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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision:- 23.08.2024***

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W.P.(C) 11560/2022**ASST. COMDT. (IRLA NO. 9910) ASHISH KUMAR DUBEY****.....Petitioner****Through: Mr. N.L. Bareja, Adv.****versus****UNION OF INDIA & ANR.****.....Respondents****Through: Mr. Ripu Daman Bhardwaj, CGSC
for UOI with Mr. Kushagra Kumar
and Mr. Abhinav Bhardwaj, Advs.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****REKHA PALLI, J(ORAL)**

1. By way of the present writ petition under Article 226 of the Constitution of India, the petitioner, who is serving as an Assistant Commandant, General Duty (GD) in the Central Reserve Police Force (CRPF), has approached this Court seeking the following reliefs:

*“a) Issue an appropriate writ, order(s) or directions(s)
In the nature of:-*

(i) Writ of Mandamus, directing the respondents to re-assign the seniority of the petitioner in the rank of Asstt. Comdt., a long with consequential benefits, at par with his course/batch-mates who, having



qualified in SICC Srl. 82, were promoted to the post of Asstt. Comdt. vide signal dated 13.01.2012 or else;

(ii) Direct the respondent to promote the petitioner along with his course / batch-mates who, having failed in SICC Sri. 82 and thereafter qualified in SICC 84, were so promoted to the post of Asstt. Comdt. vide signal dated 06.12.2012.

b) Direct the respondents not to harass/humiliate and victimize the petitioner, as also restrain the respondents from initiating any adverse action against the petitioner on one pretext or the other, without due process of law.

c) Direct the respondents to pay appropriate compensation/damages towards the sufferings and mental agony, under-gone by the petitioner on account of the unjustifiable Act on the part of the respondents for depriving the petitioner of his rights for protection of the seniority in terms of signal dated 28.02.2013 and in pursuance thereof for re-assignment of his seniority in the rank of Assit. Comdt. at par with his course / batch-mates w.e.f. 13.01.2012.

d) Direct the respondents to pay costs of this petition to the petitioner for compelling him to approach this Hon'ble Court for indulgence to seek justice.

e) Any other or further writ, order(s) or direction(s) as deemed fit and proper may also be passed in favour of the petitioner and against the respondents."

2. Before dealing with the rival submissions of the parties, the brief factual matrix as emerging from the record may be noted.
3. On 02.11.1998, the petitioner was enrolled in the CRPF as a



Constable (GD) and while he was serving in the 49th Bn, CRPF, he applied for the post of Sub-Inspector SI (GD) through direct recruitment, the selection process whereof was conducted by the Staff Selection Commission (SSC). Upon emerging successful in the said selection process, he was, on 25.01.2003, issued an offer of appointment and accordingly, reported for training at the CTC-III, CRPF, Nanded, Maharashtra on 26.02.2003.

4. On 01.04.2005, when the respondents issued a seniority list of SI(GD), while the petitioner was placed at serial no.2364 in the said list, SI(GD) Ghanshyam Gujar was placed at serial no.2363 and SI(GD) Suresh Kumar at serial no. 2365. It is the case of the petitioner that in September, 2006, though he was initially along with his batchmates, detailed for undergoing the Senior Sub-Inspector Cadre Course (SSICC) Srl. 28, he was not permitted to undergo the course on the ground that he had not completed two years' Mandatory Field Service (MFS) in a duty battalion which was a mandatory condition for promotion to the rank of Inspector. The petitioner was, accordingly, detailed for the next SSICC Srl. 29, which he completed in April, 2007.
5. On 24.04.2007, when the approved list of SI(GD) of the 74th Bn for promotion to the post of Inspectors (GD) was issued, the names of the petitioner's batchmates, who had completed SSICC Srl. 28, were included but his name was excluded on the ground that he had qualified in the next Batch i.e. Srl. 29. Consequently, the petitioner was promoted as an Inspector (GD) on 16.08.2007 along with those Sub Inspectors who had undergone the SSICC Srl. 29. Resultantly,



when the list of seniority of Inspectors was issued on 01.10.2007, while the petitioner was placed at serial no.1073, his batchmates namely SI(GD) Ghanshyam Gujjar and SI(GD) Suresh Kumar, who had been promoted as Inspector on 24.04.2007 were placed at Srl. nos.805 and 806.

