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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 15th December, 2022

+ W.P.(C) 4750/2021 & CM APPL. 41054/2021

G.S. SODHI

..... Petitioner

Through: Mr. Arun K. Sinha, Advocate.

versus

NTPC LTD. AND ANR.

..... Respondents

Through: Mr. Bharat Sangal, Senior Advocate with Ms. Babita Kushwaha and Ms. Anindita Deka, Advocates for R-1.

Mr. Vineet Dhanda, Central Government Standing Counsel with Mr. Hussain Taqvi, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTISINGH

JUDGEMENT

JYOTISINGH, J. (ORAL)

1. Present writ petition has been preferred by the Petitioner seeking the following reliefs:-

“a) Issue a writ in the nature of mandamus against the respondent No.1 herein to direct them to fix the basic pay ab initio and forward the necessary pay particulars to Respondent No.2 for further necessary action.

b) To treat the effective date of acceptance of resignation as the date of acceptance of resignation i.e. 24.10.1991.”

2. Facts to the extent necessary for deciding the present writ petition are that Petitioner joined as a Sub-Inspector on probation in the Andaman & Nicobar Police on 14.03.1974 and was confirmed w.e.f. 14.03.1977. On 31.03.1983, Petitioner joined CBI in the rank of Inspector and on 05.11.1985, he applied for the post of Vigilance Officer (E2) in National Thermal Power Corporation (NTPC) through proper channel.

3. Before his interview in the NTPC, Petitioner was promoted as Inspector in Andaman and Nicobar Police. The post of Inspector was upgraded to Group-B post in CBI and placed in the pay scale of Rs.2000-3200 w.e.f. 01.01.1986. Upon being selected with NTPC, Petitioner requested NTPC to take up the matter with his parent Department to relieve him. Petitioner also made a representation to his parent Department and was assured *vide* letter dated 17.06.1986 that all benefits of service with the parent Department will be given to him and his lien will also be protected as per Rules. Consequent upon joining the NTPC, Petitioner reiterated his request to offer him E-II Grade at the initial stage and parity with his erstwhile junior colleagues on the ground of parity in nature of duties, responsibilities and powers, minimum qualification and salary of the post. Since the matter was under active consideration, Petitioner requested NTPC to approach his parent Department for extending his lien for one more year, which request was acceded to and the lien was extended upto 25.07.1989.

4. It is the case of the Petitioner that the NTPC instead of formulating the terms of his absorption continued to insist on his technical resignation and termination of lien. Petitioner accordingly submitted his resignation on 27.12.1988, which was forwarded by NTPC to his parent Department on 20.06.1989. Simultaneously, Petitioner continued to raise the issue of seniority weightage from one year to one and a half year at par with his erstwhile junior colleagues absorbed in the Vigilance Department during the relevant period.

5. The IG of Police, Andaman and Nicobar Islands conveyed his concurrence on 08.02.1990 to NTPC for acceptance of the resignation and termination of his lien w.e.f. 01.01.1989 and also brought to the

notice of NTPC the requirement of compliance with provisions of Rule 37 of CCS Pension Rules, 1972 i.e. the acceptance of resignation and absorption have to take place simultaneously.

6. It is the case of the Petitioner that one Mr. D.K. Sarin who was holding a permanent post of an Assistant in IB, MHA and had joined ONGC on 18.07.1983, after retaining his lien in the parent Department for two years and having asked for extension for another year, had applied for the post of Vigilance Officer (E-II) in NTPC and had joined on 13.09.1985 after selection. After one year of probation, he was promoted as Senior Vigilance Officer while maintaining his lien in the parent cadre. *Vide* application dated 04.10.1988, Sh. Sarin had sought absorption from 12.07.1986 when his lien in the IB was terminated to enable him to get pensionary benefits. The request of Sh. Sarin was accepted and he was absorbed in NTPC retrospectively. According to the Petitioner, Sh. Sarin was given due benefit of service in ONGC even while being on lien and the seniority weightage of two years was also granted to him retrospectively notwithstanding his confirmation on probation on a later date. The grievance of the Petitioner is that same treatment as given to Sh. Sarin should also be extended to the Petitioner and for this he made a representation on 26.11.1998 followed by subsequent representations in 2005, 2007, 2009 and 2010. Getting no favourable response, the present writ petition was filed in the year 2021 seeking a direction to Respondent No.1/NTPC for acceptance of his resignation w.e.f. 24.10.1991 and granting benefits of seniority, etc. at par with Sh. D.K. Sarin.
7. Learned counsel appearing on behalf of the Respondent No. 2 submits that he has no role in the matter looking at the relief sought in the writ petition.

