



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

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Date of decision: February 01, 2024

+ W.P.(C) 1464/2024

(58) RAMESH KUMAR TRIPATHI & ANR.

..... Petitioners

Through: Mr. Abhay Kumar Bhargava &
Mr. Satyaarth Sinha, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms Ritu Reniwal Sr. PC with
Ms. Geetanjali Tyagi, 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 petitioners with the following prayers:-

“(i) Issue a writ of Mandamus or any other writ order or direction thereby directing the respondents to grant the seniority to the petitioner seniority at the rank of Assistant Commandant w.e.f. 20.10.2010 i.e. from the date of their Departmental Promotion Committee.

(ii) Issue a writ of Mandamus or any other writ order or direction thereby directing the respondents to fix seniority of the petitioners in the gradation list as on 24.03.2023 as per the clause 6 (3)(ii) of the Recruitment Rules.

(i) Pass any other order this Hon'ble Court deems fit in the interest of justice.”



2. The facts as noted from the petition are that the petitioners were enrolled as Sub-Inspectors in Central Reserve Police Force ('CRPF', for short) on various dates in the year 2003. They got promoted to the rank of Inspector in due course of time. The next promotional post is that of Assistant Commandant. The eligibility for promotion to the post of Assistant Commandant is three years of service in the rank of Inspector. On April 20, 2010, a Departmental Promotion Committee ('DPC', for short) was held for filling up 162 vacancies of Assistant Commandant for the year 2010-11, against promotion quota. It is stated that, due to non availability of sufficient number of SM/Inspectors, CRPF could not fill all the vacancies. It is the case of the petitioners that, 50 vacancies were still available which belong to the promotional quota of the year 2010-11.

3. That in order to fill the 50 vacancies against the promotional quota, a supplementary DPC was held on October 20, 2010, for which the zone of consideration was approximately of 147 SM/Inspectors. It is stated that in the year 2010, there were 270 vacancies in CRPF to be filled under promotional quota. The respondents conducted the recruitment by way of promotion only on 162 vacancies instead of 270 vacancies which caused grave prejudice to the petitioners.

4. It is the petitioners' case that, had the respondents promoted the petitioners against all the 270 vacancies, by way of promotion in the supplementary DPC, held on October 20, 2010, all the 147 SM/Inspectors who were within the zone of consideration for the DPC, would have been promoted to the rank of Assistant Commandant on October 20, 2010.

5. The aforesaid position according to Mr. Abhay Kumar Bhargava,



learned counsel for the petitioners, came to the notice of the petitioners through the counter affidavit filed by the respondents on February 06, 2020 in W.P (C) 7622/2019 filed by the petitioners in this Court.

6. According to Mr. Bhargava, the respondents have further admitted in paragraph 4 of the counter affidavit that the supplementary DPC was held on October 20, 2010, for 50 vacancies in which 147 SM/Inspectors were in the zone of consideration. He states the respondents have admitted in paragraph 10 of preliminary submissions in the aforesaid counter affidavit that there were 270 vacancies in the Rank of Assistant Commandant for the year 2010, in the direct recruitment quota. Moreover, the respondents have admitted in paragraph 5 of the preliminary submissions that the petitioners were considered in DPC on October 20, 2010, however, they could not be promoted because of lack of vacancies, which is completely misleading.

7. It is the conceded case of the petitioners that, on May 07, 2011, the petitioners were granted promotion to the post of Assistant Commandant on Local Rank basis in terms of Rule 76B of CRPF Rules, 1955. It is also stated that, in the month of January, 2012, the petitioners were granted the regular promotion to the post of Assistant Commandant.

8. In substance, it is the case of the petitioners and contended by Mr. Bhargava that, as the vacancies were existing in the promotion quota, the petitioners should have been promoted against those vacancies in the DPC held on October 20, 2010. According to him, if the promotion had been granted on the said date instead of in the year 2012, then it would have enured to the benefit of the petitioners in getting seniority and eligibility for next higher post.

9. We are afraid, the pleas made in the year 2024 cannot be accepted or



for that matter in the year 2019, when the petitioner had filed the earlier petition, seeking promotion w.e.f., 2010. The petitioners were within their right to make a claim for promotion against the available vacancies in the year 2010 itself. They chose not to agitate their grievance on any ground. The plea that, they had come to know about the vacancy position from the counter affidavit filed by the respondents in the year 2019/2020, and as such approached the Court, is not appealing for the reason that the same will not give cause of action. In fact, the stand of the respondents was in the counter affidavit filed to the writ petition filed by the petitioners themselves. So, in that sense, the counter affidavit cannot give cause of action, as they had already approached the Court. The cause of action arose, in the year 2010, when they were not promoted to the post of Assistant Commandant in the DPC held on October 20, 2010, or for that matter, when they were promoted on regular basis in the year 2012.

10. The law with regard to judicial review in the matter of challenge to promotion / denial of promotion at a belated stage is well settled by the Supreme Court in the following judgments:-

a. In the case of *State of U.P. v. Arvind Kumar Srivastava*, (2015) 1 SCC 347, the Court held that:-

“22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be



treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

(emphasis supplied)

- b. In the case of **Union of India v. C. Girija, (2019) 15 SCC 633**,
the Court held that:-

“17. This Court again in *Union of India v. M.K. Sarkar* on belated representation laid down following, which is extracted below : (SCC p. 66, para 15)

“15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

18. Again, this Court in *State of Uttaranchal v. Shiv Charan Singh Bhandari* had occasion to consider question of delay in challenging the promotion. The Court further held that representations relating to a stale claim or dead grievance does not give rise to a fresh cause of action. In paras 19 and 23 following was laid down : (SCC pp. 184-85)

“19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action



cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.

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23. In State of T.N. v. Seshachalam , this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus : (SCC p. 145, para 16)

‘16. ... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.’”

19. This Court referring to an earlier judgment in P.S. Sadasivaswamy v. State of T.N. noticed that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. In paras 26 and 28, following was laid down : (Shiv Charan Singh Bhandari case , SCC pp. 185-86)

“26. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in P.S. Sadasivaswamy v. State of T.N. [P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152 : 1975 SCC (L&S) 22] , wherein it has been laid down that : (SCC p. 154, para 2)

‘2. ... A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter



after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters.’

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28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court.”

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22. We, thus, due to the above both the reasons, are of the view that the Tribunal and the High Court ought not to have entertained the stale claim of the applicant.”

(emphasis supplied)

11. The plea of Mr. Bhargava by drawing our attention to the order passed by this Court on January 19, 2024, on the submission made by him that, as number of vacancies are available in the grade of Assistant Commandant he was allowed to withdraw the earlier petition with liberty to file a fresh petition shall mean that this Court has permitted the petitioners to file this petition with the prayers as sought in this petition, is concerned, the plea is unmerited for the reason the application to withdraw the petition was allowed with liberty in accordance with law. Surely, a petition filed in the year 2019 for grant of promotion from 2010 was hit by delay and laches. In



the present petition the petitioners are seeking identical prayer as sought in the previous petition i.e., for the grant of promotion to the rank of Assistant Commandant w.e.f., 2010. So, the same shall be hit by delay and latches.

12. Be it noted, the prayer no. (ii) in the petition being a consequential to prayer no. (i), the same also cannot be granted. We do not find any reason to entertain a belated challenge. The same is dismissed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 01, 2024/ds