

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 2729 of 2023

Ravi Shankar Mishra

... Petitioner

V E R S U S

1. Union of India through Ministry of Home Affairs, having office at North Block, New Delhi.
2. Director General, Central Reserve Police Force, CGO Complex, Lodhi Road, New Delhi
3. Deputy Inspector General of Police (Personnel), Central Reserve Police Force, CGO Complex, Lodhi Road, New Delhi.

... .. Respondents.

CORAM: HON'BLE DR. JUSTICE S. N. PATHAK

For the Petitioner : Mr. Amritansh Vats, Advocate
Mr. Kumar Abhishek, Advocate
Mr. Amartya Choubey, Advocate
For the Respondents : Mr. Anil Kumar, ASGI
Mr. Ravi Prakash, CGC

12.07.2024 Heard the parties.

PRAYER

2. Petitioner has approached this Court with a prayer for a direction upon the respondents to grant and confer the seniority/notional seniority from the date his batchmates were promoted on the post of Commandant i.e. 10.08.2022 and further to maintain his seniority as per the seniority list dated 01.05.2021 (Annexure-8) whereby the petitioner was placed at 32 (Gradation List No. 56).

FACTUAL MATRIX

3. The factual exposition as has been delineated in the writ petition is that the petitioner was appointed to the post of Assistant Commandant in Central Reserve Police Force (CRPF) in the year 2000. After completing the basic training, he served in different parts of the country and in the month of March, 2007, was promoted to the post of Deputy Commandant. In the year 2012, upon request of the Jharkhand Police to Central Reserve Police Force (CRPF), the petitioner was deputed with Jharkhand Police vide order dated 07.01.2013 on the post of Additional Superintendent of Police (Operation in Jharkhand).
4. In month of July, 2013 the petitioner being deputed to Jharkhand Police, was promoted as Second in Command in Central Reserve Police

Force (CRPF) vide order dated 03.09.2013. During his deputation with Jharkhand Police, the petitioner has conducted various crucial anti-Naxal operations successfully in Chatra. On 13.03.2014, while leading Anti-Naxal operation in the District of Chatra, with Naxals, due to one IED Blast by the Naxals, the petitioner was severely injured as he was leading the operation from front with Naxals. He was air lifted to Medanta Hospital, Gurgaon with the help of State Government and remained there under treatment for about five months. In the said unfortunate incident, petitioner lost his right leg, right eye, left eye partial vision, fingers of right hand etc., having 75 % disabilities. After being discharged from the hospital, he again chose to serve the nation and to lead anti-Naxal operation with the supportive artificial limbs.

5. Thereafter vide order dated 17.01.2018, the petitioner was repatriated to Central Reserve Police Force (CRPF) as he had already completed his maximum period of deputation. Thereafter, the petitioner was posted in Ranchi Range on the post of Staff Officer. During his tenure, he has worked efficiently and his performance was appreciated by the Senior Officials. The Central Reserve Police Force (CRPF) has published the seniority/gradation list of Second in Command Officer as on 01.05.2021 wherein name of the petitioner was mentioned at 32, Gradation List No. 56. In the meantime, on 10.08.2020, the petitioner has appeared before the Medical Board wherein the medical category of the petitioner was found as S1H1A3(P)P1 E3(P) and the next Medical Board was due on 10.08.2022.
6. The day when the petitioner's Medical Board was scheduled to be held on 10.08.2022, he was shocked and surprised, to witness that his juniors and batchmates were promoted to the post of Commandant vide an order dated 10.08.2022 (Annexure-9). Thereafter, the petitioner immediately made a representation on 16.08.2022 (Annexure-10) that his Medical Board was due on 10.08.2022, but the same was not conducted due to which he was not considered for promotion. Upon the request of the petitioner on 30.08.2022, the Medical Board was constituted, which was due on 10.08.2022. The petitioner was medically examined in the Medical Board and he was recommended for category A3 E2 (P), which is

a desired category as per 4.17 of Standing Order dated 15th December, 2008.

7. Upon his request, the respondents vide an order dated 04.01.2023, promoted the petitioner to the post of Commandant (Annexure-11), but he was not considered for promotion to the post of Commandant for the vacancy year 2022, due to which the petitioner has lost his seniority for no fault on his part, rather his juniors were considered for promotion to the post of Commandant w.e.f 10.08.2022 which is humiliating and demotivating for the petitioner as he was eligible for the promotion, if the Medical Board would have been conducted on scheduled time i.e. 10.08.2022. Due to said act and laches on the part of the respondents, the petitioner will end up working under his juniors.

ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONER

8. Mr. Amritansh Vats, learned counsel appearing for the petitioner vociferously argues that petitioner is entitled to retain his seniority from the date similarly situated persons were considered and granted promotion with all consequential benefits. Learned counsel further argues that it is an admitted fact that petitioner sustained 75% disability in an encounter and returned to the service after he was found fit to serve the nation in the year 2018 in his parent department. It was only in the year 2021, the seniority list was published for Second-In-Command. It has been brought to the notice of the Court that the petitioner was initially directed to appear before the Medical Board scheduled on 10.08.2022, but on the said date, the Medical Board was not constituted, rather the same was held on 30.08.2022, only after the petitioner represented and has shown concerned. In the said, Medical Board, the petitioner was assessed to be falling under the Medical category of A3 and E2, which makes him eligible for promotion to the rank of Commandant. On 10.08.2022, the day when Medical Assessment of the petitioner was due, the promotion list was issued. Further, the petitioner was granted promotion to the post of Commandant on 04.01.2023. Since petitioner was found fit by the Medical Board, his case ought to have been considered for promotion as per the seniority list and his seniority ought to have been maintained from

the date similarly situated persons were considered in light of clause 4.17 of Standing Order No. 04/2008 as well as in view of the fact that there was no fault and laches on the part of the petitioner. Learned counsel further argues that petitioner is claiming seniority only and not the backwages.

9. Mr. Amritansh Vats, further argues that the respondents in para – 7 of the counter affidavit has admitted that after the Medical Board conducted on 30.08.2022, the petitioner was medically categorized as A3 E2 (P), which is a relaxable for promotion as per para – 4.17 of Standing Order 04/2008, therefore, he requested for promotion along with restoration of original seniority, but the respondents have promoted him against the vacancy year 2023 not for the seniority list reference to the panel of DPC for vacancy year 2022. Further, the respondents have relied upon the office memorandum dated 03.08.1986 (Annexure-D) wherein at para – 2.2 it is stated that if a person is considered as unfit for the promotion and is superseded by a junior, such person shall not if he is subsequently found suitable and promoted, take seniority in the higher grade over the juniors persons, who had superseded him. Mr. Amritansh Vats further argues that the Standing Order 08 /2008 will prevail over the office memorandum dated 03.08.1986 and further it is submitted that the said office order, which is relied by the respondents are not applicable in the facts and circumstances of the case of the petitioner as the Standing Order 04/2008 clearly stipulates that when any officers regain the SHAPE –I medical category, they will be promoted as per the recommendation of the DPC, but they will not be entitled to the back wages, however, they will retain/regain their seniority.

ARGUMENTS ADVANCED ON BEHALF OF THE UNION OF INDIA

10. Mr. Anil Kumar, learned ASGI assisted by Mr. Ravi Prakash, learned CGC, opposing contention of learned counsel for the petitioner, emphatically argues that on the date of promotion, petitioner was not medically fit, which is apparent from Annexure-D, Page-39 and as per the Rule, any employee not medically fit, would not be considered for promotion maintaining the seniority list. Learned counsel further argues that any further consideration from retrospective date would be de hors the rule and the same is not permissible in the eyes of law.

FINDINGS OF THE COURT

11. From perusal of different documents brought on record, the averments made in the writ petition as well as supplementary affidavit filed by the petitioner, counter affidavit filed by the respondents and the arguments advanced on behalf of respective parties, the admitted facts which are not in dispute are as follows:
- (i) The petitioner was appointed to the post of Assistant Commandant in Central Reserve Police Force in the year 2000 and after attaining the basic training, he was promoted to the post of Deputy Commandant. It was only in the year 2012, on request, the petitioner was deputed with Jharkhand Police vide order dated 07.01.2013 on the post of Additional Superintendent of Police (Operation) for Naxal Operations in the State of Jharkhand.
 - (ii) The petitioner was, thereafter posted as Additional Superintendent of Police (Operation) at Khunti vide order dated 23.01.2013. The petitioner was promoted as Second-in-Command in CRPF vide order dated 03.09.2013. On 13.03.2014, petitioner was leading the anti-naxal operation in the district of Chatra, wherein unfortunately due to one IED Blast by the naxals, he was severely injured as a leader of the operation confronting the naxals. As already discussed hereinabove, petitioner lost his right leg, right eye, left eye partial vision, fingers of right hand etc., having 75 % disabilities.
 - (iii) Petitioner was repatriated to CRPF as he had completed maximum period of deputation. Seniority list was prepared wherein name of the petitioner was mentioned at serial no. 32, gradation list 56, being IRLA No. 5163. It was on 10.08.2022, the promotion were given from the rank of Second-in-Command to the post of Commandant.
 - (iv) The petitioner was not considered though his juniors and batchmates were considered. Thereafter, petitioner filed representation before the respondents authorities for constituting the Medical Board which was due on 10.08.2022, and only upon the said request the Medical Board was held on 30.08.2022, wherein, the petitioner has attain the SHAPE-I medical category as per Standing Order No. 04/2008 dated 15th December, 2008.

12. From the aforesaid facts, it appears that the petitioner was not considered for promotion from the rank of Second-in-Command to the rank of Commandant on 10.08.2022 rather he was considered for the same on 04.01.2023. In the promotion, neither seniority was considered nor any consequential benefits was granted as compared to the others who were considered and granted promotion on 10.08.2022. Non consideration of promotion, as it appears from the documents and the arguments of learned Sr. Counsel appearing for the Union of India, that the petitioner was not found medically fit because he was falling under the category of A3 and E3 by the Medical assessment conducted on 27.03.2021.
13. It is not out of place to mention here with respect to petitioner's Medical Board, a proceeding was due on 10.08.2022, which is evident from the Medical Board's proceeding dated 10.08.2020 that was before issuance of promotion order dated 10.08.2022. The Medical Board was due on 10.08.2022, which was later held on 30.08.2022 and before that, the promotion orders maintaining the seniority of others, junior to the petitioner, was issued. From the proceedings of the Medical Board dated 30.08.2022, it is crystal clear that the medical fitness of the petitioner was categorized as A3 and E2, which shows petitioner was found fit for promotion to the rank of Commandant. Though petitioner has been considered for promotion to the rank of Commandant on 06.01.2023, he was entitled for promotion from the date juniors were considered and granted promotion i.e. 10.08.2022. The reasons assigned and communicated to the petitioner is not tenable in the eyes of law as petitioner cannot be held responsible or made to suffer due to laches on part of the respondents.
14. On 10.08.2020, the petitioner has appeared before the medical board wherein the medical category of the petitioner was found as S1H1A3(P)P1 E3(P) and the next medical board was due on 10.08.2022. On 10.08.2020, when the Medical Board was constituted, the petitioner has not been recommended as E2 category, which is desired for the purpose of promotion in light of the 4.17 of Standing Order No. 04/ 2008, dated 15th December, 2008 (Annexure- S.A-1), which is quoted herein below:-

4.17 Relaxation in SHAPE-I Medical Category.

The relaxation in SHAPE-I Medical Category will be admissible to the following two categories of CPMFs personnel to the extent detailed below:-

Official/Personnel wounded/injured during war or while fighting against the enemy/militant/ intruders/armed hostile / Insurgents due to an act of these in India or abroad will be eligible for promotion while placed in one of the following medical classification:-

- (I) Individual Low Medical Factors
 - (aa) H2 or E2 opr P2 (Dental) which will be considered at par with SHAPE –I; and;
 - (ab) A2 or P2 or A3
- (II) Combined Low Medical Factors
 - (aa) H2 and E2 combined and
 - (ab) H2 or E2 combined with A2, A3 or P2
 - b) Officers/men who are wounded injured during field firings/ accidental firings/explosion of mines or other explosive devices and due to accidents while on active Government duty in India or abroad will be eligible for promotion in the following SHAPE Categories:-
 - (i) S1H1A2P1E1 (ii) S1H1A1P2E1 (iii) S1H2A1P1E1
 - (iv) S1H1A1P1E2 (v) S1H2A1P1E2

15. Further, as per Clause 4.13 and 4.16 of Standing Order dated 15th December, 2008, any officer will regain his seniority immediately on his promotion, if he regain the SHAPE-I medical category and they will retain their seniority.

4.13 Mandatory for the purpose of promotion

1. Medical category SHAPE – I will be an essential condition for promotion of all combatised personnel in all groups/ranks/cadres in the CPMFs. In case of those illness is of permanent nature and who are not SHAPE –I, they will be considered for promotion by DPC but will be declared unfit for promotion, even, if they are otherwise fit for promotion. In case of those personnel, whose illness is of temporary nature, after considering their cases for promotion along with others, if they are otherwise fit, the DPC will grade them as 'fit for promotion' subject to attaining SHAPE-I medical category. As and when they regain the SHAPE – I medical category, they will be promoted as per recommendations of DPC. But they will not be entitled to back wages. However, they will retain their seniority.

