



2024:DHC:8025-DB



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

Judgment reserved on: 25.09.2024

Judgment pronounced on: 18.10.2024

+ W.P.(C) 5423/2023

M SAMUNDRA SINGH

.....Petitioner

Through: Mr. Abhay Kumar Bhargava
and Mr. Satyarth Sinha, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Garima Sachdeva, SPC
with Ms. Divyanshi Maurya,
Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner, who is currently serving as an Inspector/GD in the Central Reserve Police Force (CRPF), has approached this Court seeking the following reliefs:

“(i) Issue a writ of certiorari or any other appropriate order or direction in the nature of quashing the impugned orders dated 19.04.2023 (Annexure-P1), 25.04.2022 (Annexure-P2) and 09.08.2022 (Annexure-P3).

(ii) Issue a writ of Mandamus or any other writ, order or direction thereby directing the respondents to promote the petitioner to the rank of Assistant Commandant with seniority at par with his batch-mates with all consequential benefits.”



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2. The brief facts germane for adjudication of the present petition are that in 2003, the petitioner appeared in the examination for the post of Sub-Inspector (SI) in the Central Paramilitary Organisation (CPO), as advertised by the Staff Selection Commission (SSC) and successfully cleared the written examination. He, however, was declared medically unfit in the 'Physical Efficiency Test' (PET) in March, 2004. He availed the option of being re-examined before the Review Medical Board, which he successfully cleared in December, 2004. After the interview, he was appointed as a SI in the CRPF in May, 2005 and stood included in the 2005 batch.

3. A writ petition, being W.P.(C) 4574/2021, was preferred before this Court, by similarly placed Force personnel who were claiming seniority at par with their batchmates, that is, of the 2004 batch. This Court, *vide* its Order dated 13.04.2021, disposed of the said writ petition by directing that the said writ petition shall be treated as a representation of the petitioners therein to the Director General (DG), CRPF, the respondent no.2 herein.

4. In pursuance of the said order passed by this Court, the DG/respondent no.2 issued an Order dated 03.09.2021, *vide* which the seniority of the petitioner as SI/GD was fixed as 30.04.2004.

5. Once the seniority of the petitioner was re-fixed as SI/GD, a Board of Officers was constituted to reassign the seniority of the petitioner in the rank of Inspector/GD. The said Board found the petitioner fit for being brought on Special Approved List C/GD-06/2008, and in pursuance thereto, the Office of the Inspector General (IG), Srinagar Sector passed an Order dated 04.02.2022.



6. Thereafter, the records of those personnel whose seniority was re-fixed as SI/GD *vide* the Order dated 03.09.2021, were examined as their seniority in the rank of Inspector/GD was to be re-fixed. The DG/respondent no.2, *vide* the Impugned Order dated 25.04.2022, issued a list whereby the seniority of all the SI/GD for the rank of Inspector/GD was re-fixed, however, as far as the petitioner was concerned, his seniority as Inspector/GD was maintained as on 17.02.2010, observing as under:-

“Further on examination of case of No.057220077 (Now Insp/GD) M. Samundra Singh of 181 Bn (petitioner of WP (C) No.4574/2021) (G/List No.4104-A as on 01/04/2005), it is found that he could not be detailed on P.C. Refresher course Sl.No.151 to 154 on medical grounds. He lost seniority w.r.to these courses and only chance protected. Entry regarding P.C. Refresher Course Sl.No.155 not forthcoming from his records and he subsequently qualified P.C. Refresher Course Sl.No.156. Personnel of his seniority were detailed on SSICC Sl.No.36 held from 09/06/08 to 01/09/08 and period of this Course is almost common to P. C. Refresher Course Sl.No.151 as shown in table below. Further, personnel who qualified P.C. Refresher Course Sl.No.151 to 154 were detailed on SSICC Sl.No.37 to 39 mentioned as cited in table given below. Accordingly he was not eligible for SSICC Sl.No.36 to SSICC Sl.No.39

