



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

% Date of decision: January 4, 2024

+ W.P.(C) 100/2024

(16) ASSTT COMDT RAHUL BHASHARKAR Petitioner

Through: Mr. Abhay Kumar Bhargava,
Mr. Satyarth Sinha and Mr. C.
Debnath, Advs.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Siddharth Khatana, Sr. PC with
Mr. Vedansh Anand, GP for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner seeking the following reliefs:-

“(i) Issue a Writ of Certiorari or any other appropriate writ, order or direction thereby calling for records and quash the impugned order dated 08.05.2023 issued by the i.e. IG (Pers) CRPF Respondent No.3.

(ii) Issue a Writ of Mandamus or any other appropriate writ, order or direction thereby directing the respondents to re-fix the seniority of the petitioner for the rank of Inspector and Assistant Commandant at par with his batchmates along with all the consequential benefits.

(iii) Pass any other order this Hon'ble Court may deem fit.”

2. The case of the petitioner is that he was appointed as Sub-Inspector on March 01, 2003. He was posted in 92 BN, CRPF at



Srinagar. He was promoted to the rank of Inspector in September, 2007. He was further promoted as Assistant Commandant. His case is that he should have been promoted as Inspector in January, 2007, and also to the rank of Assistant Commandant, much before his actual promotion along with his batchmates including his juniors. It is his case that he came to know that his Basic Training Report Card had *average* remarks and the same was considered for nomination purpose for the SSICC Course wherein his average grading effected his seniority / promotion. He preferred representation to the respondent No.2, to apprise the said respondent of his grievance and sought redressal thereof.

3. On March 06, 2023, he filed W.P.(C) 2845/2023 seeking a direction for correction of his seniority in the rank of Inspector as well as Assistant Commandant. Suffice to state, the said writ petition was disposed of by this Court on March 06, 2023, *inter alia* directing the Competent Authority i.e., DG, CRPF, to decide the representation filed by the petitioner within eight weeks and communicate the decision to him within one week thereafter. Accordingly, the respondents have passed an order dated May 08, 2023, rejecting the prayer of the petitioner for seniority.

4. The only submission made by the learned counsel for the petitioner is, the *average* grading in the course report of Basic Training which was treated as ACR was never communicated to the petitioner. He relies upon the Judgment of the Supreme Court in the case of ***Dev Dutt v. Union of India & Ors., Civil Appeal No.7631/2002*** decided on ***May 12, 2008***, which, according to the counsel, explicitly state that every entry must be communicated to the employee concerned, so that,



he may have an opportunity of making a representation if he is aggrieved. He also submits it is not the nomenclature of entry that is relevant but effect, the entry is having which determines whether it is an adverse entry or not. He also relies upon the judgment of the this Court in *Commandant V.S. Shekhawat v. Union of India and Ors., W.P.(C) 10370/2015* decided on *September 03, 2019*, in support of his submission that non-communication of below benchmark grading deprives a government servant of an opportunity to seek an upgradation of his grading in ACRs. That apart, it is his submission that during the basic training the petitioner stood second in written examination and performed good in physical and other skills and thus, there was no occasion for the respondents to say that the petitioner acquired *average* grading. He further states most of the APARs/ACRs of the petitioner are outstanding and, therefore, the *average remark* in the Basic Training is arbitrary. The Counsel for the petitioner would also submit that the plea of delay advanced by learned counsel for the respondents is unsustainable because as late as in the year 2023, the respondents themselves had reassigned the seniority of Assistant Commandants, *inter se* between direct recruits and promotees and there is no reason that the seniority with regard to petitioner in the grade(s) of Inspector/Assistant Commandant cannot be rectified even after 16-23 years. In this regard, he has referred to an order dated March 24, 2023, to state that the order is under challenge before the Supreme Court. He has also placed reliance on the judgment of the Supreme Court in the case of *VETINDIA Pharmaceuticals Limited v. State of Uttar Pradesh and another, SLP (C) 6319 of 2020* decided on November 06, 2020, to



state that this Court being a Writ Court can in exercise of its extraordinary jurisdiction condone the delay in filing the petition, if the delay is satisfactorily explained. He also relies upon the judgment in the case of *State of Uttar Pradesh & Ors. V. Arvind Kumar Srivastava & Ors., Civil Appeal No. 9849 of 2014*, decided on *October 17, 2014*, to state that normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit and not doing so would amount to discrimination.

5. On the other hand, the learned counsel for the respondents would contest the petition by stating that the same is an abuse of process of law inasmuch as the real challenge of the petitioner is in respect of not achieving the qualifying 21 marks in Sub Inspector Cadre Course (SSICS) which was held between March 17, 2003, and March 20, 2004. Similarly, in the SSICC No.25 held between October 17, 2005 and January 11, 2006, he was assigned average grading for his overall performance. Even in the SSICC No.27 held between July 03, 2006 to September 26, 2006, the petitioner could not obtain minimum qualifying 21 marks in the screening. Similar was the position with regard to the SSICC No.28 which was held from October 09, 2006 to February 04, 2007. Even in the SSICC No. 29 held from February 05, 2007 to May 04, 2007, he did not obtain minimum qualifying 21 marks for screening and could not have been detailed for course. He could not be able to secure qualifying marks in SSICC No. 30, held from May 07, 2007 to July 06, 2007. The ACR gradings for the period 2003-2007 resulted in him losing the seniority for promotion to the rank of



Inspector / Assistant Commandant. Therefore, his claim of seniority in the rank of Inspector / Assistant Commandant with the batchmates who were promoted to the post of Inspector / Assistant Commandant earlier to him cannot be granted. He also state, the claim now in respect of seniority in the rank of Inspector / Assistant Commandant is clearly barred by delay and laches as the petitioner did not challenge the seniority and his non-promotion to the post of Inspector / Assistant Commandant along with his batchmates. He also states that on the pretext, that below benchmarks ACRs were not conveyed to him, cannot be a ground that too after almost 16-20 years to seek restoration of his seniority and promotion to the post of Inspector / Assistant Commandant.

