

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: October 18, 2016
Judgment delivered on: November 04, 2016

+ W.P.(C) 10786/2015

SI/GD RAMESH CHANDRA JOSHI Petitioner
Through: Mr.N.L.Bareja, Adv.

Versus

UNION OF INDIA AND ORS. Respondents
Through: Mr.Amrit Pal Singh, Adv. for UOI

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This Petition has been filed by the petitioner with the following prayers:
 - a) *Issue an appropriate writ, order (s) or direction (s) in the nature of:-*
 - (i) *Writ of Certiorari, setting aside the impugned letters dated 10.11.2014 & 11.09.2015*
 - (ii) *Writ of Mandamus, directing the respondents to consider the case of the petitioner, for fixation of his seniority, at par with the batch / cadre mates, who having qualified through SCC, CPOs Exam-2009, pursuant to their allocation to the BSF, were*

appointed to the post of SI/DE, in accordance with his position in the overall merit of SSC CPOs Exam-2009, by fixing his seniority immediately below the officer having more percentage of marks than the petitioner and above the person immediate junior to the petitioner, having less percentage of mark as compared to the petitioner, as per the final merit list drawn on conclusion of SSC CPOs Exam-2009, and in pursuance thereof, issue appropriate orders indicating the fixation of his seniority, above the persons immediately junior (persons having less percentage of marks as compare to the petitioner) to him in the post of SI/DE in BSF.

- b) Directing the respondents not to harass / humiliate and victimize the petitioner, as also restrain the respondents from initiating any adverse action against the petitioner on one pretext or the other, without due process of law.*
- c) Direct the respondents to pay costs of this petition to the petitioner for compelling him to approach this Hon'ble Court for indulgence to seek justice.*
- d) Any other or further writ, order (s) or direction (s) as deemed fit and proper may also be passed in favour of the petitioner and against the respondents.*

2. The case of the petitioner is that while serving in CISF, the petitioner applied for appointment to the post of Sub-Inspector (GD) to be made as per the Staff Selection Commission Central Police Organization Examination – 2009. He qualified the written examination and appeared in the interview on June 4, 2010. His name did not find mention in the result uploaded on the website during the later half of 2010. It transpired that the result of the petitioner was not declared being over-aged. The petitioner informed the authorities in the Staff Selection Commission about his entitlement of 5 years age relaxation

being a departmental candidate. The error was corrected and he was assured of the appointment letter.

3. It is averred in the writ petition that vide memo dated January 14, 2011, petitioner was directed to give sample of his hand writing and thumb impression for verification. He was informed vide letter dated January 17, 2011 that his case was under consideration of the Commission and the decision as and when arrived at would be communicated to him. On December 12, 2011, petitioner approached this Court vide a Writ Petition being no. 7347/2011 wherein this Court vide order dated December 12, 2011 issued directions to the respondents to keep one vacancy reserved for the post of SI (GD) in any of the CPOs till the next date of hearing. The petition was disposed of in the month of February, 2012 inter-alia with directions to the respondents to consider the petitioner's candidature within three months from the date of the order in accordance with relevant rules and regulations and as per law. It was also directed that in case nothing adverse is found against the petitioner, respondents shall consider the petitioner's case for appointment to the post of SI (GD) in one of the Central Police Organization. Pursuant thereto, the petitioner was given the appointment letter and was sent for training to an Institute in Bangalore.

4. The grievance of the petitioner in this Writ Petition is primarily on account of orders dated November 10, 2014 and September 11, 2015 whereby the representation / legal notice submitted by and on behalf of the petitioner for grant of his seniority with the batch of 2009

was rejected on the ground of lack of merit and also delay and latches.

5. Mr. N.L. Bareja, learned counsel appearing on behalf of the petitioner would submit that in fact the petitioner is an appointee of 2009 batch having appeared in the written examination as well as the interview pursuant to the advertisement issued in the year 2009 and the reasons for denial of appointment along with 2009 batch on the ground of over-age or for certain investigations to be carried out by the SSC is not because of the fault attributable to the petitioner. In any case nothing adverse was found against the petitioner during the investigation and the petitioner cannot be made to suffer of losing seniority of almost 3 years inasmuch as the petitioner has been given the seniority of the year 2012. He would rely on the judgment of the Supreme Court in the case reported as **(2012) 13 SCC 340 Union of India and others vs. N.R. Parmar and others and connected petitions** and order of Division Bench dated October 28, 2014 in **Writ Petition (Civil) No. 960/2014 Jignesh Kumar vs. Union of India and others.**

