



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

Judgment reserved on: 02.08.2022

% **Judgment delivered on: 06.09.2022**

+ **W.P.(C) 78/2003**

VIJAY BHUSHAN GUPTA

..... Petitioner

Through: Mr. Ravi Sikri, Senior Advocate with
Ms. Akshita Raina & Mr. Arun
Sanwal, Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Rajesh Kumar & Mr. Puneet
Yadav, Advocates.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. In matters of employment, the aspects of appointment, *inter-se* seniority and promotions are crucial. Time and again, issues relating to these aspects land in the Courts. The petitioner in this case has put up a case that he has been superseded by three of his juniors who were promoted to the rank of Senior Investigator out of turn, owing to the relaxation of certain rules by the department, first on ad-hoc basis and then on regular posts. Consequentially, the petitioner was also promoted. However, the respective



dates of regularization of the petitioner and the three juniors had a gap of 4 years and aggrieved therewith, the petitioner has called upon the Court to regularize his services from a prior date.

Facts of the Case

2. The present case carries with it a long historical account. Let us briefly expound the same. On 21.12.1976, the petitioner joined as a Junior Investigator with the respondent. On 08.02.1977, three juniors of the petitioner namely, Sh. Suresh Kumar, Sh. R.S. Attri and Sh. K.L Goyal, who were already working as Junior Investigators on ad-hoc basis since 1973, 1974 and 1975 respectively, were regularized w.e.f. 04.11.1976. On 14.02.1978, the Ministry of Planning, Department of Statistics issued a notification containing the CSO, Dept. of Statistics (Sr. Investigator) Recruitment Rules, 1978 (hereinafter referred to as the “1978 Rules”). The 1978 Rules provided for a method of promotion to the rank of Sr. Investigator, and mandated a minimum of 5 years of regular service as a Jr. Investigator before being considered for the promotion to senior grade. For brevity and want of relevance, other conditions and requirements of promotion, as per the 1978 Rules, are not being reproduced here. Thereafter, on 28.08.1978, the department released a seniority list of Jr. Investigators, wherein the petitioner stood at Sr. No. 66, above his three juniors. The list was later corrected, however the *inter-se* positioning of the petitioner and his juniors remained the same.

3. On 05.06.1979, five Jr. Investigators, including the three colleagues in question, were promoted as Sr. Investigators on ad-hoc basis w.e.f. 01.06.1979. The petitioner gave representation to the department for



consideration of his name as well for promotion. The department refused to accede to the representation. Thereafter, on 31.01.1981, the petitioner was appointed as Sr. Investigator on ad-hoc basis w.e.f.28.01.1981.

4. After almost 8 years, in 1989, the three juniors of the petitioner approached the Tribunal, vide O.A. 1631/1989 for regularization of their promotions from the date of their ad-hoc appointments. Thereafter, the petitioner also approached the Tribunal, vide O.A. 2051/1989, being aggrieved against the refusal of the department to entertain his representation dated 05.06.1979, for grant of promotion along with the three juniors in the same year i.e. 1979. The Tribunal passed a common order on 22.11.1993, observing that there is no right to seek regularization from the date of ad-hoc appointment, and refused to entertain the cases on merits. However, noting that the vacancies in senior grade had arisen in 1986, it directed the department to conduct a review DPC and consider the case of the applicants in light of the aforesaid vacancies.

5. The department responded to this observation and regularized the services of the petitioner and his three juniors as Sr. Investigators w.e.f. 08.05.1986 in accordance with the vacancy position. Subsequently, this order was partially modified and the services of all four employees including the petitioner stood regularized w.e.f. 15.11.1983.

6. In 1996, the three juniors of the petitioner (names already mentioned above) preferred another O.A. 1144/1996 before the Tribunal seeking regularization w.e.f. the date of their ad-hoc appointment in the senior grade i.e. from 1979. The Tribunal identified that some regular vacancies existed from 1964 onwards, and the case of the applicants must be reviewed



accordingly. Consequently, the department reconsidered the case of Sh. Suresh Kumar, Sh. R.S. Attri and Sh. K.L. Goyal, and regularized their appointment as Sr. Investigators w.e.f. 14.06.1979, 16.09.1979 and 13.01.1980 respectively.

7. Notably, the petitioner was not a party to the aforesaid case O.A. 1144/1996 and no such benefit was extended to the petitioner. Thus, the appointment of the petitioner as Sr. Investigator stands regularized w.e.f. 15.11.1983 only and not from the date of his ad-hoc appointment i.e. 28.01.1981. The petitioner gave certain representations to the respondent for seeking the benefit of the Tribunal's order in O.A. 1144/1996. However, the same was denied, thereby leading to O.A. 2494/2001 wherein the petitioner sought regularization w.e.f. 27.07.1977.

