

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 27.02.2020
Order Pronounced on : 01.07.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 14092 of 2015

V.Vijayakumarasamy

... Petitioner

Vs

1. The Government of Tamil Nadu
represented by
The Principal Secretary to Government
Home (Transport II) Department,
Secretariat, Chennai -600009.

2. The Principal Secretary/Transport Commissioner
Chepauk,
Chennai-600005.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records of the 1st respondent letter (D). No. 62, dated 24.01.2014 and quash the same and to direct the 1st respondent to accord notional promotion to the petitioner from the date of the petitioner's claim namely 01.07.2010 on which date the petitioner is fully eligible for the post of Joint Transport Commissioner and a clear vacancy existed and also direct the petitioner to give all other monetary benefit and other benefit arising out the post from 01.07.2010 and retirement benefits.

For Petitioner : Mr.M.Palani

For Respondents : J.Ramesh, AGP

O R D E R

The prayer sought for in the Writ Petition is to call for records of the 1st respondent letter (D).No. 62, dated 24.01.2014 and quash the same and to direct the 1st respondent to accord notional promotion to the petitioner from the date of the petitioner's claim namely 01.07.2010 with all consequential monetary benefits.

2. Brief facts of the case is that the petitioner was appointed in the Transport Department as Motor Vehicle Inspector, Grade II on 15.11.1983 and subsequently promoted to the post of Deputy Transport Commissioner and posted at Erode on 13.06.2009. During the year 2010-2011, the second respondent sent a proposal to the first respondent on 24.07.2010, stating that the estimated vacancy for the post of Joint Transport Commissioner for the year 2010-2011 has been calculated as three and requested the 1st respondent to approve the same. The 1st respondent after considering the future posts, has estimated as five and communicated the same to the 2nd respondent in their order dated 06.01.2011. In the said estimated vacancy, the petitioner was listed at sl.no.2. The 2nd respondent has prepared a seniority list on 12.09.2011. In the said seniority list, the petitioner was placed at sl.no.2. Even though there is no ban by the Government for recruitment/promotion, the 1st respondent, without any reason, has kept pending the promotion list till the superannuation of the petitioner i.e on 31.05.2014, which according to the petitioner is highly arbitrary, erroneous and improper. Hence, claiming notional promotion and other monetary benefits from the date of 01.07.2010, the present writ petition is filed.

3. The learned counsel appearing for the petitioner submitted that the 1st respondent should have seen that when there is a clear cut vacancy arose between 2010-2011 as informed by the 2nd respondent, which has been subsequently enhanced to five as per proceedings of the 1st respondent dated 06.01.2011. The 1st respondent grossly erred in not taking any action based upon the proposal. The learned counsel for the petitioner further submitted that even though the 2nd respondent had recommended the name of the petitioner for promotion to the post of Joint Transport Commissioner by observing that he is maintaining clean record of service, the 1st respondent had drawn a nil panel for the year 2010-2011, which is contrary to the very recommendation of the 2nd respondent dated 27.04.2010.

4. The learned counsel for the petitioner further submitted that when the 2nd respondent being head of the Department, rightly sent a proposal for the year 2010-2011 to the post of Joint Transport Commissioner, the 1st respondent has no jurisdiction to say that nil panel is drawn for the year 2010-2011. The 1st respondent issued a letter dated 24.01.2014 blindly without looking into the earlier proposal sent by the 2nd respondent as well as his own letter dated 06.01.2011, in which the estimated vacancy was fixed as five for the year 2010-2011

for the post of Joint Transport Commissioner.

5. The learned counsel for the petitioner further submitted that during the petitioner's service, he sent a representation on 22.02.014 claiming his promotion to the post of Joint Transport Commissioner. But, without considering the same, he was allowed to retire from service on 31.05.2014. Even after retirement, he sent representation dated 02.06.2014, requesting to grant notional promotion and consequential benefits. The said representation was also not considered by the respondent, but promoted his juniors to the post of Joint Transport Commissioner by proceedings dated 23.07.2014. Hence this writ petition.

