

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

% **Date of decision: 11th June, 2020**

+ **W.P.(C) No.3461/2020**

DHIREN KUMAR MOHANTY **.... PETITIONER**

Through: Mr. Ankur Chhibber, Adv.

Versus

UNION OF INDIA & ORS. **...RESPONDENTS**

Through: Mr. Harish V. Shankar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

CM No.12275/2020 (for exemption)

1. Allowed, subject to just exceptions and as per relevant rules.
2. The application is disposed of.

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3. This petition, which has come up today for the first time for admission, seeks, (i) issuance of a writ of certiorari to the respondents Central Reserve Police Force (CRPF) for quashing the orders dated 10th June, 2016, 21st May, 2019 and 1st June, 2019 whereby the respondents rejected the representations dated 8th January, 2016 and 10th May, 2019 of the petitioner; and, (ii) issuance of a writ of mandamus directing the respondents to apply Paras 4.16 and 4.17 of the Standing Order No.04/2008 issued by Ministry of Home Affairs (MHA) and to promote the petitioner

from the date his batchmates were promoted i.e. 21st August, 2012 and to count that period for all consequential benefits (and to grant the same relief as granted vide order dated 13th December, 2018 in W.P.(C) No.11263/2015 titled as ***Venkatesh Vs. Union of India***).

4. It is the case of the petitioner, that (i) the petitioner was appointed as an Assistant Commandant in the respondents CRPF in the year 2005; (ii) the petitioner, in order to enhance his career prospects, in the year 2009 opted for deputation to National Security Guards (NSG); (iii) the petitioner, on being selected for deputation, underwent NSG conversion training with effect from 30th June, 2009; (iv) however on 17th July, 2009, during the said training, the petitioner sustained spinal injury; (v) after undergoing treatment, the medical condition of the petitioner was reviewed and the petitioner was placed in P2(T) medical category for four weeks; (vi) the injury sustained by the petitioner was investigated by a Court of Inquiry and vide order dated 2nd September, 2011, the Court of Inquiry held that the injury caused to the petitioner was neither intentional nor due to own negligence of the petitioner and happened while undergoing training and on government duty; (vii) on 6th November, 2010, the condition of the petitioner was again reviewed and the medical category of the petitioner was downgraded to P3(P); (viii) as per Standing Order No.04/2008 of MHA with regard to Instructions for Medical Examination with respect to individuals placed in Permanent Low Medical Category, the individual is to be reviewed after two years; however early review can be requested provided the individual's condition has improved materially; (ix) in accordance with the aforesaid Standing Order, since the petitioner on 6th November, 2010 was

placed in P3(P) category, his next Review Medical Board was due on 6th/5th November, 2012; (x) the respondents, on 26th December, 2011 requested the Inspector General / Director General to conduct a premature medical review of the petitioner since his health condition was improving day-by-day; however no Medical Board was constituted to review the health condition of the petitioner; (xi) as per the Gradation List issued as on 1st January, 2012 of Assistant Commandants, the petitioner was placed at serial no.158 whereas his immediate junior as well as senior were placed at serial nos.160 and 157 respectively; (xii) the petitioner, in the year 2012, was due for his next promotion to the rank of Deputy Commandant and Departmental Promotion Committee (DPC) for the same was held on 30th July, 2012, for the vacancy year 2012-13; (xiii) the respondents, vide order dated 21st August, 2012 issued a list of officers including the persons below the petitioner in seniority, who were promoted to the rank of Deputy Commandant; the name of the petitioner was excluded from the said list, for the reason that the petitioner was placed in a Permanent Low Medical Category as on 6th November, 2012; (xiv) the petitioner was subjected to a medical review on 3rd December, 2012 and was upgraded to P2 and vide order dated 1st March, 2013, the respondents upgraded the medical category of the petitioner to Shape-I; (xv) on the petitioner regaining Shape-I medical category, which is necessary for promotion to the rank of Deputy Commandant, the petitioner was considered by DPC for the vacancy year 2013-14 and promoted to the rank of Deputy Commandant with effect from 29th October, 2013; (xvi) however the petitioner's seniority in the rank of Deputy Commandant was not protected at par with his batchmates who got promoted to the said rank on 21st August, 2012 and which was contrary to Rule 4.16 of the Standing

