



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

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Date of Decision: September 01, 2023

+ W.P.(C) 2053/2020
BHAGWAN SINGH

..... Petitioner

Through: Mr. A. K. Behera, Sr. Advocate with
Mr. S. P. Sethi, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. J. K. Tripathi, Sr. Panel Counsel,
UOI.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J.(ORAL)

1. The challenge in this writ petition is to an order dated October 31, 2019, passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in O.A. 3751/2014, whereby the OA filed by the petitioner herein was dismissed by the Tribunal by stating in paragraph 6 as under:

"6. In view of the facts and circumstances of the case referred to above, as the applicant being retired employee w.e.f. August 31, 2012, he was not entitled for actual promotion in view of the above extracted OM and as he was not promoted permanently to Group 'A' Post, he is not entitled for DITS under para 334 of the above and IREM Volume-I and the said OA is devoid of merit."

2. The case of the petitioner before the Tribunal was that while working in Group 'B' Post, he became eligible for being promoted to the lower rank



of Group 'A' Post. He retired on attaining the age of superannuation on August 31, 2012. Thereafter, for the vacancies for the year 2010-11 (wrongly noted by the Tribunal as 2009-10), a DPC was held on 19th -21st December, 2012. It is a conceded case that the petitioner herein was in the zone of consideration for the vacancies for the year 2010-11. The DPC had found the petitioner fit for being promoted to Group 'A' Post, but he was not granted the actual promotion and even the notional promotion only on the ground that the petitioner had retired on August 31, 2012.

3. Mr.A.K.Behera, learned Senior Counsel appearing on behalf of the petitioner has drawn our attention to page No.89 of the paperbook to contend that as per Seniority/Eligibility List dated January 01, 2011, issued by the Railways though the name of the petitioner features at Serial No.28 thereof, the person above him at Serial No.27 i.e. D.K.Tewari and below him at Serial No.29 i.e. N. C. Dey Sarkar were given actual promotion w.e.f. December 31, 2012 and the benefits thereof w.e.f. December 31, 2007.

4. It is also the submission of Mr.Behera that the petitioner is only claiming the benefit of promotion to Group 'A' Post on notional basis. According to him, as the juniors to the petitioner have got the benefit of increments w.e.f. December 31, 2007, the petitioner should also be given the benefit in the same manner as it will have a bearing on the pension of the petitioner. He submits that even otherwise, since the petitioner was found fit by the DPC, he could not have been denied the benefits thereof.

5. On the other hand, M. J. K. Tripathi, learned Senior Panel Counsel appearing on behalf of the Union of India would justify the order passed by the Tribunal by submitting that the DPC having been held in the month of



December, 2012 and the petitioner having retired on August 31, 2012, he could not have been granted the promotion. In support of his submission, he has relied upon the instructions issued by the DoP&T vide OM dated October 12, 1998 of which a reference has been made by the Tribunal in the impugned order as well as OM dated November 14, 2014. Mr. Tripathi has also placed before us a Communication dated September 16, 2022 addressed to the General Manager, Northern Railway, Baroda House, New Delhi of the Ministry of Railways (Railway Board), of which paragraph 3 reads as under:

“3. The aforesaid DOPT’s OM dated 12.10.1998 provides that the retired employees, who were within the zone of consideration in the relevant year (s), but are not actually in service when the DPC is being held, are to be considered while preparing year-wise penal(s). Such retired employees would, however, have no right for actual promotion. The DPC(s) may, if need be, prepare extended panel(s). The above provisions have been reiterated in the DOPT’s above said OM dated 14.11.2014 for compliance. The provisions contained in the said OM have rightly been complied with while dealing with the case of Shri Bhagwan Singh (elaborated in para 2 above). This fact was also placed before the Hon’ble Tribunal and Hon’ble High Court in the aforesaid OA and WP respectively. Moreover, in the rejoinder filed by the petitioner (Shri Bhagwan Singh) in the said WP, he himself has accepted that the retired officials have no right for actual promotion quoting the aforesaid OM of DOPT. As such, no fresh facts have been brought out by the petitioner in the said WP.”

