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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 02.09.2024

+ W.P.(C) 6168/2020
KALICHARAN

.....Petitioner

Through: Mr.K.K.Sharma, Adv.

versus

UNION OF INDIA & ORS.

.....Respondent

Through: Ms.Nidhi Raman, CGSC with
Mr.Zubin Singh, Mr.Akash Mishra, Ms.Rashi
Kapoor, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

REKHA PALLI, J(ORAL)

1. The petitioner, who is serving as Sub-Inspector (General Duty) in the Central Reserve Police Force (CRPF) has approached this Court seeking the following reliefs-

“(a) To declare the action of the Respondent No. 2 to 4 as illegal and arbitrary through which the Respondent No.2 to 4 delayed the confirmation of the Petitioner without giving any intimation to the Petitioner and Respondent No.2 to 4 be directed for re-assignment of seniority of the Petitioner since the date they disturbed the seniority of the Petitioner while delaying the service confirmation of the Petitioner;

(b)To declare the action of the Respondent No.2 to 4 to promote the Petitioner as Assistant Sub Inspector instead of Sub Inspector as illegal and arbitrary and direct the



Respondent No.2 to 4 to promote the Petitioner to the post of Sub Inspector retrospectively alike to the Petitioner's juniors/batchmates such as Force No. 850773821 SI/GD Hari Naran Jat; Force No. 850815602 SI/GD Sahab Shukala & Force No. 850813199 SI/GD Dahate Chandu Mahadeo and also they also be directed to give arrears of salary along with all consequential benefits arising there from to the Petitioner retrospectively;

(c) To declare the action of the Respondent No.2 to 4 through which the benefit of 3rd MACP denied to the Petitioner as illegal and arbitrary and direct the Respondent No. 2 to 4 to give the benefit of 3rd MACP to the Petitioner from the date when the Petitioner completed their 30 years of regular service with CRPF on 06.06.2015;

(d) Any other relief/ order / direction as the Hon 'hle Court may deem fit and proper."

2. The petitioner joined the CRPF as a Constable (GD) on 06.06.1985 and was confirmed in the said post w.e.f. 10.04.1988, even though his batchmates had been confirmed as Constables (GD) on 01.04.1988. Based on his date of confirmation, he was promoted as Lance Naik on 22.01.1995. That on 09.08.1999, pursuant to the recommendations made by the Fifth Central Pay Commission, the Central Government introduced the Assured Career Progression Scheme (ACP) providing for two financial upgradations after 12 years and 24 years respectively. This upgradation envisaged placement of the employee in the pay scale of the promotional post. The benefit under the ACP was however, directly dependent upon the employee meeting the eligibility criteria for promotion and not having earned any promotion during the said period of 12/24 years. Taking into account that the petitioner had already been promoted as Lance Naik in 1995, he was not



granted first upgradation under the ACP Scheme at that stage and was thereafter promoted as a Head Constable (GD) on 19.11.2011. However, upon a subsequent merger of the post of Lance Naik with that of Head Constable, the petitioner was, vide order dated 10.02.2015, retrospectively granted the benefit of the first ACP w.e.f. 09.08.1999, i.e the date from which the ACP Scheme was introduced. The ACP Scheme was, substituted by a Modified Assured Career Progression Scheme (MACP) w.e.f. 01.09.2008, which scheme envisaged three financial upgradations after 10, 20 and 30 years of regular service.

3. On 07.07.2011, the respondents issued a Drawl Special Approved List which included the name of 1239 Head Constables (GD), who were, on the basis of the eligibility criteria for promotion to the rank of Sub Inspector, found fit for promotion. This list was, however, not a promotion order but was only a list of HCs, who were on the said date, fulfilling the prescribed promotional criteria for promotion to the rank of SI and therefore, upon accrual of vacancies of SI, promotions were to be made from the said list. As the petitioner was fulfilling the promotional criteria i.e. five years of blemishless service in the rank of Head Constable and having qualified the pre-promotional courses, his name was placed at Srl.No.838 of the said list.

