

(2018) 05 DEL CK 0240

In the Delhi High Court

Case No : W.P.(C) 5367 OF 2018 & CM No.20819 OF 2018

DY. COMDT. VIVEKANAND SINGH

APPELLANT

Vs

UNION OF INDIA AND ORS.

RESPONDENT

Date of Decision : 18-05-2018

Acts Referred:

Right to Information Act, 2005 — Section 24
Constitution of India, 1950 — Article 226

Citation : (2018) 05 DEL CK 0240

Hon'ble Judges : HIMA KOHLI;PRATIBHA RANI

Bench : Division Bench

Advocate : Hancy Maini, Chiranjeev Kumar, Mukesh Sachdeva

Final Decision : Dismissed

Judgement

1. The petitioner has invoked the writ jurisdiction of this Court, seeking a mandamus that the order dated 28.11.2017, be quashed and respondents be directed to re-fix his seniority at par with the 36th Batch DAGO, CRPF in terms of his merit position in the final selection list of SSB (CPO-2002)

Examination or in the alternative, he be placed on the top of the 37th Batch DAGO, CRPF (CPO-2003) Examination.

2. Briefly stated, the facts of the case are that pursuant to the advertisement issued by the SSB in the year 2002, for conducting SSB (CPO-2002)

examination for appointment to the post of Assistant Commandant in the Central Police Forces, the petitioner had participated in the recruitment

process and qualified in the written examination as well the interview. On 16.08.2004, the petitioner was declared temporarily medically unfit and was

not sent for training with the 36th Batch as his name was not included in the final selection list of SSB (CPO-2002) Examination.

3. The petitioner again participated in the recruitment process for the post of Assistant Commandant in Central Police Forces through SSB (CPO-

2003) Examination and successfully qualified not only the written test and interview, but was also declared medically fit. The petitioner was appointed

as an Assistant Commandant on an offer of appointment dated 05.09.2005, being accepted by him. He successfully completed his training as well

probation period with the 37th Batch, DAGO.

4. The petitioner sent a representation to the respondents for re-fixation of his seniority on 11.10.2010, which was rejected on 23.09.2011 and the

communication reads as under:-

1. Your application dated 11.10.2010, on the subject matter received in this office vide DIG, CRPF, Silchar Range letter No.G.II.2/2010-CC dated

18.11.2010 was forwarded to the Pers(Dte) for needful vide this Hqr letter of even number dated 27.12.2010. Having examined your case in detail,

the DIG (Pers), Dte. Vide letter No.O.II.6575/2011-Pers-A/C dated 25.08.2011 has conveyed that your claim/contention of being a 36th Batch

DAGO is in-correct. As per the records available in the Dte. Genl., you had appeared in SSB (CPOs-2002) and was declared successful in written

examination and interview. However, appointment of successful candidates in CPFs was subject to their being declared medically fit by the Medical

Board of SSB, constituted for the purpose. But, you were declared temporarily unfit in the medical examination. Only those candidates who were

declared medically fit were allocated to CPOs and your candidature did not figure in the list. Further, you had again appeared in the CPOs A/C

examination 2003 and was declared qualified in all respects and was allocated to CRPF for appointment as Asstt. Commandant vide BSF letter dated

16.02.05. Accordingly, you were appointed as A/C w.e.f. 8.10.05 and had undergone training as 37th Batch DAGO.

2. Since, you were appointed in the 37th Batch DAGOs and had undergone training with them, the seniority assigned to you is very much in order and

your case does not merit re-fixation of seniority from a date when you were not even in service. Though, you were fully aware of all the facts, you

preferred the representation by submitting misleading facts that you belong to 36th Batch DAGO to gain undue benefits from the Department. This

act of yours for vested interest not only wasted the valuable time of higher

offices but also resulted in unwarranted correspondence.

3. Hence, you are hereby **ADVISED** to refrain from making such baseless representation in future with an intention of misleading the

department for vested interests, failing which you may have to be dealt with more sternly.

5. Learned counsel for the petitioner submits that the petitioner had been making various representations to the respondents and his last such

representation was rejected on 28.11.2017. On rejection of his representation in November, 2017, the petitioner has approached the Court without any

delay

6. Alongwith the petition, the petitioner has annexed a copy of the communication dated 23.09.2011, sent by the office of Inspector General of Police,

N.E. Sector, CRPF, Shillong (Meghalaya) wherein it was explained to him as to how his claim for seeking his seniority with the 36th Batch DAGO

was not tenable. The petitioner was also advised to refrain from making such baseless representations in the future with an intention to mislead the

department for vested interests, failing which he was warned that he would be dealt with more sternly.