6. In substance, it is his plea that the petitioner being not in employment on the date when the DPC was held, he was rightly not given the actual/notional promotion.

7. We are unable to agree with this submission of Mr. Tripathi for the reasons that there is no dispute that the petitioner was eligible for promotion



to Group 'A' post. It is also not in dispute that the name of the petitioner was also considered for promotion in the DPC held between 19th - 21st December, 2012 along with the juniors to the petitioner. In fact, the juniors having been found fit by the DPC were given actual promotion and the petitioner was denied actual/notional promotion to Group 'A' post. Suffice to state, though the juniors to the petitioner were appointed to Group 'A' post w.e.f. December 31, 2012, the benefits thereof viz. increment and the eligibility for higher post were given with effect from December 31, 2007. If that be so, there is a clear prejudice caused to the petitioner as he has been denied the benefits of the promotion even on notional basis specially when the juniors of the petitioner have got the benefits of increments and eligibility thereof w.e.f. 2007.

8. The law in this regard is well settled, as relied upon by Mr. Behera in the case of ***Union of India & Anr. vs. P.G. George, W.P.(C) 4864/2010***, decided by this Court on July 23, 2010, wherein this Court in paragraphs 6 to 16 held as under:

“6. We note that learned counsel for the petitioner seeks to urge the same very points which have been dealt with by the Tribunal. Since we agree with the entire process of reasoning of the Tribunal, we need not reiterate the said reasons and unnecessarily pen a lengthy order, which would be nothing else other than rewriting, in our own words, the language of the impugned order.

7. Suffice would it be to state that as correctly held by the Tribunal, if the Department fails to convene a Departmental Promotion Committee in time and gives no reasons for delay and then considers all the eligible candidates as on the date of vacancy and by the time a few, who are empanelled, have retired they cannot be denied the benefit of a notional appointment to the post in



question. As rightly held by the Tribunal, having not worked on the post in question they would not be entitled to wages, but for purposes of pension, after giving them notional appointment, pensionary dues would have to be paid in the applicable scale.

8. The Tribunal has rightly held that under the OM dated 12.10.1998, the only bar is that the benefit of actual promotion would not be given to these employees, meaning thereby, the retired employees would not get wages. But, the impact of the circular dated 13.2.2009 where it is clearly stated that the empanelled candidates would be benefit to the dues on notional basis would mean that such retired employees who could not get actual promotion would be entitled to notional promotion.

9. We may wish to add one extra reason in support of the finding returned by the Tribunal.

10. Learned counsel for the petitioner concedes that such Government employees who are empanelled at a later date and are still in service are granted notional promotion to the post in question with effect from the date of the vacancy, meaning thereby, these candidates are given the applicable pay scales with increments in the scale with effect from a retrospective date, but salary in the higher scale with increments is paid from the date they joined. This means that the benefit of notional promotion in the form of being placed in the higher pay scale with a retrospective date is given to them. Thus, there is no reason why the same benefit be also not extended to the retired employees who could not earn promotions for no fault of theirs. .

11. As an extended limb of our aforesaid reasoning would be the argument that if the petitioner is permitted to not give notional benefits to the retired employees there would be chances of favouritism, corruption and nepotism for the reason it would be very easy to delay the declaration of result of the DPC and thereby ensure that an empanelled candidate stands retired and the benefit to go to the next one.



