

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

% *Date of Decision: May 17, 2023*

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+ W.P.(C) 806/2020, CM APPL. 2482/2020 (stay)

UNION OF INDIA

..... Petitioner

Through: Mr. Ravi Prakash, CGSC with Mr. Farman Ali, Ms. Astu Khandelwal and Ms. Usha Jamnal, Advocates.

versus

DR. M.C. MEHANATHAN & ANR.

..... Respondents

Through: Mr. J.P. Shukla & Ms. Shipra Shukla, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

1. The challenge in the Writ Petition is to an order dated November 29, 2018, whereby the Tribunal has allowed the Original Application 4399/2013 filed by the respondent no. 1 herein by stating in paragraphs 6 and 7 as under:

“6. The respondents fairly admitted in their counter affidavit that the ceiling of 60% was raised to 75% through order dated 09.07.2012 w.e.f. 01.01.2010, to be in force for a period up to 31.12.2014, in view of the additional requirement of the officers at Joint Secretary level at the Centre. In view of this relaxation, several persons were promoted. However, the benefit was not extended to the applicant. There is hardly any basis for this. The relevant paragraph of the Minutes dated 14.09.2012 reads as under:-

“3. Vide orders dated 9.7.2012, ACC has recently approved the enhancement of the existing ceiling of 60% of eligible officers of a batch being assessed for initial empanelment at the level of Joint Secretary to 75%. It was also approved

that this one-time dispensation would be in operation with effect from 1.1.2010, 75% of the officers would be eligible for empanelment. The cut off date of 1st January, 2010 has been recommended based on the fact that new empanelment guidelines even though issued in 2009, had come into operation only from 2010."

Once the relaxation is made to operate w.e.f. 01.01.2010, there is no reason as to why the case of the applicant is not covered by that. In the same note, it was also mentioned that the applicant and another officer were cleared from vigilance angle also, during that period. In the counter affidavit, except stating that the applicant was appointed in the subsequent year in view of the enhancement of the ceiling to 75%, it is not stated as to why the relaxation was not extended to the applicant.

7. We, therefore, allow the OA and direct that the applicant shall be deemed to have been promoted to the post of Joint Secretary on in situ basis w.e.f. 22.07.2011 the date on which, his other batchmates were promoted, and consequential benefits shall also be extended to him. There shall be no order as to costs."

2. The claim of the respondent no. 1 before the Tribunal was that he is an officer of 1993 batch of a Central Secretariat Service (CSS). His name was put, in the selection grade select list in the year 1995. He became eligible to be considered for promotion as Joint Secretary in the year 2011. However, there was a ceiling of 60% of the posts available against the officers to be promoted from the selection grade of CSS to Joint Secretary. On account of that the respondent no. 1 and another person were left out. In the next year both of them were promoted as Joint Secretary on in-situ basis.

3. The case of the respondent No.1 before the Tribunal was that he was entitled to be promoted in the year 2011 itself, but was promoted through an

order dated October 29, 2012. His case was also that the imposition of ceiling of 60% was totally unjustified. He also pleaded despite the government raising the ceiling from 60% to 75%, he was still treated as promoted w.e.f. October 29, 2012 and not from July 22, 2011.

4. The only submission made by Mr. Prakash is that the challenge to the impugned order is to the extent that the Tribunal has given the actual benefits to the petitioner, whereas it should have been on notional basis on the principle of no work no pay. The plea is appealing since the Tribunal has given the benefit from a back date, it was not justified for it to give the consequential benefits i.e. arrears of pay between July 22, 2011 till October 29, 2012 in the facts.

5. The order of the Tribunal is modified to the extent the petitioner shall be entitled to the benefits on the post of Joint Secretary w.e.f. July 22, 2011 on notional basis, but he shall be entitled to the arrears of pay including the difference in retiral benefits w.e.f. the date of his actual promotion on October 29, 2012 as Joint Secretary. The benefits thereof shall be released to the petitioner within a period of three months from today.

6. With the above, the Writ Petition is disposed of.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 17, 2023/akc