

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No.10054/2016**

% **Reserved on:** 25th July, 2017
Date of Decision: 24th August, 2017

ROSHAN RAJA

....Petitioner

Through: Mr.Abdul Azeem Kalebudde,
Advocate

Versus

UOI & ORS.

....Respondents

Through: Mr.Sanjeev Narula, CGSC with
Mr.Abhishek Ghai, Advocate along with
Mr.Naveen Bhagat, DC-CISF.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J.

Roshan Raja in this writ petition impugns the letter dated 28th March, 2016 issued by the Assistant Commandant/ADM, Central Industrial Security Force Unit, ISAC, Bengaluru, and seeks restoration of his seniority as per the merit list or ranking secured by him in the examination/selection process in the Central Police Forces (Assistant Commandant) Written Examination 2009, conducted by the Union Public Service Commission (Commission, for short). The petitioner also seeks consequential benefits including promotion to the rank of the Deputy Commandant and benefits of financial upgradation etc., which would accrue if his plea with regard to seniority is accepted.

2. Facts in brief may be noticed. The petitioner had qualified in the aforesaid Examination conducted in the year 2009, having secured All India Rank No.8 amongst 594 candidates, who were selected as per the list published by the Commission on 13th October, 2010.

3. The petitioner was issued appointment letter dated 25th August, 2011 appointing him as Assistant Commandant (Exe.) in the Central Industrial Security Force (for short, "CISF"). The petitioner vide appointment letter was asked to join National Industrial Security Academy (NISA) in Hyderabad for basic training commencing from 5th September, 2011 (in 26th Batch). The petitioner vide his communication dated 29th August, 2011, addressed to the Director General of Police (Pers) of CISF, confirmed receipt of the appointment letter and had requested for two months' extension for joining. The reason given was that the petitioner had appeared in the Civil Services Preliminary Examination and had qualified for the Mains Examination, which was scheduled from 29th October, 2011 till 3rd November, 2011 and hence he needed time to prepare for the said examination.

4. The respondent vide communication dated 22nd September, 2011 informed the petitioner that his request for extension had been accepted. However, this letter states that the request of the petitioner for the next batch was accepted, which it is accepted is admittedly an incorrect and wrong assertion. The letter had stated that the request for extension had been examined in the light of letter No.I-45022/69/97-Pers.I dated 28th August, 1997 and the competent authority had allowed the petitioner to join NISA Hyderabad with the next batch of Assistant Commandant (Exe.). Lastly, the

letter states that the seniority would be regulated by the provisions of the DoP&T OM No.9/23/71 Estt. 'D' dated 6th June, 1978.

5. The petitioner thereafter joined the next batch of basic training of the Assistant Commandant (Exe.) CAPFs-2010 (27th Batch) which commenced w.e.f. 29th October, 2012.

6. In September, 2014, seniority list of the Assistant Commandant/Executive was published, wherein the petitioner was placed at serial No.322 and his date of appointment was taken as 27th October, 2012, instead of 25th August, 2011. The petitioner was placed at the end of 27th Batch i.e. junior-most officers in the said batch. As recorded above, the petitioner had qualified in the 26th Batch and his overall ranking was 8th and ranking in the CISF was 2nd.

7. The petitioner made representations stating that his seniority had been wrongly depressed because he had sought extension of time, which was granted. The respondent, however, as noted above vide letter dated 28th March, 2016 did not agree and had informed that a similar issue was subjudice in the High Court at Hyderabad. This prompted the petitioner to file the present writ petition.

8. The contention of the respondents is that the petitioner in terms of office memorandum dated 6th June, 1978 issued by the DoP&T read with communication dated 28th September, 2012 issued by the Government of India, Ministry of Home Affairs, has been rightly ranked at the bottom of the candidates of the 27th Batch.

9. In order to decide the controversy, we would like to first reproduce offer of appointment dated 25th August, 2011. The first two paragraphs of the said letter reads as under:

“Consequent upon your selection to the post of Assistant Commandant (Exe) in CISF against the CPFs Examination of 2009, conducted by the Union Public Service Commission (UPSC), we are pleased to offer you the post of Assistant Commandant (Exe) in the CISF. The appointment is Provisional subject to verification of your Character and antecedents from concerned District Magistrate/Collector.