Sl No.	P.C. Refresher course Details	Corresponding SSICC on which personnel detailed and A/List from which promotion released
1	P.C Ref Sl.No. 151 held from 14/07/08 to 01/09/08	SSICC-37 held from 06/10/08 to 02/01/09 & A/List C/GD-02/2009
2	P.C Ref Sl.No. 152 held from 15/09/08 to 05/11/08	SSICC-38 held from 25/05/09 to 18/08/09 & A/List C/GD-09/2009
3	P.C Ref Sl.No. 153 held from 10/11/08 to 31/12/08	



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4	<i>P.C Ref Sl.No. 154 held from 16/03/09 to 06/05/09</i>	<i>SSICC-39 held from 24/08/09 to 18/11/09 & A/List C/GD-01/2010</i>
5	<i>P.C Ref Sl.No. 155 held from 06/07/09 to 25/08/09</i>	<i>SSICC-40 held from 23/11/09 to 17/02/10 & A/List C/GD-02/2010</i>
6	<i>P.C Ref Sl.No. 156 held from 07/09/09 to 29/10/09</i>	
Note	<i>SI/GD who qualified P.C. Refresher Course Sl.No.155 & 156 were detailed on SSICC Sl.No.40 and brought on A/List C/GD-02/2010 and released on promotion as cited above. He also qualified P.C. Refresher Course Sl.No. 156 & SSICC Sl.NO. 40. He was assigned seniority at FSS No.10 in A/List C/GD-02/2010 and released on promotion as Insp/GD with DOS-17/02/2010. Thus he makes no claim for retrospective seniority for not attending the required P.C. Refresher course with his batch-mates on medical grounds.</i>	

7. The Deputy Inspector General (DIG) (Personnel), *vide* the Impugned Order dated 09.08.2022, issued a list whereby the eligible Inspectors/GD, whose seniority was previously re-fixed in the aforementioned manner, were notionally promoted to the rank of Assistant Commandant. The names of personnel who, the petitioner claimed were junior to the petitioner in the rank of Inspector/GD, found mention on the said list, however, the name of the petitioner did not.

8. Aggrieved of the above, the petitioner filed a writ petition, being W.P.(C) 1363/2023, before this Court. This Court, *vide* its Order dated 02.02.2023, directed the respondents therein to treat the writ petition as a representation and to decide the same within four weeks.

9. The said representation came to be rejected *vide* the Impugned Order dated 19.04.2023, whereby the petitioner's claim for promotion to the rank of Assistant Commandant and seniority at par with his batchmates was rejected on the ground that the petitioner did not



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qualify for the Platoon Commander (P.C.) Refresher Courses No.151 to 154 on medical grounds and he lost his seniority with reference to these courses.

10. Dissatisfied with the said Impugned Orders, the petitioner has approached this Court.

Submissions of the Learned Counsel for the Petitioner

11. In support of the petition, Mr. Abhay Bhargava, learned counsel for the petitioner contended that there is an error apparent in the Impugned Orders and hence, these are liable to be set aside. He submitted that even though, during certain P.C Refresher Courses, the petitioner was in SHAPE-I medical category, the respondents deliberately failed to detail him for the P.C Refresher Courses, thereby jeopardizing his future career prospects. He submits that the Impugned Orders show that the P.C. Refresher Courses were held between different time periods, the P.C Refresher Course Sl. No.151 was held between 14.07.2008 to 01.09.2008; P.C. Refresher Course Sl. No. 152 took place between 15.09.2008 to 05.11.2008; P.C. Refresher Course Sl. No. 153 was held between 10.11.2008 to 31.12.2008; Finally, the P.C. Refresher Course Sl. No. 154 was conducted between 16.03.2009 to 06.05.2009. However, the petitioner was not detailed for any of these courses.

