Sr. No. 5

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

SWP No. 50/2005
IA No. 48/2005

Shri Rajinder Kumar Pandita, …..Appellant(s)/Petitioner(s)
S/o Shri Badri Nath Pandita
R/o Govt. Quarters, G.C.C. R.P.F.
Bantalab, Jammu.

Through: Mr. M. P. Gupta, Advocate

Vs

1. Union of India ….. Respondent(s)
Through Ministry of Home Affairs North
Block, New Delhi.
2. The Director General, C.R.P.F.
C.G.O. Complex, Lodhi Road,
New Delhi.
3. Inspector General of Police (Ops) CRPF
Jammu.
4. Addl. Dy. Inspector General, C.R.P.F.
Bantalab, Jammu.
5. Deputy Inspector General of Police
(Personal) Office of the Director General
CRPF CGO Complex, Lodhi Road, New
Delhi.
6. Dy. Inspector General of Police (Adm)
C.R.P.F., Jammu.

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Through: Mr. Sunil Malhotra, CGSC

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER
23.11.2023

ORAL

1. The petitioner being aggrieved of his non consideration for promotion to the post of Sub Inspector (M) by the respondents, had filed the two writ petitions before this Court i.e. SWP No. 119/2000 and SWP No. 1427/1997. While both these writ petitions were pending before this Court, the petitioner was promoted to the post of Sub Inspector (M) vide

order dated 31.07.2000. The petitioner, as such, withdrew both the petitions with liberty to prefer the representation in respect of the relief, which was not granted to the petitioner. Accordingly, the petitioner submitted the representation to the respondent No. 5 for grant of retrospective promotion and seniority, which was considered but rejected by the respondent No. 4 vide order dated 16.11.2003.

2. The petitioner being aggrieved of the communication bearing No. P.VII.22/2003-EC-3 dated 16.11.2003, has filed the present petition for quashing of the communication (supra) and also for directing the respondents to extend the benefits of promotion to the petitioner for the post of Sub Inspector (M) w.e.f. Nov., 1995 and fixation of seniority over and above the juniors, who superseded the petitioner. It is stated that till date, the respondents despite request and demand of the petitioner, have not provided the copies of DPC proceedings as well as the orders of promotions passed from time to time, whereby the juniors to the petitioner were promoted. It is contended that the communication impugned dated 16.11.2003 was created belatedly only to justify the wrongs done to the petitioner while superseding the petitioner number of times. It is also urged by the petitioner that the reporting officers should not have shied away from reporting shortcomings in performance and attitude of the officer and the person's aptitudes observed ought to have been brought to the notice of concerned as a measure of advice to cover up and improve his short comings in future. It is further averred that the Censure of December, 1989 was never awarded to the petitioner and also was never

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served upon the petitioner. Likewise, the Censure order of October, 1993 was not served upon the petitioner.

3. The respondents have filed the response stating therein that the representation of the petitioner dated 30.05.2003 was examined in the Directorate General in depth with respect to the recommendations of DPCs right from July, 1990 onwards along with ACRs for the relevant period, service records as well as the court decision in the SWPs filed by the petitioner. After going through the records, the competent authority rejected the representation. It is further stated that the DPC after assessing the Annual Confidential Report for the past 8 years as required under Rules, considered the petitioner and found him unfit for promotion. The petitioner however was found fit by the DPC for promotion during the year 2000 and was promoted as Sub Inspector (M) w.e.f. 11.09.2000. It is also stated that the DPC proceedings were not provided to the petitioner being the documents of confidential nature. It is also averred that the punishment of Censure was conveyed to the petitioner.

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4. The petitioner has also filed the rejoinder to the objections filed by the respondents, thereby stating that the adverse ACRs considered by the DPC for rendering the petitioner ineligible for promotion were not communicated to the petitioner and this fact has been ignored by the Departmental Promotion Committees as the DPCs were under obligation to ask the concerned authorities to make available adverse entries in the ACRs to the petitioner so that he could be in a position to take legal recourse against those entries. The petitioner reiterated that the alleged order of Censure passed by the DIGP Madras in the year 1989 was never

served upon the petitioner and further that there is no punishment order on the record of the respondents, which debars the petitioner from claiming his promotion to the post of Sub Inspector (M) except adverse entries. In nutshell, the stand of the petitioner is that the adverse entries were never communicated to the petitioner and the Censure orders of 1989 and 1993 were never served upon the petitioner.

