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

+ **W.P.(C) 1637/2017**

GOVT OF NCT OF DELHI AND ANR

..... Petitioner

Through Mr. Sanjay Dewan and Ms. Palak
Rohmetra, Advocates.

versus

RAVIKANT DIGAMBER SATDEVE AND ORS

..... Respondent

Through Mr. Naresh Kaushik, Advocate for the
UPSC.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

27.02.2017

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Government of NCT of Delhi and the Secretary, Department of Information Technology by this writ petition have impugned order dated 10th August, 2016, passed by the Principal Bench of the Central Administrative Tribunal, whereby OA No.4243/2014 filed by Ravikant Digamber Satdeve, respondent No.1 before us, has been allowed.

2. Ravikant Digamber Satdeve was appointed as an Assistant Programmer on 9th March, 1998. The respondent was senior to Mohan Singh, respondent No.3 before us, who had joined the post of Assistant Programmer on 31st October, 1997. The reason was that Ravikant Digamber Satdeve had secured higher marks and position in the merit list. The delay in joining of Ravikant Digamber Satdeve

was on account of verification regarding his character, antecedents and caste certificate from his home State i.e. Maharashtra.

3. The impugned order refers to the Office Memorandum dated 18th March, 1988 of the Department of Personnel and Training, which in paragraph 3.1.2 had stipulated as under:-

“It may so happen that in some cases of promotion, the senior officers would not have completed the required service whereas the juniors would have completed the prescribed eligibility condition for promotion. In such cases, seniors will be left out from consideration for the higher post. To avoid such a situation, a suitable Note may be inserted in the recruitment rules so that the seniors who have completed the probation period, are also be considered where the juniors who have completed the requisite service are being considered. ”

4. Paragraph 3.1.2 of the aforementioned OM dated 18th March, 1988 has been amended by the Office Memorandum dated 25.03.1996 issued by the Department of Personnel and Training, the relevant portion of which reads:-

"2. In the light of the Supreme Court Judgment in R. Prabha Devi & Ors. Versus Govt. of India & Ors. in civil appeals No. 2040-42 of 1987 decided on March 08, 1988 on the judgment and order dated February 11, 1986 of the Central Administrative Tribunal, New Delhi and in continuation of O.M. of even number dated 23.10.1989 Government have decided to amend Para 3.1.2 or Part-3 in this Department's O.M. No. AB- 14014/112/87-Estt. (RR) dated 18th March, 1988. Accordingly, the last sentence of para 3.1.2 will stand amended to read as under:-

“To avoid such a situation the following note may be inserted below the relevant service rules/

column in the schedules to the Recruitment Rules.

“Where juniors who have completed their qualifying/ eligibility services are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service”.”

3. Consequently Para 3.1.2 of this Department’s O.M. No. AB-14017/12/87-Estt. (RR) dated 18th March, 1988 will also be amended with the addition of the following sentence after third sentence of para 3.1.2 *ibid*.

“The Administrative Ministries/Departments are also empowered to amend all the service rules/recruitment rules to incorporate the “Note” as amended above.””

The Supreme Court in *R. Prabha Devi & Ors. Vs. Government of India*, 1988 2 SCC 233, drew a distinction between seniority and eligibility and held that seniority cannot substitute eligibility. A public servant should fulfil the eligibility conditions prescribed by the Rules. It was in the context of the said ratio that the aforesaid OM of 1996 was issued.

5. The date of joining at times can be different for various reasons, which may be beyond the control of the candidates, who have been selected and given inter se seniority based upon the merit list or the marks secured. The fortuitous circumstances beyond the control of the candidate cannot and should not be a ground to alter and deny

seniority. Such vagaries have to be offset and neutralized to ensure that there is no discrimination and matters are not left to mere chance. The Memorandum quoted above ensures a uniform procedure, as well as fair and equal treatment to all employees who may join on different dates and would, therefore, fulfil the eligibility criteria for promotion on different dates. It would be rather unfortunate and unfair for the petitioners to deny Ravikant Digamber Satdeve his seniority on account of prolonged verification exercise before Ravikant Digamber Satdeve was permitted to join.

6. Given the aforesaid facts and circumstances noticed by the Tribunal, we do not think that the impugned order requires interference in exercise of power under Articles 226 and 227 of the Constitution of India.

7. The writ petition is accordingly dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 27, 2017

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