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

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W. P. (C) 1042/2011

RAJESH KUMAR GUPTA

..... Petitioner

Through: Mr Bharat Garg and Mr L.K. Garg,
Advocates.

versus

UOI AND ORS.

..... Respondents

Through: Mr Kirtiman Singh, CGSC for UOI
with Mr Waize Ali Noor, Mr Prateek
Dhanda and Ms Shruti Dutt,
Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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02.05.2019

1. The Petitioner is aggrieved by the decision of the Respondents not to grant him the seniority on par with his juniors in the post of Deputy Commandant ('DC') of the Border Security Force ('BSF').

2. The brief facts are that the Petitioner joined the BSF on 2nd February, 1999 for training as Assistant Commandant (Direct Entry) in Course Serial No.23 that commenced with effect from 11th January, 1999. In April, 2001, the Petitioner was diagnosed as suffering from Hairy Cell Leukemia (ALL Type-II). He was initially placed in the Low Medical Category ('LAC')

S1H1A1P3(T-24)E1 by the Medical Board held on 1st October, 2001. The subsequent re-categorization of the medical category of the Petitioner is depicted in the tabular form in the counter affidavit filed by the Respondents as under:

S.No.	Date of Re-categorization medical board held	Medical category re-categorized
1.	02.09.2002	S1H1A1P3(T-48)E1 for one year.
2.	08.01.2004	S1H1A1P2(T-48)E1 for one year
3.	12.01.2005	S1H1A1P2(T-24)E1 for 24 weeks
4.	25.10.2005	S1H1A1P2(T-48)E1
5.	18.01.2007	S1H1A1P2(P)E1
6.	20.06.2007	S1H1A1P2(T-48)E1
7.	20.09.2008	S1H1A1P2(T-24)E1
8.	30.06.2008	S1H1A1P2(T-48)E1
9.	12.02.2009	SHAPE-I

3. It is pointed out that the Petitioner was in the zone of consideration for promotion to the rank of DC during the vacancy years 2006-07, 2007-08, 2008-09 and 2009-10. However, the Petitioner could not be considered for promotion by the Departmental Promotion Committee ('DPC') for the reasons again depicted in a tabular column as under:

Vacancy year	Date of DPC held	Remarks of DPC	Remarks
2006-07	13.03.2006	Ineligible due to not done mandatory course i.e. YO's Leg-II (Cdo) LMC and	Shri Mukesh Kumar, AC (Now DC) IRU\ No. 19975887, the officer immediate junior to him in AC was promoted to the rank of DC w.e.f.

			17.06.2006.
2007-08	17.04.2008	Fit subject to SHAPE-I	Officer junior to him was promoted w.e.f. 25.06.2008. Petitioner was also promoted notionally alongwith Juniors w.e.f. 25.06.2008 on up-gradation of his Low Medical Category as SHAPE-I W.E.F. 12.02.2009.
2009-10	21.05.2009	‘FIT’	Promoted to the rank of Dy Comdt. w.e.f. 15.07.2009.

4. The case of the Respondents is that the medical category for grant of seniority of the Petitioner was determined as Shape-I only with effect from 12th February, 2009. It is further contended by the Respondents as under:

“8. That as per the instructions of the MHA, issued earlier vide UO dated 12th Dec, 2001, w.r.t. UO dated 27th July 2001, if the actual promotion of a Force Officer is delayed on account of his low medical category and he is required to regain medical category SHAPE-1, the person below him can be promoted; but such officer will regain his seniority immediately upon his promotion. As per para 17.13.1 of Director of Personnel and training instructions issued on 27th Mar, 1997, the panel for promotion drawn up by DPC for 'selection posts' would normally be valid for one year. It should cease to be in force upon expiry of a period of one year and six months or when a fresh panel is prepared, whichever is earlier. MHA vide their UO dated 29th Oct, 2008 has further specifically clarified that the actual promotion of a Force Officer if delayed because of his/her low medical category, the person below him can be promoted; but the officer will regain his/her seniority immediately upon his/her promotion, if he/she regains SHAPE-1 medical category within the validity period of the recommendations of the DPC.”

