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

+ **CONT.CAS(C) 1055/2019**

S I (M) MANOJ KUMAR SHARMA

..... Petitioner

Through: Mr. Kumar Arish Ali, Mr. Zubair Ali
Yamin, Mr. S.M. Prasad, Mr. M. Raja
Yasser Wali and Mr. Mohd. Ahmad,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Kushagra Kumar and Mr.
Abhinav Bhardwaj, Advocates.
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**CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA**

**ORDER
08.02.2024**

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1. The present petition has been filed alleging disobedience of the order dated 30th September, 2019 passed by the Division Bench in *W.P.(C) 3757/2017*.
2. Learned counsel appearing for the petitioner submits that though the petitioner has been granted promotion in April, 2020, subsequent to filing of the present contempt petition, however, the seniority of the petitioner has not been fixed properly from the year 2016-2017.
3. Per contra, Mr. Ripu Daman Bhardwaj, learned Standing Counsel



appearing for the respondent draws the attention of this Court to the Office Memorandum (“OM”) dated 3rd July, 1986 issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India, in particular to para 2.2 which reads as under:

“No.22011/7/86-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

...

dated 3-7-86

OFFICE MEMORANDUM

xxx xxx xxx

2.2 Where promotions are made on the basis of selection by a D.P.C., the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.

xxx xxx xxx”

4. By relying upon the aforesaid OM, it is submitted that once the petitioner has been superseded by a junior, in terms of the aforesaid OM, the petitioner cannot be granted seniority in the higher grade over the junior persons who had superseded him. He further submits that the aforesaid OM still holds the field.

5. Having heard learned counsel for the parties, this Court notes that the order dated 30th September, 2019 passed by the Division Bench directed that all consequential orders on the basis of categorizations of the petitioner as (P1) shall be passed by the respondent. The aforementioned order passed by



the Division Bench reads as under:

“1. Pursuant to the order passed by this Court on 11th September 2019, the Petitioner was examined once again and now he has been categorised as (P1). In that view of the matter, no further directions are called for. All consequential orders on the basis of above categorisation will now be passed by the Respondent not later than four weeks from today.

2. The petition is disposed of.”

6. Pursuant to the aforesaid order passed by the Division Bench, the respondent has subsequently granted the promotion to the petitioner to the rank of Inspector/Ministerial for the vacancy year 2020.

7. The compliance affidavit filed on behalf of the respondent reads as under:

“xxx xxx xxx

5. In compliance of the Hon'ble court direction, it is submitted that No. 911650242 SI (Min) Manoj Kumar Sharma (G/List No.24 as on 01/04/2017) of GC Greater Noida has been released on promotion to the rank of Insp (M) vide the DIG (Org) Dte. Genl. CRPF signal No. P.VII-2/2020-Min-DA-I dated 19/03/2020 and allotted to Central Zone, CRPF. In pursuance to the DIG (Org) Dte. Genl. CRPF signal No. P.VII-2/2020-Min-DA-I dated 09/04/2020, the above SI/Min has taken over charge of promoted post Insp(Min) wef 11/04/2020 (FN) at present place of posting vide Group Centre, CRPF, Greater Noida office order No. P.VII-1/2020-EC-III dated 11/04/2020. Further, the IG, BS vide signal No. T.IX-4/2020-Adm-II-BS (SCT) dated 24/04/2020 has transferred the petitioner to 150 Bn, but due to lockdown petitioner has not been relieved to 150 Bn so far.

6. That it is clear from the above submissions that the directions of this Hon'ble Court in the order/judgement dated 30.09.2019 have been fully complied with by the respondents. Therefore, it would be just and proper that this Hon'ble Court is pleased to close the aforesaid contempt proceedings and discharge the noticees.

xxx xxx xxx”

8. The additional affidavit filed on behalf of the respondents with regard to the promotion of the petitioner reads as under:



“xxx xxx xxx

6. Further it is submitted that in the para-5(f) of the Order dated 28/11/2019 it is accordingly clarified that the petitioner was eligible for consideration for promotion to the rank of Insp/M for the vacancy year 2020 and not for the year 2019. The Order dated 28/11/2019 was received by SI/M Manoj Kumar Sharma on 3/12/2019.

7. That accordingly, promotion in r/o the petitioner was released vide Signal No.P-VII-2/2020-Min-DA-1 dated 19/03/2020 and his seniority in the rank of Insp(M) has been fixed at G/List Sl.No.939 as on 1/1/2021 which is correct in terms of para-2.2 of DoPT OM No.220117/7/86-Estt(D) dated 3/7/1986 which inter-alia provides following:-

“where promotions are made on the basis of selection by a D.P.C., the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered unfit for promotion and is superseded by a junior, such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.”

8. That it is further submitted that the submission of the petitioner's counsel that as per the Hon'ble Court order dated 11/09/2019 petitioner is eligible for seniority from the date when he was denied for promotion due to low medical category is incorrect and the petitioner is not entitled for seniority from retrospective effect.

xxx xxx xxx”

9. In view of the aforesaid, it is clear that substantial compliance of the order dated 30th September, 2019 has been done by the respondent. As regards the issue of wrong seniority having been granted to the petitioner, the petitioner would have the liberty to initiate appropriate proceedings, in accordance with law, including challenging the OM dated 3rd July, 1986



issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India.

10. In view thereof, no further orders are required to be passed in the present contempt petition.

11. The present petition is accordingly disposed of in accordance with the aforesaid directions.

MINI PUSHKARNA, J

FEBRUARY 8, 2024

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