

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 08.09.2015

+ W.P.(C) 8572/2015 and CM Nos. 18526/2015 and 18527/2015

HANUMAN SINGH POONIA Petitioner

Through: Mr G.D. Gupta, Sr. Adv with
Mr Piyush Sharma, Adv.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr Rakesh Kumar, CGSC and
Mr Vinod Tiwari, Adv for respondents.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. The petitioner claims to be aggrieved by what he considers as incorrect implementation on the part of the Border Security Force (BSF) with respect to the judgment of this Court dated 27.09.2002 in *W.P.(C) No. 1673/1992* titled ***B.S. Narula vs. Union of India and Others*** and connected cases. The controversy in ***B.S. Narula's*** case (supra) was with respect to the correct interpretation of rules governing BSF. Earlier, in a Madhya Pradesh High Court ruling (***Babu Joseph vs. Union of India, W.P.(C) No.257/1980***), it was held that a centralized seniority list had to be maintained in respect of all cadres. The seniority list was prepared in 1994 and DPC had been conducted in 1995. The petitioner was in line for consideration for the post of Second-in-Command. It is not in dispute that the petitioner had retired

some time in 1998. While so, the judgment of this Court was handed down on 27.09.2002. The petitioner places considerable reliance on the judgment to say that the action already taken—including the seniority reflected by the BSF prior to 2002—was protected. Learned senior counsel relied upon several extracts of the said judgment. It was submitted that in line with the final directions, the BSF was required to take consequential action and issue promotional orders based upon the seniority list which had been upheld. Learned counsel submitted that despite the petitioner's best efforts, information was not made available to him and ultimately, it was forthcoming only in 2013 when BSF intimated to him that the previous seniority list was cancelled.

2. The petitioner has in support of the present proceedings, produced a copy of the order dated 05.11.2003. That order contains a long recital of the background of the case culminating in the order of this Court on 27.09.2002. The order recounted *inter alia* that this Court has stated that there cannot be any automatic promotion to higher grade and that examination on individual basis was to be undertaken case by case by the BSF while the issue of promotion was to be taken up. The order, thereafter, stated as follows:-

“18. Whereas, the Hon’ble High Court of Delhi has disposed of the Writ Petition No.1673/92 titled BS Narula and Others vide judgment dated 27.09.02.

19. Whereas, as per order dated 27.09.02, the Hon’ble Court has held that no law has been laid down in Babu Joseph’s case and Puran Singh and Others’ case, and that the promotion from SI to Subedar is to be considered as per old rules i.e. CRPF (Fourteenth) Amendment Rules, 1967.

20. Whereas, the revised seniority granted to 357 Sub-Inspectors in the rank of Subedar vide order dated 09.11.94 as mentioned above was on the basis of Force level (Central) seniority, and whereas such Central seniority is not contemplated in the old Rules.

21. Accordingly, order No.17/49/94-Pers/BSF dated 9th Nov, 94 re-fixing seniority of 357 Sub-Inspectors in the rank of Subedar is cancelled.”

3. The record would show that the petitioner apparently represented on 22.01.2003. The BSF responded on 20.05.2003 stating that implementation of this Court's order was under progress. The petitioner then relies upon subsequent representations from May, 2013 onwards and the letter dated 01.04.2013 to say that the matter was alive and that he was ultimately informed on the later date about the adverse order. Whilst this Court highlighted the need to protect the status quo, at the same time, an extensive review of the seniority position was directed. The declaration and judgment are clearly to the effect that promotion to higher position was not automatic. In that sense, the Court was alive to the exercise required to be undertaken by the respondent given the mandate of the rules. Such being the case though the petitioner ultimately represented to the BSF in January, 2003, the fact remains that the implementation was, in fact, done on 05.11.2003. The final paragraph of the order stated that the order dated 09.11.1994 which re-fixed the seniority of 357 Sub-Inspectors was cancelled/withdrawn. Considering that the petitioner had already retired in 1998 and was, in fact, made aware of the possibilities of a comprehensive review—which entail the further possibility of his losing seniority—the Court is of the opinion that the present petition is barred by delay and laches.

4. The petitioner's endeavour to contend that the issue was kept alive by continuous correspondence between the years 2003 to 2014 is unpersuasive. The record would show that the petitioner had initially written two letters in 2003, after when there was a lag of almost a decade. He seems to have picked up the threads only in 2013 and engaged the respondents in correspondence. *S.S. Rathore vs. Madhya Pradesh, 1990 AIR SC 10* is an authority for the proposition that when a suitor or litigant merely continues to correspond with the authorities, there is no extension of the period for approaching the Court. Given these facts, especially that the petitioner had retired from the service 17 years ago and that the seniority list/order impugned in this case was issued 12 years ago, we find that the case is hopelessly time barred.

The writ petition is consequently dismissed on the ground of delay and laches.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

**SEPTEMBER 08, 2015
BG**