4. However, before the petitioner could be promoted on the basis of the said list, the respondents introduced the post of Assistant Sub Inspector (ASI), the recruitment rules for which were notified on 20.12.2011. Further, 632 HCs (GD) from the aforesaid list dated 07.07.2011 were promoted as SI. Unfortunately for the petitioner, he could not be promoted as SI before 20.12.2011 when the rank of ASI was introduced and having already completed 20 years of service on 01.09.2008, he was, vide order dated



05.08.2011, granted the benefit of second upgradation under the MACP Scheme. The petitioner was thereafter, vide order dated 30.04.2012, promoted as ASI w.e.f 19.03.2012 and as SI on 06.05.2014.

5. As the petitioners' batchmates, who had been included in the very same approved list dated 07.07.2011, had been directly promoted as SI on 20.10.2011, consequently he submitted a representation dated 31.05.2017 seeking promotion as SI at par with his batchmates. The said representation was rejected by the respondents vide order dated 29.11.2017 and the petitioner was informed that only 632 HCs (GD) from the list dated 07.07.2011 had been promoted as SI. Since his name had been placed at Srl. No. 838 in the approved list, having confirmed in service only on 10.04.1988, he could not be promoted against the vacancies of SI which had arisen before 20.12.2011. Being aggrieved, the petitioner preferred yet another representation, which was also rejected and thereafter, approached this Court.

6. In support of the petition, learned counsel for the petitioner vehemently urges that it is only on account of the fault of the respondents that the confirmation of the petitioner was delayed and therefore, he cannot be denied his rightful seniority as a Constable and in all higher ranks to which he was subsequently promoted. Further he submits that once the petitioner was found fit for promotion to the rank of SI (GD) with his name having been placed at Srl.No.838 in the approved list, he was entitled to be promoted as SI directly. The respondents' contends that, they could not have promoted him as an ASI and that too on the basis of the recruitment rules which were notified after the issuance of the approved list. Finally, he submits that since the petitioner's pay, after promotion as ASI, remained the



same as what he was drawing as a HC, this promotion to the rank of ASI ought to have been ignored for the purpose of MACP. Consequently, the petitioner was entitled to the benefit of third upgradation under the MACP Scheme w.e.f. 06.06.2015, the date when he completed 30 years of service, which benefit he contends has been wrongly denied to him.

7. *Per contra*, Ms.Nidhi Raman, learned counsel for the respondents seeks dismissal of the writ petition by urging that the petitioner's grievance regarding the date of his confirmation, i.e 10.04.1988 is grossly barred by delay and laches. She submits that in case, this Court were to now direct any alteration in the petitioner's date of confirmation, the same would have a cascading effect on the seniority of a large number of his batchmates, who, based on their date of confirmation of 01.04.1988, were all along treated as senior to him and had, accordingly, earned all promotions to the higher rank on the basis of their seniority over the petitioner.

8. She further submits that the petitioner's claim that he having been placed in the approved list dated 07.07.2011, ought to have been promoted as SI and not as an ASI is also misplaced. Once the post of ASI, as the promotional post of HC, was introduced w.e.f. on 20.12.2011 i.e. before accrual of vacancies against which the petitioner could be considered for promotion, he was rightly promoted as ASI. This, she submits, was on account of the fact that the petitioner was placed at Srl.No.838 in the approved list and only 632 vacancies of SI had arisen before the post of ASI was introduced. Consequently, it is HCs placed at Srl.Nos.01 to 632 of the approved list, who were promoted as SI on 21.10.2011. Once it is the petitioner's own case that he has been promoted as SI on 06.05.2014, his claim for third financial upgradation under the MACP is also misplaced.



9. Having considered the submissions of learned counsel for the parties and perused the record, we find that the petitioner has raised three grievances. The first being that his date of confirmation as a Constable has been wrongly treated as 10.04.1988 as against 01.04.1988, when his batchmates were confirmed. The second grievance of the petitioner is that he ought to have been promoted as an SI and not as an ASI on 19.03.2012. His third and final grievance is that he ought to have been granted the benefit of third financial upgradation under the MACP. In order to appreciate the rival submissions of the parties, it would be apposite to note hereinbelow, the tabular chart produced by the respondents setting out the dates on which the petitioner was promoted/granted benefits under the ACP and MACP Schemes.

