



2024:070:1356-DE



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

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Date of decision: March 06, 2024

+ W.P.(C) 3447/2024, CM APPL. 14042/2024

(58) RADHA KRISHAN

..... Petitioner

Through: Mr. Bhanu Gupta, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vineet Dhanda, CGSC with
Ms. Gurleen Kaur, Adv. and
Mr. Sanjeev, ASI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 14042/2024

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 3447/2024

1. This petition has been filed by the petitioner with the following prayers:

“In view of the facts and legal submission made hereinabove, the Petitioners most respectfully prays that this Hon’ble Court may graciously be pleased to:

a) Issue a Writ, Order or Direction in the nature of certiorari calling for the records and quash the

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impugned order dated 05.10.2020 to the extent of date of seniority only with effect from 15.06.2015 in place of 01.12.2017 and also impugned rejection letter dated 17.11.2022, passed by the Respondent No.6 & 4 respectively.

b) Issue a further Writ, Order or Direction in the nature of mandamus commanding the Respondents to grant the seniority to the Petitioner to the rank of Head Constable/GD from the date of bringing him in the 'approved list' i.e. 15.06.2015 or from the date of releasing of promotion i.e. 28.10.2016, in place of 01.12.2017 already given.

c) To pass any other such orders as this Hon'ble Court may deem fit and proper in the light of above mentioned facts and circumstances of the case in the interest of justice please."

2. In effect, the petitioner is challenging the decision of the respondents to grant him seniority on the post of Head Constable (GD) w.e.f. December 1, 2017 instead of June 15, 2015.

3. The facts as noted from the petition are that the petitioner was appointed in CRPF as Constable in the year 1997. Somewhere around January 2014, he went on deputation to the Ministry of External Affairs. Thereafter, he was posted in the Embassy of India at Niamey, Niger (West Africa) on August 19, 2014 and continued to be posted there till March 5, 2017. Thereafter, between the period of March 6, 2017 to March 17, 2019, the petitioner was posted at Embassy of India in Moscow.

4. It appears, during the period the petitioner was on deputation to



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Ministry of External Affairs, he fell within the zone of consideration for promotion to the post of Head Constable (GD). It is stated by the learned counsel for the petitioner that an option was taken from the petitioner as to whether he would like to get promotion to the post of Head Constable (GD) and repatriate back to the CRPF. It appears that the petitioner decided to continue on deputation.

5. It is a conceded case that on the completion of the deputation, the petitioner was repatriated back to the CRPF and on repatriation, the petitioner got the promotion to the post of Head Constable (GD) w.e.f. December 1, 2017.

6. On the issue with regard to the fixing of seniority of the petitioner, it is noted that the petitioner was granted seniority in the grade of Head Constable (GD) w.e.f. December 1, 2017.

7. The submission of learned counsel for the petitioner is that when option was called for, the petitioner was not informed that he shall be granted the seniority after one year from the date when the petitioner would have been ordinarily promoted as Head Constable (GD).

8. We also note the stand of the respondents in reply to the legal notice issued by the petitioner which states, as the petitioner has decided to forego his promotion to the post of Head Constable (GD), he shall not be entitled for consideration for promotion for next one year from the date of refusal of his promotion or till a next vacancy arises, whichever is later. Resultantly, the respondents notified the seniority of the petitioner w.e.f. December 1, 2017.

9. In this regard, it is relevant to reproduce hereinafter Para 17.12



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of the ‘Guidelines on Departmental Promotion Committees’ which governs the case of the petitioner:

“Refusal of Promotion: 17.12

When a Government employee does not want to accept a promotion which is offered to him he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-a-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where ad-hoc promotions against short term vacancies are refused.”

(emphasis supplied)

10. There being justification for the respondents to grant seniority to the petitioner w.e.f. December 1, 2017, as also the case of the petitioner is governed by Para 17.12 of the ‘Guidelines on Departmental Promotion Committees’, we are of the view that the petitioner after availing the complete deputation period till 2019, cannot, now resile out of the stand taken by him, i.e., when the option was given to him for availing the benefit of promotion to the post Head Constable (GD) from the date of his actual entitlement, he opted not to



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exercise the same.

11. We do not see any merit in the petition and as such the writ petition is dismissed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

MARCH 6, 2024/jg

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