



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

% Date of decision: January 09, 2024

+ W.P.(C) 2346/2020

(19) RAJ KUMAR Petitioner

Through: Mr. Pradeep Kumar Yadav,
Mr. Gopal Singh and
Mr. Vishal Thakre, Advs.

versus

UNION OF INDIA AND ORS. Respondents

Through: Ms. Aakanksha Kaul, Sr. PC with
Ms. Versha Singh and
Mr. Satya Sabharwal, Advs. 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 petitioner with the following prayers:

“a. It is therefore, most respectfully prayed that this Hon’ble Court may most graciously be pleased to allow the present Writ Petition of the petitioner and direct the respondents to grant all the benefits as per the directions of the order Dt.02.11.2006 and promotion and other consequential to the petitioner for the period commencing from 25.03.2005 to 30.06.2007.

b. Pass such further and other order as may be deemed fit and proper in the interest of justice.”



2. The facts as noted from the petition are that the petitioner was appointed as Constable on October 28, 1971 in Railway Protection Special Force ('RPSF', for short). He was promoted to the rank of Senior Rakshak on March 20, 1979. He was further promoted to the rank of Head Constable, on August 2, 1983. The case of the petitioner was that he was not promoted to the rank of ASI/E by the respondents.

3. It is noted that in the year 2004, the petitioner had filed a writ petition being W.P.(C) 18278/2004 before this Court challenging the decision of the respondents. The said writ petition was disposed of on November 2, 2006, wherein the following has been stated:

"During the course of hearing, the learned counsel appearing for the respondents submitted that as per the records available with the Department, the petitioner had taken three and not four chances for clearing the prescribed Departmental test for promotion to the post of Assistant Sub-Inspector (ASI) in Railways. On the basis of the records, which are available in Court, it is further stated that the petitioner had not taken the test in the year 1997. The petitioner cleared the test in third attempt. However, it was under a mistaken impression that the Court was informed that the petitioner had taken the entrance test for the fourth time in the year 2001. The petitioner having cleared the test in the year 2001, he would be entitled to promotion and benefits thereof from that year itself. In view of the statement made by the learned counsel appearing for the respondents, nothing survives in this writ petition and the same is disposed of accordingly. The petitioner would be granted the benefits of promotion from the year 2001, as per the relevant rules.

However, the parties are left to bear their own costs."

4. Pursuant thereto, the respondents had initially issued an order dated



January 8, 2007, which reads as under:

“Sub:- Writ Petition No. 18278 filed by HC/Raj Kumar 6BN/RPSF/DBSI VS Union of India and others in the High Court of Delhi at New Delhi.

Ref:- 6BN's letter No. 6BN/HC/RK/Court Cases /2006-818 dt. 7.12.06.

Please refer to above. Consequent upon order of Hon'ble High Court of Delhi, dt. 02.11.2006 in a Civil Writ Petition No. 18278/2004 filed by Raj Kumar Had Constable / RPSF (promoted as ASI/RPSE w.e.f 1.7.2004 under restructuring), Shri Raj Kumar will be promoted as ASI (E) w.e.f 21.9.2001, from the date when his batch mates were promoted. However, his promotion from retrospective effect will take place only after his successful completion of the Pre-Promotional Course.

For the period from 21.09.2001 till he is formally promoted as ASI, after completion of pre-promotional course only proforma fixation is admissible and no arrears of pay will be admissible from the period during which he has not shouldered the responsibility of the higher post, as per the existing instruction contained in Para 228 of IREM Vol. I. These provisions have also been upheld by the Hon'ble Supreme Court of India vide their order dt. 13.8.97 in Civil Appeal No. 8904/941 UOI and Others Vs. P. Abrahan and Others, against order dt. 30.9.91 of CAT/Ernakulam Bench in OAN. 649/90.

The petitioner may be advised accordingly.”

5. Thereafter, the respondents had issued an order dated February 20, 2007, whereby they have granted promotion to the petitioner as ASI w.e.f September 21, 2001 when his batch mates were promoted, but without arrears of pay and only on notional basis in terms of paragraph 228 of IREM Volume-I.



