

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

% **Reserved on: December 13, 2022**

Pronounced on: February 10, 2023

+ **W.P.(C) 11100/2019**

ROSHAN RAJA

..... Petitioner

Through: Mr. Abdul Azeem Kalebudde,
Advocate

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Avnish Singh, CGSC with
Mr. Santosh Kumar Yadav,
Advocate, H.C. Basant Kumar &
Sub Inspector Prahlad Singh
Devenda, CISF

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. Petitioner, who is posted as Deputy Commandant (Exe) in Central Industrial Security Force (henceforth referred to as the 'CISF') claims to have qualified Central Police Force Examination in the year 2009 and had secured All India Rank No.8 in the final result declared on 13.10.2010. He claims to have been issued Appointment Letter by the respondents on 25.08.2011 for the post of Assistant Commandant (Exe), wherein he was

asked to join his basic training from 05.09.2011. He accepted the offer of appointment vide his communication dated 29.08.2011 and requested the respondents to grant two months' time to join his training. According to petitioner, the said letter was replied by the respondents on 22.09.2011, i.e. much later than when he was supposed to join training on 05.09.2011, wherein it was mentioned that he had sought "Extension for Next Batch" instead of "Extension for Two Months". Petitioner hence could not join his training on 05.09.2011. Vide letter dated 28.09.2012, he was directed by the respondents to join training with the next Batch (27th Batch) from 29.10.2012.

2. Petitioner is aggrieved that in the seniority list notified by the respondents in September, 2014, he was wrongly placed at Sl. No.322 by wrongly taking his initial appointment as 27.10.2012 instead of 25.08.2011. Therefore, petitioner made a representation vide letter dated 27.07.2015 to the respondents, reminder letter dated 02.02.2016 whereof was also sent. The respondents vide letter dated 28.03.2016 informed the petitioner that a similar matter was pending adjudication before the High Court of Hyderabad and he should wait for outcome of the same. Finding no resolution to his grievance, petitioner preferred a writ petition, i.e. W.P.(C) 10054/2016, before this Court seeking restoration of his seniority from the date of his appointment i.e. 25.08.2011. During pendency of the said writ petition, the respondents vide order dated 07.10.2016 promoted one Mr. Ankit Dubey to the post of Deputy Commandant (Exe) and placed him at Sl. No.48. Thereafter, the writ petition preferred by the petitioner before this Court was partly allowed vide judgment dated

24.08.2017, wherein it was directed that the seniority of the petitioner shall be considered as per the rank secured by him in the written examination of the year 2009. Thereafter, respondents amended the seniority list vide order dated 11.05.2018. However, in contravention of judgment dated 24.08.2017 passed by this Court, the date of appointment of petitioner was taken as 27.10.2012 instead of 25.08.2011.

3. Consequently, again petitioner made a representation dated 18.12.2018 to the respondents to re-fix his seniority, which was replied by the respondents vide order dated No.E-35015/NS/ADM/ SENIORITY.LIST/18-3972 dated 26.03.2019 R/W Order No. E-31016/18/2017/Pers.I/170 dated 19.03.2019 informing the petitioner that his seniority in the rank of Assistant Commandant (Exe) has been re-fixed by the Directorate vide order dated 11.05.2018. Thereafter, petitioner was promoted to the rank of Deputy Commandant (Exe) vide Notification dated 26.03.2019.

4. Petitioner claims to have been erroneously placed below one Mr.Bijender Singh Patwal. Aggrieved by the aforesaid order dated 11.05.2018 passed by the Directorate and respondents' Communication dated 26.03.2019, the present petition has been filed by the petitioner seeking setting aside thereof. In addition, petitioner is also seeking proper pay fixation, including grant of senior time scale from the date of his initial appointment, i.e. 25.08.2011 in parity with his batch mates of CPF-2009 (26th Batch).

