



2024:DHC:8045-DB



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

Date of decision: 14.10.2024

+ W.P.(C) 9018/2022

JEEWRAJ SINGH SHEKHAWAT

.....Petitioner

Through: Mr. Ankur Chhibber, Mr.
Nikunj Arora, Mr. Anshuman
Mehrotra and Mr. Pranjal
Marwah, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Vineet Dhanda, CGSC.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India, challenging the Signals dated 19.03.2018 and 25.07.2018, to the extent that these exclude the name of the petitioner from the list of officers who were promoted to the rank of Second-in-Command (2-I/C), and the letters dated 27.09.2018, 24.07.2019, and 16.02.2022, whereby the petitioner has been declared as ineligible for promotion to the rank of 2-I/C on the ground of non-completion of the qualifying service. The petitioner further challenges the Signal dated 31.12.2020 whereby the respondents have not re-assigned the seniority of the petitioner in the rank of 2-I/C. The



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petitioner also challenges the Orders dated 18.05.2020 and 10.06.2021 to the extent that the respondents have refused to grant the benefit of Non-Functional Financial Upgradation (in short, 'NFFU') in the Junior Administrative Grade (JAG) to the petitioner along with his batchmates including Sh. Ajay Kumar.

Factual Background

2. As a brief background, the petitioner was appointed to the post of Sub-Inspector in the Central Reserve Police Force (in short, 'CRPF') on 05.12.1988. He was promoted to the rank of Inspector/GD on 31.03.1999, and was sent abroad on deputation with effect from 21.06.2001. In the meantime, the petitioner became eligible to undergo the promotional course, that is, the Senior Inspector Cadre Course (in short, 'SICC') SL. No. 65, along with his batchmates, in the year 2004. However, as he was on deputation, and as the Ministry of External Affairs refused to repatriate him to the CRPF, he could not undergo the said course. He was finally relieved by his borrowing organisation on 01.05.2007, and upon repatriation, he reported for duty at the 9th Battalion, CRPF on 11.07.2007.

3. By the Order dated 15.10.2007 and 12.11.2007, the respondents protected the chance of the petitioner and his seniority for promotion to the rank of Assistant Commandant. Finally, the petitioner undertook the promotional course SL. No. 79 for the rank of Assistant Commandant, and on successfully completing the same, the respondents, *vide* Signal dated 23.10.2009, promoted the petitioner to the rank of Assistant Commandant.

4. As the respondents did not grant the benefit of notional



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promotion to the petitioner, the petitioner represented against the same.

5. The respondents, *vide* order dated 22.09.2011, re-assigned the seniority of the petitioner, placing him above Sh. Ajay Kumar at SL. No. 205A in the gradation list.

6. The petitioner was, thereafter, promoted to the rank of Deputy Commandant, *vide* Signal dated 21.08.2012. Herein, it is pertinent to note that Sh. Ajay Kumar had already been promoted to the post of Deputy Commandant in the year 2011. The petitioner again made a representation to the respondents for re-assignment of his seniority, which was acceded to *vide* Order dated 14.08.2013, placing him above Sh. Ajay Kumar at SL. No. 530(A) in the rank of Deputy Commandant.

7. The petitioner completed his SPL Junior Command Management Course SL. No. 32 for Deputy Commandants, *vide* signal dated 22.04.2016, and was due for his next promotional rank, that is, 2-I/C.

8. The respondents *vide* Signal dated 01.03.2017, issued a list of officers, including the petitioner, who were in the zone of consideration for promotion to such rank. However, *vide* signal dated 19.03.2018, the list of officers who were promoted from the rank of Deputy Commandant to 2-I/C was issued, excluding the name of the petitioner. However, Sh. Ajay Kumar was promoted to the said rank.

9. The petitioner was again recommended for consideration by the Departmental Promotion Committee (in short, 'DPC') for the vacancy year 2018-19, *vide* signal dated 27.04.2018. However, *vide* Signal



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dated 25.07.2018, in the list of officers who were promoted to the rank of 2-I/C, the name of the petitioner again did not appear.

10. The petitioner, therefore, represented against the same *vide* letter dated 28.07.2018.

11. The respondents *vide* letter dated 27.09.2018, informed the petitioner that as per the Central Reserve Police Force Group 'A' (General Duty) Officers Recruitment Rules, 2010 (in short, 'Rules'), 10 years of Group-A service is mandatory for promotion to the rank of 2-I/C, and that the petitioner having been appointed in Group-A service only on 23.10.2009, was not eligible for consideration.

12. The petitioner was again excluded from consideration for promotion *vide* Signal dated 12.10.2018, and his representation against the same was rejected *vide* letter dated 24.07.2019.

