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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision:- 05.09.2024***

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W.P.(C) 9286/2019**TEK CHAND AND ORS.****.....Petitioner****Through: Mr. Ankur Chhibber, Mr. Pranjal Marwah and Mr. Anshuman Mehrotra, Adv.****versus****UNION OF INDIA AND ORS.****.....Respondents****Through: Mr. Sushil Kumar Pandey, SPC with Ms. Neha Yadav, Adv. for R-1 to R-3.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****REKHA PALLI, J(ORAL)**

1. The petitioners, who are serving as Assistant Commandants (General Duty) in the Central Reserve Police Force (CRPF), have approached this Court under Article 226 of the Constitution of India seeking the following reliefs:

“1. Issue a writ of certiorari for quashing the letter dated 12.03.2019 whereby the request of the petitioners to promote them as Assistant Commandant from the date they were promoted as Assistant Commandant on local basis has been rejected and for quashing the gradation list of Assistant Commandants as issued on 01.01.2018 to the extent whereby the petitioners have been shown junior to the direct recruits and the Assistant



Commandants appointed through Limited Departmental Competitive Examination after 25.04.2011.

2. Issue a writ of mandamus directing the respondents to treat the petitioners as promoted to the rank of Assistant Commandant with effect 25.04.2011 when they were promoted on local rank and to grant all consequential benefits such as pay and seniority etc. and to refix their seniority between serial No. 577 to 578; Or

3. Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case."

2. The brief factual matrix as emerging from the record shows that the petitioners joined the CRPF as Sub-Inspectors (SI) on 21.12.2003 and were promoted as Inspectors in 2008 on different dates. While serving as Inspectors, the petitioners' were, in December 2010 detailed for undergoing the pre-promotional course for their further promotion to the post of Assistant Commandant, which course they successfully qualified. Taking into account the available vacancies in the promotional quota, the respondents issued signals dated 10.02.2011 and 17.02.2011 calling for the service records of the petitioners and other similarly situated persons, for consideration of their case for promotion by a proposed Department Procedural Committee (DPC). However, this proposed DPC was not convened and the petitioners were instead, vide signal dated 25.04.2011, conferred the Local Rank of Assistant Commandant under Rule 76B of the Central Reserve Police Force Rules, 1955 ('CRPF Rules').

3. Pursuant to aforesaid signal, the petitioners' w.e.f. 01.05.2011 started discharging the duties of Assistant Commandant; the same was done without any extra pay or allowance. Consequently, they continued to draw the salary



of an Inspector till 20.02.2014, when they were promoted as Assistant Commandants on regular basis. On 01.01.2018, however, when the Gradation List of Assistant Commandants was issued, the petitioners realized that they had been granted seniority as Assistant Commandants w.e.f 20.02.2014, i.e the date when they had been promoted on regular basis and not from 25.04.2011, the date when they were discharging the duties of Assistant Commandant having been conferred the said Local Rank. Further, the names of the persons belonging to three batches of direct recruits and three batches of LDCE candidates, who had joined the CRPF as Assistant Commandants between 25.04.2011 to 20.02.2014, had been placed above the petitioners, even though they had been discharging duties of Assistant Commandant since 01.05.2011.

4. Being aggrieved by this Gradation List of Assistant Commandants issued on 01.01.2018 to the extent that they were denied seniority w.e.f 01.05.2011, the petitioner no. 7 submitted a representation dated 29.04.2018 to the respondents. This representation had been rejected by the respondent nos. 1 to 3 vide the impugned order dated 12.03.2019, leading to the filing of the present petition.

5. In support of the petition, learned counsel for the petitioners submits that the petitioners, who had been appointed as Inspectors on 07.11.2007, qualified the pre-promotional course i.e the Senior Inspector Cadre Course in December 2010. They, therefore, became eligible for promotion for the posts of Assistant Commandant as per the Recruitment Rules. As the Rules besides 50% posts being reserved for direct and 17% by Limited Departmental Competitive Examination (LDCE), 33% vacancies were earmarked for promotion, against which the petitioners were entitled to be



considered. He contends that once eligible candidates and sufficient vacancies under the promotional quota were available, in December 2010 itself, it was incumbent upon the respondents to hold a DPC in timely manner and consider the petitioners for promotion before making appointments under the other quotas. The respondents, however, did not convene any DPC for almost three years and were instead granted Local Rank of Assistant Commandant to petitioners on 25.04.2011, despite their specific unwillingness for working under a Local Rank. Even otherwise, Rule 76B of the CRPF Rules is meant to be used as a stop gap arrangement in urgent and emergent situations and cannot be resorted to when posts are lying vacant for a long period. He, therefore, contends that the petitioners cannot be deprived of their rightful promotion on account of the delay on the part of the respondents in holding DPC and that too when they were since 01.05.2011, discharging the duties of Assistant Commandants on the basis of the Local Rank conferred on them.

6. Mr. Chhibber further contends that since the petitioners had been already discharging duties as Assistant Commandant for almost three years before they were granted regular promotion, they were under a bona fide belief that seniority in the rank of Assistant Commandant would be assigned to them from the date they had been conferred the Local Rank. It is only when the seniority list of Assistant Commandants was issued on 01.01.2018 that the petitioners realized that they were being treated as junior to persons who had joined as direct recruits or through LDCE after the petitioners had started discharging the duties of Assistant Commandant on the basis of the Local Rank granted to them on 25.04.2011. It is then that the petitioners submitted a representation, which has been erroneously rejected by the



respondents. He, therefore, prays that the respondents be directed to amend the impugned seniority list issued on 01.01.2018 by treating the petitioners as having been regularly appointed as Assistant Commandant with effect from 25.04.2011 itself.

