

\$~6

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

+ **W.P.(C) 11765/2016**

DHARAM NARAYAN BORANA

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Ms. Anju Gupta with Mr. Roshan Lal
Goel, Advocates for UOI.
Mr. R.L. Goyal, Advocate for
CRPF.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

%

08.01.2019

Dr. S. Muralidhar, J.:

1. This is the second round of litigation involving the present Petitioner. He came to the Court earlier with WP (C) 1477 of 2011 in circumstances which require to be noticed hereafter.

2. On 5th March 2003, the Petitioner was enrolled in the Central Reserved Police Force (CRPF) as Sub Inspector (SI). He remained with the 20th Battalion at Tripura from 15th June, 2004 up to 21st May 2006. On 1st June, 2006 he was posted to the Central Training Centre (CTC) IV, Gwalior and remained there till 13th October 2007.

3. On 14th October 2006 the Petitioner was detailed for the SSICC promotional course for the post of Inspector. He completed the said course successfully on 11th January 2007. On 1st February, 2007 the Petitioner made a representation to the Respondents requesting them to treat the period he was posted at the CTC as a duty battalion or to post him to a unit as he was only short of the two-year mark by 24 days.

4. The result of Sub-Inspector (GD) who had qualified the SSICC course was declared on 24th April 2007. A special approved list 'C' GD was released for promotion to the rank of Inspector against the existing vacancies. The Petitioner was one of the candidates who had qualified the said course but on the ground that the Petitioner had not completed the two years mandatory field service in a duty battalion as per the notified Recruitment Rules, 2001 ('Rules'), his name was not included in the special approved list. Officers junior to the Petitioner were, however, promoted since they had mandatory two years field service and had also completed the training for SICC which was mandatory for further promotion to the rank of Assistant Commandant (AC).

5. The Petitioner then made a representation to the Respondents that the delay in counting two years field service should be condoned and that he should be promoted to the rank of Inspector along with his juniors. His request was rejected by signal dated 22nd August 2007.

6. The Petitioner was promoted as Inspector on 15th April, 2008. However, he was not given his seniority from the date his juniors were promoted.

Instead, he was given his seniority from the date of his joining as Inspector. The Petitioner's request that he should be given his original seniority from the date his juniors were promoted as Inspector was rejected by the Respondents first on 14th August 2008.

7. After noticing that similarly situated persons have been granted relief by this Court, a further representation was made by the Petitioner which was rejected by the Respondents on 18th September 2010. This resulted in the Petitioner filing WP(C) 1477 of 2011 in this Court.

8. By the judgment dated 7th March, 2011, the said writ petition was disposed of by this Court on the following reasoning:

“12. Suffice would be it to state that the petitioner had no option but to serve wherever he was required to be posted and had no say in the matter when he was posted at CIT Gwalior. It assumes importance that on 01.20.2007 the petitioner made a representation to be posted at a duty battalion. The same was not even acknowledged. It is thus apparent that the respondents have violated the right of the petitioner to serve in a duty battalion which would have rendered him eligible for promotion as an Inspector. The respondents cannot take advantage of their own wrongs.”

9. The operative portion of the said order dated 7th March 2011 passed by this Court reads as under:

“14. Thus, the writ petition stands disposed of issuing a mandamus to C.R.P.F. to forward the case of the petitioner to Ministry of Home Affairs with a request that Ministry of Home Affairs should exercise its residual power to relax the eligibility criteria requiring petitioner to serve in a duty battalion for two Years. Mandamus is issued to Ministry of Home Affairs to consider the said communication sent by CRPF, keeping in

view the observations made by us hereinabove. Ministry of Home Affairs would consider relaxing the eligibility consideration requiring petitioner to serve in a duty battalion for two years.

15. Needless to state if the decision of Ministry of Home Affairs is favourable to the petitioner, petitioner's, promotion as an Inspector would be reckoned with effect from the date persons immediate junior to the petitioner were promoted as Inspectors. Petitioner would be entitled to all consequential benefits of seniority as Inspector but not the difference of salary. Needless to say, the petitioner would then be sent for the SICC Course required to be undertaken by Inspectors as a condition of promotion to the post of Assistant Commandant."

10. Following the above order, on 9th April, 2012, the Respondents passed an order restoring the seniority of the Petitioner in the rank of Inspector above his juniors by placing him at Sl.No.892A.

11. In the meanwhile, on 8th November 2011, the Petitioner's juniors were considered and promoted to the rank of AC. The Petitioner again made a representation on 16th March 2012 stating that in view of judgment dated 7th March, 2011 of this Court, he had to be considered for promotion to the rank of AC and if found fit, given seniority in that rank from the date that his juniors were promoted as AC.

