

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

% **Reserved on: March 28, 2023**

Pronounced on: May 01, 2023

+ **W.P.(C) 6392/2016**

VINEET KUMAR Petitioner

Through: **Mr. Ankur Chhiber, Advocate**

Versus

UNION OF INDIA AND ORS. Respondents

Through: **Mr. Ripu Daman Bhardwaj, CGSC**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition has been preferred by the petitioner seeking quashing of order dated 30.12.2013 whereby respondents have not protected his seniority; Signal dated 21.10.2014 whereby his request for securing seniority was rejected and order dated 11.05.2016 whereby DIG (Est.) has rejected petitioner's request.

2. The facts narrated in the present petition are that petitioner had applied for the post of Sub Inspector (GD) in Central Reserve Police Force ("CRPF") and after being successful in the recruitment process, he was offered appointment vide letter dated 30.10.2009 and he joined the services on even date. Petitioner was posted at G.C. Bhuvneshwar and after completion of his training at CTC-III from 04.01.2010 to

09.02.2011, the petitioner joined his place of posting at 39 Bn. Narayanpur, Chhattisgarh.

3. The respondents vide Signal dated 20.06.2013 asked for petitioner's willingness to undergo promotional course, IPC Serial No.6 for promotion to the rank of Inspector scheduled from 05.08.2013 till 11.09.2013. The petitioner had his willingness to join the pre-promotional course, however, according to petitioner, he fell ill with high fever on 19.07.2013. Petitioner claims to have been diagnosed with "cerebral malaria" and admitted to MI room of the unit and was shifted to District Hospital, Naryanapur on 21.07.2013. The petitioner was thereafter referred to MMI Hospital, Raipur, where he remained admitted from 24.07.2013 till 02.08.2013, suffering from "Klebsiella Pneumonia with Hepatitis-C". Though petitioner was discharged from hospital on 02.08.2013, however, according to him, the respondents vide Signal dated 05.08.2013 advised him for medical rest for 20 days w.e.f. 03.08.2013 and so, petitioner could not participate in the IPC Serial No.6 course.

4. During the course of hearing learned counsel for petitioner submitted that the respondents vide order dated 30.12.2013 protected petitioner's chance for the course but not for his seniority. So, the petitioner submitted a representation dated 06.08.2014 to the Commandant, 38 Bn. CRPF Chhattisgarh for protection of his seniority, which was forwarded to the DIGP, Hyderabad on 14.08.2014. In the letter dated 14.08.2014 the Commandant mentioned that petitioner's case was genuine and was willing to attend the course but was unable to due to illness attributable to the risk of service condition.

5. The DIG, Southern Sector referred the case of petitioner to the IG, Southern Sector, which was rejected vide order dated 21.10.2014 stating that “*chances to attend promotional courses in respect of those placed in LMC, shape-2 to shape-4 are to be protected and their seniority is not required to be protected.*”

6. Since the juniors to petitioner who had undergone Course No.6 were promoted to the rank of Inspectors on 26.03.2015, the petitioner thereafter sent representation dated 14.07.2015 to DG, CRPF and thereafter, another representation dated 02.08.2015 to IGP-CRPF requesting to secure his seniority. Even Commandant-39 Bn CRPF also vide letter dated 16.10.2015 to the DIG prayed for protection of seniority of the petitioner. Yet another representation dated 16.01.2016 was made by the petitioner to the DIGP-CRPF requesting for protection of his seniority w.e.f. course No.6. However, vide letter dated 11.05.2016 petitioner was intimated that the original seniority can be protected only if a candidate has undergone the course and since petitioner could not join course due to illness, his seniority could not be protected.

7. Learned counsel for petitioner submitted that the respondents have erroneously rejected petitioner’s representation without noticing the fact that petitioner was posted in a malaria affected area and his illness was precipitated by the same. So, due to his medical condition only, petitioner could not attend the course and was denied promotion and seniority.

8. Learned counsel for petitioner next submitted that SO No.6/99 provides for cases wherein if a candidate is unable to attend a course due to medical reasons, a residual power is vested with the DG-CRPF to

approve the same. Also, submitted that vide order dated 26.07.2012 respondents have notified that the personnel wounded or injured while on active Government duty in India or abroad, will be eligible for promotions.