7. On the other hand, learned counsel for respondent nos. 1 to 3 seeks dismissal of the writ petition by contending that the petitioners were always well aware that their service as Assistant Commandants by way of Local Rank would not be taken into consideration for the purposes of computing their seniority as Assistant Commandants. The conferment of Local Rank upon the petitioners, he contends, is not a promotion as is evident from Rule 76B and can therefore be withdrawn at any time without any show cause notice to the employee. The conferment of Local Rank of Assistant Commandant on the petitioners was a stop arrangement to meet the administrative and operational requirements of the Force due to the shortage of Assistant Commandant in the Force, does not entitle them to claim promotion for holding the said rank. He submits that the petitioners were well aware that they were neither entitled to any seniority nor pay of the rank of Assistant Commandant for the period during which they were discharging duties under a Local Rank. His plea being that the petitioners having accepted their regular promotion w.ef 25.02.2014, could not claimed retrospective seniority and that too after 4 years of accepting their promotion as Assistant Commandant without any demur.

8. We have considered the submissions of learned counsel for the parties and perused the records. At the outset, we may observe that even though the petitioners are correct in urging that the respondents ought to have convened a DPC for filling up the available vacancies in the promotional quota in a



timely manner, the fact remains that the petitioners chose not to raise any grievance in this regard for more than 7 years. We find that it is the petitioner's own case that they become eligible for promotion as Assistant Commandant in December 2010 itself, when vacancies under the promotional quota were available. They, however, chose to make their first representation in 2018 i.e after almost 8 years; that too despite being aware that appointments to the post of Assistant Commandant through both direct recruitment and LDCE, were being regularly made. In our considered view, if the petitioners had any grievance regarding the non-holding of DPC by the respondents, they ought to have approached the Court at that stage itself. The petitioners have shown complete laxity on their part by sleeping over their rights. In fact, no tangible reason has been put forth by the petitioners for not approaching the Court in December 2010 or soon thereafter. Further, they also accepted their promotion to the post of Assistant Commandant w.e.f. 20.02.2014 without any demur. In the light of this factual matrix, the petitioners cannot now be permitted to urge that due to the delay on the part of the respondents in holding the DPCs, the three batches of direct recruits and three batches of LDCE candidates were appointed as Assistant Commandants during this period. If we were to accept the petitioners' plea for granting them retrospective seniority as Assistant Commandant w.e.f. 25.04.2011, it will unsettle the settled position of the seniority of a large number of Assistant Commandants appointed through direct recruitment and LDCE between 25.04.2011 to 20.02.2014.

9. We have also perused Rule 76B of the CRPF Rules, which lays down the procedure for the grant of Local Rank to an Officer/Inspector. It would, therefore, be apposite to note hereinbelow the provisions of Rule 76B:-



“76 B. Grant of Local Rank.-(1) Notwithstanding, anything contained in the rules, the Director General may, subject to confirmation of the Central Government, grant to an Officer or an Inspector of the Force a rank, just above in the order of seniority from the ranks mentioned below, for a period of six months, which may, if necessary, be extended further, in the interest of better functioning of the Force, namely:-

(i) Additional Director General; (ii) Inspector-General; (iii) Deputy Inspector General; (iv) Additional Deputy Inspector General; (v) Commandant; (vi) Second-in-Command; (vii) Deputy Commandant; (viii) Assistant Commandant.

(2) An Officer or Inspector of the Force holding a rank under sub-rule (1) shall,-

(a) exercise the command and be vested with the powers of an officer holding that rank;

(b) cease to hold that rank if the grant of such rank is not confirmed within one month by the Central Government or when so ordered by the Director General or when he ceases to hold the appointment for which the rank was granted;

(c) not be entitled to claim any seniority over other officers of the Force by virtue of having held such rank; and

(d) not be entitled to any extra pay and allowances for holding such rank.”

10. From a bare perusal of the aforesaid provisions, it emerges that Rule 76B(2)(c) clearly provides that any Officer/Inspector, who has been conferred with a Local Rank, would not be entitled to claim any seniority over other officers of the Force by virtue of having held the said rank w.e.f 01.05.2011. It is, therefore, evident that the conferment of Local Rank of Assistant Commandant was only to meet the exigencies of Force. The same, however, did not entitle them to either claim seniority or allowances as



Assistant Commandant, the duties whereof they had discharged.

11. In these circumstances, we are bound to accept the respondents' plea that the petitioners were well aware of their seniority as Assistant Commandant would be counted only with effect of their actual promotion and not from the date they were conferred to the Assistant Commandant on the basis of Local Rank. Thus, looked at from every angle, the petitioners cannot be granted seniority over persons who were regularly appointed as Assistant Commandant either through direct recruitment or LDCE during the period between 25.04.2011 to 20.02.2014, when they were discharging duties of Assistant Commandant only on a Local Rank. We, therefore, find no infirmity in the respondents' decision to reject the petitioners' plea for grant of retrospective seniority.

12. In the light of the aforesaid, the writ petition being meritless is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

SEPTEMBER 5, 2024
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