



\$~13

\*

**IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision:- 29.07.2024***

+

**W.P.(C) 1799/2020****AJAY KISHOR****.....Petitioner****Through: Mr. Ankur Chhibber and Mr. Nikunj  
Arora, Adv.****versus****UNION OF INDIA AND ORS.****.....Respondents****Through: Mr. Anshuman, SPC and Mr. Piyush  
Ahluwalia, Adv.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****REKHA PALLI, J (ORAL)**

1. The petitioner who is working as a Sub Inspector (CM) in the Indo-Tibetan Border Police (ITBP) has approached this Court under Article 226 of the Constitution of India seeking the following reliefs-

*“(i) Issue a writ of certiorari for quashing of order dated 17.04.2017 whereby the representation made by the petitioner dated 13.02.17 was rejected and for quashing of order dated 09.10.2018 whereby the representation made by the petitioner dated 19.09.2018 was rejected and for quashing of order dated 04.09.2019 whereby the representation made by the petitioner dated 20.12.2018 was rejected and*

*(ii) Issue a writ of certiorari for quashing of order dated 13.01.2017 to the extent whereby the name of the petitioner was not included in the said pay fixation order passed pursuant to order dated 29.01.2016 with effect of which even the petitioner was promoted and for quashing of order dated 17.01.2017 to the extent whereby the financial benefit of the promoted post was given to the petitioner w.e.f. 30.12.2016 instead of 08.03.2016 i.e., the*



*date from which the said benefit was given to the juniors of the petitioner, and*

*(iii) Issue a writ of mandamus directing the respondents to treat the petitioner as having been promoted from the dated 08.03.2016 from his juniors were promoted and to fix the pay of the petitioner notional by granting similar increment as have been granted to the juniors to grant the same pay as being drawn by his juniors along with all consequential benefits and arrears;"*

2. As per the brief factual matrix emerging from the record, we find that the petitioner who initially joined the ITBP on 14.10.2000 as a Constable (GD) tendered his technical resignation on 26.10.2005 to join the post of Head Constable (CM) on 04.11.2005. The petitioner was thereafter promoted to the rank of Assistant Sub Inspector (CM) on 29.07.2011 and cleared the pre promotional refresher course for Sub Inspector/SI (CM) in 2015. On 29.01.2016, the respondents issued an order promoting all candidates who had successfully cleared the SI (CM) refresher course as SI. As per this order the petitioner was to join 46<sup>th</sup> Bn on promotion, however, on account of pendency of a criminal case against him filed by his estranged wife under Section 498 of Indian Penal Code, 1860, the petitioner was not permitted to join 46<sup>th</sup> Bn as a SI (CM) but was asked to continue as an ASI in the CR Office.

3. The petitioner was thereafter acquitted in the aforesaid criminal case on 07.06.2016. Consequently, he was vide order dated 14.09.2016 directed to join the promotional post of SI (CM) in the 46<sup>th</sup> Bn which post the petitioner joined on 30.12.2016. This was followed by an order dated 02.01.2017 granting him all financial benefits and fixation of pay as also seniority as SI(CM) w.e.f. the date of his joining the post of SI(CM) i.e. 30.12.2016. Being aggrieved by the order vide which his pay and seniority



was fixed w.e.f. 30.12.2016 as against his batch mates who were granted pay fixation and seniority w.e.f. 29.01.2016, the petitioner made representations which were rejected on 09.10.2018 and 04.09.2019. It is in these circumstances that the petitioner has approached this Court.

4. The grievance of the petitioner is now that it has been conclusively held that the petitioner was innocent and was at the time of issuance of the promotion order dated 29.01.2016 embroiled in a false case by his estranged wife, he ought not to be deprived of his rightful promotion from the due date when he was otherwise eligible for the same. Further, he submits, on instructions, that the petitioner is only claiming notional seniority and fixation of pay along with his batch mates in the rank of SI(CM) w.e.f. 29.01.2016 and is not seeking any arrears on account of pay fixation. He, therefore, prays that the writ petition be allowed.

5. On the other hand, learned counsel for the respondents seeks dismissal of the writ petition and submits that in the light of the admitted position that a criminal case was pending against the petitioner on 29.01.2016 when his batch mates were promoted, the respondents cannot be faulted for not granting him promotion along with his batch mates. He submits that soon after the petitioner was acquitted in the criminal case, he was granted promotion and therefore, pay and seniority have rightly been fixed from the date he joined the promotional post. He, therefore, prays that the writ petition be dismissed.

6. We have considered the submissions of learned counsel for the parties and perused the record. We find that both parties are *ad idem* that the petitioner was denied promotion along with his batch mates on 29.01.2016 only on account of a criminal case pending against him, in which he was



acquitted on 07.06.2016. In view of this acquittal, it is evident that the criminal case against the petitioner was totally unfounded. The question before this Court now is as to whether the petitioner should be penalised for being involved in a false case against him at the time when he was due for promotion.

7. Having given our thoughtful consideration, we are of the view that once the petitioner stands acquitted in the criminal case, which was the only basis of denying him promotion on 29.01.2016, he is justified in claiming that he must be promoted to the post of SI (CM) from the date of the original promotional order itself. We also find that it is the respondents' own stand that the petitioner was found fit for promotion on 29.01.2016, his name having been placed at serial no. 4 of the promotion order, which benefit was denied to him only because of pendency of the criminal case against him.

8. In the light of the admitted position that the shadow of the criminal case which was cast on his right to promotion on 29.01.2016, no longer exists. We are of the view that the petitioner is entitled to claim notional pay fixation and seniority w.e.f. 29.01.2016 itself.

9. We, therefore, allow the writ petition by setting aside the orders dated 17.04.2017, 09.10.2018 and 04.09.2018 and directing the respondents to grant notional seniority and pay fixation in the rank of SI (CM) to the petitioner w.e.f from 29.01.2016 from the date his batch mates were promoted to the rank of SI (CM). We however make it clear that the petitioner will not be entitled to claim any arrears of the differential pay of a SI and an ASI for the period between 29.01.2016 to 30.12.2016 i.e., the date when he actually took charge of the post of SI (CM).



2024:DHC:5571-DB



10. The writ petition is disposed of in the aforesaid terms.

**(REKHA PALLI)**  
**JUDGE**

**(SHALINDER KAUR)**  
**JUDGE**

**JULY 29, 2024**  
**SU**