6. Based on this seniority list dated 01.10.2007, the petitioner's batchmates were detailed for the promotional course for the post of Assistant Commandant (AC) i.e Senior Inspector Cadre Course (SICC) Srl. 82, conducted from 01.02.2010 to 10.04.2010. As the petitioner had been placed at Srl No.1073 in the seniority list, he was detailed for the course only with the next batch i.e. SICC Srl No.83 conducted from 03.05.2010 to 10.07.2010. Even though the petitioner duly underwent the aforesaid promotional course, he was failed in one subject and as per the standing order no.06/1999, he appeared in a re-test for the said subject in the next course i.e. SICC Srl. 84 conducted between 29.09.2010 to 27.11.2010, when he was declared as having qualified.
7. On 13.01.2012, the respondents promoted sixty seven Inspectors(GD) as Assistant Commandant (AC), which list included the names of Inspector Ghanshyam Gujjar and Inspector Suresh Kumar, who had, in the list of Sub Inspectors(GD), just above and below the petitioner respectively. This promotion order was followed by yet another order dated 06.02.2012, promoting 537 Inspectors as Assistant Commandants, this time too the petitioner's name was excluded. Upon inquiry, he was informed that he would be promoted only with those Inspectors who had cleared the SICC Srl. 84.



8. Being aggrieved, the petitioner approached this Court by way of W.P.(C) 3101/2012 which writ petition came to be allowed on 02.11.2012 by directing the respondents to grant the petitioner retrospective seniority as Inspector w.e.f. 24.04.2007, along with all consequential benefits including fixation of seniority, pay fixation as well as arrears of pay etc. w.e.f. 24.04.2007. This order has admittedly attained finality.
9. However, since despite this order directing the respondents to grant all consequential benefits to the petitioner by granting him retrospective promotion as Inspector w.e.f. 24.04.2007, the respondents did not promote the petitioner as Assistant Commandant with his batchmates, who had been promoted as Inspectors on 24.04.2007, the petitioner made representations which were rejected. It is in these circumstances that the petitioner has approached this Court seeking a direction to the respondents to grant him seniority as Assistant Commandant along with all consequential benefits w.e.f. 13.01.2012, the date on which his juniors were promoted as Assistant Commandant.
10. In support of the petition, learned counsel for the petitioner submits that once this Court had directed the respondents on 02.11.2012 to grant the petitioner all consequential benefits after restoring his seniority as Inspector w.e.f. April, 2007, it was incumbent upon the respondents to also grant him retrospective promotion with his batchmates as Assistant Commandant. However, only because the petitioner was not detailed for SICC Srl No. 82 along with his batchmates who like him were promoted as Inspectors on 24.04.2007,



the respondents have rejected his prayer for promotion w.e.f. 13.01.2012, the date on which his batchmates were promoted as Assistant Commandant. This, he contends, is on an erroneous premise that the promotion to the post of Assistant Commandant will be dependent on the date on which the Inspector qualifies the promotional course SICC.

11. Once there is no provision in the standing order that the promotion will be linked to the date of qualifying the course, it was incumbent upon the respondents to grant promotion as per the seniority in the rank of Inspectors. He submits that on 13.01.2012 when his batchmates were promoted as Assistant Commandant, the petitioner was fulfilling all the eligibility criteria and had duly qualified the promotional course SICC and therefore, ought to have been promoted as Assistant Commandant along with his batchmates on the said date itself. He further submits that the petitioner has continuously been making representations to the respondents and was being assured that his case was under consideration and it is only when he realized in August, 2022 that the respondents were not likely to grant him the requisite relief on the erroneous premise that he had qualified the promotional course SICC Srl. 84, he could be promoted only with the Inspectors who had been detailed for the said batch. He, therefore, prays that the writ petition be allowed.

12. On the other hand, Mr. Ripu Daman Bhardwaj seeks dismissal of the writ petition by contending that as the petitioner could not qualify SICC Srl. 83 and was never detailed for SICC Srl. 82, he was rightly granted seniority as Assistant Commandant only with those Inspectors



who had qualified the said course in batch Srl. No.84. He submits that till the petitioner had qualified the said promotional course, he could not have been considered for promotions and was therefore, not entitled to claim parity with his batchmates, who had qualified SICC Srl. No.82.

