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

% *Date of Decision: March 06, 2013*

+ **W.P.(C) 5203/2012**

UMESH BARTHWAL Petitioner

Represented by: Mr.J.P.Sengh, Sr.Advocate with
Mr.Sourabh Ahuja and Ms.Ankita
Gupta, Advocates

versus

GNCT OF DELHI AND ORS Respondents

Represented by: Mr.Anuj Tyagi, Advocate with
Mr.Sachin Chopra and
Mr.Anjum Javed, Advocates

W.P.(C) 5206/2012

RAKESH KOTHIYAL Petitioner

Represented by: Mr.J.P.Sengh, Sr.Advocate with
Mr.Sourabh Ahuja and Ms.Ankita
Gupta, Advocates

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

Represented by: Mr.Anuj Tyagi, Advocate with
Mr.Sachin Chopra, Advocate

W.P.(C) 5207/2012

SANJEEV SHOKEEN Petitioner

Represented by: Mr.J.P.Sengh, Sr.Advocate with
Mr.Sourabh Ahuja and Ms.Ankita
Gupta, Advocates

versus

GNCT OF DELHI AND ORS Respondents

Represented by: Mr.Anuj Tyagi, Advocate with
Mr.Sachin Chopra, Advocate

W.P.(C) 5208/2012

MANOJ KUMAR Petitioner

Represented by: Mr.J.P.Sengh, Sr.Advocate with
Mr.Sourabh Ahuja and Ms.Ankita
Gupta, Advocates

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

Represented by: Mr.Anjum Javed, Advocate

W.P.(C) 5210/2012

MANOJ KUMAR Petitioner

Represented by: Mr.J.P.Sengh, Sr.Advocate with
Mr.Sourabh Ahuja and Ms.Ankita
Gupta, Advocates

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

Represented by: Mr.Anjum Javed, Advocate

W.P.(C) 5211/2012

RAJ KUMAR Petitioner

Represented by: Mr.J.P.Sengh, Sr.Advocate with
Mr.Sourabh Ahuja and Ms.Ankita
Gupta, Advocates

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

Represented by: Mr.Anjum Javed, Advocate

W.P.(C) 5212/2012

KULDEEP SINGH Petitioner

Represented by: Mr.J.P.Sengh, Sr.Advocate with
Mr.Sourabh Ahuja and Ms.Ankita
Gupta, Advocates

versus

GOVT. OF NCT OF DELHI AND ORS Respondents

Represented by: Mr.Anuj Tyagi, Advocate with `
Mr.Sachin Chopra, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. This is a second round of litigation being fought. The first round was fought when all the writ petitioners had individually litigated after filing original applications before the Central Administrative Tribunal. They were claiming entitlement to be granted out of turn promotion which was permitted as per Rule 19 of the Delhi Police (Promotion and Confirmation) Rules 1980. The Rule in question required 5% vacancies to be reserved for outstanding sportsmen, marksmen and such officers of Delhi Police who displayed exceptional gallantry or devotion to duty. The Rule envisages the Commissioner of Police to determine the eligible officers and grant them out of turn promotion but with the approval of the Lt.Governor of Delhi.

2. On September 21, 1999 the Commissioner of Police had issued an order constituting a committee to examine cases for out of turn promotion.

3. Taking note of citations, gallantry awards etc. received by the petitioners, the Committee proposed grant of out of turn promotion to the petitioners which was approved by the Commissioner of Police. A few

other officers were likewise recommended to be granted out of turn promotion which recommendation was approved by the Commissioner of Police. Promotions were effected but not qua the petitioners and one HC Yashpal and HC Surender. Representations made by the petitioners were ignored. They filed original applications before the Tribunal in the year 2009 which were disposed of by the Tribunal with a direction that a reasoned decision would be taken on the representations made. The Committee constituted by the Commissioner of Police re-considered the matter and opined that the petitioners were not entitled to any out of turn promotion, a view which was challenged by the petitioners once again by filing original applications. The debate before the Tribunal was on two points. Firstly whether the reconsidered opinion to deny out of turn promotion could be sustained, and secondly whether the stand taken by Delhi Police that out of turn promotions could be granted only with respect to 5% vacancies in the year when the act of gallantry/bravery or achieving distinction in sports or a marksman was achieved was correct. And for the latter controversy we may simply note that a justification given in the alternative was that there were no vacancies which had accrued in the year in question and thus the question of reserving 5% thereof for out of turn promotion did not arise.