12. *There is one more reason to be added. What is the use of including the names of retired persons by including them in the zone of consideration when as a matter of fact they have to be given no promotion! Besides, it is settled law that only those persons who are eligible to be promoted have to be put in the zone of consideration and it would be a case of inverted logic to say that the retired persons are not eligible to be promoted (notionally), but are eligible to be within the zone of consideration. One cannot operate simultaneously in two mutually contradictory directions.*

13. *There can be an interested reasoning to bring the absurdity in what the petitioner says.*

14. *The analogy of holding DPCs after 2 to 3 years when the vacancies arose and consider the retired employees on the basis that they were in service when the vacancy arose would mean to go back in the past to recognize their right to stand in the zone of consideration but to deny them notional promotion on the ground that as of today they have retired would mean to derecognize a right by looking in the present, can be contrasted with a man 'A' who stands in presenti and with reference to the past has a dialogue with a man 'B'. The dialogue would be:*

A. *I am standing on a ground which was sea bed in the past.*

B. *Do I mean to understand that you are standing on the sea bed.*

A. *No. Today I am standing on the ground.*

B. *But you just said that in the past it was a sea bed.*

A. *I never said that ever in the past I stood on the sea bed.*

B. *But that is what it would mean if we go back in the past.*

A. *Please understand that the reference to the past is merely descriptive of the past and surely not indicative of the present. Therefore, I am standing on the ground.*

B. *Well- well. I cannot carry the dialogue any forward for I have run out of logic.*

A. *Well-well. You never had one at the first instance because*



you forgot that if the present has to be linked to the past it cannot be delinked from the actuality of the present.

15. We dismiss the writ petition in limine.

16. No costs.”

9. Similarly, a Co-ordinate Division Bench of this Court in the case of ***S.N. Narayanswamy v. Union of India & Ors., (2012) 194 DLT 166 (DB)***, in paragraph Nos. 5 and 6 held as under:

“5. We have heard the learned counsel for the parties and it appears to us that the case of the petitioner is no different from the case of P.G.George (supra) which was dealt with by the Tribunal by virtue of the order dated 22.04.2010. The learned counsel for the respondent has been unable to distinguish the case of the petitioner from that of P.G.George (supra). Consequently, the observations of the Tribunal to the contrary cannot be accepted. According to us the Tribunal ought to have followed the decision of a co-ordinate bench and ought to have allowed the OA filed by the petitioner inasmuch as the case of the petitioner is not any different from that of P.G.George (supra). The said OM dated 03.08.2010 in P.G.George’s case contains the following directions with regard to implementation:-

“3. The Ministry of Petroleum and Natural Gas are therefore hereby requested to implement the order of the CAT in respect of Shri P.G. George w.e.f. 1st July of 2007 by fixing of his pay notionally and granting notional increments if any due till his retirement and also granting pensionary benefits immediately under intimation to this Department”

6. Consequently, it is directed that the petitioner’s pay be fixed notionally and he be granted notional increments, if any, due till his retirement and he be also granted pensionary benefits in accord with the directions given in P.G. George’s case. We make it clear that the petitioner would be notionally promoted to the post of Deputy Secretary w.e.f. 01.07.2005. The writ petition stands



allowed to the aforesaid extent. There shall be no order as to costs.”

10. Even this Court in *Jasbir Singh Gill v. Union of India*, *MANU/DE/2497/2014*, on an identical issue, wherein the juniors of the petitioner therein were given the benefits, observed that the petitioner therein would be entitled to benefit of notional promotion and consequential benefits arising therefrom.

11. Though the Tribunal noted the judgments relied upon by the learned counsel for the petitioner appearing before it, but has not even dealt with the same. We find that the impugned order is bereft of any reasoning.

12. Accordingly, the impugned order dated October 31, 2019 is set aside. The petitioner shall be entitled to the benefit of increments notionally w.e.f. December 31, 2007, when the juniors to the petitioner were given.

13. We also direct that since the petitioner retired on August 31, 2012, he shall also be entitled to arrears of retiral benefits based on the increments which he would get from December 31, 2007. The same shall be computed and paid to the petitioner within a period of three months from today but without any interest.

14. In view of the above, the petition is disposed of on the above terms.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

September 01, 2023/v