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

Date of Decision: 03.07.2018

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W.P.(C) No.6761/2018

SHAMSHER SINGH

..... Petitioner

Through: Mr.Anil Mittal with Ms.Komal
Aggarwal, Advs.

versus

INDO-TIBETAN BORDER POLICE FORCE AND ORS.

..... Respondents

Through: Ms.Saroj Bidawat with Mr.Kavindra
Gill, Advs.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. By the present petition, the petitioner, who is a Sub Inspector (MT) in the Indo-Tibetan Border Police Force, has sought a direction to the respondent No.1 to promote him to the post of Sub-Inspector (MT) from the date when his erstwhile junior i.e., respondent No.2 was promoted to the said post. The petitioner has also sought a declaration that he be treated as 'senior' to the respondents No.2 to 22 in the post of Sub-Inspector (MT), with a further direction that he should be promoted to the next rank of Inspector (MT) from the date on which the respondent No.2 stood promoted to the post of Inspector

(MT) alongwith all consequential benefits such as fixation of pay scale on the post of Sub-Inspector (MT) and Inspector (MT).

2. The brief facts which emerge from the record are that the petitioner, having been appointed as a Constable (MT)/Driver on 09.01.1988, was promoted as a Lance Naik/Driver on 07.10.1992, based on a departmental exam, which he had cleared prior to the respondent Nos. 2 to 22 and, thus, became senior to them in the rank of Lance Naik. Based on another departmental exam, which he had cleared in the first attempt, the petitioner was thereafter promoted as a Naik/Driver on 01.04.1995 and, thus, remained senior to the respondent Nos.2 to 22. Subsequently, based on the recommendations of the Fifth Pay Commission, the rank of Driver/Naik was merged with the rank of Head Constable on 10.10.1997 and accordingly, the petitioner was designated as Head Constable/Driver w.e.f. 10.10.1997.

3. In January, 2006, the respondent Nos.2 to 22, who had completed 18 years of 'Approved' service, became eligible to appear in the 'D' List examination, in accordance with the terms of the Standing Order No.505/2005 and upon being declared successful therein, their names were to be included in the 'Approved' list for further promotions to the post of Sub-Inspector. Since the petitioner, despite being senior to the respondent Nos.2 to 22, had not completed 18 years of service in January, 2006, he was held ineligible to appear in the 'D' List examination. It transpires that in March, 2006, the respondent Nos.2 to 22, despite fulfilling the eligibility criteria, were not allowed to appear in the 'D' List Examination. But subsequently, in July, 2006, they were, permitted to appear in the said examination and upon being

successful, vide order dated 25.07.2006, their names were brought on the 'Approved' list. Pertinently on the said date, the petitioner had not even appeared in the 'D' List examination. Thus, his name was not included in the 'Approved' list for further promotion. The petitioner finally became eligible to appear in the 'D' List examination in January, 2007 and upon successfully undertaking the said examination in March, 2007, vide order dated 11.04.2007, his name was included in the 'Approved' list for the next promotion to the post of Sub-Inspector (MT). It is an admitted case of the petitioner that in this 'Approved' list, he had become junior to his erstwhile juniors, i.e. respondent Nos.2 to 22 and as a consequence thereof, the said respondents were promoted as Sub-Inspector (MT) during the period 2008 to 2010, whereas the petitioner was promoted as a Sub Inspector (MT) only in May, 2011 and had thus become junior to the respondent Nos.2 to 22, in the post of Sub-Inspector.

4. The petitioner claims that aggrieved by his supersession by the respondent Nos.2 to 22, he had been making repeated representations but to no effect and had, therefore, been compelled to serve a legal notice dated 20.02.2014, on the respondent No.1 seeking re-fixation of his seniority as a Sub-Inspector vis-a-vis, respondent Nos.2 to 22, which request was declined vide reply dated 29.04.2014. The petitioner thereafter claims to have made some further representations including a final representation dated 13.11.2017, which was rejected vide order dated 06.02.2018, once again informing him that his similar request stood rejected on 11.01.2010 itself. In these circumstances, the petitioner has approached this Court praying for a

direction to restore his seniority vis-a-vis, respondent Nos.2 to 22, who, he claims were junior to him till March, 2006.

5. Mr.Anil Mittal, learned counsel for the petitioner contends that the petitioner being admittedly senior to the respondent Nos.2 to 22 in the post of Lance Naik, cannot be deprived of his seniority, to the higher rank of Sub-Inspector (MT) and Inspector (MT). He further submits that once the petitioner became eligible for his next promotion to the rank of Sub-Inspector (MT) in the year 2007, the respondent No.1 ought to have held the 'D' List examination of the petitioner and his juniors, only after he had become eligible in 2007 so that the *inter se* seniority of the petitioner vis-a-vis, the respondent Nos.2 to 22 in the higher ranks, was not disturbed.

