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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: September 10, 2015

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LPA 99/2015

BALWANT KAUR

..... Appellant

Represented by: Ms.Saahila Lamba, Advocate

versus

DIRECTOR OF EDUCATION & ORS

..... Respondents

Represented by: Ms.Nikhita Khetrpal, Advocate for
Ms.Nidhi Raman, Advocate for R-1
Mr.Sachin Mittal, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. WP(C) 7418/2014 filed by the appellant has been dismissed by the learned Single Judge. At the centre of the debate was an Office Memorandum dated February 08, 2002, and with reference to the claim of the appellant and the Office Memorandum, the learned Single Judge has held in paragraph 5 of the impugned decision as under:-

“5. In my opinion, the arguments which are urged on behalf of the petitioner is a case of mixing oranges with apples. If we go by the 2002 circular then we have to go by the pay scale also of the 2002 circular. It cannot be that the pay scale which will be taken for applicability of the 2002 circular will be a higher pay scale coming into force after the 2002 circular by

virtue of the 6th Central Pay Commission, and that higher pay scale will get engrafted in the 2002 circular with respect to those posts of the higher pay scale. The post-revised pay scale cannot be merged into the pre-revised pay scale guidelines for appointment to a post viz a post-revised pay scale of the 6th Central Pay Commission cannot be substituted in a category having that pay scale in a 2002 circular inasmuch as it is only pre-revised pay scale which will have to be considered. In the 2002 circular, so far as appointment to the post of the principal is concerned, the same carries the pay scale of ₹10,000-15,200/-... ”

2. The question which arises for consideration in the appeal is whether the learned Single Judge is right in expressing the opinion that the appellant was mixing oranges with apples.
3. To appreciate the controversy which needs to be noted that the second respondent was to give promotion to the post of a Principal and for which a Departmental Promotion Committee was constituted. Post Graduate Teachers working in the school who fell within the zone of consideration were eligible to be considered for promotion. The appellant and respondent No.3 were working as Post Graduate Teachers in respondent No.2 school and were eligible for being considered for promotion. The DPC took the bench mark ‘Good’. Last five year ACRs were considered. The grievance of the appellant was to the adoption of the bench mark ‘Good’. As per the appellant the bench mark was ‘Very Good’.
4. It was not in dispute between the parties that the selection was on merit. The only issue was whether the bench mark was ‘Good’ or ‘Very Good’.
5. The appellant relied upon the Office Memorandum dated February 08, 2002 which reads as under:-

*“F.No.3 5034/7/97-Estt (D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training*

*New Delhi - 110 001
February 8, 2002*

OFFICE MEMORANDUM

Subject : - Procedure to be observed by Departmental Promotion Committees (DPCs) - No supersession in 'selection' promotion - Revised Guidelines regarding.

The undersigned is directed to invite reference to the Department of Personnel and Training (DoP&T) Office Memorandum (O.M.) No.22011/5/86- Estt(D) dated March 10,1989 and O.M. of even number dated April 10,1989 [as amended by O.M.No.22011/5/91-Estt (D) dated March 27, 1997] which contain the instructions on the Departmental Promotion Committees (DPCs) and related matters. In regard to the 'selection' mode of promotion ('selection-cum-seniority' and 'selection by merit'), the aforesaid instructions prescribe the guidelines (as briefly discussed in paragraph 2 below) for overall 'grading' to be given by the DPC, 'bench-mark' for assessment of performance and the manner in which the 'select panel' has to be arranged for promotions to various levels of post/grade.

2. Existing Guidelines

2.1 As per the existing (aforementioned) instructions, in promotion up to and excluding the level in the pay-scale of ₹12,000-16,500 (excepting promotions to Group 'A' posts/services from the lower group), if the mode happens to be 'selection-cum-seniority', then the bench-mark prescribed is 'good' and officer obtaining the said bench-mark are arranged in the select panel in the order of their seniority in the lower (feeder) grade. Thus, there is no supersession among those who

meet the said bench-mark. Officers getting a grading lower than the prescribed bench-mark ('good') are not empanelled for promotion.

