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

+ **Date of Decision: 10.07.2020**

% W.P.(C) 9757/2019

RAM SINGH Petitioner

Through: Mr. Vidya Sagar, Adv.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Dilbagh Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. This petition has been preferred by the petitioner to assail the order dated 12.07.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 1813/2016. The Tribunal, by the impugned order, has rejected the petitioner's claim in the aforesaid Original Application.

2. The petitioner joined service in the office of The Controller General of Accounts, Ministry of Finance in the year 1966, and in routine earned promotions. In the year 1992, he became Senior Accounts Officer. On 04.12.1992, he was appointed to officiate against the Senior Time Scale (STS) in the Indian Civil Accounts Service (ICAS). The petitioner was inducted in the Junior Time Scale (JTS) of ICAS on 30.03.1994 and he completed his probation in the said post on 20.07.1995. He became eligible

for promotion as STS in 1995 itself. The DPC for the said promotion was held on 31.07.1995. However, since, the petitioner was facing a criminal case registered by the CBI at that time, his consideration was placed in a sealed cover. The petitioner retired from service on 31.12.2000 on attaining the age of superannuation. Eventually, the petitioner was acquitted in the aforesaid criminal case vide judgment dated 22.02.2012. After the acquittal of the petitioner in the criminal case, the sealed cover containing his consideration of promotion to the post of STS was opened, and since the applicant was found fit by the DPC, he was granted promotion to STS vide order dated 25.03.2013, with effect from 23.08.1995 i.e. from the time when his juniors were promoted.

3. The other contemporaries and batch mates of the petitioner were initially promoted on *ad hoc* basis to the Junior Administrative Grade (JAG) in the year 1999. Regular promotions to JAG were made in the year 2000. However, since, the petitioner was still under a cloud and had not been promoted as STS – which was the feeder cadre for promotion to JAG, the petitioner was not considered for either *ad hoc* or regular promotion.

4. After his retirement and acquittal, when the proposal for promotion of the petitioner to the JAG was mooted, the DOP&T turned down the same on 25.06.2014. The petitioner's further representation made in the year 2014 and 2016 were also rejected. Consequently, the petitioner preferred the Original Application seeking promotion to JAG with effect from 24.04.1999 on *ad hoc* basis, and with effect from 24.04.2000 on regular basis when his juniors were promoted, with consequential benefits and interest. The contention of the petitioner before the Tribunal was that since he stood

acquitted in the criminal case, he was entitled to be extended all the benefits that were otherwise due to him and that he would have earned, had he continued in service without blemish. He submitted that the respondents had denied him the benefit of promotion to JAG, though many of his juniors were extended the said promotion.

5. The respondents contested the Original Application, inter alia, on the ground that the Original Application was barred by limitation. It was contended that the cause of action *qua* promotion to JAG accrued to the petitioner in 1999/2000 and, consequently, the Original Application which was filed in 2016, was barred by limitation. On merits, it was contended by the respondents that the petitioner was granted promotion to STS upon opening of the sealed cover. The question of considering the petitioner's case for promotion to JAG did not arise, since he was promoted to STS only in the year 2013, and a retired employee could not be considered for promotion at all.

6. The reasoning given by the Tribunal while rejecting the Original Application reads as follows:

“9. The progression of the applicant up to the stage of JTS was smooth in the career. He became eligible to be considered for promotion to STS in the year 1995 and the DPC met for that purpose, on 31.07.1995. It is not in dispute that a criminal case was instituted against him, at that time. Therefore, sealed cover procedure was adopted. Unfortunately for the applicant, the criminal case was pending till the year 2012, twelve years after his retirement.

10. In the hierarchy in the department, promotion from STS is to JAG. Initially, steps were taken for promotion on ad hoc basis

and even for that purpose, the DPC met. The case of the applicant, however, could not be considered in view of the fact that he was yet to become part of STS, the feeder category for JAG. Steps for regular promotion to JAG were taken in the year 2000 and same situation remained as regards the applicant.

