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

+ W.P.(C) 120/2021 & CM APPL. 372/2021

GURCHARAN SINGH

..... Petitioner

Through: Mr. Vidya Sagar, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Naresh Kaushik, Advocate for UPSC.

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Date of Decision: 07th January, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the order dated 2nd November, 2020 passed by the Central Administrative Tribunal [CAT] as well as the departmental order dated 2nd November, 2019.
3. Petitioner also prays for a direction to the respondents to hold a review Departmental Promotion Committee [DPC] for considering the petitioner for promotion to the Junior Times Scale [JTS] of the Indian Civil Accounts Service [ICAS] w.e.f. 1st November, 2019 on notional basis for the purpose of re-calculating petitioner's retirement benefits.

4. Learned counsel for the petitioner states that the petitioner had arbitrarily not been considered for promotion even when three vacancies existed. In support of his contention, he relies upon para 4.5 of the Original Application filed before the Tribunal wherein it had been averred that there was vacancy on account of extension of deputation term of Shri Sahib Singh and on account of retirement of Shri B.S. Chaudhary on 01st November, 2019.

5. He points out that UPSC had promoted two similarly situated colleagues even when the respondent had informed UPSC that there was one vacancy.

6. Learned counsel for the petitioner submits that the legitimate expectations of the petitioner of being considered for promotion had been defeated by the acts of the respondents. In support of his submission, he relies upon the judgment of the Supreme Court in ***Union of India and Another Vs. Hemraj Singh Chauhan and Others, (2010) 4 SCC 290.***

7. Having heard learned counsel for the petitioner and having perused the paperbook, this Court is of the view that an employee does not have the right to promotion but only a right to be considered.

8. In the present case the department by way of a reasoned order dated 2nd December, 2019 has taken a categorical stand with respect to the number of vacancies that needed to be filled in the year 2019. The department's communication dated 2nd December, 2019 is reproduced herein below:-

“ 2. In this regard, it is intimated that the representation dated 06.11.2019 of Shri Gurucharan Singh, Sr. AO has been examined in detail as per DoP&T's O.M. dated 15.05.2007.

3. For determination of regular vacancies, DoP&T's OM dated 15.05.2007 stipulates that the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long-terms promotion and deputation or from creation

of additional posts on a long term. As regards, vacancies arising on account of deputation for more than one year will be taken to the recruitment roster for regular appointment, only after ensuring that clear vacancies will be available for deputationists likely to return to the cadre. Purely short-term, vacancies created as a result of officers proceeding on leave or on deputation for a shorter period, training etc. will not be taken into account for the preparation of regular panel under any circumstances.

4. While sending the proposal for Supplementary DPC for the vacancy year 2019, this office sent only one additional vacancy to UPSC keeping in mind as per DoP&T's O.M. dated 15.05.2007¹ which was accepted by the UPC. At that time, no other vacancies were available for the vacancy year 2019 which was more than one year.

5. As of now, there is no long term vacancy i.e. more than one year for the vacancy year 2019 to consider for Induction in ICAS."

(emphasis supplied)

9. This Court is also in agreement with the view of the Tribunal that “much would depend upon the availability of the vacancy and the need, felt by the department to effect promotions. In the matter of calculation of vacancies the last word is to be uttered by the department and not by the employee, waiting for promotion.”

10. In fact it is settled law that a promotion is not to be effected from the date of creation of the promotional post or from the date when the additional post is created or from the date on which such post falls vacant (**Union of India v. K.K. Vadera, 1989 Supp (2) SCC 625**).

11. Further, as no malice in fact has been alleged against any particular officer, the department's view with respect to the number of vacancies in 2019 has to be accepted.

12. Keeping in view the aforesaid facts, the Supreme Court judgment in ***Union of India and Another Vs. Hemraj Singh Chauhan and Others*** (supra) is inapplicable to the facts of the present case.

13. It is also settled law that a retired employee cannot be promoted except when a junior has been promoted while the employee was in service. Since that is not the case in the present instance, the writ petition and application being bereft of merits are dismissed.

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

JANUARY 07, 2021
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