12. The learned counsel pointed out that *vide* the Annual Medical Examination dated 26.03.2008, the petitioner was placed under SHAPE-I medical category, and it was only *vide* the Annual Medical Examination dated 29.12.2008, that the petitioner was placed in SHAPE-2 temporary medical category. However, the petitioner was



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again placed in the SHAPE-I medical category on 04.07.2009 by a fresh Medical Board. Therefore, during the relevant period of P.C. Refresher Course Sl No 151 and 152, that is, 14.07.2008 to 05.11.2008, the petitioner was in SHAPE-I medical category, and having not been detailed for the said course, the petitioner was entitled to seek retrospective promotion as granted to his batchmates.

13. He further contended that during the period of Refresher Course Sl No 153 and 154, that is, 10.11.2008 to 06.05.2009, the petitioner was placed in SHAPE-2 (T-12) E medical category *vide* the Annual Medical Examination dated 29.12.2008, which was a temporary medical category. While placing reliance on Clause 4.13 of the Standing Order dated 15.12.2008 issued by the DG, CRPF, the learned counsel submitted that any member of the Force whose illness is of temporary nature, if he is otherwise fit, will be granted promotion once he attains SHAPE-I medical category and that such personnel will also retain his seniority. He contended that in the aforesaid circumstances, the respondents could not have rejected the representation of the petitioner.

14. The learned counsel, then, pointed out that the orders whereby the seniority of the petitioner for the rank of Inspector/GD was fixed from 17.02.2010, is against the spirit of the Order dated 04.02.2022 passed by the IG, Srinagar Sector, which found the petitioner fit for the Special Approved List C/GD-06/2008. He submitted that once a Board of Officers, constituted for the specific purpose of determining the correct seniority of the petitioner, opined that he was eligible to be on the said list, the Impugned Orders could not have held to the



contrary. Aggrieved, the petitioner, thus was compelled to file the present petition.

Submissions of the Learned Counsel for the Respondents

15. *Per contra*, in reply to the petition, the respondents have taken the stand that the petitioner was not found fit for re-assignment of seniority in the rank of Inspector/GD as he lost his course seniority due to not being detailed in the P.C. Refresher Course Sl. No 151 to 154 on medical grounds. As per the policy of the respondents, the competent authority only protected the chance of the petitioner without seniority at par with his counterparts, who qualified the said courses before him.

16. Learned counsel further submitted that the post of Inspector/GD is a promotional post and the petitioner had to fulfil various prescribed criteria for promotion as Inspector/GD, one of which is qualifying for the promotional courses. He submitted that before a member of the Force is detailed in these courses, his/her medical fitness is ascertained, and candidates who fall in a Low Medical Category are not considered fit to undergo such strenuous promotional courses. In the said background, the respondents pray for a dismissal of the writ petition.

Reasons and Conclusion

17. Having considered the submissions of the learned counsels for the parties and perused the record, at the outset, we may note the reasons given in the Impugned Order dated 19.04.2023 bearing no. P.VII-10/2023-Estt-DA-II(P/Cell) issued by the DG, CRPF, Ministry of Home Affairs (MHA) while rejecting the petitioner's claim. The



relevant extracts of the Impugned Order read as under:-

“6. In view of directions contained in Court order dated 02/02/2023 his Service Record and APAR file have again been examined and it is found that batch-mates of No.057220077 Insp/GD Samundra Singh M of 181 Bn {Petitioner of both WP(C) No.4574/2021 and 1363/2023 and G/List No.4104-A as on 01/04/2005}, were detailed on SSICC Sl. No.36 held from 09/06/08 to 01/09/08 and period of this Course is almost common to P. C. Refresher Course Sl.No.151 held from 14/07/2008 to 01/09/2008. However, he was not detailed on P.C. Refresher course Sl.No.151 to 154 on medical grounds. Accordingly he lost seniority with reference to these courses and only chance was protected as per provision contained in Standing Order-6/1999. Entry regarding P.C. Refresher Course Sl.No. 155 not forthcoming from his records and he subsequently qualified P.C. Refresher Course Sl.No. 156.

