

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment pronounced on: 04.01.2013

W.P.(C) 8618/2010

V.K.JOSHI

..... Petitioner

Versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Jyoti Singh, Sr Advocate with Mr Amandeep Joshi.

For the Respondents : Mr Anuj Aggarwal with Mr Ashish Virmani.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. This writ petition assails the order dated 20.08.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.334/2010. By virtue of the impugned order, the Tribunal rejected the claim of the petitioner for being entitled to promotion from the year 2003, that is, when according to the petitioner, he had the requisite period of service for being considered for promotion to the next higher grade.

2. The facts, in brief, are as under:-

- (i) On 11.01.1998, the petitioner was promoted to the post of Deputy Commandant in the Central Reserve Police Force (CRPF).
- (ii) Thereafter, on 01.12.1999, the petitioner was sent on deputation to the respondent no.3 as Assistant Director (Exe).
- (iii) Subsequently, with effect from 20.11.2006, the petitioner was absorbed by the respondent no.3 on the post of Assistant Director (Exe) which was equivalent and analogous to the post held by the petitioner in the CRPF at the time when the petitioner was sent on deputation.
- (iv) Before the absorption of the petitioner took place, the Department of Personnel and Training (hereinafter referred to as DOP&T) issued an OM dated 27.03.2001 for the purpose of assigning seniority to persons absorbed after being on deputation. The OM dated 27.03.2001, in effect, brought about an amendment to another OM dated 29.05.1986, so as to implement the judgment of the Supreme Court in **S.I.Rooplal &**

Ors. vs. Lt. Governor of Delhi, 2000 (1) SCC 644. The relevant

portion of the OM dated 27.03.2001 is reproduced hereinafter:-

“OFFICE MEMORANDUM

*Subject: Seniority of persons absorbed
after being on deputation.*

The undersigned is directed to say that according to our O.M.No.20020/7/80-Estt(D) dated May 29, 1986 (copy enclosed) in the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for “transfer on deputation/transfer”), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

the date he has been holding the post of deputation,

Or

The date from which he has been appointed on a regular basis to same or equivalent grade in his parent department,

whichever is later.

2. The Supreme Court has in its judgement dated December 14, 1999 in the case of Shri S.I. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delhi JT 1999 (9) SC 597 has held that the words “whichever is later” occurring in the Office Memorandum dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution and, hence, those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined

and it has been decided to substitute the term “whichever is later” occurring in the Office Memorandum dated May 29, 1986 by the term “whichever is earlier.”

3. It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the Office Memorandum dated May 29, 1986, the criteria contained in this Department Office Memorandum No. 14017/27/75- Estt.(D)(pt) dated March 7, 1984 (copy enclosed), which lays down the criteria for determining analogous post may be followed.

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6.”

(v) Thereafter, the respondent No.3, on 05.01.2007, issued a seniority list of Assistant Director (Exe.) by virtue of which the petitioner was placed at Serial No.58 (A-3) while respondent No.4 (Major Sohan Singh) was placed at Serial No.66. The said seniority list was issued in compliance of the DOP&T's OM dated 27.03.2001. In other words, the petitioner was given the benefit of the judgment in ***S.I.Rooplal*** (*supra*).

(vi) Afterwards the petitioner was promoted to the rank of Joint Deputy Director (Exe.) with effect from 25.02.2008.

(vii) However, on 10.03.2008, the respondent No.3 issued the seniority list of Joint Deputy Director (Exe.). In the said

seniority list, the respondent No.4 was placed above the petitioner as he was granted promotion to the rank of Joint Deputy Director (Exe) w.e.f. 22.01.2003 whereas the petitioner was promoted as Joint Deputy Director only in the year 2008.

(viii) The petitioner vide representation dated 17.03.2008 and 09.04.2008 objected to the seniority list dated 10.03.2008, inasmuch as, the petitioner claimed that his seniority should be reckoned from the date from which he had been holding an analogous post in an equivalent grade in his parent cadre (11.01.1998) and not from the date of his absorption with the respondent No.3, i.e., 20.11.2006.

(ix) The representations of the petitioner were rejected by the respondent No.3 by virtue of orders dated 01.04.2008 and 18.08.2008.

(x) Thereafter, on 18.09.2008, the petitioner made another representation claiming that the respondent No.3 should give effect to his notional seniority from the date of his absorption, i.e., 11.01.1998. The petitioner further claimed that he was

entitled to promotion to the post of Joint Deputy Director (Exe) from 2003 when the Departmental Promotion Committee met and granted promotion to respondent No.4. The said representation also came to be rejected by the respondent No.3 on 26.05.2009.

3. Aggrieved by rejection of his representations, the petitioner preferred an Original Application being OA No.1900/09 before the Tribunal challenging the seniority list circulated on 10.03.2008 of Joint Deputy Director (Executive) by the respondent No.3. The said OA was withdrawn by the petitioner with liberty to file a fresh OA after impleading respondent No.4.

4. Pursuant thereto, the petitioner filed OA No.334/2010 which was dismissed by the Tribunal by virtue of the order dated 20.08.2010 impugned before us in this writ petition.

