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

+ **W.P.(C) 2943/2015**

S. K. TYAGI Petitioner

Through: Mr. Ajesh Luthra, Advocate.

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents

Through: Mr. Naushad Ahmed Khan, ASC
(Civil), GNCTD.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **27.01.2020**

1. The Petitioner challenges an order dated 23rd September, 2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') disposing of the O.A. No. 1162/2014 filed by him, whereby the main relief sought by him that his case for promotion to the post of Comptroller of Accounts ('COA') be considered by the Government of NCT of Delhi ('GNCTD') was negatived. However, the CAT, in the impugned order, has issued directions to the Respondents to regularise the Petitioner as Deputy Comptroller of Accounts ('DCA'), to which post he had been appointed on *ad hoc* basis.

2. The facts in brief are that the Petitioner was promoted as a DCA on *ad hoc* basis on 16th September, 2006. According to the Petitioner, there were

regular vacancies in the post of DCA even in that year. However, the Respondents promoted him only on *ad hoc* basis.

3. The purpose of the Petitioner approaching the CAT in O.A. No. 1162/2014, close to his date of actual retirement, was to enable his case to be considered first for regularisation as DCA and then to be considered for promotion as COA.

4. The CAT has, in the impugned order, noted that in terms of the Recruitment Rules ('RRs') in existence as of 3rd September, 2012 and the Cadre Rules ('CRs') notified with effect from 4th September, 2012, officers having five years' regular service as DCA were eligible for promotion to the post of COA. The CAT proceeded on that basis to hold that service of five years' service as DCA on *ad hoc* basis would not qualify for consideration for promotion as COA. The CAT opined that since recruitments to the post of COA had to be made only in accordance with the extant RR's and CRs, the Petitioner was not eligible to be considered for such a promotion. Nevertheless, it was observed as under:

"14. It is true that since May 2009 the respondents have inordinately delayed the DPC for regular promotion to the post of Deputy Controller of Accounts but the applicant also did not espouse his right for regular promotion for a long period of five years. Besides, in May 2008 the applicant was not even in zone of consideration for promotion to the post of Deputy Controller of Accounts and in September 2008 itself, the Govt. Of NCT of Delhi, in all fairness, gave him *ad hoc* promotion to the said post.

15. In the circumstances the only direction, which can be issued to the respondents in the present Original Application, is to

convene a DPC for regular promotion to the post of Deputy Controller of Accounts expeditiously and consider the applicant for his regular promotion to said post. If the DPC is held after retirement of the applicant, he would not be denied regular promotion as Deputy Controller of Accounts on the ground of his retirement from service before actual promotion. In the event of being found fit for regular promotion to the post of Deputy Controller of Accounts, the applicant would be entitled for seniority from the due date.”

5. This Court has heard learned counsel for the parties.

6. It is not in dispute that there were vacancies against which the Petitioner, in fact, could have been appointed on a regular basis as DCA. In this context, it requires to be noted that, no petition has been filed by the Respondent against the directions issued by the CAT in the impugned order to the Respondents to consider regularising the Petitioner in the post of DCA. Therefore, the Respondent evidently accepts the entitlement of the Petitioner to be regularised in the post of DCA.

7. Once the above decision is taken, the Petitioner will be considered to have become eligible for promotion to the post of COA by counting the period of five years from the date on which his services as DCA was regularised. It is not in dispute that the year in which the Petitioner ought to have been regularised is 2009. Therefore, the Petitioner’s turn to be considered for promotion as COA should be considered to have arisen in 2014. It was, therefore, incumbent for the Respondents to have considered his case for such promotion as COA on the date it became due.

8. Learned counsel for the Respondents drew the attention of the Court to an Office Memorandum ('OM') dated 14th November, 2014, which states that once an official has retired, he does not have the right of an actual promotion. As a result of the Review DPC that is held in such cases, only notional promotion can be granted.

9. The factual position is that the Petitioner has already superannuated. At this stage, the only direction that can be given, in modification of the impugned order dated 23rd September, 2014 of the CAT, is that the Respondent will hold the Review DPC to consider the case of the Petitioner for promotion as COA upon his having completed five years' regular service as DCA, i.e. 1st April, 2014.

10. Consistent with the OM dated 14th November, 2014, the Respondent will consider the case of the Petitioner for such promotion by convening a Review DPC, and if found fit, the Petitioner will be promoted on a notional basis as COA from 1st April, 2014 with no arrears of pay but with re-fixation of the retiral benefits by accounting for increments, etc. The consequential orders in compliance with this order be issued by the Respondents not later than 12 weeks from today. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 27, 2020/pa