

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

Judgment Reserved on October 09, 2013

Judgment Delivered on October 21, 2013

+ **W.P.(C) 5199/2010**

A.K.GOYAL Petitioner

Represented by: Ms.Kittu Bajaj, Advocate

versus

HARISH CHAND GUPTA AND ANR. Respondents

Represented by: Mr.G.D.Gupta, Senior Advocate
with Mr.Anil Mittal and Mr.Anuj
Kr.Ranjan, Advocates for R-1
Ms.Avnish Ahlawat, Adv. for R-2

+ **W.P.(C) 7919/2010**

DELHI TRANSPORT CORPORATION Petitioner

Represented by: Ms.Avnish Ahlawat, Advocate

versus

HARISH CHAND GUPTA AND ANR. Respondents

Represented by: Mr.G.D.Gupta, Senior Advocate
with Mr.Anil Mittal and Mr.Anuj
Kr.Ranjan, Advocates for R-1
Ms.Kittu Bajaj, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. Since the two writ petitions arise out of a common order dated May 12, 2010 in Transfer Application No.728/2009, involving identical facts and issue, with the consent of counsel for the parties are being

disposed of by this common order.

2. The petitioner in writ petition No.5199/2010 was respondent No.2 before the Central Administrative Tribunal in Transfer Application No.728/2009 (hereinafter referred as 'petitioner'). The petitioner in writ petition No.7919/2010 is Delhi Transport Corporation (hereinafter referred as 'DTC') whose order dated May 26, 2004 has been set aside by the Tribunal in the impugned order. The Transfer Application No.728/2009 was filed by the respondent No.1. He is referred as such in this judgment as respondent No.1.

3. The challenge in these two writ petitions is to the order dated May 12, 2010 in Transfer Application No.728/2009, whereby the Tribunal has set aside the promotion of the petitioner to the post of Senior Manager (Traffic), Training with a further direction that the respondent No.1 shall stand senior to the petitioner in the matter of further promotion as Deputy Chief General Manager (Traffic).

4. Some of the facts relevant for this case are that the petitioner and respondent No.1 joined the DTC as Assistant Traffic Superintendent on September 27, 1982 and September 30, 1982 respectively.

5. On March 08, 1985 the petitioner and respondent No.1 were promoted on officiating basis as Traffic Superintendents. On March 07, 1986 the petitioner was reverted to the post of Assistant Traffic Superintendent because of a disciplinary case, whereas the respondent No.1 was confirmed on the post of Traffic Superintendent.

6. On April 30, 1987 the respondent No.1 was communicated adverse remarks in his ACR for the year 1986 against which he represented to the authorities. He was not found fit for promotion to the post of Deputy Traffic Manager [re-designated as Senior Manager

(Traffic)] owing to the adverse ACR.

7. The disciplinary case was decided in favour of the petitioner whereby he was exonerated and by order dated November 18, 1988 the reversion of the petitioner was withdrawn and he was promoted to the post of Traffic Superintendent with effect from March 08, 1985 without interruption and further also been considered to have completed the period of officiation with effect from March 07, 1986. The petitioner was further promoted as Senior Manager (Traffic) with effect from April 05, 1989.

8. On December 12, 1989 the adverse remarks in the ACR of respondent No.1 herein were also expunged. He was also accordingly promoted as Senior Manager (Traffic) on December 04, 1998.

9. The petitioner got next promotion to the post of Deputy Chief General Manager with effect from May 11, 2005, whereas the respondent No.1 got promoted on the same post in the year 2009.

10. It so happened that the respondent No.1 filed a writ petition No.1483/2003 praying for a direction to promote him to the post of Senior Manager (Traffic) with effect from the year 1988 with seniority etc. and to further consider him for further promotion to the post of Deputy Chief General Manager reckoning his seniority with effect from 1988. The relief was granted to respondent No.1 by this Court vide order dated February 04, 2004, wherein a direction was given to convene a Review DPC for considering the case of the respondent No.1 with effect from the year 1988 or the year 1989 as the case may be for the post of Senior Manager (Traffic).

