



2024:DHC:9648-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 04.11.2024.
Pronounced on: 16.12.2024

+ **W.P.(C) 4799/2022**

PREM PRAKASH.

.....Petitioners

Through: Mr. Anilendra Pandey and Mr.
Ashutosh Gupta, Advs.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Jivesh Kumar Tiwari, Sr.
Panel Counsel with Mr.
Abhishek Ashish, GP and Ms.
Samiksha, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioner pray for the following reliefs:-

“a) Issue appropriate writ, order or directions in the nature of mandamus commanding to the respondents to provide immediate consequential benefits and seniority to the petitioner and 297 other similar situated person w.e.f. August 2018 who have been promoted with a delay of 3 years to the rank of ASI (Armors) with immediate effect;

b) Issue further appropriate writ, order or directions commanding the respondents to provide promotion to the rank of SI(Armors) to 37 persons out of 298 freshly promoted ASI(Armors) who



were eligible for the promotion to the rank of SI(Armors) before issuance of the New Rules of Recruitment since 2018;”

Case of the Petitioner:

2. It is the case of the petitioner that the petitioner was inducted into the Central Reserve Police Force (in short, ‘CRPF’) as Constable (General Duty), on 01.04.1990. The petitioner completed the Basic Armourer Course in 1994 and was subsequently transferred to the Armourer Division on 07.07.1995. On 08.08.2005, the petitioner was promoted from Constable (CT) (Armourer) to Head Constable (HC) (Armourer), and since then, the petitioner has continuously served the country without any further promotion.

3. It is the case of the petitioner that there was initially a promotion schedule in the CRPF for the advancement from HC to Sub Inspector (in short, ‘SI’), however, in the year 2018, the Ministry of Home Affairs (in short, ‘MHA’) issued a Memo No. O.VI-7/2013-PERS-II dated 03.08.2018, creating the post of Assistant Sub-Inspector (ASI) (GD) in the CRPF. The said promotion schedule was later approved by the Directorate, *vide* Order No. O.VI-7/2013-ORG-DA-III, dated 21.12.2018, for application to the CRPF (Armourer) as well.

4. It is the case of the petitioner that since the post of ASI had not been released as of 30.06.2020, the DIG (Estt) issued a letter/reminder requesting the release of the ASI post and the finalization of the Recruitment Rules, which were still awaited. Thereafter, the petitioner, through his counsel, sent a legal notice dated 02.02.2021 to



the respondents, requesting that the promotion be granted within a period of two weeks.

5. The respondent no. 3 replied to the petitioner's legal notice dated 02.02.2021, stating that the matter was under consideration with the MHA and that upon approval, the promotion of eligible HC (Armourer) to the post of ASI (Armourer) would be released at the earliest. Subsequently, the petitioner sent a reminder to the respondent no. 1, requesting that the needful be done within one week of receiving the reminder, however, no action was taken.

6. It is the case of the petitioner that being aggrieved of the inaction of the respondents, the petitioner filed a Writ Petition in this court, being W.P. (C). 3533/2021 titled ***Prem Prakash V. Union of India & Ors***, in which this Court directed the respondents to frame the Recruitment Rules for ASI (Armourer) within six months. This Court, *vide* Order dated 25.03.2021, directed that in the event the Recruitment Rules are not framed within the stipulated time, the petitioner shall have the liberty to initiate contempt proceedings against the respondents.

7. The new Recruitment Rules for the post of ASI (Armourer) were published in the *Gazette of India*, *vide* GSR No. 617(E), dated 06.09.2021.

8. It is the case of the petitioner that all 298 Constables/Head Constables of the CRPF, who were promoted with a delay of 3 years to the rank of ASI (Armourer) as per the Directorate Letter No. P.VU.39/2021Estt (04/2020)-DA-6 dated 13/09/2021, were affected by this delay. A counterpart of the petitioner sent a legal notice dated



17.01.2022, to the respondents, requesting for the provision of consequential benefits and seniority from August 2018 for all the 298 Constables/Head Constables of the CRPF who were promoted with a delay of 3 years to the rank of ASI (Armourer). The respondents replied to the above legal notice on 07.02.2022, denying any action on the legal notice from the petitioner's counterpart, and stated that the averments made in the legal notice were baseless.