11. It is true that if the sealed cover procedure is adopted in respect of an employee and he is acquitted in a criminal case or exonerated in the disciplinary proceedings, the sealed cover is required to be opened and he is entitled to be extended all the benefits, which were denied to him on account of the pendency of such proceedings. In the case of the applicant, the sealed cover procedure was opened and he was promoted to STS through order dated 25.03.2013 consequent upon his acquittal. The order reads as under:-

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ORDER

The President is pleased to appoint Shri Ram Singh a retired officer of 1991 batch of Indian Civil Accounts Service, **to the Senior Time Scale** in the pay scale of Rs.10000-325-15200 (pre-revised) (New PB-3 with GP Rs.6600) **with effect from 23.08.1995**, i.e., the date his immediate senior Shri M. N. Mehta, ICAS (1991) was promoted, since no junior eligible officer was available for making promotion in terms of DoPT's OM No.8/4/84-Estt. (Pay-I) dated 15.07.1985.” (emphasis supplied)

It needs to be mentioned here that this order came to be passed 13 years after the applicant retired from service. He has no grievance as regards the extension of benefits referable to the promotion to STS. His entire grievance is about the denial of promotion to JAG. With all sympathy to the applicant, the department forwarded the proposal for promotion to JAG also to DoP&T. However, through order dated 25.06.2014, the DoP&T has taken the stand as under:-

“The O/o CGA has made a direct reference through enclosed OM seeking opinion of this Department in the matter of promotion of Shri Ram Singh a retired officer of ICAS. This reference needed to be routed through the Ministry of Finance with a self contained note on the relevant file. As the matter is also under consideration of a National Commission of Scheduled Caste (NCSC), the matter has been examined by this Department.

2. The facts of the case are that Shri Ram Singh was considered for regular promotion to STS of ICAS. However, the findings of DPC were kept in a sealed cover due to pendency of a criminal case. The officer was acquitted vide judgment of trial court dated 22/2/2012 after retirement on 31/12/2000. Consequent upon his acquittal the referring Department had opened the sealed cover and granted regular promotion to Shri Ram Singh in STS retrospectively w.e.f. 23/8/85. Shri Singh has now requested for ad-hoc promotion w.e.f. 20/4/99 and regular promotion w.e.f. 24/4/2000 in JAG as given to officers of his batch.

3. The case has been examined and following is observed:

(a) The sealed cover procedure are applicable in ad hoc promotion cases as per this Department instructions contained in OM dated 23.2.1999. In the context of opening of sealed cover and acting on the recommendations contained in it, it may be noted that this Department's OM dated 14/9/1992 prescribes that Government Servants in whose case recommendations have been kept in sealed cover due to pendency of a disciplinary/criminal case, on being fully exonerated on conclusion of the case, the sealed covers shall be opened and if found fit, shall be promoted notionally with reference to the date of

promotion of his junior. However, whether such officer shall be entitled to arrears of pay and allowances shall be decided by the appointing authority by taking into consideration all facts and circumstances of the disciplinary proceedings/criminal prosecution. However, this OM does not provide whether officers who are exonerated fully of all charges after their retirement shall also be covered under the said provisions contained in OM dated 14.9.92.

(b) This Department OM dated 12.10.98 dealing with consideration of retired officers who were within the zone of consideration in the relevant years but are not actually in service when DPC is held, while preparing year wise panels provides that names of the retired officers are to be included in the panel if found fit. Such retired officers would, however, have no right for actual promotion.

(c) The DPC guidelines issued vide OM dated 10.4.89 vide instructions contained in paras 6.4.4 and 17.10 provide that promotions will have only prospective effect even in cases where the vacancies relate to previous years.

4. In view of the observations in para 3 above, the opening of sealed cover consequent upon acquittal of Shri Ram Singh after his retirement and giving it to its recommendations retrospectively is not in order. Hence, his request for further promotion to JAG (Ad hoc/Regular) is also not in accordance with the extant policy of this Department."

Reference was made to various office memoranda also. The gist of the same is that further promotion can be ordered if only the employee was in the zone of consideration and the only impediment was pendency of criminal case or disciplinary proceedings. That situation did prevail vis-a-vis the post of STS.

However, as regards JAG, he was not in the zone of consideration till the year 2013. The occasion to consider his case for promotion thereafter did not arise since he retired 12 years earlier to that.

12. Heavy reliance is placed upon paras 23 & 26 of the judgment in K. V. Janakiraman (supra). It read as under:-

“23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same.....

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26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the

intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary.....”

