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

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Date of Decision : 05.02.2026

+ **W.P.(C) 1025/2020**

MANOJ KUMAR

.....Petitioner

Through: **Mr. Anil Mittal and Mr. Shaurya Mittal, Advs.**

versus

INDO-TIBETAN BORDER POLICE AND ORS.

.....Respondents

Through: **Mr. Vikrant N Goyal, Mr. Piyush Wadhwa, Mr. Harsh Kumar Singh, Mr. Kunal Dixit, Advs.**

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed challenging the order dated 19.09.2019 passed by the respondent no. 1, with the following prayers:

- “(i) Quash order dated 19-9-2019 (Annexure-P.19);
(ii) direct respondent no.1 to re-fix the seniority of the petitioner and he be promoted to the rank of the Head Constable from the date his batch mates were promoted ;
(iii) since the petitioner has already cleared his examination for promotion to the post of Head Constable (GD) in 20-2-2018, he should be declared to be promoted as Head Constable (GD) from the date when his immediate junior i.e. Shyam Singh, Assistant Inspector (GD) No.897042908, respondent no.2 was*



promoted as Head Constable (GD) on 4-4-2007.”

2. The prayer in the petition is for a direction to set aside the order dated 19.09.2019, whereby the request of the petitioner for re-fixation of his seniority and grant of promotion to the post of Head Constable, w.e.f. 04.04.2007, when juniors to the petitioner were promoted with consequential benefits, was rejected.
3. The facts to be noted are that on 14.07.1989 the petitioner was appointed as a Constable (GD) in Indo-Tibetan Border Police ('ITBP', for short). On 22.10.1993, the petitioner was posted to M&SI, Auli, Uttarakhand.
4. On 23.10.1994, while going to Shivpuri, Uttarakhand to participate in river rafting with his course mates, the petitioner along with others met with a serious accident near Helang, Uttarakhand, when the bus in which they were travelling fell in a deep gorge. The petitioner and his course mates were seriously injured. He suffered injuries on his left hand wrist.
5. On 24.10.1994, a Judicial Enquiry Committee was set up for finding the facts about injuries sustained by the five constables in the accident. The Committee came to the conclusion that the constables were on government duty and there was no fault on the part of the five constables sitting in the bus and suffered injuries. It also opined that the government should bear all the expenses of their treatment and extend all the benefits as per rules.
6. In view of injury, the petitioner was placed in Lower Medical Category [A2 (P)] as there was pain and stiffness in the left wrist.
7. The constables including juniors who were appointed along with the petitioner appeared for a Promotional Course (P.P.S.L.C.) in the year 2002-



03. However, the petitioner could not participate because of his medical category. The constables including the juniors to the petitioner were promoted as Head Constables w.e.f. 04.04.2007.

8. The case of the petitioner is that, he had made representation seeking relaxation for participation in the Promotional Course (P.P.S.L.C.) but the same was denied. In the year 2013, the batch-mates of the petitioners including his juniors were promoted to the post of Assistant Sub Inspectors (ASI) vide order dated 22.07.2013.

9. Whereas, the petitioner on 09.08.2017 was granted relaxation from participating in some events of the promotional course, on the basis of recommendation made by Commandant and Senior Medical Officer.

10. The petitioner appeared for promotional test and was declared successful. The petitioner made a representation on 27.12.2018 to the respondents for protection of promotion and seniority w.e.f. 04.04.2007, when his juniors were promoted as Head Constable. The same was rejected vide the impugned order, which is under challenge in this petition.

11. It may be stated here that, during the pendency of the present petition, the respondents vide order dated 31.01.2024 promoted the petitioner to the post of Head Constable.

12. The submission of Mr. Anil Mittal, learned counsel for the petitioner is primarily that the injury suffered by the petitioner was during the course of duty and downgrading in medical fitness cannot be the fault of the petitioner. He also submitted that the relaxation given to the petitioner in the year 2017, must relate back to the year 2007, when his juniors were promoted, otherwise he states the petitioner would loose 10 years of his service, for no fault of his and despite injury, the petitioner discharged his



duties as Constable, effectively.

13. Mr. Mittal would rely upon the decision of this Court in the case of ***Kuldeep Kumar v. Union of India & Ors., W.P.(C) No. 2233/2018*** decided on 30.11.2018, wherein, according to Mr. Mittal in similar circumstances, the petitioner therein was given the benefit of seniority/promotion from a back date.

14. On the other hand Mr. Vikrant N Goyal, learned counsel for the respondents states that the petitioner would not be entitled to promotion and seniority w.e.f. 2007, when persons junior to the petitioner were promoted to the post of Head Constable, as the petitioner was not in the required medical category. He states that the injury suffered by the petitioner cannot be said to be 'while on duty.'

15. He submits that the relaxation to the petitioner has been given in the year 2017 after taking a compassionate view resulting in his promotion as Head Constable vide order dated 31.01.2024. Hence, the grievance of the petitioner shall not subsist. He do concede to the fact that the challenge made by the respondents to the judgment of the Coordinate Bench of this Court in the case of ***Kuldeep Kumar (supra)*** before the Supreme Court was dismissed.

16. Having heard the learned counsel for the parties and perused the record, at the outset, we may state, in the report of the judicial inquiry carried out on the directions of the respondents, the name of the petitioner also features. It is clear that the committee has held that the injury suffered by the constables including the petitioner was 'while on duty' and the medical expenses need to be borne by the respondents.