5. During the course of hearing, learned counsel for petitioner submitted that this Court vide judgment dated 24.08.2017 passed in

W.P.(C) 10054/2016 had directed the respondents to re-fix seniority of petitioner as per the rank secured by him in the examination of the year 2009. However, erroneously, the respondents have taken his date of joining as 27.10.2012 instead of 25.08.2011.

6. It was brought to the notice of this Court that during pendency of aforesaid writ petition, the respondents issued Order No. E-38013/B.P.-40/2016/POSTING OF GO/2016/PERS.I-827 dated 07.10.2016, wherein the immediate senior of the petitioner, namely, Mr. Ankit Dubey, was promoted to the rank of Deputy Commandant as per rank secured by him in the Central Police Forces (Assistant Commandant) Written Examination 2009 and was placed at Sl. No.48 in the seniority list.

7. Learned counsel for petitioner further submitted that though the petitioner's seniority has time and again been re-fixed retrospectively, however, it is not in consonance with the directions issued by this Court vide judgment dated 24.08.2017 and while promoting the petitioner to the rank of Deputy Commandant (Exe) vide notification dated 26.03.2019, he has been erroneously placed below Mr. Bijender Singh Patwal at Sl. No.196 instead of below Mr. Ankit Dubey, who is his immediate senior as per UPSC Merit List. Petitioner is distressed that his representation against fixation of his seniority has not been properly dealt with by the DG-CISF, who vide letter dated 18.12.2018 has erroneously replied that petitioner's seniority has been re-fixed by the Directorate vide order dated 11.05.2018.

8. Lastly, learned counsel for petitioner submitted that the present petition deserves to be allowed and a direction be issued to the

respondents to re-fix petitioner's seniority, promotion and other consequential benefits.

9. On the other hand, learned CGSC appearing on behalf of respondents submitted that vide letter dated 25.08.2011 giving offer of appointment, the petitioner was directed to join basic training on 05.09.2011. However, since petitioner had submitted application dated 29.08.2011 seeking extension of two months' time to join his basic training, the same was allowed by the respondents vide letter dated 22.09.2011, wherein it was categorically mentioned that he is permitted to join with the next batch of Assistant Commandant/Exe and his seniority shall be regulated as per the contained in DoPT OM No.9/23/74-Estt. D dated 06.06.1978. Pursuant thereto, petitioner had joined the training with 2011 Batch (27th Batch).

10. It was next submitted that vide judgment dated 24.08.2017 in W.P.(C) 10054/2016, this Court had directed to maintain petitioner's seniority as per rank secured by him in the Written Examination 2009, however, his seniority has been fixed along with Batch mates of the year 2011 since the petitioner had joined with the 2011 Batch and physically joined CISF on 27.10.2012, therefore, his date of joining is shown as 27.10.2012. It was also submitted that according to the revised seniority list of September, 2014, his immediate junior Mr.Sugana Ram (revised seniority No.106 as on September, 2014) was appointed as Assistant Commandant (Exe) on 02.09.2011, who was found short of one year five months and one day service as on 01.04.2016 for promotion to the rank of Deputy Commandant (Exe) for the vacancy year 2016-17. However, since

junior of Mr. Sugna Ram, namely, Mr. Bhupinder Singh (revised seniority No.170 as on September, 2014) was promoted as Assistant Commandant (Exe) on 05.09.2014 after completing six years eligibility services; Mr.Sugana Ram also became eligible for consideration to the promotion of Deputy Commandant (Exe) against the vacancy year 2016-17. As the immediate junior of petitioner herein, namely, Mr. Sugana Ram (revised seniority 106) was considered for promotion to the rank of Deputy Commandant (Exe) against the vacancy year 2016-17 and was assessed “Fit” for promotion to the rank of Deputy Commandant (Exe) on 08.10.2016, petitioner (in terms of his revised seniority at Sl. No.105-A) was also considered for promotion to the rank of Deputy Commandant (Exe) against the vacancy year 2016-17. However, he was found to be short of two years six months and twenty six days’ service, i.e. more than two years as on 01.04.2016. According to respondents, the petitioner’s immediate junior had become eligible for promotion to the rank of Deputy Commandant (Exe) whereas petitioner was not found eligible as he was short of two years six months and twenty six days’ service as on 01.04.2016 for promotion as per his senior/junior in terms of Recruitment Rules.

