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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 29.08.2024***+ W.P.(C) 3608/2022
KEWAL KRISHAN

.....Petitioner

Through: Mr. Shankar Raju and Mr. Nilansh
Gaur, Advocates

versus

UNION OF INDIA AND ANOTHER

.....Respondents

Through: Mr. Thakur Virender Pratap Singh,
Mr. Pushpender Singh Charak and
Ms. Shubhra Parashar, Advocates.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****J U D G M E N T****SHALINDER KAUR, J (ORAL)**

1. The petitioner, who is working as an Inspector (Ministerial) in the Sashastra Seema Bal (SSB), has approached this Court under Article 226 of the Constitution of India assailing the orders dated 20.07.2021 and 20.08.2019 vide which his prayer for re-fixing his seniority as a Head Constable (HC) / Clerk on the basis of Rule 3(b) of the Combatised Clerical Cadre Rules, 1988 ("Rules") has been rejected. The petitioner also seeks a direction to the respondents to re-assign his seniority as a HC (Clerk) w.e.f. 01.04.1998 as per his merit position in the selection process conducted for promotion to the said post as against the seniority assigned to him on the



basis of seniority of Naiks in individual Group Centres.

2. The petitioner joined the SSB as a Constable (General Duty) in the then Group Centre SSB Bhuj under Jodhpur Division on 12.09.1988 and was thereafter, appointed as a Naik (Clerk) w.e.f. 05.05.1990 through a competitive examination and as per Rule 3(b) of the Rules, his seniority was maintained on the basis of the Group Centre to which he belongs. The petitioner subsequently moved up the ranks by being promoted to the Ministerial/Clerical post of HC on 01.04.1998. He was, thereafter, promoted as an Assistant Sub-Inspector on 20.10.2003, as a Sub-Inspector on 13.08.2009 and finally as an Inspector on 01.04.2015, which rank he is presently holding. It may be noted that the promotion to the rank of HC (Clerk) was on the basis of a selection process from the entire Cadets of Naiks in all the Group Centres, in which the petitioner claims to have topped.

3. Learned counsel for the petitioner submits that in accordance with Rule 3(b), the seniority of the petitioner in the rank of Naik was rightly assigned on the basis of his Group Centre. However, when he was promoted as a HC (Clerk), his seniority was required to be maintained as per his merit position in the selection process held for the entire cadre of Naiks and not on the basis of his Group Centre. The respondents, however, erroneously fixed his seniority as HC (Clerk) on the basis of the Group Centre and consequently, due to the small Group Centre to which he belonged, he became junior to his counterparts including Sh. Shagolshem Apabi Singh and Sh. C. Zosanijiana, who belong to bigger Group Centres and were therefore, promoted as HCs (Clerks) much earlier as compared to him.



4. Being meritorious and senior in terms of the result of the competitive examination, the petitioner was entitled to be treated as the senior most HC (Clerk). However, since the respondents, by misinterpreting Rule 3(b) had been granting promotions to the cadre of HC (Clerk), separately for each Group Centre, the petitioner and many other meritorious candidates were deprived of their rightful seniority. Being aggrieved, one Sh. Adhikarimayum Tejkumar Sharma approached the Guwahati High Court by way of WP(C) No. 1753/2001, which was allowed on 15.07.2002 by directing the respondents to grant seniority to the petitioner therein as per his merit position in the selection process held for promotion to the post of HC (Clerk). This decision was unsuccessfully assailed first before the Division Bench of the Guwahati High Court and thereafter, by way of a special leave petition before the Apex Court in Civil Appeal No. 2109/2009 titled as ***Union of India and others vs Adhikarimayum Tejkumar Sharma***, which has dismissed the same by upholding the decision of the Guwahati High Court directing the respondents to determine the inter-se seniority of Sh. Adhikarimayum Tejkumar Sharma by taking into account his merit position in the selection process for promotion to the post of HC (Clerk) from amongst Naiks.

5. Learned counsel further contends that immediately after the petitioner learnt about the aforesaid decision, he submitted a representation dated 10.01.2015 seeking the benefit of the said decision and requesting the respondents for fixation of correct inter-se seniority in the rank of HC (Clerk), which representation remained undecided, compelling him to file another representation for restoration of his seniority above his juniors. It



was finally only on 20.08.2019 that the respondents rejected his request for re-fixing inter-se seniority in the rank of HC (Clerk), compelling the petitioner to approach this Court. He, therefore, prays that the writ petition be allowed, thereby extending the benefit of judgment of Apex Court to the petitioner in the aforementioned case of *Adhikarimayum (supra)* in the same manner as has been extended to him.