12. It must be noticed at this stage that the Petitioner was promoted to the rank of AC on 29th January 2013. He was not granted seniority as AC with effect from 8th November 2011 i.e. from the date on which his juniors were so promoted. Initially in the rank of AC, the Petitioner's seniority was therefore fixed below his juniors. However, on 13th May 2013, accepting his

representation, his seniority in the rank of AC was fixed above his juniors. Nevertheless, even then his actual date of promotion to the rank of AC was not notionally re-fixed as 8th November 2011. Further, unlike his juniors, he was not even considered for the grant of Senior Time Scale promotion.

13. Further representations of the Petitioner followed. He also requested that his pay in the rank of AC be fixed after granting him the notional promotion as directed by this Court in its judgment dated 7th March 2011. He pointed out that his juniors were drawing Rs.17,550/- as basic pay whereas he was drawing Rs.16,660/-.

14. The Petitioner further points out that even when the Gradation List of AC was drawn up in 2015, the seniority of the Petitioner continued to be placed below that of his juniors. The date of his joining as AC was still shown as 29th January 2013 instead of 8th November 2011. In order to be eligible for the grant of senior time scale, 4 years period of regular service was essential. While in the case of his juniors, it was completed on 8th November 2015, it was denied to the Petitioner since the list continued showing him as having been promoted as AC only from 29th January 2013.

15. The representations of the Petitioner, thereafter, were rejected thrice, the last rejection being on 11th April 2016. Thereafter, the present petition was filed.

16. In reply to the petition, the stand taken by the Respondents is that the order dated 7th March 2011 of this Court in WP(C) 1477 of 2011 did not envisage the fixing the notional date of the Petitioner's promotion as AC but

only as Inspector.

17. Mr. Ankur Chhibber, learned counsel for the Petitioner has placed reliance on the decision of this Court dated 11th February 2015 in WP(C) 8080 of 2013 (*Jay Pratap Singh v. Union of India*) where in similar circumstances the Court mandated the notional fixation of the seniority of the Petitioner in that case in the rank of AC from the same date when his juniors had been promoted as AC.

18. The Court finds that the Respondents were not justified in their interpretation of the judgment dated 7th March 2011 of this Court. In that judgment, it was made clear that the Petitioner would be entitled “to all consequential benefits of his seniority as Inspector.” This means that after having fixed seniority of the Petitioner as Inspector on par with his juniors, the Respondents had to, on the same logic, consider his promotion as AC from the very date that his juniors were so promoted. In other words, having accepted the judgment of this Court dated 7th March 2011, and having implemented it by restoring the Petitioner’s seniority as Inspector from the date his juniors were promoted, the Respondents were required to consider the case of the Petitioner for promotion as AC on that basis and if found fit, to notionally fix his seniority as AC from the same date when his juniors were promoted as AC. Otherwise at every stage the Petitioner would be lagging behind unfairly and his juniors would be stealing a march on him despite his having succeeded before this Court by way of the judgment dated 7th March 2011. That certainly was not the consequence envisaged by this Court. It is for this reason that this Court made it clear that the Petitioner

would be entitled to “all consequential benefits of his seniority as Inspector.”

19. In *Jay Pratap Singh v. Union of India* (*supra*), the facts were more or less similar. There, by a judgment dated 7th March 2011 Jay Pratap’s seniority as Inspector was reassigned and he was brought on the approved list on the post of Inspector with effect from 8th January 2007 the date on which his juniors were promoted as Inspector. While Jay Pratap’s juniors were promoted as AC on 3rd November 2010, Jay Pratap was not considered for promotion and was granted his promotion as AC only on 27th February 2012. Jay Pratap’s plea for correcting the date of his promotion as AC as 3rd November 2010, the date when his juniors were so promoted, was rejected by the Respondents. He then came to this Court for the second time in WP (C) 8080 of 2013. In those circumstances, the Court observed that there was no application of mind by the Respondents in denying the promotion to Jay Pratap as AC with effect from the same date that his juniors were so promoted. Just as in the present case, Jay Pratap also did not claim any arrears of pay/ back-wages. This Court held that Jay Pratap “would undoubtedly be entitled for promotion from the date on which his juniors were promoted i.e. from 3rd November 2010 as well as notional fixation of pay in the rank of Assistant Commandant from the said date.”

20. In the present case, for the reasons already discussed, and particularly in light of the decision of this Court in *Jay Pratap Singh v. Union of India* (*supra*), the Court finds no justification for denying the present Petitioner the notional fixation of the seniority as AC from 8th November 2011, the

date on which his juniors were so promoted.

21. Consequently, the Court sets aside the orders dated 23rd February 2016 and 24th May 2016 whereby the Respondents rejected the Petitioner's request for that relief and issues a mandamus to the Respondents to notionally fix Petitioner's seniority and pay in the rank of AC from 8th November 2011 on par with that of his juniors. This would mean that the Petitioner will not be entitled to arrears of pay. He would, however, be entitled to all other consequential benefits on the basis of such notional fixation of his pay and seniority as AC from 8th November 2011 onwards. The consequential orders will be issued by the Respondents not later than eight weeks from today. The writ petition is disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 08, 2019

tr