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

+ **W.P.(C) 9588/2019**

SUDHINDRA KUMAR SINGH Petitioner

Through: Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Anil Soni, CGSC and Mr. Vinod
Tiwari, GP for Respondents No.1 to 3

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

25.09.2019

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1. The Petitioner who is at present a Second-in-command (2 IC) with the Border Security Force (BSF) has filed this writ petition for a direction to the Respondents to conduct the review DPC for promotion of the Petitioner to the rank of Commandant with effect from 4th July, 2007 when his immediate junior was promoted to the said post and if found fit to promote him to the said rank from that date and thereafter convene the second review DPC for promotion to the rank of Deputy Inspector General (DIG) with effect from 20th July, 2017 which is the date on which his immediate junior was promoted and if found fit then promotion of the Petitioner to the said rank be done with all consequential benefits.

2. The brief facts are that the Petitioner was appointed as an Assistant Commandant (AC) in the BSF on 1st October, 1987.

3. While serving as a Deputy Commandant (OPS) with the 28th Battalion in Mandi Mandir from 12th May, 2000 to 30th October, 2003 the Petitioner was issued a show cause notice dated 12th December 2002 by the Director General (DG) for withdrawing an advance of Rs.1,48,395/- for making payment to muster roll workers engaged in construction work and keeping the amount with him for more than three months. Notwithstanding the Petitioner's reply dated 13th January, 2003 offering an explanation, on 11th March, 2003 the Petitioner was conveyed the DG's displeasure. The Petitioner's appeal against the order was rejected on 24th May, 2004.

4. Meanwhile, on 17th March, 2003 the Respondents convened a DPC for considering promotion of Deputy Commandants (DCs) to the rank of 2-ICs. The Petitioner being in the zone of consideration was considered along with his batchmates and juniors. However, relying on the DG's displeasure, the DPC declared the Petitioner unfit. Accordingly, the Petitioner's batchmates and juniors were promoted as 2-IC with effect from 16th June, 2003.

5. Petitioner states that the declaration that he was unfit was contrary to the OM dated June 1989 and 27th May, 2015 of the Department of Personnel and Training (DOPT).

6. On 19th April, 2004 and 1st April, 2005 the Petitioner was again considered for promotion to the rank of 2-IC but again declared unfit on account of the DG's displeasure. He was ultimately promoted as 2-IC against the vacancy year of 2006-2007 whereas he should have been promoted in vacancy year of 2003. On 4th July, 2007 the Petitioner's

immediate junior Mr. Hemant Kumar was promoted from 2-IC to Commandant whereas the Petitioner being senior in terms of years of service was not so promoted. It was only on 18th March, 2011 that the Petitioner was promoted as Commandant.

7. Aggrieved by his supersession, the Petitioner filed WP (C) No. 19693/2015 in the High Court of Kerala at Ernakulum. On 1st July, 2015 the Kerala High Court disposed of the said writ petition with the direction to the Respondents to consider passing orders on the Petitioner's representation within two months of the receipt of the judgment. On 18th August, 2015 the Respondents rejected the representation of the Petitioner.

8. This led the Petitioner to file another WP(C) No. 31991/2015 in the High Court of Kerala. By a judgment dated 27th November, 2017 the said writ petition was allowed.

9. On 27th February, 2019, in compliance with the judgment of the Kerala High Court, Respondent by an order informed the Petitioner that he was being notionally promoted to the rank of 2 IC with effect from 16th June, 2003 and maintained at a seniority just above Mr. Hemant Kumar, who was his immediate junior.

10. According to the Petitioner having accepted the above plea of the Petitioner, the Respondents were duty bound to hold a review DPC for considering Petitioner's promotion as Commandant and even subsequently to the rank of DIG since by then Mr. Hemant Kumar being the Petitioner's

immediate junior had already been promoted as DIG.

11. Aggrieved by the failure of the Respondents to do so, the present writ petition was filed in which notice was issued on 3rd September, 2019. Time was sought by learned counsel for the Respondents for instructions.

12. Today when the matter was called out Mr. Anil Soni, learned Central Government Standing Counsel handed over a note expressing the stand of the Respondents. The fact that the Petitioner was ultimately promoted as 2-IC with effect from 16th June, 2003, which is the date on which Mr. Hemant Kumar, his immediate junior was promoted, and an order dated 27th February, 2019 was passed to that effect is not disputed by the Respondents. It is stated that the Petitioner was not eligible for promotion to the rank of Commandant with reference to the DPC dated 7th March, 2007 as he did not qualify the mandatory course as on the crucial date of the DPC i.e. 1st January, 2007 and had also not completed two years residential service in the rank of 2-IC. It was further stated that the Petitioner qualified the second commandant course on 26th September, 2009 and therefore was not eligible for consideration in the subsequent vacancy year with reference to the DPCs dated 24th January, 2008 and 18th February, 2009 for the vacancy year 2008-2009 and 2009-2010 respectively.