2. You are accordingly directed to report to DIRECTOR, NATIONAL INDUSTRIAL SECURITY ACADEMY (NISA), CISF Hyderabad, on 02.09.2011/03.09.2011 for appointment to the post of Assistant Commandant (Exe) in CISF in the pay scale of Rs. 15600-39100/- with Grade pay of Rs. 5400/- (PB-3) of revised pay scales-2008 and also for undergoing basic training from 05.09.2011. In case you fail to report for joining on the stipulated date i.e. 02.09.2011/03.09.2011, it will be presumed that you are not interested to accept this offer and the offer of appointment will automatically stand cancelled.”

10. With regard to reporting procedure, the offer of appointment letter had postulated as under:

“REPORTING PROCEDURE

9. If you accept the above terms & conditions, you are advised to report to the Director, CISF, National Industrial Security Academy (NISA) Post : Hakimpet, Secunderabad, Hyderabad (AP) on 02.09.2011/03.09.11 for joining the post and undergoing basic training. If you are not able to report at the above mentioned training institute by the stipulated date due to unavoidable or compelling circumstances, you may submit your request with full facts/justification supported by documentary proof, to this Directorate so as to reach before the above mentioned date of reporting. In this regard, it should be

noted that your request for extension will be considered only if the same is found to be genuine considering that joining of post by the stipulated date, as offered to you, was beyond your control, by the competent authority, otherwise your candidature will be rejected.”

Clause 9 required the selected candidates to report to NISA, Hyderabad on 2nd / 3rd September, 2011 for attending the course for undergoing basic training. If the selected candidate was unable to join or report on the scheduled date due to unavoidable or compelling circumstances, he had to submit his request with full facts, justification, and documentary proof, which would have reached to the Directorate well before the date mentioned for reporting. The extension of time was to be considered only in genuine cases i.e. wherein the joining was beyond the control of the candidate, otherwise the request for extension of time was to be rejected.

11. It is accepted and admitted position that the petitioner did request for extension of time to join which was made vide letter dated 29th August, 2011, which reads as under:

“Respected Sir/Madam,

I confirm the receipt of my appointment letter to the post of **Assistant Commandant (Exe)** on the basis of CPF Exam – 2009.

I further state that I had appeared for the UPSC Civil Services Preliminary Exam 2011 and have qualified it. **The Civil Services (Main) Exam** is scheduled from 29th October, 2011 and for me it will end on 3rd November, 2011. My Civil

Services **Roll No is 136667**. I need enough time to prepare for this exam.

Therefore, I request you to kindly grant me an **extension of 2 months** so that I can join at NISA, Hyderabad immediately after the completion of my exam.”

12. The extension request was accepted by the respondents after some delay vide letter dated 22nd September, 2011. According to us this delay was significant and material. This is also one of the factors which had weighed with us while deciding the present writ petition. The letter dated 22nd September, 2011 granting extension to the petitioner reads as under:

“Sub: **RECRUITMENT OF ASSTT. COMMANDANT IN CISF, CPF-2009: Reg.**”

Reference this Directorate letter No E-32015(4)/1/AC-CPF-2009/11/Pers-1/1443 dated 25th Aug, 2011 and further your application dated 29.08.2011, requesting extension for next batch.

2. Your case has been examined in the light of MHA’s letter No 1-45022/69/97-Pers.1 dated 28.08.1997, and the competent authority has allowed you to join CISF NISA Hyderabad with the **next batch of Assistant Commandant/Exe** and your seniority will be regulated as per the provision contained in DoP&T OM No 9/23/71 Estt ‘D’ dated 06.06.1978.”

13. As already noted above, the letter dated 22nd September, 2011 wrongly noticed to record that the petitioner had requested for extension to join with the next batch. This was never stated and averred in the letter of the petitioner dated 29th August, 2011. This assumption was wrong and

false. The second paragraph of letter dated 22nd September, 2011 explains that the request for extension had been examined in terms of MHA's letter dated 28th August, 1997, and the competent authority had allowed the petitioner to join with the next batch of the Assistant Commandant/Exe.. The last paragraph is significant and crucial. It states that the seniority would be regulated as per the provisions contained in the DoP&T OM No.9/23/71 Estt. 'D' dated 6th June, 1978. The aforesaid communication, according to us should have been more lucid and clear, if the stand of the respondents is to be accepted, after all it was a matter of seniority and important for the petitioner who had secured All India Rank No.8 and was at No.2 seniority in the CISF. The letter states that the seniority would be regulated as per OM dated 6th June, 1978 and nothing more. Reference to MHA letter dated 28th August, 1997 was for the purpose of allowing extension of time and not for seniority. The MHA letter dated 28th August, 1997 was not in the public domain and its importance and relevance with reference to seniority or loss of seniority was not highlighted and brought to the notice of the petitioner, to enable him to take a considered choice.

