



\$~17

*

IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 02.09.2024***

+ W.P.(C) 4306/2020

NAIMISH KUMAR SINGH

.....Petitioner

Through: Mr. Ankur Chhibber and Mr.
Anshuman, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Manish Mohan, CGSC with Mr.
Jatin Teotia, Adv.
Mr. Arvind Kumar Tomar, DC, CISF.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****J U D G M E N T****REKHA PALLI, J (ORAL)**

1. The petitioner, who is presently serving as a Deputy Commandant in the Central Industrial Security Force [CISF], has approached this Court under Article 226 of the Constitution of India seeking the following reliefs:-

I) Issue a Writ of Certiorari quashing the orders dated 22.08.2019, 27.09.2019, 04.12.2019 and 06.03.2020 passed respectively by the Respondents determining his date of completion of probation period to be 23.06.2015 instead of the same being 23.10.2011, granting Senior Time Scale pay to him with effect from 23.06.2015 itself and not from 24.10.2013 and failure of the Respondents in determining the original seniority of the Petitioner in the rank of Deputy Commandant w.e.f 07.10.2016 i.e. the date on which the juniors of the Petitioner



were promoted to the rank of Deputy Commandant and thus detailing him for Pre Promotional Course in accordance with the judgement dated 25.04.2016 passed by Hon'ble Rajasthan High Court.

II) Issue a Writ of Mandamus directing the Respondents to determine the date of completion of probation period of the Petitioner to be 23.10.2011 instead of the same being 23.06.2015 and thus, granting Senior Time Scale Pay to the Petitioner w.e.f. 24.10.2013 itself with further prayers to direct the Respondents to re-fix his seniority to the rank of Deputy Commandant w.e.f 07.10.2016 i.e. the date on which the juniors of the Petitioner were promoted to the rank of Deputy Commandant and thereafter to detail him for Pre Promotion Course for the rank of Deputy Commandant to Commandant.

2. Before dealing with the rival submissions of the parties, we may note the brief factual matrix, as emerging from the record. The petitioner joined the CISF as a Sub Inspector (SI) on 08.11.2003 and upon being successful in the Limited Departmental Competitive Exam (LDCE), he was promoted to the rank of an Assistant Commandant on 30.09.2009. Soon after his promotion, a departmental enquiry was held against the petitioner leading to a penalty order dated 18.06.2012 imposing a penalty of reduction to the rank of SI for a period of three years on him. This enquiry was based on a complaint made by one lady constable, against whom the petitioner claims to have earlier passed a penalty order.

3. Being aggrieved, the petitioner by way of SB Civil Writ Petition No. 9642/2012 approached the High Court of Judicature for Rajasthan assailing the aforesaid penalty order dated 18.06.2012. The said writ petition came to be partly allowed on 25.04.2016 with directions to the respondents to restore the petitioner's seniority as also his increments. As a result of these



directions, the petitioner became entitled to be treated as an Assistant Commandant from the original date of his promotion i.e., w.e.f. 30.09.2009. The said decision was unsuccessfully assailed by both sides before the Division Bench and thereafter by the respondents before the Apex Court, which challenge was also rejected on 18.09.2017. After the dismissal of their SLP, the respondents detailed the petitioner for the requisite pre-promotional course in December 2017, which he successfully qualified in January 2018. As the petitioner had, in the meanwhile, preferred a contempt petition alleging non-compliance by the respondents of the Court's order dated 25.04.2016, the respondents also passed an order dated 04.01.2018, correctly fixing his seniority in the rank of Assistant Commandant. Consequently, his name was placed between that of Sh. Vivek Arya and Sh. Vishal Sharma in the seniority lists issued from 31.12.2010 to September 2014. However, taking in account that the petitioner's batch mates including Sh. Vivek Arya and Sh. Vishal Sharma were promoted as Deputy Commandant on 07.10.2016 in the next seniority list issued on 01.01.2017, his name was now placed at S. No. 4A i.e., between Rajeev Panwar and Sh. Rajan Kumar, his erstwhile juniors who were at S. No. 4 and 5 respectively of the list.

4. Based on this order dated 04.01.2018, the contempt petition filed by the petitioner was disposed of on 23.03.2018, by noting the respondents' plea that consequent to the petitioner's seniority being restored, he would be promoted in accordance with the laid down procedure. The Court, therefore, observed that the order dated 25.04.2016 passed in SB Civil Writ Petition No. 9642/2012 had been complied with by the respondents. It was further



observed that the issue of the promotion of the petitioner to the next higher post was not the subject matter of the writ petition and could therefore, not be considered in the contempt petition.

