



2025:DHC:668-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 30.01.2025

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W.P.(C) 11079/2020

JASBIR SINGH

.....Petitioner

Through: Mr.Bhanu Gupta, Adv.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Ms.Arunima Dwivedi, CGSC
with Ms.Pinky Pawar, Adv.

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, seeking notional promotion to the rank of Commandant with effect from 07.10.2016, that is, the date when his immediate junior, Mr.Suresh Chandra, was promoted to the said rank pursuant to the DPC proceedings held on 26.09.2016.

2. The petition has a rather checkered history, which is being summarised as under:-

a) The petitioner was directly recruited as an Assistant Commandant in the Border Security Force ('BSF') on 02.02.1993.

b) He was granted leave for the period from 14.05.1996 to 02.06.1996, but failed to re-join his Unit upon the expiry of the said period. He later re-joined his service only on 01.04.1997.

c) On 13.03.2000, a Departmental Promotion Committee ('DPC') was held to consider the personnel who were eligible for promotion to



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the rank of Deputy Commandant. The case of the petitioner was kept in a sealed cover on account of the contemplated action of the disciplinary proceedings that were pending against him due to his absence from 03.06.1996 to 01.04.1997.

d) Till 2002, no further action was, however, taken on the disciplinary proceedings contemplated against the petitioner. The petitioner, therefore, approached this Court by way of Writ Petition, being W.P. (C) 5340/2012.

e) Taking note of the fact that as of 13.03.2000, that is, the date of the DPC, the GSFC proceedings against the petitioner had not even been initiated, and had commenced only later on 15.11.2002, but still a sealed cover procedure was adopted by the DPC, and also the fact that though the petitioner was later found guilty of the charge for remaining absent from 03.06.1996 to 01.04.1997 by the GSFC, however, the said finding had not been confirmed by the Confirming Authority, this Court, by its Judgment dated 13.08.2014, allowed the writ petition and directed the respondents to open the sealed cover and consider the case of the petitioner for promotion to the rank of Deputy Commandant. We may quote from the judgment as under:-

“Vide order dated 18.11.2013 the submission was made by the learned counsel for the petitioner that when the DPC which was held on 13.3.2000 had considered the case of the petitioner for his promotion to the next higher rank of Deputy Commandant but his case was kept in a sealed cover but as on the said date the petitioner was not facing any General Security Force Court (GSFC) proceedings.

Ms. Rekha Palli, learned counsel for the



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petitioner today also has reiterated the submission that as on 13.3.2000 the GSFC proceedings were not initiated against the petitioner as the same were started only on 15.11.2002 but yet the sealed cover procedure was adopted by the DPC which was held on 13.3.2000. Another contention raised by the petitioner is that so far as the first charge with regard to absenteeism of the petitioner w.e.f. 2.6.1996 to 1.4.1997 is concerned, the same has not been confirmed by the Confirming Authority and therefore now it is an admitted position that the petitioner stood exonerated from the first charge which could be the only stumbling block in his promotion so far as the said DPC which was held on 13.3.2000 is concerned. This position has not been disputed so far as the facts are concerned by the respondents but the submission made by Mr. Ankur Chhibber, learned counsel for the respondents is that the charge sheet cannot be bifurcated and it is a fact that the petitioner has been convicted so far as the other charges in terms of the order passed by the Disciplinary Authority which stands confirmed by the Confirming Authority. The learned counsel has placed reliance on the DOPT Guidelines dated 14.9.1992 which says that once a person is facing a departmental inquiry and has been convicted for the same then the sealed cover is not required to be opened.

We have heard learned counsel for the parties and taken into consideration the arguments advanced by them.

The petitioner had joined the Force as an Assistant Commandant on 2.2.1993 and when he was posted at Tac Headquarters, Kishtwar, he was granted leave from 14.5.1996 to 2.6.1996 but since he became sick he was unable to join back his duties till 1.4.1997. When the petitioner had joined back the service after a prolonged illness he had



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produced all the necessary medical certificates for the said period of his sickness. It is also the case of the petitioner that the respondents instead of getting his medical documents verified decided to initiate disciplinary action against him for overstay of leave from 3.6.1996 to 1.4.1997 and the record of proceedings completed in September, 1997 but thereafter no further action was initiated against him till November, 2002 when finally he was tried by the GSFC from 15.11.2002 onwards. In the meanwhile the DPC was held when the case of the petitioner for promotion to the next higher rank of Deputy Commandant was under consideration but the sealed cover procedure was adopted by the DPC presumably on account of his alleged absenteeism w.e.f. 3.6.1996 to 1.4.1997. It is an admitted case between the parties that so far as the first charge it relates to the said period in question has not been confirmed by the Confirming Authority although with regard to the remaining two charges the Confirming Authority has accepted the findings of the GSFC. To our surprise first there was not only inordinate but totally unexplained delay on the part of the respondents in not initiating the requisite proceedings against the petitioner for his alleged absenteeism for the period 3.6.1996 to 1.4.1997 and then the said misconduct on the part of the petitioner was clubbed with the 2nd and 3rd charges. For this delay on the part of the respondents the petitioner cannot be blamed nor his rights can be put to any adverse effect. It is the case of the petitioner that he had submitted his medical documents for the period he overstayed, i.e. from 2.6.1996 to 1.4.1997 and it can be perceived that had the respondents initiated the said proceedings earlier the same would not have been terminated much prior to the date when the said DPC was held but possibly could have been exonerated as well. In any case it is now on record that the



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petitioner stood exonerated from the first charge as the Confirming Authority had exonerated the petitioner from the first charge.

