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

+ **W.P.(C) 2330/2015**

Decided on 31st January, 2017

NEW DELHI MUNICIPAL COUNCIL

..... Petitioner

Through: **Mr. Vivek B. Saharya, ASC with Mr.
Mananjay Mishra, Advocate**

versus

RAM RAJ SETHI

..... Respondent

Through: **Ms. Rashmi Chopra & Ms. Asiya,
Advocates**

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

1. The petitioner-New Delhi Municipal Council, (NDMC, for short) in this writ petition, impugns the order dated 16.4.2014, allowing OA No.3556/2012 filed by Ram Raj Sethi, the respondent before us. The impugned order directs that vide Office Order No.819/HA dated 29.3.2007, the petitioner would be considered for grant of 3rd time-bound promotion to the respondent after 26 years of service from the date of his induction as a direct recruit on regular basis at base level.
2. The respondent was appointed as Lethman on 18.5.1976. Upon the

post of Lethman being abolished, the respondent was re-designated as a Turner vide order dated 14.12.1994, with retrospective effect from 18.5.1976, i.e. the date of induction as an employee of NDMC. Thereafter, the respondent was appointed as a Machine Man on 21.5.1991, and as a Foreman vide order dated 22.4.1998 w.e.f. 1.4.1998.

3. The contention of the petitioner-NDMC is that in terms of the Office Order dated 12.9.2001 read with the Office Order dated 23.7.1997, the respondent would be entitled to first time-bound promotion after 10 years from the date of promotion/appointment as Foreman, i.e. from 1.4.2008. Learned counsel for the respondent, on the other hand, submits that for the purpose of 3rd time-bound promotion scale, as per the Office Order dated 12.9.2001, the date on which the respondent had joined the service at the base level on regular basis, is material. The respondent having spent 26 years in service from the date of entry on 18.5.1976, he would be entitled to 3rd time bound promotion scale on 18.5.2002. The date on which the respondent was appointed as foreman, i.e. 1.4.1998, would not be consequential as the respondent was in regular service since 18.5.1976.

4. In order to decide the controversy, we would like to reproduce para 1 and 4 of the Office Order dated 23.7.1997 and the entire Office Order dated

12.9.2001, which read as under:

“No.: F.5(11)/A&G/PRC/217

Dated 23.7.97

OFFICE ORDER

The Delhi Vidyut Board vide its Resolution No.216 dated 16.07.97 has been pleased to approve the introduction of time-bound promotional scales in Delhi Vidyut Board as detailed below:-

(i) All the employees/officers of Delhi Vidyut Board shall be entitled for the first time-bound promotional scale on completion of ten years of regular service, be he a subordinate /ministerial staff member, or a group A' officer.

(ii) The second time-bound promotional scale shall be given on completion of further eight years of service, i.e., 18 years of service in all from the date of induction of an official/officer at the base level on regular basis subject to the condition that in the case of class- ... Officers, second time-bound promotional scale shall be given to such of the officers who have appointed on regular basis as per Recruitment Rules in their own right to the first promotional grade.

.....

4. The benefit of time-bound promotional scale shall be given to all the employees of DVB placed in identical scales whether in the ministerial/subordinate cadre or in the group A' scale provided that the base level in each case shall be induction by direct recruitment and not by promotion as such.”

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“No. SO(EI-I)/3007/SA-III

Dated : 12.01.2001

OFFICE ORDER

In pursuance of Council's Rso.No.3(III) dated 17.7.2001, it has been decided to extend the benefit of third time bound promotional scale in NDMC to the employees covered under, S.S.Scale on D.V.B. Pattern to all the ministerial staff/sub-ordinate employees who are in service below the rant of Asstt. Engineer (Elect.). The benefit of third Time Bound Promotional Scale will be extended w.e.f.1.4.1994 to those who have completed 26 years service in all from the date of their entry in the service at the base level on regular basis. The benefit of grant of third time bound promotional scale shall be given to such of the members of sub-ordinate/ministerial staff who have been appointed on regular basis as per recruitment rules in their own right to the second time bound promotional scale. The other terms and conditions will remain the same as mentioned in the Office Order No.EI-I/850/SC-III dated 6.4.1999 issued by this office.”

5. The Office Order dated 23.7.1997 had introduced time-bound promotion scales in the Delhi Vidyut Board, and the same was adopted and made applicable to the members of the subordinate/ministerial staff of the petitioner-NDMC. As per the Office Order dated 23.7.1997, all

employees/officers were entitled to first time-bound promotion scale on completion of 10 years of service on regular basis and second time-bound promotion scale on completion of further 8 years of service, i.e., 18 years of service from the date of induction of the officer/official at the base level on regular basis. It was also stipulated that second time-bound promotional scale would be given to officers who were appointed on regular basis as per Recruitment Rules of their own right to the first promotional basis. Thus, where an officer had been promoted once, he would be entitled to second time-bound promotion after 8 years, i.e., 18 years of total service after induction at the base level on regular basis. Para 4 of the Office Order dated 23.7.1997 states that for grant of time-bound promotion scale, the period shall be computed and calculated from the date of induction at the base level and not on the basis of the date of promotion. The period of 18 years, therefore, would commence from the date when an employee had joined service as a direct recruit and not as a promotee. In fact, if an employee had been promoted once within 10 years, he would not get the benefit of the first time-bound promotion scale and similarly, in case an employee has been promoted twice within 18 years of service, he would not get the second time-bound promotion scale.

