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

% **Date of Decision: 11th August, 2020**

+ **W.P. (C) 3899/2020**

HEMANT KUMAR

.....Petitioner

Through: Ms. Saahila Lamba, Advocate

Versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Jitesh Vikram Srivastava,
SPC, Ms. Rupali Kapur, GP and
Mr. Prajesh V.S., Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE ASHA MENON

1. The petitioner is an Assistant Commandant in the respondent Central Reserve Police Force (CRPF) and is aggrieved by the fixation of his seniority and has filed the present petition with the following prayers:-

“(i) Issue a writ of certiorari quashing office note dated 04.11.2018 issued by the respondents rejecting the representation of the petitioner;

(ii) Issue a writ of mandamus directing the respondents to fix the seniority of the petitioner with 39th Batch of (Directly Appointed) Assistant Commandant of Central Reserve Police Force;

(iii) Pass any such other orders as it may deem fit to this Hon'ble Court in the facts and circumstances of the case.”

2. The brief facts, as are relevant for the disposal of the petition, are that the petitioner had participated successfully in the examination notified in the year 2005 and held by the Union Public Service Commission (UPSC) in the year 2006, for recruitment of Assistant Commandants (Group A) in the Central Armed Police Forces (CAPF) including the CRPF and result of which examination was announced in October, 2006. Vide letter dated 15th December, 2007 (Annexure P-2), the petitioner was offered appointment as Assistant Commandant in the 39th Batch of the CRPF and was asked to report for basic training at the CRPF Academy, Kadarapur, Gurgaon (Haryana) on or before 15th January, 2008 and informed that “if no reply is received or you fail to report for training by the prescribed date, the offer of appointment shall be treated as cancelled”.

3. The petitioner, by communication dated 10th January, 2008 conveyed his acceptance of the offer for recruitment but stated “due to some private and domestic reasons, which is too important for myself and family, I am unable to join in commencing batch” and requested “....please give me extension to join after coming batches of DAGOS” (Directly Appointed Gazetted Officers). The respondents vide letter dated 18th February, 2008 (Annexure P-4) informed the petitioner that his request for extension of time had been accepted and he had been granted permission to enable him to join till the commencement of the basic training of the next batch of DAGOs. The letter aforesaid also recorded that his assigned seniority would be at the bottom of the next batch with which he would undergo training. The petitioner was further informed

that the date of commencement of training will be communicated to him as and when finalized.

4. The petitioner joined the basic training course with the 40th Batch and on successful completion thereof was issued an appointment letter dated 23rd March, 2009 (Annexure P-5). His name was placed at Serial No.78, at the bottom of the 40th Batch, as had been duly informed to him on 18th February, 2008. It was only on 17th May, 2014 that he submitted a representation against his placement, which was rejected on 16th June, 2014 pointing out that it had been done in accordance with the OM dated 6th June, 1978. The petitioner also submitted another representation on 18th September, 2018, which was also rejected on 4th November, 2018 (Annexures P-6 to P-9).

5. The OM dated 6th June, 1978 lays down the following procedure for determination of seniority when the candidates recommended for appointment take long time to join or where the offers of appointment have been revived after they have been cancelled:

“(i) In the offers of appointment issued by different Ministries/Departments, it should be clearly indicated that the offer would lapse if the candidates did not join within a specified period not exceeding two or three months.

(ii) If, however, within the period stipulated, a request is received from the candidates for extension of time, if may be considered by the Ministries/Departments and if they are satisfied, an extension for a limited period may be granted but the total period granted including the

extension during which the offer of appointment will be kept open, should not exceed a period of nine months. The candidates who join within the above period of nine months will have their seniority fixed under the seniority rules applicable to the service/post concerned to which they are appointed, without any depression of seniority.

