

(2022) 09 DEL CK 0216

In the Delhi High Court

Case No : Civil Writ Petition No. 13831 Of 2022, Civil Miscellaneous Application
No. 42311 Of 2022

P S Slaria & Ors.

APPELLANT

Vs

Sashastra Seema Bal And Ors

RESPONDENT

Date of Decision : 26-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 09 DEL CK 0216

Hon'ble Judges : Suresh Kumar Kait, J;Saurabh Banerjee, J

Bench : Division Bench

Advocate : Pushkar Sood, Satya Prakash Singh, Pratima N. Lakra, Vrinda
Baheti, Neha Sharma

Final Decision : Dismissed

Judgement

1. Vide the present writ petition, petitioners are seeking parity as regards their promotion to the post of Commandant on 31.12.2013 and to the post of Deputy Inspector General on 04.05.2018, at par with Mr. V. Vikraman who was junior to the petitioners alongwith all the benefits from the said dates; quashing of impugned memorandum dated 10.09.2021 issued by Deputy Inspector General (Pers.) of respondent No.1.

2. The case of the petitioners is that the petitioner No.1 was senior to the respondent No.2 as he was promoted to the post of Deputy Commandant on 16.06.2006 and Second-in-Command on 03.12.2009 whereas respondent No.2 was promoted to the post of Deputy Commandant on 14.11.2007 and Second-in-Command on 14.10.2010. Thereafter, though the respondent No.2 was promoted to the post of Commandant on 31.12.2013, however, despite the petitioners being seniors, they were not promoted. Further, the petitioners were superseded by respondent No.2 who was promoted as DIG on 04.05.2018 whereas petitioner No.1 was promoted to the post of DIG on 03.11.2021.

3. Learned counsel for petitioners submits that a representation dated 01.04.2014 requesting promotion was given to the Director General, SSB. Thereafter, a second representation dated 27.08.2014 was given to Directorate General, SSB regarding non-redressal of grievance of the petitioners and subsequently, various reminders were given by the petitioners to the respondent No.1. However, the respondent No.1 did not decide the same till 10.09.2021 and vide Memorandum dated 10.09.2021 issued by Deputy Inspector General (Pers.), SSB stating therein that the promotion of respondent No.2 was considered as per the terms and conditions prescribed in the Recruitment Rules at that time which had been issued with the approval of IG (Pers.), whereas the representation of petitioners was addressed to D.G. SSB. Learned counsel for the petitioners submits that therefore, the present petition has been filed timely and there is no delay attributable to the petitioners.

4. Learned counsel for petitioners, relying upon the case of State of Rajasthan & Ors. Vs. O.P. Gupta : Special Leave Petition (Civil) No.016734/2022 (vide diary No.27824/2020), submits that even if there is a delay in filing the present petition, it is well settled that the laws of limitation do not apply to exercise of jurisdiction under Article 226 of the Constitution of India, as such the present petition is maintainable.

5. Learned counsel for petitioners, further relying upon the judgment passed by Hon'ble Supreme Court in the case of Rushibhai Jagdishchandra Pathak vs. Bhavnagar Municipal Corporation in Civil Appeal No.4134/2022, submits that the law recognises a 'continuing' cause of action which may give rise to a 'recurring' cause of action, as such the present petition is maintainable.

6. As stated by the learned counsel for petitioners, though the petitioners had made representation on 01.04.2014 and thereafter, on 27.08.2014 to the Director General, SSB and followed them up with various reminders to the respondent No.1, however, the respondent No.1 did not decide the same till 10.09.2021 and the petitioner No.1 was promoted to the post of Deputy Inspector General on 03.11.2021, a lot of water has flown since then and a settled thing cannot be unsettled. Thus, the petitioner cannot be allowed to take benefit of pendency of his representation and the present petition is hit by delay and latches.

7. Reliance by learned counsel for petitioners upon the judgment passed in the case of State of Rajasthan & Ors. (supra) is of no assistance as it was held thereunder that the relief sought under Article 226 of the Constitution of India is discretionary which can, in the opinion of the Court, be either granted or refused especially where there is a gross delay on the part of the petitioner and where the relief sought would, if granted, unsettle the already settled position.

8. Similarly, reliance by learned counsel for petitioners upon the judgment passed in the case of Rushibhai Jagdishchandra Pathak (supra), once again is of no assistance as the same pertains to the case of salary or pension and not to

promotion and further to a continuous/recurring 'fresh' cause of action arising every month and the wrong computation contrary to the rules whereas the instant case pertains to a cause of action which arose way back on 31.12.2013 and thereafter on 04.05.2018.

9. Accordingly, the present petition is dismissed. Pending application also stands disposed of.