14. The Office Memorandum dated 6th June, 1978 which has been referred above, issued by the DoP&T reads as under:

Subject: Candidates recommended by the UPSC for appointment to Central Civil Services and the post – delay in joining – revival of offers of appointment after their cancellation – determination of seniority.

....

The undersigned is directed to refer to the general principles of seniority contained in Ministry of Home Affairs' O.M. No. 9/11/55-RPS dated 22nd December, 1959 and to say that relative seniority of direct recruits appointed on the recommendations of the UPSC or any other authority is determined by the order of merit in which they are selected for such appointment, the persons appointed as result of an earlier selection being placed above those appointed as result of the subsequent selection. It has come to the notice of the Government that in certain cases, the candidates recommended by them for appointment take long time to join and there have also been cases where offers of appointment were revived by Departments after they had been cancelled and in spite of the long delay in joining the candidates were allowed the benefit of seniority on the basis of their initial selection. The question whether in such cases it would not be desirable to depress the seniority of the candidates who are appointed on the result of the selections by interviews/examination was considered by the Government in consultation with the UPSC and it has been decided that the following procedure may be adopted now. This procedure will be applicable both in case of (a) selection through interview and (b) examinations.

- (i) In the offers of appointment issued by different Ministries/Departments, it should be clearly indicated that the offer would lapse if the candidates did not join within a specified period not exceeding two or three months.
- (ii) If, however, within the period stipulated, a request is received from the candidates for extension of

time, it may be considered by the Ministries/Departments and if they are satisfied, an extension for a limited period may be granted but the total period granted including the extension during which the offer of appointment will be kept open, should not exceed a period of nine months. The candidates who join within the above period of nine months will have their seniority fixed under the seniority rules applicable to the service/post concerned to which they are appointed, without any depression of seniority.

- (iii) If, even after the extension(s) if any granted by the Ministry/Departments, a candidate does not join within the stipulated time (which shall not exceed a period of nine months), the order of appointment should lapse.
- (iv) An offer of appointment which has lapsed should not ordinarily be revived later, except in exceptional circumstances and on grounds of public interest. The Commission should in all cases be consulted before such offers are revived.
- (v) In a case where after the lapsing of the offer, the offer is revived in consultation with the Union Public Service Commission as mentioned in sub-para (iv) above, the seniority of the candidates concerned would be fixed below those who have already joined the posts concerned within the prescribed period of nine months; and if the candidate joins before the candidates of the next selection/examination join, he should be placed below all others of his batch. If however, the

candidate joins after some or all the candidates of the next selection/examination have joined he should be:

(a) In case of selection through interview, placed at the bottom of all the candidates of the next batch.

(b) In the case of examination, allotted to the next years batch and placed at the bottom.

The Ministry of Finance are requested to bring the above instructions to the notice of all concerned.”

15. We may note that the period of nine months mentioned in clauses (ii), (iii) and (v) has been reduced to six months vide office memorandum dated 9th August, 1995. As the said office memorandum is of some relevance, the same is reproduced below:

“OFFICE MEMORANDUM

Subject: Candidates recommended by the UPSC/SSC for appointment to Central Civil Services and the post-delay in joining revival of offer of appointment after their cancellation – determination of seniority.

.....

The undersigned is directed to say that according to DoP&T O.M.No.9/23/71-Estt.(D) dated 6.6.78 (copy enclosed) an offer of appointment issued by different Ministries/Departments, should clearly indicate that the offer would lapse if the candidate did not join within the specified period which shall not exceed two or three months. If, however, within the period stipulated, a request is received from candidates for extension of time, it may be considered by the Ministries/Departments and if they are satisfied, an

extension for a limited period may be granted but the total period granted including the extension during which the offer of appointment will be kept open, should not exceed a period of nine months.

2. The Staff Side of the Departmental Council (JCM) of DOP&T have demanded that direct recruits may be allowed a maximum of three months for joining instead of nine months provided for in the O.M. under reference so as to avoid delay in preparation and issue of select/seniority list. The matter has been examined in consultation with the UPSC and it has been decided to reduce from nine months to six months the maximum time upto which an offer of appointment can be kept to open. In other words, an offer of appointment should clearly specify the period (which shall not normally exceed one or two months) after which the offer would lapse automatically if the candidate did not join within the specified period. If however, within the specified period, a request is received from the candidate for extension of time, it may be considered by the Ministries/Departments but extension beyond three months should not be granted liberally and it may be granted only as an exception where facts and circumstances so warrant and in any case only upto a maximum of six months from the date of issue of the original offer of a appointment. An offer of appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment.