6. The submission of the learned counsel for the petitioner is that the petitioner is entitled to the wages of pay for the period between March 25, 2005 to June 30, 2007. It is not clarified as to how the petitioner is entitled to arrears for the aforesaid period. Suffice to state that the petitioner had filed applications being CM Nos. 9516/2009 and 9517/2009 in the aforesaid writ petition seeking a similar benefit as has been sought in the present petition. The said applications were not pressed as is clear from the order dated November 11, 2009 (Annexure P-4) only on the ground that the petitioner intends to file a substantive writ petition to challenge that part of the impugned order dated February 20, 2007 which denied salary to him.

7. On a specific query to the learned counsel for the petitioner as to why the petitioner had not challenged the order immediately thereafter and waited for almost 11 years to file the present petition seeking the benefit of salary, the only submission made by the learned counsel for the petitioner is that the petitioner was making representations to respondents in that regard. The said submission is not appealing as continuous representations would not justify the delay and laches which has occurred in filing of the present writ petition. Even otherwise, it is noted from the order dated February 20, 2007 which we reproduce as under that the respondents have justified the non-payment of arrears of salary by stating:-

“Consequent upon the order dated 02/11/2006 of Hon’ble High Court of Delhi in Civil writ Petition no. 18278/200 filed by Shri Rajkumar of RPSF and exemption from attending the pre-promotional training of ASI granted by DG / RPF on his representation dated 08/02/2007 on grounds of his retirement on superannuation in June, 2007, approval of IG-Cum CSC/ RPSF is hereby communicated for empanelment and promotion of Shri Raj Kumar, HC/RPSF (promoted as ASI/RPSF w.e.f



1.7.04 under restructuring) to the rank of ASI in the scale of (Rs.4000-6000) w.e.f. 21.9.2001 from the date when his batchmates were promoted on the basis of his selection to the rank of ASI/Exe in 2001 under Rule 70 of RPF Rules, 1987.

Further, as has already been intimated vide Board's letter of even number dated 8.1.07, only proforma fixation will be admissible for the period from 21.09.2001 till 1.7.04 (since when he was promoted as ASI under restructuring) and no arrears of pay will be admissible for the period during which he has not shouldered the responsibility of the higher post as per existing instructions contained in para 228 of IREM Vol I which have also been upheld by the Hon'ble Supreme Court of India vide their order dated 13.8.97 in Civil Appeal No. 8904/1994 UOI and Others Vs P. Abraham and others against order dated 30.9.91 of CAT / Ernakulam Bench in OA No. 649/90.

It may please be ensured that the above staff was / is not undergoing any punishment or facing chargesheet for major penalty or facing any vigilance case etc. during the period. In case the above official was / is undergoing any punishment or facing chargesheet for major penalty or facing any vigilance case, his promotion as ASI/Executive w.e.f 21/09/2001 should not be given effect to and his case may be referred to this office for further orders.

Necessary action may be taken accordingly."

(emphasis supplied)

8. Even otherwise, it may be stated, that in terms of order dated November 2, 2006, this Court while disposing of the writ petition had also stated that the petitioner shall be granted the benefit of promotion from the year 2001 as per the relevant rules.

9. The respondents in their order dated February 20, 2007, which we have reproduced above, has justified the non-payment of arrears of pay by relying on paragraph 228 of IREM Volume-I and also the fact that the petitioner in terms of his representation dated February 8, 2007 had sought



exemption from attending the pre-promotional training for ASI. In other words, the pre-promotional training is pre-requisite for being promoted to the post of ASI, was exempted in the case of the petitioner.

10. Though learned counsel for the petitioner has disputed any such representation dated February 8, 2007 was given by the petitioner, suffice to state that the factum of representation has been clearly recorded in the order dated February 20, 2007, which we have reproduced above. In fact, the petitioner has not even placed that order on the record of this court.

11. Be that as it may, the reasons given by the respondents by relying on paragraph 228 IREM Volume-I and coupled with the fact that the petitioner has sought exemption from attending the pre-promotional training for ASI and also the fact that the petition was filed by the petitioner only in the year 2020 which surely make the present petition, hit by delay and laches, we are of the view that the prayers as sought by the petitioner cannot be granted by this Court more so in exercise of power under Article 226 of the Constitution of India. Accordingly, the petition is dismissed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 09, 2024/jg