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**Date of Decision:19.09.2016**

**.....Petitioner**

**Vs.**

**Rajiv Mehrishi and others** .....Respondents

**CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

Mr. Dheeraj Jain, Advocate for the respondents.

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**RAKESH KUMAR JAIN, J.(Oral)**

This petition is filed for the alleged disobedience of the order dated 7.4.2015 passed in CWP No.19621 of 2013.

Counsel for the petitioner has submitted that on 22.1.2015 this Court passed the following order:-

“It is not disputed by learned counsel for the respondents that after acquiring the requisite qualifications through departmental examination of Ist Class Hindi and 3<sup>rd</sup> Class English certificate of education on 25.5.2012, petitioner was promoted to the post of Head Constable. Considering him eligible for promotion to the next higher post i.e. Assistant Sub Inspector (‘ASI’ for short), petitioner was deputed to undergo the requisite departmental course. Learned counsel for the respondents could not disclose any higher educational qualification required for promotion to the post of ASI.

A bare reading of numerous orders passed by this court

would show that respondents have either misdirected themselves or completely misunderstood the true import of the orders passed by this court, while passing the impugned orders, thereby compelling the petitioner to approach this court again. In fact, present one is the 6<sup>th</sup> round of litigation, which was very much avoidable, had the respondents acted reasonably. Once the petitioner has been deputed for undergoing the departmental course meant for promotion to the post of ASI, there was no reason for the respondents to recall him back from the said course. Petitioner had been made to suffer for a long period.

In view of the peculiar facts and circumstances of the case noticed herein above, Director General of I.T.B.P.-respondent no.2 is directed to look into the matter personally and ensure meticulous compliance of the different orders passed by this Court, so as to grant all the reliefs to the petitioner, for which he had already been found entitled in law. Reference can be made to the order dated 3.3.2010 passed in CWP No. 14975 of 1992 and order dated 19.10.2012 passed in COCP No. 1938 of 2011. Let him take the final decision in this regard at an early date, but in any case within a period of four weeks from today. Thereafter, he shall file his own affidavit alongwith action taken report, failing which he shall come present before this Court to explain as to why appropriate action is not taken.

To come up on 27.3.2015.

A copy of this order, under the signatures of Special Secretary attached to this Bench, be given dasti to the learned

counsel for the respondents for onward transmission to the authorities concerned for meticulous compliance thereof.”

Pursuant to the aforesaid order, affidavit dated 25.3.2015 was filed in which the following averments have been made:-

“That as regards promotion of the petitioner to the rank of ASI (GD), it is most humbly submitted that vide order dated 20.03.2015 he has been promoted to the rank of ASI (GD), with immediate effect, subject to the condition that he will clear the JLL-1 course in the first chance (true and typed copy of order dated 20.03.15 is annexed as **Annexure R/1**).

That the fixation of seniority of the petitioner in the rank of HC(GD) is being finalized so that the anomaly in his seniority may be addressed in the seniority list, where he shall be placed just above the personnel who was his immediate junior at the time his services were terminated on 31.03.1992.

That promotion of the petitioner to the rank of SI(GD) as a consequential benefits will also be accordingly considered after his seniority is re-fixed.

That the arrears of pay and allowances of the petitioner will be drawn and paid to him after fixation of his seniority in various ranks.”

Thereafter, the writ petition was dismissed as infructuous on 7.4.2015 with the following order:-

**CM No. 4164 of 2015**

CM allowed. Affidavit Annexure R-8 taken on record.

**CWP-19621-2013**

In terms of the order dated 22.01.2015 the Director General ITBPF filed affidavit dated 25.03.2015. Learned counsel for the petitioner states that as per this affidavit the basic relief which the petitioner has sought has been granted to him insomuch as he has been promoted as ASI(GD). However, as per this affidavit the claim for antedated seniority is to be considered and the only prayer now is that in view of the convoluted history of this case this exercise should be conducted within any reasonable time. Learned counsel for the respondents states that in the affidavit itself it has been undertaken that for the purpose of granting him seniority and other benefits three months time is required and the respondents undertake to complete this exercise within the aforesaid period.

In this view of the matter, the present petition has been rendered infructuous at this stage and the same is dismissed as such.”

It is submitted that the respondents have partially complied with their undertaking as given in their affidavit dated 25.3.2015, noticed in the order dated 7.4.2015. Till date only the promotion to the rank of SI has been given and the promotion to the rank of Inspector and fixation of seniority, pay and deemed dates of promotion as Head Constable, Assistant Sub Inspector and Sub Inspector has not been given till date and consequential benefits have also not been paid. After notice, the respondents have put in appearance. They have filed the reply in which the following

averments have been made:-

“That the respondents have now fully complied with the order, supra by promoting the petitioner to various ranks along with his immediate junior (SI/GD Liaber Das), fixing his pay corresponding to various ranks, along with his immediate junior and releasing the arrears amounting to Rs.70,355/-. Copy of relevant orders are attached here with as **Annexure R-1 (Colly)**.

The detail has been given in the order Annexure R.1 dated 14.1.2016 and it is submitted that the averments made in paras 3, 4 and 5 of the affidavit have been complied with.

I have heard counsel for the parties in detail and perused the record from which it has been found that the order passed by the Court much less the averments made in the affidavit in paras 3 , 4 and 5 have been duly complied with as referred to and reflected in order dated 14.1.2016 (Annexure R.1) Hence, the cause of action in the present petition does not survive and the same is hereby dismissed.

**September 19, 2016**  
**renu**

**( RAKESH KUMAR JAIN )**  
**JUDGE**

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|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |