

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

+ **LPA No.509/2017**

+ Date of Decision: 2nd August, 2017

VANDANA VARMA Appellant
Through Mr.Hitendra K. Nahata, Adv.
with Mr.V.P. Singh, Adv. &
Mr.Anuj R. Yadav, Adv.

versus

THE UNION OF INDIA & ORS Respondents
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

1. The present Letter Patents Appeal assails the judgment dated 07.03.2017 passed by the learned Single Judge whereby the Writ Petition (C) 5480/2017 filed by the Appellant has been disposed of as infructuous.

2. The Appellant, who is an employee of respondent No.2- Oil Industry Development Board, had preferred the aforesaid Writ Petition praying for a direction to the Respondent No.2 to

consider her for promotion on ad-hoc/regular basis for the post of Stenographer Grade 'B'. The petitioner had also prayed that no Review Departmental Promotion Committee (in short 'DPC') should be held qua Respondent No.3 and she should not be promoted to the post of Stenographer Grade 'B'.

3. The case set up by the Appellant before the learned Single Judge, was that she had been appointed in the Respondent No.2 Organisation on 19.03.1993 as a Stenographer Grade 'D' whereafter, based on the successful clearance of test, she had been promoted to the post of Stenographer Grade 'C' on 16.12.1997. The Appellant's plea was that she had completed four years service in Grade 'C', and therefore, as per the Recruitment Rules, she was eligible for being considered for promotion to the post of Stenographer Grade 'B' but Respondent No.2 was taking no action in this regard despite, there being availability of a vacancy of Stenographer Grade 'B' in the Organisation.

4. The Appellant had also contended that Respondent No.3 Smt. Asha, who had been initially appointed in a different cadre

i.e. Stenographer-Typist Hindi on 17.05.1988 was wrongly being granted promotion to the post of Stenographer Grade 'C' even though the post of Stenographer-Typist Hindi was not a feeder post for promotion to the said post of Stenographer Grade 'C'. The Appellant, therefore, contended before the learned Single Judge that by wrongly granting promotion to Respondent No.3 as a Stenographer Grade 'C' her chances of promotion to the post of Stenographer Grade 'B' were likely to be adversely affected as she apprehended that the officials of Respondent No.2 would promote Respondent No.3 to the sole post available of Stenographer Grade 'B' by overlooking the Appellant.

5. Per Contra, The Respondents No.1 and 2 in their reply before the learned Single Judge justified their action of promoting Respondent No.3 as Stenographer Grade 'C' w.e.f. 11.12.1997 by pointing out that both the posts of Stenographer Grade-D(Hindi) and Stenographer Grade-D(English) belonged to the same cadre and, therefore, both the Appellant and Respondent No.3 were eligible for promotion to the post of

Stenographer Grade-‘C’. It was further pointed out that since Respondent No.3 was about 5 years senior to the Appellant, she was rightly granted promotion as Stenographer Grade ‘C’ w.e.f 11.12.1997 pursuant to a Review DPC. The further plea of the Respondent No.1 & 2 were that a duly constituted DPC held on 03.09.2002 after considering all eligible candidates, including both the Appellant and Respondent No.3 for promotion from Stenographer Grade ‘C’ to Stenographer Grade ‘B’ against the sole available vacancy, recommended Respondent No.3 for promotion to the post of Stenographer Grade ‘B’ and accordingly Respondent No.3 stood promoted on adhoc basis Stenographer ‘B’ w.e.f 05.09.2002. In these circumstances it was prayed that the Writ Petition had become infructuous.

6. During the pendency of the Writ Petition, before the Court, the Appellant was also promoted as a Stenographer Grade ‘B’ on regular Basis w.e.f. 09.03.2011. This fact was brought to the knowledge of the Court by way of an Application being (CM 8172/2016) by the Appellant herself as also by Respondent No.2 by way of an additional affidavit dated

16.03.2016. The relevant para of the Additional Affidavit filed by Respondent No.2 read as:

“ 3. That the matter was directed to be listed on regular list and to be heard finally as per the order dated 05.10.2004 of this Hon’ble court. Subsequent to the same, the facts and circumstances set out below have transpired and have much bearing on the matter and must be brought on record before this Hon’ble Court, as the same effectively renders the prayers of the Petitioner as against the Respondents infructuous:

(a) At the time of the filing the writ petition the Respondent No.3 was promoted to the post of the Stenographer ‘B’ on ad hoc basis on 05.09.2002, which the Petitioner has challenged and sought to be struck down.

(b) The promotion of the Respondent No.3 to the post of Stenographer Grade ‘C’ was made effective from 16.12.1997 vide the Review DPC held on 02.09.2002.

(c) On 22.12.2006, the Petitioner was promoted to the post of Stenographer Grade ‘B’ on ad hoc basis, during the pendency of the Writ Petition.

(d) Both Respondent No.3 and Petitioner were promoted to the post of Stenographer ‘B’ on regular basis w.e.f. 09.03.2011.