17. The issue raised by the petitioner is primarily that he be granted



relaxation in the promotional course w.e.f. 2007. The grant of relaxation in the year 2017, when persons junior to the petitioner were promoted to the post of Head Constable and granted seniority w.e.f. 2007 is arbitrary as the facts which were existing in the year 2017 were also existing in the year 2007 and if such a relaxation is not granted w.e.f. 2007, the petitioner would lose 10 years of service for no fault of his. Moreover, it is not the case of the respondents, that the petitioner was not discharging his duties as Constable effectively.

18. The plea/issue raised by Mr. Mittal is appealing. The relaxation having been granted by the respondents should not have been from the year 2017 but must relate back to the year 2007, when constables junior to the petitioner were promoted to the post of Head Constable. Surely, the petitioner is not at fault for suffering the injury which had the consequence of lowering his medical category.

19. The plea of Mr. Goyal is primarily that the request of the petitioner was initially rejected in the year 2010 and it is too late for the petitioner to seek the benefit of relaxation. We have seen the order passed by the respondents. In paragraphs 2 and 3, the following is stated:-

“2. With regard to the above it is, to inform that according to para 15(B) of the Standing Order No. 4/2002 being injured during the active duty, personnel in Lower Medical category has been treated equal to Shape-1 for promotion, whereas 'according to Recruitment Rules it is compulsory for him to complete the promotion course.

3. On examination of the case of the above personnel it has been found that the Personnel was returning on dated 23.10.1994 from Rafting Course Camp, Shivpuri to back to Ouli while going was injured in the accident, due to which the personnel has been put in Low Medical Category A2 (P) from



dated 25.8.2010. From this it is evident that the personnel did not sustain injury during active duty which is not covered in para 15(B) of Standing Order No. 4/2002.”

20. The above reveals that, the case of the respondents is the petitioner did not receive injury while on duty, which according to us, is clearly contrary to the report of the Judicial Enquiry Committee. It has come on record, that he sustained injury while going along with others for a course. It follows the very basis for the respondents to deny relaxation is misconceived.

21. We have noted that in the order dated 24.11.2010, the respondents refers to paragraph 15(B) of the Standing Order No.4/2002, which states that the personnel injured in active duty though in Lower Medical Category have to be treated equal to Shape-1 for promotion. Whereas, according to Recruitment Rules, it is compulsory for a personnel to complete the promotional course. The said order also reads that the petitioner did not sustain injury in active duty and being in the Lower Medical Category of A2(P), his case is not covered under para 15(B) of the Standing Order No.4/2002. This according to us is clearly untenable.

22. The respondents themselves having relaxed the requirement for Promotional Course in the year 2017, could have very well relaxed the requirement w.e.f. 2007. In this regard, we may refer to the judgment of the Coordinate Bench of this Court in the case of **Kuldeep Kumar (supra)**, wherein, the Court in paragraph 20 onwards has held as under:-

20. It may be noted that Mr. Chhibber, learned counsel for the Petitioner, pointed out that if the Respondents had placed the Petitioner in the correct medical category after the Medical



Board held on 12th June 1999, he could have been sent for the pre-promotional course in 2003 along with his batchmates. In such event there would have been no delay and he too could have been granted promotion as HC with effect from 22nd October 2007. This failure also is attributable only to the Respondents.

21. Consequently, the Court directs that the Respondents will now issue a fresh order in modification of the order dated 24th April 2018 granting the Petitioner promotion to the post of HC notionally from the date on which his batchmates were granted promotion, i.e. 22nd October 2007. This exercise be completed by the Respondents and the necessary orders issued within a period of six weeks from today.

22. Further, as regards the Petitioner's further promotion as ASI, the Petitioner will be detailed for the pre-promotional course of ASI. If he qualifies in such course, he will be considered for promotion as ASI notionally with effect from the same date as his batchmates were granted such promotion i.e. 2013.

23. If there is a failure on the part of the respondents to comply with the above directions, it will be open to the Petitioner to seek appropriate remedies in accordance with law.

24. The petition is allowed in the above terms."

23. The issue in hand to some extent is covered by the above judgment. It also relates to the promotion to the post of Head Constable with effect from 2007. The only difference in both the cases is that, in **Kuldeep Kumar (supra)**, the petitioner was wrongly placed in medical category A-2(P) instead of BEE(P), which made this Court issue direction for promotion. In the case in hand, the relaxation was granted to the petitioner in the year 2017, and not in the year 2007, for no justifiable reason. The aforesaid judgment was taken in appeal, which was dismissed by the Supreme Court.

24. We must state that, as the injuries suffered by the petitioner were in active duty, surely, it was a fit case for relaxing the requirement of the



promotional course, w.e.f. 2007 which they have in any case relaxed in the year 2017. The same would benefit the petitioner to get promotion to the post of Head Constable and consequential seniority w.e.f. 2007, which may entail further promotion to the post of ASI. This we say so, as it is not the case of the respondents that the petitioner was not discharging the duties of the Constable despite being in low medical category effectively.

25. In the facts of this case, the present petition filed by the petitioner is required to be allowed; we order so. The petitioner shall be given promotion as Head Constable on notional basis w.e.f., 2007, when his juniors were promoted with consequential seniority. The promotion to the post of ASI shall be with effect from the date when the immediate junior to the petitioner was promoted to the post of ASI i.e, 2013, on notional basis. The actual benefits, because of the advancement/grant of promotions to the post of Head Constable and ASI, shall be from three years prior to the filing of the writ petition i.e., shall be from January 2017.

26. The petition is allowed on the above terms. No costs.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 05, 2026

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