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

+ **W.P.(C) 9225/2022**

GOUTAM TIWARI AND ORS.

.... Petitioners

Through: Mr. Anil Kumar Sahu and Mr. Aditya
Chaturvedi, Advocates

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Rishabh Sahu, SPC with Mr.
Sameer Sharma and Mr. Mayank,
Advocates

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

12.03.2024

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CM APPL. 15073/2024 (Delay of 151 days in filing counter affidavit)

1. This is an application filed by the respondents seeking condonation of 151 days delay in filing the affidavit/the counter affidavit.
2. Noting the contents of the application and that the learned counsel for the petitioners / non applicants has no objection, the delay of 151 days in filing the counter affidavit is condoned and the counter affidavit is taken on record.

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3. With the consent of the learned counsel for the parties the writ petition has been heard.
4. The petitioners have filed the petition with the following prayers:



“a) Issue a Writ of Mandamus directing the Respondents to consider the right of the Petitioners to be considered for promotion and also to designate and treat him in order to provide adequate promotional avenues to the petitioners who are the personnel working at rank and file of Head Constable (HC)/ Armourer/ITBPF under the Indo-Tibetan Border Police Force, ARMOURER Cadre (Group B and C posts), Recruitment Rules, 2019 and as things stand at the time of filing of this Petition.

b) Issue a Writ of Mandamus or such other Writ as may be expedient, directing the Respondents that, to alleviate the stagnation issues with promotional avenues from Head Constable to Sub Inspector, and without altering the status quo of the petitioners which affect the rank structure in the B and C grade in the Armourer cadre after bringing into effect any law/rule/order/notification with retrospective effect which are contrary to the existing law/rule/order/notification in force in order to deprive the petitioners from the benefits of promotion and consequential benefits under the law in force as of the date of filing of the present petition.

c) Issue rule Nisi in terms of prayer and confirm the same after hearing the parties and,

d) Grant such other relief/s as may be deemed fit in the facts and circumstances of the case.”

5. In substance, the petitioners are seeking promotion to the post of Sub Inspector (Armourer). On February 21, 2024 this Court had passed the following order:

“CM APPL. 10605/2024

- 1. This is an application for an early hearing of the petition.*
- 2. The learned counsel for the petitioners state that the respondents in their short affidavit in paragraph 9 at page 9 stated that the petitioners meet the eligibility for promotion to the post of Sub Inspector (Armourer) as on January 01, 2023. He submits that the petitioners have appropriate seniority and also the fact that vacancies are available in the grade of Sub Inspector (Armourer), the petitioners can be promoted.*
- 3. Noting the said submission, issue notice. Mr. Rishabh Sahu accepts notice for the respondents.*
- 4. In view of the submission made by the counsel for the petitioners as a short issue arises for consideration, the application is allowed.*
- 5. The petition is set out for final hearing on March 11, 2024.*
- 6. The learned counsel for the respondents to get the short affidavit placed on record before the next date of hearing.*
- 7. The date of October 21, 2024, stands cancelled.”*



6. The learned counsel for the petitioners reiterates the submission in as much as the petitioners have the eligibility for promotion to the post of Sub Inspector (Armourer). They have sufficient seniority for being considered for promotion to the said post.

7. He has drawn our attention to the counter affidavit more specifically paragraphs 9, 10 and 11 wherein the following has been stated:

“9. That as per RR 2019 Head Constable (Armourer) of ITBPF in level 4 in the pay matrix with 10 years of regular service in the grade and having successfully completed the prescribed pre-promotional training or course are eligible for promotion to the rank of Sub Inspector (Armourer). Further, as per the records, though the 10 years' regular service of the petitioner in the rank of Head Constable (Armourer) has been completed on 30.03 .2022, as per the instructions contained in DoP&T OM No. 220 I I /4/20 13-Estt(D) dated 08.05 .2017 the crucial date for determining the eligibility for promotions is 1 st January of every year and as such the petitioners are attaining eligibility for getting promotion to the rank of Sub inspector (Armourer) only on 0 1.01.2023.

10. That: the 3rd Cadre Review of ITBPF was approved on 15.01.2020 and consequent upon the approval of the 3rd Cadre Review an intermediary post of Assistant Sub Inspector between the ranks of Head Constable and Sub Inspector was introduced. As such, the revised RRs of Armourer Cadre Group B and C posts were drafted and are presently under consideration at MHA I DoP&T. In the proposed Recruitment Rules of Armourer Cadre (Group 8 and C posts) the eligibility condition for promotion to the rank of Sub Inspector (Armourer) has been proposed as under:

"From amongst Assistant Sub Inspector {Armourer} of ITBPF in levef-5 in the pay matrix with six years regular service in the grade failing which ten years combined regular service in the rank of Assistant Sub inspector (Armoure1) and Head Constable (Armourer) and having successfully completed the prescribed training or course."

11 . That in the meantime, vide SAO (Estt), Dte Gen ITBPF E-mail Msg No. 1527 dated 25.07.2022 (Annexure R-1) the service particulars of Head Constables (Armourer) were sought for advance preparation/scrutiny of their service records (which is an administrative procedure) to assess the suitability/eligibility, before DPC."



8. He submits as the respondents admit that the petitioners have attained the eligibility for promotion as on January 01, 2023 and the vacancies are available, the petitioners be considered for promotion to the post of Sub Inspector (Armourer).

9. Learned counsel for the respondents submits that he has instructions to state that the case of the petitioners shall be considered as expeditiously as possible. He states six weeks be granted to consider the case for promotion by holding a DPC.

10. If that be so, taking the submission made by the learned counsel for the respondents on record, the petition is disposed of by directing the respondents to hold DPC for making promotion to the post of Sub Inspector (Armourer) in the respondent organisation by considering all officers who are eligible as on January 01, 2023.

11. The petition is disposed of.

12. The date already fixed stands cancelled.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

MARCH 12, 2024/So..