7. Since the grounds of rejection of his representation in the communication dated 28.11.2017 are not new but only a reiteration of the earlier grounds

as communicated to the petitioner in September, 2011, learned counsel for the petitioner has been requested to explain the inordinate delay in

approaching the court as the cause of action, if any, to seek legal recourse first arose on the rejection of his representation in September, 2011.

8. Learned counsel for the petitioner has submitted that after the rejection of his representation in September, 2011, the petitioner had been trying to

obtain information under the Right to Information Act, 2005 and was making various representations for redressal of his grievance. As the request of

the petitioner for re-fixation of the seniority has been finally rejected on 28.11.2017, the petition cannot be treated as belated.

9. It is noteworthy that though it is a case of re-fixation of seniority, the petitioner has not impleaded any of the parties likely to be adversely affected.

To our mind, the petitioner is flogging a dead horse. On the rejection of his representation in September, 2011, he could have sought legal recourse

within a reasonable period thereafter. The time spent by the petitioner in obtaining information through the RTI route or repeatedly making representations to the respondents on the same ground, cannot be a valid ground to condone the inordinate delay in availing legal remedy. The petitioner had been informed that in terms of Section 24 of the RTI Act, 2005, BSF being a security organisation, is listed in the Second Schedule of the Act and has been given exemption from the provisions of the RTI Act.

10. Legal position is well settled that under Article 226 of the Constitution of India, though there can never be a case where the court cannot interfere in a matter after passage of a certain length of time but, ordinarily, the court may refuse to exercise its extra-ordinary powers under Article 226 in case of persons who do not approach it expeditiously for relief and who simply stand by and allow a state of affairs to continue for several years and then approach Court to put forward stale claims, thereby trying to unsettle settled matters. (Rel. P.S.Sadasivaswamy vs. State of Tamil Nadu AIR 1974 SC 2271).

11. In the instant case, the petitioner was informed in September, 2011 itself that his appointment as an Assistant Commandant was with the 37th Batch DAGO CRPF. Though the petitioner had qualified the written examination and interview in the SSB (CPO-2002), but at that time during his medical examination, he was declared temporarily unfit. Therefore, his name did not figure in the final list of selected candidates, who were sent for training in 36th Batch DAGO. The petitioner had participated in the recruitment process in the CPOs A/C Examination, 2003 as well and was appointed as Assistant Commandant in October, 2005 and was sent for training with the 37th Batch DAGO. It is not a case where after he had qualified the written examination and the interview in the SSB (CPO-2002) he was declared temporarily unfit and later on declared fit and sent as a candidate of the 36th Batch DAGO for training with the 37th Batch DAGO. Admittedly, the petitioner did not challenge the report of the Medical Committee declaring him as temporarily unfit.

12. It is borne out from the record that the petitioner was selected in the SSB (CPO-2003) Examination i.e. 37th Batch DAGO, but is seeking seniority with the 36th Batch DAGO (CPO-2002). In a case of re-fixation of seniority, an inordinate delay of over 6 ½ years reckoned from the date his

representation was rejected, cannot be condoned, just because the petitioner kept representing before the respondents that he be treated as an

Assistant Commandant appointed with the 36th Batch, knowing fully well that his appointment was pursuant to his participation in the recruitment

process of the 37th Batch DAGO.

13. If the petitioner was claiming seniority with the 36th Batch DAGO (CPO-2002) for which he was not even sent for training since his name did not

find mention in the final selection list of selected candidates of the SSB (CPO-2002) Examination, he should have raised this issue soon after joining in

the year 2005. In any event, he could not have waited for more than a decade for fixation/re-fixation of his seniority with the 36th Batch DAGO, if he

had any grievance. It is obligatory on the part of a litigant to approach the Court for redressal of his grievance at the earliest or within a reasonable

span of time. The contention raised before us that the petitioner sent various representations cannot cut any ice in view of the position being made

clear to him by the respondents in the communication dated 23.09.2011 that the offer of appointment was issued to him on declaring him successful in

the SSB (CPO-2003) Examination.

14. The above position being made clear to the petitioner in September, 2011, the instant petition is squarely hit by delay and laches and is accordingly

dismissed, along with the pending application.