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

+ **W.P.(C) 5670/2018**

SHASHI RANJAN KUMAR Petitioner
Through Mr.Ankur Chhibber, Advocate

versus

UNION OF INDIA AND ORS Respondents
Through Ms. Saakshi Agrawal, GP for
Respondent No.1/UOI with
Mr. Vivek Kumar Singh, DC Law,
Mr. Deepak Kumar, SI and
Mr. R.N.Pareek, ASI, CRPF

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
25.02.2019

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Dr. S. Muralidhar, J.:

1. The Petitioner is an Inspector in the Central Reserve Police Force (CRPF) and is aggrieved by the impugned order dated 10th June, 2016 passed by the Directorate General, CRPF (Respondent No.2) rejecting his prayer that his seniority should be reckoned from December, 2003 i.e. the same date on which the batchmates of the Petitioner who participated in the Staff Selection Commission (SSC) Examination of 2002 and were appointed as Sub-Inspector (SIs), and to grant all consequential benefits accruing thereof especially the Old Pension Scheme which was applicable till 31st December, 2003.

2. This is the second round of litigation. Earlier the Petitioner had filed WP(C) No. 894/2016 with the same prayer. The Petitioner had relied on the decision dated 2nd November, 2012 of this Court in WP(C) No. 3827/2012 (*Naveen Kumar Jha v. Union of India*). In the said writ petition it was pointed out that although the Petitioner took the same written examination for the post of SI in the Central Para-Military Organisation ('CPO') and declared qualified in the written and Physical Efficiency Test ('PET'), he was declared unfit initially in the medical examination. He then filed an appeal for examination by the Review Medical Board ('RMB') by submitting an appeal on 23rd June, 2003 within a month from the date when he was declared medically unfit.

3. The Petitioner did not receive any letter from the RMB for a long period and in the meantime the final result of successful candidates was published. The successful candidates joined different para military force in December 2003. It was only on 1st January, 2004 after a gap of six months that the Petitioner received a letter from the Respondents for appearing before the RMB on 2nd January, 2004. At the medical examination that took place before the RMB, the Petitioner was declared fit. Thereafter he was called for interview and was declared successful. He was given an appointment letter as SI in the CRPF on 12th May, 2005 pursuant to which he joined underwent training in CRPF from 12th May 2005 to 15th September 2006. After successful training, the Petitioner was posted to 68 Battalion at Jammu. It was in the above context that he prayed for counting his seniority, not from 12th May, 2005 but from December, 2003 when his batchmates of the SSC Exam, 2002 were appointed.

4. It may be mentioned here that the Supreme Court by an order dated 12th August, 2003 dismissed the SLP filed by the Respondents against decision of this Court in *Naveen Kumar Jha (supra)*. Meanwhile on the basis of the judgment in *Naveen Kumar Jha (supra)* the Petitioner had made a representation to the Respondents on 5th February, 2013 which was rejected on 29th April, 2013. His second representation was also rejected on 1st August, 2013. The third representation was sent on 17th June, 2015 but the Petitioner received no response. It is in those circumstances that he filed WP(C) No. 894/2016.

5. The operative portion of the order dated 10th June, 2016 disposing of the said writ petition reads as under:

“3. Learned counsel for the petitioners submits that the petitioners herein cannot lose out their seniority merely because their Review Medical Boards were conducted by the respondents belatedly. He states that before filing the present petition, all the petitioners have submitted representations to the respondents requesting them to reconsider their seniority, but to no avail.

4. Learned counsel for the respondents submits that if the representations of the petitioners are still pending, then they shall be considered and a speaking order shall be passed within a reasonable time.

5. In view of the aforesaid submissions, the present petitions are disposed of with directions issued to the respondents to consider the petitioners' pending representation in accordance with law and in the light of the judicial pronouncement in the case of Naveen Kumar Jha (supra), which is stated to have attained finality as vide order of 12th August, 2013 passed in CC No. 3827/2012, entitled U.O.I & Ors. vs. Naveen Kumar Jha, the Special Leave Petition filed by the respondents

UOI, was dismissed by the Supreme Court.

6. Needful shall be done within six weeks from today under written intimation to the petitioners. If the grievance of the petitioners still survives, then they shall be at liberty to seek their remedies in accordance with law.”

6. In the impugned order dated 10th June, 2016 passed by the Respondent No.2 rejecting the Petitioner’s representation, it is stated *inter-alia* that candidates were allotted to the CRPF after a gap of one year and as such they cannot be granted seniority at par with their batchmates as the seniority of these candidates is fixed as per their allotment to CRPF through the merit list on completion of the medical review. It is stated that the inter-se seniority of the candidates fixed as per their allotment in CRPF, on completion of the ‘review medical’ will be treated as “separate in accordance with supplementary list of DASI issued by the SSC.” Since the Petitioner was found fit not in the first examination but in the review medical his seniority could not be fixed at par with personnel who were found fit eligible much earlier during medical examination.