<i>Date of enlistment as CT/GD</i>	:	6/6/1985
<i>Promoted as L/NK</i>	:	22.01.1995
<i>Sanction of 1st ACP</i>	:	9/8/1999 (Vide CRPF office order dated 10/02/2015)
<i>Promoted as HC/GD</i>	:	19/11/2001 (F.O.No.586/2001 dated 24/11/2001)
<i>Sanction of 2nd MACP</i>	:	1/9/2008 (CRPF office order dated 5/8/2011)
<i>Promoted as ASI/GD</i>	:	19/3/2012 (Bn Office order dated 30/4/2012)
<i>Promoted as SI/GD</i>	:	2/5/2014 (Bn Office order dated 6/5/2014)



10. From a perusal of the aforesaid what emerges is that though the petitioner was promoted as Lance Naik on 22.01.1995, taking into account that the said post was subsequently merged with that of the HC, the respondents had themselves granted him the benefit of the first financial upgradation under the ACP Scheme w.e.f 09.08.1999. It is also clear that the petitioner had been granted the benefit of second financial upgradation under the MACP Scheme on 01.09.2008 and has also earned three promotions one to the post of HC, the second to the post of ASI and the third to the post of SI. The purpose of both, the ACP Scheme and the MACP Scheme, is to prevent stagnation and grant financial upgradation to employees who do not earn any promotion within the period prescribed under these schemes. In the present case, it is the petitioner's own case that he had earned three promotions i.e. from Constable to HC and then to ASI and SI, before completing 30 years of service. In these circumstances, we find absolutely no merit in the petitioner's plea that he was entitled to grant of third financial upgradation under the MACP Scheme.

11. Now coming to the petitioner's plea that his date of confirmation in service has been wrongly fixed as 10.04.1988 instead of 01.04.1988. The respondents have opposed this plea primarily on the ground of delay and laches and have urged that any alteration of the petitioner's date of confirmation at this belated stage, would affect the seniority of a large number of his batchmates thereby unsettling the settled position of seniority. Having given our thoughtful consideration to the rival submissions of the parties, we are inclined to agree with the respondents that the petitioner's



prayer for correction of the purported error in his date of confirmation cannot be accepted at this stage. Learned counsel for the respondent is correct in urging that based on this date of confirmation, the petitioner was not only promoted as a Lance Naik but also as a HC, ASI and finally earned his promotion as SI on 06.05.2014. The present writ petition has been filed only in the year 2020 and therefore, we are of the considered view that this claim of the petitioner for correction of his date of confirmation is liable to be rejected on the ground of inordinate delay and laches itself.

12. In this regard reference may be made to the following observations of the ***Apex Court in Union of India vs. Tarsen Singh (2008) 8 SCC 648:-***

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will



apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

13. Having found no merit in the petitioner’s first two pleas, we may now deal with his final plea that his name having been placed in the approved list for SI, he ought to have been promoted as SI especially since he was fulfilling all the eligibility criteria for promotion to the rank of SI on 07.07.2011, when the said list was published. Even though, this plea appears to be attractive on the first blush, upon a closer scrutiny of the factual matrix, we find that the petitioner’s claim in this regard also needs to be rejected.

14. No doubt the petitioner’s name was included in the list of HCs who were on 07.07.2011 found eligible for promotion to the rank of SI but we find that, the said approved list in itself made it clear that promotions were subject to availability of vacancies in the rank of SI. It is the respondents’ specific case that only 632 HCs from the said approved list could be promoted as SI on 21.10.2011, whereafter the recruitment rules for the rank of ASI were notified on 20.12.2011. As a result of notification of the rules a promotional post of ASI was introduced for the HCs and therefore, a HC could be promoted only as ASI and not as SI directly. As the petitioner’s name which was at Srl. No. 838 of the approved list came up for consideration for promotion on 19.03.2012, he could be promoted as per the applicable rules as ASI. In the light of the admitted recruitment rules for the rank of ASI came into effect from 20.12.2011, we find no infirmity in the respondents’ decision to promote the petitioner as ASI and not as SI on 19.03.2012.



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15. For the aforesaid reasons, the writ petition being meritless is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

SEPTEMBER 2, 2024
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