8. The Ld. Tribunal dismissed the O.A. 2494/2001 holding that no discrimination has been meted out to the petitioner vis-à-vis the three juniors as they were promoted upon the completion of four years by offering a one-time relaxation as a class. It further held that the petitioner had not completed four years in service in 1979, and thus, he stood on a different footing as compared to the three juniors. Para 5 of the impugned order is relevant and the same is reproduced for reference thus:

"5. We have carefully considered the rival contentions made in this case. When applicant's earlier application, namely, O.A. No.2051/1989 in which he had claimed regularisation of his services as Senior Investigator w.e.f. 1979 was rejected, coming up with a prayer for regularisation of his services from 1977, i.e., earlier than even 1979, does not stand to reason. We are in agreement with the learned counsel of respondents that S / Shri Suresh Kumar, R.S. Attri and K.L. Goyal had been accorded relaxation in the rule as per respondents' policy decision for



one-time relaxation for those who had completed four years of service in the feeder post. This relaxation had been provided to a class of personnel- Applicant having joined as Senior Investigator in December, 1976 could not have been granted any relaxation as he had not completed even four years as Senior Investigator- He did not fall in the class of employees about whom relaxation of one year for regularisation of their services had been decided upon- In this regard, it is our considered view that applicant had not been meted out any discriminatory treatment vis-a-vis the other three personnel. He was ultimately appointed as Senior Investigator w.e.f-28.1.1981 when he too had rendered more than four years in the grade of Junior Investigator. Regularisation of the services of S/ Shri Suresh Kumar, R.S.Attri and K.L.Goyal in implementation of the judgment in OA No.1144/1996 with effect from the respective dates of their officiation and appointment of applicant as Senior Investigator w.e.f. 28.1.1981 are quite in order as we have not found any infirmity in respondents' orders in regard to them."

9. This petition emerges from the above order passed by the Central Administrative Tribunal (Hereinafter referred to as "the Tribunal"), Principal Bench, New Delhi. The principal argument addressed by the petitioner is that the three juniors of the petitioner were granted undue relaxation for promotion as they had merely completed 2.5 years of regular service (and not 4 years) when they were promoted in 1979. It is urged that the petitioner stood on the same footing with the three juniors at that point of time, and thus, discrimination was meted out to him by not granting the same relaxation. It is further argued that the benefit of O.A. 1144/1996 ought to be given to the petitioner as well, despite not being an applicant in that case, as he was similarly situated with the three juniors. And thus, the benefit of regularization w.e.f. 1977 must be given to the petitioner as vacancy had existed at that point of time. Reliance has been placed upon **Malkhan Singh**



& Ors. V. Union of India & Ors., W.P.(C.) No. 4905/2020; and **Chairman/Managing Director, U.P. Power Corporation Ltd. And Ors. V. Ram Gopal**, Civil Appeal No.852/2020, to support the proposition that all similarly placed persons must be conferred the benefit of a judgment.

10. The respondent has countered the submissions of the petitioner by submitting that the three juniors were considered for promotion due to a one-time relaxation as they had completed four years as Jr. Investigator. It is stated that the petitioner had not completed 4 years in service at that point and thus, he was not similarly placed with the three juniors. It is further submitted that the present writ is barred by *res judicata* as in O.A. 2051/1989 as well, the petitioner had sought regularization of his services as Sr. Investigator w.e.f. 1979, and the same stood dismissed vide order dated 22.11.1993.

11. Owing to the protracted history of this legal journey, the nature of this case appears to be a complex one. However, on a careful consideration, we feel that the Court must steer clear from entering into areas that have already been settled or do not arise for consideration before us. The three juniors of the petitioner were promoted in the year 1979, along with 2 other employees, upon the grant of a one-time relaxation to these 5 persons as a class. The underlying criteria was the completion of 4 years of service. It is nowhere in dispute that the calculation of 4 years of service refers to regular service and must not take into account the experience gained in ad-hoc service. The Ld. Tribunal, in OA. 1631/1989 and O.A. 2051/1989, observed the same. However, it found that under the 1976 Rules, as applicable at that time, the prerogative of relaxation rests with the department and the



department could relax certain conditions of promotion for a class of employees who are similarly placed in service. The reference to a class, instead of an individual, is to seal any possibility of discrimination in grant of relaxation. Be it noted that in the present case, we are not sitting in appeal over the aforesaid order dated 22.11.1993, passed in the above two O.A's, and we are not inclined to express any view regarding the correctness of the grant of relaxation, or whether it resulted into any discrimination. The case of the petitioner is solely about regularization from a prior date. Thus, the limited issues that arise before this Court are:

- i. Whether the benefit of the judgment passed by the Ld. Tribunal in O.A. 1144/1996 be extended to the petitioner?
- ii. If yes, whether the appointment of the petitioner as Sr. Investigator could be regularized w.e.f. 1977?

12. We have considered the rival submissions at length and have carefully perused the authorities relied upon by the petitioner.

13. The law regarding whether or not the benefit of a judgment could be extended to those who are not parties to the same is no more *res integra*. The Supreme Court, in ***State of U.P. V. Arvind Kumar Srivastava***, (2015) 1 SCC 347, has summed up the principles thus:

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India.



