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Devika S vs Union of India,

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Court : Kerala

Decided On : Nov-30-2022

Judge : Honourable Mrs. Justice Anu Sivaraman

Appeal No. : WP(C)/10377/2020

Appellant : Devika S

Respondent : Union of India,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN WEDNESDAY, THE 30TH DAY OF NOVEMBER 2022 / 9TH AGRAHAYANA, 1944 PETITIONER: DEVIKA S AGED 35 YEARS D/O.MOHANDAS.R., SAKEATH, C.M.C-12, CHERTHALA.P.O., ALAPPUZHA-688524, EMPLOYED AS SR.GCI, KERALA AND LAKSHAWDEEP DIRECTORATE, NCC. BY ADV ANITHA MATHAI MUTHIRENTHY RESPONDENTS:

1 UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF DEFENCE, RAJPATH, E BLOCK, CENTRAL SECRETARIAT, NEW DELHI-110011. 2 DIRECTORATE GENERAL NCC, REPRESENTED BY

THE DIRECTOR GENERAL, WEST BLOCK IV, R.K.PURAM, NEW DELHI-110066. 3 DEPUTY DIRECTOR GENERAL (PLANNING AND COORDINATION), DIRECTORATE GENERAL NCC, WEST BLOCK IV, R.K.PURAM, NEW DELHI-110066. 4 DEPUTY DIRECTOR GENERAL (PERSONAL AND FINANCE), DIRECTORATE GENERAL NCC, WEST BLOCK IV, R.K.PURAM, NEW DELHI-110066. ADV.S.MANU THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

30.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of November, 2022 This writ petition is filed seeking the following prayers: (i) To issue a writ, direction or order quashing Exhibit P7

order issued by the 4th respondent reducing the grade from

three star rank to two star rank as illegal, arbitrary and ultra vires.

(ii) To declare the Exhibit P7 letter is discriminatory in nature so far as it discriminates between those Sr. GCIs who retired prior to the issuance of Exhibit P7 letter and those Sr. GCIs in service.

(iii) To declare that the petitioner is entitled to continue to use three stars badges of rank

2. Heard the learned counsel for the petitioner and the learned DSGI appearing for the respondents.

3. It is submitted by the learned counsel for the petitioner that the

petitioner was initially appointed as Girl Cadet Instructor Grade-III in the year 2010. It is submitted that the immediate promotion post for the post of GCI Grade III was GCI Grade II and later the further promotion post is GCI Grade I. It is submitted that the restructuring of the cadres had been carried out in the NCC by

Ext.P2 order dated 16.01.2004. Soon thereafter, Ext.P3 proceedings were issued by the Director

General, NCC revising the badges for the ranks of GCIs and GCI Grade I were to have 3 stars on their badge as is evident from Ext.P3. It is submitted that by Ext.P4 proceedings dated 26.10.2015, the post of GCI Grade II and GCI Grade I were merged and re-designated as Senior GCI. It is submitted that by Ext.P5 communication with regard to designation of the organization, it was specifically stated that GCI Grade II has been merged and upgraded to GCI Grade I and renamed as Senior GCI as per the 6th CPC vide letter dated 26.11.2016. It is submitted that by Ext.P6 proceedings dated 06.03.2020, the petitioner was promoted as Senior GCI and at her pipping as Senior GCI, she was invested with a badge containing 3 stars. It is stated that long thereafter, by Ext.P7, which is a clarification on rank structure issued on behalf of the Director General, it was clarified that no Senior GCIs regardless of date of promotion is to wear 3 stars or any other unauthorized rank badges with the uniform. The learned counsel for the petitioner submits that the petitioner had been promoted as Senior GCI as early as on 06.03.2020 and that she had been wearing 3 stars along with her badge since then. It is submitted that the clarification issued long thereafter,

without any authority, has now resulted in the petitioner being deprived of the stars that she was actually wearing along with her badge from her date of promotion onwards. The petitioner submits that the clarification issued does not have the force of law since Exts.P3 and P5 proceedings ought to show that the petitioner is entitled to wear the badge which was assigned to GCI Grade I and that the recalling of the badge is therefore bad in law.

4. A statement has been placed on record by the respondents

wherein it is contended that any mentioning in Ext.P5 that the post of GCI Grade II has been upgraded as GCI Grade I is an erroneous statement, since what is referred to in Ext.P5 itself is Ext.P4 order of merger of posts dated 26.10.2015. It is contended that a reading of Ext.P4 would itself show that the post had been merged and re- designated and that there is no upgradation of the post as contended by the petitioner. It is submitted that the Director General is perfectly

competent to issue instructions with regard to the wearing of the badges and that Ext.P7, therefore, cannot be said to be without power or jurisdiction.

5. Having considered the contentions advanced, I notice that the petitioner was one among several persons who had been promoted by

order dated 06.03.2020. It is not in dispute before me that after the

promotion, the petitioner has been wearing 3 stars as allotted by Ext.P3 proceedings. I am of the opinion that the specific contention of the petitioner that the stars which she was wearing on the basis of Ext.P3 and also Ext.P5 cannot be recalled by a clarificatory exercise in the nature of Ext.P7 requires a consideration.

6. In the above view of the matter, in case the petitioner approaches

the Director General with a representation pointing out her grievances as against Ext.P7, the same shall be considered with notice to the petitioner as well. If such a representation is filed within a period of three weeks from the date of receipt of a copy of this judgment, the same shall be addressed and the contention of the petitioner shall be specifically considered and a speaking order passed within a period of two months thereafter. Till such time as orders are passed and duly communicated to the petitioner, the interim order granted by this Court will continue.

This writ petition is ordered accordingly. Sd/- ANU SIVARAMAN JUDGE NP APPENDIX OF WP(C) 10377/2020 PETITIONERS ANNEXURES EXHIBIT P1 A TRUE COPY OF THE LETTER DATED 10.3.2010 ISSUED BY THE 2ND RESPONDENT. EXHIBIT P2 A TRUE COPY OF THE LETTER DATED 16.1.2014 ISSUED BY THE FIRST RESPONDENT. EXHIBIT P3 A TRUE COPY OF THE LETTER DATED 12.4.2004 ISSUED BY THE 3RD RESPONDENT. EXHIBIT P4 A TRUE COPY OF THE LETTER DATED 26.10.2015 ISSUED BY THE FIRST RESPONDENT. EXHIBIT P5 A TRUE COPY OF THE LETTER DATED 27.7.2018 ISSUED BY THE FIRST RESPONDENT. EXHIBIT P6 A TRUE COPY OF THE ORDER OF PROMOTION DATED 6.3.2020. EXHIBIT P7 A TRUE COPY OF THE LETTER DATED 4.5.2020. RESPONDENTS EXHIBITS: ANNEXURE R4(A) A

TRUE COPY OF THE LETTER NO 12209/DCNCC/PERS(C) DATED 01-09-2020

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