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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(C) 5326/2015**

Date of decision : 28th July, 2017

VIJAY SINGH DOGRA Petitioner
Through: Dr.Surender Singh Hooda, Adv.

versus

UNION OF INDIA AND ORS. Respondents
Through Mr.Amit Mahajan, CGSC for
UOI.
Dr.Rakesh Gosain, Adv. for
Respondent No.6

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

The petitioner-Vijay Singh Dogra seeks and prays for seniority in the cadre of Law Officer Grade-I/ Commandant in the BSF-Law service above S.S. Rana, the 6th respondent. The petitioner has also prayed for quashing of orders dated 29.03.2012, 20.09.2012, 09.12.2013, 18.02.2015 and 01.05.2015 rejecting his representations on seniority.

2. The 6th respondent was appointed as Law Officer, Grade-II on deputation on 03.11.2003 in the BSF-Law Cadre. The

selection was made by Departmental Screening Committee, in which the petitioner and others had participated but were not selected. This selection and appointment on deputation is not under challenge.

3. The 6th respondent was absorbed as Law Officer, Grade-II on 20.12.2004. This absorption is also not under challenge.

4. The 6th respondent was promoted as Law Officer, Grade-I on 27.05.2008. The promotion was as per Rules and, again, is not challenged.

5. The petitioner was appointed as Law Officer, Grade-I on deputation on 13.04.2007. The petitioner sought absorption as Law Officer, Grade-I vide representation dated 02.07.2007. The petitioner was absorbed as Law Officer, Grade-I on 22.09.2008 which is after the 6th respondent was promoted as Law Officer, Grade-I on 27.05.2008. Hence, the petitioner has been treated as junior to the sixth respondent.

6. As per the Office Memorandum dated 27.03.2001, F.No.20011/1/2000-Estt (D) issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, a person who is initially taken on deputation and absorbed later, (where the relevant recruitment rules provide for “transfer on deputation/transfer”), the seniority of the absorbed officer is to be normally counted from the date of absorption unless he was already holding, on the date of

absorption, the same or equivalent grade in his parent department. It is not the case of the petitioner that he was holding the same or equivalent grade in the parent department at the time of his absorption as Law Officer-Grade I.

7. The petitioner, however, submits that he is entitled to seniority above the 6th respondent for two reasons. The petitioner was senior to the 6th respondent in the General Duty Cadre in the BSF as he had joined as Assistant Commandant, Direct Entry (GD) on 26.12.1990, whereas, the 6th respondent had joined the same post on 17.02.1993. Secondly, the petitioner's absorption as Law Officer Grade 1 was intentionally and deliberately delayed to accommodate the 6th Respondent. The application for absorption was filed on 02.07.2007 and the order of absorption was passed after more than 14 months on 22.09.2008. In between the 6th respondent was promoted. The plea of malafides is raised.

8. The present writ petition was filed on 18.05.2015. The contention of the official respondents and 6th respondent is that the writ petition is highly belated and should be dismissed for delay and laches as the petitioner is challenging and harping on the alleged delay in absorption between 02.07.2007 and 22.09.2008. The challenge raised is nearly seven years post the absorption.

9. Learned counsel for the petitioner submits that the limitation or cause of action would commence only after the

final seniority list was published. It does not matter that the petitioner had not earlier challenged or questioned the delay in his absorption on 22.09.2008 or questioned promotion of the 6th respondent as Law Officer, Grade-I on 27.05.2008. Reliance is placed on the judgment of the Supreme Court dated 12.11.2009 in *Shiba Shankar Mohapatra & Ors. v. State of Orissa & Ors*, Civil Appeal Nos.7537-7541/2009 and decision of Division Bench of this Court dated 03.09.2012, *Baljit Singh Bahmania v. UOI & Ors.*, WP (C) 8955/2011.

10. We have considered the preliminary objection raised by the respondents and find considerable merit in the same. The petitioner was certainly aware, and it was in his knowledge, that the 6th respondent was granted regular promotion as Law Officer, Grade-I on 27.05.2008. The date of his absorption was also known and in the knowledge of the petitioner. The petitioner was also aware of the consequences of the "delay" and knew that inter-se seniority between him and the 6th respondent would depend on who was appointed earlier to the post of Law Officer, Grade-I. In these circumstances, we do not think the submission of the petitioner that the cause of action had arisen only when the final seniority list was published on 9.12.2013 can be accepted. The cause of action arose when the 6th respondent was appointed as Law Officer, Grade-I on 27.05.2008 and when thereafter the petitioner was absorbed on 22.09.2008. The seniority list merely fixes the seniority,

applying the rule position. It did not create or give rise to cause of action to question the alleged delay in absorption. The petitioner did not challenge or question either the delay or the promotion of 6th respondent as Law Officer, Grade-I till 22.03.2010 when he had made his first representation. As on the said date the petitioner was certainly aware and had knowledge that the 6th respondent would be senior to him in the post of Law Officer, Grade-I having been appointed to that post on an earlier date. Hence, the decisions relied upon by the petitioner are distinguishable.