7. Personnel who qualified P.C. Refresher Course Sl.No.151 to 154 were detailed on SSICC Sl.No.37 to 39 as cited in table given below. Accordingly, he was not eligible for SSICC Sl.No.36 to SSICC Sl.No.39. SI/GD who qualified P.C. Refresher Course Sl.No.155 & 156, were detailed on SSICC Sl.No.40 and brought on A/List C/GD-02/2010 as cited in table below:

Sl. No	P.C. Refresher course details	Corresponding SSICC on which personnel detailed and Approved List from which promotion released
1	P.C Ref Sl. No. 151 held from 14/07/08 to 01/09/08	SSICC-37 held from 06/10/08 to 02/01/09 & A/List C/GD-02/2009
2	P.C Ref Sl. No. 152 held from 15/09/08 to 05/11/08	SSICC-38 held from 25/05/09 to 18/08/09 & A/List C/GD-09/2009
3	P.C Ref Sl. No. 153 held from 15/09/08 to 05/11/08	
4	P.C Ref Sl. No. 154 held from 16/03/09 to 06/05/09	SSICC-39 held from 24/08/09 to 18/11/09 & A/List C/GD-01/2010
5	P.C Ref Sl. No. 155 held from	



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	06/07/09 to 25/08/09	SSICC-40 held from 23/11/09 to
6	P.C Ref Sl. No. 156 held from 07/09/09 to 29/10/09	17/02/10 & A/List C/GD-02/2010

8. *He had qualified P.C. Refresher Course Sl.No.156 & SSICC Sl.No.40. He was assigned seniority at FSS No.10 in A/List C/GD-02/2010 and released on promotion as Insp/GD with DOS-17/02/2010. Thus he cannot claim for seniority with reference to Approved Lists, drawn prior to Approved List C/GD-2/2010 because he did not attend P.C. Refresher course with his batch-mates on medical grounds.”*

18. In view of the aforementioned extracts of the Impugned Order, the learned counsel for the respondents vehemently submitted that the batchmates of the petitioner [of both W.P.(C) 4574/2021 and W.P.(C) 1363/2023 and G/List No. 4104-A as on 01.04.2005] were detailed on Senior Sub-Inspector Cadre Course (SSICC), Sl. No. 36 held from 09.06.2008 to 01.09.2008. The petitioner was not detailed for the P.C. Refresher Course on medical ground and he qualified only for SSICC, Sl. No. 40. The respondents, while relying upon the CRPF's Standing Order No. 06/1999, submitted that the petitioner lagged behind his batchmates and lost his seniority due to not being detailed in the promotional courses, which he subsequently qualified, and was accordingly, promoted.

19. Before us, Mr. Bhargava, learned counsel for the petitioner strongly contended that Standing Order No. 04/2008 dated 15.12.2008 issued by the DG, CRPF, MHA, in Clause 4.13, provides that personnel who have an illness of temporary nature, will be granted promotion subject to attaining SHAPE-I medical category. He



submitted that as the petitioner was in SHAPE-I medical category when P.C. Refresher Courses, Sl. No.151 and 152 were held between 14.07.2008 to 05.11.2008, thus the respondents could not ignore detailing the petitioner for the said P.C Refresher Course and consequently, he could not have been denied his right to be promoted along with his batchmates.

20. In order to appreciate the aforesaid plea raised by the petitioner, it would be apposite to refer to Clause 4.13 of Standing Order No. 04/2008, which reads as under:-

“4.13 Mandatory for the purpose of promotion.

Medical Category SHAPE-I will be an essential condition for promotion of all combatised personnel in all groups/ranks/cadres in the CPMFs. In case of those whose illness is of permanent nature and who are not SHAPE-I, they will be considered for promotion by DPC but will be declared unfit for promotion, even if, they are otherwise fit for promotion. In case of those personnel, whose illness is of temporary nature, after considering their case for promotion along with others, if they are otherwise fit, the DPC will grade them as ‘fit for promotion’ subject to attaining SHAPE-I medical category. As and when they regain the SHAPE-I medical category they will be promoted as per recommendations of DPC. But they will not be entitled to back wages. However they will retain their seniority.”