Order No.04/2008; (xvii) per the said Rule 4.16 “*if the actual promotion of force officer is delayed because of his/her low medical category and he/she is required to regain medical category SHAPE-I, the person below him can (be) promoted, but the officer will regain his/her seniority immediately on his/her, promotion, if he regains SHAPE-I medical category within the validity period of the recommendations of the DPC.*”; (xviii) the respondents issued a fresh seniority list dated 1st January, 2016, wherein the petitioner was placed at serial no.650 instead of at serial no.552 i.e. just below his senior aforesaid as per seniority list dated 1st January, 2012 and who in the seniority list dated 1st January, 2016 was placed as serial no.551; (xix) the petitioner, being aggrieved by the inaction of the respondents of not protecting the seniority of the petitioner at par with his batchmates in terms of Standing Order No.04/2008, preferred a representation dated 8th January, 2016; (xxi) the respondents, vide order dated 10th June, 2016 rejected the representation of the petitioner on the ground that the petitioner was in Permanent Low Medical Category as on the date of DPC i.e. 30th July, 2012, so he was unfit for promotion; (xxii) the petitioner vide letter dated 23rd March, 2018 sought personal audience of Director General, CRPF for redressal of his grievance; (xxiii) in the interregnum, in a similar matter i.e. **Venkatesh** supra, the respondents were directed to pass a fresh order within four weeks, giving the petitioner therein the relaxation in terms of Para4.17(b)(v) of Standing Order No.04/2008; (xxiv) based on the judgment in **Venkatesh** supra, the petitioner yet again represented on 22nd December, 2018, requesting the respondents to consider the case of the petitioner on the same ground as that of **Venkatesh** supra; (xxv) the respondents issued a fresh list of Deputy Commandants as on 1st January, 2019, which though showed

the petitioner at serial no.156 but the senior and junior aforesaid of the petitioner as per Gradation List dated 1st January, 2012 were placed at serial nos.70 and 71 respectively; (xxvi) not protecting the petitioner's seniority even though the petitioner regained Shape-I medical category on 1st March, 2013 and was promoted to the rank of Deputy Commandant on 29th October, 2013, was in violation of Standing Order No.04/2008 and the law laid down in **Venkatesh** supra; (xxvii) the respondents, vide communication dated 19th February, 2019 rejected the representation of the petitioner on the ground that the petitioner was placed in low medical category up to 28th February, 2013 and the DPC for the rank of Deputy Commandant was released during 2012 and owing to the Permanent Low Medical Category, the seniority of the petitioner could not be protected; (xxviii) the petitioner again represented on 22nd April, 2019, 25th April, 2019 and 10th May, 2019; (xxix) the respondents, vide letter dated 10th May, 2019 requested the IGP, CRPF to consider / review the case of the petitioner for reassessment of his seniority in the rank of Deputy Commandant, at par with his batchmates; and, (xxx) the respondents, vide order dated 21st May, 2019 rejected the representation dated 10th May, 2019 on the ground that there was no provision for considering the petitioner for review DPC in case of regaining Shape-I medical category within the validity period of DPC panel.

5. The counsel for the respondents appears on advance notice.

6. We have, at the very outset, enquired from the counsel for the petitioner, whether not the petitioner, even if entitled to any relief on merits, is not entitled thereto for the reason of delay, laches and waiver. As per the petitioner, the batchmates of the petitioner and with whom the petitioner is

claiming parity, were promoted on 21st August, 2012 but the petitioner was wrongly denied promotion at that stage, owing to the respondents wrongly not reviewing the medical category of the petitioner inspite of such review having been sought on 26th December, 2011 and/or delaying the review of the medical category of the petitioner. The cause of action if any to the petitioner, for the wrong if any committed to the petitioner thus accrued on the medical review of the petitioner having not been conducted immediately after 26th December, 2011 i.e. more than nine years prior hereto, or on 21st August, 2012 when his batchmates were promoted i.e. nearly eight years prior hereto. We have further enquired from the counsel for the petitioner, whether not the cause of action if any again accrued to the petitioner on 1st January, 2016 when another seniority list was published and in which also, according to the petitioner his seniority was wrongly reflected. We have further enquired from the counsel for the petitioner, whether not the cause of action if any to the petitioner yet again accrued on 10th January, 2016 when the representation dated 8th January, 2016 of the petitioner was rejected.