The emphasis is no doubt to ensure that the employee is put in the same position as he would have been, before initiation of departmental or criminal proceedings, if he is exonerated or acquitted, as the case may be. We do not find in the entire judgment any instance of a retired employee being extended the benefit of further promotion as a sequel to the benefit of one promotion on opening the sealed cover. In the Full Bench judgment of this Tribunal in K. Ch. Venkata Reddy (supra) also, the same principle was enunciated. Here again, not a word was said about the right of a retired employee, for further promotion.

13. It is fairly well settled that the question of a retired employee to be promoted does not arise. The only exception is that if such an employee was considered along with his juniors by the DPC, sealed cover procedure was followed in respect of him, and on opening of sealed cover, if it emerges that he was found fit; and his junior was promoted with effect from any date anterior to his retirement, he is also entitled for promotion on notional basis from the date on which his junior was promoted. Even where a sealed cover procedure is adopted, if the selection process did not result in promotion of a junior with effect from a date anterior to the one of retirement of senior, the question of extending the benefit even on notional basis also does not arise. In Devki Nandan Gupta vs. Union of India (OA 3484/2009 decided on 01.08.2011), this Tribunal summed the principles of law in this behalf as under:-

“12. From the above cited judgments, the following key principles emerge:

(i) There is no rule that promotion should be given from the date of creation of the promotional post or from the date of vacancy.

(ii) If promotion is effected prospectively from the date of issue of the order of promotion, retired employees prior to such date would not be eligible for promotion retrospectively. Even if retired employees are in the Select List or Panel for promotion, they cannot be given retrospective promotion when the promotion is prospective.

(iii) if promotion is granted retrospectively and a person junior to the retired employee has been promoted from the date when the retired person was in service and if the retired employee has been found fit by the DPC and is available in the Panel or Select List, such retired employee would be entitled to promotion retrospectively on notional basis from the date his immediate junior has been promoted.” Reference was made to various judgments of the Hon’ble Supreme Court.

14. In the instant case, it is not even alleged that the case of the applicant was considered for JAG when he was in service or after retirement; much less sealed cover procedure was adopted. As a matter of fact, he did not acquire eligibility for consideration for JAG till the year 2013.

15. The applicant may have been put to hardship on account of the long pendency of the criminal case for more than a decade. However, the various events referred to above, would lead to a situation where the applicant was not entitled to be extended the benefit of notional promotion to JAG. These, however, are vagaries of service and we cannot expect law to provide solution in respect of every situation.” (emphasis supplied)

7. The submission of Mr. Vidya Sagar, learned counsel for the petitioner is that the reasoning adopted by the DOP&T in its order dated 25.06.2014, which has been taken note of by the Tribunal and extracted hereinabove, is completely fallacious. Learned counsel submits that even though the sealed

cover procedure was applicable for consideration of the petitioner's case for promotion to JAG – both on *ad hoc* basis, and thereafter on regular basis, the same was not adopted. Learned counsel places reliance on the Office Memorandum dated 14.09.1992, and in particular 3 thereof, which reads as follows:

“3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Government servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enunciate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified. ”

8. He also places reliance on the Office Memorandum dated 25.01.2016

on the subject of “*Promotion of Govt. Servants exonerated after retirement - Procedure and Guidelines to be followed - Regarding.*” The said OM, after setting out paragraph 3 of the OM dated 14.09.1992 (extracted hereinabove), states in paragraphs 3 to 6 as follows:

3. *The applicability of above provisions in so far as it relates to cases where the Government servant, who has retired by the time he is exonerated of all the charges has been considered in respect of the following cases:*

i. *Where the promotion order pertaining to the relevant DPC has been issued and the officers empanelled have assumed charge prior to the date of superannuation of the retired Government Servant; and*

ii. *The retired Government Servant would have been service and assumed charge of the post had the disciplinary proceeding not been initiated against him/ her.*

4. *It has been decided in consultation with the Department of Expenditure, Department of Pensions and Pensioner's Welfare and the Department of Legal Affairs that **notional promotion and payment of arrears of pay, if any, for the period of notional promotion till the date of retirement, to such a retired Government Servant if found fit on opening of the sealed cover is to be decided by the appointing authority in terms of Para 3 of OM No. 22011/4/91-Estt. (A) dated 14/9/1992.***

5. *A retired Government employee who is considered for notional promotion from the date of promotion of his next junior after opening of the sealed cover would also be entitled to fixation of pension on the basis of such notional pay on his notional promotion.*

6. *The provisions contained in this Office Memorandum shall become operational from the date of issue of this Office*

Memorandum. Past cases settled in accordance with the earlier provisions shall not be reopened.” (emphasis supplied)

9. Counsel for the petitioner submits that the Tribunal failed to appreciate that since the petitioner was exonerated by the Criminal Court, he was entitled to be put back in the same position as he would have been, had he not been subjected to the said criminal trial. The Tribunal failed to appreciate that the petitioner was entitled to consideration for further promotions along with his batch mates after his acquittal, even though he had retired. His retirement may not entitle him the actual promotion, but if he is found meritorious by the DPC for grant of promotion, he could still be granted notional promotion and, consequently, pay fixation and benefits.