9. Further submitted that juniors of petitioner have been promoted to the rank of Inspector whereas petitioner has not yet been promoted and his loss of seniority is due to his malaria fever, which is directly attributable to his service, as he was posted in such an area which was infected with mosquitoes, unhygienic working conditions and water. Hence, rejection of petitioner's representations, seeking promotion from the IPC Serial No.6 as per his seniority, vide impugned orders deserves to be set aside.

10. To the contrary, learned CGSC appearing on behalf of respondents submitted that it is not disputed that on 19.07.2013 petitioner had fallen ill and was admitted in Unit Hospital, where he was treated at unit M.I.Room as a case of suspected clinical malaria till 21.07.2013. Thereafter, he was referred to District Hospital Narayanpur and remained admitted till 24.07.2013 but since his condition did not improve, he was referred to MMI Hospital, Raipur on 24.07.2013. There he was diagnosed as a case of "Acute Febrile illness HCV Positive". He was admitted to MMI Hospital from 24.07.2013 till 02.08.2013. Thereafter, he was advised medical rest for 20 days w.e.f. 06.08.2013 due to hepatitis C.

11. However, IGP, SS vide signal dated 31.07.2013 intimated that petitioner had secured qualifying marks and directed his unit to attend IPC No. 6 w.e.f. 05.08.2013 till 11.09.2013 to be conducted at CTC Gwalior subject to medical category SHAPE-I. Since petitioner had been

prescribed rest from 06.08.2013 for 20 days i.e. till 16.08.2013, he expressed his inability to attend IPC S. No. 6 vide his application dated 06.08.2013 and proceeded to medical rest.

12. Learned counsel submitted that the respondents have rightly rejected petitioner's different representations seeking seniority and because as per medical documents, petitioner was suffering from "klebsiella Pneumonia with Hepatitis "C" whereas his case was recommended for protection of chance and seniority on the ground that Narayanpur District of Chhattisgarh was declared a "malaria prone area" which has no relation with the disease actually suffered by him. His chance with reference to IPC S. No. 06 was rightly protected without seniority vide letter dated 30.12.2013 as per the instructions.

13. Learned CGSC next submitted that after making representation dated 14.07.2015 to DG, CRPF, New Delhi seeking setting aside of order dated 20.10.2014 passed by the IG and for consideration of his prayer seeking seniority, petitioner was transferred to Dte. Gen., CRPF, New Delhi. The petitioner made another representation dated 02.08.2015 seeking protection of his seniority w.e.f. IPC No.6 but the same has been returned to DIGP with the remarks that petitioner was suffering from "klebsiella Pneumonia with Hepatitis "C", which has nothing to do with malaria and there is no provision/ instruction to consider personnel suffering from Hepatitis C to treat as attributable to the service conditions.

14. Learned CGSC also submitted that as per Standing Order 6/1999 (later replaced vide SO No.1 to 3/2015) if a candidate could not be sent for the course on administrative grounds, he will get another opportunity

and his original seniority will be protected. Also, as per instructions contained in letter dated 26.07.2022, the chance of personnel placed in LMC Shape-2 to Shape-4 to attend promotional course is to be protected and their seniority is not required to be protected. In the present case, petitioner was categorized as Shape-1 as per standing order 4/2008 and not eligible for any relaxation. The petitioner could not attend the course due to his illness/ LMC and so, the IGP has rightly protected his case to attend course but not seniority as per SO-06/1999. Lastly, it was submitted that the impugned orders passed in respect of petitioner are just and proper and do not call for any interference by this Court.

15. In rebuttal, learned counsel for petitioner submitted that petitioner was discharge from hospital on 02.08.2013 and was advised medical rest for 20 days, effective from 03.08.2013; whereas the pre-promotion course was scheduled to commence from 05.08.2013 till 11.09.2013 and so, petitioner could not attend the same. Also, the order dated 26.07.2012 and 30.07.2013 passed by the respondents state that any personnel wounded or injured due to accident while on Government duty will be eligible for promotion. Moreover, the Commandant, 39 Bn, vide letter dated 14.08.2014 written to the Dy. Inspector General of Police, Hyderabad observed that the case of petitioner is genuine and since as per S.O.6/99 deals with cases where the personnel is unwilling to attend the course, and not sickness, so, the plea of petitioner is maintainable.

