HIGH COURT OF MADHYA PRADESH

WP No.18068/2017

(Shaligram Dubey vs. State of M.P. and others)

JABALPUR, DATED : 23.08.2021.

Shri H.K.Upadhyay, Advocate for the petitioner.

Ms. Sonali Paroche, Panel Lawyer for the respondents/State.

Heard finally.

This petition under Article 226 of the Constitution of India takes exception to the order dated 26.09.2016 passed by respondent no.1/Director General of Police, Police Headquarter, Bhopal, whereby petitioner's representation seeking out of turn promotion, was rejected.

2. The facts, as culled out from the pleadings reveals that in the year 2001 the petitioner was posted at Balaghat at "A" Company Police Station, Rupjhar as Gunman to Addl.Supdt.of Police, Balaghat/respondent no.4. On 06.10.2002. A truck loaded with dynamite destined for Malajkhand Copper Mines was looted by nexalites at Udd Valley Bahir Road. On receiving this information, a police party headed by respondent no.4, including the

petitioner and other four persons reached the spot. After some time, other police personnel also arrived at the spot and by joint efforts about 8 tons of dynamite was recovered. According to the petitioner, he was promised by the respondent no.4 that he would be adequately awarded for the bravery shown by him. Much to his dismay, 19 police personnel were promoted out of turn in the same year i.e.2002, but petitioner was neither promoted nor offered any reward. Distressed by this discrimination, petitioner made various representations to the authorities, but in vain. He, therefore, filed WP No.11628/2016 (Shaligram Dubey vs. State of M.P. and others) wherein vide order dated 20.07.2016, a direction was given to respondent no.1 to decide his representation. However, the representation of petitioner was rejected vide the impugned order on the grounds that :- (i) The name of petitioner is not reflected in the daily police book of the date on which police party went to the spot of crime; (ii) name of petitioner was neither sent to PHQ with other names nor recommended by his superior officers; (iii) Police regulation 70-A of M.P.Police Regulations (hereinafter referred to as "the Regulations") for out of turn promotion has been deleted vide Gazette Notification dated 11.09.2012.

3. Referring to letter dated 28.08.2017 (Annexure P/8) obtained under Right to Information Act, it is urged by learned counsel for the petitioner that petitioner was serving as Gunman to respondent no.4, and, therefore, there is no entry in the police duty diary.The photographs filed as Annexure P/7 also confirms the presence of petitioner at the crime scene. It is submitted that respondent no.4 sent the name of the petitioner for Gallantry award to the Supdt. of Police, Balaghat who did not send it any further to Police Headquarter. It is urged that 25 police persons were given out of turn promotion, but petitioner, though on same footing, has been selectively excluded with *mala fide* intent.

4. Per contra, Ms. Sonali Paroche, learned PL appearing for respondent no.1 to 3 submitted that out of turn promotion for act of bravery is not a matter of legal right, but it is the discretion of the competent authority. Petitioner's representation has been rejected since his name was not found in the *Aamad Rawangi* Register of the concerned police station comprising team of police personnel who had recovered the huge quantity of dynamite nor his name was recommended by his superiors. It is further submitted that Regulation 70-A of the

Regulations which was inserted vide notification dated 10.06.1987 has been deleted vide notification no.392 dated 11.09.2012. Under such circumstances, petitioner is not entitled for any relief.

5. Respondent no.4 in para 4 of his reply filed along with his affidavit submitted that petitioner was a part of his team but has denied making any promise or assurance to the petitioner.

6. Heard learned counsel for the parties and perused the record.

7. In view of reply filed along with affidavit of respondent no.4 and photographs (Annexure P/7), undisputedly, petitioner was a part of the team, other members of which were given out of turn promotion and reward for the act of bravery. The claim of the petitioner was resisted on the ground that his name was not found in the Aamad Rawangi Register, however from Annexure P/8, dated 28.08.2017, it is evident that petitioner never got his *Aamad Rawangi* Register noted in the police diary. It is pertinent to note that this document is not denied by the respondents.

8. Regulation 70-A of the Regulations is reproduced as under :-

> "***70-A*** *Notwithstanding anything contained in Regulation 70, a Constable may be promoted to the rank of Head Constable by the Supdt.of Police with the prior approval of the Director General of Police and a Head Constable to the rank of Assistant Sub-Inspector by the Deputy Inspector General of Police with the prior approval of Director General of Police if he has distinguished himself in anti dacoit operations, law and order situations of shooting competitions or in some other field of duty or who has been awarded the President's Police Medal for Gallantry or for meritorious/distinguished services, if he considers him suitable for promotion. Similarly the Inspector General of Police may promote an Assistant Sub-Inspector to the rank of Sub-Inspector and a Sub-Inspector to the rank of an Inspector on similar grounds if found suitable for promotion and subject to the prior approval of the Director General of Police. The number of Officers promoted under this Regulation shall not exceed 10 per cent."*

9. Admittedly, other team members of the petitioner have been granted out of turn promotion/reward in the year 2002 itself. The petitioner's claim for promotion is based on the concept of equity and equability. However, the

petitioner has knocked the door of the Court only in the year 2016. It is clear from the documents on record that cause of action has arisen to the petitioner in the year 2002 itself when his other team members were promoted out of turn, and in view of Regulation 70-A of the Regulations, his name was not considered. Though the respondents have not denied that petitioner has been making repeated representations to the respondents regarding his claim,but mere making representations could not justify his belated approach.

10. In **State of T.N.vs. Seshachalam (2007) 10 SCC 137**, Hon'ble the Supreme Court while testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefits has observed thus :-

> "**16.....***filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted*

as it is well known that law leans in favour of those who are alert and vigilant.

11. Though there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, yet a writ petition ordinarily should be filed within a reasonable time. In this case, the petitioner first approached this Court in the year 2016 i.e. after more than a decade.

12. In **P.S.Sadasivaswamy vs. State of Tamil Nadu** reported in **(1975) Vol.1 SCC 152**, Hon'ble the Supreme Court held thus :-

> "**2.....***A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."*

13. In **S.S.Balu vs. State of Kerala reported in (2009) 2 SCC 479,** it has been held by the Supreme Court thus **:-**

> ***"17.*** *It is also well settled principle of law that "delay defeats equity". It is now trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain benefit of a judgment....."*

14. Grant of out of turn promotion is not a fundamental right. Grant of such relief while remaining oblivious to the factum of delay and laches is contrary to the settled principle. What is urged by learned counsel for the petitioner is that the petitioner be treated equally with his other team members. But equality has to be claimed at the right juncture and not after expiry of a decade.

15. Consequently, the petition fails and is, accordingly, dismissed. No order as to costs.

(Nandita Dubey)
Judge.

jk.

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