

\$~S-1

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

+ W.P.(C) 8070/2014

ABHIJEET KUMAR

..... Petitioner

Represented by: Mr.Manish Paliwal, Advocate
with Mr.Vikas Kumar, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Represented by: Mr.Akshay Makhija, Advocate for
R-1
Ms.Jyoti Singh, Sr.Advocate
instructed by Mr.Dinesh Yadav,
Advocate for review petitioners

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

27.05.2016

CM No.20821/2016

1. The application seeking review, in respect whereof delay is prayed to be condoned, itself needs a disposal making an observation with respect to the order dated December 31, 2015 under which the revised inter-se seniority list has been issued, and with respect whereto the order which we are passing would not warrant any consideration to be bestowed upon CM No.20821/2016.

2. That apart, the issue of delay would have to be considered with reference to the subsequent conduct of the Union of India and this itself would warrant the application to be disposed of observing that there is no delay at all.

3. CM No.20821/2016 is disposed of accordingly.

R.P.No.273/2016

1. The writ petition was disposed of on May 06, 2015 inasmuch as the grievance of the petitioner concerning seniority list not being drawn up was disposed of noting that the Union of India has since filed the counter affidavit conceding to the point that the writ petitioner was an Assistant Commandant of the 2007 batch. The Union of India stated in terms of a gazette notification dated May 05, 2007 published by the Ministry of Home Affairs, Government of India, inter-se seniority of the direct recruits had to be fixed on the basis of marks obtained at the competitive examination and as awarded by the training institute after training. Noting said stand of the Union of India the writ petition was disposed of recording that nothing survives for adjudication because the Union of India itself said that they would draw up the seniority list.

2. The grievance in the review petition is that while doing so, the Union of India has written in the order dated December 31, 2015:-

“3. The Hon’ble Delhi High Court vide its Judgment Order dated 06.05.2015 has ordered that the revised seniority shall be published by the Respondents after taking into account the marks obtained in competitive examination and basic course in the ratio of 50:50.

4. In compliance with the Judgment Order passed by the Hon’ble Court and approval accorded by the MHA, the revised inter-se seniority list of Assistant Commandant (Exe) will be issued from the year 2003 onwards in phases.”

3. Now, we have not issued any direction to said effect in the order dated May 06, 2015. We have only noted the stand of the Union of India and disposed of the writ petition.

4. If the seniority list has to be drawn up with reference to the marks obtained at the examination conducted by the UPSC and marks obtained after training at the training institute have to be ignored, the issue needs to be decided with reference to the recruitment rules or the seniority rules, and in the absence of the rules vacuum filled up by office instructions, memorandums or past practice.
5. Therefore, the review petition needs to be disposed of simply noting that this Court had not issued any direction to the UOI. It had only noted the stand of the Union of India. If the stand is incorrect, those who are aggrieved by the seniority list drawn up would have a remedy as per law.
6. No costs.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

MAY 27, 2016

mamta