This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently." (emphasis supplied)

Noting that laches and delays may operate as exceptions to the aforesaid rule, the Court further noted thus:

"22.2. However, this principle is subject to well- recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/ or the acquiescence, would be a valid ground to dismiss their claim."

The Court further observed that if the judgment was meant to operate *in rem*, then the exception of laches and delay would also not apply, as reproduced thus:

"22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India (K.C. Sharma v. Union of India, (1997) 6 SCC]. On the other hand, if the judgment of the court was in personam holding that



benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence " (emphasis supplied)

14. The position of law, as settled, provides that the conditions pre-requisite for the conferment of benefits of a judgment to non-parties are, *first*, involvement of identically placed persons and *second*, judgment not being restricted to operate *in personam* by the Court (either expressly or by necessary implication). The Supreme Court has also laid down certain exceptions to this rule, which primarily include delay/laches and expiry of the period of limitation. In the instant case, the Ld. Tribunal's decision in O.A. 1144/1996 (whose benefit was sought by the petitioner in the impugned order) did not consider the case of the applicants on their respective merit, and did not confer any right on the parties to get their services regularized from the date of ad-hoc appointment. It merely directed the DPC of the respondent to consider such requests in light of the eligibility of the persons being considered and the availability of vacancies at the relevant point of time. It was a standard order, in line with the previous order by the Ld. Tribunal wherein similar prayers were made.

15. In the order passed in O.A. 1144/1996, there is no express mention of the order being one *in personam*. Furthermore, there is no observation as regards the specific merits of the case of the applicants therein, which could impress upon us to impliedly view the order as an order *in personam*. The direction is a general direction to consider the case of the applicants as per standard rules. The order cannot be viewed as an outcome of any specific



consideration of the applicants who approached the Ld. Tribunal. Moreover, it was passed in tune with the earlier decisions of the Ld. Tribunal, viz. O.A. 2051/1989 and O.A. 1631/1989, wherein a similar prayer was sought, and the Ld. Tribunal directed the department to consider the case of the applicants therein. In our view, there is no indication in the order, either expressly or by necessary implication, which could enable us to view it as a restricted order limited in its application to the applicants therein.

16. The petitioner, and other employees of the department who approached the Tribunal in O.A. 1144/1996, were all serving as Sr. Investigators. The applicants in the impugned case approached the Tribunal for seeking the benefit of regularization from the date of ad-hoc appointment, in light of the new vacancy position. The Tribunal passed a direction to the department, and did not consider the case on merits. Thus, the question of specific application of the order to the applicants in the O.A. does not arise. As a matter of chance, the petitioner could not approach the Tribunal. There is nothing on record which distinguishes the case of the petitioner in a manner that his request for regularization from the date of ad-hoc appointment cannot even be considered by the department, in accordance with the rules and as per the availability of vacancies. If the petitioner met the criteria for such regularization, then merely because he could not approach the Tribunal for seeking a direction to the department, it would not be a reason for the department to not have considered his representation. Particularly, keeping in view that the Petitioner was an applicant in previous O.A.s relating to this subject matter, his case also warranted indulgence by the department, atleast for the purpose of



consideration when the cases of other identically placed employees were being considered. Therefore, for the purpose of consideration of regularization from the date of ad-hoc appointment, the petitioner is identically placed with the applicants in O.A.1144/1996.

17. After the passing of the judgment, the petitioner approached the department by way of a representation within a year. There is no question of laches. Thus, the exceptions to the rule, as laid down by the Hon'ble Supreme Court in *Arvind Kumar Srivastava* (supra), do not apply to the petitioner.

18. Having noted the aforesaid legal position, we hasten to add that there is no possibility of considering the regularization of the appointment of the petitioner from 1977, as at that point of time, the petitioner was neither appointed as an ad-hoc Sr. Investigator, nor eligible to be appointed on that post. Therefore, no question arises for retrospective consideration of regularization of promotion in senior grade at a time when the employee was not even eligible for promotion. As the settled law states, the eligibility for promotion and existence of vacancy at the relevant point of time are two pre-requisites for regularization of appointment from a prior date (wherever rules so permit). Thus, to maintain parity with the three juniors, whose services got regularized from the date of their ad-hoc appointment, we are inclined to give the petitioner a chance to get his case considered for similar regularization from the date of his ad-hoc appointment i.e. 28.01.1981.

19. The respondent is hereby directed to consider the case of the petitioner for regularization of his appointment as Sr. Investigator w.e.f. 28.01.1981 (the date of his ad-hoc appointment). Needless to observe that



this direction is merely for consideration of the case of the petitioner as per the rules and in accordance with the existence of vacancies at that point of time.

20. Be it noted that if the respondent department finds that the case of the petitioner meets the criteria for such regularisation, all consequential benefits shall accordingly follow from the date of such regularization.

21. The petition stands disposed of in accordance with the above directions.

22. Interim application, if any, shall also stands disposed of. No order as to costs.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

SEPTEMBER 06 , 2022