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

+ **W.P.(C) 62/2016**

Date of decision: 7th February, 2017

UNION OF INDIA AND ANR

..... Petitioner

Through Mr. Arun Bhardwaj, CGSC with Mr. Mimansak Bhardwaj, Mr. Nikhil Bhardwaj, Mr. A. Sriram, Advocates and Mr. Manish Sharma, SSO.

versus

CHHITAR MAL MEENA

..... Respondent

Through Ms. Harvinder Oberoi, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

The dispute pertains to grant of regular promotion to Chhittar Mal Meena, the respondent before us, as Senior Investigator with effect from 18th January, 2001, when he was promoted to the same post on *ad-hoc* basis.

2. Chhittar Mal Meena had first approached the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) along with three others in OA No. 2137 of 2002, which was disposed of vide order dated 29th May, 2003. The order is a short one and is reproduced below:-

“During the course of submissions on behalf of the respondents, it was stated at the Bar that the applicants have been promoted on ad-hoc basis, therefore, they have no right for regularisation to the said post. However, it was conceded that at present there are no regular vacancies available, therefore, the applicants cannot be

regularized. But if and when the regular vacancies will arise, the applicants shall also be considered in accordance with law. It is also conceded that there is no likelihood of applicants' reversion. The respondents' learned counsel has no objection if any order is passed on these lines. This is accepted by applicants' learned counsel.

2. Accordingly, we dispose of the present application directing the respondents:-

- a) in case regular vacancies fall vacant, the claim of the applicants, who are working on ad-hoc basis, shall be considered in accordance with law.
- b) the applicants shall not be reverted till such time one of the incumbents, who has lien on this post, returns; and
- c) till then the applicants will continue to work on ad-hoc basis ”

This order refers to the submission made by the Government/authorities that Chhittar Mal Meena and three others who were granted *ad-hoc* promotions, do not have a right to regular appointment as Senior Investigators. There were no regular vacancies where Chhittar Mal Meena and the three others could be regularised. The Government had, however, conceded that Chhittar Mal Meena and the three others would not be reverted. It was directed that in case regular vacancies fall vacant, the case of Chhittar Mal Meena and three others, who were working on *ad-hoc* basis, shall be considered for promotion in accordance with law.

3. After about six years, vide order dated 6th March, 2009, Chhittar Mal Meena was promoted as the Senior Investigator on a regular basis with effect from 24th December, 2004.

4. Aggrieved that regular promotion was not granted with effect from the date of *ad-hoc* promotion i.e. 18th January, 2001, Chhittar Mal Meena

filed OA No.3197/2011, which was disposed of at the admission stage vide order dated 16th September, 2011, directing the authorities to consider and dispose of the representations dated 15th October, 2009 and 16th November, 2009 by passing a speaking and reasoned order within six weeks.

5. The representations were disposed of vide the order dated 17th October, 2011. The contention that some others were promoted earlier was examined and rejected. It was observed that the file(s) of those promoted on regular basis with effect from 11th January, 2001, including K.K. Chand, were not traceable. Benefit of reservation could not be extended to Chhitar Mal Meena (who belonged to the Scheduled Tribe category) owing to 50% restriction. Lastly, due to non-availability of a regular vacancy, K.K. Chand had to be reverted subsequently, but his reversion order was withdrawn because of the directions of the Tribunal. The last three paragraphs of the order dated 17th October, 2011 are relevant and read as under:-

“6. Further as already stated above, on being promoted on ad-hoc basis as Senior Investigator along with three others, owing to non-availability of regular vacancies, Sh. Meena had filed a CAT case for regular appointment from the date of adhoc promotion. The CAT, after considering the fact that there was no regular vacancy available at that time, passed direction for regular appointment in case regular vacancies become available. Accordingly, Sh. Meena was appointed as regular Senior Investigator w.e.f. 24.12.2004, the date from which regular vacancy became available in CSO and absorbed in SSS w.e.f. 1.5.2005 i.e. on availability of vacancy in the Cadre.

7. Therefore, keeping in view the fact that Sh. Meena's regular appointment in Senior Investigator Grade has been made w.e.f. availability of vacancy i.e.

24.12.2004 as per order passed by Hon'ble CAT in OA No.2137/2002 it cannot be pre-dated, due to non-availability of vacancy. Since, Sh. Meena has now been absorbed into SSS w.e.f. 1.5.2005 his name has been placed at appropriate place in seniority list to be considered for promotion in JTS Grade of ISS as per guidelines on reservation for SC/ST.

8. This issue is in compliance with the orders of the Hon'ble CAT (PB) in OA No.3197/2011 & MA No.2359/2011 dt. 20.9.2011.”

6. Chhittar Mal Meena challenged this order dated 17th October, 2011 by way of OA No.455/2012, which was disposed of vide order dated 2nd April, 2013. The Tribunal had elucidated that the only issue that required consideration was whether there existed any regular vacancy of Senior Investigator prior to 24th December, 2004. Reference was made to the office note of the Departmental Promotion Committee Meeting dated 15th December, 1998 to the following effect:-

“There is no reservation for adhoc appointments. However, even if we go by the reservation roster which is now on percentage basis, the SC quota is full whereas ST quota (6) has a shortage of three. There is, however, no eligible ST person in the seniority list.”

