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

+ **W.P.(C) 937/2017 & C.M. No. 4240/2017**

**GOVT OF NCT OF DELHI THR ITS CHIEFSECRETARY AND  
ORS**

..... Petitioner

Through: Mr. Sanjoy Ghose, ASC with Mr.  
Rhishab Jetley and Ms. Pratishtha V,  
Adv.

versus

**V.K VERMA**

..... Respondent

Through: Mr. Sourabh Ahuja, Advocate

**CORAM:  
HON'BLE MR. JUSTICE VIPIN SANGHI  
HON'BLE MS. JUSTICE DEEPA SHARMA**

**ORDER  
27.04.2017**

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1. The petitioner has preferred the present writ petition to assail the order dated 15.04.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.1826/2012. By the impugned order, the tribunal has directed that the claim of the respondent/ applicant for promotion as Head of the Department (Electrical Engineering-EE) ("HOD/EE") should be considered with effect from 12.06.1996 – the date from when, according to the respondent/ applicant, the vacancy in the said post arose.

2. The case of the respondent was that he was fully eligible to be promoted to the said post in the year 1996. The petitioner required the respondent to discharge the duties of the HOD/EE from 1989 onwards in officiating capacity. Despite there being a vacancy, no Departmental Promotion Committee (DPC) meeting was held and the respondent's right to consider for promotion was, therefore, denied. Eventually, the respondent was granted regular promotion on the post he was officiating on, in the year 2011. He approached the tribunal seeking grant of retrospective promotion from 1996 onwards.

3. The tribunal, as aforesaid, has directed the petitioner to consider the claim of the respondent for promotion with effect from 12.06.1996 and in case he is so granted promotion by holding a review DPC, to grant him all consequential benefits upon retrospective promotion. The operative part of the impugned order reads as follows:

*“20. In view of above, we are of the opinion that the applicant needs to be considered for promotion w.e.f. 12.06.1996 as claimed in the OA. Respondents shall accordingly hold review DPC to consider the case of the applicant for promotion to the post of HOD (EE) by drawing year-wise panels and while doing so, shall ensure compliance of the rules and instructions on the subject as well as the pronouncements of the Hon'ble Apex Court and Hon'ble High Court. Consequential benefits, if any, as a result of the aforementioned consideration by respondents, shall be governed by the extant instructions on the subject”.*

4. Even though, the impugned order was passed as early as on 15.04.2014, the petitioner has sat over the matter. It is only when the respondent moved the tribunal alleging contempt against the officers of the petitioner, the present writ petition has been preferred after nearly three

years of the passing of the impugned order.

5. Vide order dated 03.02.2017, this court directed the petitioner to file an affidavit giving full details and particulars of the file movement with supporting documents to explain the delay and latches in filing this petition. The said affidavit has been filed and read by learned counsel for the petitioner.

6. On a perusal of the affidavit, we are not satisfied that the delay in filing this petition has been sufficiently explained. To persuade us to interfere with the impugned order the submission of Mr. Ghose is that the decision of the tribunal is contrary to the well settled principle that retrospective promotion cannot be granted from the date when the vacancy may have become available, and that promotion would take effect from the date when the order of promotion is passed, except in exceptional circumstances, namely, where recruitment rules provide for fixation of retrospective seniority in case of a promote; where the denial of promotion is malafide, or, where the holding of the DPC is deliberately delayed without any justification with a view to deny the right of the eligible candidates to be considered for promotion.

7. Mr. Ghosh has placed reliance on the following decisions in support of his aforesaid submission:

- i) ***Union of India & Anr. v. K.L. Taneja & Anr.***, W.P. (C.) No. 8102/2012 decided on 12.04.2013, a Division Bench of this court observed in para 20 as follows:-

*“20. The cornucopia of case law above noted brings out the position :-*

(i) *Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.*

(ii) *If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.*

(iii) *Since mala fides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act i.e. deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.*

(iv) *If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.*

ii) **G.S. Tiwari; J.S. Joshi v. Union of India & Ors.**, 2016 Law Suit (Del) 3663, it was held:

*“19. The question which arises for our consideration is whether in the aforesaid background, the two petitioners could claim appointment to the said posts of Principal Director with retrospective effect or even notionally. The answer in the facts of the present case would be against the petitioners. The normal rule is that promotion is effective prospectively from the date of issue of the order of promotion and those employees who have retired prior to such date, should not be granted promotion retrospectively. Even when an employee is included in the select list in the panel of promotion and has retired before he could be promoted, retrospective promotion should not be given. There is no rule that promotion could be given from the date of creation of promotional posts or from the date of vacancy.*

*Promotion to a post would be from the date promotion is granted and not from the date the post falls vacant. The aforesaid general rule is subject to exceptions. Two significant exceptions are, when there is a specific stipulation to the said effect in the rules and when a junior to the retired employee has been granted promotion from the date when the retired employee claiming notional promotion was in service. In the present case, no rule has been brought to our notice. The first exception is not applicable. The Tribunal has specifically recorded and it has not been challenged that juniors to the petitioners were not promoted from a date when the petitioners were in service. The second exception therefore cannot be invoked and applied”.*

8. Though there may be some merit in the aforesaid submission of learned counsel for the petitioner, however, on account of the circumstances taken note of herein, we do not propose to interfere with the impugned order. The reason for our reluctance to interfere with the impugned order is also that the implementation of the impugned order by the petitioner would not impact the rights of any other employee since the respondent, admittedly, is the senior most officer who could have been promoted to the post of HOD/EE. Moreover, he was officiating in the promotional post since 1989. No specific reason was disclosed by the petitioner, before the Tribunal, and none has been disclosed before us, as to why the regular promotions were not held by convening the DPCs, at least since 1999, when a vacancy arose in the promotional post.

9. Learned counsel for the respondent has tendered in court the information gathered under the RTI by one of the respondent's colleague. The year-wise eligibility list for promotion to the post of HOD/EE from 1996 to 2002 has been disclosed in the information supplied by the

petitioner department. From the same, it is seen that there were no vacancies in the post of HOD/EE in the years 1996, 1997 and 1998. In the year 1999, there was only one vacancy, and the seniority position of the respondent in the said year was at Sl. no.2, since Mr. Prem Prakash Gupta is shown as senior to the respondent. Thus, the earliest point of time when the respondent could have been considered for promotion was in the year 1999 since he would fall into the zone of consideration on account of his being at second position in seniority.

10. Consequently, the direction issued by the tribunal is partially modified to the extent that the claim of the respondent for promotion shall be considered from the year 1999 onwards, and not from 1996 as directed by the tribunal. In all other respects, we maintain the impugned order. It goes without saying that we have passed this order in the facts and circumstances of this case, and we have left the question of law raised by the petitioner open for consideration in an appropriate case.

**VIPIN SANGHI, J**

**DEEPA SHARMA, J**

**APRIL 27, 2017**

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