3. Subject to the above modifications the other provisions contained in the OM dated 6.6.78 should be followed scrupulously.

4. These instructions are not applicable to cases of persons who have been granted exemption under rule 4 of Civil Services Examination Rules.

5. The Ministry of Finance etc. are requested to bring the above instructions to the notice of all concerned.”

16. OM dated 6th June, 1978 requires that the Department/ Ministry must clearly indicate that the offer would lapse if the candidate does not join within the specified period which should be between 2 to 3 months. The letter of offer dated 25th August, 2011, issued to the petitioner, did not so stipulate. On the other hand we have quoted clause 9 relating to reporting procedure, which is an aspect covered by clause (ii) of OM dated 6th June, 1978. Clause (ii) states that the candidates, who join in the extended period, which should not exceed 9 / 6 months, would have seniority fixed under the seniority rules applicable to service/ post concerned to which were are appointed without any depression of seniority. There would not be depression of seniority in such cases. This was notwithstanding the extension of time for joining. According to us the petitioner's case would be clearly covered by this clause for the petitioner had applied for extension for two months which was granted by the respondents. The petitioner could have joined immediately after two months but the respondents had shifted the date of joining with the next batch. It is not the case of the respondents that the offer of appointment had lapsed. In such circumstances clause (iii) of letter dated 6th June, 1978 would not be applicable for it relates to cases where even after extension is granted, the candidate does not joined and the offer of appointment lapses. Clause (iv) relates to cases where an offer of

appointment had lapsed, and stipulates that ordinarily offer of appointment should not be revived except in exceptional circumstances and on grounds of public interest. The Commission has to be consulted in all such cases. As per clause (v), it is apparent that it will apply to cases where the offer was revived in consultation with the Commission. In such cases where offer had lapsed and was revived in consultation with the Commission, the seniority of candidate was to be fixed below those, who had already joined the post concerned within the prescribed period. Thus, where the candidate joins before the candidates of the next selection / examination, he would be placed below all others of his batch. But when candidate joins after some or all the candidates of the next batch, he would be placed at the bottom of the candidates of the next batch in selection through interview or examination. The consequences of clause (v) are harsh and significant.

17. It was therefore, important for the respondents to clarify and state in their letter granting extension dated 22nd September, 2011 that the petitioner would be covered by clause (v) of OM dated 6th June, 1978 even if in his case the appointment offer had not lapsed. This should have been so indicated to the petitioner if he had to join in the next batch for basic training. Explicit and straightforward assertion in the communication was mandated as the office memorandum dated 9th August, 1995 had required that the offer of appointment should clearly specify the period which should not exceed one or two months after which the offer would lapse if the candidate does not join within the specified period; and further request for extension beyond three months should not be granted liberally and granted only in exceptional cases where the fact and circumstances so warrant. These instructions affirm the stand and stance of the petitioner.

18. As the respondents, as noticed above, have placed reliance on the internal communication of the Ministry of Home Affairs dated 28th August, 1997, we would reproduce the same as under:

“Sir,

The issue relating to grant of extension in joining time etc to the candidates selected for the post of AC(GD) in BSF/CRPF/ITBP on the basis of SSB selection has been considered.

2. Candidates selected for the post of AC(GD) in BSF/CRPF/ITBP will be issued offers of appointment with instructions to report at the concerned Training Academy on specific date. The candidates who report for joining on or before the specified date as also the candidates who report for joining within 4 weeks of the specified date may be allowed to join for training.

3. In respect of other candidates who seek extension in joining time in excess of 4 weeks, they may be allowed to join with the next training batch. However in such cases their seniority will be depressed as per the provisions of DOP&T OM No. 9/23/71-Estt. ‘D’ dated 6.6.1978 (published in Swamy’s Establishment and Administration Manual).”

The aforesaid communication relates to grant of extension of joining time. Offer of appointment to the selected candidates to the post of Assistant Commandant should be issued with instructions to report to the concerned academy within four weeks; and the candidates who join within four weeks could be allowed to join the training with the same batch. Paragraph 3 states that other candidates, who seek extension of joining time in excess of four

weeks could be allowed to join the next training batch. This has been done and exacted in the case of the petitioner. The last sentence states that in such cases i.e. the cases where the candidates has been allowed to join in the next training batch his seniority would be depressed as per the provisions of the DoP&T OM dated 6th June, 1978.

