

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

+ **RSA No. 79/2001**

% **6th July, 2017**

INDIAN NATIONAL SCIENCE ACADEMY Appellant

Through: Mr. K.V.Mavi and
Mr.B.P.Mishra, Advocates.

versus

V.K.GUPTA Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant in the suit impugning the judgment of the first appellate Court dated 13.2.2001 by which the first appellate Court had set aside the judgment of the trial Court dated 1.3.1995. Trial Court by its judgment dated 1.3.1995 had dismissed the suit of the respondents/plaintiffs, and the first appellate Court by its impugned judgment dated 13.2.2001 has decreed the suit of the respondent/plaintiff. At the outset however I may note that the present appeal will only be decided as regards only one of the plaintiff Sh. V.K. Gupta, out of original five plaintiffs, inasmuch as counsel for the

appellant/defendant informs that all other plaintiffs have given up their rights and which is clear from the fact that the first appeal filed before the court below was only on behalf of Sh. V.K. Gupta/respondent.

2. The subject suit was filed by the respondent Sh. V.K. Gupta seeking two reliefs. The first relief sought was that the promotion which was granted to the respondent from the post of Assistant to the post of Section Officer should not be granted w.e.f 1989 but should be granted earlier from November 1985 and when 7 years service stood completed. The second relief which was prayed in the suit was for grant of the pay-scale of Rs.2000-3500 (in the higher grade) instead of the lower pay-scale granted i.e respondent/plaintiff Sh. V.K. Gupta pleaded that the grade pay of Section Officer was not Rs.550-970 as was granted to the respondent/plaintiff by the appellant/defendant but was in fact Rs. 650-1200.

3. Para 10 of the plaint and prayer clause of the plaint read as under:-

Para 10 of the plaint

“10. That the plaintiffs, although were promoted only in the year 1989, however, they have completed their respective Seven Years of Services in their lower posts and grade as under:-

<u>S.No.</u>	<u>Name</u>	<u>Due Date of Promotion</u>	<u>Due Grade</u>
(i)	SHRI M.S.PELIA	1985 (August)	2000-3500
(ii)	Shri V.K.Gupta	1985 (November)	2000-3500
(iii)	Shri B.P.Bahuguma	1988 (May)	2000-3500
(iv)	Shri Rajan Phull	1988 (October)	2000-3500
(v)	Shrimati Manju Kant	1988 (August)	2000-3500

Prayer Clause

It is, therefore, most respectfully prayed that the Hon'ble Court may be pleased to grant a decree of DECLARATION with mandatory injunction that the plaintiffs are entitled for the benefits of their respective promotions in the proper grade of Rs.2000/- to Rs.3500/- duly effective w.e.f. the last date of the month when they completed their seven years of services in the existing grade before their promotions."

4. In response to para 10 of the plaint, the appellant/defendant when it filed its written statement did not deny the scheme which entitled grant of promotion after 7 years. Also, there was only a general denial with respect to the entitlement of the grade without the written statement specifying that the pay-scale claimed by the respondent/plaintiff was not the pay-scale of the promotion post of Section Officer. Para 10 of the written statement reads as under:-

"10. In reply to para 10 of the plaint, it is submitted that the Plaintiffs were not entitled to the promotion as a matter of right and it is in the discretion of the Academy to give promotions from any date. It is absolutely wrong that the plaintiffs became entitled to promotion from the dates mentioned in the para under reply or that they become entitled to the grades mentioned in para under reply. Para 10 of the plaint is denied in toto."

5. In the written statement the appellant/defendant also raised a plea that it was not a State under Article 12 of the Constitution of India and hence being a private organization it was not bound to grant promotion or a particular higher pay-scale/grade pay.

6. Trial Court after pleadings were complete framed the following issues:-

"1. Whether the suit of the plttff is not maintainable. OPD

2. Whether the suit is bad for misjoinder of parties. OPD
3. Whether there is no cause of action in favour of the plttf. and against the deftr. OPD.
4. Whether the plttf is entitled for the decree of declaration as alleged. OPD
5. Relief.”

7. At this stage, let me reproduce the relevant scheme on the basis of which the promotion was sought on behalf of the respondent/plaintiff. This scheme, and which is an admitted document, reads as under:-

“PROMOTION UNDER 7 YEAR ASSESSMENT SCHEME

1. Staff members of the Academy who complete 7 years of service in the same pay scale may be considered for personal promotion to the next higher scale in the line of promotion in case there is no adverse entry in their confidential reports and no enquiry pending against them.
2. Qualifications prescribed for direct recruitment should be insisted upon for those who are considered for promotion under this scheme from one group to another; however, relaxation in exceptional cases may be given by the Departmental Promotion Committee and reasons thereon shall be recorded in writing. Qualifications may not be insisted upon the case of promotions within 8 Group.
3. Promotions under this scheme will be limited to 33-1/3% of the available sanctioned posts in a particular grade on the date of DPC meeting each year.
4. The D.P.C. will consist of the following:
Vice President
Treasurer
Two Secretaries
Editor of Publications (in case of employees from Publication Section)
Executive Secretary
Nominee from DST.
5. On the basis of interviews, confidential reports and written test wherever it is deemed necessary, the D.P.C. will recommend the employees for promotion under this scheme.
6. Personal Promotion under this scheme can be granted upto the post of Deputy Executive Secretary in the grade of Rs.4100-5300.
7. Personal promotion will be effective on the last day of the month in which the employee completes 7 years of service.
8. Normally there will be no change in functions and responsibilities of an employee getting promotion under this scheme. In the event of a vacancy arising, the upgraded scale will revert back to the lower scale.