7. We have thus enquired from the counsel for the petitioner that once the petitioner is found to have so delayed approaching this Court with the grievance with respect to his seniority, whether not granting any relief as sought to the petitioner, after said delay of more than eight years, would cause prejudice to those who, though in the Gradation List dated 1st January, 2012 may have been junior to the petitioner, but since 21st August, 2012 at least, are senior to the petitioner. We have enquired from the counsel for the petitioner, how the petitioner can be foisted above those who, in the various seniority lists published in the last eight years, have been senior to the

petitioner. In this respect, it matters not that prior thereto, in the Gradation List as on 1st January, 2012, they may have been junior to the petitioner.

8. We have further highlighted to the counsel for the petitioner that the petitioner, as per his own pleadings, inspite of promotion claimed to be deserved by him being delayed by a little over one year, as far back as in 2013, did not raise any protest till 8th January, 2016, when first representation was made by the petitioner. It is enquired, whether not the said conduct of the petitioner also amounts to acceptance by the petitioner of the seniority list and of those who were junior to him as per seniority list as on 1st January, 2012 having become his seniors.

9. The counsel for the petitioner has given two responses. Firstly, it is contended that the petitioner has throughout been representing to the DIGP, CRPF who vide his letter dated 10th May, 2019 to the IGP, CRPF has forwarded the representations of the petitioner for review. The second contention of the counsel for the petitioner is, that the petitioner is fully covered by the dicta of this Court in **Venkatesh** supra, Special Leave Petition preferred whereagainst is stated to have been dismissed. It is also argued that had the Review Medical Board been conducted in the year 2011, as was then sought, the petitioner would have been eligible for consideration for promotion at the same time when his batchmates were considered and promoted.

10. We are unable to agree. Repeated representations do not extend the period of limitation and / or do not explain the delay and laches otherwise in approaching the Court. Rather, from the arguments of the counsel for the

petitioner, it is admitted that the grievance of the petitioner is as old as of the year 2011 when the medical category of the petitioner was not reviewed inspite of demand of the petitioner i.e. nearly nine years old.

11. Attention of the counsel for the petitioner in this respect is invited to ***K.V. Rajalakshmiah Setty Vs. State of Mysore*** AIR 1967 SC 993, ***Jagdish Narain Maltiar Vs. State of Bihar*** (1973) 1 SCC 811, ***State of Orissa Vs. Pyarimohan Samantaray*** (1977) 3 SCC 396, ***Gian Singh Mann Vs. High Court of Punjab & Haryana*** (1980) 4 SCC 266, ***Shiv Dass Vs. Union of India*** (2007) 9 SCC 274 & ***C.B.S.E. Vs. B.R. Uppal*** 129 (2006) DLT 660 (DB), all holding that merely making repeated representations neither explains the delay and laches nor is a good ground for condoning the delay, unless it is a statutory representation. Thus the fact that the petitioner has been making representations since 8th January, 2016 would not explain the long delay therefrom, till today, in approaching the Court. In fact the first representation dated 8th January, 2016, against the grievance which had accrued in the year 2011 or in the year 2013, was itself belated.

12. With respect to reliance on ***Venkatesh*** supra, we have enquired from the counsel for the petitioner, whether not ***Venkatesh*** had approached the Court as far back as in 2015 and as distinct wherefrom, the petitioner has approached the Court now, after nearly five years therefrom.

