

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

% *Date of Decision: March 23, 2015*

+ **W.P.(C) 4706/2013**

AJAI SAXENAPetitioner

Represented by: Ms.Rekha Palli, Advocate with
Ms.Ankita Patnaik and Ms.Garima
Sachdeva, Advocates

versus

UNION OF INDIA & ORS.Respondents

Represented by: Mr.Ajay Digpaul, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The petitioner joined the Sashastra Seema Bal (SSB) as an Assistant Commandant on March 26, 1998. He was promoted as the Deputy Commandant on May 09, 2005 and thereafter as a Second-in-Command in December 2009.

2. The appointment of the petitioner as an Assistant Commandant was delayed for reasons not attributable to him and as a result persons junior to him in the merit list were offered appointment in August, 1997 and the petitioner was offered appointment in March, 1998. However, this did not create any problem for the petitioner because in the seniority list drawn up, the merit was recognized and thus he was placed in seniority above those who had obtained lesser marks than him in the open selection made in the year 1997. The said seniority list which was drawn up somewhere in the

year 2002 was consistently followed for further promotions to the post of Deputy Commandant and Second-in-Command.

3. Vacancies existed for the post of Commandant. As per the SSB Group-A Combatized (General Duty) Officers Rules, 2004, fifteen years service to be completed in Group-A is the eligibility for being promoted as a Commandant.

4. The batch mate of the petitioner who were appointed in October 1997, attained fifteen years' qualifying service in Group-A in October 2012. The petitioner did so in March 2013.

5. For the vacancy year 2013-14 the department initiated the process of appraisal and treated only those who were eligible as on January 01, 2013.

6. The petitioner learnt that persons junior to him namely; S.R.Gupta, H.N.S. Bisht and Ajai Saxena were being considered for promotion and not he. He made a representation which was not accepted.

7. The petitioner was constrained to file the instant writ petition.

8. There exist an OM dated March 25, 1996 which reads as under:-

*"No.AB/14017/12/88-Estt(RR)
Government of India
Min. Of Personnel, P.G. & Pensioners
(Department of Personnel & Training)*

New Delhi, THE 25th March, 96

OFFICE MEMORANDUM

*Subject:- Revision of guidelines for framing/amendment/
relaxation of recruitment rules – consideration of
seniors in cases where juniors are considered.*

*The undersigned is directed to refer to para 3.1.2 of part.III
in this Department O.M. No. AB/14017/12/87-Estt.(RR) dated 18th
March, 1988 wherein it was suggested that a suitable "Note" may
be inserted in the Recruitment Rules to the effect that seniors who
have completed the probation period may also be considered for*

promotion when their juniors who have completed the requisite service are being considered.

2. In the light of the Supreme Court judgment in B. Prabha Devi and others versus Government of India and others in Civil Appeals Nos.2040-42 of 1987 decided on March 8, 1988 on the judgment and order dated Feb. 11, 1986 of the Central Administrative Tribunal, New Delhi and in continuation of O.M. of even No. dated 23.10.1989 Government have decided to amend para 3.1.2 of Part.III in this Department's O.M. No. AB/14017/12/87-Estt(RR) dated 18th March, 1988. Accordingly, the last sentence of para 3.1.2. will stand amended to read as under:-

“To avoid such a situation the following note may be inserted below the relevant service rules/column in the schedule to the Recruitment Rules.

Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying/eligibility service.”

3. Consequently para 2.1.2. of this Department's O.M. No. AB/14017/12/87-Estt(RR) dated the 18th March, 1988 will also be amended with the addition of the following sentence after 3rd sentence of para 2.1.2 ibid.

“The administrative Ministries/Departments are also empowered to amend all the service rules/recruitment rules to incorporate the “Note” as amended above.”

Sd/-xxxxx (T.O. Thomas)

*Under Secretary to the Government of
India*

To

All Ministries/Depts. Of Govt. of India

*Copy to:- 1.Comptroller and Auditor General of India 10,
Bahadur Shah Zafar Marg, New Delhi.*

2. Union Public Service Commission, Dholpur House, Shah Jahan Road, New Delhi w.r.t. their No.F.1/1/93-S.II dated 27th Nov., 1995. The above decision has been taken with the approval of the competent authority.

*Sd/-xxxxx (T.O. Thomas)
Under Secretary to the Government of India”*

9. In view of the aforesaid OM, we see no justification not to treat the petitioner eligible to be considered for promotion as a Commandant.

10. As of the cut of date set by the respondents, which was January 01, 2013, the petitioner had rendered fourteen years and nine months service. He was short only by three months. The shortfall was on account of the fact that for reasons not attributable to the petitioner letter offering appointment to him was delayed. Qualifying with the batch of 1997, whereas all were issued appointment letters in October 1997, letter offering appointment to the petitioner was issued on March 26, 1998.

11. As per the OM in question, where juniors, having completed their qualifying service are being considered for promotion, the seniors are also entitled to be considered for promotion if they are not short of the requisite qualifying service by more than half of such qualifying service or two years, whichever is less.

12. We need to speak a word more.

13. In the counter affidavit filed, the respondents have tried to reason that the seniority of the petitioner was wrongly fixed above that of S.R.Gupta and SH.HNN Bisht. It is pleaded that because of said error, the petitioner was erroneously promoted before them as a Deputy Commandant and thereafter as Second-in-Command.

14. But no reasons have been given in the counter affidavit as to why petitioner's seniority was wrongly fixed.

15. That apart, it is settled law that if a seniority is wrongly fixed and it is not challenged and opposed; and based thereon the department takes action for years together, after more than a decade the seniority list cannot be revised.

16. Under the circumstances we dispose of the petition directing the respondents to hold a review DPC and consider the case of the petitioner for promotion to the rank of Commandant and if found fit the petitioner be promoted as a Commandant from the date the person immediately junior to him was promoted. The petitioner would be entitled to all consequential benefits such as seniority, pay fixation, but on notional basis, meaning thereby arrears would not be paid.

17. We deny the arrears on the principle of the petitioner's having not shouldered the responsibility of a higher post would not be entitled to the emoluments thereof.

18. Needful shall be done within 12 weeks from today.

19. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 23, 2015

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