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

+ W.P.(C) 753/2018 and CM APPL. 3145-47/2018

MINISTRY OF HOME AFFAIRS Petitioner
Through: Ms. Suman Chauhan, Advocate

versus

RAMESH CHANDER AND ANR Respondents
Through: None

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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31.01.2018

1. The petitioner/Ministry of Home Affairs, Government of India has challenged an order dated 12.08.2016 passed by the Central Administrative Tribunal, Principal Bench, allowing O.A. No.1056/2012 filed by the respondent No.1 herein for granting him regular promotion against vacancies in the Junior Administrative Grade-II (in short 'JAG-II') of the National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli Civil Service (in short, 'DANICS') and promote him from the date the vacancy had arisen, with all consequential benefits w.e.f. 01.07.2009, the date when his juniors were granted regularisation with retrospective effect.

2. The facts of the case lie in a narrow compass. On 23.08.1995, the respondent No.1 was inducted at the Entry Grade in the DANICS, which is a Group 'B' Service. As per Schedule-III of the DANICS Rules, an Entry

Grade Officer enters the next scale (Senior Scale) on completion of four years of service and he becomes eligible for getting Selection Grade on completion of a minimum of eight years of service. The next higher scale after the Selection Grade is that of JAG-II, for which one qualifies on completion of 13 years of service and for JAG-I (Group A), on completion of 18 years of service. Rule 2(e) of the DANICS Rules defines the term, “Approved Service” for the purpose of promotion and states as below:-

“2(e) ‘Approved Service’, in relation to any grade, means the period or periods of regular service rendered in that grade, including period or periods during which a member of the Service could have held a post on regular basis in that grade but for his being on leave or otherwise not being available to hold such posts, from the 1st day of July of the year –

(a) following the year in which the examination was held in respect of an officer appointed directly to that grade;

(b) for which the recruitment was made on regular basis in respect of an officer appointed to that grade by promotion.”

3. As per the DOPT instructions, DPC meetings ought to be convened on regular intervals for making recommendations to fill up vacancies of the promotion quota, but admittedly, the petitioner did not do so in the case of DANICS officers. Learned counsel for the respondent had submitted before the Tribunal that despite OM dated 13.10.1998 and OM dated 11.03.2011 issued by the DOPT, which provide a schedule for holding timely DPC meetings, in the present case the petitioner kept on delaying convening of the DPC meetings. He contended that had the DPC meetings been held regularly, the respondent would have got promoted to the post of JAG-II in the year 2008 itself, in view of his eligibility. Reference was made by

learned counsel to the order dated 25.02.2011 issued by the Supreme Court in Writ Petition (Civil) No.06/2010, wherein directions were issued to the authorities to fill up vacant posts in the IAS under the promotion quota.

4. In terms of the aforesaid directions, 23 DANICS officers in JAG-I were promoted to the IAS vide Notifications dated 23.11.2011 and 29.02.2012. With the promotion of these 23 JAG-I DANICS officers to the IAS, an equal strength of vacancies got created in the grade of DANICS JAG-I, for promotion to JAG-II, but they could not be filled up since the petitioner failed to hold regular DPC meetings for promoting the officers in the IAS, under the promotion quota. Learned counsel for the respondent had pointed out before the Tribunal that in terms of the Notification dated 22.06.2011 issued by the Ministry of Home Affairs, several officers including those who were junior to the respondent, were given retrospective promotion, whereas the same was wrongfully denied to the respondent.

5. The aforesaid arguments were sought to be countered by learned counsel for the petitioner, who had stated before the Tribunal that regular DPC meetings could not be convened on account of some pending litigation relating to the seniority list. Finally, on 02.09.2011, a DPC meeting was convened by the UPSC and the respondent's name was considered in the said DPC for regularization in the Selection Grade. Based on the recommendations of the DPC, the seniority list was drawn and issued on 23.11.2011, but before that date, the respondent had superannuated on 30.09.2011.

6. It was submitted before the Tribunal that though the respondent was promoted to the Selection Grade on an *ad hoc* basis, in terms of the order dated 03.02.2004, he could not be regularized in the Selection Grade and

therefore, could not be promoted to the post of JAG-II. The DOPT was consulted in the matter and the advice received was that the case of retired officers would be governed in terms of the OM dated 13.10.1998 issued by the DOPT (erroneously mentioned as '12.10.1998' in para 5.1 of the impugned judgment). It was also sought to be explained on behalf of the petitioner that one Ms. Geetika Sharma and others were confirmed in the Selection Grade and promoted to the next higher Grade of JAG-II with retrospective effect, as unlike the respondent, they were still in service.

