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

Date of Decision: July 16, 2015

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W.P.(C) 3789/2013

SAMIR KUMAR PUJARI

..... Petitioner

Through: Ms.Ankita Patnaik, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondent

Through: Ms.Archana Gaur, Adv. for R1 and
R2

Mr.Vishnu Sharma, Adv. for R3

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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16.07.2015

1. The present petition has been filed by the petitioner inter-alia seeking a writ of certiorari, quashing the letters dated January 29, 2013 and August 27, 2012 issued by the respondents and with a further direction that he be granted notionally the time-scale to the next higher grade pay of Rs.8,700/- with all consequential benefits.
2. It is the case of the petitioner, that while working as Asst. Account Officer in the Ministry of Defence, he was sent on deputation as Accountant on March 23, 1992 to Oil Industry Development Board, a Statutory body. While on deputation, the petitioner was promoted to the post of Accounts

Officer in OIDB and finally in January 1995, he was permanently absorbed in OIDB. According to him, he was thereafter, promoted to the rank of Senior Accounts Officer in 1998 and on the basis of DPC held on November 18, 2002, the petitioner was promoted to the post of Deputy Chief Finance and Accounts Officer (DCF & AO) in officiating capacity vide order dated January 7, 2003 issued by OIDB in the pay scale of Rs.12000 - 16500 plus grade pay of Rs.7,600/-. It is the case of the petitioner that he having completed six years of uninterrupted service in the post of DCF and AO on January 7, 2009, he was fully eligible to get the next higher grade pay as per the provisions of Rule 11 (1) and (2) of OIDB Employees (Recruitment) Regulations, 1986. However, despite several representations made by him, he was not granted the next higher grade of Rs.8700/- as time-scale, whereas other Group 'A' officers had been given the benefit of time-scale promotion under the same provisions. It may be stated here, he had referred to a case of one Rajesh Kumar Saini, Stenographer Grade-C, who, while on ad-hoc promotion to Stenographer Grade-B was granted a time-scale promotion in the pay scale of Rs.10000 - 15200.

3. The respondent No.3 in its reply has contested the relief sought for by the petitioner in this petition primarily on the ground that the petitioner

while holding the substantive post of Senior Accounts Officer was promoted to the post of DCF & AO on ad-hoc basis as there were no regular vacant posts available and could not have been given the time scale promotion to the post of FA & CAO under Regulation 11 (1) as the six years specified therein cannot include the service rendered on ad-hoc basis. According to them, the grade pay of Rs.8700/- is the pay attached to the post of FA & CAO, which is a promotional post to DCF & AO. A reading of Regulation 11 contemplates, the promotion can be given only when an Officer is working on substantive basis in the feeder grade. According to the respondent No.3, on March 2, 2009, the respondent received petitioner's ACR reports for the year 2004-05 and 2006-07 as the reports contains adverse remarks the same were communicated to the petitioner. The respondent No.3 would state that the petitioner had acknowledged the receipt of the letter dated March 31, 2009, whereby he was communicated the adverse remarks. It is the stand of respondent No.3, the petitioner had neither challenged nor filed any objection to the said adverse remarks in the said ACR's. It was only on April 19, 2012, one month prior to his retirement, the petitioner made a representation seeking regularization on the post of DCF and AO and the time-scale promotion of FA and CAO. After

his retirement, on July 3, 2012, the petitioner made further representation to the Secretary, Ministry of Petroleum and Natural Gas seeking his intervention. It was in response to the said representation, the respondent No. 3 had sent a letter dated August 27, 2012 which is impugned in the present proceedings stating that the petitioner could not be granted the time-scale promotion to the post of FA and CAO as he was holding the post of DCF & AO purely on ad-hoc basis. Even, the rule on which reliance was placed cannot be availed by the petitioner as the same is subject to satisfactory performance in the existing grade, whereas the petitioner had adverse remarks in the ACRs for the year 2004-05 and 2006-07.

4. Learned counsel for the petitioner would contend that under Rule 11 (1) and 11 (2) of the Rules, the petitioner having completed six years of service in the grade of DCF and AO, the petitioner was entitled to a higher grade pay of Rs.8,700/-. She would also state, Rule 11 does not stipulate, an employee should hold the post regularly in the lower grade to be entitled to time-scale promotion to the higher grade. It is also her contention that one Mr. Rajesh Kumar Saini, Stenographer Grade-C, while working as Stenographer Grade-B was granted time-scale promotion under Regulation 11 (2).

5. On the other hand, learned counsel for the respondent No.3 would reiterate the stand taken in the reply.

6. Having heard, learned counsel for the parties, I note that a perusal of Rule 11 (1) and 11 (2) of the Regulations, which are reproduced hereunder, it is clear that the said rules contemplates two situations, if an employee is not promoted to the next higher post for want of vacancy or there are no avenues of promotion, in that eventuality, an officer is given the next higher grade on completion of six years:-

“11. Time Scale promotion:

(1) An employee if not promoted to the next higher post for want of vacancies, after six years of continuous service in the existing grade, may be placed in the next higher grade to which he may be eligible on promotion, subject to his satisfactory performance in his existing grade.

(2) For posts, for which there are no avenues for promotion, an employees may be given the next grade of the particular cadre as ‘Selection Grade’ after he has completed six years of satisfactory service in the existing grade, provided that once an employee is given a selection grade under this rule, he shall not be eligible again for the next higher grade as selection grade under this rule.”

7. It is the settled position in service jurisprudence, an employee is

eligible for promotion if he is holding the feeder post on substantive regular basis. It is not the case here that he was holding the post of DCF & AO on regular basis. Even otherwise, the time-scale promotion to higher grade in terms of Rule 11 of the Regulations is subject to an employee having a satisfactory performance in the existing grade. There is no dispute that the petitioner had adverse remarks in his ACRs for 2004-05 and 2006-07 which remained uncontested despite having been communicated to him. It was only in the year 2012, he made the first representation, that too, claiming regularisation on the post of DCF and AO w.e.f September 30, 2010, which is after three years of the communication of the adverse ACRs clearly hit by delay and laches. Even in this petition, the plea of the petitioner is for grant of grade pay of Rs.8,700/- and not regularisation on the post of DCF & AO, which cannot be granted in the absence of satisfactory service as is seen from the adverse ACRs. On an interpretation of Rule 11 of the Regulations, the petitioner is not entitled to time-scale promotion to the higher grade pay of Rs.8,700/-.

8. The plea of discrimination would not be available to the petitioner when Rule 11 of the Rules does not stipulate grant of time-scale of pay to higher grade while working on ad-hoc basis on a feeder post. The facts with

regard to the case of Rajesh Kumar Saini are not adequate for this Court to conclude discrimination.

9. I do not see any merit in the present petition. The same is dismissed.

V. KAMESWAR RAO, J

JULY 16, 2015/ak