6. On the other hand, the learned Additional Government Pleader appearing for the respondents submitted that the 1st respondent directed the 2nd respondent to send necessary proposal for estimate of vacancies for the post of Joint Transport Commissioner for the year 2013-2014 as the panel period for the years 2010-2011, 2011-2012 and 2012-2013 was already over and carry forward the unfilled vacancies pertaining to the above said periods, while calculating the estimate of vacancies for the post of Joint Transport Commissioner for the panel year 2013-2014. In accordance with the direction of 1st respondent, the 2nd respondent has arrived estimate of vacancies as ten (10). Even though, it was arrived as 10, the qualified individuals available at that time was only eight including the petitioner. Hence, the proposal had been sent to the 1st respondent only in respect of eight individuals.

7. The learned Additional Government Pleader further submitted that the 1st respondent drawn a 'Nil panel' as the panel years 2010-2011, 2011-2012 and 2012-2013 was already over and estimate of vacancies have been carried over to the panel year 2013-2014 on administrative grounds. It is further submitted that the 1st respondent being administrative department of the 2nd respondent vested with all powers as per Rules. Since the 1st respondent is superior to the 2nd respondent in the administrative matter, it is not necessary to approve the list of officials for the promotion from lower cadre to the higher cadre and the decision of the 1st respondent is final in the administration of 2nd respondent department. Therefore, consideration of estimated vacancies sent by the 2nd respondent vide letter dated 06.01.2011 was in accordance with law. After completing the administrative procedures, while approving the proposal for the panel year 2013-2014, the petitioner was retired from service on attaining the age of superannuation. Hence, his name was left out from the above said panel for the

year 2013-2014. Therefore, the above act of the respondents is not arbitrary nor illegal as contended by the learned counsel appearing for the petitioner.

8. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing on behalf of the respondents and perused the documents available on record.

9. Point to be considered in the present writ petition is as to whether the petitioner, who retired on superannuation is entitled for notional promotion and consequential monetary benefits or not.

10. The learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of Major General H.M.Singh Vs. Union of India & another reported in (2014) 3 SCC 670. In the said case, the appellant therein was recommended for promotion to the post of Lt. General and during pendency of the recommendation he was superannuated from service on 27.02.2008. Subsequently, his services was extended on two occasions, firstly by Presidential Order dated 29.02.2008, and thereafter, by a further Presidential Order dated 30.05.2008. The respondents therein rejected the request of the appellant on the ground that the petitioner was in extension service. The Hon'ble Supreme Court has observed that the rejection of appellant's claim for promotion on ground that he was on extended service is unjustified and directed the appellant to be promoted to rank of Lt.General with all consequential benefits. The relevant paragraphs are extracted below:

".... 28. The question that arises for consideration is, whether the non-consideration of the claim of the appellant would violate the fundamental rights vested in him under Articles 14 and 16 of the Constitution of India. The answer to the aforesaid query would be in the affirmative, subject to the condition, that the respondents were desirous of filling the vacancy of Lieutenant General, when it became available on 1.1.2007. The factual position depicted in the counter affidavit reveals, that the respondents indeed were desirous of filling up the said vacancy. In the above view of the matter, if the appellant was the senior most serving Major General eligible for consideration (which he undoubtedly was), he most definitely had the fundamental right of being considered against the above vacancy, and also the fundamental right of being promoted if he was adjudged suitable. Failing which, he would be deprived of his fundamental right of equality before the law, and equal protection of the

laws, extended by Article 14 of the Constitution of India. We are of the view, that it was in order to extend the benefit of the fundamental right enshrined under Article 14 of the Constitution of India, that he was allowed extension in service on two occasions, firstly by the Presidential Order dated 29.2.2008, and thereafter, by a further Presidential order dated 30.5.2008. The above orders clearly depict, that the aforesaid extension in service was granted to the appellant for a period of three months (and for a further period of one month), or till the approval of the ACC, whichever is earlier. By the aforesaid orders, the respondents desired to treat the appellant justly, so as to enable him to acquire the honour of promotion to the rank of Lieutenant General, (in case the recommendation made in his favour by the Selection Board was approved by the Appointments Committee of the Cabinet), stands affirmed. The action of the authorities in depriving the appellant due consideration for promotion to the rank of the Lieutenant General, would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary.