6. Having heard the learned counsel for the parties, the petition has been filed, with the prayers as noted above challenging the order dated May 08, 2023, which was passed on the directions given by this Court in the earlier writ petition being W.P. (C) 2845/2023. Merely because the petitioner had filed the said writ petition and a direction was given by the Court to dispose of the representation which has been complied with by passing the impugned order, dated May 08, 2023, the same will not give a fresh cause of action to petitioner to file the present writ petition against a stale claim, of seniority / promotion on the post of Inspector / Assistant Commandant. In this regard, reference can be made to the judgment of the Supreme Court in the case of *Union of India v. M.K. Sarkar, (2010) 2 SCC 59*, wherein the Supreme Court has in paragraph 16 held as under:



“16. A court or tribunal, before directing “consideration” of a claim or representation should examine whether the claim or representation is with reference to a “live” issue or whether it is with reference to a “dead” or “stale” issue. If it is with reference to a “dead” or “stale” issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct “consideration” without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

7. A perusal of the prayer clause would reveal that the petitioner has in fact, sought a direction for re-fixing of his seniority in the rank of Inspector and Assistant Commandant. It is the case of the respondents that petitioner lost his seniority because of the average ACRs during the SSICC. He was detailed for the course, which is a pre-requisite for promotion to the post of Inspector, which also delayed his further promotion to the post of Assistant Commandant. The training held between the years, 2003-2004 till May 04, 2007, was almost 16-20 years back. The plea of the learned counsel for the petitioner that the adverse grading in the ACR were not communicated and in view of the law in the case of **Dev Dutt (supra)** of the Supreme Court, the below benchmark ACR should have been communicated to the petitioner and having not done that, he is entitled to the relief is clearly unsustainable. This, we say so because the denial of promotion along with the batch mates, which factum was in the knowledge of the petitioner and in fact the petitioner cannot plead ignorance in respect of promotion of his



juniors / batchmates in their respective years, surely had given cause of action to the petitioner to approach a Court of law seeking relief of seniority / promotion. No steps were taken by the petitioner, to atleast make a representation to the respondents stating that he has not been promoted to the post of Inspector / Assistant Commandant though his batchmates / juniors have been promoted. No such representation has been shown to us. In effect, the seniority / denial of promotion remained unchallenged till 2023, when the petitioner for the first time had given a representation which resulted in the filing of the writ petition (of which a reference is made above) in 2023. It follows, for almost 16-20 years, the petitioner kept silent without agitating his grievance.

8. In so far as the reliance placed by the Counsel for the petitioner, on the judgment in the case of *Arvind Kumar Srivastava & Ors. (supra)* is concerned the said judgment has no applicability to the facts of this case inasmuch as the counsel for the petitioner has not drawn our attention to any judgment wherein similarly placed employees like the petitioner have been granted the seniority in rank of Inspector / Assistant Commandant, so as to enable the petitioner seek parity. Hence, the proposition for which the judgment has been relied upon has no applicability to the facts of this case. Insofar as reliance on the judgment in the case of *VETINDIA Pharmaceuticals Limited (supra)*, for the proposition that a Writ Court while exercising extraordinary jurisdiction under Article 226 of the Constitution of India can condone the delay in filing the petition, if the delay is satisfactorily explained is concerned, the said judgment has no applicability because on a perusal of the petition, it is clear that no explanation has been given by the



petitioner for not agitating his claim for seniority / promotion till 2023. In fact, it is the case of the petitioner himself that his Basic Training Report Card had *average* marks and the same was considered for nomination purpose to SSICC Course.

9. In any case, the issue with regard to delay and laches, moreso, in respect of seniority and promotion has been settled by the Supreme Court in the case of ***Union of India & Ors. v. Tarsem Singh, Civil Appeal No.5151-5152/2008***, decided on August 13, 2008, wherein, the Supreme Court has in paragraph 5, held as under:-

“5. 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 re-opening 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 re-fixation 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. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, 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.”

(emphasis supplied)

10. The judgment in **Tarsem Singh (supra)** is applicable on all fours to the facts of this case as any interference with the seniority list / promotion made long back shall have cascading effect, which includes change of seniority / promotion of the petitioner / other officers of the batch.

11. Before parting, it is necessary to refer to the order dated March 24, 2023, on which reliance has been placed by the counsel for the petitioner. The same is primarily with regard to *inter se* seniority between the Direct Recruits and the Promotees and not in respect of seniority *qua* the batchmates of the petitioner, that is promotes. Hence, the said order has no bearing insofar as issue which arises for consideration in this petition, so as to give the benefit of the same to the petitioner.

12. In view of our above discussion, it is held that the present petition filed by the petitioner is misconceived. The prayers sought are hit by delay and laches and as such cannot be granted. The petition is dismissed. No cost.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 4, 2024/ds