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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8899/2016

JASVINDER SINGH & ORS

..... Petitioners

Through: Mr. Chandan Kumar, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Jagjit Singh, Sr. Standing Counsel with Ms. Rashmi Malhotra and Ms. Preet Singh, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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18.12.2019

1. 14 Petitioners, who were appointed as a Commercial Apprentices against the 10% departmental promotion quota, having qualified the Limited Departmental Competitive Examination ‘(LDCE)’ in the Indian Railways, have filed the present petition challenging the order dated 20th May, 2016 of the Central Administrative Tribunal, Principal Bench, New Delhi (‘CAT’) dismissing OA No. 861/2015 filed by them. In the said OA No. 861/2015, the Petitioners *inter alia* sought the relief of seniority as on the date when the vacancy actually arose i.e. 9th June, 2006, or at best from 25th May, 2007, when the Departmental Promotion Committee (‘DPC’) was originally scheduled to meet.

2. It may be noted at the outset that the dispute concerning *inter se* seniority

between the Petitioners, who are promotees, on the one hand, and the private Respondent Nos. 4-13, who are direct recruits, on the other, has since been resolved. This was noted by the Court in its order dated 16th October, 2019. The relevant portion of the said order reads as under:

“2. Counsel for the Respondents informs the Court that among the private Respondents, Respondent Nos.4 to 10 have already superannuated. As far as private Respondent Nos. 11 to 13 are concerned, all are personally present in the Court.

3. The subsequent development is that by a notice dated 24th July, 2019 the seniority list stands modified and the Petitioner's first prayer in his application before the Central Administrative Tribunal, viz., to correct his seniority position, the Petitioner having come through the LDCE quota, has been taken care of.

4. Counsel for the Petitioner points out that the only issue that now remains to be considered is whether he should be granted notional promotion, without any other consequential benefits, either from 9th June, 2006, when the vacancy actually arose or from 25th May, 2007 when the DPC was originally scheduled to be held.

5. On this aspect, learned counsel for the Respondents states that he will seek instructions.

6. The Court notes that for deciding the above issue, since it does not affect their seniority, the presence of the private Respondents is not required.

7. List for hearing on 26th November 2019.

8. It will be open to the parties to file short note limited to the above aspect.”

3. Mr. Chandan Kumar, learned counsel appearing for the Petitioners has, apart from submitting a short note of written arguments, urged that the delay

in finally empanelling the present Petitioners for promotion was not attributable to them and that therefore they should not suffer for the fault of the Respondents. According to him, the cancellation of the results of the LDCE, which was originally fixed for 1st April, 200, and for which results were declared on 9th May 2007, on account of alleged irregularities, was not attributable to any of the Petitioners. He contends that this led to the cancellation of the DPC which was scheduled for 25th May, 2007 and to the postponement of the empanelment of the Petitioners. Accordingly, he argues, the Petitioners' notional seniority should relate back either to the date of occurrence of the vacancy or the date of the original DPC i.e. 25th May, 2007. He referred to the decisions in ***Om Prakash Shukla v. Akhilesh Kumar Shukla (1986) Supp SCC 285*** and ***Union of India v. K.V. Jankiraman (1991) 4 SCC 109***.

4. The stand of the Respondents, on the other hand, is that in the present case, the delay, if any, in empanelling the Petitioners for grant of promotions consequent upon the LDCE, was for *bonafide* reasons. Mr. Jagjit Singh, learned counsel for the Respondents submitted that after the exam was held in 1st April, 2007 and the results were declared on 9th May 2007, complaints were received by the Vigilance Department, which upon inquiring into them found them to be true. As a result, the Respondents had to cancel the whole process. On the intervention of the CAT, the Respondents had to continue from the stage of cancellation. In other words, they had to continue from the stage of revaluation of the answer-sheets in the written exam. After this was done and the results declared, the final panel was issued on 22nd January, 2010 and 16th February, 2010. It is stated that the DPC could not have been

held while the inquiry was in progress and the revaluation had not been completed. The impugned order of the CAT appears to have accepted the above submission.

5. The relevant rule as regards seniority in the grade is Para 302 of the Indian Railways Establishment Manual, which reads as under:

“302. Seniority in initial recruitment grades.

Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promote and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotes and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group.”

6. It is not in dispute that the issue of seniority is governed by the above Para 302. This incidentally does not mention ‘vacancy year’ as being the relevant date from which the seniority of the person who has been promoted through LDCE should be reckoned. It only speaks of “date of appointment to the grade”. With Para 302 making the position explicit, the Respondents cannot be faulted for granting the Petitioners seniority only from the date of empanelment of the Petitioners for the said promotion i.e. 22nd January,

2010.

7. In that view of the matter, the relief as prayed for by the Petitioners as regards notional seniority having to relate back to either the date of occurrence of vacancy or the date on which the DPC was originally scheduled to meet, cannot be granted.

8. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 18, 2019

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