5. The Tribunal while dismissing the OA held that promotion of the petitioner to the next higher grade would have to be governed by the Recruitment Rules and no promotion could be made *de hors* the Recruitment Rules. The Tribunal further held that promotion could have only been

granted to the petitioner had he satisfied the eligibility conditions prescribed for such promotion. The finding of the Tribunal is extracted herein below:-

“7. It is, therefore, clear that the promotion to the next higher grade would be governed by the Recruitment Rules and any employee fulfilling the eligibility conditions would be considered for promotion. In the instant case, the fourth Respondent had become eligible for promotion as JDD in the year 2003 and thereafter as ADD in the year 2008. Once found fit by the DPC, he had to be promoted to these grades. The Applicant got absorbed in the IB, the third Respondent, only in the year 2006. Although he got seniority above the fourth Respondent in the grade of AD, yet he had to complete the period of eligibility for promotion to the grade of JDD. Merely because the fourth Respondent, junior to him in the grade of AD, had been promoted earlier, it would not be permitted for the Applicant to catch up with him and also be promoted to the grade of JDD, notionally or otherwise, de hors the rules

8. We further fail to see how the Applicant could claim promotion on notional basis when there are no Recruitment Rules supporting his claim. The Applicant has chosen to get absorbed in the IB and he has been given the benefit of seniority in the feeder grade of Assistant Director. Thereafter, the future promotions have to be on the basis of the Recruitment Rules which prescribe a period of residency in the grade of Assistant Director in the IB before the Applicant could be promoted to the grade of Joint Deputy Director. We are of the considered opinion that no relaxation can be given in the rules to advance the Applicant further in the ladder of promotion.”

(underlining added)

6. Before us, the learned senior counsel appearing for the petitioner has strenuously contended that the impugned judgment is erroneous, inasmuch

as, once the petitioner has been given the benefit of the DOP&T's OM dated 27.03.2001 for the purpose of assigning his seniority in the grade of Assistant Director (Exe), it would be incorrect and capricious to deny him the benefit of such seniority to the next higher grades of Joint Deputy Director (Exe.) and Additional Deputy Director (Exe.). Counsel further contends that the very purpose of assigning seniority to the petitioner on the basis of his earlier service in same or equivalent grade would be lost if the benefit of seniority for further promotion was not given. The learned senior counsel for the petitioner next urged that if the benefit of the seniority that inured in favour of the petitioner was not given in future promotion, then mere assigning of seniority from a retrospective date would be of no consequence and benefit of past services given to the petitioner by virtue of the Supreme Court decision in *S.I. Rooplal* (*supra*) would be rendered illusory.

7. Per Contra, the learned counsel for the respondent No.3 contended that the petitioner was absorbed by respondent No.3 on 20.11.2006 and so promotion, if any, could be granted to him only w.e.f. 20.11.2006, the date on which the petitioner was born in the cadre of the respondent No.3 and not prior to that. To buttress his contention, the learned counsel for the

respondent No.3 drew our attention to Clause 3.4.2 of DOP&T's OM dated 29.05.1986 which has been reproduced in the next paragraph.

8. Before embarking upon a discussion on the rival contentions, it would be apposite to take note of Clauses 3.4.1 and 3.4.2 of DOP&T's OM dated 29.05.1986 before an amendment to the same was effected by the OM dated 27.03.2001. The said clauses read as under:-

“3.4.1 In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for “Transfer on deputation/Transfer”), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department. Such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from-

- the date he has been holding the post on deputation,
- (or)
- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department.

whichever is later.

3.4.2. The fixation of seniority of a transferee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

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.....”

(underlining added)

9. It is apparent that simply the words “whichever is later” occurring in Clause 3.4.1 of the OM dated 29.05.1986 are substituted to “whichever is earlier” by a later OM dated 27.03.2001. The said change was necessitated by the decision of the Supreme Court in *S.I.Rooplal (supra)* which, *inter alia*, held that an employee on deputation cannot be denied the benefit of the service rendered by him in an equivalent cadre in the parent department for computing his seniority in the deputed post. No other change was brought about in the OM dated 29.05.2006. Clause 3.4.2 of OM dated 29.05.2006 clearly states that fixation of seniority on the basis of Clause 3.4.1 would not affect any regular promotion made to the next higher grade prior to the date of such absorption. It is further clarified in the said clause that fixation of seniority in accordance with Clause 3.4.1 would be operative only for filling up of vacancies in the next higher grade after the absorption of the employee and not before that.

10. In the instant case, the petitioner was absorbed by the respondent No.3 only on 20.11.2006 and in terms of Clause 3.4.2, the petitioner would become eligible for promotion only after his absorption. Therefore, in our considered opinion, there is no merit in the contention advanced by the counsel for the petitioner claiming that the petitioner is entitled to promotion

from the year 2003, which is when he had requisite experience for promotion to the next higher grade. In view of Clause 3.4.2, promotion cannot be granted to the petitioner before his absorption by the respondent No.3. It is pertinent to note that petitioner has been promoted to the rank of Joint Deputy Director (Exe) with effect from 25.02.2008 which is after the date of his absorption and the same is in conformity with the OM dated 29.05.1986 as well as the OM dated 27.03.2001.

11. In view of the foregoing discussion, the impugned decision warrants no interference. The writ petition has no merit and same is dismissed.

SIDDHARTH MRIDUL, J.

BADAR DURREZ AHMED, J.

JANUARY 04, 2013

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