16. The submissions advanced by learned counsel representing both the sides were heard at length and the material placed on record has been perused by this Court.

17. As per Signal dated 24.07.2013, the Daily Situation Report about Malaria, the petitioner is shown to be suffering from Malaria. Further, as per Communication dated 05.08.2013, written by Commandant, 39 Bn to Dy. DIG, Hyderabad, the petitioner was placed in LMC and was advised rest for 20 days w.e.f. 03.08.2013. The Commandant, 39 Bn vide letter dated 14.08.2014 written to the IG, Hyderabad, highly recommended the case of petitioner for protection of his seniority, while stating as under:-

“5. From the above, it may kindly be seen that No.095042101 SI/GD Vineet Kumar of this unit could not attend IPG SI. No.6 due to illness while performing bona fide govt. duties and is purely attributable to risk of govt. service as Narayanpur district of Chhattisgarh is declared as malaria prone area and the individual cannot be held responsible for the same. Moreover, para j of SO-6/99 only pertains to dealing with cases where personnel have expressed unwillingness to attend promotional courses and there is no mention of how to deal with cases where personnel have expressed their willingness to attend courses but could not attend due to illness attributable to risk of service conditions.

6. In view of the above, request of No. 095042101 SI/GD Vineet Kumar of this unit for protection of seniority w.r.t. IPC SI. No.6 seems to be genuine and needs sympathetic consideration. If the request of the individual is considered sympathetically, it will also boost up the morale of other personnel serving in units deployed in highly naxal affected and malaria prone areas like Narayanpur (GG). Hence, it is strongly recommended that case may kindly be taken up with competent authority for

protection of seniority....”

18. A perusal of letter dated 16.10.2015 written by the Office of Commandant -39 BN to DIG, CRPF, Hyderabad shows that it has been stated therein that *vide Signal dated 20.10.2014 the respondents have intimated that there is no provision / instructions existing that Hepatitis C suffered by the individual is to be treated as attributable risk of Government service.*

19. Further, on examination of Standing Order No. 6/99 dated 23.04.1999 we find that with regard to procedure for promotion, it has been noted as under:-

**“ACCEPTANCE OF UNWILLINGNESS FOR
VARIOUS PROMOTIONAL COURSES**

Unwillingness to undergo various courses on turn without valid reasons shall be decided in the following manner:-

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2) For accepting the unwillingness, it is left to the discretion of the competent authority to accept unwillingness of a candidate on merit. However, this should be accepted on extreme compassionate grounds and not as a matter of routine.

3) If a candidate could not be sent for the course on administrative grounds, he will get another opportunity and his original seniority shall be protected.

4) If unwillingness of a candidate on compassionate grounds is accepted by competent authority with valid reasons, he does not lose his chance to go for the course but shall not claim seniority.

5) If unwillingness of a candidate is not accepted by competent authority, he shall lose seniority as well as one chance out of the permissible number of chances to attend the course. He however, can avail the remaining number of chances to qualify in the course and acquire his promotion. Once all the available chances of unwillingness are exhausted due to un acceptance of unwillingness of the candidate, it will be entered into his record and he will cease to get any further opportunity for appearing in the promotional test and shall have to forgo further promotion. Any departure from the above instructions shall be with the approval of the Director General”

20. Also, vide order dated 26.07.2012, the respondents have notified that for pre-promotional course, the medical category of SHAPE-One is mandatory, however, relaxation has been extended as under:-

“B) Officers/men who are wounded/ injured, during field firing / accidental firings/ explosions of mines or other explosive devices and due to accidents while on active Government duty in India or abroad will be eligible for promotion in the following SHAPE categories:-

- | | |
|------------------|-----------------|
| (i) S1H1A2P1E1 | (ii) S1H1A1P2E1 |
| (iii) S1H2A1P1E1 | (iv) S1H1A1P1E2 |
| (V) S1H2A1P1E2” | |

