



\$~4

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

Date of decision: 27.02.2025

+ W.P.(C) 8888/2017
RAJEEV KUMAR

.....Petitioner

Through: Mr.Ankur Chhibber and
Mr.Nikunj Arora, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr.Manish Mohan, CGSC with
Mr.Jatin Teotia,
Mr.Varenyum, Ms.Aishani
Mohan, Advs. for UOI
Mr.Devender Singh, DG/JAG,
ITBP

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner, challenging the Order dated 20.09.2017, whereby the representation of the petitioner challenging his reversion from the post of Sub-Inspector (GD) to Assistant Sub-Inspector (GD), was rejected. The petitioner further prays for a direction to the respondents to continue the petitioner in the rank of Sub-Inspector having notional seniority and other consequential benefits as have been granted by an Order dated 31.05.2014.

2. It is the case of the petitioner that the petitioner joined the Indo-



Tibetan Border Police Force (ITBP) on 10.09.1987 at the rank of Constable (GD). On 07.07.2011, personnel junior to the petitioner were promoted to the rank of Assistant Sub-Inspector, which the petitioner was not promoted due to being placed in Low Medical Category (LMC).

3. The petitioner further states that his juniors were thereafter detailed for the Pre-Promotional Course to which the petitioner was not detailed again due to temporary unfitness by virtue of being placed in Low Medical Category. The personnel junior to the petitioner were then promoted to the rank of Sub-Inspector in March 2013, while the petitioner continued to serve the Force at the rank of Head Constable.

4. The petitioner remained in SHAPE-II Medical Category till 06.04.2013, when he was upgraded to SHAPE-I Medical Category. The petitioner was thereafter detailed for undergoing the Pre-Promotional Course for the rank of Assistant Sub-Inspector, and earned his promotion to the said rank with effect from 09.07.2013. Placing reliance on Clause 4.13 of the Circular dated 29.10.2008, the petitioner states that on being promoted after gaining the Medical Category of SHAPE-II, the seniority of the petitioner would date back to the date of promotion of his juniors.

5. The petitioner states that the same was also accepted by the respondents in the draft seniority list for the post of Assistant Sub-Inspector (GD), circulated *vide* the Order dated 03.03.2014.

6. The petitioner was then granted rank of Assistant Sub-Inspector notionally with effect from 07.07.2011, *vide* an Order dated 31.05.2014, and upon qualifying the JLL-2 Course, the petitioner was



granted promotion to the rank of Sub-Inspector on 06.10.2015, with the notional seniority being maintained.

7. It is only thereafter, that the petitioner received a Show-Cause Notice dated 15.09.2016, proposing to revert him to the rank of Assistant Sub-Inspector, stating that he had wrongly been granted a retrospective seniority in the rank of Assistant Sub-Inspector from 07.07.2011. The petitioner replied to the same, however, the respondents have rejected the representation of the petitioner and passed an Order dated 16.05.2017, reverting the petitioner to the rank of Assistant Sub-Inspector (GD). The petitioner then filed a Statutory Petition which has been dismissed by way of the Impugned Order, challenging which the petitioner has filed the present petition.

8. The learned counsel for the petitioner reiterates that if a promotion is denied to a personnel on the ground that he is not in SHAPE-I Medical Category, on the personnel gaining SHAPE-I Medical Category, his promotion shall date back to the date when his name is proposed for the same by the DPC.

9. He submits that in the present case, the petitioner was denied promotion to the rank of Assistant Sub-Inspector (GD) in the year 2011, because he was temporarily in SHAPE-II Medical Category, however, once the petitioner gained SHAPE-I Medical Category in the year 2013, the petitioner was granted such promotion to the rank of Assistant Sub-Inspector (GD) which, in terms of Clause 4.13 of the Circular dated 29.10.2008, would relate back to the date of the promotion granted to his immediate juniors, that is, 07.07.2011.

10. He submits that taking such seniority into account, the



petitioner was thereafter promoted to the rank of Sub-Inspector (GD) from which the petitioner is now wrongly being reverted back to the post of Assistant Sub-Inspector (GD).

11. On the other hand, the learned counsel for the respondents submits that posts at the rank of Assistant Sub-Inspector (GD) were created *vide* the Order dated 17.02.2011, and accordingly, Head Constables (GD) who had completed five years in the Grade at that time were approved for promotion as Assistant Sub-Inspectors (GD) on 07.07.2011 in one-time relaxation to the eligibility criteria. The approval was also accorded for promotion of the petitioner to the said rank, however, the petitioner could not take over the charge of the promoted post in view of being in Permanent Low Medical Category.

12. It was only in the year 2013, on the petitioner gaining SHAPE-I Medical Category and qualifying in the Pre-Promotional Course, that the petitioner was approved for promotion to the rank of Assistant Sub-Inspector (GD) with effect from 09.07.2013. The petitioner, therefore, could not have been granted a retrospective seniority from 2011 as he could not take charge of the rank of Assistant Sub-Inspector (GD) being in Low Medical Category.