Chhittar Mal Meena, who belongs to Scheduled Tribe category, had relied upon the said note to submit that he was eligible and was promoted as Senior Investigator with effect from 18th January, 2001 and, therefore, could have been adjusted against the three vacant posts, which were vacant as per the aforesaid note. Reference was also made to the office order dated 13th December, 2010 by which three officers, namely, J.P. Meena, Jag Ram Meena and Jagat Hazarika had been recommended by the Union Public

Service Commission for promotion to Junior Time Scale of the Indian Statistical Service, the next higher post above Senior Investigator, against vacancies for 2002-03. The Tribunal had directed as under:-

“7. We have perused the impugned order of the respondents and find that in the said order it is stated that the file relating to the promotion of the applicant is not traceable in the concerned division. However, we find that even if this is so, sufficient number of documents are available with the respondents to reconstruct the case of the applicant and take an appropriate decision thereon. Thus the respondents erred in rejecting the claim of the applicant by the impugned order.

8. The impugned order of the respondents is, therefore, quashed. We direct the respondents to once again consider regularization of the applicant from a date from which regular vacancy was available taking into account the DPC Note of 1998 and their Office Order dated 13.12.2010. Accordingly, the present O.A. is disposed of. There shall be no order as to costs.”

7. A reading of the directions given in paragraph 8 would show that the Tribunal while quashing the order dated 17th October, 2011, had not given any firm or affirmative final direction. The authorities were required to once again consider the case of Chhitar Mal Meena for regularization from the date on which the regular vacancy was available. The DPC note of 15th December, 1998 and the office order dated 13th December, 2010 were to be taken into consideration by the authorities. We are in agreement with the counsel for the Union of India (the petitioners before us) that this order dated 2nd April, 2013 did not give any affirmative direction to the

authorities, albeit on the other hand, the authorities were required to apply their mind once again keeping in mind the DPC note of 1998 and their office order dated 13th December, 2010.

8. Chhitar Mal Meena read the order differently and was also aggrieved as authorities did not pass any effective order. Chhitar Mal Meena filed M.A. No.1932 of 2014 praying for execution. The Tribunal on this application vide order dated 4th September, 2015, after recording the contentions, passed the following order:-

“In the DPC note dated 15.12.1998 it was specifically indicated that in ST quota of 06 there was shortage of 03. The emphasis of OM dated 27.08.2002 is that the vacancies meant for direct recruitment which were not cleared by the Screening Committee, could not be filled up for promotion or otherwise should be abolished. The only ramification of the provision in the OM would be that the vacancies in DR quota could not be filled up by promotion and were to be abolished. The abolition might have taken place after 27.08.2002 i.e. much after 18.01.2001, since when the applicant had been working on the post on ad hoc basis. The case of the applicant in the OA was for modification of the order dated 06.03.2009 to the extent that he is entitled for his promotion to the post of Senior Inspector w.e.f. 18.01.2001. In the Order dated 02.04.2013, the Tribunal had taken a specific view that the regular vacancies were to be determined in terms of DPC note dated 15.12.1998.

As far as the plea of delay in filing the execution application is concerned, in the case of ***Hukum Raj Khinvasra Vs. Union of India & Ors***: 1998 (1) AISC 226 Hon'ble Supreme Court ruled that since the application was beyond limitation and no application for condonation of delay was filed the Tribunal was

right in rejecting the execution application.

In the present case, no time limit had been specified for implementation of the Order execution of which is sought in the present proceedings, thus, the respondents had six months time to do the needful. The order became final and executable only on expiry of date of 6 months from 02.04.2013. Before expiry of six months from the date of order i.e. 20.04.2013 (sic 02.04.2013), any execution petition if filed could be premature.

Thus, the present execution application filed within one year expiry of six months from 02.04.2013, cannot be considered as barred by limitation and the plea of delay raised on behalf of the respondents is rejected.

The respondents are directed to obey order passed by the Tribunal in true letter spirit within four weeks and file the compliance affidavit, failing which we would be constrained to take coercive steps to ensure that the Order is executed. ”

9. Faced with the aforesaid order, the authorities have preferred the present writ petition impugning the order dated 4th September, 2015 in M.A. No. 3944/2014 as well as the order dated 2nd April, 2013 passed in OA No.455/2012.

10. During the course of hearing before us, the petitioner authorities filed an affidavit on 17th March, 2016, in which they have stated as under:-

“9) On the basis of it, petitioners tried to reconstruct the file and during the course of the same it was found that from 01.05.2000 to 31.03.2002, 4 posts of S.I. were abolished on the recommendation of Internal Work Study Unit. (Annexure P-11).

