



2024:DHC:6617-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 29.08.2024***+ W.P.(C) 8133/2020
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.....Petitioner

Through: Mr. Anuj Aggarwal, Ms. Divya
Aggarwal and Mr. Pradeep Kumar, Advs.

versus

CENTRAL RESERVE POLICE FORCE & ORS.Respondents

Through: Mr. Avnish Singh, SPC with Ms
Kanchan Kumari, Mr. Anant Yadav, Mr. Vishal
Kumar Yadav and Mr. Mahendra Vikram Singh,
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 an Assistant Commandant in the Central Reserve Police Force (CRPF), has approached this Court under Article 226 of the Constitution of India assailing the order dated 27.04.2018 passed by the DIG (Pers), CRPF, rejecting his prayer for grant of benefits of Senior Time Scale w.e.f. 12.01.2016, the date from which his batchmates were extended the said benefits. It may be noted at this stage itself that these benefits have been granted to the petitioner w.e.f. 25.03.2017 as against his claim from 12.01.2016.
2. Before dealing with the rival submissions of the parties, was may note

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the brief factual matrix as emerging from the record. On 12.01.2012, the petitioner was appointed as an Assistant Commandant in the CRPF. While he was posted in the 201 Cobra Battalion, CRPF, Sukma, Chhattisgarh, on 26.09.2015, he suffered severe injuries due to an IED blast at village - Lakhapal, District - Sukma, Chhattisgarh. This resulted in a Grade-I tear in his knee and he was consequently placed in a low medical category i.e. SHAPE-III [A3 (T-12) P3 (T-12)] from 28.09.2015 to 25.03.2017. Thereafter, a Court of Inquiry (CoI) was held to investigate the said incident in which the petitioner had sustained the aforesaid injury. Vide its recommendations made on 13.10.2016, the CoI opined that the petitioner had sustained injuries due to the IED blast that took place on 26.09.2015 and therefore directed that in case he was found to be partially or fully incapacitated, he would be eligible for all financial benefits.

3. As the petitioner was completing 4 years of service as an Assistant Commandant, required for grant of Senior Time Scale on 12.01.2016, his case was, on 11.12.2015, considered with his batchmates for grant of the said benefits. However, since the petitioner had been placed in a low medical category due to the aforesaid injury suffered in the IED blast, he was denied the said benefit of Senior Time Scale at that stage which was extended to his batchmates on 12.01.2016. This was on account of the petitioner being in medical category Shape-III as against Shape-I prescribed under OM dated 29.06.2005.
4. On 25.03.2017, after the petitioner recovered from his injuries, he was placed in SHAPE I and was consequently granted Senior Time Scale with effect from the said date. Claiming that he was entitled to be

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granted the benefit of Senior Time Scale w.e.f. 12.01.2016, the petitioner submitted a representation to the respondents on 08.05.2017, which was rejected on 27.04.2018. Consequently, the petitioner served a legal notice dated 12.12.2019 upon the respondents, which was rejected on 16.01.2020. It is in these circumstances, that the petitioner has approached this Court by way of the present petition.

5. Learned counsel for the petitioner submits that the respondents have erred in denying the petitioner the benefit of Senior Time Scale, w.e.f. 12.01.2016, despite themselves having passed a specific order on 13.10.2016, extending to him all financial benefits on account of the injuries sustained by him due to naxalites IED blast in Chhattisgarh. He contends that the respondents have also failed to appreciate that benefit of Senior Time Scale is merely a financial upgradation for which the condition of being in medical category Shape-I ought to have been relaxed in peculiar circumstances, like the present case, when the injuries suffered by the petitioner were during bonafide government duty.
6. He further contends that Clause 4.17 of the Standing Order No. 4/2008 is also liable to be set aside as it arbitrarily grants relaxation to personnel falling only in certain low medical categories and not to all cases of low medical category, even if the placement in low medical category is due to service conditions. Finally, he submits once Clause 4.13 of the Standing Order 4/2008 itself provides for retrospective seniority upon the employee being declared medically fit, the petitioner ought to be granted the benefits of Senior Time Scale w.e.f.



12.01.2016 itself. He, therefore, prays that the writ petition be allowed by setting aside the impugned order dated 27.04.2018, which rejected the petitioner's claim for Senior Time Scale w.e.f. 12.01.2016 and prays that the respondents be directed to extend the said benefit to him from the due date.

7. *Per Contra*, learned counsel for the respondents while not denying that the injuries suffered by the petitioner, resulting in him being placed in Low Medical Category Shape-III, were on account of an IED blast due to naxalite activities in Chhattisgarh, submits that the petitioner was rightly not granted the benefits of Senior Time Scale on 12.01.2016, as he was not falling within parameters of relaxation provided under Clause 4.17 of the Standing Order No. 04/2008. He submits that the decision of the respondents to grant relaxation only in certain medical categories is based on functional requirements of the CRPF as Force Personnel in medical categories lower than the one prescribed under the relaxation clause, would not be fit to discharge the duties of a higher posts. The decision of the respondents to grant relaxation to only certain categories of low medical category personnel is justified, he contends, and, therefore, prays that the writ petition be dismissed.
8. Having considered the submissions of learned counsel for the parties and perused the record. We may begin by noting the contents of Clause 4.17 of the Standing Order 4/2008, which reads as under:

"4.17 Relaxation in SHAPE-I Medical Category.

