

(2020) 10 DEL CK 0041

In the Delhi High Court

Case No : Civil Writ Petition No. 12711 Of 2019

Santosh Kumar & Ors.

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 08-10-2020

Acts Referred:

Citation : (2020) 10 DEL CK 0041

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Saahila Lamba, Arun Bhardwaj, Nikhil Bhardwaj, Abhishek Sharma

Final Decision : Disposed Of

Judgement

Rajiv Sahai Endlaw, J

C.M. Appl. No.25375/2020 (of the petitioners for early hearing)

1. The counsel for the respondents Border Security Force (BSF) appears on advance notice.

2. For the reasons stated, the application is allowed and disposed of and the writ petition is ordered to be taken up for hearing today itself.

W.P. (C) 12711/2019

3. This petition has been filed, (i) impugning the Signal dated 15th October, 2019 for the reason of not including the names of the 74 petitioners in the list of Assistant Commandants whose seniority and financial benefits, in compliance of judgment dated 14th November, 2018 in W.P.(C) 8809/2017 titled as Satya Dev Yadav & Anr. Vs. Union of India & Ors., was amended with effect from 30th December, 2002 and for holding review Departmental Promotion Committee (DPC), with where to permission was sought vide the said Signal, from the Ministry of Home Affairs (MHA); and, (ii) seeking mandamus to the respondents to conduct the review DPC for 28th Batch of Assistant Commandants of BSF

including the petitioners, for according them seniority and financial benefits in terms of Satya Dev Yadav supra and the order dated 21st June, 2019 of the respondents.

4. The petition came up before this court first on 3rd December, 2019 when, finding that the petitioners, claiming to be at par with the petitioners in Satya Dev Yadav supra, were claiming the same benefits as granted in Satya Dev Yadav supra, while issuing notice of the petition the counsel for the respondents appearing on advance notice on that date, was directed to obtain instructions whether the benefit of judgment of this court in Satya Dev Yadav supra could be extended to the 74 petitioners who have filed this petition.

5. Thereafter the petition was adjourned from time to time and of late, owing to the prevalent pandemic.

6. No reply/counter affidavit has been filed till date.

7. The counsel for the respondents states (i) that the petitioners, at page 17 in para 4 of the petition have claimed seniority from 6th December, 2003 and not from 30th December, 2002, as was granted in Satya Dev Yadav supra; attention in this respect is invited to the judgment in Satya Dev Yadav supra, directing seniority of the petitioners therein to be reckoned from 30th December, 2002 instead of from 6th January, 2003; and, (ii) that though the relief of mandamus for holding of review DPC has been sought but without laying any foundation therefor. He otherwise states that if the petitioners are claiming to be at par with Satya Dev Yadav and others, the respondents admit the petitioners to be similarly placed as the petitioners in Satya Dev Yadav supra and to be entitled to the same relief.

8. We have perused the writ petition as well as the dicta of this court in Satya Dev Yadav supra and find the petitioners to be claiming to be identically placed as the petitioners in Satya Dev Yadav supra and impugning the Signal dated 15th October, 2019 only for the reason of the names of the petitioners being not included therein.

9. As far as second contention of the counsel for the petitioners is concerned, we have enquired from the counsel for the petitioners, why mandamus for holding a review DPC is sought and whether the petitioners, on correction of their seniority, are claiming right to be considered for any promotion.

10. The counsel for the petitioners states that the petitioners are not seeking right to any promotion and are only seeking correction of their seniority as directed for the petitioners in Satya Dev Yadav supra and to others whose names are included in Signal dated 15th October, 2019 and have sought the relief of holding a review DPC only for the reason that the Signal dated 15th October, 2019 also sought permission of the MHA for holding a review DPC.

11. The aforesaid clarifies the position and does not leave any ambiguity.

12. We accordingly allow this petition and a direction is issued to the respondents (a) to treat the date of appointment of the petitioners, for the purposes of seniority and financial benefit, as 30th December, 2002; and, (b) to grant to the petitioners all the same/consequential benefits as granted to the petitioners in *Satya Dev Yadav supra* and as granted to the personnel whose names were included in the Signal dated 15th October, 2019.

13. At this stage the counsel for the petitioners states that besides the petitioners there are about 30-40 others of the same batch who have also not been granted the benefits and who will also be compelled to file petitions unless the respondents themselves grant the same benefits to them. It is urged that a direction to the said effect be issued to the respondents.

14. We can only say that upon others claiming to be similarly placed representing to the respondents, the respondents shall within 8 weeks of receipt of the representation, if find the representationists to be indeed similarly placed, grant the same benefits to them as granted to their contemporaries and if do not find the representationists to be similarly placed, dispose of their representations giving specific reasons why the representations are not similarly placed.

15. The petition is disposed of.