11. It was strenuously submitted that the petitioner was not fulfilling the eligibility criteria on 01.04.2016 and this Court vide judgment dated 24.08.2017 in W.P.(C) 10054/2016 had clearly directed that petitioner be promoted only if he is fulfilling the eligibility criteria.

12. In the next DPC held on 03.03.2017, petitioner’s immediate junior, namely, Mr.Saroj Kumar Sinha, who was promoted as Asstt Comdt (Exe)

on 06.02.2010 was considered for promotion to the post of Deputy Commandant (Exe) against the vacancy year 2017-18, however, he was assessed 'unfit' for promotion. In the said DPC, petitioner was also considered for promotion but he was found short of 01 year, 06 months & 26 days service. Therefore, only Shri Bijender Singh Patwal, who is immediate senior to petitioner, was found fit for promotion by the DPC. Therefore, the DPC recommended the petitioner for promotion and his name was placed in the panel below Mr. Bijender Singh Patwal for the vacancy year 2017-18. Accordingly, notional promotion was given to the petitioner w.e.f. 17.06.2017, i.e. the date when his senior Mr. Bijender Singh Patwal had assumed charge of rank of Deputy Commandant (Exe). Vide Notification dated 26.03.2019 petitioner's seniority in the rank of Deputy Commandant was fixed at Sl. No.196 as on 01.01.2018 i.e. below the name of Mr. Bijender Singh Patwal (Seniority No. 195) vide Order No. E-31016/18/2017/Pers.I/291 dated 02.04.2019.

13. It was strenuously submitted that the petitioner was not fulfilling the eligibility criteria on 01.04.2016 and this Court vide judgment dated 24.08.2017 in W.P.(C) 10054/2016 had clearly directed that petitioner be promoted if he is fulfilling the eligibility criteria. As per revised seniority list, being at Sl. No.5-A as on 01.01.2017, petitioner had to be treated for promotion to the rank of Deputy Commandant (Exe) against the vacancy year of 2017-18. Accordingly, he was considered in the Review DPC held on 10.01.2019 wherein he was assessed "Fit" for promotion.

14. In rebuttal, learned counsel for petitioner submitted that the petitioner stood at rank 08 in the merit list of the examination held in 2009

and was offered appointment letter on 25.08.2011 and his services has been wrongly taken as 27.10.2012 instead of 25.08.2011. It was submitted that respondents have erroneously stated that 25.08.2011 is the date of offer of appointment and it cannot be considered for the purpose of seniority. It was further submitted that seeking extension of time to join training is permissible under the law and respondents have erroneously taken a stand that the offer of appointment is not appointment order.

15. It was further submitted that in violation of judgment dated 24.08.2017 passed by this Court in W.P.(C) 10054/2016, the respondents have relegated him to the bottom of his batch and, therefore, his juniors are promoted whereas respondents have to wait for his promotion. Lastly, learned counsel for petitioner submitted that the stand taken on behalf of respondents is arbitrary, hence, deserves rejection.

16. Upon hearing learned counsel representing both the sides and on perusal of the material placed before this Court, we find that the undisputed position in the present case is that respondents had vide letter dated 25.08.2011 given offer of appointment to the petitioner and he was directed to join basic training on 05.09.2011. However, petitioner had to appear for UPSC examination and as per applicable rules and vide his letter dated 29.08.2011, he sought two months extension to join his training, which was allowed by the respondents vide letter dated 22.09.2011. There is no doubt that in the aforesaid letter dated 22.09.2011 petitioner was given extension of time to join training, but was also mentioned that he will join with the next batch of Assistant Commandant/Exe and his seniority shall be regulated as contained in

DoPT OM No.9/23/74-Estt. D dated 06.06.1978.