13. It cannot be lost sight of, that as per the seniority with effect from 21st August, 2012, the petitioner is junior to those who as on 1st January, 2012 were junior to him in the seniority list. Not only did the petitioner at that time not challenge the illegality if any, in his Review Medical Board being

not constituted or in DPC for promotion to the rank of Deputy Commandant being conducted without his Review Medical Examination and/or in those, earlier junior to him, being promoted before him, but even after a fresh seniority list was published on 1st January, 2016 and in which the petitioner though by then also a Deputy Commandant, was junior to those who were earlier junior to him, still did not take any action and the present petition is filed after more than four years therefrom also. It cannot also be lost sight of that the last seniority list was published on 1st January, 2019 and the petition is filed after nearly one and a half years therefrom also. The batchmates of the petitioner who have been so senior to the petitioner since 21st August, 2012, cannot be thrust below the petitioner in the list of seniority, after such long time.

14. The petitioner does not even qualify as a fence sitter qua **Venkatesh** supra, inasmuch as **Venkatesh** supra also was granted relief more than one and a half years prior to the filing of the present petition. This petition appears to have been filed now when the petitioner per chance appears to have come to know of **Venkatesh** supra and when has been advised that his case is similar to that of **Venkatesh**; however forgetting that **Venkatesh** was agitating his rights since 2015. The petitioner has clearly allowed his juniors as on 1st January, 2012 to become and remain his seniors in the seniority lists published thereafter and after such long delay cannot be permitted to rock the seniority list and which is also likely to lead to multiple litigation. In fact there is no explanation whatsoever in the petition or otherwise of such long delay on the part of the petitioner.

15. A fresh seniority list even if published, would not furnish a cause of action, if what the petitioner is aggrieved from in the said seniority list, has existed in the seniority list for over several years prior thereto also.

16. Supreme Court, in **Balakrishna S.P. Waghmare Vs. Shree Dhyaneshwar Maharaj Sansthan** AIR 1959 SC 798, **M.R. Gupta Vs. Union of India** AIR 1996 SC 669, **Shiv Dass** supra, all referred to in **Union of India Vs. Tarsem Singh** (2008) 8 SCC 648, held (i) a 'continuing wrong' refers to a single wrongful act which causes a continuing injury; (ii) 'recurring / successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action; (iii) if the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue; (iv) if however a wrongful act is of such a character that the injury caused by itself continues, then the act constitutes a continuing wrong; (v) in this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the injury; (vi) pay fixation, not in accordance with the Rules, constitutes a continuing wrong as it gives rise to a recurring cause of action each time salary computed not in accordance with Rules is paid and a fresh cause of action arises every month and if the claim in this respect is made belatedly, arrears would not be paid; (vii) the High Court does not ordinarily permit a belated resort to extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties; (viii)

when writ jurisdiction is invoked, unexplained delay coupled with creation of third party rights in the meantime is an important factor which weighs with the High Courts in deciding whether or not to exercise such discretion; (ix) a belated service related claim will be rejected on the ground of delay and laches or limitation; one of the exceptions to the said Rule is cases relating to a continuing wrong and in which case relief can be granted even if there is a long delay in seeking remedy, if such continuing wrong creates a continuing source of injury; but there is an exception to the exception – if the grievance is in respect of any order or administrative decision which related to or affected several others also and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained; and, (x) if the claim involves issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches / limitation will be applied.

17. Applying the aforesaid, the action of the respondents of promoting the juniors of the petitioner before the petitioner and thereby making them senior to the petitioner in the seniority list, even if wrong, though may cause continuing injury to the petitioner, was of a character that it was complete on the day the juniors of the petitioner were promoted before the petitioner, does not qualify as a continuing wrong, to enable the petitioner to approach this Court belatedly.

18. Else, as far back as in ***Tilokchand & Motichand Vs. H.B. Munshi*** MANU/SC/0127/1968, the contention that the right to move the Supreme Court under Article 32 of the Constitution of India being a fundamental right, writ petition filed under the said provision cannot be dismissed on the

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ground of delay or laches since such a course would amount to a denial of fundamental right, was rejected *inter alia* holding it to be settled law in the matter of issue of a writ under Article 226, that the Courts have discretion and may refuse to give relief even though on merits the applicant has a substantial complaint as regards violation of fundamental rights. It was further held that although the Limitation Act, 1963 does not apply, the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured.

