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

+ **W.P.(C) 3047/2017 & CM 13356/2017**

Date of decision: 10th October, 2017

RAM NATH JHA Petitioner
Through: Mr.Jitendra Kumar Jha, Ms.Aditya,
Advs.

versus

DIRECTOR GENERAL OF POLICE Respondent
Through Ms.Barkha Babbar, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

Ram Nath Jha has filed the present writ petition praying for the following reliefs:

(i) Direct the respondent to pay the entire pecuniary benefit with interest to the petitioner in terms of the order dated 08/072011 passed by this Hon'ble Court in WP (C) No. 1975/2011.

(ii) Quash the letter of transfer dated 23/01/2017 and letter of rejection request dated 21/03/2017 with respect to the petitioner.

(iii) Direct the respondent authorities not to transfer the petitioner outside Delhi till his superannuation from his service that is January, 2020.

(iv) Direct the respondent to treat the petitioner as per his seniority and all the entitlement of the petitioner may be directed to be restored.

(v) Pass any other or further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case of the petitioner and to secure the ends of justice against the contemnor/respondents.

2. The petitioner is an Ex-Serviceman who had applied for appointment as Assistant Sub-Inspector/Work (Ex-Serviceman) in Central Industrial Security Force (CISF), pursuant to notification for recruitment issued in November-December 2008.

3. The petitioner was declared medically unfit as he was wearing dentures.

4. The petitioner, thereafter, challenged the aforesaid opinion in WP(C) no. 4705/2010 which was disposed of on 26th November, 2010 with the direction that the petitioner would be examined by the Board of Specialists at the Command Army Hospital (Research and Referral), Delhi Cantt, Delhi and if the report was favourable, his case for appointment would be processed as per law. It was observed that the petitioner had retired from the Indian Army in 2008 and was then placed in the category

'Shape I'. The physical fitness stipulated and applied was for initial employment targeting those who seek employment at young age, whereas the petitioner was at that time more than 45 years of age.

5. The petitioner on examination was declared medically fit by the Command Army Hospital (Research and Referral) Delhi Cantt, Delhi. The respondents nevertheless denied enrolment to the petitioner reiterating their earlier stand that as per the prescribed medical fitness standard the petitioner was unfit for he has lost all his teeth and was using dentures.

6. This compelled the petitioner to file WP(C) no. 1975/2011, which was allowed vide order 8th July, 2011 issuing mandamus to the respondents to forthwith issue letter of offer of appointment to the petitioner to the post of Assistant Sub-Inspector. Back wages were denied while it was directed that for the purpose of seniority, the petitioner would be entitled to the benefit of the merit position, which he had obtained at the selection.

7. The petitioner subsequently joined as Assistant Sub-Inspector on 30th December, 2011.

8. The first prayer made by the petitioner is for payment of entire pecuniary benefit for the period from 8th July, 2011 till the offer of appointment letter dated 21st December, 2011. With regard to the claim of back wages for the period 8th July, 2011 till 30th December, 2011, the same has to be rejected as the petitioner has belatedly approached this Court after delay of nearly 6 years. Apparently, the petitioner was satisfied and had accepted the letter of appointment issued on 21st

December, 2011 and had joined the post of Assistant Sub-Inspector on 30th December, 2011. We would not like to grant the said relief to the petitioner at this belated stage. The prayer has to be disallowed on the ground of delay and laches.

9. The second prayer made by the petitioner relates to his seniority. As noticed above, order dated 8th July, 2011 in WP(C) No. 1975/2011 had directed that the petitioner would, for the purpose of seniority, be entitled to benefit of merit position which he had obtained at the selection. The respondents in the counter affidavit have stated that the petitioner has been placed at seniority no. 12012 against the selection in the year 2009 vide letter no. E/35017/16/09/Estt.-182 dated 24th February 2010 as per his merit position in the seniority list. It is also stated that the petitioner, on the basis of junior and senior clause, was considered by the Departmental Promotional Committee for promotion to the rank of Sub-Inspector/Executive and was promoted as Sub-Inspector/ Executive on 4th February 2017 though the petitioner had not completed the requisite service of 6 years in the lower post of Assistant Sub-Inspector.