10) On perusal of seniority list dated 01.01.2002 (Annexure P-12), it is found that 104 posts have already been filled (sic) up by regular incumbents till 07.01.99. It is relevant to mention here that in CSO during the year 2001 there were 87 sanctioned posts of Senior Investigator which were offered for absorption in SSS (Annexure P-13). Therefore, as on 01.01.2000, there were 104 incumbents against 87 sanctioned posts, hence there was no vacancy. The same position continued till 02.07.2002 when vide Circular No.A-23011/1/2002-Ad.II dated 02.07.2002 (Annexure P-14) final seniority list of Senior Investigator was issued vide which it was found that no vacancy is available in the grade of regular S.I. beyond 101 (inclusive of Plan posts + incumbents on deputation). It is submitted that from 07.01.99 to 02.07.2002, there were more incumbents holding the post of senior investigator than the actual 87 sanctioned posts. The number of posts of Senior Investigator in seniority list dated 02.07.2002 consisting of 101 incumbents has been calculated on the basis of 87 regular posts +10 plan posts + incumbents on deputation.

11) It can be seen on perusal of Seniority list dated 01.01.2002 (Annexure P-12) and seniority dated 02.07.2002 (Annexure P-14) and facts mentioned above that there may be a shortfall of ST quota but there was no regular vacancy available at all the period in question to accommodate Respondent as plan posts as well as vacancy arisen due to incumbents on deputation cannot be counted as regular posts for the purpose of promotion.”

11. In the reply filed by Chhitar Mal Meena to the said affidavit, it has been stated that paragraphs 9, 10 and 12 are not relevant and, therefore, do not require any answer.

12. We would observe that the averments made in paragraph 10 are most

germane and apposite. In the said paragraph, it is affirmed that there were 87 sanctioned posts of Senior Investigator in the year 2001. As on 1st January, 2002, there were 104 incumbents against 87 sanctioned posts and, therefore, there were no regular vacancies. If there were no regular vacancies, obviously Chhitar Mal Meena could not have been absorbed on regular basis as on 18th January, 2001. This explains the reason why in the note dated 15th December, 1998, the DPC had specifically mentioned that there was no reservation in *ad-hoc* appointments and in that context it was observed that even if the roster reservation system was followed, the Scheduled Caste quota post was not available and even if there was shortage of Scheduled Tribe candidates, none in the feeder cadre were eligible for promotion. If we read the DPC note dated 15th December, 1998 in this background, the noting made by the DPC would become clear. This note would not establish and show existence of regular vacancies in the cadre of Senior Investigators for Scheduled Tribe category. The recording or reference was for *ad-hoc* promotions and reservation, and would not establish and show the existence of a regular vacancy reserved for the Scheduled Tribe Category.

13. J.P. Meena, Jag Ram Meena and Jagat Hazarika were promoted as Assistant Directors vide office order dated 13.12.2010, which is not on record. The three were granted promotions from retrospective effect pursuant to the directions issued by the Tribunal in the Original Applications filed by them.

14. We would observe that this facet and the effect of the retrospective promotions has to be examined, if raised by Chhitar Mal Meena, in an independent Original Application. We have quoted the operative

portion of the order dated 2nd April, 2013, whereby OA No.455/2012 was disposed of. The operative portion reveals that the Tribunal had left it to the authorities to pass a speaking order taking into consideration the DPC note of 15th December, 1998 and the office order dated 13th December, 2010 by which J.P. Meena, Jag Ram Meena and Jagat Hazarika were recommended for promotion as Assistant Directors. There was no specific direction that Chhitar Mal Meena should be promoted as Senior Investigator on regular basis with effect from 18th January, 2001. It is in this context, we have also examined the order dated 4th September, 2015 passed in M.A. No.1932 of 2014 in which directions were issued to the authorities to pass a speaking order within four weeks and file a compliance affidavit. This order dated 4th September, 2015 had only directed and compelled the authorities to pass an order, which was required and mandated in terms of the order dated 2nd April, 2013, whereby OA No.455/2012 was disposed of. We do not think that the operative portion of the impugned order dated 2nd April, 2013 should be construed and read as giving a specific direction that promotion should have been granted to Chhitar Mal Meena to the post of Senior Investigator with effect from 18th January, 2001.

15. Accordingly, we would dispose of the writ petition giving liberty to Chhitar Mal Meena to file a comprehensive representation within four weeks from the date of receipt of this order, which would be disposed of by the petitioner authorities by a speaking and reasoned order within six weeks. In case, Chhitar Mal Meena is still aggrieved by the said order, he will be at liberty to take recourse to the appropriate remedy in accordance with law. We hope and trust that the petitioner authorities will abide by the time frame fixed above.

16. We were reluctant to pass this order in view of the earlier history of litigation but were compelled to do so as the order dated 2nd April, 2013 in OA No.455/2012 had left the issue open to be decided by the petitioner authorities keeping in mind the DPC note of 1998 and office order dated 13th December, 2010.

17. The writ petition is accordingly disposed of. There will be no order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 07, 2017
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