7. The Tribunal agreed with the arguments advanced on behalf of the respondent and held that he was admittedly in service when the DPC meeting was convened on 02.09.2011 and his case had been favourably considered. The only ground for denying the respondent conformation in the Selection Grade w.e.f. 01.07.2004 and promotion to JAG-II w.e.f. 01.07.2009, was that by the time the Department issued two Notifications dated 23.11.2011 and 29.02.2012, declaring the seniority list, the respondent had already superannuated. The Tribunal opined that the delay on the part of the Department in issuing two Notifications in the months of November, 2011 and February, 2012, when the DPC had taken place much earlier, in the beginning of September, 2011, cannot be a reason to exclude the respondent herein particularly when his case had been favourably considered in the DPC. As a result, the respondent was held entitled to the same benefits, which were extended to his juniors and the petitioner was directed to confirm him in the Selection Grade w.e.f. 1.07.2004 and grant him promotion to JAG-II w.e.f. 01.07.2009, at par with his juniors, alongwith consequential benefits, within a period of three months from the date the judgment was pronounced.

8. The petitioner has taken over one year to approach this Court to assail the impugned judgment dated 12.08.2016. Mr. Chauhan, learned counsel for the petitioner states that the Tribunal ought not to have granted promotion to the respondent with retrospective effect as service jurisprudence does not contemplate retrospective promotion; that no *malafides* have been alleged against the petitioner for failing to convene the DPC meetings punctually and therefore, retrospective appointment ought not to have been granted to the respondent; that no exceptional facts were brought out by the respondent in his pleadings before the Tribunal for having been granted retrospective promotion and merely because some persons had been granted the benefit of retrospective promotion, would not automatically confer any right on the respondent to claim equality.

9. We have carefully considered the submissions made by learned counsel for the petitioner and examined the pleadings before the Tribunal.

10. There is no dispute on the facts of the case. The petitioner had admittedly granted the respondent Selection Grade on an *ad hoc* basis on 03.02.2004 itself but his regularisation could not take place only for the reason that a regular DPC meetings were not convened by the Department for several years. Prior to the date of his retirement, the respondent had made a representation to the petitioner for convening a DPC meeting so that his case could be considered for regularisation on the Selection Grade and thereafter, he could be considered for promotion to JAG-II, but no action was taken on the said representation. It was only when the Supreme Court had prodded the petitioner herein to expedite filling up the vacant posts in the IAS under the promotion quota, vide order dated 25.02.2011 passed in **Writ Petition (Civil) No.06/2010** entitled Z.U. Siddqui and Ors. vs. UOI

and Ors., did the petitioner get activated and the DPC meeting was convened on 02.09.2011. On that date, the respondent was still in service. As a result, his case was considered alongwith the others in the said DPC for regularisation in the Selection Grade. As luck would have it, the two Notifications declaring the seniority list were issued by the petitioner on the basis of the recommendations made by the DPC on 23.11.2011, whereas the respondent had retired on 30.09.2011. This was the sole ground for denying the respondent regularisation in the Selection Grade and promotion to JAG-II and that too when those who were juniors to him including Ms. Geetika Sharma and others were granted the same benefit only on the ground that they were still in service and therefore, could be promoted.

11. We are of the opinion that once the DPC was convened on 02.09.2011, when the respondent was still in service and he was considered and found eligible for confirmation in the Selection Grade and thereafter, was eligible for promotion to JAG-II, a vested right had accrued in his favour, especially when it is an admitted case of the parties that the minutes of the DPC held on 02.09.2011, were duly approved, though subsequently. There was no good reason for the petitioner to have deprived him of the said benefit only because they had delayed issuance of the Notification for implementing the recommendations made by the DPC. The said Notifications came to be issued on 23.11.2011 and 29.12.2012 due to procedural delays purely attributable to the petitioner. Given the above facts, there was no justification for the petitioner to have withheld the benefit of Selection Grade and promotion to JAG-II to the respondent, as per the recommendations received from the DPC, convened on 02.09.2011 and at the same time, give retrospective benefits to his juniors by confirming them

in the Selection Grade w.e.f. 01.07.2004 and promoting them to JAG-II w.e.f. 01.07.2009.

12. This being the position, we do not find any merit in the pleas taken by the counsel for the petitioner that promotion to the subject post could not be given effect to retrospectively simply because no *malafides* had been alleged against the petitioner for failing to convene the DPC meetings punctually. The very fact that the DPC had been convened when the respondent was still in service and his name was considered favourably, was sufficient ground for him to have a valid grievance that he had been discriminated against vis-a-vis those persons who were junior to him and yet they were granted the benefit of retrospective promotion only because they were still in service whereas, the respondent had superannuated by the time the petitioner took steps to issue the Notification, declaring the seniority list.

13. As a result, we do not find any illegality or arbitrariness in the impugned judgment that warrants interference under Article 226 of the Constitution of India. The present petition is accordingly dismissed in *limine*, as meritless alongwith the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

JANUARY 31, 2018

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