10. Counsel for the petitioner has also places reliance on the Judgment of the Supreme Court in the case of ***Union of India v. K.V. Janakiraman***, (1991) 4 SCC 109.

11. On the other hand, learned counsel for the respondent has, firstly, argued that the Original Application was barred by limitation, inasmuch, as, the claim for promotion to JAG – initiated on *ad hoc* basis, and thereafter on regular basis, arose in the year 1999 and 2000, whereas the Original Application was preferred only in the year 2016. Learned counsel further submits that reliance placed by the petitioner on the Office Memorandum dated 25.01.2016 is misplaced, since paragraph 6 thereof clearly states that the provisions contained in this Office Memorandum shall become operational from the date of issue of this Office Memorandum. Past cases settled in accordance with the earlier provisions shall not be reopened. Learned counsel for the respondent has sought to place reliance on ***Director***

General of Posts and Others Vs. K.Chandrasheker Rao, (2013) 3 SCC 310 to submit that Policy decisions fall within the domain of State action, and cannot be interfered by the Court. He also places reliance on ***B C Mylarappa vs Dr R Venkatasubbaiah***, (2008) 14 SCC 305, wherein the Supreme Court held that that where academic experts have taken a decision in the matter of selection of professors, the Court should not interfere with such decisions if no *mala fide* is attributed to the expert body. Learned counsel for the respondent has supported the impugned order passed by the Tribunal.

12. In his rejoinder, Mr. Vidya Sagar has, firstly, submitted that the case of the petitioner was not barred by limitation. He submits that the Tribunal has not even returned a finding to that effect. In fact, the Tribunal has proceeded to examine the action of the respondents on its merits. Learned counsel submits that the claim of the petitioner relates to re-fixation of his retiral benefits, which is a continuous cause of action. In this regard, he placed reliance on the decision of the Supreme Court in ***MR Gupta v. Union of India and Others*** (1995) 5 SCC 628. He further submits that the cause of action for preferring the Original Application did not arise till the acquittal of the petitioner in the criminal trial, which happened in 2012. Only thereafter the sealed cover granting promotion to the petitioner to the post of STS was opened. It is only thereafter that the petitioner could have raised a grievance with regard to his further promotion to the post of JAG. Learned counsel further points out that his representation was lastly rejected in the year 2016, whereafter he preferred the Original Application. He submits that before the Tribunal, the petitioner had, by way of abundant caution moved an application to seek condonation of delay. The Tribunal takes note of that application and has not rejected the same.

13. On merits, learned counsel for the petitioner has drawn our attention to the

document placed collectively at page 84 of the record which is the proposal for ad-hoc promotion of STS (Rs 10000-325-15200) ICAS Officers of the 1990 batch to the Junior Administrative Grade (Rs 12000-375-16500) to fill up the vacant posts. He submits that the list of eligible officers of the 1990 batch for promotion to JAG contains the name of the petitioner at serial No. 12, with the remark that a vigilance case is pending against the petitioner and that the recommendations of the DPC for his regular promotion to STS have been kept in a sealed cover. This document further states that as a vigilance case is pending, Shri Ram Singh cannot be considered for *ad hoc* promotion as per DOP&T O.M. No. 31/6/90-EO(MM) dated 25.11.90.

14. Thus, learned counsel for the petitioner points out that the respondents had themselves stated that the petitioner's case would be considered after the disposal of the criminal case. Therefore, it does not lie in the mouth of the respondents to claim that the petitioner did not press his claim for promotion to JAG at the relevant point of time.