5. After the disposal of the contempt petition, the petitioner made representations praying that he be promoted as Deputy Commandant from the same date on which his batch mates were promoted to the said post. Based on his representations and taking into account that he was meeting all the promotional criteria, he was promoted as a Deputy Commandant on 14.08.2018. Soon thereafter, the respondents issued yet another order dated 26.09.2018, this time directing that the petitioner would be treated as having been promoted as an Assistant Commandant w.e.f. 24.10.2009/23.06.2015 and completed his probation period on 22.06.2015 and was therefore, confirmed as Assistant Commandant on 23.06.2015. Being aggrieved, the petitioner once again made a representation and prayed that once the High Court of Judicature for Rajasthan had vide its order dated 25.04.2016 directed that his seniority would be restored, he was entitled to be treated at par with his batch mates and entitled to be promoted as a Deputy Commandant from 07.10.2016 itself. Upon consideration of the petitioner's representation, the Director General, CISF/respondent no. 2 recommended that the petitioner's seniority as Deputy Commandant be restored at par with his batch mates and the delay on his part in qualifying the pre-promotional course be condoned. The said recommendation came to be rejected vide the impugned order leading to the filing of the present petition.

6. The short submission of the learned counsel for the petitioner is that once the High Court of Judicature for Rajasthan, had, vide its order dated



25.04.2016 directed that the petitioner would be entitled to restoration of his seniority as Assistant Commandant, which position is undisputed by the respondents, he was entitled to all consequential benefits including promotion to all higher ranks at par with his batch mates. He submits that the very purpose of the directions issued by the Court for protection of the petitioner's seniority was to ensure that he does not lose out on further promotions and except for back wages, receives all benefits at par with his batch mates. The respondents having not detailed the petitioner for the pre promotional course in time cannot deprive of his rightful seniority as Deputy Commandant w.e.f 07.10.2016, only on the ground of the delay in qualifying the pre promotional course.

7. He further submits that the petitioner's batch mates already stand promoted as Commandant on 10.05.2021 and despite the petitioner having qualified the pre promotional course for the post of Commandant, he is still continuing to serve as a Deputy Commandant only on account of the respondents' refusal to assign him seniority in the said rank at par with his batch mates. As the petitioner is being treated as a Deputy Commandant from 14.08.2018 and not from 07.10.2016, the date when his batch mates were promoted as Deputy Commandant, he is suffering grave hardship and humiliation. He, therefore, prays that the writ petition be allowed by directing the respondents to restore the petitioner's seniority as Deputy Commandant and hold a Review DPC for considering his case for promotion to the post of Commandant and if found fit, grant him all consequential benefits.

8. On the other hand, Mr. Mohan, learned CGSC for the respondents



fairly does not deny that the Director General, CISF had recommended that the petitioner's seniority as Deputy Commandant be restored by condoning the delay on his part in qualifying the pre promotional course. He, however, seeks dismissal of the writ petition by urging that the Court's order dated 25.04.2016 in SB Civil Writ Petition No. 9642/2012 filed by the petitioner did not include any specific directions for confirmation of the petitioner as an Assistant Commandant from a date earlier than 23.06.2015 or for waiving the requirement of the pre promotional course, which course the petitioner had admittedly not qualified on 07.10.2016, when his batch mates were promoted as Deputy Commandant. His plea therefore is that since no directions were issued in this regard, the respondent no. 1's decision not to condone the delay on the part of the petitioner cannot be said to be arbitrary. He, therefore, prays that the writ petition be dismissed.

9. Having considered the submissions of the learned counsel for the parties, we may begin by noting the relevant extracts of the directions issued by the High Court of Judicature at Rajasthan on 25.04.2016, the same read as under:-

"35. The petitioner after the reduction to the lower post/ grade of Sub-Inspector for a period of three years has spent out the period and has been restored to the original position. It would, therefore, it will be sufficient to modify the Penalty imposed on him and direct that the period of service in the lower post/grade/Sub-Inspector be treated as service in the post held by him prior to imposition of penalty subject to the condition that the petitioner shall not be entitled to difference of salary during the period of reduction. The period shall be counted for seniority and will not have the effect of postponing the future increments of pay."