6. On the other hand, learned counsel for the respondents seeks dismissal of the writ petition by urging that the petitioner having approached this Court after an inordinate delay, his prayer for correcting his seniority in the rank of HC (Clerk) retrospectively cannot be accepted. He submits that not only the petitioner but all other persons, who are likely to be affected by any retrospective change in seniority of the petitioner, have already earned two further promotions and are presently serving as Inspectors at this stage. By placing reliance on the decision of the Apex Court in “*Union of India vs. Tarsem Singh*” (2008) 8 SCC 648, he submits that a challenge to the seniority position made by the petitioner after 24 years is liable to be rejected.

7. Learned counsel further submits that the petitioner in the case of *Adhikarimayum (supra)*, belonged to Group Centre Imphal under Nagaland & Kohima Division, had sought seniority over Sh. L. Lokhendra Singh of Group Centre Mukochang, which seniority was granted as they both, though belonging to different Group Centres, were from the same division i.e. Nagaland and Kohima division. The petitioner in the present case belongs to an entirely different division i.e. Jodhpur division and cannot now, after 24 years, seek correction of his seniority as HC (Clerk), which was fixed on



01.04.1998 and that too without impleading the effected parties. He, therefore, prays that the writ petition be dismissed.

8. Having considered the submissions of the learned counsel for the parties and perused the record, we find that the petitioner, who was promoted as HC (Clerk) on 01.04.1998 and was assigned seniority as per the Group Centre to which he belonged, is now seeking that his seniority be re-fixed by taking into account his merit position in the common selection process conducted for promotion to the rank of HC (Clerk) from the entire cadre of Naiks. His plea being that this issue that as per Rule 3(b), only the seniority of Naiks was required to be maintained Group Centre wise and the seniority of the higher rank of HC (Clerk) was to be a common seniority based on the inter-se merit of the candidates in the selection process, has been clarified by the Apex Court only in 2014.

9. Since the entire premise of the petitioner approaching this Court is based on the decision of the Apex Court in ***Union of India and others vs. Adhikarimayum (Supra)***, it would be apposite to refer to the said order in its entirety, the same reads as under:

“Through the instant civil appeal, the Union of India and others have assailed the order passed by the High Court of Gauhati (Imphal Bench) (hereinafter referred to as the 'High Court') dated 15.7.2002 in Writ Petition No. 1753 of 2001, as also the order in Writ Appeal No. 36 of 2003 dated 19.09.2006, whereby the former order dated 15.7.2002 was affirmed.

The direction of the High Court pertains to the determination of seniority in the cadre of Head Constable (Clerk). On the above subject, learned counsel for the appellants invited our attention to the Combatised Clerical Cadre Rules, 1988 (hereinafter referred to as the '1988 Rules'), and more specifically to Rule 3(b) thereof. The above Rule 3(b) relied upon by the learned counsel for the appellants is being extracted hereunder:

"3(b) Seniority list in relation to the Naiks shall be



separately maintained by each Group Centre for promotion to the rank of Head Constable."

A perusal of the above rule reveals, that the same pertains to the cadre of Naiks, and not to the cadre of Head Constables (Clerk). Accordingly, we are of the view that the rule relied upon by the learned counsel for the appellants would be inapplicable for the determination of the controversy in hand.

It is not a matter of dispute that appointment by promotion to the cadre of Head Constables (Clerk) is made out of Naiks. Even though, the seniority of Naiks is to be maintained separately, by each Group Centre, promotion is by way of selection from entire cadre of Naiks in all the Group Centres. The above promotion is made on the basis of a process of selection, whereupon, a definite inter se merit list is prepared, wherefrom, onward promotion to the cadre of Head Constable (Clerk) is made. That being the position, we find no infirmity in the impugned orders passed by the High Court, directing the appellants to determine the inter se seniority of the respondent, keeping in view the fact the he was placed at serial number 1 in the merit list for promotion from amongst Naiks to the post of Head Constable (Clerk).

For the reasons recorded hereinabove, we find no merit in the instant appeal, and the same is accordingly dismissed."

10. From a perusal of the aforesaid decision, we find that the petitioner is correct in urging that the Apex Court has upheld the decision of the Guwahati High Court in directing the respondents to determine the inter-se seniority of the respondent therein as HC (Clerk) on the basis of his merit position in the merit list for promotion. This, undoubtedly has been clarified by the Apex Court that as per Rule 3(b) of the Rules, it is only the seniority list in relation to Naiks, which was to be maintained separately for each Group Centre and not for any higher post including that of HC (Clerk). The question for our consideration, however, is as to whether in the light of this finding of the Apex Court, the respondents were required to re-work the inter-se seniority of all HC (Clerk) irrespective of the date on which they were promoted.



