

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

+ **WP(C) No.2384/2010**

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Date of Decision: 12.04.2010

Delhi Development Authority Petitioner
Through Mr.Arun Birbal, Advocate.

Versus

Sh.Dewan Singh & another Respondents
Through Ms.Jyoti Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner, Delhi Development Authority, has impugned the order dated 21st October, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.461 of 2009, titled as 'Sh.Dewan Singh v. Delhi Development Authority and another', allowing the original application of the respondent and setting aside the order dated 4th August, 2008, and directing the petitioner to hold a Review DPC for the year 1998 for the vacancy which became available on 01.02.1998, and to consider the respondent for promotion from that date. The Tribunal has also held that seniority of the respondent,

however, shall be notional and the respondent will not be entitled for back wages.

Brief facts to comprehend the controversies between the parties are that the respondent no.1 belongs to Scheduled Caste Category and he had joined the services of the petitioner/DDA on 13.11.1979. He was promoted as Research Officer on 31.01.1984. The respondent no.1 became eligible for promotion to the post of Research Officer on 23.05.1987 as per the Recruitment Rules in the grade of Research Assistant.

On superannuation, on 28.02.1991 of Sh. Naim Singh, a Scheduled Castes Category Research Officer, the respondent no.1 represented that he should be promoted being senior most eligible candidate in the Scheduled Caste Category. According to respondent no.1, he was communicated by the petitioner by letter dated 10th June, 1991 that he would be considered for the next vacancy which would also be a reserve vacancy. Another Research Officer, Mr.M.S.Gogia, died on 02.02.1992 and the respondent no.1 became entitled for consideration. However, pursuant to representation made by the respondent no.1, he was communicated in 1993 that there is a ban imposed by the Government of India for filling up post of Research Officers.

According to respondent no.1, yet another General Category vacancy had arisen on promotion of Mrs.Aparna Raghuram on 21st October, 1993. Since the respondent no.1 was not promoted, he filed a writ petition being CWP No.49171993. In the said writ petition though the Mrs.Aparna Raghuram was a party, however, the respondent no.1 did not claim any relief as yet another vacancy had become available on 31.01.1998.

The respondent no.1 thereafter claimed promotion against the vacancy which had arisen on 31.01.1998, as he was a suitable candidate on the basis of the Scheduled Castes Category candidate. In the writ petition No.49178/1993 filed by the respondent no.1 earlier, this Court directed the petitioner to consider the case of the respondent no.1 against the vacancy which had arisen on 31.01.1998, and issue appropriate orders, as if the petitioner belongs to Scheduled Castes Category, and if the petitioner is otherwise found fit.

The respondent no.1 thereafter was promoted as Research Officer by order dated 29.11.2001, however, another person, Mr.Y.K.Malhotra, respondent no.2 was also promoted, but he was shown above respondent no.1 in the panel of promoted Officers.

Aggrieved by showing the respondent no.1 junior to Mr.Y.K.Malhotra, respondent no. and the act of the petitioner in

promoting respondent no.1 only in 2001, though the vacancy had arisen in 1998, he filed another writ petition being CWP No.5333/2003, which was transferred to the Tribunal being T.A. No.27 of 2007, which was disposed of by order dated 2.04.2008 directing the petitioner to pass an order pursuant to the direction of the Hon'ble High Court already passed on 22nd September, 1998.

Pursuant thereto, the petitioner has passed an order dated 4th August, 2008 holding that the name of the respondent no.1 did not fall in the normal as well as extended zone of consideration earlier, and therefore, he could not be considered for promotion in 1998, and therefore, Sh.Y.K.Malhotra and Sh.Dewan Singh were promoted on the same date, therefore, they have been promoted from 29.11.2001, and the respondent no.1 has been shown junior to Sh.Y.K.Malhotra, respondent no.2.

The Tribunal, after considering the contentions of the respective parties, has held that the direction given by the High Court in CWP No.4917/1993 was to consider the respondent no.1 for the post of Research Officer, which had fallen vacant on 31.01.1998, and in the order, it was not held that the respondent was not eligible or not within the zone of consideration. The Tribunal also relied on the facts that the respondent was not found fit by the DDA which met in March, 1999,

and consequently, the order of the High Court had become final, which the petitioner was bound to follow.

Learned counsel for the petitioner has emphatically contended that the order passed by the High court only stipulated that the respondent no.1 was to be considered if he was otherwise found fit. According to him, the fitness will also involve the respondent no.1 being within the zone of consideration.

Learned counsel for the petitioner has however, admitted that the plea that the respondent was not in the zone of consideration was available to the petitioner when earlier petition was filed, however, this plea was not taken. If this plea was available to the petitioner, the same ought to have been taken by them, and in case, such the plea was available to them was not taken by them and this Court has passed an order in the writ petition filed by the respondent no.1 for the post of Research Officer which had fallen vacant on 31.11.1998, then petitioner cannot be allowed to contend now, that the respondent no.1 was not within the zone of consideration in 1998, and therefore, could not be considered, and he could be considered for promotion only in 2001. Such a plea of the petitioner shall apparently be barred under the principle of constructive res judicata.

The tribunal has also considered the Cadre Strength at the time of initial Recruitment, and has come to the conclusion as to how 7 vacancies could be filled up for Scheduled Castes category Candidates. In the circumstances, it has been held that the petitioner could without any hurdle accommodate one Scheduled Castes Candidate as since 1991 two Scheduled Castes Candidates had vacated post of Research Officer.

In the circumstances, apparently two Scheduled Castes Candidates' post of Research Officer were vacated, and the respondent no.1 could be considered for promotion from 1998, and the plea of the petitioner that the respondent no.1 was not within the zone of consideration, would be barred by the principle of constructive res judicata,

Therefore, in the facts and circumstances, there is no such illegality or irregularity in the order of the Tribunal directing the petitioner to hold a Review DPC for the year 1998 for the vacancy which became available on 01.02.1998 and to consider the respondent no.1 for promotion from that date. The Tribunal has also granted only notional promotion to the respondent from 01.02.1998 in case the respondent is found fit by the Review DPC and has not granted back wages to the respondent.

In the circumstances, this Court does not find any ground to interfere with the order of the Tribunal, nor the learned counsel for the petitioner has been able to make out any case for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit, and it is, therefore, dismissed.

ANIL KUMAR, J.

APRIL 12, 2010
'VK'

MOOL CHAND GARG, J.