5. The respondents also filed the response to the supplementary affidavit filed by the petitioner, thereby stating that the petitioner was communicated the adverse remarks vide DIGP, CRPF, Madras communication dated 08.07.1989 and after consideration of his representation, the competent authority found that the remarks recorded in his ACR were justified and the petitioner was intimated about the same vide communication dated 19.10.1989. The respondents have also stated that the punishment was awarded to the petitioner on the basis of departmental enquiry initiated against him and the final orders were communicated to the petitioner but due to weeding out of old record by the Board of Officers on 05.03.1997, the copy of the order along with receipt cannot be placed on record.

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6. Learned counsel for the petitioner has submitted that the petitioner was been wrongly taken out of consideration zone for promotion to the post of Sub Inspector (M) by the Departmental Promotion Committees from time to time as the adverse entries in the ACRs of the petitioner were never communicated to the petitioner. It is further argued that both the Censure orders were not served upon the petitioner.

7. Mr. Sunil Malhotra, learned CGSC submits that while considering the candidate for promotion to the post of Sub Inspector (M), ACRs of 8 years are required to be considered as per Rules. As the petitioner was having adverse remarks, therefore, he was not found fit by the Departmental Promotion Committees for promotion to the post of Sub Inspector (M). He further submitted that the adverse remarks for the period 01.04.1989 to 31.03.1990 were duly communicated to the petitioner. The petitioner had submitted the representations against the adverse entry in ACR for the period 31.03.1989 but his representation was rejected. He further submitted that adverse remarks in ACR for the period 31.03.1990 were also communicated to the petitioner.

8. Heard learned counsels for the parties and perused the record.

9. A perusal of the record reveals that vide order dated 28.10.2003, the case of the petitioner was examined and the representation made by the petitioner for grant of promotional benefits and re-fixation of seniority was rejected on account of following reasons:-

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(a) ACR grading of the petitioner from 1988-89 to 1992-93 and 1994-95 to 1995-96 were not according to prescribed bench mark required for promotion to the rank of SI(M).

(b) The petitioner was awarded one severe Censure by DIGP Madras in Dec. 1989 and one Censure by ADIGP GC BTB in Oct. 1993.

(c) The petitioner was not found fit for promotion to the post of SI (M) by various DPCs convened upto 11/4/2000 as he could not meet the requirement of prescribed bench mark grade and also due to unsatisfactory record of service.

(d) As the petitioner was found fit for the post of SI(M) by the DPC held on 10/11-4-2000, under the arrangements of IGP W/S, he was promoted as SI(M) vide Dt General sig and accordingly placed at appropriate place in the G/List of SI(M) i.e. SI No. 1366 as on 1/12/2000.

10. The record further divulges that pursuant to order dated 28.10.2003, the communication dated 16.11.2003 has been issued. Though the petitioner has not impugned the communication dated 28.10.2003 but the reasons for rejecting the representation have been reproduced in the communication dated 16.11.2003, which was communicated to the petitioner. A perusal of the communication dated 16.11.2003 reveals that the claim of the petitioner for re-fixation of seniority has been rejected as ACR gradings of the petitioner from 1988-89 to 1992-93 and 1994-95 to 1995-96 were not according to the prescribed bench mark required for promotion to the rank of Sub Inspector (M). Further the Censures awarded to the petitioner in the month of December, 1989 and October, 1993 have also been cited as reasons for rejecting the case of the petitioner.

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11. After perusing the record, this Court finds that there is nothing on record to demonstrate whether the adverse entries made in the ACRs of the petitioner w.e.f 01.04.1990 to 31.03.1991, 01.04.1991 to 31.03.1992, 01.04.1992 to 31.03.1993, 01.04.1994 to 31.03.1995 and 01.04.1995 to 31.03.1996 were communicated to the petitioner or not. Further, whether the Censure awarded to the petitioner could have been considered as a cause for rejecting the claim of the petitioner for his promotion by the DPC is also required to be looked into. After perusing the minutes of the

Departmental Promotion Committees, this Court finds that except returning the finding as 'unfit' qua the petitioner, no reason has been assigned for declaring him unfit.

12. In view of the above, this Court deems it proper to quash the communication No. P.VII.22/2003-EC-3 dated 16.11.2003, whereby the claim of the petitioner for promotion and re-fixation of the seniority was rejected and the respondents are directed to consider the claim of the petitioner afresh in accordance with law and pass the appropriate order within a period of three months from the date of receipt of this order. It is made clear that this Court has not made any observations qua the merits of the claims of the petitioner.

13. Disposed of.

(RAJNESH OSWAL)
JUDGE

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Jammu
23.11.2023
Neha-II

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No