The relaxation in SHAPE-I Medical Category will be admissible to the following two categories of CPMFs



personnel to the extent detailed below:-

a) Official/Personnel wounded/injured during war or while fighting against the enemy/militant/intruders/armed hostiles/insurgents due to an act of these in India or abroad will be eligible for promotion while placed in one of the following medical classification:-

i) Individual Low Medical Factors

(aa) H2 or E2 or P2(Dental) which will be considered at par with SHAPE-I; and ;

(ab) A2 or P2 or A3

ii) Combined Low Medical Factors

(aa) H2 and E2 combined and

(ab) H2 or E2 combined with A2, A3 or P2

b) Officers/men who are wounded/injured during field firings/accidental firings/explosion of mines or other explosive devices and due to accidents while on active Government duty in India or abroad will be eligible for promotion in the following SHAPE Categories:-

i) S1H1A2P1E1 (ii) S1H1A1P2E1 (iii) S1H2A1P1E1

(iv) S1H1A1P1E2 (v) S1H2A1P1E2”

9. From the aforesaid extract of the Standing Order, we find that the respondents have laid down a large number of categories where relaxation has been granted *vis a vis* requirement of medical category Shape-I for promotions/ Senior Time Scale/NFFU. As noted hereinabove, the petitioner was placed in medical category Shape-III on account of both A3 and P3, meaning thereby that he was in lower medical category on account of two of the five factors required for determining medical fitness. From the aforesaid categories where



relaxation has been extended, what emerges is that the respondents have provided for relaxation up to category A3 but not for category P3. We are of the view that this decision of the respondents to grant relaxation only to category A3 and not to P3 cannot be said to be arbitrary as a person who is totally unfit may not be in a position to discharge duties of the higher post. We, therefore, find no merits to the petitioner's challenge to Clause 4.17 of the Standing Order dated 4/2008.

10. Now coming to the petitioner's second plea that once Clause 4.13 of the Standing Order 4/2008 itself provides for retrospective seniority, upon the employee being declared medically fit, the petitioner ought to be granted the benefits of Senior Time Scale w.e.f. 12.01.2016 itself. It has been contended that even though the Clause 4.13 provides that no arrears will be payable, taking into account the recommendations made by the CoI that the petitioner will be eligible for all the financial benefits, the petitioner ought to be granted the benefit of Senior Time Scale w.e.f. 12.01.2016 along with all consequential arrears.

11. In order to appreciate this plea of the petitioner, it would be apposite to refer to Clause 4.13 of the Standing Order 4/2008, which reads as under:

"4.13 Mandatory for the purpose of promotion Medical Category SHAPE-I will be an essential condition for promotion of all combatised personnel in all groups/ranks/cadres in the CPMFs. In case of those whose illness is of permanent nature and who are not SHAPE-I, they will be considered for promotion by DPC but will be declared unfit for promotion, even if, they are



otherwise fit for promotion. In case of those personnel, whose illness is of temporary nature, after considering their cases for promotion along with others, if they are otherwise fit, the DPC will grade them as 'fit for promotion' subject to attaining SHAPE-I medical category. As and when they regain the SHAPE-I medical category, they will be promoted as per recommendations of DPC. But they will not be entitled to back wages. However they will retain their seniority."

12. From a bare perusal of the aforesaid Clause, it is evident that the Standing Order 4/2008 itself provides that combatized personnel, who are promoted after regaining their medical fitness, will retain their seniority. The said clause, however, specifically bars grant of any backwages. In the light of this specific provision providing for grant of retrospective seniority, the respondents could not have denied the petitioner the benefits of Senior Time Scale on notional basis w.e.f. 12.01.2016, i.e., the date when his batchmates were extended the same. Even though the petitioner has claimed that he is entitled to all consequential benefits w.e.f. 12.01.2016, which ought to have included backwages, since Clause 4.13 has not been assailed, we are unable to accept his claim for grant of arrears. Consequently, the petitioner would be entitled to the benefit of Senior Time Scale on notional basis w.e.f. 12.01.2016, albeit without backwages.
13. The writ petition is, accordingly, allowed by directing the respondents to grant notional pay scale of the Senior Time Scale to the petitioner in the rank of Assistant Commandant w.e.f. 12.01.2016 itself. The petitioner will, however, not be entitled to any arrears of pay for the period between 12.01.2016 till 25.03.2017, the date he was



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actually granted the benefit Senior Time upon being declared medically fit.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

AUGUST 29, 2024
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