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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: July 22, 2013

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WP(C) 1514/2012

SHIBDAS MONDAL

..... Petitioner

Represented by: Ms.Rekha Palli, Advocate with
Ms.Punam Singh, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr.Saqib, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

1. The facts of the instant case would reveal that the officers of the Director General of Meteorology fund contrived to cheat the petitioner of his entitlement and the apparent reason we can fathom is that the petitioner comes from a humble background and is a member of a notified Scheduled Caste. It is not in dispute that the Indian Meteorology Department (Group-C & D Posts), Recruitment Rules, which were framed in the year 1987, did not envisage that a Senior Observer has to clear the Basic Meteorology Course as a condition for being promoted till the Rule was amended in the year 1995.

2. However, an executive instruction was issued to the effect that only those Senior Observers would be promoted as Scientific Assistant who had cleared the Basic Meteorology Course.

3. The petitioner who had joined as a Senior Observer as a direct recruit became eligible for promotion as a Scientific Assistant after he rendered 5 years service which was in the year 1990. He did not raise the issue of his non-promotion till the year 1995 when he found a person junior to him being promoted in said year. It is obvious that no vacancy existed. Since his claim was not allowed he filed an Original Application before the Tribunal raising a grievance of a junior being promoted. The Original Application was successfully opposed by the department by relying upon the executive instruction pertaining to clearing the Basic Meteorology Course. Writ petitioner unsuccessfully challenged the decision of the Tribunal which was against him. But succeeded in the review application when he brought out that many persons who had not cleared the Basic Meteorology Course, but were of high caste, had been promoted as per their seniority ignoring the executive instruction which the department had successfully used against him.

4. The review application filed by the petitioner succeeded with costs imposed upon the department. The Division Bench noted that before the review application could be decided the department had already promoted the petitioner by holding a review DPC as of the year 1995 but had given only notional benefit of the promotion to the petitioner. The Division Bench left the issue open, to be adjudicated at a substantive proceeding, whether the petitioner would be entitled to wages for the post which was unjustifiedly denied to him.

5. Petitioner filed OA No.4069/2010 praying for back wages, a claim which has been denied by the Tribunal as per the impugned decision dated December 16, 2011.

6. On April 12, 2013, we had decided a batch of writ petitions, lead matter being WP(C) No.8102/2012 UOI & Anr.vs.K.L.Taneja & WP(C)1514/2012

Anr. on the subject as to when can a person be granted promotion from a retrospective date. We had noted various decisions of the Supreme Court on the point as under:-

- (i) 1987 (4) SCC 566 K.Madhavan & Anr. vs. UOI & Ors.
- (ii) 1989 Supp (2) SCC 625 Union of India & Ors. vs. K.K.Vadera & Ors.
- (iii) 1995 (4) SCC 246 Vinod Kumar Sangal vs. UOI & Ors.
- (iv) 1998 (7) SCC 44 Baij Nath Sharma vs. Hon'ble Rajasthan High Court At Jodhpur & Anr.
- (v) AIR 2004 SC 255 P.N Premachandran vs. The State of Kerala & Ors.
- (vi) AIR 2004 SC 3460 Sanjay K.Sinha & Ors. vs. State of Bihar & Ors.
- (vii) 2006 (13) SCALE 246 State of Uttaranchal & Ors. Vs. Dinesh Kr. Sharma.
- (viii) 2007 (1) SCC 683 State of Uttaranchal & Anr. vs. Dinesh kumar Sharma.
- (ix) 2008 (14) SCC 29 Nirmal Chandra Sinha vs. UOI & Ors.
- (x) 2010 (4) SCC 290 UOI & Anr. vs. Hemraj Singh Chauhan & Ors.

7. We had held that the cornucopia of case law above noted brings out the position :-

- (i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.
- (ii) If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.
- (iii) Since mala fides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act i.e. deliberately

delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.

(iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.

8. Our reasoning in the decision dated April 12, 2013 be read as a part of the present decision.

9. Instant case shows gross malice against the petitioner. The officers of the respondent were selectively using the executive instruction against some and not against the others. Learned counsel for the respondent has not been able to give any explanation as to why the office memorandum containing the executive instruction pertaining to clearing the Basic Meteorology Course as a condition for promotion was not used against the non-Scheduled Castes members who were given promotion as per seniority but the executive instruction was used against the petitioner, a member of a Scheduled Castes.

10. Finding malice against the petitioner we allow the writ petition and direct that the instead of promotion on notional basis with effect from June 20, 1995 the petitioner be granted promotion from said date with all consequential benefits including arrears.

11. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

July 22, 2013
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