

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

% *Date of decision: May 01, 2023*

+ **W.P.(C) 5596/2023, CM APPL. 21930/2023**

SHRI DEEPAK SINGH BHADAURIA

..... Petitioner

Through: Mr. Karanjot Singh Mainee and
Ms. Shreya Gupta, Advs.

versus

DELHI METRO RAIL CORP LTD & ANR.

..... Respondents

Through: Mr. V.S.R. Krishna and Mr. V.
Shashank Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 21930/2023

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 5596/2023

1. The challenge in this petition is to an order dated September 16, 2022 passed by the Central Administrative Tribunal ('Tribunal', for short) in an Original Application being OA 4348/2018, filed by the petitioner herein. The challenge in the OA was to an order dated January 30, 2018 issued by the respondents whereby the request of the petitioner for promoting him to the post of Sr. SC/TO was rejected.

2. The Tribunal vide the impugned order has rejected the OA by stating in paragraph 11 as under:

“11. In the facts and circumstances of the case and after appreciating the legal position, we do not find any illegality in the promotion given to the applicant’s junior. When applicant did not acquired the Bench Mark for last preceding 3 years for consideration of higher post. The present OA lacks merits and is accordingly dismissed.”

3. The submission of Mr. Karanjot Singh Mainee, learned counsel appearing for the petitioner is that the OA was decided by the Tribunal in the absence of the petitioner and his counsel

4. According to Mr. Mainee, the Tribunal had not considered the stand taken by the petitioner in the OA inasmuch as the petitioner’s adverse remarks in ACR/APARs for the years 2010-2011 and 2011-2012 were not communicated to him, which resulted in the petitioner not achieving the benchmark (i.e., to secure 11 points out of 15 in the previous three years of ACR / APARs), when his case was considered for promotion in the year 2013. He submits that the petitioner had made representations thereafter, but those representations were not answered by the respondents. He concedes to the fact that in the year 2016, the petitioner was promoted to the said post, but not with retrospective effect. His submission is that even after being promoted, the petitioner had made several representations to the respondents to relate back his promotion from the year 2013, when persons junior to the petitioner were promoted. According to him, it is pursuant to the rejection of the representation of the petitioner dated January 22, 2018 vide order dated January 30, 2018, that the petitioner had approached the Tribunal by filing the aforesaid OA. On a specific

query to Mr. Mainee, that how will the petitioner explain the delay that has occurred in filing the OA before the Tribunal only in the year 2018 for a claim of promotion denied in the year 2013, Mr. Mainee submits that the right to invoke the Tribunal's jurisdiction only arose when the petitioner's representation was rejected by the respondents in the year 2018. We are unable to agree with the said submission of Mr. Mainee.

5. On a further query to Mr. Mainee as to when the ACR / APARs for the years 2010-2011 & 2011-2012 (which according to Mr. Mainee were below the benchmark), were communicated to the petitioner, he submits that it was in the year 2013.

6. In fact, it is also his submission that persons junior to him were also promoted to the higher post in the year 2013. If that be so, the OA having been filed in the year 2018 was clearly barred by time, more particularly, in view of the provisions of Section 21 of the Administrative Tribunals Act, 1985. Suffice to state, mere filing of representations shall not extend the limitation for a cause of action that had arisen to the petitioner in the year 2013.

7. We find that the Tribunal has already in paragraphs 8 & 9, dealt with merit of the issue raised by the petitioner herein qua his non-promotion to the post of Sr. SC / TO in the year 2012 (not 2013 as contended by Mr. Mainee), by stating as under:

"8. Heard counsel for the parties and perused the records. The question to be decided by this Tribunal is whether the applicant is entitled for the promotion from the date(s) his juniors were promoted i.e. 2012 onwards. The bench mark for promotional avenue was points to be awarded out of 15 for last 3 preceding year's ACR/APAR are considered by the DPC for the

promotion. For the promotion in question, bench mark stipulated for promotion was minimum 11 points out of 15 in the previous three years of ACR/APAR.

9. Admittedly, applicant in Para 4.7 discloses that he has not obtained 11 points for the preceding 3 years i.e. 2010, 2011 and 2012. Para 4.7 reads as under:-

“Worthy it would be to state that earlier the grading/marks were out of 15 and minimum benchmark was 11 out of 15 for promotion and after wards from the year 2012-13 grading was given out of 40 wherein minimum benchmark was 32 out of 40 Applicants ACRs during various years are illustrated in tabular form;

2008-2009	Very good
2009-2010	Good
2010-2011	Good
2011-2012	Good
2012-2013	Very good
2013-2014	Very good
2014-2015	Very good
2015-2016	Very good

”

8. The above shows, the petitioner could not satisfy the Tribunal on the merit of his claim for promotion. In that sense, no prejudice has been caused to the petitioner even if the petitioner and his counsel were absent at the time of disposal of the OA.

9. In the totality of the facts, more so in exercise of Article 226 of the Constitution of India, we do not see any reason to interfere with the impugned order. The same is dismissed.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

MAY 01, 2023/jg