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

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+ **W.P.(C) 10015/2015**

HC/GD KRISHNA YADAV

..... Petitioner

Through: Mr Kunwar Arish Ali and Mr M. Raja
with Mr Nishant Mohan Prasad,
Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Prasanta Varma, Senior
Government Counsel for UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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12.03.2019

1. The Petitioner who is presently Head Constable/General Duty ('HC/GD') in the Central Reserve Police Force ('CRPF') has filed this petition seeking directions to the Respondents to grant the seniority as HC/GD on par with her junior colleagues with effect from 2008 and consequent promotion as Assistant Sub Inspector ('ASI/GD') in 2014. The further prayer is for directions to the Respondents to give the benefit of Second Modified Assured Career Progression Scheme ('MACP') with effect from 29th December, 2013.

2. The background facts are that the Petitioner joined the CRPF as a lady constable on 29th December, 1993. While her colleagues were sent for Section Commander Course (SCC) No. 19 held in 2001, the Petitioner was

not informed and was not sent for the course. The other colleagues of hers were sent for the said course and they subsequently they became HCs in 2008. The Petitioner, however, continued as Constable /GD. Thereafter, in November, 2014, her colleagues became ASIs (GD). This resulted in the Petitioner being placed much junior to her colleagues.

3. The Petitioner was finally sent for the SCC No. 35 held in the year 2006 and promoted as HC/GD on 7th May, 2010. She is currently in the same post.

4. On 31st January, 2015, the Petitioner made a representation to the Assistant Commandant/HQ, Group Centre, CRPF (Respondent No.3 herein) with regard to her promotion. In it, she mentioned that the colleagues of the Petitioner were sent for Section commander course no. 19 held in 2001 and the Respondents had not informed the Petitioner about the same. The Petitioner's application was forwarded by the Respondent No. 3 to the Deputy Inspector General of Police ('DIGP'), Group Centre, CRPF (Respondent No.2) on 2nd February, 2015. The Petitioner gave a further representation to the Respondent No. 3 on 3rd March, 2015 followed by another application to the Respondent No. 2 on 25th April, 2015. The case of the Petitioner is that having joined the CRPF on 29th December, 1993, she was entitled to the second MACP on 29th December, 2013, on completion of 20 years of service.

5. In response to the notice issued in the present petition, the Respondents have filed their counter affidavit on 2nd March, 2016, stating that on her transfer from 88 (Mahila) Bn to the Group Centre where she reported on 5th

June, 2012, a PE report was received from the 88 (Mahila) Bn stating therein that the Petitioner had “manipulated with the annual remarks in her confidential card for the years 2006 and 2007 and had also changed the last page of her confidential card, with one of her colleagues, on the annual remarks for the year 2010 and 2011 which was duly endorsed”. The Respondents contended that a departmental enquiry was then conducted against the Petitioner and the charges stood proved. The Petitioner was awarded the punishment of stoppage of increment for one year with cumulative effect. In appeal, the punishment was modified as ‘stoppage of one increment without cumulative effect’.

6. The Respondents state that the Petitioner’s case for grant of the second MACP which fell due on 28th December, 2013, was considered by the Departmental Screening Committee on 19th September, 2014 and 15th May, 2015. She was, however, found not fit for that benefit because of the aforementioned punishment awarded to her which was during the ‘currency period’

7. As regards the Petitioner’s claim for grant of seniority since 2008, the Respondents do not dispute that the Petitioner was not detailed in the SSC Serial Nos.19 to 34. When the 88 (Mahila) Bn was asked to forward its comments, they stated in the reply that information regarding the detailing of the Petitioner in SSC SI. No. 19 to 34 are not available and all the files regarding it have already been weeded out. Further it was stated by the unit that the non detailing of the Petitioner in SSC SI. No. 19 maybe presumed that the Petitioner was not considered for detailing.

8. According to the Respondents, the above reply of the 88 (Mahila) Bn was not satisfactory and they were again requested to forward their specific comments. However, comments similar to the earlier one, which did not serve any purpose were received. According to the Respondents, therefore, it is “unable to forward any parawise comments regarding the seniority of the Petitioner”.

9. In other words, the Respondents have no reply whatsoever to the case of the Petitioner about being denied her seniority as HC/GD from 2008. This fact is also pointed out by the Petitioner in her rejoinder.

10. On 20th July, 2016, the following order was passed by the Court:

“1. The wishy-washy pleading in the petition and the wishy-washy counter affidavit misses the point.

2. It appears that the petitioner's grievance is that joining CRPF as a Constable in December, 1993, whereas she was promoted as a Head Constable in the year 2010 persons immediately junior to her and appointed with her as Constables were promoted as Head Constable in the year 2008.

3. From the counter affidavit and the pleadings in the writ petition it appears that name of the petitioner was not sent to undergo the mandatory pre-promotional course with the 19th batch and this appears to be the reason why petitioner could not be promoted when her turn matured.

4. Learned counsel for the respondents is directed to file a better affidavit explaining why petitioner could not be promoted as a Head Constable when the person immediately junior to her was promoted as a Head Constable. The date when promotions were effected would be indicated clearly so would be the reason for

not promoting the petitioner.

5. Needful shall be done within four weeks.

6. Re-notify for September 02, 2016.”

11. Pursuant thereto on 7th January, 2017, another counter affidavit was filed by the Respondent No.2. Virtually, the earlier counter affidavit has been repeated in the subsequent counter affidavit, without any change whatsoever.

12. The resultant position as far as the Petitioner’s claim for seniority as HC/GD with effect from 2008 is concerned, the Respondents have no answer to the same whatsoever. They are unable to explain to the Court as to why the 88 (Mahila) Bn, of which she was part, did not send her for the section commander course no. 19 (SSC No.19) along with her male colleagues in 2001 itself.

13. Learned counsel for the Respondents sought to contend that because of the departmental enquiry against the Petitioner, she was not sent for the SSC Course No.19 in 2001. The above submission overlooks the fact that at the time when her colleagues were sent for SSC No.19 in 2001, there was no departmental enquiry pending against the Petitioner. In other words, there was no impediment whatsoever in sending the Petitioner for the SSC No.19 in 2001.

14. With there being no justifiable reasons for denying the Petitioner the opportunity of the SSC No.19, it appears to this Court that the Respondents

acted arbitrarily in depriving her of the consequent promotion as HC/GD from the same date as her colleagues i.e. from 2008.

15. As regards the further promotion as ASI, the admitted case is that the departmental enquiry into the alleged misconduct of the Petitioner deprived her of the chance for a second MACP. However, in the regular course, with her colleagues having been promoted as ASIs in November 2014, she should also have been considered for that promotion but was not on account of the pending departmental proceedings against her.

16. Admittedly, the punishment awarded to the Petitioner was modified in appeal as 'stoppage of one increment without cumulative effect'. The Court is informed that the appellate order was passed sometime in 2014, as a result of which her promotion as ASI would take effect from expiry of one year i.e. from November, 2015.

17. Consequently, the writ petition is disposed of with directions to the Respondents to issue appropriate orders notionally fixing the date of promotion of the Petitioner as HC/GD from 2008 along with her colleagues and as an ASI with effect from November, 2015. This will be without any benefit of arrears of pay / wages. However, for all other purposes, including fixing of seniority and other consequential benefits, the above order will hold good. The consequential orders be passed by the Respondents within 12 weeks from today.

18. In view of the above, the Petitioner's prayer for grant of the second MACP does not survive.

19. The petition is disposed of with above directions. No costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 12, 2019
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