9. The DPC will meet once a year in March/April and consider all eligible cases as on 31st December of the preceding year.

Note: There will be no vacancy based promotion” (underlining added)

8. A reading of the aforesaid admitted scheme shows that promotion is granted after consideration of the annual confidential reports of the employee. Para 7 of the Scheme makes it clear that if promotion is granted it has to be granted from the end of 7th year i.e from the first date of the 8th year of the service.

9. The first contention urged on behalf of the appellant/defendant before this Court is that the appellant being a private organization and not a State under Article 12 of the Constitution of India it was not bound to grant the promotion as per the scheme. In my opinion, this argument is misconceived because taking that the appellant/defendant is only a private organization, once a scheme is framed, the said scheme becomes in the nature of a contract between the appellant/employer and the respondent/employee and such a contract therefore can always be enforced by the respondent/employee. Accordingly, even if the appellant is not a State under Article 12 of the Constitution of India it is bound to act as per its own scheme for giving promotion after 7 years, and which contract/scheme is binding between the appellant as employer and the respondent as its employee.

10. The second aspect urged on behalf of the appellant is that the appellant has a discretion whether or not to grant promotion and the respondent cannot claim automatic right to promotion. This argument of the appellant is misconceived because there is no dispute that the appellant in fact did grant promotion to the respondent. This becomes clear from para 10 of the plaint and the reply thereto given in the written statement. Once the respondent stood promoted in terms of the scheme, the only issue which remained was as to the date from which promotion has to be given and once we read para 7 of the scheme, it is clear that the commencement of the date of promotion is the first date of 8th year in service. Respondent/plaintiff completed 7 years in service in November 1985 and therefore, w.e.f 1.12.1985, the respondent/plaintiff will be entitled to promotion to the post of Section Officer and not from 1989 from when the appellant/defendant has granted promotion to the respondent/plaintiff.

11. Learned counsel for the appellant then contended that it has been held by the courts that an employer is not bound to grant promotion, however, this argument is completely misconceived for the reason that once there is admittedly a scheme, and which operates in the nature of contract between the parties, then on the terms and conditions being the eligibility criteria of the scheme, are satisfied,

then the appellant/employer has no option to act in accordance with the scheme and grant promotion. In any case the appellant has already granted promotion and the issues only are the effective date of promotion and the scale/grade of pay of the promotion post. This argument of the appellant is therefore rejected.

12. The relevant observations of the first appellate court in its impugned judgment dated 13.2.2001 which deal with the contentions with respect to the grade pay, applicability of the scheme for promotion of 7 years etc are contained in para 5, this para reproduced as under:-

“5. In the present case, appellant V.K.Gupta was appointed as Assistant in November 1978 in the grade of Rs. 425-700/-. He had completed seven years of service in November 1985. He was promoted as Section Officer in 1989 in the grade of Rs.550-970/- in stead of Rs.650-1200/-. The main contention raised by Ld. Counsel for appellant is that appellant was not given promotion w.e.f. the last date of the month when he had completed seven years of service as has been done in the case of other employees. I have gone through evidence on record carefully. DW1 has deposed that services of the employees are governed by the rules and regulations as framed and amended from time to time by the respondent academy. He has also admitted that earlier there was no promotion scheme but now there is a promotion scheme which is known as Personal Promotion Scheme and Award Scheme. There are certain rules for promotion in the personal promotion scheme and the persons who have completed seven years of service have come under the promotion scheme. Firstly a test is conducted then the matter is reported to DPC and then on the recommendations of DPC the promotions are made. So far as the promotion of appellant is concerned he has been promoted vide ex.PW1/B w.e.f 17th May 1989 under the seven year assessment scheme. I have perused ex. PW1/A which is a memorandum dated 28th October 1978 which says that if the appellant accept the appointment on the terms and conditions explained above, he should communicate in writing which should reach the respondent by 8th November 1978 and report on duty as early as possible but not later than 20th November 1978. Clause 6 of this memorandum reads as under:-

“Other terms and conditions of service will be as may be prescribed by this Academy from time to time.”

Admittedly, personal promotion scheme is applicable in the respondent academy. As per Clause 7 of the scheme, personal promotion will be effective on the last date of the month in which the employee completes seven year of service. As per Clause 9 of the scheme, DPC will meet once a year in March/April for consideration of all the eligible cases as on 31st of the proceeding year. The appellant had become eligible in November 1985 and the DPC should have considered its case in its meeting to be held on 31st March 1986 which was not held for the reasons best known to the respondent. As per the personal promotion scheme, appellant deserve to be promoted after seven years of service and his promotion order should have been made effective from the last date of the month in which he completes seven years of service. As such, this appeal deserves to be allowed.”

(underlining added)

13. It is therefore seen that the first appellate court has rightly relied upon the admitted scheme and its para 7 and then rightly held that the entitlement to promotion of the respondent/plaintiff was not from 1989 but from 1.12.1985 when the 7 years period of service of the respondent/plaintiff with the appellant stood completed.

14. No substantial question of law arises. Dismissed.

JULY 06, 2017/ib

VALMIKI J. MEHTA, J