In our view the petitioner, thus, cannot be punished for a charge which never existed as on the date of the consideration of his case for promotion before the DPC which held on 13.3.2000. In the peculiar facts of this case the DOPT Guidelines dated 14.9.1992 will not come in the way of the DPC to open the sealed cover to consider his case for promotion to the next higher rank of Deputy Commandant.

We, therefore, direct the respondents to open the sealed cover and if he is found fit for promotion then he shall be promoted accordingly from the said date with all consequential benefits of that promotion.

The writ petition stands allowed.”

- f) Though the respondents challenged the above judgment by way of SLP (C) No. 8462/2015, the same was dismissed by the Supreme Court *vide* its Order dated 16.03.2015.
- g) In compliance with the judgment dated 13.08.2014 of this Court, the respondents by an Order dated 10.07.2015, promoted the petitioner to the rank of Deputy Commandant in the BSF with effect from 24.05.2000, along with all consequential benefits.
- h) Later, by an Order dated 21.09.2016, the petitioner was promoted to the rank of Second-in-Command (‘2IC’) with effect from 21.09.2016.
- i) Claiming the same to be a violation of the Judgment dated 13.08.2014 of this Court in W.P. (C) 5340/2012, as the officer junior to the petitioner had been promoted to the said post with effect from



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13.10.2009, the petitioner filed a Contempt Petition being, CONT.CAS(C) 1260/2016.

j) When the contempt petition was listed before this Court on 28.11.2016, the counsel appearing for the respondents made a statement that a Review DPC was in the process of being constituted to consider the case of the petitioner. Based thereon, the Contempt Petition was disposed of by this Court.

k) Thereafter, by an Order dated 18.01.2017, the petitioner was granted notional promotion to the rank of 2IC with effect from 13.10.2009.

l) In the meantime, however, a DPC was held on 29.09.2016 for promotion to the post of Commandant, wherein the petitioner was not considered, but his junior, having been found fit, was promoted to the said post on 07.10.2016.

m) Aggrieved thereby, the petitioner made a representation, which has been rejected by the respondents.

3. The learned counsel for the respondents submits that the respondents have taken the opinion from the Ministry of Home Affairs ('MHA') and the Department of Personnel and Training ('DoP&T'), which has opined as under:-

"The proposal has been examined and as regards to senior junior clause, seniors would be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed probation period for promotion to the next higher grade along with their juniors who have already completed



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such qualifying/eligibility service. Further the Officer has also not completed mandatory Senior Command course and not completed two years residency service as 2IC in a duty Battalion."

4. She further submits that in the GSFC proceedings, the petitioner had been proceeded against for three charges and had been found guilty for the 2nd and 3rd charges and visited with the following punishments:

".....to take rank and precedence as if his appointment as Assistant Commandant bore the date 01 February 2000 and to forfeit four years of past service for the purpose of pension."

5. She submits that while the Confirming Authority did not confirm the findings on the 1st charge, the findings on the 2nd and 3rd charges were confirmed, and for which the sentence was awarded by the GSFC. She submits that this order has attained finality and has not been challenged by the petitioner.

6. Having considered the above facts and the submissions, it becomes evident that as far as the failure of the petitioner to complete the two years residency service as 2IC in a Duty Battalion and the non-completion of the mandatory Senior Command Course are concerned, the blame has to lie on the respondents. The promotion of the petitioner had been delayed for the posts of Deputy Commandant and 2IC, for which the petitioner had to approach this Court, and it was only after succeeding till the Supreme Court that the petitioner was granted promotion to the rank of Deputy Commandant



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retrospectively with effect from 24.05.2000 and later, to the rank of 2IC with effect from 13.10.2009. There was a domino effect of the same for the subsequent promotion of the petitioner. The petitioner cannot be made to re-suffer for the same faults of the respondents. Accordingly, the ground taken by the respondents of the petitioner not having completed the mandatory Senior Command Course as also of the failure of the petitioner to complete the two years residency service as 2IC in a Duty Battalion, should not come in the way of the petitioner seeking promotion to the post of Commandant along with his juniors. In this regard, we find support in our Judgment in ***Jeewraj Singh Shekhawat v. Union of India and Ors.*** 2024:DHC:8045-DB.

7. As far as the petitioner being found guilty of the 2nd and 3rd charges by the GSFC and being punished for the same by taking rank and precedence as if his appointment as Assistant Commandant bore the date 01.02.2000 and forfeiture of four years of past service for the purposes of pension are concerned, the effect thereof has to be considered by a DPC. We note that the petitioner has thereafter been promoted as detailed by us herein above.

9. We, therefore, direct that a review DPC be constituted by the respondents and the case of the petitioner be reconsidered for promotion to the post of Commandant retrospectively with effect from 07.10.2016, when the officer junior to the petitioner was promoted. This exercise be completed within a period of twelve weeks from today. We make it clear that in case the petitioner is found eligible for promotion to the post of Commandant with retrospective effect, he



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shall be granted notional promotion from the said date with all consequential benefits except for the additional pay that he may have drawn for the period in question.

10. With the above directions, the petition is disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JANUARY 30, 2025/rv/SJ

Click here to check corrigendum, if any