

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR

S.B. Civil Writ Petition No.15456/2013

Rakshpal Rana

Versus

Union of India & Ors.

DATE OF ORDER : 30/08/2013

HON'BLE MR. JUSTICE M.N. BHANDARI

Ms. Anita Agrawal, for petitioner

By this petition, a direction is sought for holding review DPC as on 10.04.2003 and consideration of the case of petitioner for promotion to the rank of Dy. Commandant to Second-in-Command. If petitioner is found fit as per Clause 13, he may be assigned seniority from the year 2003. The consequential benefits arising out of the promotion have also been claimed.

Learned counsel submits that petitioner was facing inquiry which was concluded with punishment. It was prior to review DPC held on 10.04.2003. The respondents erroneously kept petitioner's case in sealed cover. The petitioner was later on given promotion to the post in question in pursuance of DPC held on 24.03.2005. It was vide order dated 21.04.2006 at Annexure-7. The petitioner was infact eligible for promotion in the year 2003 itself and the mistake aforesaid has been realized by the respondents in their own order dated 15th January, 2013 at Annexure-9. As per extant rules, even if

petitioner was caused with punishment prior to DPC, he was not only entitled to the right of consideration but promotion in view of the judgment of Delhi High Court in the case of S.S. Sidhu, W.P.8970/2006.

I have considered the submission and find that for seeking promotion in the year 2003, writ petition has been filed in the year 2013. It is after expiry of 10 years. It may be that in between, the petitioner was making representation but the question for my consideration is as to whether it condones delay to approach this court. It is moreso when petitioner was in litigation for seniority before Gauhati High Court. The writ petition therein was decided in the year 2000. The petitioner then approached Jammu & Kashmir High Court for his promotion against the vacancy of 1997. The writ petition therein was dismissed and the matter is pending before Hon'ble Apex Court where review petition has been filed by the petitioner.

So far as promotion against the vacancy of 2003 is concerned, writ petition in the year 2013 is hit by laches. The issue of delay in filing writ petition for seniority and promotion with the delay of 10 years or more has already been decided by Hon'ble Apex Court holding it to be fatal. Reference of judgment in the case of **Shiba Shankar Mohapatra & Ors. Vs. State Of Orissa & Ors.,** reported in AIR 2010 SC 706 would be relevant where issue of laches in questioning seniority and

promotion was held to be fatal. Relevant para of the said judgment is quoted hereunder for ready reference:

“The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in *Ramchandra Shanker Deodhar & Ors. v. State of Maharashtra & Ors.* AIR 1974 SC 259, considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the Court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in *Tilokchand Motichand v. H.B. Munshi*, AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay.”

The same view has been taken by Hon'ble Apex Court in the case of **Union of India (UOI) & ors. Vs. A. Durairaj (Dead) by L.Rs.**, reported in AIR 2011 SC 1084. Relevant

para of the said judgment is quoted hereunder for ready reference:

“It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.”

Perusal of para quoted above reveals that delay in raising issue of seniority and promotion would be fatal unless satisfactory explanation exists. It is also held that mere repeating representation would not condone the delay. If it is assumed for the sake of argument that petitioner was making

representation, it would not condone the delay. The view aforesaid was taken by Hon'ble Apex Court in the case of **Union of India (UOI) & Ors. Vs. Har Dayal, reported in AIR 2010 SC 1155**. The relevant para of the said judgment is quoted hereunder for ready reference:

“This Court has repeatedly held that merely giving representation will neither extend the limitation nor wipe out the delay and laches.”

In view of the above, promotion claimed from the year 2003 is hit laches thus cannot be granted. It is moreso when petitioner was given promotion since 24.03.2005 vide the order dated 21.04.2006 yet he did not make a claim immediately for promotion from the year 2003. The delay thus remains unexplained.

The writ petition so as stay application are accordingly dismissed. However, dismissal of the writ petition will not come in the way of petitioner if department takes the matter at their own.

[M.N.BHANDARI], J.

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Certificate:

“All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.”

FATEH RAJ BOHRA, P.A.