

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

Judgment Reserved on May 22, 2013

Judgment Delivered on May 24, 2013

+ **W.P.(C) 2969/2012**

RANVIR SINGH Petitioner
Represented by: Mr.K.P.Gupta, Advocate

Versus

GOVT. OF NCT OF DELHI & ORS. ...Respondents
Represented by: Mr.Aditya Madan, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the order dated January 24, 2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Original Application No.1098/2011 whereby the Tribunal dismissed the Original Application filed by the petitioner and one Daulat Ram Sharma.

2. The petitioner retired from service under the respondent on May 31, 2010 as Vice Principal, on attaining the age of superannuation. The next promotion post is that of Principal. On November 10, 2008 an eligibility list for grant of promotion to the post of Principals for the vacancy year 2008-2009 was circulated.

The said list shows the name of the petitioner at serial No.22. A promotion order was issued on June 29, 2010 whereby 128 Vice Principals were promoted to the post of Principals. This order did not reflect the name of the petitioner. He accordingly made a representation on October 21, 2010 requesting the respondent No.3 to grant him promotion on notional basis. The respondents vide communication dated November 29, 2010 rejected the request of the petitioner for promotion to the post of Principal and relied on the provisions at para 17.11 of the DOP&T OM dated April 10, 1989. The communication requires that if no junior to the petitioner was promoted before the date of the issue of promotion order dated June 29, 2010, the petitioner is not entitled to actual promotion or promotion on notional basis.

3. The aforesaid communication dated November 29, 2010 was assailed by the petitioner before the Tribunal. The Tribunal rejected the claim of the petitioner in terms of para 7 of the impugned order which is reproduced as under:-

“7. Tested on the touch stone of the above trite law, we find that law laid in Rajendra Roy’s case (supra) is squarely applicable to the instant OA. The Respondent before the Honourable Delhi High Court had retired from service and none of his juniors had been promoted before his retirement. In the instant OA, the facts are similar to the Rajendra Roy’s case (supra). The admitted facts clearly indicate that both the applicants in the OA retired before 29.6.2010 i.e. the date of the promotion order. The 1st applicant retired on 31.5.2010 and the 2nd applicant retired on 31.5.2008. None of their juniors in the Panel was granted promotion retrospectively, and the juniors were appointed from the list only prospectively.

Hence, the claim of the applicants that their juniors were promoted and as such they should be promoted does not stand to logic. It is noticed that there has been delay in preparing the promotion panel but the respondents have given the convincing reasons for the time taken to draw the said panel.”

4. The only question which calls for our consideration is whether the petitioner is entitled to be promoted on notional basis to the post of Principal. The admitted position is that the petitioner stood retired on May 31, 2010 i.e. before the date of promotion order, June 29, 2010. The issue is no more *res integra* inasmuch as a Division Bench of this Court of which one of us, Pradeep Nandrajog, J. was a member had decided a batch of writ petitions, lead matter being WP(C) No.8102/2012 Union of India & Anr. v. K.L.Taneja on the subject as to when can a person be granted promotion from a retrospective date. The Bench 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.”*

5. 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.”

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

7. The learned counsel for the petitioner would rely upon a judgment of this Court in WP(C) 5549/2007, Dr. Sahadeva Singh v. Union of India & Ors. The said case can be differentiated on facts inasmuch as in that case the petitioner was still working whereas in this case he stood retired. Further, in the case in hand the promotion order was issued after the petitioner had retired. Further, the Tribunal in the impugned order relied upon a judgment of this Court in the case in WP(C) 20812/2005 Union of India v. Rajender Roy wherein this Court rejected a similar plea on the ground that none of the juniors to the respondent was promoted before his retirement. In this case also the Tribunal, in the impugned order, rejected the claim of the petitioner on this very ground. In other words, since no junior to the petitioner was promoted before his retirement, he could not have claimed any right for being promoted to the post of Principal. Further, if the claim of the petitioner is allowed then the promotion order with respect to around 128 Vice Principals promoted to the post of Principals vide order dated June 29, 2010, need to be revised which is impermissible.

8. We find no infirmity in the order of the Tribunal. The writ petition is dismissed.

9. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MAY 24, 2013
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