....

33. Insofar as the present controversy is concerned, there is no doubt whatsoever, that a clear vacancy against the rank of Lieutenant General became available with effect from 1.1.2007. At that juncture, the appellant had 14 months of service remaining. It is not as if the vacancy came into existence after the appellant had reached the age of retirement on superannuation. The present case is therefore, not covered by the technical plea canvassed at the hands of the learned senior counsel for the respondents. The denial of promotion to the appellant mainly for the reason, that the appellant was on extension in service, to our mind, is unsustainable besides being arbitrary, specially in the light of the fact, that the vacancy for which the appellant was clamouring consideration, became available, well before the date of his retirement on superannuation. We have, therefore, no hesitation in rejecting the basis on which the claim of the appellant for onward promotion to the rank of Lieutenant General was declined, by the Appointments Committee of the Cabinet."

11. The learned counsel for the petitioner has also placed the decision of the Hon'ble Division Bench of this Court in W.A.No. 594 of 2018, dated 19.03.2018 (Commissioner, Corporation of Chennai Vs. Muthuirulappan & another), wherein this Court by relying upon the aforesaid judgment of the Hon'ble Supreme Court (H.M. Singh's case) had granted notional promotion and consequential service benefits. The relevant portion is extracted below;

"6. Learned Additional Advocate General submitted that in the case relied by learned Single Judge, party had the benefit of extensions and thus was in service when the question of drawing up the panel for promotion came up for consideration. Though learned Additional Advocate General seeks to make such distinction, we find that the decision of Apex Court in Major General H.M.Singh, VSM Vs.Union of India and another (2014(3) SCC 670) informs that when a person was found eligible for promotion on the day when consideration of the vacancies in the post arose, then Article 14 and 16 of the Constitution of India would require his being appointed unless he suffered any disqualification. When so understood it will be seen that there is no error in the order under challenge."

12. On a careful perusal of the aforesaid Judgment of the Hon'ble Supreme Court (H.M. Singh's case), in para 33 of the judgments it is observed that "That the denial of promotion to the appellant mainly for the reason, that the appellant was on extension in service, to our mind, is unsustainable besides being arbitrary, specially in the light of the fact, that the vacancy for which the appellant was clamouring consideration, became available well before the date of his retirement on superannuation."

13. The appellant in the aforesaid case has been made repeated request to the authorities claiming promotion prior to his retirement and his service was also extended on two occasions. Considering the extension of service granted by the respondents therein, the Hon'ble Apex Court observed that his extension of service enables him to be considered for onward promotion to the rank of Lieutenant General, therefore rejection of appellant's claim for promotion on ground that he was on extended service is unjustified. Accordingly, directed the respondents therein to promote the appellant to the post of Lieutenant General and also permitted to continue till age of 60 years and directed to grant all monetary benefits.

14. Per contra, the learned Additional Government Pleader has placed the decision rendered by the High Court of Delhi in

WP(C) No. 8102/2012 Union of India & Another Vs.K.L.Taneja, wherein the High Court of Delhi by relying upon the various decisions of other High Courts and the Hon'ble Supreme Court held that for the purpose of further promotion, qualifying service would be determined from the date they were actually promoted.

15. Before proceeding to the law on the subject, from the foregoing discussion, it is clear that to the normal rule of law nobody can be promoted with a retrospective effect except the exception is that when there exists facts which necessitates so or there is a rule which permits so. In this context, to decide further, it is useful to rely upon the following decisions.