4. The Tribunal held in favour of the petitioners. The respondents came up to this Court filing 7 writ petitions numbered as W.P.(C) No.5444/2010, W.P.(C) No.5446/2010, W.P.(C) No.5458/2010, W.P.(C) No.5465/2010, W.P.(C) No.5482/2010, W.P.(C) No.5528/2010 and W.P.(C) No.5549/2010.

5. On the subject of the incentive committee, while re-considering the matter, opining that the citations and gallantry awards received by the

respondents did not entitle them to having performed acts of bravery, deciding all 7 writ petitions vide judgment dated December 10, 2010 the Division Bench of this Court opined the view to be ex-facie perverse. The language of the citations were noted by the Division Bench which clearly evidences the acts of bravery and exceptional devotion to duty performed by the respondents. The Division Bench highlighted that the first opinion of the Committee had extensively dealt with the roles performed by the respondents while discharging their duties evidencing act of gallantry. On the subject of Rule 19 of the Delhi Police (Promotion and Confirmation) Rules 1980 wherein 5% vacancies were required to be filled up by out of turn promotions, the Division Bench noted the following words in the Rule: *‘such promotions shall not exceed 5% of the vacancies likely to fall vacant in the given year in the rank.’* In paragraphs 33 and 34 of its opinion, the Division Bench opined as under:-

“33. The expression ‘given year’ is found in the sentence *‘Such promotions shall not exceed 5% of the vacancies likely to fall vacant in the given year in the rank’*. It is apparent that the sentence contemplates promotions to be given in a rank and further imposes a limit by prescribing that promotions shall not exceed 5% of the vacancies. The only area of debate is to the year for which the limit of 5% vacancies capable of being filled up under Rule 19(ii) i.e. which is the year contemplated by the Rule. The expression, likely to fall vacant, guides us that it is the future which is to be the guiding factor for the reason when one talks of an event *‘likely’* to happen it has to be in the future and cannot be in the present or the past. Thus, at least one thing is clear that the year for which 5% vacancies have to be identified has to be the year after when the act of bravery or gallantry was performed. It could be the year next; or is it any other year other than the year next. It has to be factored that the process of identifying the eligible persons is a time consuming process inasmuch as an Incentive Committee has to screen

large number of cases and make recommendations which have to be perused by the Commissioner of Police and sent for approval to the administrator, who in turn has to apply his mind and then a final decision taken. It is settled law that while interpreting a statute, if the language permits, the practicality of the situation to which the Rule has to be applied has to be kept in mind. It is settled law that a statute has to be interpreted to further the object. The object of Rule 19(ii) is to reward gallantry and bravery and indeed it acts as an incentive to a police officer, in discharge of his duties, that if he puts in more than what is normally required in the discharge of his duties and even at the cost of personal safety, he would be rewarded. Thus, the Rule has to be interpreted, as long as the language permits, to preserve and implement the beneficial right which accrues to a police officer and not in a manner where the right is recognized but is left unenforced due to technicalities. Keeping in view the pre-noted principles the expression '*Such promotions shall not exceed 5% of the vacancies likely to fall vacant in the given year in the rank*' is capable of being read as limiting 5% quota to the vacancies which fall vacant in any given year i.e. the right, on being crystallized, for its implementation has to await existence of 5% vacancies allocable for the quota in each year, meaning thereby the department has to satisfy the claim as and when it can be accommodated within the 5% vacancies accruing in the given year i.e. the year in which the promotion is made. We find that the department has itself been interpreting and implementing the Rule as is expounded by us. The same is evidenced with respect to a response to a query sought from the petitioner under Right to Information Act by the respondent. Information sought was to inform the date when the Incentive Committee gave the recommendation, the date on which the Commissioner granted approval and the date of promotion. The response submitted in a tabular form reads as under:-