10. We may now also refer to the relevant extracts of the order passed on



23.03.2018 in SB Civil Contempt Petition No. 1369/2017, wherein the respondents had assured the Court that consequent to the petitioner's seniority being restored he will be granted all promotions as per procedure. The same reads as under:-

"In view of the reply to the petition, and submission of counsel for the respondents, I find that the order dated 25.4.2016 passed by this Court in SBCWP No. 9642/2012 has been complied with and contempt thereof as alleged is not made out. The issue of promotion of the petitioner to the next higher post is not the subject matter of the petition. However counsel for the respondents have stated that consequent to the petitioner's seniority being restored such promotion shall follow in accordance with prescribed procedure."

(emphasis supplied)

11. From a perusal of the aforesaid, what clearly emerges is that it is the respondents' own case that in terms of the Court's order dated 25.04.2016, the seniority of the petitioner as Assistant Commandant was to be restored. The natural consequence thereof would be that the seniority of the petitioner as Assistant Commandant has to be reckoned with from 30.09.2009, the date he was promoted to the said post. The respondents do not deny this position. There is also no denial by the respondents that even though the direction for restoration of the petitioner's seniority as Assistant Commandant had been passed by the Court on 25.04.2016, he was not detailed for the pre promotional course till December 2017, which course he qualified in the first chance itself. In these circumstances, can the petitioner be faulted for the delay in qualifying the promotional course and consequently deprived of his seniority in the promotional post of Deputy Commandant, is the question before us.



12. Having given our thoughtful consideration to this aspect, we are of the view that the petitioner cannot be penalised for the delay on the part of the respondents in detailing him for the pre promotional course, which is the only ground on which his claim for retrospective seniority as Deputy Commandant w.e.f. 07.10.2016 has been rejected by respondent no. 1. In our considered opinion, the learned counsel for the petitioner is correct in urging that once specific directions were issued by the Court for restoration of the petitioner's seniority as Assistant Commandant, full effect thereto has to be given. The respondents' action in restoring the petitioner's seniority as an Assistant Commandant and denying restoration of his seniority as Deputy Commandant would virtually amount to nullify the effect of the direction given by the Court in SB Civil Writ Petition No. 9642/2012.

13. Once the respondents were on 25.04.2016 directed to restore the petitioner's seniority as Assistant Commandant, it was incumbent upon them to ensure that he get the opportunity to be considered for deputy commandant along with his batch mates. They ought to, therefore, have detailed the petitioner for the promotional course immediately after 25.04.2016. In any event, even if there was a delay in detailing the petitioner for the said course, which as noted hereinabove he qualified in the first chance, he could not be denied his rightful seniority with his batch mates. We also find that the respondent no. 2 being well aware that the petitioner could not be faulted for the delay in qualifying the pre promotional course, had vide his letter dated 01/05.11.2018 requested the respondent no. 1 to accord approval for holding a review DPC for considering his case for promotion to the Deputy Commandant w.e.f



07.10.2016 by granting him relaxation qua the pre promotional course.

14. This detailed request of the respondent no. 2 was rejected by respondent no. 1 without properly appreciating the ambit of the directions issued by the Court on 25.04.2016, which mandated restoration of the petitioner's seniority. We, therefore, have no hesitation in holding that the decision of the respondent no. 1 in rejecting the recommendations made by respondent no. 2 being against the letter and spirit of the directions issued in SB Civil Writ Petition No. 9642/2012 was illegal. The impugned orders are therefore, unsustainable and the petitioner is entitled to restoration of his seniority as Deputy Commandant w.e.f 07.10.2016, the date his batch mates were promoted to the said rank.

15. For the aforesaid reasons, we allow the writ petition by directing the respondents to grant to the petitioner, notional fixation of pay and seniority as a Deputy Commandant w.e.f. 07.10.2016. The petitioner will however not be entitled to receive any arrears of wages as a Deputy Commandant for the period between 07.10.2016 to 14.10.2018 till he actually started discharging the duties of a Deputy Commandant. It is, however, made clear that the petitioner will be entitled to all consequential benefits upon re-fixation of his pay, w.e.f 14.10.2018. Since the petitioner's batch mates already stand promoted as Commandant from 10.05.2021 and he has already qualified the pre promotional course for the said rank, the respondents will, after restoring his seniority as a Deputy Commandant w.e.f 07.10.2016, hold a Review DPC to consider his case for promotion as Commandant. In case the petitioner is found to be meeting all other eligibility criteria for promotion, he will be promoted as Commandant w.e.f 10.05.2021 and will



2024:DHC:6700-DB



be granted notional pay fixation in the said rank as well, albeit, without any arrears. The exercise in terms of this order will be carried out within a period of 12 weeks.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

SEPTEMBER 02, 2024
FK/SU