8. Learned counsel appearing on behalf of Respondent No. 1/NTPC draws the attention of the Court to an order dated 12.11.1997 which is annexed as Annexure P-23, to point out that the entire case set up by the Petitioner falls to the ground as he was never appointed on deputation but the appointment was through direct recruitment. He further submits that in partial modification of the appointment order dated 24.03.1986 and in light of the subsequent communications, regarding grant of one and a half years of seniority weightage, the benefit was actually granted to the Petitioner and the appointment letter was accordingly modified. As a result of the modification, Petitioner was placed in the following Grades:

Senior Vigilance Officer 01.01.1990

Deputy Manager Vigilance 01.04.1993

9. It is also submitted by the learned counsel that three months prior to the retirement of the Petitioner, he was also placed in the Grade of General Manager, which is subject matter of challenge in another writ petition, which is pending disposal.

10. In a nutshell, the stand of Respondent No.1 is that all benefits due to the Petitioner were given to him at the relevant time and there is no cause of action for filing the present writ petition having accepted all the benefits and promotions. In any event, the writ petition is barred by delay and laches. Assuming that the Petitioner had any grievance, it was in the year 1986 and the Petitioner has chosen to wake up from a deep slumber only in 2021 and on this ground alone the Petition deserves to be dismissed.

11. I have heard the learned counsels for the parties and examined their contentions.

12. A careful reading of the writ petition reveals that while the writ petition has been styled as if the Petitioner is laying a claim to retiral benefits, however, the claim of the Petitioner effectively is for absorption from a retrospective date with seniority weightage of one and a half year at the level of E-2 w.e.f. 30.07.1986. Petitioner has placed reliance on the judgment of the Supreme Court in ***R.S. Rawat v. Union of India & Another, (1996) 9 SCC 319*** for the proposition that employee on deputation would be absorbed in the borrowing Department on equivalent post. It is also the contention of the Petitioner that the impugned action of NTPC has resulted in wiping out the service of the Petitioner, more particularly, six years as Inspector of Police.

13. There cannot be any debate on the fact that if the relief sought by the Petitioner is allowed at this stage, the impact would be on the seniority of the other Officers and their consequent promotions. The law on entertaining belated claims of seniority/promotion is no longer *res integra* and Courts have repeatedly affirmed and reiterated that claims for seniority at a belated stage should be rejected at the outset as any interference after a passage of time would disturb vested rights accrued to other employees. In this context, I may allude to judgment of Supreme Court in ***Prahlad Raut vs. All India Institute of Medical Sciences, 2019 SCC OnLine SC 1110***, wherein the Supreme Court has relied on an earlier judgment of the Supreme Court in ***Union of India and Others vs. Tarsem Singh, (2008) 8 SCC 648***, relevant para of which is as follows:

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong.

Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, 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. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

14. In this context, it would be profitable to refer to a few passages of the Supreme Court in ***Shiba Shankar Mohapatra & Others v. State of Orissa & Others, (2010) 12 SCC 471*** which are as follows:-

“18. The question of entertaining the petition disputing the long-standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in *Ramchandra Shankar Deodhar v. State of Maharashtra [(1974) 1 SCC 317 : 1974 SCC (L&S) 137]* considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in *Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110]*, wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under: (*Tilokchand case [(1969) 1 SCC 110]*, SCC p. 115, para 7)

“7. ... The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.”

19. *This Court in Ramchandra Shankar Deodhar case [(1974) 1 SCC 317 : 1974 SCC (L&S) 137] also placed reliance upon its earlier judgment of the Constitution Bench in Rabindranath Bose v. Union of India [(1970) 1 SCC 84] , wherein it has been observed as under : (Rabindranath Bose case [(1970) 1 SCC 84] , SCC p. 97, para 33)*

“33. ... It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years.”

20. *In R.S. Makashi v. I.M. Menon [(1982) 1 SCC 379 : 1982 SCC (L&S) 77] this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006], wherein it has been observed that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured. The Court observed as under : (R.S. Makashi case [(1982) 1 SCC 379 : 1982 SCC (L&S) 77] , SCC pp. 398-400, paras 28 & 30)*

“28. ... ‘33. ... we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. ...’ [Ed. : As observed in Rabindranath Bose v. Union of India, (1970) 1 SCC 84, p. 97, para 33.]

30. ... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the court with the challenge against the seniority principles laid down in the Government Resolution of 1968. ... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of 22-3-1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition insofar as it related to the prayer for quashing the said Government Resolution should have been dismissed.”

21. *The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in K.R. Mudgal v. R.P. Singh [(1986) 4 SCC 531 : 1987 SCC (L&S) 6*

: AIR 1986 SC 2086]. The Court held as under : (SCC pp. 532 & 536, paras 2 & 7)

“2. ... A government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. ...

7. ... Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by writ petitions filed after several years as in this case. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the government servants there would also be administrative complications and difficulties. ... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches.”

(emphasis added)

22. While deciding *K.R. Mudgal case* [(1986) 4 SCC 531 : 1987 SCC (L&S) 6 : AIR 1986 SC 2086], this Court placed reliance upon its earlier judgment in *Malcom Lawrence Cecil D'Souza v. Union of India* [(1976) 1 SCC 599 : 1976 SCC (L&S) 115 : AIR 1975 SC 1269], wherein it had been observed as under : (*Cecil D'Souza case* [(1976) 1 SCC 599 : 1976 SCC (L&S) 115 : AIR 1975 SC 1269], SCC p. 602, para 9)

“9. Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time.”

(emphasis added)

23. *In B.S. Bajwa v. State of Punjab [(1998) 2 SCC 523 : 1998 SCC (L&S) 611] this Court while deciding the similar issue reiterated the same view, observing as under : (SCC p. 526, para 7)*

“7. ... It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.”

(emphasis added)

29. *It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and the laches. The court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum. (Vide Aflatoon v. Lt. Governor of Delhi [(1975) 4 SCC 285 : AIR 1974 SC 2077] ; State of Mysore v. V.K. Kangan [(1976) 2 SCC 895 : AIR 1975 SC 2190] ; Municipal Council, Ahmednagar v. Shah Hyder Beig [(2000) 2 SCC 48] ; Inderjit Gupta v. Union of India [(2001) 6 SCC 637 : 2001 SCC (L&S) 1083] ; Shiv Dass v. Union of India [(2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395] ; A.P. SRTC v. N. Satyanarayana [(2008) 1 SCC 210 : (2008) 1 SCC (L&S) 161] and City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla [(2009) 1 SCC 168]).*

30. *Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”*

15. In view of the law laid down by the Supreme Court as aforementioned, the present writ petition which is highly belated cannot be entertained at this stage. Even assuming the Petitioner had any genuine grievance, he has been acting as a fence sitter for over

two decades and cannot be permitted to rake up issues relating to absorption/seniority/anti-dating of his resignation date.

16. Even otherwise, this Court finds merit in the contention of NTPC that the Offer of Appointment given to the Petitioner was subsequently modified in 1997 itself giving him due weightage of seniority of one and a half years. Order dated 12.11.1997 is extracted hereunder for ready reference:-

“Dear Sir,

Please refer to your representation regarding review of your terms and conditions of appointment in NTPC. After examination of your representation, the competent Authority has decided as follows:-

“1. In partial modification of your office of appointment dated 24.03.86 and subsequent communications regarding grant of one and a half years of seniority weightage in the post of AVO your appointment in NTPC w.e.f. 30.07.186 will be taken as Vigilance Officer. Accordingly, the offer of appointment stands modified to this extent only.

2. As a consequence, you will be deemed to have been placed in the following grades with effect from the dates as mentioned against each:-

Senior Vigilance Officer 1.1.1990

Deputy Manager (Vigilance) 1.4.1993

3. For the items mentioned at para 1 and 2, you will be allowed the consequential financial benefits.

4. You will be considered for promotion to the level of Manager (E-5) w.e.f. 01.04.196, in the ensuing CPC, to assess your suitability for promotion to E-5, based on your performance, Performance Appraisal report.

5. This is in full and final settlement of the issues raised by you, on the subject. ”

17. Petitioner has also availed subsequent benefits of promotion and has been appointed upto the post of General Manager three months prior to his retirement. Be it noted that the order dated 12.11.1997 was never assailed by the Petitioner as it clearly understood the benefits flowing out of the said order.

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18. For all the aforesaid reasons, the writ petition cannot be entertained for agitating a stale claim and is accordingly dismissed along with pending application.

JYOTI SINGH, J

DECEMBER 15, 2022/sn/ha/kks

