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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 24.08.2023

+ W.P.(C) 10219/2023

HC GD SUBHASH KUMAR

..... Petitioner

versus

UNION OF INDIA MINISTRY OF HOME
AFFAIRS & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Kunwar Arish Ali, Mr. S.M. Prasad, Mr. Zubair Ali, Mr. M. Raja and Mr. Yasir Wali, Advocates with petitioner in person.

For the Respondents:

Mr. Himanshu Pathak, Senior Panel Counsel with Mr. Chetanya Puri (GP), Mr. Samman Kr. Singh and Mr. Anand Awasthi, Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks quashing of promotion order dated 07.06.2023 and seeks seniority and promotion retrospectively from the year 2016 along with grant of 2nd MACP benefit with consequential benefits.



2. Petitioner had joined the Central Reserve Police Force as Constable/GD on 25.05.1996. Petitioner was sent on deputation to Central Bureau of Investigation on 03.07.2012 on the rank of Constable. In the year 2015 when petitioner was on deputation in CBI, the parent organization-CRPF issued a promotion list in which petitioner was proposed to be promoted to the rank of Head-Constable/GD along with repatriation to the parent organization i.e. CRPF.

3. Petitioner gave a request to continue with the deputation and agreed to forego his promotion to continue in the rank of Constable in the borrowing Department-CBI. Request of the petitioner was accepted and petitioner thereafter continued in the CBI on the rank of Constable.

4. Once again on 14.01.2019, the petitioner was brought in the approved list for promotion to the rank of Head Constable/GD in the parent Department again with the condition of repatriation. Once again petitioner requested for continuing in the borrowing department i.e. CBI and agreed to forego his promotion. In the application given by the petitioner, he categorically stated that he would forego his promotion and not claim any seniority in the future.



5. Thereafter petitioner was repatriated to the parent organization on 14.07.2021. Thereafter petitioner has been promoted to the rank of Head Constable by the subject order dated 07.06.2023.

6. Petitioner was twice empaneled for promotion to the rank of Head Constable; once in the year 2017 and then in the year 2019 and in both cases petitioner himself chose not to avail of the promotion and has foregone his promotion and has also stated that he shall not claim any seniority.

7. Petitioner who had himself then chosen to continue in the CBI on the rank of Constable and foregone his promotion twice over cannot now seek retrospective benefits and claim promotion retrospectively.

8. Reference may also be had to order dated 27.09.2017 passed by the respondent on the application of the petitioner whereby the request of the petitioner for foregoing the promotion was accepted and it was directed that no fresh offer of appointment on promotion shall be made for a period of one year from the date of refusal or till the next vacancy arises whichever is later and on the eventual promotion to the higher grade he would lose his seniority, vis-à-vis, his junior promoted to the higher grade earlier.



9. With regard to the request of the petitioner for grant of the benefit under the Modified Assured Career Progression Scheme, reference may be had to the Clause 24 of the Scheme (Annexure-I of OM dated 22.10.2019) which reads as under:-

“24. If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to refusal.”

10. Clause 24 categorically states that if regular promotion has been offered to an employee and same has been refused before becoming entitled to an upgradation under the scheme, no financial upgradation shall be allowed as there is no stagnation of the employee due to lack of opportunity.

11. In the instant case, petitioner was offered regular promotion in the year 2016 which was refused and as per the petitioner he



completed 20 years of service in 2016 to avail of the benefit of the MACP.

12. Since petitioner refused regular promotion prior to becoming eligible for grant of MACP, petitioner is not entitled to the benefit of the MACP Scheme as there is no stagnation on account of lack of opportunity. On that count also, the relief sought for by the petitioner cannot be granted.

13. In view of the above, we find no merit in the petition. The petition is consequently dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

AUGUST 24, 2023
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