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

% **Date of Judgment: 15th July, 2021**

+ **W.P.(C) 6562/2021**

ASSTT. COMDTT. SUNIL DOBRIYAL Petitioner

Through: **Mr. A.K. Singh, Advocate.**
Mr. Sunil Dobriyal, Petitioner in
Person.

versus

UNION OF INDIA AND ANR. Respondents

Through: **Mr. Vivek Kumar Singh, DC Law,**
CRPF.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

RAJIV SAHAI ENDLAW, J.

[VIA VIDEO CONFERENCING]

CM No.20586/2021 (for exemption)

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

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3. The petitioner joined respondents Central Reserve Police Force (CRPF), as a Sub-Inspector, in the year 1994. The petitioner, in or about the year 2002, consented for empanelment for a U.N. Mission and further consented that he will not claim seniority, if could not go for Pre-Promotional Course on account of being so empanelled. The petitioner, as per his seniority, became entitled to go for the Pre-Promotional Senior Sub-

Inspector Cadre Course, necessary for promotion from Sub-Inspector to Inspector, on 7th April, 2003 but did not go for the said Course, to save his chance of proceeding for the U.N. Mission for which he had been empanelled. The petitioner, in fact proceeded to Kosovo, on U.N. Mission, on 8th May, 2003 and remained there till 2004. The petitioner finally completed the Senior Sub-Inspector Cadre Course between 24th January, 2005 and 25th March, 2005 and was promoted to the post of Inspector in May, 2005 and was promoted to the post of Assistant Commandant in 2010.

4. We may notice, that as per the averments in the petition, the batchmates of the petitioner, i.e. those who joined CRPF as Sub-Inspector with the petitioner in the year 1994 and who were not empanelled for the U.N. Mission and did their Pre-Promotional Course as per their seniority, were promoted to the post of Assistant Commandant three years prior to the petitioner i.e. in the year 2007.

5. It can safely be assumed that the seniority of the petitioner as Inspector must be of May, 2005 and in the post of Assistant Commandant, of 2010.

6. It is further the case of the petitioner that vide judgment dated 15th March, 2007 of this Court in W.P. (C) 18544/2004 filed by one R.K. Gupta, similarly situated as the petitioner, the said R.K. Gupta was restored his seniority immediately below his batchmates. The petitioner, after nearly four years from the said Judgment, on 3rd January, 2011, made representations and which did not meet with any success, though several replies were sent to the petitioner. Finally, vide communication dated 31st July, 2017 the petitioner was informed that he was not at par with R.K. Gupta, since R.K.

Gupta had not shown unwillingness to undergo the Pre-Promotional Course, while the petitioner had.

7. This petition has been filed, impugning the communication dated 31st July, 2017 and seeking seniority in the rank of Assistant Commandant, at par with his batchmates.

8. The petition has been filed, impleading only Union of India and CRPF as parties. None of the other personnel whose seniority is sought to be affected by the relief claimed in this petition, are impleaded as parties. Needless to state, those promoted as Assistant Commandants between the year 2007, when the batchmates of the petitioner or the last of the said batchmates were/was promoted, and the year 2010, would be affected and prejudiced if the petitioner were to be conferred seniority in the post of Assistant Commandant, of the year 2007.

9. Not only so, it is not the case of the petitioner that his seniority in the post of Inspector was at par with his batchmates. Since the petitioner was promoted as Inspector in the year 2005, while his batchmates were promoted in the year 2003, it can safely be assumed that the present seniority of the petitioner in the post of Assistant Commandant is continuing since the earlier post of Inspector.

10. In *Malcom Lawrence Cecil D'souza Vs. Union of India* (1976) 1 SCC 599, *K.R. Mudgal Vs. R.P. Singh* (1986) 4 SCC 531, *B.S. Bajwa Vs. State of Punjab* (1998) 2 SCC 523, *Bimlesh Tanwar Vs. State of Haryana* (2003) 5 SCC 604, *H.S. Vankani Vs. State of Gujarat* (2010) 4 SCC 301, *Dr. Akshya Bisoi Vs. All India Institute of Medical Sciences* (2018) 3 SCC

391, ***J.B. Sharma Vs. UoI*** MANU/DE/1397/2019, ***Dhiren Kumar Mohanty Vs. Union of India*** MANU/DE/1248/2020 [Special Leave Petition (Civil) No.13229/2020 thereagainst dismissed on 7th December, 2020] and ***Rajeev Kumar Vs. Union of India*** MANU/DE/1693/2020, it has been held that seniority, once long settled, cannot be disturbed. The seniority which is sought to be today disturbed in the year 2021, is existing since the year 2005 if not, the year 2003 and such settled position cannot be disturbed.

11. As far as the contention of the counsel for the petitioner, of the petitioner representing since 2011 is concerned, it is a settled law that merely making repeated representations does not save the limitation. Reference, if any, required can be made to ***K.V. Rajalakshmiah Shetty 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*** (2006) 129 DLT 660 (DB), ***State of Orissa Vs Arun Kumar Patnaik*** (1976) 3 SCC 579, ***Malcom Lawrence Cecil D'souza*** supra, ***K.R. Mudgal*** supra, ***Union of India Vs. Tarsem Singh*** (2008) 8 SCC 648, ***State of Uttaranchal Vs. Shiv Charan Singh Bhandari*** (2013) 12 SCC 179, ***Rajeev Kumar*** supra.

12. Once the representation of the petitioner had not yielded any result, the petitioner ought to have approached the Court immediately. It cannot also be lost sight of that the petitioner has approached the Court after four years from rejection of his representation on 31st July, 2017.

13. As far as argument of claiming parity with R.K. Gupta aforesaid is concerned, R.K. Gupta is found to have agitated his rights as far back as in the year 2004 i.e. immediately when he was denied seniority claimed, at the post of Inspector. On the contrary, the petitioner did not represent against his seniority, as aforesaid, from the year 2003/2005 and represented for the first time in the year 2011 and has filed this petition in the year 2021. For this reason alone, the petitioner is not entitled to the same relief as granted to R.K. Gupta. Moreover, there is a finding in the judgment in the case of R.K. Gupta that he had not expressed unwillingness for the Pre-Promotional Course. On the contrary, it is the pleading of the petitioner in the petition itself that he had consented to not claim seniority if missed the Pre-Promotional Course for the reason of empanelment for the U.N. Mission.

14. The petitioner cannot have the benefit of both i.e. of U.N. Mission as well as seniority and having as far back as in the year 2002-03 agreed to not claim seniority, cannot now, after 18-19 years, be heard otherwise.

15. The counsel for the petitioner contends that R.K. Gupta also had not impleaded those whose seniority was sought to be affected, as parties to the petition. It is further contended that it was the plea of the respondents CRPF in the counter affidavit in R.K. Gupta that he had given his unwillingness but, in the communication dated 31st July, 2017 it has been falsely stated that he had not given his unwillingness for Pre-Promotional Course.

16. No merit is found in the aforesaid contentions. In R.K. Gupta there is a judicial finding of the R.K. Gupta having not given his unwillingness and on the basis thereof it is so stated in the communication dated 31st July, 2017.

17. There is no merit in the petition.
18. Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JULY 15, 2021/hd