4.16 If the actual promotion of Force Officer is delayed because of his/her low medical category and he/she is required to regain medical category SHAPE – I, the person below him can be promoted, but the officer will regain his/her seniority immediately on his/her, promotion, if he regains SHAPE – I medical category within the validity period of the recommendation of the DPC.

16. Going through the aforementioned provisions, it is crystal clear that as and when officers regain the SHAPE-1 medical category, they will be promoted as per the recommendations of the DPC but they will not be entitled to the backwages. However, they will regain their seniority. From para 4.16, it is clear that the officer will regain his/her seniority immediately on his/her promotion if he/she regains the SHAPE-I medical category within the validity period of recommendation of the DPC. The petitioner has regained SHAPE-I Medical category. He was found fit for promotion. The Rule says he may regain his seniority immediately but not the backwages. Petitioner herein is not claiming backwages.

17. Further, it is an admitted position that petitioner sustained injuries causing 75% disability in an anti-naxal encounter. The same merits consideration even if he is not entitled for the aforesaid promotion, compassion of higher degree is required in the facts and circumstances of the instant case. Petitioner is not claiming any relaxation but as per rules, he is entitled for restoration of seniority as he has been found fit for promotion.

18. The similar issue fell for consideration before the Hon'ble Delhi High Court in the case of *Venkatesh Vs. Union of India and others* in *W.P.(C) No. 11263 of 2015* and the Hon'ble Court has held in para-20, 21 and 22 as under:

“20. The Court clarifies that it is not expressing any opinion on what category the Petitioner should be placed under. The Court is proceeding on the basis that at present the Petitioner has been placed in the E2 permanent category. If in future point in time that medical category gets revised, then obviously it will be open to the Respondents to proceed on the basis of such revised medical category. However, as of now the Petitioner continues to be in the E2 permanent category and in the considered view of the Court, he is entitled to the relaxation which is provided under para 4.17 (B) (v) of SO No. 4/2008

21. *In that view of the matter, rejection of the Petitioner's representation by the orders dated 1st April, 2015 and 26th August, 2015, is hereby set aside by the Court and a mandamus is issued to the Respondents to pass a fresh order within four weeks giving the petitioner the relaxation in terms of para 4.17 (b)(v) of SO No. 4/2008. The Respondents will also pass the consequential orders for promotion of the petitioner to the rank of DC from 19th December, 2014 the date on which the batchmates were promoted as DC received the said promotion.*

22. *The consequential orders for fixing the petitioner's be now issued within a period of four weeks. The petitioner's pay will also be revised and notionally fixed in the above terms along with his batch mates with all consequential benefits."*

19. In view of the aforesaid facts and circumstances as pleaded above, it appears that the case of the petitioner was not considered for promotion to the post of Commandant w.e.f. 10.08.2022, the date on which his batchmates and juniors have been promoted as the medical board, which was due on 10.08.2022, was not held on time due to which the petitioner's medical category could not be determined rather the same was conducted on 30.08.2022 wherein the medical category of the petitioner was upgraded to A3 E2 (P) (which falls under SHAPE-I Medical Category), which is the desired medical category for promotion to the next higher rank as per Para – 4.17 of Standing Order 4/2008, other than this, the para 4.13 and 4.16 clearly suggest that as and when the officers regain the SHAPE –I Medical Category, they will be promoted as per the recommendation of the DPC, but they will not be entitled for back wages. However, they will regain their seniority, which was not done in the case of the petitioner in spite of the fact that he was promoted w.e.f. 04.01.2023 on the post of Commandant, but the seniority was not conferred to the petitioner from the date his batchmates and juniors were promoted, which is not in conformity with the Standing Order 04/2008 and since there was no fault on the part of the petitioner rather due to the laches on the part of the respondents, the petitioner cannot be made to suffer, who has given his entire life for the force and has suffered 75 % disability due to injury caused while conducting the Naxal operation.

20. As a sequitur to the aforesaid rules, guidelines, judicial pronouncements, this Court is of the considered view that petitioner is

entitled for the benefits as prayed for, considering his promotion and maintaining the seniority as per Annexure-8 i.e. the date when his juniors were considered and granted promotion i.e. with effect from 10.08.2022. The respondents are directed to issue suitable orders conferring the seniority of the petitioner w.e.f. 10.08.2022 i.e. the date when his batchmates and juniors were promoted to the post of Commandant and further respondents are directed to maintain the seniority as per the seniority list dated 01.05.2021 (Annexure-8) whereby the petitioner was placed at 32 (Gradation List No. 56). Let the entire exercise be completed within a period of six weeks from the date of receipt/ production of a copy of this order.

21. The writ petition stands allowed.

(Dr. S.N. Pathak, J.)