



\$~3

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

% Judgment delivered on: 31.08.2022

+ W.P.(C) 5446/2016 & C.M. No. 2000/2021

JAI BHAGWAN & ORS

..... Petitioners

versus

UNION OF INDIA & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Sanjiv Joshi, Advocate (through VC).

For the Respondent: Mr. Prasanta Verma, Sr. Central Govt. Counsel with Mr Hiteshi Kakkar and Mr Amrit Singh, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners impugn judgment dated 15.02.2016 whereby the Original Applications filed by the petitioners before the Central Administrative Tribunal, Principal Bench, New Delhi (in short 'the Tribunal') have been dismissed holding that promotion of a retired officer cannot be effective from a date after his retirement.

2. Learned counsel for petitioners submits that the stand of the respondent before the Tribunal was that the juniors of the petitioners were promoted by promotion order dated 23.10.2012 which is after the date of the superannuation of the petitioners and as such they were not



entitled to any promotion.

3. Learned counsel for the petitioners submits that petitioner Nos.1 & 2 superannuated on 31.12.2009 and petitioner No.3 superannuated on 30.11.2010. He submits that though a promotion order has been issued on 23.10.2012, however the respondents have given retrospective promotion to the juniors of the petitioners w.e.f 01.04.2009 and 01.04.2010 respectively for petitioner Nos.1 & 2 and petitioner No.3.

4. He submits that this final seniority list which was circulated on 01.12.2015 was not placed by the respondents before the Tribunal and petitioners became aware of the list subsequently. He submits that the final seniority list dated 01.12.2015 categorically reckons the date of the appointment and reckoning of approved service of the juniors of the petitioners as 01.04.2009 and 01.04.2010 respectively. He submits that since the service of the juniors of the petitioners is being reckoned from a date prior to the superannuation of petitioners, petitioners are entitled to the notional benefits w.e.f the said date.

5. The final seniority list dated 01.12.2015 has been placed on record along with an additional affidavit filed by the petitioners. In the written synopsis filed by the respondents this list is not disputed. However, it is contended that the date of reckoning is for a separate purpose and not for grant of any benefits.

6. As per the written submission of the respondents is that



petitioner Nos.1 & 2 were eligible to be considered for promotion as Deputy Director for the panel year 2009-2010 and petitioner No.3 became eligible for the same panel year for the year 2010-2011. However, before the select list could be effected petitioners had superannuated from service.

7. We may notice that this list was not placed before the Tribunal nor was any material placed before the Tribunal that the juniors of the petitioners were given retrospective appointment to the post of Deputy Director or their service was reckoned from a retrospective date i.e. a date prior to the superannuation of the petitioners. The effect of the list dated 01.12.2015 in our view is liable to be considered by the Tribunal.

8. Since the order of the Tribunal is only based on the promotion order dated 18.10.2012 which was passed after the superannuation of the petitioners and the material with regard to the final seniority list dated 01.12.2015 was neither placed before the Tribunal nor considered by the Tribunal, we are of the view that the impugned order is liable to be set aside and the matter remitted to the Tribunal giving an opportunity to the parties to place material on record before the Tribunal with regard to the alleged retrospective appointment being given to the juniors of the petitioners.

9. In view of the above, the impugned order dated 15.02.2016 is set aside. The matter is remitted to the Tribunal for a fresh



consideration. Petitioners are granted four weeks time to place additional material before the Tribunal. Respondents shall also respond to the said material within four weeks thereafter. The tribunal is directed to expeditiously consider the case and pass a final order preferably within a period of six months.

10. Parties shall appear before the Tribunal for directions on 11.10.2022.

11. Petition is allowed. All rights and contentions of parties are reserved.

SANJEEV SACHDEVA, J.

TUSHAR RAO GEDELA, J.

AUGUST 31, 2022

rk