



2024:DHC:9784-DB



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

Date of decision: 16.12.2024

+ **W.P.(C) 10563/2023, CM APPL. 41018/2023**

VIRENDRA SINGH SHEKHAWATPetitioner

Through: **Mr. Aditya Hooda and Dr. S.S. Hooda, Advs.**

versus

UNION OF INDIA & ORS.Respondents

Through: **Mr. Nishant Gautam, CGSC with Ms. Sanjana Mehrotra, Mr. Mayank Sharma, Mr. Vipul Verma, Ms. Akriti Mehrish and Mr. Vipul Kumar, Advs.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner praying for the following reliefs :

“a. Issue a writ, order or direction in the nature of certiorari thereby quashing and setting aside order dated 02.03.2022 passed by Respondent No. 2 whereby the Respondents have refused to grant notional seniority to the Petitioner in the Rank of Commandant W.E.F. 26.03.2010; and

b. Issue a writ, order or direction in the nature of mandamus directing the Respondents to hold review DPC to consider the Petitioner for promotion to the rank of Commandant w.e.f.



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26.03.2010 and if found fit, to promote the Petitioner to the said rank from that date; and

c. Issue a writ, order or direction in the nature of mandamus directing the Respondents to hold DPC to consider the Petitioner for promotion to the rank of Deputy Inspector General (DIG) w.e.f. 13.08.2021 and if found fit, to promote the Petitioner to the said rank from that date; and

d. Issue a writ, order or direction in the nature of mandamus directing the Respondents to grant all consequential financial benefits to the Petitioner from the respective dates of retrospective promotions to the rank of Commandant and Deputy Inspector General.”

2. It is the case of the petitioner that the petitioner had approached this Court by way of a Writ Petition, being W.P. (C) 10370/2015 titled ***Commandant V.S. Shekhawat v. Union of India and Ors.***, challenging therein the Office Memorandum (OM) dated 28.03.2006 issued by the Department of Personnel & Training (DoPT), Ministry of Personnel, PG & Pensions, Government of India on the subject of ‘communication of adverse entries/remarks recorded in the Annual Confidential Report (ACR)’. The petitioner had also challenged the orders passed on 17.04.2014 by the Deputy Inspector General (Confid.) (DIG) of the Border Security Force (BSF), and the Order dated 04.12.2014 passed by the DIG, rejecting the petitioner’s representations dated 26.12.2013 and 02.07.2014 seeking upgradation of the ACR for the period 2002-03. The third prayer in the petition was for a writ of mandamus to the respondents to hold a review Departmental Promotion Committee (DPC) meeting and grant the consequential promotions to the petitioner with enhanced notional



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seniority in the rank of Second-in-Command (2IC) and Commandant.

3. The said petition was allowed by this Court *vide* Judgment dated 03.09.2019, directing as under :

“25. For the aforementioned reasons the Court hereby quashes the decision communicated to the Petitioner by the impugned orders dated 17th April, 2014 and 4th December, 2014 rejecting his representations whereby he was seeking upgradation of his ACR for 2002-03.

26. A direction is now issued to the Respondents to hold a review DPC to consider the Petitioner's prayer of upgradation of his ACR/APAR of 2002-03 consequent upon the expunction of the adverse remarks therein. This exercise be completed within a period of six weeks from today. Within a further period of four weeks thereafter, orders will be issued granting the notional seniority with reference to the promotion to the Petitioner to the ranks of 2IC and Commandant and this should be communicated to the Petitioner not later than two weeks thereafter. All consequential benefits will enure to the Petitioner. The petition is allowed with the above directions.”

4. In compliance with the said Order, the respondents issued the Impugned Order dated 02.03.2022 whereby, they granted promotion to the petitioner to the rank of 2IC with effect from 04.01.2005, however, further held that the petitioner was found ‘unfit’ for the promotion to the rank of Commandant for the vacancy years 2009-10 and 2010-11 as he had not qualified the Mandatory Senior Command Course as per the Recruitment Rules on the crucial dates of the DPC, being 01.01.2009 and 01.01.2010, for the respective vacancy years.

5. The petitioner already stands promoted to the rank of Commandant with effect from 12.08.2011 for the vacancy year



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2011-12, after having qualified for the aforementioned course as of 18.09.2010.

6. The learned counsel for the petitioner submits that the petitioner was not detailed to undergo the Mandatory Senior Command Course as he had challenged the denial of promotion to the rank of 2IC. He submits that the petitioner cannot be made to suffer for the acts of the respondents since he was never detailed for the said course.