2.2 In the case of promotions from lower Groups to Group 'A', while the mode of promotion happens to be 'selection by merit', the bench-mark prescribed is 'good' and only those officers who obtain the said bench-mark are promoted in the order of merit as per grading obtained. Thus, officers getting a superior grading supersede those getting lower grading. In other words, an officer graded as 'outstanding' supersedes those graded as 'very good' and an officer graded as 'very good' supersedes officers graded as 'good'. Officers obtaining the same grading are arranged in the select panel in the order of their seniority in the lower grade. Those who get a grading lower than the prescribed bench-mark ('good') are not empanelled for promotion.

2.3 In promotions to the level in the pay-scale of ₹12,000-16,500/- and above, while the mode of promotion is 'selection by merit', the bench-mark prescribed is 'very good' and only those officers who obtain the said benchmark are promoted in the order of merit as per the grading obtained, officers getting superior grading supersede those getting lower grading as explained in paragraph 2.2 above. Officers obtaining the same grading are arranged in the select panel in the order of their seniority in the lower grade. Those who get a grading lower than the prescribed bench-mark ('very good') are not empanelled for promotion

3. Revised Guidelines

The aforementioned guidelines which permit supersession in 'selection' promotion ('selection by merit') have been reviewed by the Government and after comprehensive/extensive examination of relevant issues it has been decided that there should be no supersession in matter of 'selection' (merit) promotion at any level. In keeping with the

said decision, the following revised promotion norms/ guidelines, in partial modification (to the extent relevant for the purpose of these instructions) of all existing instructions on the subject (as referred to in paragraph 1 above) are prescribed in the succeeding paragraphs for providing guidance to the Departmental Promotion Committees (DPCs).

3.1 Mode of Promotion

In the case of 'selection' (merit) promotion, the hitherto existing distinction in the nomenclature ('selection by merit' and 'selection-cum-seniority') is dispensed with and the mode of promotion in all such cases is rechristened as 'selection' only. The element of selectivity (higher or lower) shall be determined with reference to the relevant bench-mark ("Very Good" or "Good") prescribed for promotion.

3.2 'Bench-mark' for promotion

The DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench-mark and accordingly grade the officers as 'fit' or 'unfit' only. Only those who are graded 'fit' (i.e. who meet the prescribed bench-mark) by the DPC shall be included and arranged in the select panel in order to their inter-se seniority in the feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed bench-mark) by the DPC shall not be included in the select panel. Thus, there shall be no supersession in promotion among those who are graded 'fit' (in terms of the prescribed bench-mark) by the DPC.

3.2.1 Although among those who meet the prescribed bench-mark, inter-se seniority of the feeder grade shall remain intact, eligibility for promotion will no doubt be subject to fulfilment of all the conditions laid down in the relevant Recruitment/Service Rules, including the conditions that one should be the holder of the relevant feeder post on regular basis and that he should have rendered the prescribed eligibility service in the feeder

post.

3.3 Promotion to the revised pay-scale (grade) of ₹12,000-16,500 and above

- (i) The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.*
- (ii) The bench-mark for promotion, as it is now, shall continue to be 'very - good'. This will ensure element of higher selectivity in comparison to selection promotions to the grades lower than the aforesaid level where the bench-mark, as indicated in the following paragraphs, shall be 'good' only.*
- (iii) The DPC shall for promotions to said pay-scale (grade) and above, grade officers as 'fit' or 'unfit' only with reference to the bench-mark of 'very good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. Thus, as already explained in paragraph 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed bench-mark of 'very good'*

3.4 Promotion to grades below the revised pay-scale (grade) of ₹12,000-16,500 (including promotions from lower Groups to Group 'A' posts/grades/services)

- (i) The mode of promotion, as indicated in paragraph 3.1 above, shall be 'selection'.*
- (ii) The bench-mark for promotion, as it is now, shall continue to be 'good'.*
- (iii) The DPC shall for promotion to posts/grades/services in the aforesaid categories, grade officers as 'fit' or 'unfit'*

only with reference to the bench-mark of 'good'. Only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their inter-se seniority in the feeder grade. Thus, as already explained in paragraph 3.2 above, there shall be no supersession in promotion among those who are found 'fit' by the DPC in terms of the aforesaid prescribed benchmark of 'good'.