13. The note further states that the BSF moved a proposal with the Ministry of Home Affairs (MHA) for obtaining relaxation in the mandatory course and MFS for promotion of the Petitioner to the post of Commandant but the MHA returned the file with the following remarks.

“There is no court direction for further promotion. Since the officer does not meet the requirements for promotion as Commandant, he cannot be promoted. No case for seeking any relaxation.”

14. The note further states that the review DPC in respect of the Petitioner was held on 30th May, 2019 for promotion to the rank of Commandant with reference to the DPC dated 15th March, 2010 for the vacancy year 2010-2011 and the DPC minutes were sent to the MHA for approval on 4th June, 2019. The minutes were however returned by the MHA with some observations which had been rectified and the minutes were re-submitted to the MHA on 1st August, 2019. They are still stated to be pending with the MHA.

15. The Court finds that the stand taken by the MHA is untenable. The judgment dated 27th November, 2017 of the Kerala High Court is abundantly clear. The relevant portion thereof reads as under:

"Therefore, going by Clause (iv), Ext PI displeasure ought not have been placed before the DPC as it could not have found a place in the Confidential Reports for the year 1997-98 to 2001-02 when the DPC met on 17.03.2003, The only reason stated in the counter affidavit, for superseding the petitioner in the two successive DPCs from 17.03.2003 was the displeasure Ext PL Ext PI would have found a place in the confidential reports for the period ending 31.03.2003 or thereafter. Therefore, the case of the petitioner is liable to be considered, as in the case of others on the basis of the Confidential Reports for 1997-98 to 2001-02 without reckoning Ext.PI and untrammelled by Ext.PI, by convening the adhoc DPC. As there is no other reason for his supersession, the petitioner would be entitled to be granted promotion on the basis of findings of the DPC with effect from the date on which his junior was promoted.

13. However, it is to be noted that the petitioner did not challenge

the denial of promotion until the Government of India issued Ext P5 Office Memorandum in the year 2015 i.e., for a period of 12 years, though representations and appeals were submitted in the meanwhile. As rightly pointed out by the learned CGC, there is inordinate delay.

14. Therefore, I am of the view that the petitioner shall not be granted the monetary benefits except by way of fixation of pay and future benefits, consequent to the revision of promotion, on the basis of the findings of the adhoc DPC. The petitioner would be entitled only for the notional benefits.

15. In the result, there shall be a direction to the respondents to convene a review/adhoc DPC to reconsider the case of the petitioner for promotion as Second in Command on the basis of the confidential W.P. (C) No. 31991 of 2015(Y) reports for the period from 1997-98 to 2001-02 untrammelled by Ext PI and to pass orders in the light of the aforesaid observations and to issue revised orders granting promotion to the petitioner with effect from the date of promotion of his immediate junior. Petitioner shall thereafter be granted the benefit of promotion by re-fixation of his pay. This shall be done within a period of three months from the date of receipt of a copy of this judgment. This writ petition is disposed of accordingly.”

16. It is, therefore, not correct for the MHA to take the stand that there was no Court direction for further promotion. It is obvious that once the Petitioner has been directed to be promoted to 2-IC “untrammelled by the DG’s displeasure” and “to issue revised orders granting promotion to the Petitioner with effect from the date of promotion of his immediate junior” such direction would include not only promotion to the rank of 2-IC but further promotions as well. There was no need to repeatedly go to the Court for each promotion.

17. Once it is acknowledged that it is on account of the mistake committed by the Respondents, in treating the DG's displeasure as a bar to consider the Petitioner's case for promotion at the relevant time, such mistake ought to be corrected by the Respondents with reference to such DPCs where the Petitioner ought to have been considered for promotion. It is unfortunate that the Petitioner has had to file the present writ petition again been forced to litigate to get the full benefit of the above judgment of the Kerala High Court in his favour.

18. Accordingly, the writ petition is allowed and a direction is issued to Respondents to convene a DPC to consider the case of the Petitioner for promotion to the rank of Commandant with effect from 4th July, 2007, that is the date on which his immediate junior was promoted to the said post and if found fit to promote him to the said rank from that date. Thereafter the Respondents will convene the second review DPC for promotion of the Petitioner to the rank of DIG on 20th July, 2017 when his immediate junior was promoted and if found fit to promote him to the said rank from the said date with all consequential benefits including seniority, pay etc.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 25, 2019

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