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

Date of decision : May 20, 2013

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W.P.(C) 3294/2013

BHOOP SINGH KAUSHIK Petitioner

Represented by: Mr.Awadesh Kumar, Advocate

versus

UNION OF INDIA Respondent

Represented by: Mr.Sachin Datta, CGSC with
Mr.Dinesh Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

CM No.6252/2013

Allowed subject to just exceptions.

W.P.(C) No.3294/2013

1. The 6th Central Pay Commission recommended that certain posts of Senior Principal Private Secretaries be upgraded to that of a Principal Staff Officer. The recommendations of the 6th Central Pay Commission were processed and accepted by the Central Government in August, 2008 requiring a certain percentage of the posts of Senior Principal Private Secretaries be upgraded to that of a Principal Staff Officer.

2. After collecting relevant information pertaining to the number of Senior Principal Private Secretaries functioning, on March 20, 2009, decision was taken to upgrade 39 posts to that of Principal Staff Officer.

3. The matter had to be processed further with reference to whether Recruitment Rules required to be amended or not. If not, what

would be the process to upgrade 39 Senior Principal Private Secretaries as Principal Staff Officers.

4. In the interregnum, petitioner superannuated on March 31, 2009. By the time the select panel was prepared promoting 39 Senior Principal Private Secretaries as Principal Staff Officers, name of the petitioner could not be considered inasmuch as on March 31, 2009 he had superannuated.

5. As recent as on April 12, 2013, a Division Bench of this Court of which one of us, Pradeep Nandrajog, J. was a member of, had decided a batch of writ petitions, lead matter being WP(C)No.8102/2012 UOI & Anr. vs. K.L.Taneja & Anr. on the subject as to when can a person be granted promotion from a retrospective date. The Bench 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.”

6. The Bench 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.”

7. The reasoning of the Bench in the decision dated April 12, 2013 be read as a part of the present decision.

8. View taken by the Tribunal is that under the circumstances the petitioner could not be granted benefit of retrospective promotion to the post of Principal Staff Officers. We note that the actual promotion order is

dated October 28, 2009.

9. Concurring with the view taken by the Tribunal we dismiss the writ petition in limine.

10. No costs.

PRADEEP NANDRAJOG, J.

V. KAMESWAR RAO, J.

MAY 20, 2013

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