9. The petitioner has, therefore, approached this Court seeking seniority for himself and the 297 other similarly situated individuals, with effect from August 2018, as they were promoted with a delay of 3 years to the rank of ASI (Armourer). Additionally, the petitioner requests the respondents to promote 37 of the 298 newly promoted ASI (Armourer) personnel to the rank of SI (Armourer), as they were eligible for promotion to that rank before the issuance of the new Recruitment Rules in 2018.

Submissions of the learned counsel for the Petitioner:

10. The learned counsel for the petitioner submits that in the present case, 298 posts of ASI (Armourer) had been created by the MHA vide office Order dated 21.12.2018. However, the respondents delayed the notification of the Recruitment Rules and resultantly, the Recruitment Rules were notified only on 06.09.2021, with promotions to the said posts being made with effect from 13.09.2021. He submits that due to the delay caused by the respondents, the petitioner and other similarly situated personnel of the CRPF cannot be made to suffer. He submits that, therefore, the promotion must be given a retrospective effect from the date of the creation of the post of ASI, that is, August 2018.



He submits that there were 37 personnel who were eligible for promotion to the rank of SI (Armourer) before the issuance of the new Recruitment Rules. Their promotion was delayed only because the exercise of formation of the new Recruitment Rules was in progress. They would, therefore, be entitled to promotion to the rank of SI (Armourer) from the date they became eligible for the said post.

Submissions of the learned counsel for the Respondents:

11. On the other hand, the learned counsel for the respondents submits that a proposal for the first cadre review of the Armourer cadre (Group 'B' and 'C') to enhance their promotion prospects was forwarded to the MHA *vide* UO No. O.IV.7/2013-Org dated 24.04.2018. Subsequently, the MHA conveyed the Competent Authority's approval for the first cadre review of the Armourer cadre (Group "B" & "C") through letter No. O.IV-07/2013-Per-II dated 03-12-2018. He submits that this approval resulted in the creation of the post of ASI(Armourer) by abolishing an equal number of HC(Armourer) posts. He submits that the approval was communicated to all CRPF formations by the DIG (Org), Directorate, through order No. O.IV-07/2013-Org-DA-III dated 21-12-2018.

12. The respondents further contend that with the introduction of the ASI/Armourer rank into the cadre *via* Directorate Order No. O.IV-07/2013-Org-DA-III dated 21-12-2018, promotions from HC/Armourer to ASI/Armourer were to be implemented. Extensive efforts were made to finalize the Recruitment Rules for the newly created ASI/Armourer posts, while simultaneously screening the records of eligible HC/Armourer personnel to enable immediate



promotions upon finalization of the Recruitment Rules. Although the proposal for framing the Recruitment Rules for ASI/Armourer was initially submitted to the MHA via UO No. M.V-01/2019-Estt(P/Cell) dated 21-05-2019, the process was finalized only on 06-09-2021, after addressing repeated observations and concerns raised by the MHA over time.

13. He further submits that the Recruitment Rules were finally approved by the MHA via GSR No. 617(E) dated 06-09-2021 and published in the *Gazette of India* under No. 503 on 07-09-2021. Subsequently, 299 senior-most HCs (Armourer) (including the petitioner), who had completed the requisite promotional courses, were placed on the panel of the Special Approved List-AA/Armourer-04/2020. They were promoted to the rank of ASI(Armourer) as per the Directorate letter dated 13.09.2021, with their seniority for further promotion being effective from 13.09.2021. They were also allowed to take charge of their promoted posts at their current locations, that is, places other than the declared headquarters, subject to meeting all the eligibility conditions for promotion. The petitioner was promoted to the rank of ASI (Armourer) with effect from 17.09.2021 (FN), with seniority for the next promotion being considered from 13.09.2021.

