

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

% *Date of Judgment: 06.09.2011*

+ **Cont. Cas.(C) No. 437/2003 and CM No. 11216/2004**

SH. VIRENDER KUMAR Petitioner
Through: Raman Duggal, Advocate.

Versus

SH. P.K. PRADHAN & ORS. Respondents
Through: Mr. Rajinder Dhawan, Advocate
for HUDCO.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. The petitioner is aggrieved by the conduct of the respondent; his contention is that the directions contained in the order of the Division Bench dated 29.05.2002 have not been complied with in true letter and spirit; although, he has admittedly been promoted to the post of Assistant Design Officer Grade I as also subsequent promotions have also been accorded to him i.e.

from an Assistant Design officer to an Assistant Appraisal officer; thereafter, to Senior Appraisal Officer and lastly, to an Assistant Chief; but the date of his promotion as an Assistant Chief which has been with effect from the year 2009 should actually have been from the year 2002. This is the grievance of the petitioner.

2. Record shows that writ petition i.e. WP(C) No.5171/1993 had been filed by the petitioner; his grievance as is evident from the averments made in the petition, were that the petitioner was appointed as Design Assistant in HUDCO in the pay scale of Rs.425-800/-; the second respondent, namely, Mr. Sunil Talwar (hereinafter referred to as 'the second respondent') had joined the services of the Department on 07.06.1983 in a lower pay scale of Rs. 330-560/-; however on 10.03.1984, the second respondent was designated as a Design Assistant upon the upgradation of his post; contention is that the petitioner and the second respondent were promoted as Assistant Design Officer Grade II on 30.06.1989 in the pay scale of Rs. 900-1650/-; petitioner was senior to the second respondent; however, vide order dated 03.12.1992, the second respondent was promoted to the post of Assistant Appraisal Officer in terms of the decision of the Board of Directors whereas the petitioner was promoted as an Assistant Appraisal

Officer only on 27.05.1994; the respondent No. 2 was thereafter promoted as an Appraisal Officer in the pay scale of Rs. 4800-8275/- whereas the petitioner was promoted as an Assistant Appraisal Officer only on 09.07.1988; present writ petition was accordingly filed; there are four prayers in the writ petition; prayer C is that a writ of mandamus be issued to the respondent that the petitioner should be declared promoted in the grade of Rs. 700-1300 (pre-revised) to any post; to direct the first respondent to grant him the said promotion; further, another writ of mandamus be issued commanding the first respondent not to effect further promotion and confirmation in the grade of Rs. 700-1300 (pre-revised) without considering the promotion of the petitioner. Thus, as is evident from the writ petition, the grievance of the petitioner qua his future promotion was for the grade of Rs. 700-1300 (pre-revised); contention being that no future promotions should be effected in this grade without considering the case of the petitioner in the first instance.

3. This writ petition was disposed of on 29.05.2002. The order dated 03.12.1992 of the Department impugned by the petitioner had been allowed; the first respondent was directed to consider the case of the petitioner and the respondent No. 2 afresh for

fixing their promotion in the light of this judgment. The relevant extract of the said order reads as under:

“We therefore, are of the opinion that in the facts and circumstances of the case, the impugned order dated 03.12.1992 cannot be sustained. It is set aside accordingly. This writ petition is allowed. The first respondent is directed to consider the case of the petitioner and respondent No. 2 for fixing their cases for promotion afresh in the light of this judgment.”

4. The contention of the petitioner before this court is that although he has admittedly been promoted along with the second respondent from the post of Assistant Appraisal Officer Grade I to Appraisal Officer, thereafter to Senior Appraisal Officer yet his promotion as Assistant Chief had to be with effect from the year 2002 and not from the year 2009.

5. These contentions raised by the petitioner have been disputed. Attention has been drawn to the Minutes of a Special Departmental Promotion Committee held on 13.07.2007 and 19.07.2007 (page No. 191 of paper book). The petitioner/Virender Kumar and the second respondent/Sunil Talwar had been promoted as Assistant Design Officer Grade I with effect from 01.07.1990; as Appraisal Officer with effect from 01.07.1994 and

lastly as Senior Appraisal Officer with effect from 01.07.1998.

6. The writ petition as noted above was only founded upon the prayer that the promotion in the pre-revised pay scale of Rs. 700-1300/- be not given effect till the promotion of the petitioner is first decided as per his seniority; directions given in the order dated 29.05.2002 were qua this prayer; the first respondent had been directed to consider the case of both the petitioner and the respondent No. 2, namely, Sunil Talwar and to fix their cases for promotion afresh; that has already been considered and granted right up to the post of Senior Appraisal Officer.

7. The prayer in the writ petition was confined only for promotion up to the post of Assistant Design Officer as is evident from the prayer clause in the petition; prayer clause being confined to the pay scale of Rs. 700-1300/- which was the grade of the Assistant Design Officer. Up to this count i.e. promotion to the post of Assistant Design Officer Grade I, petitioner has no grievance; in fact, he has no grievance even in his subsequent promotions i.e. as Appraisal Officer and Senior Appraisal Officer; his grievance is that his promotion as Assistant Chief which has been granted to him in 2009 has to be counted with effect from the year 2002. This was not the subject matter of

the writ petition in which the directions dated 29.05.2002 was passed and which is the subject matter of the present contempt petition. It is clear that even as per the petitioner's own showing, no case for contempt is made out.

8. The submission of the learned counsel for the petitioner that the order dated 03.02.1994 which was passed as an interim measure in the present writ petition clearly shows that all subsequent promotions, appointment and regularization shall be done subject to the decision of the writ petition which order has not been complied with; is an argument without any force. The order dated 03.02.1994 reads herein as under:-

"Present: Mr. Navenn R. Nath for the petitioner.

CM No. 923/1994

We clarify our interim order and it would be to the following effect:

"Any promotion, appointment or regularization made/done shall be subject to decision of this writ petition."

CM stands disposed of. Dasti."

9. This order was by way of an interim measure passed in the present writ petition i.e. W.P.(C) No. 5171/1993; after the passing of the final order on 29.05.2002 (on which date this petition was disposed of) the interim order had obviously merged with the final

order. Directions contained were passed in this final order dated 29.05.2002. As noted supra, there has been no disobedience of this order.

10. In (1996) 10 SCC 102 titled as V. Kanakarajan Vs. General Manager, South Eastern Railway and others, the Apex Court had noted the directions have been given by the Division Bench qua the question of the appellant's promotion; the Authorities having refused to promote him on the ground of unsuitability, it was held by the Apex Court that the High Court had rightly refused to entertain an application for contempt; such an appellant had been advised to challenge by separate proceedings the consequential orders passed by the Authority; contempt petition was held not maintainable .

11. In the present case as well the petitioner is aggrieved by the act of the respondent in not giving him promotion to the post of Assistant Chief with effect from 2002, he has a separate independent remedy for this.

12. Contempt petition is not maintainable; it is dismissed.

INDERMEET KAUR, J.

SEPTEMBER 06, 2011
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