“DETAIL OF POLICE OFFICIALS WHO WERE GRANTED OUT OF TURN PROMOTION DURING THE YEAR – 2006”

SL. No.	Rank	Name & No.	Date of ICM	Date of approval by CP	Date of Promotion
1.	SI (Exe.)	Akhileshwar, D/884	27/01/2004	29/01/2004	02.01.2006
2.	SI (Exe.)	Arvind Kr., D/2750	12, 15 & 16/04/2002	27/04/2002	02.01.2006
3.	SI (Exe.)	Arvind Kr., D/842	13/10/2004	21/10/2004	02.01.2006
4.	SI (Exe.)	Ranbir Singh, D/3443	15/09/2004	16/09/2004	02.01.2006
5.	SI (Exe.)	Sanjay Dutt, D/2736	13/02/2001	13/02/2001	02.01.2006
6.	SI (Exe.)	Jitender Singh, D/3782	25/10/2005	25/10/2005	30.03.2006
7.	SI (Exe.)	Rajpal Dabas, D/882	14/12/2005	14/12/2005	19.06.2006
8.	SI (Exe.)	Ved Prakash, D/3451	14/12/2005	14/12/2005	19.06.2006
9.	SI (Exe.)	Raj Kr, D/3467	14/12/2005	14/12/2005	20.10.2006
10.	ASI (Exe.)	Devender, 616/88	29/06/2005	29/06/2005	30.03.2006
11.	ASI (Exe.)	Harish Chander, 372/D	24/06/2005	24/06/2005	30.03.2006
12.	ASI (Exe.)	Rajiv Kakker, 616/88	25/10/2005	25/10/2005	30.03.2006
13.	ASI (Exe.)	Rishi Pal, 647/88, 1188/D	29/06/2005	29/06/2005	30.03.2006
14.	ASI (Exe.)	Kamal Singh, 1582/D		31.07.2006	31.07.2006
15.	ASI (Exe.)	Devender Singh, 548/88	02/08/2006	03/08/2006	31.08.2006
16.	ASI (Exe.)	Krishan Lal, 1223/D	02/08/2006	03/08/2006	31.08.2006
17.	ASI (Exe.)	Parmod Kr., 663/88	02/08/2006	03/08/2006	31.08.2006
18.	ASI (Exe.)	Rajinder Singh, 625/88	02/08/2006	03/08/2006	31.08.2006
19.	ASI (Exe.)	Ranvir Singh, 662/88	02/08/2006	03/08/2006	31.08.2006
20.	HC (Exe.)	Ashok Kr., 1207/8D	07/06/2005	07/06/2005	30.03.2006
21.	HC (Exe.)	Chiranjil Lal, 36/DRP	04/06/2005	04/06/2005	30.03.2006
22.	HC (Exe.)	Devender Kr., 235/NE, 247/SB	22/12/2004	22/12/2004	30.03.2006
23.	HC (Exe.)	Devender Singh, 91/Cr.		10/02/2005	30.03.2006
24.	HC (Exe.)	Hira Lal, 139/SB	15/03/2005	15/03/2005	30.03.2006
25.	HC (Exe.)	Kewal		17/06/2005	30.03.2006