13. He was finally promoted to the rank of 2-I/C on 31.12.2020.

14. In the meantime, the respondents, *vide* Signal dated 01.09.2019, issued a list of officers of the 2004 batch, including the petitioner, who were holding the rank of Deputy Commandants and were entitled for the grant of NFFU of JAG with effect from 01.07.2015. However, by the impugned order dated 18.05.2020, the respondents, while granting the same to Sh. Ajay Kumar, excluded the petitioner from the said benefit.

15. The petitioner, *vide* Order dated 10.06.2021, was finally granted the NFFU only with effect from 01.01.2020.

16. The representation of the petitioner against the same was rejected *vide* letter dated 16.02.2022.



Submissions of the learned counsel for the petitioner

17. The learned counsel for the petitioner, by placing reliance *inter alia* on the Judgment of this Court in ***Rakesh Kumar v. Union of India & Ors.***, 2024 SCC OnLine Del 4886, submits that once the petitioner, in accordance with the Rules, has been granted a retrospective seniority to the post of Assistant Commandant, for all purposes, the date of appointment to the said post has to be considered as 17.08.2004, that is, when his immediate junior Sh. Ajay Kumar was appointed to the said post, and the consequent relief of subsequent promotion and NFFU granted to him on that basis.

Submissions of the learned counsel for the respondents

18. On the other hand, the learned counsel for the respondents submits that in terms of the Rules, 10 years Group 'A' service, including 5 years service in the rank of Deputy Commandant, is mandatory for the promotion of 2-I/C. Further, as per the provisions contained in paragraph 7 of the said Rules, officers who have completed their qualifying or eligibility service, as prescribed in the Schedule annexed to those Rules, shall only be considered for appointment or promotion or deputation to the grade or grades if they are in Medical Category 'SHAPE-I' as specified under the Standing Order No. 04/2008 dated 15.12.2008 issued by the Director General, CRPF.

19. He submits that the petitioner was promoted to the rank of the Assistant Commandant on 23.10.2009. He was eligible to be considered for promotion to the rank of 2-I/C in the following DPCs



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in terms of his seniority in G/list of Deputy Commandant, but, as he was falling short of 10 years Group 'A' service and 5 years residency period as on the crucial date of DPCs, the case of the petitioner for relaxation in his eligibility conditions along with other identical cases was submitted to Ministry of Home Affairs (in short, 'MHA'). MHA, *vide* noting dated 19.02.2019, did not grant relaxation in the residency period to the petitioner. Accordingly, the name of the petitioner was not included in the zone of consideration by the DPCs as the below-mentioned criteria for promotion to the rank of 2-I/C were not fulfilled:-

<i>S/No.</i>	<i>Vacancy year</i>	<i>Short in Group 'A' service as on crucial date of DPC</i>	<i>Short in residency period on crucial date of DPC</i>
1.	2017-18	02 years 06 months and 22 days	06 months and 20 days
2.	2018	01 year 6 months and 22 days	-
3.	2019	09 months and 22 days	-

20. He further submits that, subsequently, the name of the petitioner was considered for promotion to the rank of 2-I/C by the supplementary DPCs convened on 23.12.2020 for the vacancy in the year 2020, and on being found fit by the DPC, he was promoted to the rank of 2-I/C with effect from 04.01.2021.

21. He submits that as far as seniority is concerned, the same is governed by the GOI, DoP&T OM No. 22011/7/86-Estt(D) dated 03.07.1986, which provides that where a person is considered unfit for



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promotion and is superseded by his junior, such person shall not, if he subsequently is found suitable and promoted, take seniority in the higher grade over the junior person who had superseded him. He submits that as Shri Ajay Kumar was promoted on 19.03.2018 from the panel of DPCs for vacancy year 2017-18, while the petitioner was promoted to the rank of 2-I/C with effect from 04.01.2021 with respect to the panel of supplementary DPC for the year 2020, his claim for re-assignment of seniority in the rank of 2-I/C at par with Shri Ajay Kumar cannot be acceded to.

22. On the claim of NFFU, he submits that the Screening Committee in the meeting held on 24.04.2020, found the petitioner unfit as he had not completed 10 years Group 'A' service as on 01.04.2017, having been promoted as Group 'A' officer only on 23.10.2009. It was by the meeting of the Screening Committee held on 09.03.2021, that the petitioner was found fit for grant of NFFU in JAG with effect from 01.01.2020 and, accordingly, the same was granted to the petitioner *vide* Order dated 10.06.2021 with effect from 01.01.2020.