11. Learned counsel for the petitioner has urged that even though, Sh. Adhikarimayum Tej Kumar Sharma was promoted as HC (Clerk) on 13.07.2002, the decision of the Guwahati High Court as upheld by the Apex Court ought to be also applied to the case of the petitioner, who was promoted as a few years earlier i.e. 01.04.1998. We are, however, unable to agree. This is for two reasons, the first being that there is no such direction by the Apex Court that the seniority of all HC (Clerk) promoted right from 1988, when the Cadre Rules were promulgated, should be re-fixed. The second being that unlike Sh. Adhikarimayum Tej Kumar, who had approached the Guwahati High Court in 2001 itself seeking his promotion on the basis of his merit position in the selection process conducted for the post of HC (Clerk), the petitioner has chosen to approach this Court only on 22.02.2022 i.e. almost 24 years after his seniority as HC (Clerk) was fixed.

12. While considering the issue of delay and laches, we find that there is absolutely no explanation from the petitioner as to why he did not take steps within reasonable time to challenge his seniority by seeking an appropriate legal remedy, especially when a common seniority list of Naiks / Clerks for promotion to the post of HC (Clerk) was being maintained w.e.f. 01.04.2003. The respondents are, therefore, correct in urging that the petitioner has shown laxity on his part by sleeping over his rights for 24 years from the date he was promoted and for 08 years from the date of the aforesaid decision of the Apex Court. The petitioner has not denied that prior to 01.04.2003, the seniority of Naiks was being maintained at Unit / Division level and the eligible Naiks / Clerks were being promoted to the rank of HC (Clerk) on the basis of each Unit / Division.



13. We also find that based on the seniority assigned to him as HC (Clerk) w.e.f. 01.04.1998, the petitioner was promoted to the rank of ASI (Ministerial) on 20.10.2003 and thereafter, also promoted first as Sub-Inspector on 13.08.2009 and thereafter, as Inspector on 01.04.2015. The petitioner was from time to time being made aware regarding his seniority position but raised no grievance with respect to the same till 10.01.2015, i.e., when he submitted his first representation and has approached the Court only in 22.02.2022. In our considered view, any person aggrieved by the incorrect fixation of his seniority is expected to seek redressal within a reasonable time. Mere filing of representations, which, as noted hereinabove, was filed by the petitioner on 10.01.2015 i.e. almost 17 years after his seniority was fixed, cannot be a ground to accept such a belated challenge to the petitioner's seniority position. Any relief granted to the petitioner at this stage would lead to disruption of the settled seniority position of a huge number of employees, who are not even before this Court.

14. In this regard, it may be apposite to refer to the following extracts from the decision of the Apex Court in ***Tarsem Singh (supra)***:-

“7. 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.”

15. Reference may also be made to the following observations from the decision dated 02.12.2022 of a Co-ordinate Bench in **WP(C) 3567/2014** titled as **Ajay Kumar Awasthi & Ors. vs. UOI**:

“33... The judgments relied upon by the counsel for the petitioners are of no avail. On the contrary, it is clearly borne out that the petitioners by first voluntarily opting not to be a part of the then newly constituted Central list and then by showing laxity on their part, silently stood on the sidelines without raising their voices at the appropriate stage/time, they are thereby guilty of derailing themselves by not latching onto the then available chance. For the above reasons, representations made by the petitioners herein can hardly be of any assistance to them as the seniority list could not have been disturbed in any event.

34. Seeing the factual matrix, especially the background involved, at this stage, it would be highly inappropriate for this Court to unsettle the existing position as it would then lead to numerous complexities and give rise to a new chapter altogether, which will be highly complex and tardy in the present scenario. For these reasons detailed herein above, the petitioners herein are not entitled to the reliefs sought for.

35. Accordingly, in view of the aforesaid factual position and settled law, the present petition is dismissed alongwith the pending applications, if any, leaving the parties to bear their own costs.”

16. In the light of the aforesaid, we are of the considered view that the writ petition suffers from gross delay and laches. The seniority position, which has prevailed for the last many years, cannot now be permitted to be altered or changed at this belated stage at the behest of the petitioner, who



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has slept over his rights for the last 24 years. The writ petition, being meritless, is accordingly dismissed.

**(SHALINDER KAUR)
JUDGE**

**(REKHA PALLI)
JUDGE**

AUGUST 29, 2024/ss