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

+ **W.P.(C) 4940/2016**

UNION OF INDIA

..... Petitioner

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

versus

ANIL WASON & ANR

..... Respondents

Through Mr.Ajay Kumar Adv. for Ms.Swaty
S.Malik, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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02.06.2016

1. It is correct that promotion cannot be granted with retrospective effect. However, this principle is subject to some exceptions. Learned counsel for the petitioner concedes that if junior of the respondent had been promoted on the date when the respondent was in service, then review DPC is required to be held and notional promotion can be granted.

2. This being the position as accepted by the counsel for the petitioner, there is no error in the order dated 17th September, 2015 whereby O.A.No. 3308/2010 filed by Anil Wasan has been allowed recording as under:-

“There could be a doubt that whether a retired employee could claim ad hoc promotion, as a matter of right. To clarify the same learned counsel for the applicant relied upon the judgment of Hon’ble Supreme Court in State of Uttranchal & Anr. vs. Shri Shiv Charan Singh Bhandari & Ors. (JT 2013 (12)

SC 269), wherein it has been ruled that when a junior in the cadre is conferred with the benefit of promotion ignoring the seniority of senior employee without any rational basis the person aggrieved can always challenge the same in appropriate forum.

Para 12 of the judgment read thus:

“12. It can be stated with certitude that when a junior in the cadre is conferred with the benefit of promotion ignoring the seniority of an employee without any rational basis the person aggrieved can always challenge the same in an appropriate forum. for he has a right to be considered even for ad hoc promotion and a junior cannot be allowed to march over him solely on the ground that the promotion granted is ad hoc in nature. Needless to emphasise that if the senior is found unfit for some reason or other, the matter would be quite different. But, if senior incumbents are eligible as per the rules and there is no legal justification to ignore them, the employer cannot extend the promotional benefit to a junior on ad hoc basis at his whim or caprice. That is not permissible.”

3. In view of the aforementioned, the OA is disposed of with direction to respondents to consider the applicant for his ad hoc promotion to selection grade of DANICS as on 3.02.2011/06.02.2011 in terms of the aforementioned instructions issued by DOPT (ibid). Needful should be done within three months from the date of receipt of a copy of this order. No costs.”

3. At the time of the original DPC, the respondent could not be considered for promotion for grant of selection grade as his ACRs were not given and made available to the DPC. It was not a case that respondent was declared unfit for grant of selection grade. Review DPC should be,

therefore, called and held in accordance with law.

4. In view of the aforesaid, the writ petition is dismissed. Pending application also stands disposed of.

SANJIV KHANNA, J

NAJMI WAZIRI, J

JUNE 02, 2016

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