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

% Date of decision: 17th May, 2016

+ W.P.(C) 8700/2015, CM No.19102/2015

DELHI MILK SCHEME & ORS Petitioners

Through: Mr. Arun Bhardwaj, CGSC for P-1 & 2

versus

ANIL KUMAR & ANR Respondents

Through: Mr. Brajesh Kumar Singh with
Mr. Saurabh Chandra & Ms. Anjani Dubey, Advts.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

1. Delhi Milk Scheme and the Government of India have filed this writ petition impugning the order dated 10.4.2015 passed by the Principal Bench of the Central Administrative Tribunal in OA No.4033/2013. Operative portion of the impugned order reads as under:-

“10. We therefore, dispose of this O.A. with the following directions:-

(i) The prayer of the applicants for grant of promotion from the dates on which they completed eight years of service is denied.

(ii) The prayer of the applicants seeking direction to the respondents not to promote respondent No.3 (Sh. Madan Pal Singh) is also denied.

- (iii) *The respondents are directed to convene a review DPC for preparing year-wise panels in accordance with DoP&T Instructions as given in their O.M. No.22011/4/98-Extt.(D) dated 12.10.1998.*
- (iv) *The respondents are directed to count as regular service that period of Ad. hoc promotion of the applicants which falls after the occurrence of vacancy assigned to them on the basis of year-wise panel prepared by the review DPC.*
- (v) *This exercise will be completed by the respondents within a period of eight weeks from the date of receipt of a certified copy of this order.*
- (vi) *No costs.”*

2. A reading of the aforesaid directions reflects that several prayers made by the original applicants, the respondents herein, namely Anil Kumar and M. Kali Venkat Ramanna, were rejected and denied. Prayers for retrospective promotion to the post of Section Manager and challenge to the promotion of Madan Pal Singh as Shift Manager was rejected. Thus the OA was partially allowed.

3. It has been submitted that there is a contradiction in the above quoted directions, and the findings in the immediately preceding paragraph of the impugned order, which reads:

“8. Applying the law laid down in above citations to the instant case, we find that the prayer of the applicants for grant of promotion from the dates on which they became eligible for such promotion after completion of eight years of service cannot be acceded to as retrospective promotions have been disallowed by the Apex Court. However, DPC

held on 27.11.2009 committed an error in not preparing year-wise panel as mandated by DoP&T instructions. Thus, a review DPC needs to be held and the applicants have to be reconsidered for assignment of correct vacancy year for promotion. This will help in determining the earliest vacancy against which the applicants could have been promoted on regular basis. If the applicants are found suitable for assignment to a vacancy that occurred prior to their date of ad hoc promotion then their entire period of ad hoc promotion shall be counted as regular service for the purpose of next promotion. On the other hand, if any, of the applicants is assigned to a vacancy occurring after the date of ad hoc promotion then his ad hoc service shall be counted as regular service from the date of occurrence of the vacancy.”

4. To appreciate the controversy, we would like to refer to the facts in brief. The respondents, Anil Kumar and Mr. Kali Kenkat Ramanna had joined Delhi Milk Scheme as a direct recruit at the post of Dairy Supervisor on 30.12.1997 and 28.01.1998, respectively. After eight years of regular service, they were eligible for promotion as Section Managers from the first day of the next calendar year i.e. 01.01.2006 and 01.01.2007, respectively. The respondents were not promoted at the relevant time as there was no regular General Manager in the Delhi Milk Scheme. The respondents were granted adhoc promotion as Section Managers on 12.12.2007. Subsequently, in terms of Fundamental Rule 49, Deputy Manager (Technical) was given the charge of the post of General Manager with effect from 29.05.2009. Thereafter a Departmental Promotion Committee (DPC, for short) was held on 27.11.2009 and their adhoc promotions as Section Managers were regularized.

5. The grievance of the respondents that the delay in regular promotion had adversely impacted and delayed their promotion first as Section Manager and then Shift Manager for which they required eight years of experience as Section Manager, was duly considered and examined by the Tribunal. The impugned order holds that service jurisprudence does not recognise retrospective promotion, unless there exists a rule or a residual power. No person can claim a right to be promoted from the date when the vacancy had accrued and the employee must take promotion with its benefits from the date of actual promotion.

6. Respondents were also aggrieved as Madan Pal Singh, who has been wrongly arrayed as petitioner No.3 in the writ petition, was promoted as the Shift Manager, whereas the respondents were not considered for promotion for the post of Shift Manager as they lacked requisite experience of eight years in the grade of Section Manager. The Tribunal for valid reasons has rejected the said prayer made by the respondents and has upheld the promotion of Madan Pal Singh as the Shift Manager.

7. Simultaneously, the Tribunal has observed that there was delay in granting regular promotion as Section Manager. The reason was the post of General Manager had remained vacant and Deputy General Manager (Technical) was given the charge of the said post only on 29.5.2009. To do justice and to be fair, the impugned order has directed that the petitioner would hold review DPC dependent on the vacancies in the post of Section Manager and the respondents would be considered for regular promotion. The period of adhoc

promotion from 12.12.2007 till 26.11.2009 would be counted as qualifying service dependent on the dates when the review DPC would promote the respondent. This was fair and just in the facts of the case. The aforesaid directions were given by the Tribunal, relying on ***P.N.Premachandran. Vs. The State of Kerala & Ors., AIR 2004 SC 255.*** This decision directs that the period of adhoc appointment should be counted and treated as regular service provided it was followed by regular promotion when there existed a vacancy. It is not disputed that adhoc promotion was followed by regular promotion. Therefore, the direction to the petitioner to ascertain whether there were vacancies in the post of Section Manager. The respondents were certainly promoted on an adhoc basis as Section Officer, for the post of General Manager was vacant for considerable time. In fact they had worked as Section Manager during the period 12.12.2007 till 26.11.2009.

8. Learned counsel for the respondents submits that the petitioners have implemented the order passed by the Tribunal. This being the position, we would not like to interfere with the impugned order. Pertinently and it is apparent that no employee was adversely impacted and affected by the said direction. We are conscious and aware that adhoc service in all cases is not to be counted for seniority and is normally counted when the initial appointment though adhoc is made by the same process as applicable to regular appointment and is not a stop gap arrangement. In the present case as noticed, the issue of seniority is not in question. The question pertains to counting adhoc service as qualifying service for the next promotion. The

respondents were qualified and eligible for promotion, but their consideration for promotion was delayed for administrative and extraneous reasons not attributable to the respondents. Their adhoc promotions were made as per the mandate of the rules and on the respondents meeting the conditions. In these circumstances, we would not like to interfere with the impugned order and directions given therein for the reason recorded by us in the first sentence of this paragraph.

9. With the aforesaid observations, the present writ petition is disposed of.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 17, 2016/ak