7. This Court has heard the submissions of learned counsel for the parties. The matter of fixation of seniority of those candidates who were declared fit later than others in the same batch for reasons attributable to the Respondents is no longer *res integra*. This principle has been settled in ***Naveen Kumar Jha*** (*supra*) which has been affirmed by the Supreme Court. In the present case although in the initial medical examination the Petitioner was declared unfit, the review medical examination declared him fit. The Petitioner had submitted his appeal for being examined by the RMB within

the time stipulated. The delay in six months in calling him for the review medical examination was entirely attributable to the Respondents.

8. In similar circumstances this Court in its decision dated 28th November, 2017 in WP(C) No. 8546/2016 in **Anjan Kumar Mandal v. Union of India** while allowing the petition directed as under:-

“18. For the aforesaid reasons, the present petition is allowed. A writ of mandamus is issued to the respondents, directing them to refix the seniority of the petitioner as an Assistant Commandant, in accordance with Rule 8 (b) (2) of the CRPF Rules by granting him seniority with reference to those Assistant Commandants who had joined CRPF as members of the 41st Batch. The petitioner shall also be entitled to all consequential benefits except for back wages, on the principle of not having shouldered the responsibilities of the higher post.”

9. There were two other decisions where following decision in **Naveen Kumar Jha (supra)** where this Court allowed similar reliefs. One was the decision dated 30th July, 2014 in WP(C) No. 4348/2014 (**Durga Nandan Srivastava v. Union of India**). The other the decision is dated 9th April, 2015 in WP(C) No. 3348/2015 (**Shashank Shekhar Mishra v. Union of India**). Recently in a decision dated 6th December, 2018 in WP(C) No. 6275/2016 (**M.V.Sheshagiri v. Union of India**), this Court in similar circumstances held as under:

“19. The facts of the present case thus unequivocally establish that it is the Respondents who are to be blamed for depriving the Petitioners from joining the services of the Respondents along with their batch mates who had been successful under the respective examinations. Petitioners are certainly not at fault. It is also undisputed that Petitioners are losing on their seniority, as they were unable to join the training with their batchmates. The factors for the delay discussed above are squarely attributable to Respondents.

20. There are several other decisions of this Court, where the Petitioners who were similarly deprived of the opportunity to join with their batch mates for training, on account of delay in conducting Review Medical Examination, have been granted relief by this Court. It would thus be relevant to note few of such decisions being ***Avinash Singh v Union of India 2011 SCC OnLine Del 2432, Gurnam Singh v Union of India (2015) 217 DLT 586 (DB), Rajendra Singh v Union of India 240 (2017) DLT 576, Durga Nandan Srivastava in W.P. (C) No. 4348/2014, Amarendra Kumar v Union of India 2010 SCC OnLine Del 2565 and Anjan Kumar Mandal v Union of India 2017 SCC OnLine Del 12028.***

21. We have considered the afore-noted judgments and note that this court has repeatedly held that in case the employer has caused delay in the joining of a candidate, the employee should not be deprived of his seniority. The facts of the present case are squarely covered by the aforesaid decisions of this Court as well as by the decision in ***Naveen Kumar Jha*** (supra).

22. The counsels for the Respondents have also countered the present petition on the ground that there has been a delay on the part of the Petitioners in approaching the Court. The judgment of this Court in ***Naveen Kumar Jha*** (supra), was challenged by the Respondents before the Supreme Court. The challenge could not be sustained and the petition was dismissed. We are informed that Respondents have since implemented the aforesaid decision. On this issue, it would be apt to refer to the judgment of the Supreme Court in ***State of Uttar Pradesh v. Arvind Kumar Srivastava 2015 1 SCC 347*** has held as under:

“23. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the Appellants as well as the Respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount

to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma and Ors. v. Union of India* (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

23. In view of the aforesaid decision, since the Petitioners are claiming parity with *Naveen Kumar Jha (supra)*, we would not like to deny them the relief on account of delay in approaching the Court. A writ of mandamus is issued to the Respondents directing them to notionally re-fix Petitioners' seniority with reference to his merit position in the select list in their respective examinations, that is, with those who have joined the CRPF pursuant to the said examinations. Petitioners shall also be entitled to all consequential benefits, except for back wages.

24. Respondents are also directed to treat the Petitioners as members of the old pension scheme that was in force till 31st December 2003.”

10. For all of the aforementioned reasons, the impugned order dated 10th June, 2016 is set aside and a direction is issued to the Respondents to fix the seniority of the Petitioner along with this batchmates of the SSC 2002 from the same date when they were appointed in December, 2003 and to also grant him all consequential benefits from that date, except arrears of pay. The consequential order shall be issued within eight weeks.

11. The petition is allowed in the above terms with no order as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 25, 2019

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