19. The question relates to interpretation of the last sentence in the letter dated 28th August, 1997. As per the respondents, it means that in all cases where the selected candidate was granted extension of time in excess of four weeks and he joined in the next batch, clause (v) of the O.M. dated 6th June, 1978 would apply. In our opinion the said interpretation of the letter dated 28th June, 1997 read with OM dated 6th June, 1978 is misconceived and should be rejected. We would elucidate and give our reasons below.

20. The letter dated 28th August, 1997 issued by the Ministry of Home Affairs only states that the seniority would be depressed as per the provisions of O.M. dated 6th June, 1978. It does not seek to alter or modify the OM dated 6th June, 1978. The Ministry of Home Affairs's letter dated 28th August, 1997 has been referred only for the purpose of extension of time, however, on the question of seniority it was stated it would be regulated as per the provisions in OM dated 6th June, 1978. On the other hand "depression" as per OM dated 6th June, 1978 would indicate to the contrary i.e. the seniority would be depressed, when a case was covered by clause (v) and not in all cases where extension is granted. Clause (v) of OM dated 6th June, 1978 applies when the offer of appointment has lapsed and then revived, which is not the case here. Even if we hold that there is some ambiguity in clause (iii) of the letter dated 28th August, 1997, it was the duty of the respondent, who has taken up the aforesaid stand, to clearly

communicate and inform to the petitioner when they had granted extension of time for joining vide letter dated 22nd September, 2011. We have already commented on the language of the letter dated 22nd September, 2011 which has been quoted above. The respondents could have clearly informed and told the petitioner that if he joins the training with the next batch his seniority would be depressed to the bottom of the next batch, i.e. he would lose the seniority and would be the junior-most in the next batch. This would have enabled the petitioner to take a considered choice and decision. This would have been more important and particular as the letter dated 28th August, 1997 of the Ministry of Home Affairs was not in public domain or circulation. Further, the interpretation placed by the respondents was equally obscured and private.

21. We have also looked into the matter from equity, fairness and justice. The petitioner had secured 8th rank amongst 594 candidates in the examination. If he was given full information and details regarding loss of seniority, he may well have taken and/or asked for extension of time by four weeks and no more for appearing in the Civil Services Main Examination. Thus, the communication dated 22nd September, 2011 sent by the respondents to the petitioner was of vital importance. The petitioner should not be made to suffer for incoherent and vague communication written by the respondents, which would have catastrophic effect on the seniority of the petitioner throughout his career in CISF. We may state that there is difference between seniority and eligibility when it comes to promotion. Seniority of the petitioner based upon his ranking is one aspect and the eligibility of the qualifying service is another aspect. Our decision does not

deal with the question of eligibility and indeed concession with regard to the eligibility is only available if permitted and available as per the extant rules.

22. The respondents have also pleaded delay and laches. We do not find any merit in the same for the seniority list was published in September, 2014; and till the seniority list was published the petitioner could not have approached the Court and sought seniority. It is apparent that the petitioner could not have assumed loss of seniority. We have already quoted the letter dated 28th August, 1997 and observed that it is ambiguous. We have also quoted OM dated 6th June, 1978 and observed that it would support the stand of the petitioner. It could have been wrong for the petitioner to assume that he had lost his seniority. Arguments of delay and laches would fail for the petitioner was required to await the outcome of his representations before coming to court. The representation made by the petitioner was dealt with and apparently rejected vide communication dated 28th March, 2016 which had stated that a similar matter was subjudice in the High Court of Hyderabad and till the decision in the said matter the seniority of the petitioner would be maintained. Thus, even communication dated 28th March, 2016 had not rejected the petitioner's claim on seniority. We are not stating that belated or repeated representations extends "limitation" or is sufficient explanation for delay and laches, albeit in the present case the seniority list was published in September, 2014. Thereafter the petitioner had made representations which were ambiguously rejected vide communication dated 28th March, 2016. The charge of delay and laches thus fails.

23. In view of the aforesaid discussion, we partly allow the present writ petition with the direction that the respondents would maintain the seniority

of the petitioner as per the rank secured by him in the Central Police Forces (Assistant Commandant) Written Examination 2009. However, as far as promotion is concerned, the petitioner would have to meet the eligibility criteria and would be considered in terms of the extant rules. In the facts of the case, there would be no order as to costs.

(SANJIV KHANNA)
JUDGE

(NAVIN CHAWLA)
JUDGE

AUGUST 24th , 2017
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