21. Further, vide order dated 30.07.2013, the afore-noted guidelines were reiterated while noting as under:-

“a) Official/ Personnel wounded/ injured during war or while fighting against enemy/militant/intruders/armed hostile/insurgents due to an act of these in India or abroad, will be eligible for promotion while placed in one of the

following medical classifications:-

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b) Officers/men who are wounded /injured during field firings/ accidental firings/explosions of mines or other explosives devices and due to accidents, while on active Government duty in India or abroad will be eligible for promotion in the following SHAPE categories:-

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03 Considering all these aspects, it is decided to allow following relaxation in the final test of various promotional courses to the personnel having "A2", "A3" or "P2" category in SHAPE system of medical examination, due to injury sustained by them, while on active Govt. Duty:-

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22. There is no dispute that petitioner had tendered his willingness to join promotional course, IPC Serial No.6 for promotion to the rank of Inspector scheduled from 05.08.2013 till 11.09.2013, however, unfortunately he fell sick and remained hospitalized from 19.07.2013 till 02.08.2013 and thereafter advised rest for 20 days from 03.08.2013. Therefore, he could not participate in the course for promotion to the rank of Inspector being IPC Serial No.6 from 05.08.2013 till 11.09.2013. The respondents protected his right to participate and petitioner underwent course for promotion to the rank of Inspector being IPC Serial No.7. The juniors of petitioner who had participated in IPC Serial No.6 were promoted to the rank of Inspectors on 26.03.2015, whereas petitioner, who had joined IPC Serial No.7 is below in seniority against them.

23. The petitioner has claimed that his illness was attributable to the respondents, as he was posted in an area which was infected with mosquitoes, unhygienic working conditions and water. It is not in dispute that respondents vide order dated 26.07.2012 and 30.07.2013 have notified that the Officers/Personnel, whether in India or abroad, who are injured or wounded, will be eligible for promotion. The respondents have not considered the case of petitioner for promotion and seniority on the ground that petitioner was not suffering from Malaria but Hepatitis C and if an Officer/ personnel is suffering from Hepatitis C, then there is no provision existing it to be treated as attributable risk of Government Service. While passing the aforesaid observations, the respondents have not considered the recommendations of the Commandant, 39 Bn vide letter dated 14.08.2014 written to the Dy. IG, Hyderabad, wherein it is admitted that the petitioner was deployed in *malaria prone area like Narayanpur (GG)*. Thereby, the factum of petitioner's hospitalization and suffering from illness, attributable to his service conditions, is not disputed. Whether petitioner was suffering from Malaria or Hepatitis C is of no relevance. What is relevant is that petitioner has suffered the agony of illness and treatment due to conditions of his service. Respondents' plea that there is no guideline/ provision / instruction to consider the personnel suffering from Hepatitis C cannot be a dent to the claim of petitioner seeking seniority, especially when petitioner has passed out IPC Serial No.7 and his candidature is highly recommended by his immediate Officer i.e. Commandant, 39 Bn. The guidelines prescribed in S.O.6/99 deals with cases where the personnel is unwilling to attend the course and not about those personnel who are willing but could not attend the course.

In this regard, relevant notified orders are dated 26.07.2012 and 30.07.2013, which state that the officers/ personnel whether in India or abroad, who are injured or wounded, will be eligible for promotion. In our considered opinion, the case of petitioner falls under the said category.

24. In the light of aforesaid, this Court is of the considered opinion that in the peculiar facts of the present case, petitioner cannot be made to suffer mental agony to work below his juniors. Accordingly, order dated 30.12.2013; Signal dated 21.10.2014 and order dated 11.05.2016 passed by the respondents are hereby set aside with directions to the respondents to pass necessary orders to re-fix petitioner's seniority in terms of his merit with those who had passed out IPC Serial No.6 for promotion to the rank of Inspector scheduled from 05.08.2013 till 11.09.2013 within six weeks. Needless to say consequential financial benefits shall flow.

25. With directions as aforesaid, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

MAY 01, 2023

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