		Krishan, 49/Cr.			
26.	HC (Exe.)	Rajinder Singh, 471/SB	13/10/2004	13/10/2004	30.03.2006
27.	Ct. (Exe.)	Gulveer Sigh, 4437/DP	12/04/2006	12/04/2006	28.04.2006
28.	Ct. (Exe.)	Pankaj Sharma, 9782/DAP	12/04/2006	12/04/2006	28.04.2006
29.	Ct. (Exe.)	Bijender Kr., 921/C	12/04/2006	12/04/2006	17.05.2006
30.	Ct. (Exe.)	Khalid Ahmad, 3103/SD	12/04/2006	12/04/2006	17.05.2006
31.	Ct. (Exe.)	Surender Kr., 1397/SD	12/05/2006	12/05/2006	17.05.2006
32.	Ct. (Exe.)	Bachu Singh, 270/DRP	02/08/2006	03/08/2006	31.08.2006
33.	Ct. (Exe.)	Devender Kr., 489/SB	02/08/2006	03/08/2006	31.08.2006
34.	Ct. (Exe.)	Mohd. Iqbal, 7341/DAP	02/08/2006	03/08/2006	31.08.2006
35.	Ct. (Exe.)	N.K. Pavithran, 467/DRP	02/08/2006	03/08/2006	31.08.2006
36.	Ct. (Exe.)	Ombir Singh, 1702/W	02/08/2006	03/08/2006	31.08.2006
37.	Ct. (Exe.)	Vinod Kr., 4614/DAP	02/08/2006	03/08/2006	31.08.2006
38.	Ct. (Exe.)	Babulal Meena, 2340/E		30/11/2006	30.11.2006
39.	Ct. (Exe.)	Suresh Chand, 1829/E		30/11/2006	30.11.2006
40.	Ct. (Exe.)	Anil Kumar, 1277/NW	04/12/2006	05/12/2006	15.12.2006
41.	Ct. (Exe.)	Azad Singh, 322/DRP	04/12/2006	05/12/2006	15.12.2006
42.	Ct. (Exe.)	Bhoop Singh, 2242/SD	04/12/2006	05/12/2006	15.12.2006
43.	Ct. (Exe.)	Jai Pal Singh, 2446/SD	04/12/2006	05/12/2006	15.12.2006
44.	Ct. (Exe.)	Munesh Kr., 976/SD	04/12/2006	05/12/2006	15.12.2006
45.	Ct. (Exe.)	Sunder Lal, 444/SB	04/12/2006	05/12/2006	15.12.2006
46.	Ct. (Exe.)	Sunil Kr., 287/SB	04/12/2006	05/12/2006	15.12.2006
47.	Ct. (Exe.)	Vinay Pal Singh, 19063/NW	04/12/2006	05/12/2006	15.12.2006

**DETAILS OF POLICE OFFICIALS WHO WERE
GRANTED OUT OF TURN PROMOTION DURING THE
YEAR-2007**

SL.	Rank	Name & No.	Date of ICM	Date of	Date of
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No.				approval by CP	Promotion
1.	SI (Exe.)	Kailash Bisht, D/726	19/04/2006	19/04/2006	08.05.2007
2.	SI (Exe.)	Pawan Kr., D/1187	14/12/2005	14/12/2005	08.05.2007
3.	SI (Exe.)	Vivekanand Jha, D/3944	12/04/2006	12/04/2006	08.05.2007
4.	SI (Exe.)	Naresh Kr., D/3773	In pursuance of the judgment of the Hon'ble Delhi High Court in WP (C) No.11732/2005		04.05.2007
5.	ASI (Exe.)	Mohinder Singh, 3026/SW & (4482/D)		09.08.2007	07.11.2007
6.	HC (Exe.)	Rakesh Kr., 341/SB	23/06/2006	23/06/2005	08.05.2007
7.	HC (Exe.)	Ranjit Kr., 385/SB	23/06/2005	23/06/2005	08.05.2007
8.	HC (Exe.)	Manoj Kr., 320/E		10/05/2007	19/05/2007
9.	HC (Exe.)	Rajbir Singh, 385/SB		19/07/2007	19/07/2007
10.	Ct. (Exe.)	Kailash Chand, 2213/SD		13/01/2007	13/01/2007
11.	Ct. (Exe.)	Dushyant, 1269/W		17/01/2007	18.01.2007
12.	Ct. (Exe.)	Mahesh Kr., 1884/C		21/02/2007	22.02.2007
13.	Ct. (Exe.)	Virender Singh, 1723/E		10/05/2007	10.05.2007
14.	Ct. (Exe.)	Balmiki Mishra, 1147/W		28/05/2007	28.05.2007
15.	Ct. (Exe.)	Sanjay Kr., 1825/SW		27/08/2007	29.08.2007
16.	Ct. (Exe.)	Satpal Singh, 306/Cr.	12/04/2007	16/04/2007	24.07.2007
17.	Ct. (Exe.)	Surender Kr., 443/SB	24/04/2007	26/04/2007	24.04.2007"

