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

Judgment dated: 19th September, 2016

+ W.P. (C) 10539/2004

S.C. RAY

..... Petitioner

Through : Ms.Jyoti Singh, Sr. Adv., Mr.Aditya
Kumar Choudhary, Ms.Tinu Bajwa
and Mr.Sameer Sharma, Advs.

Versus

UOI & ORS.

..... Respondents

Through : Mr. R .V. Sinha and Mr. A. S. Singh,
Advs.

CORAM:

**HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE I.S. MEHTA**

ORDER

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19.09.2016

1. Challenge in this writ petition is to the orders dated 17.11.2003 and 06.02.2004 passed by the Central Administrative Tribunal by which the OA and RA filed by the petitioner were dismissed.

2. The petitioner joined the respondent department in the year 18.10.1979 as a Technical Officer in the Directorate of Sugar in the Department of Food, Ministry of Consumer Affairs, Food & Public

Distribution. He was promoted as a Deputy Director on 25.03.1987. The next avenue of promotion available for the petitioner was to the post of Director (Sugar Technical) which had two posts. The promotion was to be made 50% through promotion, failing which by transfer on deputation and 50% through direct recruitment. The post of Director (Sugar Technical) became vacant in 1995. However, on 06.08.1996 one post of Director (Sugar Technical) was abolished vide office order No.246/96-E.1.

3. Learned counsel for the petitioner submits that thereafter, there were numerous file notings from 1997 onwards on the point that the recruitment rules ought to be amended and the promotion to the post of Director should be made only on the basis of promotion. The petitioner was given ad-hoc promotion as Director on 10.09.1996 which post he continued to occupy till 26.09.2001 when he was reverted back as Deputy Director which led to filing of OA being 3080/2002. The respondent thereafter, reviewed the order of reversion on 09.07.2002 and thereafter, the post of the petitioner was regularized by the order of 09.06.2003. The post of Director which the petitioner occupied was regularized ex-post facto for the period 1998 to 09.06.2003. Surprisingly, the petitioner was again reverted on 09.06.2003, which led to filing of second OA being No. 1525/2003 which was dismissed on 17.11.2003 and the review petition was also dismissed on 06.02.2004 which led to the filing of the present writ petition. Another important fact

which requires to be noticed is that the petitioner had filed the another OA being No. 342/2003. The petitioner prayed therein that the petitioner should be permitted to continue as Director, the recruitment rules be amended and the period where he worked as ad-hoc Director be regularized. The OA filed was disposed of with a direction to the respondent to re-examine the matter. The department passed an order on 06.12.2005 granting promotion to the petitioner as a regular Director on 23.11.2005. It may also be noticed that the petitioner retired as a Director on 21.12.2007.

4 During the pendency of this writ petition, the petitioner made an application No.14330/2007 for the amendment of the writ petition inter-alia the petitioner sought to include ground EE and also amongst others as prayer 5 which reads as under:-

“EE. The Petitioner most humbly submits that had he not been victimized and had he been given his due, he would have been promoted as Chief Director in the year 2005 itself. On the other hand the Petitioner was not given his due and on the other hand the Respondents have in May 2005 filled up the post of Chief Director department of Sugar by making appointment of a deputationist. It is further submitted that even as per the Chief Director Recruitments Rules 1987 as aforesaid, he would become eligible for appointment as Chief Director department of Sugar, being the Senior Most Officer in the feeder cadre. The Petitioner makes a humbly prayer before this Hon’ble Court to consider his case and direct the Respondents to atleast give him his due from November 2007 onwards as the Petitioner is due to retire on 31st December, 2007.”

“(v) direct the Respondents to promote and appoint the Petitioner as Chief Director department of Sugar by taking into consideration the services of the Petitioner rendered as Director (Sugar Technical) with effect from 10.9.96 or in any case with effect from the date the Petitioner was appointed as Director (Sugar Technical) on regular basis.”

5. The application seeking amendment came up for hearing on 29.10.2007, when the application was allowed.

6. Ms. Jyoti Singh, learned senior counsel for the petitioner submits that as of today the only relief which petitioner is claiming is that he became due for promotion prior to his retirement to the post of Chief Director but since, no DPC was held the respondent be directed to hold a review DPC and if the petitioner is found successful he should be granted notional promotion and his pension be fixed according to last pay to the promoted post.

7. Mr. Sinha, learned counsel for the respondent has opposed this prayer firstly on the ground that no such relief was claimed in the OA by the petitioner which was filed and stands dismissed and secondly being a substantive relief the prayer was made in these proceedings cannot be entertained. The petitioner if aggrieved should file a substantive OA before the Tribunal and seek the relief. He further submits that although an amendment application was made but that application was not allowed in terms of the prayer made while learned senior counsel for the petitioner

submits that amendment application was made and she was under the impression that the amendment was allowed as the amended counter affidavit was filed by the respondent.

8. At this stage, learned senior counsel for the petitioner submits that in the application for amendment total four prayers were made. The prayer for placing the judgment was disallowed. However, the petitioner was under the impression that the second prayer was also allowed.

9. We are unable to find that the submissions of learned senior counsel are borne out from the ordersheets.

10. At this stage, learned senior counsel for the petitioner submits that petitioner shall file an independent petition and seek appropriate remedy as available in accordance with law.

11. Having regard to the submissions made and taking into consideration that in fact an application for amendment was made with a prayer to treat para 15 of the said application as ground No.EE and para 15 has been extracted by us in the proceeding paragraphs and in case the OA is filed within three weeks from today, we hope the Tribunal would consider the prayer of condonation of delay favourably as for the reasons stated by us in the above paragraphs.

12. With the above observations, the writ petition is disposed of as prayed by the learned senior counsel for the petitioner.

G.S.SISTANI
(JUDGE)

I.S. MEHTA
(JUDGE)

SEPTEMBER, 19, 2016
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