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

+ **W.P.(C) 3134/2016**

BANSHI DHAR Petitioner

Through: Dr. Kedar Nath Tripathy, Advocate.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Vikram Jetly, CGSC with ASI
Krishan Kumar.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **28.08.2019**

Dr. S. Muralidhar, J.:

1. The short question that arises in this petition is whether the Petitioner is liable to be given protection of his seniority in the rank of Sub-Inspector (SI) (CM) in the Indo-Tibetan Border Police ('ITBP') from the date of promotion of his immediate juniors.

2. The brief facts are that the Petitioner is currently an SI (CM) in the ITBP. He was initially appointed as Constable on 11th March 1991 and promoted as Naik (CM) on 8th February, 1995. He was further promoted as ASI (CM) on 15th May 2008 and as SI (CM) on 30th July, 2008.

3. While working as SI (CM) at the Sector Headquarter (SHQ) in Lucknow

he was, on 21st February 2011 declared to be falling in the 'Low Medical Category' i.e. LMC, S-3 (T-24), P-3 (T-24). A second medical review took place on 6th September, 2011. He continued to be in the LMC, S-2(T-24). A third medical review took place on 4th April 2012. He was still declared LMC, S-2 (T-24) and P-2 (T-24) with effect from that date.

4. The Petitioner states that the fourth medical review was due in October 2012, but could not be carried out. This too is admitted by the Respondents. It is pointed out that the SHQ Lucknow requested the MHCC, Saboli about the medical review of the Petitioner. By a signal dated 18th October, 2012 the MHCC, Saboli informed that a bed was available only in the month of November 2012. However, because of non-availability of the concerned doctor a fresh date for the Petitioner's medical review was given as 29th December, 2012.

5. From the counter-affidavit filed by the Respondents to the present petition it is seen that the Petitioner was not immediately sent for medical review on the due date i.e. 29th December, 2012. Instead, as indicated in para 7 of the counter-affidavit, he was relieved to the Ministry of Home Affairs ('MHA') on 27th December 2012, with a direction to report to the Section Officer (PRS-1) MHA, North Block, New Delhi on 28th December 2012.

6. It is then stated that since the Petitioner was not able to perform his tasks and had absented himself since 8th April, 2013, he stood repatriated from the MHA to the ITBP on 11th April 2013. However, he ultimately reported at the ITBP on 19th July 2013 and was then relieved to his parent office i.e. SHQ,

Lucknow on 25th July 2013.

7. Ultimately, the Petitioner reported to SHQ, Lucknow on 31st July, 2013 and was found to be suffering from Enteric Fever. The Petitioner was sent to MHCC, Saboli on 8th August, 2013 for medical review. He stood admitted between 12th and 26th August 2013. The medical review was held on 27th January, 2014 at the base hospital ITBP Tigri, New Delhi and Petitioner was upgraded to SHAPE 1 with effect from 25th January 2014.

8. It is seen from the above narration in the counter-affidavit of the Respondents that the delay in the Petitioner's fourth medical review which was due on 17th October, 2012 was due to a lapse on part of the Respondents and not due to any reluctance on the part of the Petitioner to go for such medical review. It will be recalled that the medical review could not take place on 18th October, 2012 since the concerned doctor was not available. The admitted position is that it is ultimately only on 27th January, 2014 that the Petitioner's fourth medical review could actually take place. It is nowhere shown that the Petitioner deliberately delayed his medical review and in any event that was not even expected of the Petitioner.

9. Learned counsel for the Respondents refers to the Standing Order No.4 of 2011 dated 13th April 2011 and in particular para 5(e), (j) and (k) which read as under:

“(e) All approved Lists C,D &E will be drawn as per requirement of the force for filling up vacancies and ACP preferably should be done between Jan to March every Year. The crucial date for determining the eligibility conditions will

be 1st January of the year in which Approved Lists are drawn.

(j) The personnel placed on Low Medical Category (Temporary) may be brought in the approved list but his candidature will be considered for promotion only, after they are upgraded to medical category SHAPE-I. There is no time limit for keeping them, in the respective approved list except when removed on other grounds/conditions. However, those who are declared/brought on Permanent Low Medical Category subsequently will be removed from the Approved List.

(k) The Low Medical Category (Temporary) personnel on his/her upgradation to SHAPE-I within a year of he/she brought into approved list will maintain his/her original seniority. If not upgraded to medical category SHAPE-I within a year, his/her seniority will be determined from the actual date of his/her medical up-gradation as SHAPE-I. In other words, he/she will be senior to all those who have been promoted after he/she got upgraded to SHAPE-I.”

10. It is submitted that the crucial date for determining eligibility would be 1st January of the year in which the approved lists are drawn. The Petitioner's name could be brought in the approved list for promotion only after upgradation to medical category SHAPE-I within 1 year of the previous review of the medical board. In the present case, according to the Respondents since the fourth medical review after 4th April 2012 took place only on 27th January 2014, which was beyond 1 year, he could not be brought in the approved list and, therefore, his seniority could not be protected along with his immediate juniors.

11. The Petitioner on the other hand, refers to Standing Order No. 1 of 1992

dated 22nd July 1992 which is specific to ‘protection of seniority of combatised personnel of the force.’ Para 2 of the said standing order reads as under:

“2. After a careful examination of the matter, it has been decided that seniority of such personnel who are otherwise/eligible but could not be detailed on the requisite promotional Course or appear in the promotion test, due to their un-avoidable involvement in the under mentioned Force commitments will be protected, subject to the condition that they qualify in the concerned promotional course/promotion test in the first attempt. They will be allowed to claim their seniority from the dates on which their Juniors are promoted. However, financial benefits will accrue to them only from the dates of taking over charge of the new posts.

(a) Force level/international mountaineering expeditions including detailment as [illegible] for Foreign Mountaineering Expeditions.

(b) Un-avoidable/un-foreseen/operational made scale deployment of the Force including during General Elections.

(c) West Zone Police Tournaments, All India Police Games, All India Police Duty Meet National /International Sports Meets.

(d) Posting /deployment at Indian missions abroad.

(e) Any other peculiar circumstances for which the matter will be decided on merits of the individual case at the Directorate General.”

12. It appears to the Court that the aforementioned Standing Order No.1 of 1992 is specific to the issue of protection of seniority. On the other hand, the Standing Order relied upon by the Respondents is 4 of 2011 is dated 13th

April, 2011 and pertains to promotion/appointment of personnel of CM cadre.

13. From the factual narration, it is plain that the delay of 1 year between the third medical examination on 4th April, 2012 and the fourth medical examination of the Petitioner on 27th January, 2014 was due to reasons not attributable to the Petitioner. It is not as if the Petitioner of his own volition can simply walk into a medical facility and demand a medical review. There have to be specific orders of the Respondents. They were fully aware that the fourth medical review of the Petitioner was due within 6 months from the third review i.e. 17th October, 2012. This was postponed on account of the Respondents not having enough qualified doctors. The Petitioner was also not sent for medical review on the revised date of 29th December, 2012.

14. Consequently the Court accepts the plea of the Petitioner that in terms of para 2 of the Standing Order No.1 of 1992, the Petitioner will be able to claim his seniority from the dates from which his juniors were promoted to the next higher post. A direction is issued to the Respondents to re-fix the seniority of the Petitioner in the rank of SI (CM) with reference to the date of promotion of his immediate juniors. The necessary directions in this regard will be issued within 4 weeks. The petition is disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 28, 2019/ tr