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

+ W.P. (C) 2809/2021, CM APPLs. 8472-74/2021

BABU P.S.

.....Petitioner

Through: Mr. Deepak Prakash with
Mr. Nachiketa Vajpayee and
Ms. Divyangna Malik, Advocates.

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC
With Kushagra Kumar, Advocate.

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Date of Decision: 02st March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. The petition has been heard by way of video conferencing.
2. By way of the present petition, Petitioner seeks directions to the Respondent Nos. 1 and 2 to promote the Petitioner to the rank of EO/SSPO (2 IC) under the Directorate General Border Security Force, Air Wing Officers (Group 'A' & Group 'B' posts) Recruitment Rules, 1999 read with 3.1.3 – 'Retention of Existing Eligibility Service' in the Office Memorandum dated 31st December, 2010 issued by Department of Personnel and Training. Petitioner also prays that his promotion in terms of prayer (a) be considered effective from 01st January, 2021 and ahead of the promotion of Respondent No. 3, to safeguard and maintain the seniority of

the Petitioner. Petitioner further seeks declaration that the relaxation granted by Respondent No.1 to Respondent No.3 and the consequent promotion of Respondent No.3 ahead of the Petitioner is in violation of the Fundamental Rights of the Petitioner enumerated under Articles 14, 19 and 21 of the Indian Constitution.

3. Learned Counsel for the Petitioner submits that the Petitioner is a Logistics Officer (Deputy Commandant), Border Security Force Air Wing, Logistics Division whose promotion to the rank of Senior Stores Provisioning Officer has been delayed, despite meeting all the eligibility criteria for the said promotion- including the requirement of being in ten years of regular Group A service, in terms of Directorate General Border Security Force, Air Wing Officers Recruitment Rules, 1999.

4. He contends that while the Petitioner's promotion is being wrongfully delayed, Respondent No. 3, whose past service was rendered under 'Short Service Commission' (non-regular service) and who would have been eligible for promotion only in the year 2024, has been unreasonably promoted ahead of the Petitioner, by granting a relaxation of more than three years to Respondent No. 3. He submits that the said action adversely affects the seniority of the Petitioner with respect to the next concerned post.

5. A perusal of the paper book reveals that the petitioner has made three representations dated 3rd November, 2020, 4th November, 2020 and 01st February, 2021 to the Director General, BSF which have not been disposed of till date.

6. Keeping in view the aforesaid, this Court directs the Director General, BSF to decide the aforesaid representations of the petitioner by way of a reasoned order in accordance with law within four weeks.

7. To balance the equities, this Court directs that the decision of the DPC as well as that of the Ministry of Home Affairs shall not be communicated to the respondent no.3 till the aforesaid representations are disposed of and the said decision is communicated to the petitioner. It is pertinent to mention that the aforesaid direction has been passed as the learned counsel for the petitioner assures this Court that respondent no.3 had been served by way of an advance notice sent by e-mail.

8. This Court clarifies that it has not expressed any opinion on the merits of the controversy and all the rights and contentions of both the parties are left open.

9. With the aforesaid direction, the present writ petition along with pending applications stand disposed of.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

MARCH 2, 2021
AS