6. On the other hand Mr. Amrit Pal Singh, learned counsel for the respondent UOI has drawn our attention to the counter-affidavit (s) filed by the respondents SSC as well as the BSF to show *bona fide* of the concerned respondents for carrying out certain investigations which were necessary to ensure that the appointment has not been secured through illegal means. It is only after the authorities have ensured that the appointment is just and proper, pursuant to the directions of the Court, the appointment letter was given and the petitioner

was sent for the training in the year 2012 and was given the seniority w.e.f 2012 and the impugned order cannot be faulted. He would rely upon the judgment of the Supreme Court in the case of ***Rohitash Kumar & Ors. v. Om Prakash Sharma & Ors.*** in ***Civil Appeal Nos. 2133-2134 of 2014*** decided on November 6, 2012 and also judgment dated September 17, 2015 in batch of Writ Petitions, lead case being ***Shoorvir Singh Negi v. Union of India and Ors. in W.P.(C) 5830/2015*** wherein this Court in identical facts inasmuch as the writ petitioners in the said Writ Petitions had sought seniority from the date their batch mates or original batch mates who were otherwise appointed in normal circumstances were given, was rejected. He pray the writ petition be dismissed.

7. Having heard the learned counsel for the parties, there is no doubt initially Staff Selection Commission did not include the name of the petitioner in the list of successful candidates on the ground of over-age. The said aspect was clarified and the mistake was corrected.

8. It appears there was some doubt as to whether the petitioner had actually appeared in the examination, for which the investigation was to be carried out. In any case pursuant to the directions in the earlier Writ Petition, petitioner was given the appointment letter and accordingly was sent for training. The delay that had occurred appears to be *bona fide*. Be that as it may in the earlier round of litigation being Writ Petition no.7347/2011, the Court while disposing of the Writ Petition had given a categorical directions without any pre-

condition that his appointment must relate back to the date when the batch of 2009 was appointed or the petitioner must be given seniority along with the batch of 2009. If that be so, the plea now being taken by the petitioner shall be barred by the principles of constructive res-judicata. That apart we have seen the judgment rendered by the Coordinate Bench of this Court in ***Shoorvir Singh Negi (supra)***. We are of the view that following the conclusion of this Court in Paras 13 and 14, which we reproduce as under are applicable to the facts of this case inasmuch as on a specific query to Mr. Bareja as to why the petitioner has not made any person, whose seniority would be affected if the Writ Petition is allowed, he has feigned ignorance that the petitioner is not aware of any such persons having been appointed:

“13. Respectfully, we differ from Naveen Kumar Jha (supra) and Avinash Singh (supra) as we find that no discussion of a rule akin to Rule 8 has been made in these judgments. In our opinion Rule 8 is determinative of the question of how seniority must be calculated for the present petitioners. We are also mindful that interfering in the manner sought will upset already settled seniority lists and affect persons who are not parties before us. We prefer instead the view taken in Roop Ram Kundu (supra), a decision that was not brought to the notice of the court in either Naveen Kumar Jha (supra) or Avinash Singh (supra).

14. In view of the above discussion, we are of the opinion that the petitioners claim for seniority from the date their batch mates or original batch mates who were otherwise appointed in the normal circumstances in 2000-2001 cannot succeed.”

9. Be that as it may, any order allowing the Writ Petition and granting the prayers as

made by the petitioner would upset the persons already listed in the seniority list. In fact the seniority list has not been placed on record. The judgment of the Supreme Court in the case of *Union of India and others v. N.R. Parmar (supra)* has no applicability in the facts of this case. Insofar as the reliance placed on the order of the Division Bench in the case of *Jignesh Kumar (supra)* is concerned, it is noted that the respondents therein have taken a decision to grant seniority to the petitioner. No facts have been placed before us to seek parity with that judgment. That apart, in view of the latest judgment of the Division Bench in *Shoorvir Singh Negi (supra)*, we are of the view that the petitioner is not entitled to any relief. The writ petition is without any merit. The same is dismissed without any cost.

V. KAMESWAR RAO, J

INDIRA BANERJEE, J

NOVEMBER 04, 2016

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