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

Date of Decision: 18.07.2024

+ W.P.(C) 5538/2019
RAKESH KUMAR

.....Petitioner

Through: Mr. Manoj Joshi with Ms. Richa
Sharma, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. K.K. Jha, SPC with Mr. Jitendra
Kumar Tripathi, GP with Mr. Saurabh
Jha, Mr. Avinash Singh with Mr.
Rahul Jha, Advs. for UOI.

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 working as a Sub-Inspector (Executive) in the Central Industrial Security Force [CISF] has approached this Court by way of present writ petition filed under Article 226 of the Constitution of India seeking the following relief:-

“i) allow the present Writ Petition;

(ii) issue a writ of certiorari for quashing the impugned promotion order dated 04-09-2018 passed by the respondent No. 4, whereby junior to the applicant were promoted and not given the promotion to the applicant;

(iii) A writ of certiorari for quashing the impugned letter dated 24-10-2018 passed by the respondent No.4 and letter dated 27-10-2018 passed by the respondent No. 5 whereby informed that as per rule petitioner not having



six years experience for promotion of the post of Sub Inspector from the post of Assistant Sub Inspector;

(iv) A writ of mandamus directing the respondents to count the experience of Petitioner from the dated junior person was appointed;

(v) A writ of mandamus directing respondents to promote the Petitioner w.e.f. promotion of just junior to applicant on the post of Sub Inspector;

(vi) A writ of mandamus directing the respondents to all the consequential benefits alongwith interest of 24% per annum.”

2. We may at the outset note that though the petitioner already stands promoted as Sub Inspector (Executive)/SI during the pendency of the present petition and has sought a number of reliefs in the present petition, his primary grievance is that he ought to have been promoted to the said post w.e.f. 04.09.2018, when persons junior to him in the seniority list of ASI were promoted as SI (Exe.).

3. As per the factual matrix emerging from the record, we find that upon an advertisement being issued for recruitment to the post of ASI in the CAPFs in the year 2011, the petitioner applied and based upon the exam conducted by the Staff Selection Commission his name was included in the merit list. Consequently, he was issued an offer of appointment on 21.05.2012 which was on account of his having been earlier involved in a criminal case withdrawn on 13.08.2012 and thereafter cancelled on 13.03.2013.

4. Since the petitioner had already been acquitted in the criminal case much before the recruitment process commenced, he approached the Punjab and Haryana High Court at Chandigarh by way of Civil Writ No. 11422/2013 which was allowed on 13.10.2014 by directing the respondents to appoint him as an ASI along with all consequential service benefits on notional basis *albeit* without any arrears of salary.



5. As a consequence, the petitioner was in compliance with this decision of the Punjab and Haryana High Court appointed as an ASI (Exe.) on 15.01.2015 and was granted his rightful seniority from the same date when other candidates selected for the post of ASI were appointed i.e., 21.05.2012. Resultantly, the petitioner who was entitled to get notional seniority w.e.f. 21.05.2012 was placed at serial No. 16971-A in the seniority list of ASIs with ASI Alvina Raleng in the ST category being placed at serial no. 16974 and ASI Santosh Kumar in the general category being placed at serial no. 16976. Taking into account that six years service was required for promotion from the rank of ASI (Exe.) to SI (Exe.), the respondents on 04.09.2018 issued an order promoting 1269 ASIs (Exe.) to the rank of SI (Exe.) w.e.f. 11.09.2018. This list, however, did not include the petitioner's name leading to the filing of the present petition.

6. Learned counsel for the petitioner submits that even though the respondents had in accordance with the directions issued by the Punjab and Haryana High Court granted notional seniority to the petitioner as an ASI by rightly placing him, as per his merit position, above ASI Santosh Kumar. However, at the time of consideration for promotion to the post of Sub Inspector the respondents ignored him on the premise that he had not completed six years of regular service as an Assistant Sub Inspector. Once the Punjab and Haryana High Court had specifically directed the respondents to grant notional seniority to the petitioner, its effect thereof would be that the petitioner had to be treated as an ASI for all the purposes with effect from the same date i.e., 21.05.2012 the date on which other candidates selected along with him in the selection process were appointed. He, therefore, prays that the writ petition be allowed and the respondents be



directed to promote him as SI(Exe.) w.e.f. 11.09.2018 itself.

7. On the other hand, Mr. Jha, learned counsel appearing on behalf of the respondents seeks to support the impugned promotion order dated 04.09.2018 by urging that since the petitioner had not put in six years of actual service as an ASI in September, 2018, the respondents were justified in denying him promotion to the rank of SI when other ASIs placed in the same seniority list as him were promoted. Further, the petitioner after completing six years of service with reference to his date of joining i.e., 15.01.2015, already stands promoted as SI during the pendency of the petition and therefore the writ petition itself is rendered infructuous. After some arguments, he concedes that the decision of the Punjab and Haryana High Court specifically directed the respondents to grant the petitioner notional seniority as an ASI w.e.f. the date, persons selected in the same selection process were granted seniority. He also does not deny that the said decision has attained finality.

8. Having considered the submissions of learned counsel for the parties and perused the record, we are of the view that the petitioner is correct in urging that once it was directed by the Court that he was entitled to be granted notional seniority as an ASI w.e.f. the date persons selected with him were granted seniority. The effect of the directions issued by Punjab & Haryana High Court on 13.10.2014 therefore would be that the petitioner will, for all intents and purposes except for back wages, be treated as having been appointed as an ASI w.e.f. 21.05.2012 itself. Once the respondents implemented the aforesaid order dated 13.10.2014 by placing the petitioner at his rightful position in the seniority list of ASIs, they could not take the plea that since he actually joined service on 15.01.2015, his service for the



purposes of consideration for promotion could be reckoned from the said date. In our considered opinion, if this plea were to be accepted, it would amount to negating the very relief of notional seniority as an ASI which the Punjab & Haryana High Court granted to him.

9. In the light of the aforesaid, once it is the respondents' own case that the petitioner was on 04.09.2018 fulfilling all other promotional criteria, the petitioner was undoubtedly entitled to be promoted as SI (Exe.) w.e.f. 11.09.2018. The writ petition is, accordingly, allowed by directing the respondents to grant notional promotion to the petitioner as an SI (Exe.) along with pay fixation w.e.f 11.09.2018 when persons similarly situated including ASI Santosh Kumar who was placed lower in the seniority list of ASIs, were granted promotion as an SI. We, however, make it clear that though the petitioner's seniority as an SI will be reckoned w.e.f. 04.09.2018 as against the date on which he was later promoted, he will not be entitled to any arrears of pay on this ground.

10. The writ petition is, accordingly, disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

JULY 18, 2024
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