High Court for redressal of their grievances under Article 226 of the Constitution was sufficient to justify rejection of the petition."

11. I have considered the submissions made by the learned counsel of both sides.

12. After considering the submissions, I have decided to agree with the learned counsel for the respondents.

13. The petitioner is a serving officer of Village Guards Organisation. He along with the Respondent No.7 was promoted together and the inter se seniority list was prepared in the year 2018. After four years, the writ petition has been filed in the year 2022. The delay has not been satisfactorily explained by the petitioner.

14. It is a settled position of law that while entertaining a petition under Article 226 of the Constitution of India, the High Court is entitled to exercise discretion. In *Shiv Dass* (supra,) it settled that 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. In *Malcom Lawrence Cecil D'Souza* (supra), it is settled that raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It is further held that it would, therefore, appear to be in the

interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time

15. The petitioner was, without any valid reason, sleeping over those happenings in his service life for a long period of four years. Now after so many years, the petitioner is not entitled to seek any relief because any change in the seniority list would create confusions and difficulties in the administrative set up. This Court is not satisfied that the petitioner has properly explained the delay.

16. Therefore, the writ petition is found to be devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant