

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

% **Date of order: 15th July 2022**

+ W.P.(C) 2843/2010

S.B. RAM Petitioner

Through: Mr. Rakesh Kumar and Mr.
Gaurav Kr Singh, Advocates

versus

UNION OF INDIA & ANR Respondent

Through: Mr. Rajat Arora and Mr. Niraj
Kumar, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking issuance of a writ of Mandamus directing the respondent to implement the recommendations dated 23rd October 2008 of the National Commission for Schedule Castes and to grant the petitioner all benefits of arrears of dues of Efficiency Bar and promotions from due dates.

2. The brief background of the case leading up to the filing of instant petition is as follows:-

i. The petitioner joined Central Warehousing Corporation (hereinafter "Corporation") as Junior Superintendent on 13th August 1971 and was promoted to the post of Superintendent w.e.f. 8th July 1985 and thereafter, as Storage and Inspection Officer w.e.f. 8th June 2001.

ii. It is the case of the petitioner that he was denied his Efficiency Bar since 1st July 1977, which he was entitled to cross as per the provisions of Fundamental Rules 25 read with the Government of India, Department of Personnel and Administrative Reforms Order No. 29014/2/75 – Estt. (A) dated 15th November 1975 and Order No. 40/1/73 – Estt. (A) dated 31st December 1973.

iii. The petitioner made representations to the Corporation regarding his denial of the Efficiency Bar and received the Memo dated 2nd April 1980, after three years, informing the petitioner that his Efficiency Bar was been kept in abeyance because of pendency of disciplinary proceedings against him. The said disciplinary proceedings against the petitioner were dropped vide Memorandum dated 22nd July 1981 with a remark that the petitioner has to be careful in future. The petitioner made a representation to expunge the aforesaid remark from the memorandum dated 22nd July 1981, but the same was turned down by the respondent.

iv. The petitioner filed a complaint before the National Commission for Scheduled Castes (hereinafter “the Commission”) for redressal of his grievance, that is, to allow him to cross Efficiency Bar from 1st July 1977, to grant him three annual increments due on 1st July 1977, 1st July 1978 and 1st July 1979 in the scale of Junior Superintendent being 425-800, and to grant his promotions from due dates with monetary benefits thereof.

v. It is the case of the petitioner that vide order dated 23rd October 2008, the Commission has recommended that the petitioner is entitled to crossing of Efficiency Bar in the scale of Rs.425-800 from 1st July 1977

as well the benefit of his annual increments from 1st July 1977, 1st July 1978 and 1st July 1979 and all the promotions from due dates with monetary benefits. It was further directed that the management should grant benefit to the petitioner after giving an opportunity of hearing. However, the respondent and its Committees did not implement the recommendations.

vi. The petitioner is before this Court, by way of the instant petition, praying that the Commission may be directed to implement the said recommendations dated 23rd October 2008, amongst other reliefs as sought.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was denied his Efficiency Bar for the reason of personal vendetta of officers who had vested interest and did not want their illegal ways to be exposed which the petitioner had helped unearth. It is submitted that the Memo dated 24th April 1980 was issued after almost three years since the petitioner's Efficiency Bar was denied and even the disciplinary proceedings against the petitioner were dropped. However, while dropping the disciplinary proceedings undue remarks were given which said that the petitioner has to be careful in the future. It is submitted that the petitioner made a subsequent representation for expunging the remark and the same was rejected by the respondent evasively stating that the remark was not a penalty.

4. Learned counsel appearing on behalf of the petitioner submitted that vide order dated 23rd October 2008, the Commission recommended

that the petitioner was entitled to benefits he was seeking including crossing of Efficiency Bar, annual increments and promotions with monetary benefits. After the order of recommendation dated 23rd October 2008, a meeting was held by the management on 27th February 2009 and the Executive Committee had reached to the conclusion that there was no infirmity in the decision of not allowing the petitioner to cross the Efficiency Bar during the year 1977, 1978 and 1979 and in not promoting him during the period from 1977 to 1984. In pursuance of the meeting held by the Committee, order dated 6th March 2009 was issued by the Director of Central Warehousing Corporation.

5. It is submitted that after getting the order from the respondent, the petitioner again approached the Commission with its representation dated 5th October 2009 for implementation of the direction/recommendation given by it and in response to the said representation, the Commission issued letter dated 25th February 2010, recommending the concerned department to implement its findings given in the order dated 23rd October 2008. However, despite the said letter no action was taken.

6. It is further submitted that the concerned departments have not passed any order on the recommendations and letters of the Commission and it is still remains pending. Learned counsel for the petitioner submitted that the writ petition is filed before this Court for seeking a direction to implement the recommendation of the SC/ST commission issued vide dated 23rd October 2008 as well as the second order dated 25th February 2010 and the same may be allowed in light of the submissions made.

7. *Per Contra*, learned counsel for the respondent submitted that the instant petition is nothing but a gross misuse of the process of law. It is submitted that the management of the Corporation has already taken a decision on the representation vide order dated 6th March 2009, which is not subject matter of the instant writ petition. The petitioner has not challenged the order passed on the representation made by the petitioner.

8. It is submitted that the order dated 6th March 2009 was passed by the Corporation after considering the recommendations of the Commission as well as other relevant factors. The meeting on 27th February 2009 was held to deal with the entire issue raised by the petitioner. It is submitted that all the aspects of the petitioner's case were dealt with, in detail, and considering the same, it was found that he was not entitled for Efficiency Bar for the year 1977, 1978 and 1979 or for further promotion.

9. It is vehemently argued by learned counsel for the respondent that the findings of the Commission are not mandatory for the management of the Corporation to accept and the same are suggestions or recommendations for the Corporation and its Committee to consider. It is also submitted that there is neither any pleading or prayer nor any contentions in the instant writ petition challenging the order dated 6th March 2009 or arguing that the same was illegal or erroneous. Since there is no pleading on record impugning the said order, this Court may not adjudicate the order passed by the Corporation on merits. Learned counsel appearing on behalf of the respondent vehemently submitted that the instant petition is devoid of any merit and is liable to be dismissed.

10. Heard learned counsel for the parties and perused the record.

11. I have perused the recommendation of the National Commission for Scheduled Castes dated 23rd October 2008, which is on record. The minutes of the meeting dated 27th February 2009 have also been relied upon and reiterated on behalf of the respondent before this Court. In pursuance of the said meeting, the order dated 6th March 2009 was passed. In the meeting, the Executive Committee dealt with the entire issue pertaining to the petitioner's Efficiency Bar and other promotional benefits in detail. After having considered the case of the petitioner thoroughly, the Committee found that he was not entitled to the benefits that he had prayed for. The petitioner has argued that the Committee did not implement the recommendations of the Commission and passed the order dated 6th March 2009 making contrary observations, however, it is found that he has not challenged the said order at any stage, either orally before this Court or in his writ petition. Such a pleading cannot be entertained at this stage, especially, when there is no pleading in the instant petition with regard to this issue.

12. It is an admitted fact that the Commission has only made recommendations with regards to the case of the petitioner to the Corporation for giving the Efficiency Bar for the year 1977-1979 and to promote the petitioner. These recommendations were not mandatory for or binding on the Committee or the Corporation to implement and they had the power to exercise their discretion on the issue of the petitioner.

13. Further, on perusal of the recommendation of the Commission, it is also found that the Commission did not consider the matter and the grievance of the petitioner on merits and did not take into consideration the relevant Rules and Regulations for the purpose of granting Efficiency Bar and promotion to the petitioner. The recommendation of the Commission was not mandatory to accept in *toto* by the Corporation. The Corporation had the power to act and pass a detailed order as per Rules prescribed after taking into consideration the entire material pertaining to the service record of the petitioner.

14. The petitioner has made a limited prayer in the writ petition to issue a writ/order/direction in the nature of Mandamus to direct the respondent/Corporation to implement the recommendation of the Commission. After perusing the entire contentions made in the petition as the arguments advanced by the petitioner, this Court does not find any merit in the arguments made on behalf of the petitioner and contentions made in the writ petition for invoking writ jurisdiction of this Court seeking issuance of the Mandamus for directing the respondent/Corporation for implementing the recommendation.

15. Accordingly, the writ petition is dismissed for being devoid of any merit. Pending application, if any, stands disposed of.

16. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JULY 15, 2022/ Ajs/MS