13. After some arguments, he concedes that on 13.01.2012 when the petitioner's batchmates who like him were Inspectors since 24.04.2007, were promoted as Assistant Commandants, the petitioner was fulfilling all the eligibility criteria including the promotional course i.e. SICC. He, however, submits that the petitioner having approached this Court after an inordinate delay, his claim ought to be rejected on the ground of delay and laches itself.
14. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting the aspects on which the parties are *ad idem*. The first and foremost fact on which the parties are not at variance is that this Court had vide its order dated 02.11.2012 directed that the petitioner would be treated as an Inspector(GD) w.e.f. 24.04.2007 and granted all consequential benefits. It is also an admitted position that though the petitioner has now been granted seniority as an Inspector w.e.f. 24.04.2007, he was not detailed for SICC Srl. 82 along with other Inspectors, who had been promoted as Inspectors from the same date. It is further the admitted case of the parties that the petitioner was subsequently detailed for SICC Srl. 83, where he failed in one subject and as per the applicable standing order, re-appeared in the said subject and consequently, qualified the SICC Srl. 84 which was held between



29.09.2010 and 27.11.2010.

15. We may note that the parties are also *ad idem* that the petitioner having qualified the SICC on 27.11.2010, was fulfilling all the promotional criteria on 13.01.2012 when his batchmates including Ghanshyam Gujjar and Suresh Kumar, who had been placed in the seniority list of Inspectors(GD) just above and below respectively. Finally, it is also an undisputed position that the petitioner was not promoted as Assistant Commandant even on 06.02.2012 when another set of 537 Inspectors, who were junior to him, were promoted as Assistant Commandant and was promoted only on 20.02.2014.
16. Having noted the aforesaid factual matrix, we find that the only ground on which the respondents have declined the petitioner's request for granting him seniority as Assistant Commandant w.e.f. 13.01.2012 is that he had qualified in SICC Srl. 84 and not SICC Srl. 83. It is the respondents' plea that since this course was a mandatory course for being considered for promotion to the post of Assistant Commandant, promotions to the rank of Assistant Commandant were being given as per the batch in which the Inspectors had qualified in the promotional course. The petitioner has vehemently urged that there is no rationale or legal basis for adopting this practice as subject to fulfilling the eligibility criteria, promotion to all employees has to be granted as per their seniority.
17. Having perused the standing order 06/1999, we are unable to find any such condition which prescribes that the promotions will be done on the basis of the batch in which the concerned Inspector(s) qualifies the promotional course of SICC. We, therefore, find no merit in the



respondents' plea that since the petitioner had qualified the promotional course SICC Srl. No.84, he could not be promoted with those Inspectors who had qualified SICC Srl. No.82.

18. In these circumstances, when it is an admitted position that by the time the petitioner's batchmates were being considered for promotion as AC on 13.01.2012, the petitioner had already qualified the promotional course i.e. SICC on 27.11.2010, we are of the considered view that the petitioner should also have been considered along with his batchmates for promotion to the post of Assistant Commandant. The petitioner is, therefore, justified in urging that he has been wrongly deprived of promotion as Assistant Commandant w.e.f. 13.01.2012 when persons like Inspector Suresh Kumar who was junior to him, were promoted.

19. For the aforesaid reasons, the writ petition is entitled to succeed and is, accordingly, allowed by directing the respondents to grant retrospective seniority to the petitioner as an Assistant Commandant w.e.f. 13.01.2012 along with notional pay fixation from the said date, by fixing his pay as Assistant Commandant with effect from the said date. The petitioner will also be entitled to all other consequential benefits including consideration for promotion to the higher rank of Deputy Commandant with reference to the date his batchmates were promoted as Deputy Commandant, subject to his having qualified the promotional course necessary for promotion to the rank of Deputy Commandant.

20. However, taking into account that the petitioner has approached this Court after some delay, we direct that arrears of differential pay, if



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any, will be paid to him only for a period of three years prior to the date of filing of the writ petition.

21. The writ petition stands allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

AUGUST 23, 2024

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