5. The Respondents do not dispute those junior to the Petitioner were promoted in the rank of DC with effect from 25th June, 2008. After he regained the Shape-I medical category on 12th February, 2009, the Petitioner was considered for promotion to the rank of DC in the vacancy year 2008-09. In other words, it is maintained that his seniority had been correctly fixed under the relevant rules.

6. Reliance has been placed by the learned counsel for the Petitioner on an order dated 9th February, 2011 in W.P.(C) No.6758/2010 (***Kanwar Singh v Union of India***). It is submitted that in similar circumstances the relief prayed for by the Petitioner in that case, who also belonged to the BSF was granted.

7. At the hearing of this case on 14th January, 2019, when faced with the above decision, which was cited by the learned counsel for the Petitioner, the Respondents took the plea that the DoPT's circular was not brought of the notice of the Court when it decided ***Kanwar Singh v Union of India*** (*supra*).

8. The short question that arises is whether the validity of the panel prepared by the DPC was only for one year and six months and whether it was during this period that the Petitioner had to regain Shape-I category.

9. In ***Kanwar Singh v. Union of India*** (*supra*) itself there was no discussion by this Court of the pleadings of the parties, and in particular the counter affidavit filed by the Respondents. In fact, in ***Kanwar Singh v. Union of***

India (supra), it was observed by the Division Bench in para 6 as under:

“6. It be noted that the respondents have neither pleaded nor filed a document to show that the DPC has set a time frame within which the petitioner had to regain his SHAPE-I medical category. This would obviously mean that no time limit was set by the DPC within which the petitioner had to regain his SHAPE-I medical category to be entitled to the benefit of the recommendations of the DPC, which met on 05.08.2005.”

10. It appears that the DB also did not take note of the Para 17.13.1 of the DoPT instructions issued on 10th April, 1989. On the other hand, it was observed by the DB in para 9 as under:

“9. It is apparent that since the DPC never set any time frame within which the petitioner had to regain SHAPE-I category (none has been shown to us), the petitioner on having regained SHAPE-I category and being promoted would be entitled to his seniority to be fixed as per his seniority in the post of Assistant Commandant and that would mean that promoted as a Deputy Commandant, his seniority would be immediately above the person who were junior to him as an Assistant Commandant. Further, the petitioner would be entitled to a review DPC for considering his case for further promotion as 2-IC as of 4.6.2010 when persons junior to the petitioner were further promoted.”

11. This Court has perused the counter affidavit filed by the Union of India in **Kanwar Singh v. Union of India** (supra). Not only was the aforementioned Rule 17.13.1 pointed out by the Union of India, but specific mention was also made to MHA's UO dated 29th October, 2008 in terms of which the Petitioner would regain his seniority only if he regained Shape-I category “within the validity period of the recommendations of the DPC”. A copy of the said MHA's UO dated 29th October, 2010 was enclosed with the said counter affidavit as Annexure-F.

12. Reading Rule 17.13.1 with the above MHA's UO dated 29th October, 2008, it is obvious that the Petitioner had to regain the Shape-I medical category within 18 months of the preparation of the panel of the DPC since its validity is only to that extent. For some reasons, however, the DB did not advert to the above rules and instructions.

13. Learned counsel for the Petitioner urged that if this Court were to disagree with the decision of the Coordinate Bench in ***Kanwar Singh v. Union of India*** (*supra*), it should refer the matter to a larger Bench.

14. This Court is not inclined to agree with this submission for the simple reason that ***Kanwar Singh v Union of India*** (*supra*) proceeded on the premise that in that case there was no time limit fixed for the validity of the panel prepared by the DPC and the court accordingly proceeded to pass the order in the manner it did. In the present case, however, the facts are abundantly clear. This Court is clearly informed of the exact date on which the Petitioner regained the Shape-I medical category and the dates on which the DPC panel was constituted. There is no doubt that the Petitioner herein regained the medical category of Shape-I only after the expiry of the validity of the panel prepared by the DPC at the meeting in which the Petitioner's juniors were promoted as DC. As a result, the Petitioner's seniority could not be fixed with his juniors. It was fixed correctly upon his regaining the Shape-1 medical category in the manner indicated hereinbefore.

15. For all of the aforementioned reasons, this Court does not find any merit in this petition and the same is accordingly dismissed. No costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

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