- (iii) If, even after the extension(s) if any granted by the Ministry/Departments, a candidates does not join within the stipulated time (which shall not exceed a period of nine months), the order of appointment should lapse.*
- (iv) An offer of appointment which has lapsed, should not ordinarily be revived later, except in exceptional circumstances and on grounds of public interest. The Commission should in all cases be consulted before such offers are revived.*
- (v) In a case where after the lapsing of the offer, the offer is revived in consultation with the Union Public Service Commission as mentioned in sub-para (iv) above, the seniority of the candidates concerned would be fixed below those who have already joined the posts concerned within the prescribed period of nine months; and if the candidate joins before the candidates of the next selection/examination join, he should be placed below all others of his batch. If however, the candidates*

joins after some or all the candidates of the next selection/examination have joined, he should be:

- (a) in cases of selection through interview, placed at the bottom of all the candidates of the next batch.*
- (b) in the case of examination, allotted to the next years batch and placed at the bottom.”*

6. The learned counsel for the petitioner, Ms. Saahila Lamba submitted that the reliance of the respondents on the OM dated 6th June, 1978 was misplaced as his appointment had never been cancelled and he was not covered by Clause (v) of the said OM. She submitted that the petitioner was entitled to the benefit of the decision of this Court in W.P.(C)10054 of 2016 titled **Roshan Raja versus Union of India & Others** decided on 24th August, 2017, wherein it was held that Clause (v) of the OM dated 6th June, 1978 was attracted only in cases where the appointment had been cancelled and subsequently restored and not in cases where the candidate had sought extension of time for joining the training and had been granted such extension.

7. We have heard learned counsel for the petitioner and considered the judgement relied upon by her as well as the material placed on the record. At first blush, the facts appear to be similar in both cases. However, on scrutiny, we find that there are some material differences in both cases, as we shall discuss presently.

8. This court in **Roshan Raja (supra)** was dealing with the case of a candidate who had been offered appointment as Assistant Commandant (Group A) in the 26th Batch of the CISF on 25th August, 2011 and was asked to report for basic training on 5th September, 2011 at the National

Industrial Security Academy (NISA) in Hyderabad. Vide letter dated 29th August, 2011, he had sought extension of two months to join the basic training on the ground that he was preparing for the Civil Services (Mains) to be held from 29th October, 2011 to 3rd November, 2011. This request was acceded to vide letter dated 22nd September, 2011 recording incorrectly that he had requested permission to join the next batch, which he had not, and was admittedly factually incorrect. The letter had stated that the request for extension had been examined in the light of letter No.I-45022/69/97-Pers.I dated 28th August, 1997 and the competent authority had allowed the petitioner to join NISA, Hyderabad with the next batch of Assistant Commandant (Exe.). The letter had also stated that the seniority would be regulated by the provisions of the DoP&T OM No.9/23/71 Estt. 'D' dated 6th June, 1978. The said candidate subsequently joined the basic training programme for Assistant Commandant (Exe.) CAPFs-2010 (27th Batch) which commenced w.e.f. 29th October, 2012. When the Seniority List was published in September 2014, he found himself placed at the bottom of the 27th Batch with which he had trained. He represented against such assignment of seniority and when the respondents informed him the seniority would be maintained vide letter dated 28th March, 2016, he moved the court.

9. These facts give rise to an impression that the case of the present petitioner is exactly on the same footing and that the view taken by this court in **Roshan Raja (supra)** would apply on all fours to this case, viz. that the loss of seniority as a consequence of Clause (v) of the OM dated 6th June, 1978 was harsh and significant and that the said Clause would not apply in all cases of extension of time to join, but would apply only

when the offer of appointment had lapsed or stood cancelled automatically and was revived. It was held by the Court as follows:

“19. The question relates to interpretation of the last sentence in the letter dated 28th August, 1997. As per the respondents, it means that in all cases where the selected candidate was granted extension of time in excess of four weeks and he joined in the next batch, clause (v) of the O.M. dated 6th June, 1978 would apply. In our opinion the said interpretation of the letter dated 28th June, 1997 read with OM dated 6th June, 1978 is misconceived and should be rejected. We would elucidate and give our reasons below.

20. The letter dated 28th August, 1997 issued by the Ministry of Home Affairs only states that the seniority would be depressed as per the provisions of O.M. dated 6th June, 1978. It does not seek to alter or modify the OM dated 6th June, 1978. The Ministry of Home Affairs’ letter dated 28th August, 1997 has been referred only for the purpose of extension of time, however, on the question of seniority it was stated it would be regulated as per the provisions in OM dated 6th June, 1978. On the other hand “depression” as per OM dated 6th June, 1978 would indicate to the contrary i.e. the seniority would be depressed, when a case was covered by clause (v) and not in all cases where extension is granted. Clause (v) of OM dated 6th June, 1978 applies when the offer of appointment has lapsed and then revived, which is not the case here.”

