



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

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Date of decision: January 09, 2024

+ **W.P.(C) 9227/2023**

AKHILESH KUMAR SHARMA

..... Petitioner

Through: **Mr. Harshit Pandey and Ms. Kritika,**
Advocates

versus

**UNION OF INDIA, THROUGH SECRETARY, MINISTRY OF
HOME AFFAIRS. & ANR.**

..... Respondents

Through: **Mr. Anshuman, SPC**

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:-

“In the conspectus of the facts and circumstances mentioned herein and in the interest of justice, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

(a) Allow the present writ Petition in favour of the Petitioner.

(b) Issue a writ a Mandamus, order or direction quashing all the two orders dated 13.01.2023, 17.02.2023; respectively denying the opportunity to the Petitioner to appear in the departmental LDC AC promotional exam.



(c) Issue a writ of Mandamus directing the Respondent to provide all the service / promotions benefits like Deputation to various services to the Petitioner which was due because of the pendency of the disciplinary proceedings regarding censorship.

(d) Issue a writ of Mandamus directing the respondents to give age relaxation of the duration of pendency of disciplinary proceedings, to the petitioner for appearing in the departmental LDC AC examinations.

(e) Pass any such other order or orders as deems fit and proper as are necessary in the circumstances of the present case, in the interest of justice.”

2. The case of the petitioner is primarily that he should be considered for promotion to the post of Assistant Commandant (AC) under the Limited Departmental Examination quota. There is no dispute that, a penalty of censure was imposed on him on May 9, 2016 in respect to certain disciplinary proceedings initiated against the petitioner.

3. The said penalty became the subject matter of a writ petition filed by the petitioner before the High Court of Calcutta. The High Court had quashed the penalty imposed on the petitioner vide order dated August 5, 2022.

4. The submission of the learned counsel for the petitioner is that the petitioner because of imposition of Penalty could not apply for promotion under LDCE quota before August, 2022. Even otherwise, the respondents were required to issue the notification for making promotion under the LDCE quota in the month of December, 2022, which they did not, for the reasons known to them. He further submits that the petitioner had made a representation to the respondents for giving him one more chance, as he has



lost opportunities to appear in LDC examination in the past. He also states that, the notification with regard to the LDC examination was issued only in the month of May, 2023 (instead of December, 2022) when the petitioner had become over-age (in the month of April, 2023). He submits that, in the facts of this case, the petitioner is entitled to age relaxation.

5. On the other hand, learned counsel for the respondents would submit that the earliest opportunity for the petitioner to sit in the LDC examination was only in the month May, 2023, when the respondent issued notification, but by that time he had become over-age. According to him, because of stay order granted by this Court in the *W.P. (C) 5877/2022* titled as *Diwakar Pande & Ors. v. Ministry of Home Affairs & Ors.* on October 7, 2022, the respondent could not issue notification in December, 2022. The stay order was vacated only in February, 2023. In support of his submission, he has placed before us the orders dated October 7, 2022 and February 3, 2023 passed in *Diwakar Pande & Ors. (supra)*.

6. Noting the submissions made by the learned counsel for the respondents, we are of the view that the petitioner had become over-age in the month of April, 2023 and the notification having been issued in the month of May, 2023, he cannot be allowed to sit in the examination.

7. In fact, we find that no attempt was made by the petitioner from 2016-2019, to challenge the penalty imposed on him. So, the chances lost by the petitioner are attributable to him. That apart, when the matter was listed on February 28, 2023, this Court had allowed the respondent's counsel to ascertain as to whether any power of relaxation is provided in the Recruitment Rules. We have seen the Recruitment Rules, the power to relax is stipulated in the following manner:-



Power of relax - Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, and in consultation with the Union Public Service Commission, relax any of the provisions of these rules with respect to any class or category of person.

8. The power of relaxation can be exercised by the Central Government only in respect of category/class of persons and not in favour of an individual officer. If that be so, the petitioner's age being beyond the upper age limit, the prayer as sought by the petitioner in this case cannot be granted.
9. The petition is dismissed.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 09, 2024/rr