

\$~20

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

+ W.P.(C) 9299/2015 and CM Nos. 21408-21409/2015

CHUNILAL BELWA

..... Petitioner

Through: Mr.Surender Singh Hooda, Advocate

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Rakesh Kumar and Ms.Pallavi
Shali, Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

%

30.09.2015

C.M.No.21409/2015 (for exemption)

Exemption is allowed subject to just exceptions.

Application stands disposed of.

W.P.(C) 9299/2015 and C.M.21408/2015 (for stay)

1. The petitioner's grievance is with respect to his seniority shown at the wrong place in the list for the post of Deputy Commandant. The petitioner had initially joined the Border Security Force (BSF) as Assistant Commandant on 05.10.1987. In the seniority list issued for the cadre of Assistant Commandant, the petitioner was shown at Sl.No.1145 as on 30.07.1992. The petitioner's name ought to be shown at Sl.No.1310 after Anil Kumar Gautam and above Bhaju Khan. It is stated that on 24.11.1992, the Departmental Promotional Committee considered the names of 182 BSF Officers for promotion to the rank of Deputy Commandant. The petitioner complains that he was shown below others even though in the feeder cadre of Assistant Commandant; he was senior to them. The petitioner is a

reserved category Scheduled Caste candidate. The petitioner refers to several representations made to the BSF complaining of the seniority and also as disclosed in the subsequent seniority list dated 01.06.1994 he was unjustly shown junior to the said Bhaju Khan and several others. The BSF apparently replied on 21.12.2001 stating that seniority was assigned on the basis of the records/performance – related to the assignment by the committee. Thus, those securing “outstanding” were placed first followed by those graded “very good”. This was still later followed by those graded as “Good”. The petitioner, it was stated, was ranked “average” and therefore shown below others who were senior to him in the feeder cadre.

2. The petitioner refers to proceedings initiated by him before the National Commission for Scheduled Caste which investigated the matter at his behest and issued notice to BSF on 13.10.2014. Before us, learned counsel relies upon the proceedings of the commission and the order made on 05.01.2015 to say that BSF’s explanations are transparently false. The petitioner’s counsel relies upon the observation of the commission to say that he was unfairly and unjustly dealt with by the BSF and by his superior officers by down grading him in the seniority list. It is evident from the factual narrative itself that the petitioner’s grievance pertains to the assignment of his ranking pursuant to the DPC grading given to him. The DPC selected the petitioner along with others in its proceedings dated 24.11.1992. It is a matter of fact that the petitioner knew that he was placed before 49 others who were junior to him in the feeder cadre category. This is evident from the fact that he represented against the action on 06.05.1994 itself. The main ground to seek this court’s intervention is that the implausibility of the BSF’s rationale in denying due seniority was unknown

to the petitioner and this in the opinion of this Court cannot per se be a ground for invoking the discretionary jurisdiction. The record establishes that the petitioner was aware that his seniority ranking was below others who according to him were his juniors. This was made known to him as early as in 1994. The record shows he represented against this in 1994 itself and subsequently in 2001. The mere fact that he approached the National Commission for Scheduled Caste subsequently which went into the records in the opinion of this Court is not sufficient explanation why the petitioner did not in the first instance move the Court within reasonable time. It is quite well settled that any public officer with the grievance with respect to his promotion or seniority should move the Court within reasonable time. Failure to do so would result in the settlement of such issues in the favour of the third party who can then sit content and claim further in the service benefits i.e. precisely what is happened in this case by not moving the court for the last 20 years and relying upon the observation of the National Commission for Scheduled Caste, to say that the unfairness of the denial was made known to him recently and court should therefore intervene is not sufficient explanation why the petitioner did not in the first instance move the Court when the cause of action arise; in 1994.

3. For the reasons discussed above, this Court is of the opinion that the writ petition suffers with delay and laches. It is therefore dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 30, 2015/rb