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

+ **W.P.(C) 11865/2016 & CM APPL. 46819-46820/2016**

R RUBAN

..... Petitioner

Through: Mr. Anish R. Shah, Advocate

versus

UNION OF INDIA

..... Respondent

Through: Mr. Vijay Joshi & Mr. Mayank
Sharma, Advocates with Mr. Vinod
Kumar, D. C. Law

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER
26.11.2018

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1. This is a petition seeking issuance of directions to the Respondent, Border Security Force ('BSF') regarding the fixation of seniority of the Petitioner.

2. The facts are that the Petitioner appeared in the competitive exams for the post of Sub-Inspector in the Central Police Organisations ('CPOs'). He passed the said examination which was held on 9th November 2008. After passing the physical endurance tests, he was called, by a letter dated 28th November 2009, for a personality test/interview to be held on 23rd December 2009.

3. Subsequently, the Petitioner was issued a letter dated 15th December 2009 by the Assistant Director of the Staff Selection Commission ('SSC') stating

that his candidature was treated as cancelled as he did not possess the requisite educational qualifications as on 4th July 2008. When he challenged this before the Madras High Court by filing W.P. (C) 27067/2009, notice was issued in the said writ petition on 23rd December 2009 and a direction was issued to the SSC to keep one post vacant. Ultimately, by a judgment dated 25th April 2011, the Madras High Court allowed the Petitioner's writ petition and upheld his eligibility for the post of Sub-Inspector. The SSC was directed to publish his results and once found fit, to issue him an appointment letter within four weeks.

4. Writ Appeal No. 1603/2011 filed by the SSC against the above order was dismissed by a Division Bench of the Madras High Court on 14th September 2011.

5. The Petitioner gave a representation dated 8th November 2011 to the SSC seeking implementation of the judgment of the learned Single Judge of the Madras High Court dated 25th April 2011. When no action was taken, he filed a Contempt Petition No.244/2012 in the Madras High Court. The said contempt petition was disposed of by an order dated 12th June 2014. Ultimately, the Petitioner came to be appointed to the post of Sub-Inspector (Direct Entry), BSF by an order dated 25th August 2014.

6. The Petitioner, thereafter, made a representation to the BSF seeking fixation of seniority in the Central Seniority List of 2011 in light of the order of the Madras High Court dated 25th April 2011. This was rejected by the Respondents by the impugned order dated 23rd September 2015 communicated to the Petitioner on 30th September 2015. This has been

challenged in the present writ petition.

7. The plea taken by the Respondents in the counter affidavit is that the seniority of GD (Non-Gazetted) Personnel is governed by the BSF GD (Non-Gazetted) Recruitment Rules 2012 ('the Rules') in terms of which seniority in any rank would be determined on the basis of continuous regular employment in that rank. Since the Petitioner was appointed to the post of SI (GD) in the BSF on 25th August 2014, the seniority of the Petitioner has been fixed in the Central Seniority List of SI (GD) 2016. Additionally, reliance is also placed upon the decision of the Supreme Court in ***Rohitash Kumar v. Om Prakash Sharma***(2013) 11 SCC 451.

8. The Court finds no merit in the above submissions of the Respondents. The failure by the Petitioner to join the post of SI (GD) was not due to his fault but that of the Respondents. The fact that the Madras High Court, while issuing notice in the petition, directed the Respondents to keep one post vacant was a clear indication to the Respondents that the appointments made from the 2008 batch, which fructified in 2011, would be subject to the outcome of the writ petition. While it is true that Rule 8 is applicable and states that seniority would be determined on the basis of "continuous regular employment in that rank", where such regular employment is postponed on account of the fault of the Respondents, clearly the candidate cannot be made to suffer the consequences. Losing the appropriate seniority on account of the mistake of the Respondents is indeed an unfair consequence which the Petitioner cannot be saddled with despite succeeding in his legal challenge to his non-appointment.

9. As far as the decision in ***Rohitash Kumar*** (*supra*) is concerned, it is distinguishable on facts. There, the issue arose on account of the interpretation of Rule 3 of the BSF (Seniority, Promotion, Superannuation of Officers) Rules, 1978, which is a different set of rules for a different set of officers. The issue there was of fixation of *inter se* seniority between a promotee and direct recruits who belonged to different batches and who were sent for training on different dates. That is not the issue here at all. Consequently, this decision is of no assistance to the Respondents.

10. Additionally, the Petitioner has placed on record the relevant orders in respect of one Anoop Singh who took the SI (DE) training course and whose seniority, pursuant to the orders of this Court in W.P. (C) 2311 of 2102, was fixed from the date of commencement of the training. The Court, therefore, finds that the Petitioner is justified in his grievance that his seniority should also have been notionally fixed from the date that he was held eligible for appointment by the Madras High Court i.e. 25th April 2011. The delay of three years in the Respondents appointing him to the post is entirely their own doing and the Petitioner cannot be made to suffer for that.

11. For the aforementioned reasons, the Court sets aside the decision of the Respondents declining the Petitioner's representation communicated to him by the letter dated 23rd September 2015 and directs them to re-fix the seniority of the Petitioner notionally from 25th April 2011, i.e. the date on which the Madras High Court upheld his claim of eligibility for appointment as SI to the BSF.

12. The writ petition is allowed in the above terms but with no order as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 26, 2018
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