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

+ W.P.(C) 8772/2015 & CM No. 19421/2015

HAVILDAR MUKESH KUMAR Petitioner

Through: Ms. Archana Ramesh, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Ankur Chhibber, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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15.09.2015

The petitioner's grievance is that he was detailed for the promotion belatedly even though he was eligible for it sometime in 2009. He could not be spared at that time by his Unit. To say so, he relies upon the copy of the letter dated 25.07.2009. The second grievance is against the imposed penalty of severe reprimand for absence on duty for the period w.e.f. 05.02.2011 to 28.02.2011.

As far as the second grievance is concerned, the petitioner urges that he was sanctioned 30 days leave on 04.02.2011 and relies upon documentary evidence to this effect. He also submits that he was under treatment by the Base Hospital, Delhi Cantt and has enclosed copies of prescriptions dated 14.02.2011, 24.02.2011 and other related dates in support of these submissions. It is stated that

when the movement order was issued on 05.02.2011, the petitioner was unable to report and did so on 28.02.2011. The petitioner states that instead of appreciating the hardship that the petitioner underwent due to physical ailment and discomfort, the Army instead chose to initiate disciplinary proceedings. Counsel contends that this treatment is harsh and excessive and that penalty of severe reprimand especially has serious repercussions as it has the effect of postponing his promotion.

This Court has considered the submissions. As far as the first grievance (i.e. delayed detailing for the promotional post) is concerned, we are of the opinion that the claim is time barred. The petitioner's grievance in this regard would have arisen in sometime in 2009 but there is no contemporaneous evidence in the form of materials to show that he agitated this at that time. He appears to be aggrieved only now pursuant to the severe reprimand imposed in 2011.

As far as the second issue of penalty is concerned, the Court notices at the outset, that the petitioner pleaded guilty of the charge. During the submissions, it was urged by the counsel that the petitioner was not served with the movement order dated 05.02.2011. We notice that the statutory complaint – made on 10.02.2015 for the first time does not even advert to this. Clearly therefore, the petitioner's contention that he was not in notice of the movement order, cannot be accepted. Secondly, the petitioner's ailment also is a matter of speculation- concededly, he was not hospitalised and was an out-patient, put under antibiotics. In these circumstances, the fact that he

had foreknowledge about the movement order dated 05.02.2011 is undeniable.

For the above reasons, the Court is of the opinion that the petition is not merited and therefore dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 15, 2015

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