13. He further submits that the petitioner was, erroneously promoted to the rank of Sub-Inspector (GD) taking into consideration the date of approval for promotion to the rank of Assistant Sub-Inspector (GD) as 07.07.2011. The said anomaly was discovered on a representation received from Assistant Sub-Inspector (GD), Ram Bahadur Yadav. Accordingly, a Show-Cause Notice dated 15.09.2016 was issued to the petitioner for reverting him back to the post of



Assistant Sub-Inspector (GD), and upon considering his reply, the Impugned Order has been passed.

14. We have considered the submissions made by the learned counsels for the parties.

15. The petitioner himself has placed his medical categorisation over the relevant period of time, which is produced hereinunder:

सारिणी-6
Table-VI
 वार्षिक चिकित्सा जांच तथा वर्गीकरण
Annual Medical Check up and Categorisation

57
 Anurag Puri

2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Place	यूनिट Unit	दिनांक Date	उचाई (से.मी.) Height (cms)	वजन (कि.ग्रा.) Weight (Kg)	सोना Chest	बल / गुच्छा अनुपात Waist/Hip Ratio	नाड़ी / रक्तचाप Pulse & B.P.	मानसिक/आधुनिक Psychological	श्रवण Hearing	अपवा Appendage	शारीरिक शक्ति Physical Capacity	दृष्टि Eye Sight	अंतिम वर्गीकरण Final Categorisation	यदि कोई भी डॉक्टर को शिकायत मिले तो उसे संबंधित कारण सहित प्रमाणों के अभाव में शरीर का वर्गीकरण 'down' category में होगा। category is down graded with signature of M.O's
								एस S	एच H	ए A	पी P	ई E		
2500	18th	05/2011	177	75	93/100	0.88	74/100	S ₁	H ₁	A ₁	E ₁	SHAPE-I		
LNU 100	18th	21/10	177	68kg	90-96	0.88	80/100	S ₁	H ₁	A ₁	E ₁	SHAPE-I		
1500	18th	22/3/11	177	72	90-95	0.88	80/100	S ₁	H ₁	A ₁	E ₁	SHAPE-I		
1500	22nd	05/13	177	77	90-95	0.88	80/100	S ₁	H ₁	A ₁	E ₁	SHAPE-I		
1500	22nd	22/3/11	177	77	90-95	0.88	80/100	S ₁	H ₁	A ₁	E ₁	SHAPE-I		

TRUE COPY

16. From the above, it would be apparent that as on 22.03.2011, the petitioner was placed in the Category of P3 (P) with effect from 16.03.2011. He was upgraded to SHAPE-I Medical Category only on 25.04.2013. As on 07.07.2011, therefore, the petitioner was not in SHAPE-I Medical Category but in a Permanent Low Medical Category.

17. Though the learned counsel for the petitioner has today



submitted that the petitioner could not have been placed in Permanent Low Medical Category as the respondents themselves upgraded him to SHAPE-I Medical Category in the subsequent Medical Board and with effect from 06.04.2013, there being no challenge laid before us to the medical categorisation in the Annual Medical Check-up conducted by the respondents, we would not like to comment on the same.

18. The fact remains that the petitioner, being considered in Permanent Medical Category, was not allowed to take the charge of the promotional post of Assistant Sub-Inspector (GD) alongwith his batchmates and juniors on 07.07.2011. He was later, however, promoted to the rank of Assistant Sub-Inspector (GD) with effect from 09.07.2013 after gaining SHAPE-I Medical Category.

19. Clause 4.13 of the Circular dated 29.10.2008, on which reliance has been placed by the learned counsel for the petitioner, reads as under:

“4.13 Mandatory for the purpose of promotion

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 who 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 alongwith 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. ”*

(Emphasis supplied)

20. A reading of the above, would show, that personnel whose illness is of permanent nature and who are not in SHAPE-I though will be considered for promotion by the DPC, but will be declared ‘Unfit’ for promotion even if they are otherwise ‘Fit’ for promotion. It is only in cases of the personnel whose illness is of ‘temporary in nature’, that the DPC after considering their cases for promotion alongwith others, if they are otherwise found ‘Fit’, will grade them as ‘fit for promotion’ subject to them attaining SHAPE-I Medical Category, and as and when they regain the SHAPE-I Medical Category, they will be promoted as per the recommendations of the DPC and will be entitled to retain their seniority.

21. In the present case, as the petitioner was not in a Temporary Low Medical Category but was in a Permanent Low Medical Category as on 2011 when the batchmates were promoted to the rank of Assistant Sub-Inspector (GD), he cannot be granted the benefit of Clause 4.13 of the Circular dated 29.10.2008.

22. The subsequent promotion to the post of Sub-Inspector (GD) granted to the petitioner was by erroneously taking his date of seniority to the rank of Assistant Sub-Inspector (GD) from 07.07.2011. On this mistake being pointed out on a representation received, the respondents have corrected this mistake by issuing the Impugned Order. Therefore, no fault can be found in the same.

23. At the same time, the petitioner has worked in the rank of Sub-



2025:DHC:1318-DB



Inspector (GD) from the date of being granted promotion till the date of his reversion due to the Impugned Order. The petitioner, therefore, cannot be denied the salary which he was entitled to while working as Sub-Inspector (GD). Therefore, any emoluments paid to the petitioner while the petitioner was working at the post of Sub-Inspector (GD), will not be recovered from the petitioner.

24. With the above directions, the petition is disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 27, 2025/sg/IK

[Click here to check corrigendum, if any](#)