7. The learned counsel for the petitioner, in support of his prayer, relies upon the Judgments of this Court in ***Ram Avatar Sharma v. Directorate General Border Security Force and Others*** 2014 SCC OnLine Del 7765; ***Suraj Bhan and Ors. v. UOI and Ors.*** 2013:DHC:5321-DB; ***Hargovind Singh v. Central Industrial Security Force*** 2011:DHC:943-DB; and Order dated 25.09.2019 in W.P.(C) 9588/2019 titled ***Sudhindra Kumar Singh vs. Union of India and Ors.***; and on the Judgement of the High Court of Kerala in ***Sudhindra Kumar Singh v. Director General, Border Security Force & Ors.*** 2017:KER:47859.

8. On the other hand, the learned counsel for the respondents reiterates that the petitioner, having not undergone the mandatory course, has rightly not been considered for the post of Commandant for the vacancy years 2009-10 and 2010-11.

9. We have considered the submissions made by the learned counsels for the parties.

10. It is not the case of the respondents that the petitioner was detailed to undergo the promotion course, however, for any fault of the petitioner himself, he did not undergo the same as per his revised



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seniority.

11. As noted hereinabove, this Court *vide* its Judgement dated 03.09.2019, while quashing the decision of the respondents rejecting the representation of the petitioner by which he had sought upgradation of his ACRs for the year 2002-03, had further directed the respondents to grant notional seniority to the petitioner for the ranks of 2IC and Commandant. The petitioner cannot be made to suffer for the acts of the respondents in not detailing him to undergo the promotion course.

12. This Court in **Hargovind Singh** (supra), held that the respondents cannot take advantage of not discharging their obligation, which precedes the obligation of the incumbent officer to clear the promotion course, and that the prior obligation is on the department to detail the officer for the concerned course.

13. Similarly, in **Suraj Bhan** (supra), placing reliance on **Hargovind Singh** (supra), this Court held that if it is the responsibility of the department to detail an individual for a particular promotional course, and if they hold that individual entitled for undergoing the said course but do not offer that individual an opportunity to undergo the said course even though he may be willing and able to do so, then the department cannot be allowed to withhold the benefits entitled to that individual for their own faults.

14. In **Ram Avtar Sharma** (supra), this Court again held that a lapse in detailing officers in the relevant course in the required period, which is primarily attributed to the department, cannot cause the concerned individuals to suffer due to the recalcitrant attitude of the



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department.

15. In *Sudhindra Kumar Singh* (supra), the petitioner therein was denied promotion to the rank of 2IC, despite his batchmates and juniors being promoted, due to a DG's displeasure against the petitioner therein. The petitioner challenged this before the High Court of Kerala, which petition was allowed by observing that the DG's displeasure was outside the zone of consideration of the said DPC. In compliance with the said judgement, the petitioner was notionally promoted to 2IC, with his seniority just above his immediate junior, however, the respondents failed to conduct a review DPC for promotion to Commandant and DIG, as his immediate junior had already been promoted to DIG. The Court held that the High Court of Kerala's direction to grant promotion to 2IC included further promotions as well. The Court further held that it was on account of the mistake committed by the respondents, in considering the DG's displeasure as a bar to the petitioner's promotion, that the petitioner was denied his promotions at the relevant time, therefore, the respondents ought to have corrected this mistake with reference to such DPCs where the petitioner ought to have been considered for promotion, and the petitioner should not have to suffer due to the respondents' mistake.

16. In the present case as well, the petitioner could not be detailed for the promotion course only for the fault of the respondents. For the said default, the petitioner cannot be made to suffer in matters of his seniority and promotion. The petitioner cleared the promotional course in the first available opportunity, when he was detailed for the same



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by the respondents. He could not have undergone the said course earlier than that on his own.

17. For the above reasons, we direct the respondents to consider the petitioner's seniority to the rank of Commandant with effect from the date his immediate junior was promoted, who the petitioner claims is Mr. Ajith Kumar V. The said exercise be completed within a period of eight weeks from today.

18. The petitioner further prays for being considered for promotion to the rank of DIG with effect from 13.08.2021, based on his claim of notional seniority to the post of Commandant with effect from the date his immediate junior was promoted, that is, 26.03.2010.

19. In view of our above order, the case of the petitioner shall also be considered for the post of DIG by a Review DPC, to be conducted by the respondents in accordance with the Recruitment Rules within the abovementioned period, and an appropriate order thereon shall be passed based on the recommendations of the Review DPC.

20. The petition, along with the pending application, is disposed of in the above terms.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 16, 2024/sds/sk/SJ

Click here to check corrigendum, if any