Analysis and findings

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

24. The controversy in the present case started when the petitioner was sent on deputation abroad with effect from 21.06.2001. He was released by his borrowing organisation only on 01.05.2007. In the meantime, his batchmates were promoted to the rank of Assistant



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Commandant with effect from 17.08.2004. The petitioner could not be promoted as he could not undergo SICC SL. No. 65 along with his batchmates having not been relieved by his borrowing department.

25. The respondent acted as a model employer and protected the chance of the petitioner at the seniority for promotion to the rank of Assistant Commandant, *vide* Orders dated 15.10.2007 and 12.11.2007. On his repatriation to his parent organisation, the petitioner cleared the promotional course SICC SL.No. 79, and *vide* Signal dated 23.10.2009, was promoted to the rank of Assistant Commandant. The seniority of the petitioner was re-fixed above his immediate junior- Shri Ajay Kumar *vide* Order dated 22.09.2011.

26. For the rank of Deputy Commandant also, though Shri Ajay Kumar had already been promoted to the post of Deputy Commandant in the year 2011 itself, when the petitioner was finally promoted to the said rank *vide* Signal dated 21.08.2012, *vide* Order dated 14.08.2013, his seniority was reassigned by placing him above his immediate junior- Shri Ajay Kumar.

27. From the above, it would be evident that the respondents themselves had recognised that it was not due to the fault of the petitioner that the petitioner could not earlier be promoted to the rank of Assistant Commandant and later to the rank of Deputy Commandant along with his batchmates. It was due to circumstances beyond his control, that is, for him not being relieved by his borrowing department, that he could not obtain these ranks along with his batchmates.

28. Unfortunately, the respondents for the rank of 2-I/C, however,



have not adopted a similar benevolent attitude towards the petitioner. They have acted strictly in accordance with the Rules, which require 10 years Group 'A' service and the residency period of 5 years, for depriving the said rank to the petitioner along with his batchmates. The petitioner could not complete the above said eligibility period along with his batchmates only for the reasons which have already been recognised by the respondents to be beyond his control and for which the respondents themselves have given the benefit of retrospective seniority to the petitioner while promoting him to the rank of Assistant Commandant and the Deputy Commandant. In our view, therefore, the denial of retrospective seniority to the petitioner in the rank of 2-I/C along with his batchmates and above his immediate junior in the said rank, cannot be sustained.

29. Similar is our opinion on the denial of NFFU to the petitioner along with his batchmates.

30. In support of our above conclusion, we place reliance on the Judgment of our Court in ***Jay Pratap Singh v. Union of India & Ors.***, 2015 SCC OnLine Del 7276, wherein, this Court was confronted with a situation where the petitioner therein was not found eligible to be kept in the zone of consideration for promotion to the post of Inspector as he had not rendered 2 years service in a duty battalion and resultantly his juniors were promoted to the said post. This Court, placing reliance on the earlier Judgment in ***Ashok Kumar v. Union of India & Ors.***, 2009 SCC OnLine Del 3407, held as under:-

“11. Relevant would it be to note that way back on October 27, 2009, deciding a bunch of writ petitions; lead matter being



W.P.(C)No.21900/2005, Ashok Kumar Vs. Union of India & Drs., a Division Bench of this court held that where the department is at fault in not letting a person complete two years duty in a duty battalion, non-fulfillment of the eligibility condition for promotion requiring two years service in a duty battalion cannot be held against the person concerned.

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25. Suffice it to state that as already noted by us in the order dated March 07, 2011 as well as in the decision in Ashok Kumar's case (supra) the petitioner had no option but to serve wherever he was required to be posted. Moreover, force personnel have no say in the matter of posting and therefore, it is the department who is at fault in not letting a person complete two years duty in a duty battalion, despite the same being a pre-condition of mandatory field service for grant of promotion. Non-fulfillment of the eligibility condition for promotion requiring two years service in a duty battalion cannot be held against a person concerned as the same is the sole prerogative of the department. As regards the power of relaxation to be exercised by the Ministry of Home Affairs, as per the letter dated July 04, 2012, the perusal of the said letter would reveal that services rendered in NSG/SPGINDRF would be treated as service rendered in a field unit for the purpose of promotion. In the instant case, the petitioner was posted on deputation with the SPG at the time when the batch-mates and persons junior to the petitioner earned promotion as Assistant Commandant by virtue of the order dated November 03, 2010. Therefore, the respondents cannot deny the benefit of back dated promotion to the petitioner on the ground that the same was given to him only upon completion of two years service in duty battalion. Vide impugned order dated June 11, 2013, it is observed that in light of the directions given by this Court that the petitioner, if promoted as Assistant



Commander, shall be entitled to all consequential benefits, except actual wages and for this very reason he would not be entitled to refixation of pay at par with his juniors from a retrospective date.