4. That in view of the above circumstances prayer (i) of the Petitioner seeking to consider her promotion to the post of Stenographer ‘B’ is rendered infructuous from 22.12.2006. The prayer (ii) is rendered infructuous by the holding of Review DPC on 02.09.2002 which was essential to consider the eligible candidate i.e, Respondent No.3 who was inadvertently left to be considered during December 1997.

5. That since the Respondent No.3 and the Petitioner have been promoted to the same post i.e. Stenographer

‘B’ with effect from the same date(09.03.2011), the alternative prayer of the Petitioner to strike down the appointment of the Respondent No.3 also ceases to have any relevance or necessity even to the petitioner.”

7. When the Writ Petition came up for final hearing before the learned Single Judge, he after considering the fact that both Respondent No.3 and the Appellant stood promoted as Stenographer Grade ‘B’ w.e.f 09.03.2011, came to the conclusion that in view of the promotion granted to her w.e.f. 09.03.2011, the Appellant’s claim regarding her first prayer for consideration of her case for promotion to the post of Stenographer Grade ‘B’, stood satisfied. The learned Single Judge was also of the view that in case the Appellant wanted to claim promotion from an earlier date, she would have to file a fresh petition for the same, as the claim for retrospective promotion would be beyond the scope of the Writ Petition.

8. Similarly, while dealing with the second prayer of the Appellant, the learned Single Judge observed that though the Appellant had in her Writ Petition prayed that no Review DPC should be conducted qua Respondent No.3 for re-fixing her seniority in the post of Stenographer Grade ‘C’ but it had

transpired that a Review DPC had already been held on 02.09.2002 whereby Respondent No.3 had been granted ante-dated promotion to the post of Stenographer Grade 'C' w.e.f. 16.12.1997. Based on these facts, the learned Single Judge was of the view that there being no challenge to the Review DPC held on 02.09.2002 in respect of Respondent No.3, the Writ Petition qua the second prayer of the Appellant had also become infructuous. The learned Single Judge accordingly disposed off the Writ Petition as being infructuous while granting liberty to the Appellant to claim her entitlement for the post of Stenographer Grade 'B' from a date prior to 09.03.2011.

9. Aggrieved by the disposal of her Writ Petition in the above manner, the Appellant filed a Review Petition which was dismissed vide order dated 21.04.2017, whereafter she has preferred the present Appeal. Before us, the learned counsel for the Appellant has contended that the learned Single Judge has erred in disposing of the Writ Petition without adjudicating on the issues raised by the Appellant. He submits that the learned Single Judge has failed to consider the fact that the Appellant

had already filed a CM No.8172/2016 to bring on record additional and corroborative facts on record from which it would be apparent that the Appellant had already brought to the notice of the Court, the illegalities being committed by the Respondents in promoting Respondent No.3 as Stenographer Grade 'C' and Grade 'B'. Learned counsel further argued that the learned Single Judge while disposing of the Writ Petition as infructuous had overlooked the principle of *lis pendence* and had therefore contended that any illegal Review DPC conducted during the pendency of the Writ Petition ought not to be given effect to and the Court ought to have examined those aspects.

10. We have considered the submissions of the learned counsel for the Petitioner and perused the record. It becomes evident from the record that during the pendency of the Writ Petition, the Appellant was indeed promoted as Stenographer Grade 'B' w.e.f 09.03.2011, which was her first main prayer in the Writ Petition and therefore as rightly observed by the learned Single Judge, if she has a grievance regarding the date from which she claims this promotion, she would be required to

challenge the same by a fresh petition, as the prayer in the Writ Petition was only for consideration of her case for promotion as Stenographer Grade 'B' and there was no prayer for grant of promotion from any particular date. In our view, the learned Single Judge has rightly come to the conclusion that the first prayer of the Appellant had become infructuous.

11. We have also considered the second relief claimed by the Appellant whereby she had prayed that no review DPC should be held qua Respondent No.3 and she should not be promoted as Stenographer Grade 'B'. As noticed above, it is an admitted fact that during the pendency of the Writ Petition, not only a Review DPC qua Respondent No.3 had been held but she also stood promoted as Stenographer Grade 'B' w.e.f 09.03.2011 and therefore the second prayer of the Appellant had also become infructuous. It is evident in case the Appellant is aggrieved by the holding of review DPC qua Respondent No.3 and/or her promotion to the post of Stenographer Grade 'B', she will be required to challenge those orders substantively and cannot contend that the validity of a promotion order passed

much after the filing of the Writ Petition, should be examined in the same Writ Petition. Therefore in our considered view, the learned Single Judge was justified in holding the Writ Petition as infructuous qua the second prayer also. In these circumstances the disposal of the Appellant's Writ Petition as infructuous with liberty granted to her to file a fresh Petition, if so advised, is just and proper and warrants no interference.

The Appeal is accordingly dismissed with no order as to costs.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

AUGUST 02, 2017
nn/aa/sr