6. Mr.Mittal further contends that once it is apparent that the petitioner had been wrongly deprived of his promotion to the rank of Sub-Inspector (MT), the respondent No.1 ought to be directed to rectify the said illegality. He submits that despite being senior, the petitioner has been deprived of his further promotion to the rank of Inspector (MT), to which post, the respondent Nos.2, 4 and 5 already stand promoted. He argues that the mere delay on the part of the petitioner in approaching this Court, cannot be a ground to permit the respondent No.1 to perpetuate injustice caused to him on account of their erroneous action in permitting the respondent Nos.2 to 22 to appear in the 'D' List examination in 2006, and consequently, promoting them as Sub-Inspector (MT) i.e. prior to the petitioner, despite it being an admitted position, that they were all junior to him.

7. On the other hand, Ms.Saroj Bidawat, learned counsel for the

respondents while defending the impugned action of the respondent No.1, contends that a challenge to the promotion granted to the respondent Nos.2 to 22 in the year 2007-2008, ought not to be permitted at this belated stage. She submits that in view of the settled legal position that in cases of *inter se* seniority, stale claims ought not to be entertained, the present petition is liable to be outrightly rejected.

8. We have carefully considered the submissions of the learned counsel for the parties and having perused the record, are of the view that the present petition is an attempt to unsettle the *inter se* seniority of the parties which was finalised as long back as in the year 2008-2009. In fact, during the course of arguments, learned counsel for the petitioner was unable to dispute the position that the basic grievance of the petitioner is regarding the placement of the respondent Nos.2 to 22 in the 'Approved List' in July, 2006 itself, on which date, he had not even appeared in the 'D' List examination, which was the qualifying exam for being placed in the 'Approved List'. It is also an admitted position that the petitioner has, right from the year 2007, been treated as junior to the respondent Nos.2 to 22, on account of his appearing in the aforesaid examination, on a date much later than the aforesaid respondents. We also find that the other reliefs relating to the petitioner's promotion to the post of Sub-Inspector (MT) and Inspector (MT) as claimed by him are only consequential to his basic grievance that he had wrongly been treated as junior to the respondent Nos.2 to 22 in the 'Approved' list issued in the year 2007-2008.

9. The facts clearly show that the cause of action, if any, first arose in July,

2006, when the respondent Nos.2 to 22 were permitted to appear in the 'D' List examination and the cause of action again arose when the petitioner was treated as junior to the respondent Nos.2 to 22 in April, 2007 due to placement of his name at a lower position in the 'Approved' list, vis-a-vis, respondent Nos.2 to 22. The record shows that the petitioner had submitted a representation in the year 2009, which was rejected on 11.01.2010. Thus, it is evident that the cause of action had accrued in favour of the petitioner to approach the Court had initially arisen in the year 2007 or latest by 2010, when his representation was rejected. Therefore, he ought to have approached this Court promptly, at best in the year 2010, as the relief sought by him would necessarily alter the *inter se* seniority of all the private respondents. In these circumstances, we are of the considered view that the petitioner cannot, at this belated stage, be allowed to challenge the *inter se* seniority as the same would clearly amount to unsettling the seniority position which has remained unchallenged for the past 10 years.

10. We are fortified in our aforesaid view by a recent decision in ***Union of India & Ors. vs. V. Chaman Rana***, (2018) SCC Online SC 294, wherein the Supreme Court has observed as under:-

“9. Manifestly, the cause of action first arose to the Respondents on the date of initial supersession and again on the date when rejection of their representation was communicated to them, or within reasonable time thereafter. Even if the plea based on Dev Dutt (supra) be considered, the cause of action based thereon accrued on 12.05.2008. There has to be a difference between a cause of action and what is perceived as materials in support of the cause of action. (In

service matters, especially with regard to promotion, there is always an urgency. The aggrieved must approach the Court at the earliest opportunity, or within a reasonable time thereafter as third party rights accrue in the meantime to those who are subsequently promoted.) Such persons continue to work on the promotional post, ensconced in their belief of the protection available to them in service with regard to seniority. Any belated interference with the same is bound to have adverse effect on those already promoted affecting their morale in service also. Additionally, any directions at a belated stage to consider others for promotion with retrospective effect, after considerable time is bound to have serious administrative implications apart from the financial burden on the government that would follow by such orders of promotion.” (emphasis added)

11. In view of the settled legal position and the admitted factual position that reveals that the entire claim of the petitioner is based on an alleged wrong, which he claims was meted out to him in the year 2007 itself, we find the present petition hopelessly belated. The same is accordingly, dismissed with no orders as to costs.

(REKHA PALLI)
JUDGE

(HIMA KOHLI)
JUDGE

JULY 03, 2018
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