

(2021) 04 DEL CK 0119

In the Delhi High Court

Case No : Civil Writ Petition No. 4438 Of 2021, Civil Miscellaneous No. 13544 Of 2021

Anupam Kumar

APPELLANT

Vs

Director General, Border Security Force & Anr

RESPONDENT

Date of Decision : 09-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 32, 226

Citation : (2021) 04 DEL CK 0119

Hon'ble Judges : Manmohan, J;Asha Menon, J

Bench : Division Bench

Advocate : Manish Gupta, Divyya Kapur, Ruchir Mishra, Gunjan Jaura, Mukesh Kumar Tiwari, Arman Pratap Singh

Final Decision : Dismissed

Judgement

Manmohan, J

1. The petition has been heard by way of video conferencing.
2. By way of the present petition, the Petitioner seeks "Non-Functional Grade Selection" in accordance with the Office Order dated 26th December, 2019 along with the consequential benefits like back wages. Petitioner further seeks direction to Respondent No. 1 to modify the promotion granted to the Petitioner to the rank of "Second-in-Commands" as being effective from 21st October, 2016 and grant all the consequential benefits such as back wages w.e.f from the same date.
3. Learned Counsel for the Petitioner states that in 2016, six Batches of the BSF, including the Batch to which the Petitioner belongs, were simultaneously promoted from the level of Deputy Commandant to "Second-in-Commands" vide Office Order dated 21st October, 2016. He further states that the Petitioner was however not promoted due to his low ACR grading for the year 2010-2011. He submits that this denial of promotion was not only arbitrary and illegal but has also seriously affected the seniority position of the Petitioner bringing him 350

ranks below his batchmates. He further submits that the loss of seniority was coupled with a pay scale which was much lower than what was paid to his counterparts.

4. Learned Counsel for the Petitioner submits that the Petitioner was subsequently promoted from the post of 'Deputy Commandant' to the rank of "Second-in-Commandant" BSF vide Promotion Order dated 26th July 2018 w.e.f. from 07th November, 2017, i.e. after much delay.

5. Learned Counsel for the Petitioner states that an Office Order dated 26th December, 2019, was issued by the Commandant (Personnel) granting 'Non-Functional Selection Grade' to officers of Group-A Executive Cadre of BSF wherein the pay scale was revised in Level 13 of pay matrix for the year, 2017 and 2018 (from 01st January, 2016 to 31st December, 2018). He further states that Petitioner was again not included in this list due to his low ACR grading in 2010-11, even though all other batchmates of the Petitioner had been granted the same.

6. Learned Counsel for the Petitioner states that the Petitioner has filed a detailed representation dated 28th June, 2020 to the DG, BSF pointing out that the low grading received by him in the year 2010-11 was because of the biased view of the then I.O., as the Petitioner refused to comply with his illegal orders. He further states that the petitioner has not received any reply to the said representation.

7. He also states that a Coordinate Division Bench of this Court in Vidya Shankar Tiwari Vs. Union of India & Ors.; W.P.(C) No.10486/2017 has granted relief to a similarly placed officer.

8. Having heard learned counsel for the petitioner and having perused the paper book, this Court finds that the petitioner in essence challenges his APAR Grade for the year 2010-11 as according to him, it is due to his adverse APAR grading that Non-Functional Grade Selection has been denied to him.

9. At this stage, learned counsel for the petitioner states that the petitioner in the present writ petition does not only challenge his APAR grade for the year 2010-11. However, this contention of the petitioner is belied from the petitioner's own representation dated 28th June, 2020, which is reproduced hereinbelow in its entirety:-

"AK/APR/10/02/06

Dated 28th June 2020

To,

THE DIRECTOR GENERAL

BORDER SECURITY FORCE

10 CGO COMPLEX

LODI ROAD

NEW DELHI

SUB: REPRESENTATION AGAINST ACR/APR OF YEAR 2010-2011 FOR
CONSIDERATION OF NFSG

Sir,

In ref to subject cited above. I the undersigned would like to lay following lines for your consideration and favourable action. That my ACR grading of year 2010-2011 was ruined by IO on biased view taken by him. My representation on the same was also not taken into right spirit and same were rejected citing the reason as devoid of merit. In this case the Comdt has made my APR adverse. My APR of year 2010-2011 was given adverse by IO Unit Comdt due to non-compliance of illegal order dated 30 March 2010. It is submitted that the Calcutta High Court in its interim order had said that "Ordering Dy Comdt to take charge of a service Coy. Comdt as prima facia an unlawful order and its non-compliance of illegal order will not invite any adverse to the officer.