17. The respondents in September, 2014 notified Seniority List of Assistant Commandant / Executive (seniority assigned upto the year 2011), with date of joining as 27.10.2012 and the petitioner reflected at Sl. No. 322, wherein he has been placed at the end of Batch 27. Taking his date of joining as 27.10.2012, petitioner had lost his seniority to around 226 persons and his name should have appeared at Sl. No. 95. When petitioner did not get satisfactory reply to his representation filed against the reply dated 28.03.216, petitioner invoked writ jurisdiction of this Court by filing W.P.(C) No. 10054/2016 seeking re-fixation of his seniority.

18. Pertinently, in the first round of litigation preferred by the petitioner seeking fixation of his seniority, this Court vide judgment dated 24.08.2017 in W.P.(C) 10054/2016 had taken elaborate note of contentions of both the sides, which in verbatim have been urged in the present petition by both the sides. The judgment dated 24.08.2017 in W.P.(C) 10054/2016 is elaborative on the aspect of date of joining and seniority of petitioner in the light of appointment letter, extension letter and terms of seniority contained in DoPT OM No.9/23/74-Estt. Dated 06.06.1978. This Court held as under:-

“21. We have also looked into the matter from equity, fairness and justice. The petitioner had secured 8th rank amongst 594 candidates in the examination. If he was given full information and details regarding loss of seniority, he may well have taken and/or asked for extension of time by four weeks and no more for appearing in the Civil

Services Main Examination. Thus, the communication dated 22nd September, 2011 sent by the respondents to the petitioner was of vital importance. The petitioner should not be made to suffer for incoherent and vague communication written by the respondents, which would have catastrophic effect on the seniority of the petitioner throughout his career in CISF. We may state that there is difference between seniority and eligibility when it comes to promotion. Seniority of the petitioner based upon his ranking is one aspect and the eligibility of the qualifying service is another aspect. Our decision does not deal with the question of eligibility and indeed concession with regard to the eligibility is only available if permitted and available as per the extant rules.

22. The respondents have also pleaded delay and laches. We do not find any merit in the same for the seniority list was published in September, 2014; and till the seniority list was published the petitioner could not have approached the Court and sought seniority. It is apparent that the petitioner could not have assumed loss of seniority. We have already quoted the letter dated 28th August, 1997 and observed that it is ambiguous. We have also quoted OM dated 6th June, 1978 and observed that it would support the stand of the petitioner. It could have been wrong for the petitioner to assume that he had lost his seniority. Arguments of delay and laches would fail for the petitioner was required to await the outcome of his representations before coming to court. The representation made by the petitioner was dealt with and apparently rejected vide communication dated 28th March, 2016 which had stated that a similar matter was subjudice in the High Court of Hyderabad and till the decision in the said matter the seniority of the petitioner would be

maintained. Thus, even communication dated 28th March, 2016 had not rejected the petitioner's claim on seniority. We are not stating that belated or repeated representations extends 'limitation' or is sufficient explanation for delay and laches, albeit in the present case the seniority list was published in September, 2014. Thereafter the petitioner had made representations which were ambiguously rejected vide communication dated 28th March, 2016. The charge of delay and laches thus fails.

