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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7350 OF 2015

Dattatreya W. Padale

... Petitioner

Vs.

Union of India and ors.

... Respondents

Mr. Vasant S. Gokhale for the Petitioner.

Mr. Suresh Kumar a/w. Mr. A.D. Yadav for Respondent Nos.1 to 4.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.

DATE : JUNE 07, 2016

P. C.

1] Heard learned counsel appearing on behalf of the Petitioner and learned counsel appearing on behalf of the State-Respondents.

2] Brief facts which are relevant for the purpose of deciding the petition are as under:-

The Petitioner was appointed as Extra Departmental Delivery Agent on 19 January 1992. However, Respondent No.5 was appointed as Extra Departmental Delivery Agent on 28 January 1992. In the DPC which was held on 15 March 1999, Respondent No.5 was promoted to Group D post. The Petitioner filed Original Application bearing Original Application No. 627 of 2004 claiming promotion and consequential seniority. When the matter came up for hearing before

the Tribunal, the Respondent-Union of India (UOI) produced order dated 13 January 2005, whereby the Petitioner was promoted as Group D employee. In view of the said order of promotion, the Tribunal came to the conclusion that the original application has become infructuous.

3] The Petitioner did not challenge the said order by filing a writ petition in this Court. It is also not in dispute that the Petitioner had not challenged the order of promotion of Respondent No.5 in the DPC held on 15 March 1999. Thereafter, the Petitioner again filed a fresh Original Application No. 574 of 2007 claiming more or less similar reliefs. The Tribunal however came to the conclusion that it was not open for the Petitioner to seek those reliefs firstly on the ground that no person junior to the Petitioner was promoted in subsequent DPCs, and secondly, they were not shown as senior to the Petitioner in the seniority list. The Tribunal also observed that there was gross delay in filing the application.

4] Mr. Gokhale, learned counsel appearing on behalf of the Petitioner, submitted that the Tribunal has committed an error in passing both the impugned orders. He invited our attention to the order dated 18 January 2005 passed in first original application and order dated 4 September 2012 passed by the Tribunal in the second original application. He also invited our attention to the review order passed in Review Application No. 8 of 2013.

5] We have gone through the said orders. We are of the view that there is no error of law apparent on the face of record committed by the Tribunal. We have perused the affidavit-in-reply filed on behalf of Respondents-State, in which they have made statement that no person, who is junior to the Petitioner, has been promoted and has been shown as senior to him and as such therefore, the grievance of the Petitioner does not survive.

6] The present Petitioner, in the first place has not challenged the order of promotion of Respondent No.5 in the DPC held on 15 March 1999. In the first original application, the Petitioner was seeking promotion and other consequential benefits. That being the position, it is not open for the Petitioner to claim seniority over Respondent No.5. Therefore, we are not inclined to interfere with the order passed by the Tribunal in O.A. No. 574 of 2007 or in Review Petition No. 8 of 2013. The petition is therefore dismissed in the aforesaid terms.

[M. S. SONAK, J.]

[V. M. KANADE, J.]