11. In ***Shiba Shankar Mahapatra*** (supra) prayer made was for re-fixation of inter-se seniority and the Supreme Court observed that once the seniority list remains unchallenged for 3 to 4 years, it should not be interfered with. In the present case, the aforesaid ratio would not assist the petitioner as the question of seniority depends on the date of appointment of the 6th respondent and the date of absorption of the petitioner. Grievance of the petitioner is delay in absorption.

12. Similarly, the decision in ***Baljit Singh Bahmania*** (supra) would have no application as in the said case the issue pertained to ad-hoc promotion and whether such date of ad-hoc promotion should be taken into consideration for final gradation/seniority list which was prepared subsequently. In this context, it was observed that cause of action would arise

after publication of the final seniority list which would substitute and override the provisional seniority list.

13. Even on the question of malafide, we find that the petitioner has not impleaded the officers who had dealt with the file of the petitioner for absorption and against whom made personal allegation of malafides could have been alleged. On examining the office file produced by the official respondents, it is apparent that different view and opinions were expressed on the question of absorption. This was the reason and cause for the delay. The matter was first kept in abeyance to await the decision in the earlier case of **Deepak Chaturvedi** who had similarly been appointed as Law Officer, Grade-I on deputation and had made an application seeking permanent absorption. In the present case, the matter and issue regarding the absorption had to be examined in consultation with Ministry of Home Affairs. Absorption unless specified and permitted in the applicable recruitment rules, cannot be claimed as a matter of right. The petitioner was appointed on deputation, without stipulation or clause regarding absorption. The Recruitment Rules postulate the appointment to the post of Law Officer Grade 1 by promotion failing which by deputation/absorption/re-employment. In the present case, the petitioner was appointed as Law Officer, Grade-I on deputation on 13.04.2007. He had then moved an application for absorption on 02.07.2007. He was absorbed on 22.09.2008. To

determine and decide whether there was malicious and deliberate delay in the petitioner's absorption, the assertion has to be established.

14. The respondents on the said aspect have relied upon the decision of Supreme Court in ***P.S. Sadasivaswamy v. State of Tamil Nadu***, (1975) 1SCC 152 wherein it has been observed as under:

“2. ...A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal”.

15. In these circumstances, the reliance placed by the petitioner in ***Union of India v. B.S. Agarwal and Anr.***, (1997)

8 SCC 89 is untenable. In the said case, Supreme Court observed that “An empanelled officer having higher inter se seniority over others has a reasonable expectation to get appointment on the accrual of vacancy but if the actual appointment is not made promptly either on account of inherent time-lag associated with procedural formalities or on account of bureaucratic lethargy or by delaying the process of appointment in a calculated and designated manner an eligible and senior officer in the panel cannot but suffer unmerited hardship”. The said ratio has no application in the present case.

16. Similar, reference was made to the decision in *Shriram Singh Chauhan v. Haryana State Electricity Board & Ors.*, (1992) 2 SLR 336 (P&H), which states that if a procedural delay that results in an officer not being considered and another junior officer is promoted, thereby superseding the senior, it would result in denial of equality of opportunity. We have commented on the allegation of malafides. Pursuant to the complaints of the petitioner, a Court of Inquiry was held. Statements of witnesses were recorded. The Court of Inquiry did not find substantial merit in the allegation that there was deliberate and intentional delay in absorption of the petitioner. It was observed that 6th respondent was junior to the petitioner in the cadre of General Duty, albeit this would of no consequence as subsequently the 6th respondent was appointed as Law Officer, Grade-II and his cadre had changed. This is the correct position. Seniority inter-se the petitioner and the 6th

respondent in the General Duty cadre would not determine and decide the inter-se seniority in the Law Officer, Grade I cadre.

17. In the aforesaid discussion, we do not find any merits in the present writ petition and same is dismissed with no order as to cost.

SANJIV KHANNA, J

NAVIN CHAWLA, J

JULY 28, 2017
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