10. Here the petitioner admittedly on his own, sought extension to join, not of a limited period of two or three months, but with the next batch of

DAGOs and which could well be beyond the period of nine months, within the meaning of Clauses (i) and (ii) supra of the OM dated 6th June, 1978. The petitioner thus cannot claim the benefit of Clauses (i) and (ii) of the OM dated 6th June, 1978. The case of the petitioner falls under Clause (v) of the OM dated 6th June, 1978 i.e. of the petitioner not joining the post “before the candidates of the next selection / examination join” but joining after some or all the candidates of the next selection / examination had joined. Therefore, the interpretation given by this court in **Roshan Raja (supra)** in the facts of that case would not apply to the facts of the present case.

11. Moreover, as noted by us in the order dated 2nd July, 2020, there is much delay in the filing of the present petition. The petitioner had been specifically informed on 18th February, 2008 that vide Clause (v) of the OM dated 6th June, 1978, he would be placed at the bottom of the batch with which he would train. When the appointment letter was issued to him on 25th March, 2009 (Annexure P-5), he was shown at Serial No.78 at the bottom of the list, which also contained names of all those from the 40th Batch with whom he had trained. Thus, it is amply clear that since 18th February, 2008, he knew that he would be placed at the bottom of the next batch and also knew that he had actually been so placed since 25th March, 2009. But he did not protest. His first representation is dated 17th May, 2014. The publication of the Seniority List in the year 2014 will not suffice to explain the inaction of the petitioner as all along he acquiesced to the fact that he had lost his seniority.

12. It is to be noticed that after the publication of the Seniority List, the representation of the petitioner dated 17th May, 2014 was rejected as early

as in June, 2014. However, the petitioner did not initiate any legal action for the proper assignment of his seniority. He slept over the matter for four years till 18th September, 2018, when he made a fresh representation. This representation was also rejected on 4th November, 2018. The present writ petition has been filed on 24th June, 2020. There has been no explanation for these yawning delays in the action taken by the petitioner to protect his seniority.

13. Moreover, the facts of the present case are distinguishable from the case of **Roshan Raja (supra)**. Firstly, the petitioner himself had requested for being placed with the next batch for training, whereas *Roshan Raja* had sought an extension of two months. The petitioner in his letter had, to quote, “*Further I request please give me extension to join **after coming batches of DAGOs***”. Secondly, the petitioner was duly informed that such a request had been acceded to, subject to his seniority being assigned at the bottom of the next batch. The respondents acceded to his clear request to join with subsequent batches, also cautioning in clear terms, to quote, “*You are further informed that you will be **assigned seniority at the bottom of the next batch** with which you will be undergoing basic training in accordance with provisions of sub-para V (b) of DOP&T PM No. 9/23/71-Estt(D) dated 06/6/78*”. This is in stark contrast to **Roshan Raja (supra)** as such a consequence had not been lucidly and clearly told to him and so, till the publication of the Seniority List in the year 2014, *Roshan Raja* remained unaware of his assigned seniority. He also came to the Court in the year 2016 itself immediately on rejection of his representation in March, 2016.

14. It cannot also be overlooked that this Court had found equities in favour of *Roshan Raja*, as he had succeeded in the examination with the 8th rank out of 594 candidates. This Court found that he was never informed clearly and lucidly that he would be placed at the bottom of a subsequent batch with whom he would train and so had no chance to take a considered decision. The quoted letter of 28th August, 1997 was not in the public domain and so, *Roshan Raja* was unaware that asking for extension would have such drastic consequences. No such equities exist in favour of the present petitioner as the letter acceding to his request clearly explained that he would be assigned seniority at the bottom of the subsequent batch. Moreover *Roshan Raja* had sought extension of two months only and the action of not allowing him to join immediately after two months and of making him join with the next batch was attributable to the respondents therein.

15. The petition lacks in merit and is dismissed.

ASHA MENON, J.

RAJIV SAHAI ENDLAW, J.

AUGUST 11, 2020

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