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

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Date of Decision:18.07.2019

% W.P.(C) 1715/2015

S.K. YADAV

..... Petitioner

Through: Ms. Jasvinder Kaur, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ajay Digpaal, CGSC with Mr.
Soumava Karmakar and Mr. P.N.
Shukla, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 24.04.2014, passed by the respondent rejected the petitioner's representation for re-assignment of his seniority, and consequential anomaly and disparity in pay. The petitioner also seeks a direction to the respondents to accord him notional promotion in the rank of Inspector (GD) w.e.f. the date when his immediate junior Mr. K.L. Lamba was promoted to the rank of Inspector(GD), and, accordingly, to fix his seniority. The petitioner seeks a direction to the respondents to accord notional promotion to the petitioner

to the rank of Assistant Commandant and onwards, till the rank of Commandant, with effect from the date when Mr. K.L. Lamba was promoted and to accordingly fix the seniority in the said ranks.

2. The petitioner was selected in the CRPF as a Sub-Inspector (GD) on 07.09.1981. He joined the post on 16.09.1981. In November 1985, the petitioner went on deputation to Delhi Police. He remained on deputation with Delhi Police till June, 1988. He was repatriated to CRPF in June, 1988. After returning from deputation, on 14.07.1988, the petitioner tendered his resignation from active service in CRPF w.e.f. 31.10.1988. Subsequently, he sought to withdraw his resignation. However, the same was accepted by the respondents. The petitioner assailed the acceptance of his resignation by preferring W.P.(C.) No. 2668/1989 before this Court. That petition was allowed on 09.03.1989 and the respondent was directed to reinstate the petitioner back in service with back wages and consequential benefits. On 28.08.1999, the petitioner was reinstated in service with all back wages and consequential benefits.

3. The petitioner claims that upon his re-joining his service, he realized that persons junior in the rank of Sub Inspector had already been promoted as Deputy Commandant. He also claims that he learnt that during the period of his deputation with Delhi Police, his contemporaries and Juniors had appeared in the test for promotion to the post of Inspector (GD). He claims that while he was on deputation with Delhi Police, he did not receive any intimation from his parent Unit 10 Battalion, nor from DIG (Pers.), CRPF, asking him to undertake the said test, which was essential for consideration

for promotion. He states that he made an enquiry and learnt about the details of promotion granted to his contemporaries and juniors, including Mr. K.L. Lamba. In the aforesaid background, he made a representation to the respondents, which was rejected by the respondents. Consequently, he has preferred the present writ petition.

4. The petitioner sought to place reliance on the standing order No.4 of 79 which, inter alia, deals with promotion from sub-inspector to Subedar (Inspector) List – ‘E’. Learned counsel submits that Clause XV of the said standing order provides that claims of those who are away on deputation, or who due to exigency of service cannot be called for interview and test shall be considered in absentia on the basis of their record and such of them as are recommended by the Board will after, approval of the IGP, be brought on the ‘E’ subject of their satisfactory performance before the next Board. It also provides for filling up of vacancies on ad hoc basis.

5. Learned counsel for the petitioner submits that it was the responsibility of the respondents to inform the petitioner of the promotion process undertaken while he was on deputation, and to proceed in terms of the standing order. Not having done so, the petitioner cannot be put to prejudice and he is entitled to be considered for promotion from the date when his immediate junior – Mr. K.L. Lamba was considered and promoted.

6. The respondents have contested the petitioner’s claim. They have filed their counter-affidavit and have also filed an additional affidavit in compliance of the order dated 18.08.2017, since the petitioner had placed reliance on clause XV of standing order 4 of 79 on the said date before the

Court. The respondents have stated in their additional affidavit dated 04.04.2018, inter alia, as follows:

“2. That in compliance of order dated 18.08.2017 and in response to the Clause ‘XV’ of the Standing Order No. 4/79, the deponent submits that Item No. XV at page No. 10 is pertaining to drawal of “E” list as per Standing Order 04/79 for promotion from Sub-Inspector to Subedar (Inspector) in respect of personnel who were away on deputation or who due to exigency of service could not be called for interview. These instructions were adhered strictly till its existence in Force by the Sectors/ Ranges with the consultation of Directors.

3. The deponent submits that as such, the petitioner was well aware of his case and himself failed to attend requisite promotional test (i.e. ‘E’ LIST conducted during November, 1987 for promotion from SI/GD to Insp/GD). The veracity of his contention that he was not informed about said promotion test during his deputation cannot be cross checked at this belated stage as old records pertaining to the year 1987 already weeded out being their retention period of three years.

4. The deponent further submits that the batch mates of the petitioner who were also on deputation at that time attended the subject promotional test and acquired their promotion in due time. Thus, the contention of the petitioner that other officer were given information and the petitioner was not informed about the promotional test is no tenable.”

7. We have heard learned counsels and considered their respective submissions as well as perused the record.

8. Admittedly, the petitioner came back from deputation to his parent department i.e. CRPF in June, 1988. When he came back, he would have found out as to where his contemporaries and immediate juniors were posted, and in which rank. This was but natural. The petitioner did not raise

any grievance contemporaneously with regard to his not being considered for promotion in absentia. He, in fact, tendered his resignation on 14.07.1988 w.e.f. 31.10.1988. Thus, the petitioner did not intend to continue with his service after he returned from deputation. If he had any grievance in relation to his not being intimated about the promotion process, he should have raised the grievance at that stage. On 15.10.1988 he made a representation to withdraw his resignation. Even then he did not raise any such dispute. The petitioner then preferred W.P.(C.) No. 2668/1989 to assail the acceptance of his resignation. Thus, he had legal advice available to him and yet he did not raise the issue, now raised in the present petition. Only after he was reinstated in service in pursuance of the order passed by the Court, he sought to raise the dispute, for the first time, in 1999. Thus, in our view, it was raised highly belatedly by the petitioner.

9. Pertinently, the petitioner did not face the test at the relevant point of time when his contemporaries did. It appears that the petitioner opted not to face the said test, nor to shoulder the higher responsibilities, since he did not raise a grievance upon his return from deputation. To permit the petitioner to now clam consideration for promotion in the process which was undertaken when he was away on deputation, in our view, would be to grant him undue advantage to which he is not entitled because of his own conduct.

10. Pertinently, the respondents have stated in their additional affidavit that the other batchmates of the petitioner, who were also on deputation at the same time as the petitioner was, attended the subject promotional test

and secured their promotion in due course. Thus, it cannot be said that the petitioner could not have followed suit. Even the records relating to the petitioner have been weeded out and they are not available.

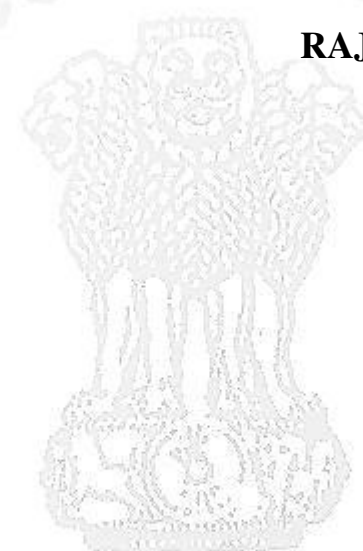
11. In these circumstances, we find no reason to interfere in the present matter. Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

JULY 18, 2019

N.Khanna



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