6. The Office Order dated 12.9.2001 relates to grant of 3rd time-bound promotion scale, which was not available and granted vide Office Order dated 23.7.1997. This benefit was extended w.e.f. 1.4.1994 to those who had completed 26 years of service. In other words, 3rd time-bound promotion scale was granted with retrospective effect even before the Office Order dated 23.7.1997. The reason for the said grant is not required to be examined. This period of 26 years, it was stipulated, would be counted from the date of entry of the employee into service at the base level on regular basis.

7. In the present case, we are clearly of the opinion that the respondent had entered into the service of the petitioner–NDMC when he was appointed as Lethman/Turner on 18.5.1976. The starting point for computing the period of 26 years would, therefore, be his date of induction in the petitioner-NDMC, i.e. 18.5.1976, and not the date on which he was promoted as Machine Man (21.5.1991) or Foreman (1.4.1998). These promotions would not constitute entry into the service of the petitioner NDMC on the base level on regular basis. Appointment to the post of both Machine Man and Foreman was on account of the fact that the respondent was working and had joined the petitioner NDMC as Lethman/Turner on

18.5.1976.

8. The contention of the petitioner that the respondent had not been granted second time-bound promotion and would not be entitled to 3rd time-bound promotion in terms of Office Order dated 12.9.2001 is unacceptable and fallacious. The time-bound promotion scale scheme is applicable only if an employee has not earned promotion within the stipulated time/period. If an employee has earned promotion once, twice or on three occasions within the stipulated time/period, he is not granted time-bound promotion scale on the first, second or third occasion, respectively. The petitioner was promoted to the post of Machine Man in 1991, and subsequently to the post of Foreman in 1998 and would, therefore, not be entitled to first and second time-bound promotion scale. However, he would be entitled to grant of 3rd time-bound promotion scale, in terms of the Office Order dated 12.9.2001 which states that the same would be granted when an employee has completed 26 years of service from the date of entry into service at the base level, i.e., the first appointment, on regular basis.

9. The view we have taken is in consonance with an earlier decision of this Court in WP(C) No.230/2010 titled ***Ram Raj Sethi Vs. New Delhi Municipal Council*** decided on 14.1.2010, filed by the respondent herein,

claiming that even if he has earned promotions, he should be paid the enhanced time-bound promotion scale. In other words, the contention was that promotion should not be taken into account or considered and time-bound promotion scale should be granted, notwithstanding the promotions. This contention of the respondent was rejected, observing that he had obtained promotion as a Machine Man on 21.5.1991 and was promoted as Foreman on 1.4.1998. Learned counsel for the petitioner submits that this order also holds that the respondent had become entitled to 1st time-bound promotion scale on 21.5.2001, i.e. 10 years after he was promoted as Machine Man on 4.5.1991. The said observation was in a different context. We do not think the aforesaid observations in the order dated 14.1.2010, disposing of WP(C) No.230/2010, should be read as conclusive findings or ratio recorded by the Division Bench as the issue raised and decided in the case was different. The pronouncement and ratio elucidated was relevant to the *lis* and question whether promotions earned by the respondent should be set-off and taken into consideration for considering his case for time-bound promotion scale. The Division Bench, in its order dated 14.1.2010, was not required and did not specifically examine the language of the Office Order dated 12.9.2001 with regard to third time-bound promotion scale. That was

not the issue under consideration and examination of the Division Bench. We are, in the present writ petition, concerned with the issue whether the respondent is entitled to grant of 3rd time-bound promotion scale in terms of the Office Order dated 12.9.2001.

10. The contention raised by the petitioner, if accepted, would lead to absurdity and incongruities. As per the petitioner-NDMC, in case the respondent had not earned any promotion, he would have certainly got the 3rd time-bound scale after completion of 26 years of service, i.e., on 18.5.2002. However, as the respondent was promoted twice, he would not be entitled to 3rd time-bound promotion scale on completion of 26 years of service from the date of induction, and would be granted the scale w.e.f. 1.4.2008, i.e., 10 years after he earned the 2nd promotion as a Foreman on 1.4.1998. This is clearly not acceptable. The two promotions earned would disentitle and deny the grant of first and second time-bound promotion scales, but these promotions would not push the grant of third time-bound promotion scale to 10 years from the date of last promotion. The grant of time-bound promotion scales is with reference to the date of induction in service at base level on regular basis. The period specified for eligibility is 10 years, 8 years, and 8 years. Thus, an employee is granted the first-time

bound promotion scale if he is not granted promotion in the first 10 years of service, second time bound-promotion scale if he is not granted two promotions within the first 18 years of service, and third time-bound promotion scale if he has not been granted three promotions within the first 26 years of service from the date of induction at base level on regular basis. The Scheme, in terms of the Office Order dated 23.7.1997 or the Office Order dated 12.9.2001, in our opinion, did not envisage the position and stand of the petitioner. We must read the Scheme in a rational and logical way, rather than create ambiguity or incongruity while interpreting the said Scheme.

11. Lastly, learned counsel for the petitioner has submitted that Delhi Transco Ltd. had, vide their letter dated 17.8.2011, informed the petitioner NDMC that, as per the extant Rules, the first time-bound promotion is granted after 10 years of regular service from the date of initial appointment. It is further clarified that the post of Foreman (Electrical) is not an induction level post but a promotional post, and the grant of 1st time-bound promotion scale from the date of appointment to the post is not postulated. This is clearly stated in the letter of Delhi Transco Ltd. and the said letter does not support the case of the petitioner NDMC. Rather, the letter supports the

respondent.

12. In view of the aforesaid discussion, we find no merit in the writ petition and the same is dismissed. The respondent will comply with the order passed by the Tribunal within a period of one month from the date of receipt of this order, failing which he shall pay interest on the defaulted amount @ 7% p.a. from the date of this order, till payment of arrears is made. There will be no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 31, 2017
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