16. In the decision reported in (2007) 1 SCC 683 in the case of State of Uttaranchal & Another Vs. Dinesh Kumar Sharma, wherein the Hon'ble Supreme Court has held that the grant of promotion pay is for the service after the date of the promotion and not from the date of vacancy arose in the recruitment year.

"The fact that the vacancy had fallen on 1st May, 1996 and 1st June, 1996 in the recruitment year 1995-96 are not disputed by the respondents. The petitioner cannot be made to suffer on account of delay in recommendation by the Director of Agriculture for promotion of the petitioner. The petitioner cannot be held responsible and cannot be made to suffer as such became entitled to be considered for promotion on 1st May, 1996. Therefore, the government is directed to re- consider the matter and send it back to the Commission for appropriate orders suitable in the facts and circumstances of the case. Subject to the above, the writ petition is disposed off finally."

This observation of the High Court in our view is erroneous. The High Court while observing that, "the appellants rejected the representation of the respondents on the ground that since the appointment letter was issued to the respondent on 19.11.1999, he is entitled to his seniority from that date. The authority has failed to appreciate that if the fact of vacancy being accrued in the recruitment year 1995-96 i.e. on 1st May, 1996 and second vacancy on 1st June 1996 had come to the knowledge of the Commission the Commission could have given the promotion to the petitioner w.e.f. these dates, as the petitioner was entitled for the same and the Commission has found him suitable, which is evident from the promotion order dated 19.11.1999", has committed an error in

understanding and appreciating Rule 17 and 21 of the Uttar Pradesh Agriculture Group "B" Service Rules, 1995 and Rule 8 of the U.P. Government Servants Seniority Rules, 1991, which categorically states that the date of 'substantive appointment' will be the date that shall be taken for determining promotion, seniority and other benefits.

.....

2. In regard to the application of Shri Sharma, whose promotion was made in consultation by the UP Public Service Commission, Allahabad, in accordance with the Public Service(Procedure) Rules, 1970, towards the vacancies for the Recruitment year 1997-98 vide Office Memo No. 5653 dated 19.11.1991; I am to state that even if the recruitment year of Shri Sharma is to be taken as 1995-96 rather than 1997-98 even then the date of substantive appointment would remain the same being the date the order had been issued. Since Shri Sharma's promotion in respect of the vacancies of the Recruitment year 1997-98 was issued on 19.11.99, therefore the date on which the said order of promotion has been issued being 19.11.1999 it shall remain the date of Shri Sharma's substantive appointment after promotion. As regards the question of entitlement of Shri Sharma to the benefit of the selection grade salary upon selection against the vacancies of 1995-96, the benefit of selection grade salary is available only in the promoted post if the officer is working in the said post for the stipulated period. The grant of promotion pay is for the service after the date of the promotion and not from the date the vacancy arose in the recruitment year.

17. The Hon'ble Supreme Court while deciding the Case of S.B. Bhattacharjee Vs.S.D.Majumdar, in Appeal (Civil) No. 2527 of 2007 dated 15.05.2007 has held that the promotion is not a fundamental right of a person and it is a condition of service. The relevant portion is extracted below;

13. Although a person has no fundamental right of promotion in terms of Article 16 of the Constitution of India, he has a fundamental right to be considered therefor. An effective and meaningful consideration is postulated thereby. The terms and conditions of service of an employee including his right to be considered for promotion indisputably are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India.

18. It is also relevant to mention here the judgment of the High Court of Delhi in WP (c) 5359 of 2009 in the case of Ram Krishna Sharma Vs. Union of India & Others, wherein, the High Court of Delhi had dismissed the writ petition filed by the petitioner therein challenging the order of tribunal rejecting the notional promotion sought for by the petitioner after superannuation. The aforesaid writ petition was dismissed by the Delhi High Court by referring the case of Baijnath Sharma Vs. Hon'ble Rajasthan High Court of Jodhpur & another, reported in 1988 SCC (L&S). The relevant portion of the judgment is extracted below;