23. *In view of the aforesaid discussion, we partly allow the present writ petition with the direction that the respondents would maintain the seniority of the petitioner as per the rank secured by him in the Central Police Forces (Assistant Commandant) Written Examination 2009. However, as far as promotion is concerned, the petitioner would have to meet the eligibility criteria and would be considered in terms of the extant rules. In the facts of the case, there would be no order as to costs."*

19. Apparently, vide aforesaid judgment dated 24.08.2017 in W.P.(C) 10054/2016, this Court has already held that the seniority of petitioner has to be maintained as per his rank secured in written examination of the year 2009, which undisputedly is Rank No.8 amongst 594 candidates. However, during pendency of the said petition, regular promotion list dated 07.10.2016 to the post of Deputy Commandant was notified, wherein his immediate senior, namely, Ankit Dubey, in the written examination held in 2009, got promoted and placed at Sl. No. 48. Pursuant to judgment dated 24.08.2017, another seniority list in respect of petitioner was released on 11.05.2018 but again took petitioner's date of

appointment as 27.10.2012 instead of 25-08-2011, which was his date of appointment letter. Thereafter, petitioner was notionally promoted to the rank of Deputy Commandant (EXE) w.e.f.17.06.2017 and was placed at serial No., 196 in the list of Deputy Commandant (EXE) as on 01.01.2018. The petitioner was finally promoted to the rank of Deputy Command (EXE) vide notification dated 26.03.2019. The petitioner claims his seniority below Mr.Ankit Dubey, at serial No.125A in the list of Deputy Commandant as on 01.01.2018; whereas his juniors namely, Kamlesh Poonia who secured 12th position in the 2009 examination has been placed at Sl. No. 126; Anil Kumar who secured 25th position in the 2009 examination is at Sl. No. 127 and Vipin Yadav who secured 33rd rank is positioned at Sl. No. 128; have been placed above him.

20. The second part of the judgment notes that for his seniority, the petitioner has to meet his eligibility criteria. According to respondents, the criteria for promotion has been spelt out by DoPT in OM No.9/23/74-Estt. D dated 06.06.1978, application thereof in the case of petitioner has already been negated in the judgment dated 24.08.2017 in view of O.M. dated 09.08.1995, wherein it is held as under:-

“8. The contention of the respondents is that the petitioner in terms of office memorandum dated 6th June, 1978 issued by the DoP&T read with communication dated 28th September, 2012 issued by the Government of India, Ministry of Home Affairs, has been rightly ranked at the bottom of the candidates of the 27th Batch.

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16. OM dated 6th June, 1978 requires that the

Department/ Ministry must clearly indicate that the offer would lapse if the candidate does not join within the specified period which should be between 2 to 3 months. The letter of offer dated 25th August, 2011, issued to the petitioner, did not so stipulate. On the other hand we have quoted clause 9 relating to reporting procedure, which is an aspect covered by clause (ii) of OM dated 6th June, 1978. Clause (ii) states that the candidates, who join in the extended period, which should not exceed 9 / 6 months, would have seniority fixed under the seniority rules applicable to service/ post concerned to which were are appointed without any depression of seniority. There would not be depression of seniority in such cases. This was notwithstanding the extension of time for joining. According to us the petitioner's case would be clearly covered by this clause for the petitioner had applied for extension for two months which was granted by the respondents. The petitioner could have joined immediately after two months but the respondents had shifted the date of joining with the next batch. It is not the case of the respondents that the offer of appointment had lapsed. In such circumstances clause (iii) of letter dated 6th June, 1978 would not be applicable for it relates to cases where even after extension is granted, the candidate does not joined and the offer of appointment lapses. Clause (iv) relates to cases where an offer of appointment had lapsed, and stipulates that ordinarily offer of appointment should not be revived except in exceptional circumstances and on grounds of public interest. The Commission has to be consulted in all such cases. As per clause (v), it is apparent that it will apply to cases where the offer was revived in consultation with the Commission. In such cases where offer had lapsed and was revived in consultation with the Commission, the seniority of

candidate was to be fixed below those, who had already joined the post concerned within the prescribed period. Thus, where the candidate joins before the candidates of the next selection / examination, he would be placed below all others of his batch. But when candidate joins after some or all the candidates of the next batch, he would be placed at the bottom of the candidates of the next batch in selection through interview or examination. The consequences of clause (v) are harsh and significant.