11. Pursuant to the directions of this Court in Writ Petition No.1483/2003 the DTC apart from considering the name of respondent

No.1 for promotion to the post of Senior Manager (Traffic) had considered the case of the petitioner herein for the reason that the petitioner was senior to respondent No.1 in the feeder post. The petitioner as well as respondent No.1 were found fit for being promoted as Senior Manager (Traffic) with effect from 1988.

12. The case of the respondent No.1 before the Tribunal was that because of the promotion of the petitioner as Senior Manager (Traffic) his chances for promotion to the post of Deputy Chief General Manager have been adversely affected. He has also sought quashing of order dated May 26, 2004. The DTC justified the consideration of the petitioner to the post of Senior Manager (Traffic) with effect from 1988.

13. The question which falls for our consideration primarily is whether the DTC could have considered the case of the petitioner also through the Review DPC pursuant to the directions of this Court in Writ Petition No.1483/2003.

14. Ms.Kittu Bajaj, learned counsel for the petitioner has placed before us the facts which have already been reflected above. She would further state that the Review DPC had rightly considered the name of petitioner inasmuch as the petitioner was senior to respondent No.1. The respondent No.1 could not have got the benefit of promotion from a date prior to the date from which the petitioner was promoted as Senior Manager (Traffic). She would rely upon the judgment of the Supreme Court reported as (2011) 4 SCC 374 Bharat Sanchar Nigam Ltd. Vs. Ghanshyam Dass (2) & Ors. and (1975) 2 SCR 960 Amrit Lal Berry vs. Collector of Central Excise New Delhi & Ors.

15. Mr.G.D.Gupta, learned Senior Counsel assisted by Mr.Anil Mittal, Advocate on the other hand would submit that the case of the petitioner

for promotion to the post of Senior Manager (Traffic) could not have been considered by the Review DPC that to from the year 1988 inasmuch as the petitioner was not having the necessary experience required for consideration. They would further submit that one officer namely Mr.Nand Kishore, who was junior to the petitioner was promoted as Senior Manger (Traffic) in the year 1988. The petitioner did not challenge the promotion of Mr.Nand Kishore as Senior Manager (Traffic) primarily for the reason that the petitioner could not lay a claim for the said post in the year 1988 as he was not having the relevant experience. If the petitioner had not challenged the promotion of Mr.Nand Kishore and sat quiet for so many years, he cannot seek parity with respondent No.1, whose case has been directed to be considered by this Court with effect from 1988.

16. Ms.Avnish Ahlawat would also attack the impugned order of the Tribunal dated May 12, 2010 on similar grounds as has been urged by Ms.Kittu Bajaj, Advocate for the petitioner. She would state that the Tribunal has misdirected itself both on facts and law in allowing the Transfer Application No.728/2009. According to her, as an employer the DTC was required to consider the case of petitioner also when the case of respondent No.1 was being considered from the year 1988 inasmuch as he was also similarly placed and senior to the respondent No.1. He also did not have the relevant experience for promotion in the year 1988. According to her relaxation was sought for from the Board with regard to experience in respect of both the petitioner and respondent No.1. It is only when the relevant relaxation was given by the Board, their cases have been considered.

17. In so far as the plea of Mr.G.D.Gupta, learned Senior Counsel for

respondent No.1 that the petitioner is estopped from challenging the promotion of respondent No.1 on the ground that on an earlier occasion the petitioner had not challenged the promotion of his junior Mr.Nand Kishore, is concerned, the same is liable to be rejected. We have been informed that Nand Kishore had retired in the year 1989. Because of his retirement no long term effect has been caused to the petitioner. Moreover, the petitioner did not had relevant experience in 1988. Pursuant to the order of this Court, the respondent No.1 was being considered after giving relaxation, the petitioner, who was similarly placed was also given the same benefit. Further the promotion of respondent No.1 with effect from 1988 would have had long term repercussion. Promotions of Mr.Nand Kishore and the respondent No.1 are separate cause of action, the petitioner's challenge in so far as the promotion of respondent No.1 is concerned can't be faulted.

