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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7532/2016**

SHIVKANT

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.
versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Vijay Joshi, Senior Panel Counsel
along with Mr. Deepak Kumar, SI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **09.01.2019**

SANJEEV NARULA, J:

CM No. 760/2019 (for condonation of delay)

1. For the reasons stated in the application, the delay in filing the additional affidavit by the Respondents is condoned and the application is disposed of.

W.P.(C) 7532/2016

2. The present petition under Article 226 of the Constitution of India, sought the following reliefs:-

“1. Issue a Writ of Certiorari for quashing the letter dated 5.7.2016 whereby the application of the petitioner has been returned on the ground that the petitioner is not SHAPE-1 category, and

2. Issue a writ of mandamus directing the respondents to treat the petitioner as SHAPE-1 category after grant of relaxation as provided in standing order 4 of 2008 dated 29.10.2008 and issue an admit card to the petitioner to appear in the LDCE 2015-16

examination for the post of Assistant Commandant which is scheduled to be held on 28.8.2016, or

3. In the alternative direct the respondents to promote the petitioner to the rank of Inspector with effect from the date his juniors have been promoted to the said rank with all consequential benefits.

4. Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case.”

3. The Petitioner had applied for Limited Departmental Competitive Examination (LDCE), 2015-2016. His application was returned with the remarks that he has been placed in Medical Category Shape A-2(U)(P) and since Shape A-1 Medical Category is mandatory for LDCE, he could not be allowed to appear in the said examination. Against the aforesaid rejection, he made a representation requesting the Medical Category A-2 be treated as Shape A-1 for pre-promotional course.

4. This Court *vide* order dated 26th August, 2016 permitted the Petitioner to appear in the examination. On 27th April 2017, the Petitioner admitted that he had not qualified LDCE and therefore the prayer No. 2 referred above did not survive. Learned counsel for the Petitioner made a statement to this effect. The order dated 27th April, 2017 reads as under:-

“1. The petitioner having not qualified the Limited Departmental Competitive Examination, prayer 2 does not survive. To this extent, counsel for the petitioner has accepted and made a statement.

2. Counsel for the petitioner, however, has drawn our attention to

paragraph 17 (page 6) of the writ petition. He submits that the petitioner was sent for promotional course in September, 2013. It is submitted that as per the policy, the petitioner is entitled to promotion to the rank of Inspector from the same date his batch mates have been promoted i.e. 31st March, 2016 and 29th June, 2016. It does not matter whether the petitioner was sent for promotional course in June, 2013, though he should have been sent for the said course earlier.

3. The respondents will answer the said contention by filing an affidavit within a period of six weeks from today. Counter affidavit will also refer to and meet the contention relying upon standing order dated 26th July, 2012.

4. Rejoinder, if any, may be filed within four weeks after service of the counter affidavit.

5. Relist on 4th September, 2017.”

5. We now proceed to examine if the Petitioner is entitled to the remaining reliefs. The facts of the present case in brief are that the Petitioner was appointed as Constable (G.D), CRPF on 1st June, 2004 and he was posted to 89 Bn in Rourkela in Odisha in July 2005. In 2007, his unit moved to Kashmir Badgaon where he remained till 2009. Thereafter, the Petitioner was posted to Delhi.

6. The Petitioner applied for the post of Sub – Inspector in 2007 by way of direct recruitment conducted by Staff Selection Commission (SSC). On his successful completion of the examination, he was appointed as Sub-Inspector in CRPF on 14th December, 2009. He was posted at various places during his tenure as Sub-Inspector in CRPF.

7. On 25th January, 2013, the Petitioner was detailed along with his company to fight the naxalites. On the said date, an unfortunate incident took place. During the combat, while Petitioner along with his company was climbing the hill, his foot slipped and he seriously injured his radial hand (left hand) and the elbow of the said arm was separated.

8. The Petitioner was subsequently airlifted and transported to Gadchiroli Hospital. A Court of Inquiry was ordered to ascertain the circumstances under which the Petitioner had suffered the injury in left elbow. The Court of Inquiry established that the Petitioner had suffered the injury while he was on duty during operation at Village Laheri, Metabera, Michbera U/PS Bhamragarh, Distt. Gadchiroli on 25th January, 2013. Petitioner was not at fault or in any way responsible for the injury. It was also confirmed that the injury occurred when Petitioner was on bona fide Government duty. The opinion of the Court of Inquiry was placed before the Commandant (the Competent Authority) who agreed with the aforesaid findings and held that “the individual is not found at fault or held responsible for the injury occurred as the individual was on bona fide Govt. duty”. The Commandant further held that he should be given all service benefits as per rules/instructions.

9. In para 5 of the counter affidavit filed by the Respondents it is averred that since the Petitioner was eligible/willing for Inspector Promotion Course (IPC), Respondents vide order dated 29th July, 2013, detailed him to undergo Inspector Promotional Course Sl. No. 06 commencing from 5th August, 2013 till 11th September, 2013 at CTC, CRPF Gwalior and Coimbatore. At the

same time it is also stated that, the Petitioner despite being eligible/willing for Inspector Promotional Course (IPC) SL No. 06, could not be detailed due to Low Medical Category (Medical Category Shape-A3u(T-24) as on 30.04.2013) and also on account of his ongoing physiotherapy treatment. Though Petitioner's chance for undergoing the aforesaid course was protected, however, his seniority could not be protected in terms of Para 3 (b) of the letter dated 26th July, 2013 which stipulates that **“the chance to attend promotional course in respect of those placed in LMC SHAPE-2 to SHAPE-4 may be protected and their seniority is not required to be protected.”**

10. The Petitioner appeared in IPC Sl. No. 07 from 30th September, 2013 to 5th November, 2013, at CTC, CRPF, Gwalior and Coimimbatore and was declared pass with grading “BY” and was promoted as per his seniority.