17. It was therefore, important for the respondents to clarify and state in their letter granting extension dated 22nd September, 2011 that the petitioner would be covered by clause (v) of OM dated 6th June, 1978 even if in his case the appointment offer had not lapsed. This should have been so indicated to the petitioner if he had to join in the next batch for basic training. Explicit and straightforward assertion in the communication was mandated as the office memorandum dated 9th August, 1995 had required that the offer of appointment should clearly specify the period which should not exceed one or two months after which the offer would lapse if the candidate does not join within the specified period; and further request for extension beyond three months should not be granted liberally and granted only in exceptional cases where the fact and circumstances so warrant. These instructions affirm the stand and stance of the petitioner.

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21. The question relates to interpretation of the last sentence in the letter dated 28th August, 1997. As per the respondents, it means that in all cases where the selected candidate was granted extension of time in excess of four weeks and he joined in the

next batch, clause (v) of the O.M. dated 6th June, 1978 would apply. In our opinion the said interpretation of the letter dated 28th June, 1997 read with OM dated 6th June, 1978 is misconceived and should be rejected. We would elucidate and give our reasons below.

20. The letter dated 28th August, 1997 issued by the Ministry of Home Affairs only states that the seniority would be depressed as per the provisions of O.M. dated 6th June, 1978. It does not seek to alter or modify the OM dated 6th June, 1978. The Ministry of Home Affairs' letter dated 28th August, 1997 has been referred only for the purpose of extension of time, however, on the question of seniority it was stated it would be regulated as per the provisions in OM dated 6th June, 1978. On the other hand "depression" as per OM dated 6th June, 1978 would indicate to the contrary i.e. the seniority would be depressed, when a case was covered by clause (v) and not in all cases where extension is granted. Clause (v) of OM dated 6th June, 1978 applies when the offer of appointment has lapsed and then revived, which is not the case here. Even if we hold that there is some ambiguity in clause (iii) of the letter dated 28th August, 1997, it was the duty of the respondent, who has taken up the aforesaid stand, to clearly communicate and inform to the petitioner when they had granted extension of time for joining vide letter dated 22nd September, 2011. We have already commented on the language of the letter dated 22nd September, 2011 which has been quoted above. The respondents could have clearly informed and told the petitioner that if he joins the training with the next batch his seniority would be depressed to the bottom of the next batch, i.e. he would lose the seniority and would be the junior-most in the next batch. This would have enabled the

petitioner to take a considered choice and decision. This would have been more important and particular as the letter dated 28th August, 1997 of the Ministry of Home Affairs was not in public domain or circulation. Further, the interpretation placed by the respondents was equally obscured and private.”

22. Once it has already been held that there have been lacunae on the part of respondents in communicating under what eventualities he may lose his seniority with the batch of 2009 and that the OM No.9/23/74-Estt. D dated 06.06.1978 cannot be implemented in totality in the case of petitioner, we find that petitioner cannot be made to suffer for the fault and lapse of respondents.

23. So far as meeting the eligibility criteria is concerned, we find that respondents have erroneously taken petitioner's date of appointment as 27.10.2012. In the considered opinion of this Court, petitioner's date of appointment should have been taken as per his merit secured in the UPSC examination. It is not the case of respondents that during his service petitioner had any penalty to his credit. The only eligibility criterion is the date of appointment and, therefore, petitioner's date of appointment is required to be corrected. The petitioner had secured remarkably good rank No.8 in merit in the examination held in the year 2009 and so, in the interest of justice, he cannot be deprived of his legitimate right to hold seniority according to the rank earned, especially when his juniors who were below in rank have been positioned above him.

24. In the light of what we have observed above, the respondents are accordingly directed to issue fresh seniority list within four weeks,

positioning the petitioner in terms of his merit obtained in the examination of the year i.e. 2009 and grant him consequential promotions and benefits.

25. With aforesaid directions, the present and pending application is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 10, 2023

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