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

Date of decision: 7th September 2020

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W.P. (C) 4949/2020

RAJEEV KUMAR

.....Petitioner

Through: Ms. Saahila Lamba, Advocate.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Arun Bhardwaj, CGSC for
UOI with Mr. Abhishek Sharma &
Mr. Nikhil Bhardwaj, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

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[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. On 5th August 2020, when this petition had come up for admission, *inter alia*, the following order was passed:

“3. The petitioner, holding the rank of Second-in-Command (2IC) in the respondents No. 1 to 3 Central Reserve Police Force (CRPF), has filed this petition impugning the seniority list of the rank of 2IC published on 1st January, 2019 and in which the petitioner has been placed at S. No.91 i.e below respondents No. 4 to 48 and also seeks mandamus to the respondents No. 1 to 3 CRPF to fix the seniority of the petitioner at S. No.46, i.e., above respondent Nos. 4 to 48.

4. It is the case of the petitioner, (i) that the petitioner participated in the examination announced in the year 1997 for recruitment of Assistant Commandants in Central Armed Police Forces (CAPF); (ii) that in the result of the said examination declared in November, 1998, the petitioner was declared 'pass' and was allocated CRPF and was to join for training with the 31st batch of Directly Appointed Assistant Commandants, in April, 1999; (iii) however the petitioner could not join with the 31st batch in April, 1999 because of delay on the part of the respondents in obtaining police verification of the petitioner and which delay was not attributable to the petitioner; (iv) that the petitioner, on 28th January, 2000 was directed to join with the 32nd batch of Directly Appointed Assistant Commandants, for training, on 25th February, 2000; (v) however, the petitioner, owing to family reasons, was unable to join and sought extension; (vi) the respondents No. 1 to 3 CRPF, on 29th March, 2000 granted extension of six months to the petitioner and intimated the petitioner that his seniority would be at the bottom of the 31st batch; (vii) petitioner ultimately joined training on 19th October, 2000; (viii) that the petitioner, after joining as Assistant Commandant, was promoted to Deputy Commandant and thereafter to 2IC; and, (ix) the seniority list of officers holding the rank of 2IC was published on 1st January, 2019 and wherein the petitioner was placed at S. No.91, i.e., at the bottom of the 32nd batch of Directly Appointed Assistant Commandants, i.e., below respondents No.4 to 48 of the 32nd batch.

5. Though in some other matters we have been shown circulars of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions (DoPT) prescribing that all the persons belonging to the same batch of recruitment should be given seniority as per their merit but the petitioner

herein, owing to having sought extension to join and which was granted subject to the condition that his seniority will be fixed at the bottom of 31st batch, accepted the said position.

6. The question which arises for consideration, however, is that even if the petitioner was granted extension, can the petitioner be granted seniority above those officers of the 32nd batch, who had admittedly joined before the petitioner.

7. We also do not find any averment in the petition or any document filed with the petition as to what was the seniority of the petitioner in the ranks of Assistant Commandant and Deputy Commandant. If the petitioner, in the seniority lists of the said ranks also was placed at the bottom of the 32nd batch i.e. below respondent Nos.4 to 48 and did not object, he cannot now, after 20 years when has reached the rank of 2IC, be heard objecting thereagainst and the petitioner, even if entitled to the relief, would not be entitled thereto on the grounds of laches and acquiescence.

8. Neither the counsel for the petitioner nor the counsel for the respondents No. 1 to 3 CRPF appearing on advance notice, have instructions with respect to earlier seniority of the petitioner.

9. It is deemed appropriate to adjourn, to enable the counsels to take instructions.

10. Documents in this regard including the earlier seniority lists, be placed on record before the next date.

11. List on 7th September, 2020.”

2. Though neither party has filed any document as was ordered but the counsel for the respondents No. 1 to 3 Central Reserve

Police Force (CRPF) states that he has with him the seniority lists issued yearly, from the year 2001 to the year 2019 and in all of which the seniority of the petitioner is the same as is impugned in this petition. He thus states that the petitioner having not challenged his seniority for 20 years and having allowed it to settle, the petition is highly belated and barred by limitation. It is also contended that the petitioner has earned two promotions, to the rank of Deputy Commandant and to the rank of 2IC, based on the same seniority and without any protest and without representing against gradation list published year after year.

3. The counsel for the petitioner has gracefully confirmed but states that the petitioner has been making representations against his seniority. However on enquiry it is stated that the said representations have not been filed with the petition.

4. The law in this regard is clear. We have, on a conspectus of case law, in judgment dated 11th June 2020 in W.P. (C) No. 3461/2020 titled ***Dhiren Kumar Mohanty Vs. Union of India***, held as follows:

*“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.”

It was further held that repeated representations do not extend the period of limitation and/or do not explain the delay and laches otherwise in approaching the court. Reference was made 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 explain the delay and laches nor is a good ground for condoning the delay. It was further held that once juniors had been allowed to become seniors and remain seniors in the seniority list published year after year, the petitioner cannot be permitted to rock the seniority list and which will also lead to multiple litigation; a fresh seniority list even if published, was held to not furnish a cause of action, if what the petitioner is aggrieved from in the said seniority list, has existed in seniority list for over several years prior thereto also. Reliance was placed on ***K.R. Mudgal vs. R.P. Singh*** (1986) 4 SCC 531, holding that since the petitioner therein had not preferred any objection when the seniority list was published and had allowed successive seniority lists to be published, his challenge to the

seniority list was not maintainable and to ***Akshya Bisoi vs. All India Institute of Medical Sciences*** (2018) 3 SCC 391, holding that the challenge therein made in the year 2017 to the correctness of rankings made on 12th July 2005, was manifestly unfair and to unsettle *inter se* seniority. Reliance was also placed on ***H.S. Vankani vs. State of Gujarat*** (2010) 4 SCC 301, holding that seniority once settled is decisive and gives certainty and assurance and if the settled seniority, at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility and the enthusiasm to do quality work might be lost; thus seniority once settled should not be unsettled.

5. The counsel for the respondents has also e-mailed to us the instructions in writing received by him, qua merits of the claim of the petitioner, as under:

“2. As per existing rules, seniority of the officer whose verification has been received late and undergone training with next batch has to be fixed in the bottom of his actual batch or at the top of batch in which he has undergone training. On examination of the personal file of the petitioner revealed that the petitioner was selected in SSB (CPOs) Examination-1997 (31st DAGO Batch) and could not undergo training with that batch as his verification received late. If the petitioner had undergone training with 32nd batch, his seniority would have been placed at the top of 32nd batch. However, he requested for extension to join in the next batch which was considered and he had undergone training with 33rd batch DAGO. As per Government of India MHA OM dated 28-08-1997, candidates, who seek extension in joining time in

excess of 4 weeks, may be allowed to join with the next training batch. However, in such cases their seniority will be depressed as per the provisions of DoP&T OM dated 06-06-1978. Since the petitioner requested for extension and undergone training with 33rd batch DAGO, his seniority was depressed as per the above provisions and he was rightly placed at the bottom of 32nd batch/top of 33rd batch in which he had undergone training vide Directorate Office Order No. A.VI.1/2001-Pes-I-KW dated 24-01-2002.”

6. However for the reasons given in the earlier paragraphs, we need not give any finding on merits.
7. The petition is dismissed.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

SEPTEMBER 07, 2020

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