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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 396/2017**

HARVINDER SINGH Petitioner
Through: Ms. Priyanka M. Bhardwaj &
Mr. M.K. Bhardwaj, Advocates

versus

UOI AND ANR Respondents
Through: Ms. Barkha Babbar, Advocate for
Respondent/UOI

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA
ORDER
% **08.01.2019**

1. This is third round of litigation involving the Petitioner who joined the Border Security Force (BSF) as Head Constable (HC) in 1997 in the sports quota. In the first round of litigation he filed W.P. (C) 15547 of 2004 in this Court aggrieved that his juniors in the rank of HC were granted promotion as Sub-Inspector (SI) earlier to him. He prayed that he should be granted promotion as SI from the same date as his juniors were so promoted. During the pendency of that writ petition the Petitioner's juniors were further promoted as Inspector with effect from 13th May 2007. The said writ petition was disposed of on 19th May 2008 by this Court with a direction to the Respondents to take a decision on the Petitioner's request within three months and communicate the decision to him.

2. Consequent thereto, the Respondents by an order dated 12th February

2009 granting the Petitioner promotion as SI with effect from 27th August 2003. Aggrieved, the Petitioner came to this Court for a second time with WP (C) No. 8672/2010 seeking issuance of a mandamus to the Respondents to promote him as SI with effect from 2001 and Inspector from 13th May, 2007, the respective dates on which his juniors were so promoted with all consequential benefits including arrears.

3. WP (C) No. 8672/2010 was disposed of by the Division Bench of this Court by judgment dated 18th September, 2012. As far as promotion for the post of SI is concerned, this Court did not interfere with the decision of the Respondents granting him that promotion with effect from 27th August 2003. However, the Court observed that the Petitioner would be entitled to consideration for notional promotion to the post of Inspector from the date when his immediate juniors were so promoted.

4. It transpires that after the above judgment of this Court, the Respondents promoted the Petitioner as Inspector considering his seniority from 9th September, 2008 and not from 13th May, 2007, which was the date of promotion of his juniors. Subsequently, a contempt petition appears to have been filed by the Petitioner before this Court. However, the said petition was disposed of on 15th September, 2014 with liberty to the Petitioner to file a fresh writ petition. That is how, for the third time the present petition has been filed by the Petitioner seeking a direction to the Respondents to grant him promotion to the post of Inspector from 13th May 2007.

5. The contention of the Petitioner is that the earlier judgment dated 18th September, 2012 has not been complied with by the Respondents in letter

and spirit. He ought to have been promoted as Inspector with effect from 13th May, 2007. It is submitted that the stand of the Respondents that the said order of this Court was fully complied with and that he was granted his promotion as Inspector from 9th September, 2008, the date on which his immediate juniors were so promoted is untenable because there were two juniors of the Petitioner i.e. Raj Kumar and Vikram. While Vikram was promoted with effect from 13th May, 2007, Raj Kumar could be promoted only later i.e. 9th September, 2008 because he failed in the training exam. It is submitted that it is unfair to equate the Petitioner and grant him seniority on par with his junior who had failed the training exam and was therefore granted delayed seniority.

6. To the Court it appears that the above contention is reasonable. The proper way of implementing the earlier directions issued by the Court in its judgment dated 18th September, 2012 would be to grant the Petitioner the date of promotion as Inspector on par with Vikram who passed the exam and not with Raj Kumar who had failed it. In the aforesaid judgment, the Court has categorically noted that the earlier order dated 19th May, 2008 granted the Petitioner promotion with all consequential benefits.

7. As far as the Petitioner's plea that he should be granted also the arrears of pay in the post of Inspector with effect from the same date, the Court is not inclined to grant that relief on the principle of 'no work no pay'.

8. In this regard the counsel sought to place reliance on the judgment of this Court in ***GNCT Delhi v. Sh. Rakesh Beniwal 213 (2014) DLT 748*** which in turn referred to the judgment of Supreme Court in ***Union of India v. K.V.***

Janakiraman AIR 1991 SC 2010. Having examined the said decisions, the Court is of the view that they are distinguishable on facts. In view of the earlier judgment of this Court dated 18th September 2012, the Petitioner would be entitled to have the date of his promotion and pay as Inspector notionally fixed from 13th May, 2007 but would be entitled to draw the salary as Inspector only from the date he actually joined in that post.

9. Accordingly, the petition is disposed of by issuing the direction to the Respondents to fix the notional date of promotion as well as pay of the Petitioner as Inspector from 13th May, 2007 on par with his juniors who got promoted from that date with all consequential benefits except that the Petitioner would not be entitled to arrears of pay in the post of Inspector from 13th May, 2007 till he actually joined in the said post. The consequential orders by way of compliance will be passed by the Respondents within eight weeks.

10. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 08, 2019

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