3.5 Zone of consideration

The guidelines relating to the 'zone of consideration' in its existing form (twice the number of vacancies plus four) shall continue to have general application. However, in view of the modifications in promotion norms indicated in paragraph 3.3 above, the following stipulation [as is already applicable in the case of promotions below the revised pay-scale (grade) of ₹12,000-16,500/- vide DoP&T O.M.no.22011/8/98-Estt (D) dated November 6, 1998] is also made in the regard to the zone of consideration for promotion to the revised pay-scale (grade) of ₹12,000-16,500/- and above:

"While the zone of consideration would remain as already prescribed, the DPC, in the aforesaid category of cases, may assess the suitability of eligible employees in the zone of consideration (in the descending order) for inclusion in the panel for promotion up to a number which is considered sufficient against the number of vacancies. With regard to the number of employees to be included in the panel, the DPC may also be required to keep in view the instructions issued vide Department of Personnel and Training Office Memorandum No.22011/18/87-Estt(D) dated April 9, 1996 relating to norms for preparing extended panel for promotion. In respect of the remaining

employees, the DPC may put a note in the minutes that “the assessment of the remaining employees in the zone of consideration is considered not necessary as sufficient number of employees with prescribed bench-mark have become available.”

4. Provisions of the paragraph 1 (vii) of the DoP&T O.M.No. AB-14017/2/97-Estt(RR) dated May 25, 1998 stand modified in accordance with these revised instructions. In addition to this, if the guidelines contained in this Office Memorandum come in conflict with the provisions of any other executive instructions (O.M.) issued by DoP&T on this subject, the same shall be taken to be modified to the extent provided herein.

5. The instructions contained in this Office Memorandum shall come into force from the date of its issue.”

6. It is not in dispute that the post of Principal was in the pay scale ₹12000-16500/- pre-recommendations of the 6th Central Pay Commission being implemented and post-recommendations of the 6th Central Pay Commission being implemented in Pay Band-3 with Grade Pay ₹7600/-, Pay Band-3 was having the band ₹15600-39100/-.

7. A perusal of para 3.1 of the Office Memorandum dated February 08, 2002 evinces that where merit was the criteria for promotion reference to the relevant bench mark had to be determined with reference to the subsequent paragraphs of the Office Memorandum. Para 3.3 of the Office Memorandum dated February 08, 2002 would make it clear that for the post in the then existing pay scale ₹12000-16500/- and above the bench mark prescribed was ‘Very Good’. For post below the pay scale ₹12000-16500/- the bench mark was ‘Good’. It is trite that since the Office Memorandum continued to exist, replacement pay scales or replacements placement in the pay bands

would be termed as what would be the bench mark. As noted above, the scale ₹12000-16500/- was placed in Pay Band-3 with Grade Pay ₹7600/-. When the promotion was made the recommendations of the 6th Central Pay Commission had come into being. The learned Single Judge has clearly erred in holding that the appellant is comparing oranges with apples. The learned Single Judge overlooked the fact that the applicability of the Office Memorandum dated February 08, 2002 had to be seen with reference to the pay scales then in vogue, of course as replaced by the pay bands.

8. That apart, the learned Single Judge erred in overlooking the fact that the appellant had relied upon an order dated December 09, 2011 issued by the Directorate of Education concerning promotion to the post of the Principal of Ramjas Secondary School, Bazar Sitaram, in which the Directorate of Education, after making reference to an OM dated April 03, 2011, directed that the bench mark for promotion to said post was 'Very Good'.

9. The learned Single Judge has gravely erred in dismissing the writ petition in limine, overlooking paragraphs 3.3 and 3.4 of the Office Memorandum dated February 08, 2002. We note in the impugned judgment the learned Single Judge has, while reproducing such parts of OM dated February 08, 2002 which he thought were relevant, not reproduced para 3.3. of the OM in question, which paragraph was determinative of the dispute.

10. The appeal is allowed. Impugned order dated January 09, 2015 is set aside. WP(C) 7418/2014 filed by the appellant is allowed. The mandamus as prayed for is issued. The mandamus would be that a review DPC shall be constituted to consider promotion to the post of Principal in respondent No.2 school and the bench mark adopted by the DPC would be 'Very Good'. Till then we allow respondent No.3 to discharge duties as Principal of the

school. However, we make it clear that promotion to the post of Principal in respondent No.2 school would be made on the recommendations of the DPC which shall be implemented with reference to the bench mark being 'Very Good'. The mandamus will be complied with positively within six months from today.

11. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 10, 2015

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