It is pertinent to point out that ACR written by same IO and same RO in year 2010-2013 and 2011-12 is self-contradicting in assessment of innate qualities.

The traits and quality which are inherent and cannot change is graded vindictively in year 2010-11 apparent with the comparison with 11-12.

Sl./ NO

2010-11 IO

2010-11 RO

2011-12 IO

2011-12 RO

1.

Accomplishment of planned work

3

4

5.5

6

2.

Quality of output and effectiveness

5

5

6

6

3.

Thoroughness and efficiency work

3

4

5.9

6

4.

A compliment exceptional work

3

4

5.8

6

5.

Attitude to work

3

4

6

7

6.

Sense of responsibility

3

4

5.8

7

7.

Maintenance of discipline

3

4

5

6

8.

Communication skill

3

4

5.3

6

9.

Leadership qualities

3

4

5.4

6

10.

Capacity to work in team spirit

3

4

5

6

11.

Capacity to work in time limit

3

4

5.3

6

12.

Inter personal relations

3

4

5

6

13.

Appearance and bearing

3

6

5.2

6

14.

Knowledge of rules and regulations

5

5

6

7

15.

Strategic planning ability

3

4

5.5

6

16.

Decision making ability

3

4

5.4

6

17.

Coordination ability

3

4

5

6

18.

Ability to develop subordinates

3

4

5

6

19.

Interest in welfare of troops and apprising ability

3

4

5.5

6

My adverse APR led to non grant of NFSG to me whereas my entire batch has got it. Further I submit that the 93 BN BSF was deployed under dist Malkangiri for Anti-naxal operation under police. The SP Malkangiri, Mr. Anirudh Kumar Singh, (IPS) as a police head had seen my work and leadership and special efforts on the ground and appreciated in his letter dated Do185 17.04.2010. I also attached the copy of the letter for your consideration (copy enclosed).

Therefore I request you to re-book on the APR of your 2010-11 and upgrade it. I will expect a positive outcome within 30 days of dispatch of my representation or I will have no option left except the legal course of action.

Thanking you

Yours sincerely

Sd/-

ANUPAM KUMAR

2IC

IRLA NO.19976242"

10. The Supreme Court in Chairman/Managing Director, U.P. Power Corporation Ltd. & Ors. Vs. Ram Gopal; 2020 SCC OnLine SC 101 has held as under:-

"16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot

be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fencesitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In *SS Balu v. State of Kerala*, this Court observed thus:

"17. It is also well-settled principle of law that "delay defeats equity". ...It is now a 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 the benefit of the judgment."

17. Similarly, in *Vijay Kumar Kaul v. Union of India* this Court while considering the claim of candidates who, despite being higher in merit, exercised their right to parity much after those who were though lower in merit but were diligently agitating their rights, this Court observed that:

"27. ...It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in W.P.(C) 2766/2021 Page 5 of 5 favour of one melts into total insignificance and paves the path of extinction with the passage of time."

11. Accordingly, this Court is of the view that the petitioner cannot challenge his APAR grading after a gap of more than ten years.

12. As far as the Division Bench judgment in *Vidya Shankar Tiwari* (supra), relied upon by learned counsel for the petitioner, is concerned, this Court finds that the same does not constitute a binding precedent as the issue of delay and laches was neither urged nor discussed in the said judgment. The Supreme Court in *MCD Vs. Gurnam Kaur*, (1989) 1 SCC 101, has held that precedents sub silentio and without argument are of no moment. Accordingly, the said judgment is not a precedent on the issue of delay and laches.

13. Consequently, the present writ petition is barred by delay and laches.

14. In view of the above, the present writ petition along with pending application is dismissed.

15. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.