26. The same reveals a total non-application of mind in as much as the import of the order dated March 07, 2011 in denying actual wages to the petitioner was on the principle of 'no work no pay' and the same could not have been treated by the respondents as a ground to reject the notional pay fixation of the petitioner. It is not a case where the petitioner has claimed back wages or arrears of pay, in which case the stand taken by the respondents may have been justified. As a natural consequence of being considered and subsequently being found fit for promotion, the petitioner would undoubtedly be entitled for promotion from the date on which his juniors were promoted, i.e. from November 03, 2010 as well as notional fixation of pay in the rank of Assistant Commandant from the said date."

31. The above Judgment was followed by this Court in ***Dharam Narayan Borana v. Union of India & Ors.***, 2019 SCC OnLine Del 6406, by observing as under:-

"18. The Court finds that the Respondents were not justified in their interpretation of the judgment dated 7th March 2011 of this Court. In that judgment, it was made clear that the Petitioner would be entitled "to all consequential benefits of his seniority as Inspector." This means that after having fixed seniority of the Petitioner as Inspector on par with his juniors, the Respondents had to, on the same logic, consider his promotion as AC from the very date that his juniors were so promoted. In other words, having accepted the judgment of this Court dated 7th March 2011, and having implemented it by restoring the Petitioner's seniority as Inspector from the date his juniors were promoted, the



Respondents were required to consider the case of the Petitioner for promotion as AC on that basis and if found fit, to notionally fix his seniority as AC from the same date when his juniors were promoted as AC. Otherwise at every stage the Petitioner would be lagging behind unfairly and his juniors would be stealing a march on him despite his having succeeded before this Court by way of the judgment dated 7th March 2011. That certainly was not the consequence envisaged by this Court. It is for this reason that this Court made it clear that the Petitioner would be entitled to "all consequential benefits of his seniority as Inspector."

32. In its Order dated 25.09.2019 in W.P.(C) 9588/2019 titled ***Sudhindra Kumar Singh v. Union of India & Ors.***, this Court was again confronted with a factual position where the petitioner therein had not been promoted to the rank of 2-I/C, having been declared unfit on account of DGs displeasure. Pursuant to an order passed by the High Court of Kerala, the petitioner was considered for the said post and maintained his seniority above his immediate junior. However, in the meantime, his immediate junior had been promoted to the rank of Commandant. The petitioner therein was denied this promotion with a retrospective effect on the ground that he had not completed the 2 years residency service in the rank of 2-I/C. MHA also had refused to exercise its power of relaxation, as is the case in the present petition as well. This Court, however, held that as the initial promotion to the post of 2-I/C had been denied to the petitioner therein on account of a mistake committed by the respondent, the mistake ought to have been corrected even for the other DPCs where the petitioner ought to have been considered for promotion. We may quote from the Judgment as



under:-

“16. It is, therefore, not correct for the MHA to take the stand that there was no Court direction for further promotion. It is obvious that once the Petitioner has been directed to be promoted to 2-IC "untrammelled by the DG's displeasure" and "to issue revised orders granting promotion to the Petitioner with effect from the date of promotion of his immediate junior" such direction would include not only promotion to the rank of 2-IC but further promotions as well. There was no need to repeatedly go to the Court for each promotion.

17. Once it is acknowledged that it is on account of the mistake committed by the Respondents, in treating the DG's displeasure as a bar to consider the Petitioner's case for promotion at the relevant time, such mistake ought to be corrected by the Respondents with reference to such DPCs where the Petitioner ought to have been considered for promotion. It is unfortunate that the Petitioner has had to file the present writ petition again been forced to litigate to get the full benefit of the above judgment of the Kerala High Court in his favour.”

33. Recently, this Court in **Rakesh Kumar** (supra) (wherein one of us, namely, Justice Shalinder Kaur, was a part of the Bench), again on being confronted with similar facts, held that once the petitioner therein had been placed in his rightful position in the seniority list of Assistant Sub-Inspector, the respondent by taking his actual date of joining service could not deny his promotion.

34. In view of the above facts and the position in law, we allow this petition by directing the respondents to grant retrospective seniority to the petitioner to the post of 2-I/C from the date on which his



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immediate junior Shri Ajay Kumar was granted such promotion, and to place him immediately above Shri Ajay Kumar in the seniority list in the rank of 2-I/C. The petitioner, however, while being granted all consequential benefits, including pay fixation, etc., will not be given the benefit of enhanced wages for the period he did not actually serve in the rank of 2-I/C. As far as NFFU is concerned, the petitioner shall again be granted the said benefit from 01.04.2017, that is, the date his immediate junior, that is, Shri Ajay Kumar has been granted the same.

35. With the above directions, the petition is disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 14, 2024/rv/VS

Click here to check corrigendum, if any