15. We have heard the submissions of learned counsels and considered the same. We have also perused the record, including the impugned order and the decisions relied upon by the parties. In ***K.V. Janakriraman***, (supra), the Supreme Court has laid down the principle that where an employee is completely exonerated and is not visited with any penalty, even that of censure – indicating that he was not blameworthy in the least, he should not be deprived of any benefits, including the salary of the promotional post. In the present case, admittedly, the petitioner has been completely exonerated by the Criminal Court in the year 2012. In recognition of this, the respondents opened the sealed cover of the DPC held for consideration for promotion to STS, and since the petitioner was found eligible and

meritorious, he was granted notional promotion to STS with effect from the date that his junior was promoted. Since, the petitioner had been granted notional promotion as STS with effect from 23.08.1995, that deeming fiction has to be given its full effect to. That being the position, it cannot be considered that he was not eligible to be considered as JAG on *ad hoc* basis in 1999, and on regular basis in the year 2000 before his retirement. The fact that the batch mates of the petitioner were considered for further promotion during the pendency of the criminal trial against the petitioner and, for that reason, the petitioner was not considered for promotion to JAG, cannot be taken against the petitioner and to his prejudice. That is not the position emerging from any of the Office Memorandum relied upon by the parties. In fact, the position which emerges is that even for grant of *ad hoc* promotion, the sealed cover procedure should have been resorted to. Thereafter, the respondents were bound to follow the sealed cover procedure in relation to the petitioner even while considering the case of his other batch mates for *ad hoc* promotion and, thereafter, for regular promotion to the post of JAG. The failure to do so on the part of the respondents cannot be to the petitioner's detriment. Merely because the petitioner was not promoted as STS, and his consideration was placed under a sealed cover, did not mean that he could be considered as not falling within the zone of consideration for further promotion to JAG. This finding of the Tribunal, in our view, is completely erroneous.

16. The Tribunal could not have denied relief to the petitioner by merely observing that he may have been put to hardship on account of long pendency of the criminal case. The Tribunal could not have raised its hands

and denied the relief to which the petitioner was otherwise entitled.

17. The Office Memorandum dated 25.01.2016 merely reiterates the legal position as enunciated by the Supreme Court in **K.V. Janakriraman**, (Supra). Reliance placed by learned counsel for the respondent on paragraph 6 of the said Office Memorandum, in our view, is misplaced. This is for the reason that the petitioner's case cannot be considered as "*settled in accordance with the earlier provisions*"

18. Reliance placed by learned counsel for the respondent on the decision in **K.Chandrasheker Rao** (supra) is completely irrelevant. We are not concerned, in this case, with a challenge to the policy of the respondents, and there is no question of the Court interfering with any policy decision.

19. Similarly, reliance placed on **B C Mylarappa** (supra) is misplaced. The petitioner's case was not even considered by the DPC – which met to consider cases of all eligible officers for promotion initially on *ad hoc* basis and thereafter, on regular basis to JAG. That being the position, there is no question of this Court interfering with any expert body's opinion.

20. So far as the issue of limitation is concerned, we again do not find merit in this submission of learned counsel for the respondent. This is for the reason that the first time that the petitioner could have raised a grievance with regard to his non-consideration for promotion to the post of JAG, was when he was granted promotion as STS vide order dated 25.03.2013. It is only thereafter that he could have raised the said issue. The petitioner continuously raised the said issue in the year 2014 and up to year 2016 and his representations were rejected even in the year 2016. Soon thereafter, he

approached the Tribunal by preferring the present Original Application. Moreover, so far as the petitioner is concerned, since he is retired, his only claim is for re-fixation of his pension to which he would be entitled, in case, he is granted notional promotion as JAG and his pay is re-fixed. Thus, the cause of action in favour of the petitioner is a continuing one.

21. We, accordingly, allow the writ petition and quash the impugned order passed by the Tribunal dated 12.07.2019 in O.A. No. 1813/2016. We direct the respondents to hold review DPC for consideration of the petitioner's case for regular promotion to the post of JAG along with his other batchmates, while keeping in view the number of available vacancies. In case, the review DPC finds the petitioner meritorious for grant of promotion as JAG on regular basis, he shall be granted notional promotion to the said post from the date that his immediate junior was so promoted. In that eventuality, he shall be entitled to re-fixation of his salary on a notional basis. However, he shall not be entitled to any arrears. The notional pay that may be fixed would, however, be taken into consideration for the purpose of re-fixation of the petitioner's pension.

22. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

JULY 10, 2020
N.Khanna