10. The petitioner, in paragraph 13 of the writ petition, has claimed that his juniors were promoted as Sub-Inspectors in March, 2012. Specific details, however, have not been furnished. The respondents in the counter affidavit have pointed out that there was amendment and modification in the Recruitment Rules and the petitioner was considered for promotion as per his turn.

11. Be that as it may, we would not like to go into the said aspect and leave it to the petitioner, in case he has any specific grievance, to point out

details and particulars of juniors and file an independent/separate writ petition if he has been denied promotion to the post of Sub-Inspector while his junior has been promoted to the said post at an earlier point of time.

12. The third issue raised by the petitioner pertains to his transfer vide order dated 23rd January, 2017 and letter of rejection dated 21st March, 2017.

13. The petitioner was posted in Delhi in April 2014. By order dated 1st February, 2017, the petitioner was informed about his promotion as Sub-Inspector. He was relieved from the earlier post on 6th January 2017. Thereafter, the respondents passed an order dated 6th February 2017 by which petitioner was posted in East Zone, PTPS PATRATU.

14. Learned counsel for the petitioner during the course of hearing had drawn our attention to the Posting/Transfer order dated 23rd January 2017 by which the petitioner was posted in the East Zone. This Posting/Transfer order dated 23rd January 2017 was issued to the petitioner while he was still working as Assistant Sub-Inspector. This order was superseded by order dated 6th February 2017, which was passed after the petitioner was promoted as Sub-Inspector.

15. The respondent in the counter affidavit, has referred to the transfer policy as per which an Ex-Serviceman on appointment in CISF is to be posted in the respective Home Zone during his entire service except for the first tenure of 3 years (excluding the period of training). After 3 years of outside Home Zone, the Ex-Serviceman is to be posted in the Home

Zone. This stipulation is, however, subject to the restriction of maximum 3 years in one tenure and also subject to operational and security consideration and outside Home Zone/Home Zone/State Quota guidelines.

16. The petitioner has not referred to and stated his Home Zone in the writ petition. The petitioner has also not stated that he had sought change of his Home Zone. The respondents in the counter-affidavit have pointed out that the petitioner had initially declared his residential address as Darbhanga, in the State of Bihar. Subsequently, in 2017, the petitioner had requested for change of his home address to WZ-1280/1, Nangal Raya, Samaj Mandir, P.S.Mayapuri, New Delhi-110046. This request made by the petitioner has been forwarded to the competent authority vide office letter dated 29th April 2017 for necessary action.

17. We need not go into the said controversy with regard to the change of Home Zone as the transfer policy placed on record states that Ex-Serviceman for the first 3 years of the tenure must be posted outside Home Zone and thereafter would be entitled and would be posted in the Home Zone. The stipulation is also subject to certain restrictions of maximum 3 years in one tenure, and subject to operational and security consideration, and outside Home Zone/Home Zone/State Quota guidelines also have to be adhered.

18. The petitioner has been posted in Delhi since 2014. The petitioner's Home Zone till now is in the State of Bihar. The posting of the petitioner has been given in terms of Transfer Policy at Eastern Zone which is the Home Zone of the petitioner. Even otherwise, we find that

the petitioner has been in Delhi since April 2014 and spent 3 years in Delhi.

19. In view of the aforesaid position, we do not think that the Transfer order/Posting order requires any interference. By order dated 11th April 2017, the movement order was stayed with the direction to the respondents to maintain *status quo*. The said order stands vacated and the petitioner would join the transfer posting within a period of four weeks from today. With the aforesaid observations and directions, the writ petition is disposed of, without any order as to cost.

Dasti under signature of the Court Master.

SANJIV KHANNA, J

NAVIN CHAWLA, J

OCTOBER 10, 2017
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