34. It is apparent that out of turn promotions have been given to as many as 25 police officers in years subsequent to the year when the act of gallantry was performed as also the year in which the Commissioner granted approval to the recommendations of the Incentive Committee. To highlight, SI Arvind Kumar at serial No.2 of the list of persons who

were granted out of turn promotion in the year 2006 was recommended for promotion on 16.4.2002 and the Commissioner gave the necessary approval on 27.4.2002. He was promoted on 2.1.2006.”

6. The decision of the Division Bench has since attained finality and thus the respondents have granted out of turn promotion to the petitioners as per order dated July 11, 2011. The order issued is with prospective date. Petitioners filed applications before the Tribunal praying that directions be issued to the respondent to grant them promotion with retrospective date i.e. from the date when vacancies existed.

7. We have noted hereinabove that apart from the petitioners, HC Yashpal and HC Surender had likewise been denied the benefit of out of turn promotion. Said two persons had not filed any original applications, as were filed by the petitioners when the first round of litigation was fought.

8. But since the petitioners had succeeded in the first round of litigation not only before the Tribunal but even this Court, and HC Yashpal as also HC Surender being similarly situated, the Department considered even their case as well and included their names for out of turn promotion along with those of the petitioners when order was issued on April 11, 2011.

9. Since even said two persons were granted promotion with prospective effect, they filed original applications before the Tribunal praying that they be promoted from the date when vacancies accrued. The Original Applications filed by said two persons were allowed. Notional promotion from a back date i.e. when vacancies accrued stands granted to them by the department which had accepted the decision of the Tribunal in their favour.

10. But the petitioners found failure before the Tribunal which has taken a very pedantic view. The view taken by the Tribunal is that because

the petitioners litigated at the first round but HC Yashpal and HC Surender did not litigate and since the view taken by the Tribunal in the Original Applications filed by the petitioners was affirmed by a Division Bench of this Court, the opinion of the Tribunal had merged with the decision of this Court thereby denuding the Tribunal of any powers to pass any orders with respect to its earlier decision. The Tribunal forgot that it was subsequent events which were being made the foundation of the claim. But even the petitioners are to be blamed because rather than seeking a substantive relief by way of substantive petition they chose to file review applications in the disposed of matters; ignoring that there were no clear cut directions in the orders passed by the Tribunal at the first round of litigation that promotions be granted from a retrospective date. The reason being that said issue had not even been born then.

11. But instant writ petitions can always be treated as a substantive proceeding.

12. The undisputed facts therefore would be that the petitioners were found being entitled to out of turn promotion. The vacancies to which they have to be adjusted would be the ones which accrued immediately in the year or the year thereafter as also the further year thereafter, till a vacancy became available in the 5% quota for the first time. This view has already been taken by a Division Bench of this Court, which has attained finality. Two other similarly placed persons have been granted notional promotion from the date when vacancy for their post accrued in the promotional post.

13. Thus, we dispose of the petitions directing that the petitioners would be entitled to the same benefit of notional promotion as has been granted by the Department to HC Yashpal and HC Surender. The

petitioners would be granted notional promotion with effect from the date when vacancies ensued in the promotional posts. The petitioners would be entitled to seniority in the promotional post by treating them as having been promoted from said date as per the rule applicable to inter-se seniority of promotees and direct recruits. Denying actual wages on the principle of not being entitled to wages for a higher post on account of not discharging the onerous duties of the higher posts, petitioners would be entitled to be notionally placed in the pay scale of the promotional post and receive notional pay increment, with actual pay with the benefit of notional pay increment from the date they assumed charge of the promotional post.

14. Compliance be made within 12 weeks from today.
15. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 06, 2013
mm