" The Tribunal answered this question in favour of the petitioner. Union of India came before this Court when it was held that the decision of the Tribunal was erroneous & was contrary to the judgment of the Supreme Court in UOI & Ors Vs. K.K. Vadhera 1989 Supp. (2) SCC 625 as well as in the case of Baijnath Sharma Vs. Hon'ble Rajasthan High Court at Jodhpur & Anr. 1988 SCC (L&S) 1754 discussed in that order. It was held:

22. We feel that the Tribunal erred on this count as well. The thrust of the OM, which was issued soon after the decision of the Hon'ble Supreme Court in Baijnath Sharma (supra) is to clarify that the superannuated employees should not be considered for promotion where the DPC is being held after their superannuation. The later part of the OM, which is contradictory to the dictum of the Hon'ble Supreme Court in Baijnath Sharma (supra) obviously cannot be given effect to. Pertinently even the said OM does not in clear terms say that the retired/superannuated employees, if considered and recommended by the DPC would be granted notional promotion from a back date. However, the Tribunal has read this aspect into the OM which, in any event, it could not have done.

23. In view of the aforesaid, we find that the decision of the Tribunal is erroneous and the directions given therein are contrary to the judgments of the Hon'ble Supreme Court in K.K. Vadera (supra) as well as Baijnath Sharma (supra).

23. It is also contended by the respondent that similar directions have been given by the Hon'ble Supreme Court in Karam Singh (supra). We cannot accept this contention of the respondent for the simple reason that the short order passed by the Supreme Court in Karam Singh does not deal with this issue. It appears that no such issue was raised before the Hon'ble Supreme Court in that case and no arguments were advanced in this regard. The Hon'ble Supreme Court also did not consider the legal issue while issuing the said direction. It cannot be cited as an authority on the propositions under consideration. The other case relied upon by the respondent i.e. Hamesh Mahajan (supra) is not applicable to the facts of the present case. In that case on a subsequent revision of seniority the petitioner ranked senior to one Mr. Ramesh Chand Sehgal, who had apparently been promoted. In these circumstances, the High Court rejected the defence of the respondents that the petitioner could not be granted benefits of selection grade and notional promotion with retrospective effect since he had already retired on 31.5.1999. As noticed hereinabove, the respondent has not made out a case of his being superseded by any of his juniors. He had claimed that Ms. Monideepa Bannerjee had superseded him. However, that claim is not correct since Monideepa Bannerjee ranked higher to the respondent in the senior grade of IIS Group 'A'.

25. Coming to the charge of discrimination against him by the petitioner, on the basis of that, the petitioner had promoted a large number of Sr. Grade officers of IIS Group 'A' to JAG notionally w.e.f 10.7.2002 and on actual basis w.e.f. from the date of the taking over a charge, many of whom in the meantime had retired. We find even this claim to be misplaced. He claims that four of his colleagues, who retired like him in the Sr. Grade of IIS Group 'A' have been given notional promotion to Junior Administrative Grade from retrospective date i.e. 7.2.2002. However, what is being missed by the respondent is that all the persons promoted retrospectively notionally w.e.f. 10.7.2002 to the Junior Administrative Grade of the service were senior to the respondent as per the revised seniority

list as on 31.3.2000. Had a junior of the respondent been promoted to the Junior Administrative Grade, certainly the respondent would have had a valid and enforcement claim to seek notional promotion from retrospective date i.e. from the date on which the junior was promoted. But this is not his case.

26. In view of the aforesaid, we set aside the impugned order passed by the Tribunal in OA No. 192/2005 dated 8.7.2005 and allow the present writ petition leaving the parties to bear their respective costs.

19. The Hon'ble Supreme Court in the decision reported in 1997 SCC (LS) 1194 in Union of India and Others Vs.N.R.Banerji and Others, has observed as follows;

"Filling up of the posts are done in clear or anticipated vacancies arising in the year. But it was also held that it is a settled law that mere inclusion of one's name in the list does not confer any right in him/her to appointment. It is also not incumbent that all posts should be filled up but the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary."

