

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 1st December, 2020.**

+ **W.P.(C) 9606/2020**

AKRAM SHAH

..... Petitioner

Through: Mr. Ankur Chhibber, Mr. Anshuman Mehrotra, Mr. Harsh Dhankar and Mr. Nikunj Arora, Advs.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Ruchir Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.30797/2020 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) No.9606/2020

3. The petitioner, now holding the rank of Deputy Commandant in the respondents Central Reserve Police Force (CRPF), has filed this petition impugning the order dated 5th August, 2020 of the respondents CRPF, rejecting the representation of the petitioner and seeking mandamus to the respondents CRPF to grant out of turn promotion to the petitioner, to the rank of Assistant Commandant, retrospectively w.e.f. 4th August, 2002, in

line with the judgment dated 20th April, 2015 in W.P.(C) No.7043/2012 titled *Pradeep Singh & Anr. Vs. Union of India*, and with all consequential benefits.

4. It is the case of the petitioner, that (i) on 27th October, 1998, he was enlisted in the respondents CRPF, as a Constable (GD), in Sports Quota (Judo); (ii) in accordance with the Policy dated 14th July, 1998 for grant of out of turn promotion to sportspersons excelling in their respective sports, the petitioner, on 18th August, 2000, was granted out of turn promotion to the post of Sub-Inspector (GD); (iii) in accordance with the policy aforesaid, the petitioner, on 4th October, 2001 was granted out of turn promotion to the post of Inspector (GD); (iv) in accordance with the aforesaid policy, the petitioner, on 4th August, 2002, on account of winning a silver medal in Judo in the 17th Commonwealth Games – 2002 held at Manchester, United Kingdom, became entitled to out of turn promotion to the post of Assistant Commandant, but which was not granted to the petitioner inspite of the case of the petitioner being recommended therefor and owing to the delays on the part of the respondents CRPF themselves in processing the same; (v) the petitioner, on 15th May, 2009 was promoted to the post of Assistant Commandant, as per his turn, and on 1st April, 2017 was promoted to the rank of Deputy Commandant, again as per his turn; and, (vi) the petitioner, on 3rd May, 2019 made yet another representation, claiming to be covered by the dicta of this Court in *Pradeep Singh* supra and which representation has been rejected vide impugned order dated 5th August, 2020, merely reasoning that since the case of the petitioner had been badly delayed for 18 years, his request cannot be acceded to by the Competent Authority.

5. The counsel or the respondents CRPF appears on advance notice.
6. Being *prima facie* of the view that the claim brought by the petitioner before this Court is highly belated i.e. by nearly 18 years, we have heard the counsel for the petitioner at length.
7. The counsel for the petitioner has contended that the petitioner, in accordance with the 14th July, 1998 Policy, was entitled to three out of turn promotions and was due the third out of turn promotion to the post of Assistant Commandant, on 4th August, 2002 and which has been deprived to the petitioner. It is further contended that though the said policy was withdrawn on 22nd December, 2004 but since the petitioner had earned the third promotion in terms of the policy prior thereto, the petitioner was entitled to the promotion. Relevant passages of the judgment of this Court in *Pradeep Singh* supra are read out in the Court and it is stated that the petitioner is fully covered thereby. Attention is also drawn to the consideration of the case of the petitioner as recently as on 3rd May, 2019.
8. The counsel has vehemently argued that it was for the respondents CRPF themselves to comply with the policy and cannot, on the one hand, not comply with their own policies and on the other hand, reject the representations made to get the benefit of the policy, merely on the ground of delay.
9. We are unable to agree. If the respondents CRPF were at fault, the petitioner had the remedy available in law and just like has availed of remedy today, could have availed of the same immediately or shortly after 2002, when, despite of the entitlement claimed, out of turn promotion was not granted. On the contrary, the petitioner, in the said long passage of 18

years, has allowed others to be promoted, rights to be created in their favour and seniorities to attain finality and has himself also, been promoted to the same rank to which out of turn promotion was sought, on his own turn, that too as far back as in the year 2009. Not only so, the petitioner has earned another promotion thereafter, again on his turn, in the year 2017.

10. The counsel for the petitioner, during the hearing has also informed that in the year 2012, the policy of out of turn promotion for sportsperson has been brought back.

11. However, the claim of the petitioner in the present petition is not under the 2012 Policy.

12. As far as the contention of the counsel for the petitioner, of the case of the petitioner being considered till as late as in May, 2019, we have, while dealing with cases pertaining to para-military and armed forces, seen a trend, of those aggrieved, making repeated representations and which are dealt with, from time to time, by different officers and some of whom, more favourably inclined to the claimants, after long lapse of time, do grant the relief claimed in the representation. Thus, the mere fact that the file of the petitioner was activated/reactivated on a representation of the petitioner, would not enliven for the purposes of approaching the Court, a claim which otherwise, for bringing to the Court, has become stale and dead. The law also in this regard is settled, that mere repeated demands/representations do not extend the period of limitation. Reference in this regard may be made to *Jagdish Narain Maltiar Vs. The State of Bihar* (1973) 1 SCC 811, *State of Orissa Vs. Pyarimohan Samantaray* (1977) 3 SCC 396, *Shiv Dass Vs. Union of India* (2007) 9 SCC 274, *Naresh Kumar Vs. Department of*

Atomic Energy (2010) 7 SCC 525, *State of Uttaranchal Vs. Shiv Charan Singh Bhandari* (2013) 12 SCC 179, *C.B.S.E. Vs. B.R. Uppal* (2006) 129 DLT 660 (DB), *Savitri Sahni Vs. Lt. Governor, NCT of Delhi* (2006) 130 DLT 287 (DB), *Nanak Chand Vs. Union of India* 2012 SCC OnLine Del 3391, *Dhiren Kumar Mohanty Vs. Union of India* MANU/DE/1248/2020 (DB) and *Rajeev Kumar Vs Union of India* MANU/DE/1693/2020 (DB). It has been recently reiterated in *U.P. Power Corporation Ltd. Vs Ram Gopal* 2020 SCC OnLine SC 101 that though the Limitation Act, 1963 is not applicable to these proceedings but the principles thereof are and applying the said principles, the claim of the petitioner is found to be highly belated and barred by delay, laches and acquiescence.

13. The counsel for the petitioner has also contended that the delay can only deprive the petitioner of the arrears, and today the question is monetary only, of the petitioner being entitled to fixation of his future salary and promotion, counting his promotion to the post of Assistant Commandant, out of turn, w.e.f. 4th August, 2002.

14. Though the argument is attractive but applying the law laid down by the Supreme Court in *Union of India Vs. Tarsem Singh* (2008) 8 SCC 648, we do not find the present case to be falling in the category of recurring cause of action. The act of earning the out of turn promotion to the post of Assistant Commandant, was a onetime act, denial whereof, if not challenged for long, cannot entitle the petitioner to future emoluments on the premise thereof. The right to earn enhance salary and future promotion, was inherent to the right if any of out of turn promotion and once the said right was not agitated and claimed and allowed to become time barred, the rights of

enhance salary and future promotion consequential thereto, cannot also be claimed now.

15. The petition is thus dismissed, as barred by time, delay, laches and acquiescence.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 1, 2020
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