21. From a reading of the aforesaid Clause, it is evident that medical category SHAPE-I is an essential condition for promotion of all combatised personnel in all groups, ranks, and cadres in the Central Armed Police Forces. It further provides that in case a personnel is



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temporarily unfit, he/she will be considered for promotion after he/she regains medical category SHAPE-I, with his/her seniority being protected.

22. In the instant case, it is not disputed by the respondents that a Board of Officers constituted for re-assignment of the seniority of the petitioner in the rank of Inspector/GD. *Vide* the Order dated 04.02.2022, the petitioner was found fit for Special Approved List C/GD-06/2008, pursuant to which, the IG, Srinagar Sector, *vide* an Order dated 04.02.2022, brought the petitioner on the aforementioned list and accordingly, approved the petitioner for promotion and grant of seniority from 2008. However, despite the same, the name of the petitioner was not included in the list of personnel's, who were granted seniority as per the aforementioned approved list.

23. It is the consistent case of the respondents that the petitioner was not found fit for re-assigning of seniority for the rank of Inspector/GD as he could not be detailed for the P.C. Refresher Course at Sl. No. 151 to 154 on medical grounds. Since the findings in the Impugned Orders are based on the Low Medical Category of the petitioner, it would also be apposite to note the details of medical category of petitioner. The same are as under:-

- (i) Between the period from 14.07.2008 to 01.09.2008 – SHAPE-I
- (ii) Between the period from 15.09.2008 to 05.11.2008- SHAPE-I
- (iii) Between the period from 10.11.2008 to 31.12.2008- SHAPE-II



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(iv) Between the period from 16.03.2009 to 06.05.2009-
SHAPE-II

24. The learned counsel for the petitioner thus, has correctly urged that he was not provided any reason for not being detailed in the P.C Refresher Course Sl. No.151 and 152, despite being in SHAPE-I medical category. Furthermore, the respondents have also not assigned any reason as to why the petitioner was not detailed for the P.C Refresher Course, Sl. No.155, except for submitting that the record for the same is not available. We, thus, find that the submissions of the respondents are devoid of any cogent reason.

25. However, the parties are *ad idem* that the petitioner had regained medical category SHAPE-I on 04.07.2009. In the light of the specific provision, that is, Clause 4.13 of the Standing Order 4/2008 providing for retrospective seniority, the respondents could not have denied the petitioner benefit of seniority in the rank of Inspector/GD with effect from 06.06.2008, when his batchmates were given such seniority, that is, SSICC, Sl. No. 36. Consequentially, the petitioner was also entitled to be promoted to the rank of Assistant Commandant and to retain his seniority at par along with his batchmates, with effect from 09.08.2022, that is, the date when his batchmates were extended the same. The petitioner is, therefore, justified in urging that he has been wrongly deprived of the promotion as an Assistant Commandant w.e.f. 09.08.2022, when his batchmates and persons junior to him were promoted.

26. For the aforesaid reasons, the writ petition is entitled to succeed. The Impugned Orders dated 25.04.2022, 09.08.2022, and 19.04.2023,



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denying seniority and promotion to the petitioner along with his batchmates are set aside. The respondents are directed to grant retrospective seniority to the petitioner as Inspector/GD in SSICC, Sl. No. 36 held from 09.06.2008 to 01.09.2008 below his immediate senior in the grade of SI/GD (as re-fixed), along with notional pay fixation from the said date. The petitioner will also be entitled to all consequential benefits, including consideration for promotion to the higher rank of Assistant Commandant with reference to the date that is 09.08.2022, when his batchmates were promoted as Assistant Commandant, subject to him having qualified the promotional course(s) necessary for promotion to the rank of Assistant Commandant. The petitioner shall not be entitled to back wages, however, shall be entitled to all other consequential benefits, including his seniority and pay fixation. The necessary orders be passed by the competent authority of the respondents, within 12 weeks.

27. The petition is allowed in the above terms. There shall be no order as to costs.

**(SHALINDER KAUR)
JUDGE**

**(NAVIN CHAWLA)
JUDGE**

October 18, 2024/ss/fk/SJ