20. In the decision reported as 1991 (3) SCC 47 Shankarsan Dash Vs.Union of India in para 7 the Hon'ble Supreme Court held as under;

'7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State of bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

21. In the case of Union of India and Others Vs.K.K. Vede & Others reported in 2017 SCC Online CAT 927 has held as follows;

"After a post falls vacant for any reason whatsoever, a promotion to the post should be from the date the promotion is granted and not from the date on which such post falls vacant. Similarly, when additional posts are created, promotions to those posts can be granted only after the assessment Board has met and made its recommendations for promotion being granted. If, however, promotions are directed to become effective from the date of creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the Candidates for promotion."

22. The decision of the Hon'ble Delhi High Court in the case of Ranvir Singh Vs. Government of NCT of Delhi & Others (WP (C) No. 2969 of 2012 dated 24.05.2013), held as follows;

"4. The only question which calls for our consideration is whether the petitioner is entitled to be promoted on notional basis to the post of Principal. The admitted position is that the petitioner stood retired on May 31, 2010 i.e. before the date of promotion order, June 29, 2010. The issue is no more res integra inasmuch as a Division Bench of this Court of which one of us, Pradeep Nandrajog, J. was a member had decided a batch of writ petitions, lead matter being WP(C) No.8102/2012 Union of India & Anr. v. K.L.Taneja on the subject as to when can a person be granted promotion from a retrospective date. The Bench noted various decisions of the Supreme Court on the point as under:-

"(i) 1987 (4) SCC 566 K.Madhavan & Anr. vs.UOI & Ors.

(ii) 1989 Supp (2) SCC 625 Union of India & Ors. vs. K.K.Vadera & Ors.

(iii) 1995 (4) SCC 246 Vinod Kumar Sangal vs.UOI& Ors.

(iv) 1998 (7) SCC 44 Baij Nath Sharma vs. Hon'ble Rajasthan High Court At Jodhpur & Anr.

(v) AIR 2004 SC 255 P.N Premachandran vs. The State of Kerala & Ors.

(vi) AIR 2004 SC 3460 Sanjay K.Sinha & Ors. vs. State of Bihar & Ors.

(vii) 2006 (13) SCALE 246 State of Uttaranchal & Ors.

Vs.Dinesh Kr.Sharma

(viii) 2007 (1) SCC 683 State of Uttaranchal & Anr.
vs. Dinesh kumar Sharma.

(ix) 2008 (14) SCC 29 Nirmal Chandra Sinha vs. UOI &
Ors.

(x) 2010 (4) SCC 290 UOI & Anr. vs. Hemraj Singh
Chauhan & Ors."

....

7. The learned counsel for the petitioner would rely upon a judgment of this Court in WP(C) 5549/2007, Dr. Sahadeva Singh v. Union of India & Ors. The said case can be differentiated on facts inasmuch as in that case the petitioner was still working whereas in this case he stood retired. Further, in the case in hand the promotion order was issued after the petitioner had retired. Further, the Tribunal in the impugned order relied upon a judgment of this Court in the case in WP(C) 20812/2005 Union of India v. Rajender Roy wherein this Court rejected a similar plea on the ground that none of the juniors to the respondent was promoted before his retirement. In this case also the Tribunal, in the impugned order, rejected the claim of the petitioner on this very ground. In other words, since no junior to the petitioner was promoted before his retirement, he could not have claimed any right for being promoted to the post of Principal. Further, if the claim of the petitioner is allowed then the promotion order with respect to around 128 Vice Principals promoted to the post of Principals vide order dated June 29, 2010, need to be revised which is impermissible.