18. We note that this Court in W.P.(C) No.1483/2003 had directed for consideration of the case of respondent No.1 for promotion to the post of Senior Manager (Traffic) with effect from the year 1988. It is the case of DTC that the respondent No.1 did not have the relevant experience under the rules for promotion to the post of Senior Manager (Traffic). The said hurdle was crossed by the DTC by seeking a relaxation from the Board in so far as the experience is concerned.

19. We further note that in 1989 the petitioner stood promoted to the post of Senior Manager (Traffic). He was not considered in 1988 because of lack of relevant experience. If relaxation had been accorded by the Board to him earlier, he would have got promoted with effect from 1988 itself. We are of the view that the petitioner would also be entitled to the same parity more so being senior, otherwise it would

amount to an anomaly inasmuch as person junior to the petitioner was being considered for promotion much prior in time by giving relaxation. Such a position would have rather caused prejudice to the petitioner inasmuch as a junior would have superseded the petitioner. That supersession would not only entail a promotion prior in time but would have had a bearing on seniority etc. which would have bearing on promotions as well.

20. We see rationale in the action of the DTC for considering the case of the petitioner as well with effect from 1988 for promotion as Senior Manager (Traffic). Unfortunately the Tribunal missed this particular aspect of the case while allowing the Original Application filed by respondent No.1. In fact the reasoning given by the Tribunal is that since the petitioner had not approached the High Court for antedating the promotion his case could not have been considered by the Review DPC and the judgment of the High Court in favour of respondent No.1 could not be considered as judgment in rem.

21. The question is not, whether the judgment of this Court in Writ Petition No.1483/2003 should be treated as judgment in rem or in persona, rather it is a case where the employer has decided that since in terms of directions of the High Court a junior has been directed to be considered, a person senior who is similarly placed should also be considered on parity. We do not find any illegality in the same. Otherwise it would amount to causing a prejudice to the petitioner which would have future repercussion for him.

22. The reliance placed by Ms.Kittu Bajaj on the judgment of BSNL case (supra) is concerned, we find that the subject matter of the civil appeals before the Supreme Court was an order of the Division Bench of

this Court whereby this Court had dismissed two writ petitions against the order of the Central Administrative Tribunal which had granted benefit of promotion to the respondents with effect from the date their immediate juniors in the basic grade of seniority were so promoted. This Court while dismissing the writ petition noted that the Tribunal had directed the appellants to follow its own circular which has been issued pursuant to order of the Tribunal dated July 07, 1992 in Santosh Kapoor's case which has attained finality. A contention was raised on behalf of the respondents by referring to judgment of the Supreme Court reported as (1987) 4 SCC 431 K.I.Shephard vs. Union of India in support of the contention that those employees who had not come to the Court should not be penalised for not having litigated and would be entitled to the same benefits as the petitioners in Santosh Kapoor's case (supra). The Supreme Court after distinguishing the judgment of K.I.Shephard's case (supra) and the facts of the case with which it was dealing, allowed the Civil Appeals on the ground that the respondents were sleeping over their rights and approached the Tribunal only in 1997 even though they were seeking benefit of order dated July 07, 1992 of the Tribunal in Santosh Kapoor's case (supra). The judgment as relied upon by Ms.Kittu Bajaj, learned counsel for the petitioner is not applicable in the facts of this case. In the case in hand as noted above it is the DTC which by itself had decided to consider the case of the petitioner who was similarly placed like respondent No.1. After considering the case of the petitioner, through a Review DPC which had found him fit the petitioner was promoted. It is not a case where the petitioner had approached seeking a similar benefit as was granted to respondent No.1 in W.P.(C) 1483/2003. Similarly the judgment relied upon by Ms.Kittu Bajaj in Amrit Lal

Berry's case (supra) wherein she relied upon para No.24 of the judgment, the same would be of no relevance in the facts of this case more so in view of our conclusion in the preceding para.

23. We accordingly set aside the order of the Tribunal and uphold the promotion of petitioner as Senior Manager (Traffic) with effect from 1988.

24. We allow the writ petitions and consequently dismiss the Original Application filed by respondent No.1.

25. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

OCTOBER 21, 2013
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