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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 12148/2015 and CM APPL. 2619/2018**

KESHAVE KISHORE SINGH

..... Petitioner

Through: Mr. A.K. Behera and Mr. S.N.Kaul,
Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Ruchir Mishra, Mr. Sanjiv K.
Saxena, Mr. Mukesh K. Tiwari,
Mr. Kavindra Gill and Mr. Ramneek
Mishra, Advocates for R-1 to R-3.
Mr. H.S. Dahiya, Advocate for R-4.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

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ORDER
11.02.2020

1. The challenge in this writ petition is to an order dated 15th October, 2014 passed by the Directorate General, Central Industrial Security Force ('CISF') rejecting the representation dated 1st May, 2014 submitted by the present Petitioner, who is currently serving as Deputy Inspector General ('DIG') in the CISF for restoration of his *inter se* seniority in the rank of DIG.

2. The stand of the Respondents while rejecting the Petitioner's representation, as set out in the said letter dated 15th October, 2014, reads as

under:

“...It is intimated that since the officer was not in SHAPE-I medical category (which is a mandatory requirement for consideration for promotion as per RRs) during the vacancy years 2009-10, 2010-11, 2011-12 and 2012-13, his case was not considered for promotion to the rank of DIG. However, on attaining the medical category SHAPE-I on 24.07.2012, his case was considered for promotion for the vacancy year 2013-14 and on being found fit by the DPC, he was promoted to the rank of DIG. Accordingly, his inter-se-seniority was fixed in the rank of DIG in accordance with the laid down procedure.”

3. The background facts are that the Petitioner was appointed as an Assistant Commandant (‘AC’) Executive in the CISF on 6th March, 1989 through the Civil Services Examination of 1987. He was promoted as Deputy Commandant (‘DC’) on 24th July, 1995, as Commandant on 30th July, 2001, Senior Commandant on 29th June, 2004 and as DIG with effect from 2nd May, 2013.

4. While the Petitioner was serving as Senior Commandant and the next promotional post at the relevant time was that of Addl. DIG (‘ADIG’), a Departmental Promotion Committee (‘DPC’) for consideration of the Petitioner’s case for promotion as ADIG was held on 19th August, 2008 under the aegis of the Union Public Service Commission (‘UPSC’). Although there were 8 vacancies, the Petitioner’s name was not included as he did not meet the eligibility criteria of being in the SHAPE-I Medical Category, as stipulated in the relevant Recruitment Rules (‘RRs’).

5. Meanwhile, Respondent No. 4 was promoted as ADIG as a result of the DPC held on 19th August, 2008 and assumed charge as ADIG from 1st

September, 2008.

6. While the Petitioner did not challenge his non-consideration for promotion to the post of ADIG at that stage, he sought to claim notional promotion from 2008 after he got promoted as DIG finally on 2nd May, 2013, by which time he was in SHAPE-I category.

7. It must be noted at this stage that the Petitioner was examined by the medical board on 4th November, 2009, which was of the opinion that the Petitioner was suffering from “uncontrolled Hypertension with ECG changes as well as increase in T3 level as per available records”. Accordingly, it was opined that he was not eligible for promotion as per the RRs “due to SHAPE medical categorization system in Central Para Military forces and the exemption is not allowed to them”.

8. The case of the Petitioner is essentially based on the instructions issued by the Ministry of Home Affairs (‘MHA’) dated 31st July, 2007, regarding “Medical Examination and Classification of Personnel serving in the CPMF”. Para 4.13 of the said instructions reads as under:

“4.13 Mandatory for the purpose of promotion

Medical Category SHAPE-I will be an essential condition for promotion of all combatised personnel in all groups/ranks/cadres in the CPMFs. In case of those, whose illness is of permanent nature and who are not SHAPE-I, they will be considered for promotion by DPC but will be declared unfit for promotion, even if, they are otherwise fit for promotion in case of those personnel, whose illness is of temporary nature, after considering the cases for promotion alongwith others, if they are otherwise fit, the DPC will grade

them as 'fit for promotion' subject to attaining SHAPE-I medical category. *As and when they regain the SHAPE-I medical category, they will be promoted as per recommendations of DPC. But they will not be entitled to back wages. However, they will retain their seniority*" (emphasis supplied)."

9. According to the Petitioner, since he subsequently regained SHAPE-I, it was essential for the Respondents to have considered him for promotion with effect from 2008 itself and after he got so promoted, to have restored his seniority.

10. It appears that the above instructions have been explained further by a letter dated 29th October, 2008 of the Director (Pers), MHA as under:

"If the actual promotion of a 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."

11. In view of the above clarification, it is plain the Petitioner had to regain SHAPE-I within the validity period of the recommendations of the DPC which met in 2008. However, as far as the Petitioner is concerned, the gap between the DPC that convened in 2008 and the one in which the Petitioner was ultimately considered, is more than 4 years.

12. Mr. Behera, learned counsel for the Petitioner sought to re-explain para 4.13 as well as the further clarification dated 29th October, 2008 by

submitting that it did not affect the right of the Petitioner to retain his seniority.

13. The above submission overlooks the fact that even in terms of para 4.13 of the MHA's instructions dated 31st July, 2007, SHAPE-I Medical Category was an essential condition for promotion. The Petitioner could not have been considered in 2008 when he was not in SHAPE-I Category. The questioning of his retaining his seniority would arise only if he had regained the SHAPE-I medical category happens within the validity period of the recommendation of the initial DPC in 2008 which considered Respondent No. 4 and promoted him as ADIG. With that not being the case, the Court finds no error in the impugned order dated 15th October, 2014, passed by the Respondents rejecting the Petitioner's representation to antedate his seniority as DIG.

14. For the aforesaid reasons the Court sees no merit in this petition and accordingly dismisses the same. The pending application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 11, 2020

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