8. We find no infirmity in the order of the Tribunal. The writ petition is dismissed."

23. The aforesaid decisions of the Hon'ble Supreme Court and Delhi High Court were not placed before the Hon'ble Division Bench of this Court while deciding the case in W.A. No. 594 of 2018 and the Hon'ble Division Bench has not considered the proposition of law laid by the decisions cited supra. Therefore considering the facts and circumstances of the case on hand and by relying upon the various decisions of the Hon'ble Apex Court cited supra, the following principles of law has been laid down

in the aforesaid decisions:

(i) Service Jurisprudence does not recognize retrospective promotion i.e a promotion from a back date

(ii) If there exists a rule authorising the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.

(iii). Since malafides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the malafide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a malafide act i.e deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.

(iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.

24. The method of promotion to the Government Servant has been prescribed under Rule 7 (i) of the Tamilnadu Subordinate Service Rules, which reads as follows;

" Provided that the list of approved candidates for appointment by promotion and by recruitment by transfer to all the categories of posts in the State and Subordinate Services shall be prepared annually against the estimated number of vacancies expected to arise during the course of a year. The estimate of vacancies shall be prepared taking into account the total number of permanent post in a category; the number of temporary posts in existence; the anticipated sanction of new posts in the next year; the recruitment post of leave reserves; the anticipated vacancies due to retirement and promotion, etc., in the course of the year and the number of candidates already in position in that category.

The list of approved candidates, so prepared, shall be in force for a period of one year only and shall lapse at the end of the year. The candidates whose names were included in the previous list, but were not appointed, shall be considered, if eligible for

inclusion in the list of next year along with their seniors, if any, whose names were not included in the previous list either because they were found not suitable or because they were not technically qualified when the previous list was drawn up:"

25. The abovesaid Rule clearly states the list of approved candidates, so prepared, shall be in force for a period of one year only and shall lapse at the end of the year. The candidates whose names were included in the previous list, but were not appointed, shall be considered, if eligible for inclusion in the list of next year along with their seniors.

26. In the present case on hand, the petitioner's service was not extended, after the date of superannuation. Therefore, it is clear that the facts involved in the case cited supra (H.M. Singh's case) relied by the learned counsel appearing for the petitioner is entirely different from the facts of the case on hand, hence seeking notional promotion by relying upon the aforesaid judgement will not apply to the facts of the case.

27. The petitioner had not disputed the fact that his name has been included in the panel from the date of vacancy arose till the year 2013-2014. Since, the petitioner had retired from service on attaining the age of superannuation on 31.05.2014 i.e. before finalising the promotion panel, he is before this Court claiming notional promotion on the ground of delay by the respondents.

28. Considering the facts and circumstances of the case and the decision of the Hon'ble Supreme Court and High Courts cited supra and also considering the fact that there are no materials to establish that the respondents have wantonly delayed the petitioner's promotion and there is no taint of malice for the delay, this Court is of the firm view that the petitioner has not satisfied the criteria for considering the notional promotion and therefore, the claim of the petitioner seeking notional promotion and other benefits cannot be considered on the ground of delay due to administrative reasons at the hands of the respondent Department, as contended by the learned counsel for the petitioner and the same is liable to be rejected on the following grounds;

- (i). No juniors to the petitioner were given promotion during service period of the petitioner, therefore there would not be any monetary loss to the petitioner during his service period.

(ii).Promotion is not a fundamental right of a person and it is a condition of service, which has been very much observed by the Hon'ble Supreme Court in the case of S.B. Bhattacharjee Vs.S.D.Majumdar, cited supra.

(iii). Even though, the promotions were made by the 1st respondent after the date of superannuation of the petitioner due to administrative reasons, no materials have been placed before this Court to prove the malafide or illegality on the part of the respondents for the delay in finalising the promotion panel.

29. In view of above, there is no merits in the contention of the learned counsel for the petitioner and consequently, the writ petition stands dismissed. No costs.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Secretary to Government
Home (Transport II) Department,
Secretariat, Chennai -600009.

2.The Principal Secretary/Transport Commissioner
Chepauk,
Chennai-600005.

W.P.No. 14092 of 2015

KK(CO)
SP(30/09/2020)