19. The petitioner in this writ petition is impugning the seniority list with effect from 2012 and particularly the seniority list drawn up on 1st January, 2016. The remedy of the petitioner in the Civil Court would have been by filing a suit for declaration, falling under Article 58 of the schedule to the Limitation Act, 1963 and the limitation provided wherefor is of three years from the date when the right to sue first accrues. The right to sue, as per the own case of the petitioner, accrued on 21st August, 2012 when the juniors of the petitioner were promoted before the petitioner and this writ petition has been brought long after three years therefrom.

20. In (i) ***K.R. Mudgal Vs. R.P. Singh*** (1986) 4 SCC 531, the challenge to the seniority list was dismissed *inter alia* holding that the petitioner therein had not preferred any objection when the seniority list was first published and had allowed successive seniority lists to be published; (ii) ***C. Jacob Vs. Director of Geology & Mining*** (2008) 10 SCC 115, it was held that every representation to the government for relief may not be replied on merits and

replies even if any cannot furnish a fresh cause of action or revive a stale or dead claim; (iii) ***Naresh Kumar Vs. Department of Atomic Energy*** (2010) 7 SCC 525, it was held that merely because the case of the appellant therein was forwarded by the department for favourable consideration, would not vest any right in the appellant and could hardly be of any material consequence and that if an employee keeps making representation after representation, he cannot claim any relief on that ground; (iv) ***State of Uttaranchal Vs. Shiv Charan Singh Bhandari*** (2013) 12 SCC 179, it was held that even if the Court or Tribunal directs for consideration of representations relating to a stale claim or dead grievance, it does not give rise to a fresh cause of action; that making of repeated representation is not a satisfactory explanation of delay; the claim of promotion is based on concept of equality and equitability, but the said relief has to be claimed within a reasonable time; a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion; remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and would not even remotely attract the concept of discretion; (v) ***Akshya Bisoi Vs. All India Institute of Medical Sciences*** (2018) 3 SCC 391, where dispute pertaining to *inter se* seniority questioning correctness of rankings made on 12th July, 2005 brought before the Court in the year 2017 was held to be manifestly unfair and to unsettle *inter se* seniority; and, (vi) ***Chennai Metropolitan Water Supply & Sewerage Board Vs. T.T. Murali Babu*** (2014) 4 SCC 108, it was held that doctrine of delay and laches should not be lightly brushed aside.

21. Mention may be made of ***H.S. Vankani Vs. State of Gujarat*** (2010) 4 SCC 301 holding that, seniority is a civil right which has an important and vital role to play in one's service career; future promotion of a government servant depend either on strict seniority or on basis of seniority-cum-merit or merit-cum-seniority etc.; seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work; if the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost; such a situation may drive the parties to approach the administration for resolution of that acrimonious situation, which may consume a lot of time and energy. Thus seniority once settled should not be unsettled. Similarly in ***Rajendra Pratap Singh Yadav Vs. State of U.P.*** (2011) 7 SCC 743, it was held that seniority list once published cannot be disturbed at the behest of a person who chose not to challenge it, for four years in that case. It was further held that sanctity of seniority list must be maintained unless there are very compelling reasons. Reference may also be made to judgment dated 22nd April, 2019 of the Division Bench of this Court in W.P.(C) No.2329/2007 titled ***J.B. Sharma Vs. Union of India***.

22. The counsel for the respondents states that the case of the petitioner is not even comparable to that of ***Venkatesh*** supra. It is stated that the medical category of ***Venkatesh*** was not permanently low as that of the petitioner.

23. However having found the petition to be suffering from the malady of delay, laches and acquiescence, we need not go into the said aspect.

24. We accordingly dismiss the petition as barred by time and on the principles of delay, laches and acquiescence and also for the reason of the relief sought by the petitioner affecting the rights of others who are not before this Court.

No costs.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JUNE 11, 2020
‘gsr’..