11. The learned counsel for the Petitioner submits that Petitioner is entitled to be promoted in the rank of Inspector from the date his juniors were promoted i.e. 31st March, 2016. He submits that though the Petitioner has been granted promotion vide order dated 24th August, 2016 to the rank of Inspector, however that is pursuant to his successful completion of IPC Sl. No. 07. He submits that the Petitioner's seniority should be counted in respect of IPC Sl. No. 06 from the date his juniors got promoted.

12. He drew the attention of this Court to an order dated 6th April, 2018, which records that the counter affidavit filed by the Respondents gives no proper explanation. By the said order, Respondents were directed as under:-

“1. Counter affidavit has been filed by the respondents. Learned counsel for the petitioner states that he does not wish to file a rejoinder. He alludes to the stand taken by the respondents in para 4 of the counter affidavit and submits that the promotional course in question to be undergone by Sub Inspectors for promotion to the post of Inspectors, was conducted between 05.08.2013 to 11.09.2013 and the plea taken by the respondents that the petitioner could not be detailed for the said course due to 'Low Medical Category' on account of his undergoing treatment of Physiotherapy, is falsified by the fact that even when he was sent to participate in the same promotional course in the next session held between 30.09.2013 to 05.11.2013, the petitioner was still undergoing Physiotherapy. Having passed the said course, the petitioner was duly promoted, but from a subsequent date.

2. Learned counsel for the respondents is directed to file an affidavit explaining the aforesaid ambiguity in the counter affidavit, particularly, with reference to the averments made in paras 4 to 6 of the brief facts. Needful shall be done within four weeks with a copy to the other side. Reply, if any, to the affidavit may be filed by the petitioner within four weeks thereafter.

3. List on 09.01.2019.”

13. Pursuant to the aforesaid order, Respondents have filed an additional affidavit wherein they have stated as under:-

“2. That in compliance of order dated 06.09.2018 passed by this Hon'ble Court the present additional affidavit is being filed by the respondents.

3. That the answering respondent respectfully submits that as per office order No. C.IX-2/2013-Adm-I-DA-3 dated 29/07/2013, the petitioner was eligible/willing for Inspector Promotional Course Sl. No. 06 commenced wef. 05/08/2013 to 11/09/2013 at CTC,

CRPF Gwalior and Coimbatore but could not be detailed due to Low Medical (medical category SHAPE-A3u(T-24) as on 30/04/2013) as well as the petitioner was under physiotherapy treatment of hand, accordingly chance has been protected but his seniority have not been protected as per para No. 3 (b) of Dte. letter No. P.VII-20/2012-Estt dated 26/07/2012 due to his physiotherapy was going on.

4. That though the petitioner was SHAPE-3 at the time of detailment of Sl.No. 6 & 7 but in view of his case covered under the preview of Estt. Dte letter No. No.P.VII-20/2012-Estt dated 26/07/2012, his medical category was treated as SHAPE-I as per above orders. However, in view of willingness submitted by the petitioner in writing, the petitioner was sent on IPC Sl.No.-7.

5. That the petitioner has already been relieved on transfer on promotion to 76 Bn on 1611112018 (AN).”

14. According to the learned counsel for the Petitioner, the Respondents in the aforesaid affidavit have admitted that the Petitioner was not detailed for promotional course Sl. No. 06 that commenced w.e.f. 5th August, 2013 to 11th September, 2013 on account of the Low Medical Category and also on account of the fact he was undergoing physiotherapy treatment for his injured hand.

15. In the additional affidavit, the Respondents allege that Petitioner was in Shape-3 at the time of his detailment of IPC Sl. No. 06 and 07 but in view of his case being covered under the purview of the order dated 26th July, 2012, his medical category was treated as Shape -1. However, since the Petitioner had expressed unwillingness for IPC Sl. No. 06, he was sent for the subsequent IPC Sl. No. 07.

16. The aforesaid stand taken by the Respondents is completely bereft of merit, inasmuch as the averments made in the additional affidavit are contradictory. On the one hand, the Respondents in para 3 of the additional affidavit noted above, admit that Petitioner was eligible/willing for IPC Sl. No. 06 but he could not be detailed due to his low medical category i.e. Shape-A3u and his chance was protected as per letter dated 26th July 2012. On the other hand, in para 4 it is stated that Petitioner's medical category has been treated as Shape-1 for his detailment in IPC Sl. No.7 in view of his case being covered under the purview of letter the dated 26th July 2012.

17. The stand of the Respondents is *ex-facie* wrong, as concededly as per letter dated 26th July 2012, Petitioner is entitled to relaxation in terms of para 4.17 of SO-04/2008 and in terms thereof his medical category A-2 (U) (P) is to be treated as SHAPE-1. This position is also admitted in the letter dated 5th July, 2016 that reads as under:-

“As individual having Medical Category A2(U)(P). Whereas SHAPE-1 Med Category is mandatory for LDCE. Further A2 category is treated as SHAPE-1 for detailment in promotional course as well as for promotion only as per para 4.17 of SO-04/2008.”

18. In view of the aforesaid, it is evident that Petitioner is entitled to relaxation of his medical category for promotional course as well as for promotion. Therefore, he ought to have been detailed in IPC Sl. No. 06 and the question of Petitioner's willingness does not arise, as admittedly, he was not detailed for the said course on account of his low medical category.

19. For the above reasons, we find no hesitation in allowing this writ petition to the extent that the Petitioner would be entitled to have his seniority fixed w.e.f. 31st March, 2016, when his juniors got promoted to the post of Inspector.

20. The writ petition is allowed in above terms with no order as to costs.

SANJEEV NARULA, J

S.MURALIDHAR, J

JANUARY 09, 2019

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