14. The learned counsel for the respondents submits that the government has already introduced the Modified Assured Career Progression (in short, 'MACP') Scheme, which provides for three financial upgradations at intervals of 10 years of regular service, subject to fulfilling the eligibility conditions. The petitioner has already been granted the second MACP benefit, effective from



01.07.2011, as per the Office Order No. P.1.4/SRC-14 dated 26.03.2012. Additionally, 299 promotions to the rank of ASI (Armourer) were made after the posts of ASI (Armourer) were created by abolishing an equal number of HC/Armourer posts. He submits that the process of framing and publishing Recruitment Rules is time-consuming and requires adequate time for completion.

Analysis and Findings:

15. We have considered the submissions made by the learned counsels for the parties.

16. At the outset, we must reiterate the general and universal principle that the right to be considered for promotion accrues on the date of consideration of the eligible candidates, unless, of course, the applicable rule lays down a particular time-frame within which the selection process must be completed. Where no statutory duties are cast to either prepare a year-wise panel of the eligible candidates or of the selected candidates for promotion, no vested right accrues in favour of the personnel to seek such promotion, especially in the absence of the recruitment rules.

17. In the present case, pursuant to the first cadre review of Group 'B' and 'C' Armourer Cadre of the CRPF, the MHA, *vide* letter dated 07.12.2018, had conveyed the approval of the Competent Authority, *inter alia*, for the creation of 298 posts of ASI (Armourer). As these were new posts being created, Recruitment Rules for the same had to be notified. The exercise for the framing and notification of the Recruitment Rules started with the proposal thereof being sent by the Competent Authority in the CRPF to the MHA for seeking its



approval. The respondents alleged that the MHA had raised certain objections and queries on the said draft of the recruitment rules, and after due deliberation, the Recruitment Rules were finally approved by the MHA on 06.09.2021 and published in the *Gazette of India* on 07.09.2021.

18. In between, the petitioner had also filed a petition before this Court, being W.P. (C). 3533/2021, praying for a direction to the respondents to promote the petitioner and other similarly situated persons from the post of Head Constable (Armourer) to ASI (Armourer) with effect from 2018. This Court disposed of the said petition *vide* Order dated 25.03.2021, with a direction to the respondent no.1 to frame the Recruitment Rules for the post of ASI (Armourer) within six months of the said order. The Recruitment Rules so framed have been made to come into effect from the date of their publication in the Official Gazette and, therefore, do not have a retrospective effect.

19. In the absence of the Recruitment Rules, the petitioner, therefore, cannot seek promotion to the post of ASI (Armourer), even though such posts were created by the MHA *vide* its letter dated 07.12.2018. There could not have been a promotion in a vacuum. It is not the case of the petitioner that the petitioner has been discriminated as against some other personnel. It is also not the case of the petitioner that they were the feeder cadre for the post of ASI (Armourer) and that some other personnel belonging to such other feeder cadres obtained a march over the petitioner due to the delay in framing of the Recruitment Rules.



20. In *KJS Bains v. Union of India and Ors.*, 2024 SCC OnLine Del 1919, a Division Bench of this Court held that merely because a post has been upgraded, it would not mean that a person shall automatically be upgraded/promoted to the post. Such upgradation/promotion has to be in accordance with the Recruitment Rules and through the process of the Departmental Promotion Committee (DPC). The above Judgement was followed by a Division Bench of this Court in *Vijay Yadav & Ors. v. Union of India & Ors.*, 2024 SCC OnLine Del 2773, as well.

21. In view of the above, we find no merit in the present petition. The petitioner cannot claim a retrospective promotion merely due to the creation of a post. In the absence of the Recruitment Rules, the petitioner could not have been considered for the said post during the *interregnum* till such time the Recruitment Rules were notified.

22. As far as the claim of the 37 unnamed persons for promotion to the post of SI (Armourer) is concerned, the petitioner cannot agitate their rights in the present petition. We, therefore, do not make any comment on the entitlement of these persons in the present petition.

23. Accordingly, we find no merit in the present petition. The same is dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 16, 2024/rv/DG

[Click here to check corrigendum, if any](#)