

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

% Date of decision: 13th February, 2023

+ W.P.(C) 6177/2019

DR. RAMAKANT SINGH

..... Petitioner

Through: Mr. R.K. Saini, Mr. Abhik Kumar and
Mr. Rinku Mathur, Advs.

versus

UNION OF INDIA THROUGH THE SECRETARY & ORS

..... Respondent

Through: Mr. Tanveer Ahmed Ansari, Sr. Panel
Counsel for R-1 & R-2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in the writ petition is to an order dated December 21, 2018, passed by the Central Administrative Tribunal, Principal Bench, ('Tribunal', for short) in Original Application ('OA', for short), being O.A. No.2594/2017 filed by the petitioner whereby the Tribunal dismissed the same.

2. The challenge in the OA by the petitioner was to an order dated May 1, 2017, of the respondents whereby the request of the petitioner for being promoted to the post of Director (Aeronautical Engineering) ('AE', for short) w.e.f. 2012 was rejected.

3. The facts as noted from the record are that in the year 1993 the petitioner joined the office of Director General Civil Aviation as Project Officer. He was promoted to the post of Senior

Scientific Officer in the year 2003. The said post was re-designated as Assistant Director (AE). On completion of five years of service on that post, an incumbent becomes eligible for being considered for promotion to the post of Deputy Director (AE). The petitioner became eligible for the post of Deputy Director (AE) in the year 2008. A charge sheet was issued to the petitioner on February 12, 2009. The charges were dropped vide order dated August 05, 2010.

4. The petitioner with a grievance that the process of direct recruitment has been initiated to the post of Deputy Director (AE) without taking any steps by promotion to that post, had filed, OA No.2506/2011. During the pendency of the OA, the petitioner was promoted to the post of Deputy Director (AE). The OA was ultimately dismissed on September 05, 2014. The petitioner filed W.P.(C) No.5802/2015 before this Court, feeling aggrieved by the dismissal of the OA.

5. It was his case that, he is entitled to be promoted to the post of Deputy Director (AE) w.e.f. the date on which the vacancy had arisen. The writ petition was disposed of on August 11, 2016, taking note of the fact that the petitioner has already been promoted, with a direction that a review Departmental Promotion Committee ('DPC', for short) shall be held to consider the case of the petitioner for promotion with effect from an earlier date when the vacancy had arisen, i.e., in the year 2009-2010. Pursuant thereto, the petitioner was considered for promotion to the post of Deputy Director (AE) and was promoted as such w.e.f. May 9, 2009.

6. The case of the petitioner before the Tribunal was that he became eligible to be promoted to the post of Director (AE) w.e.f. April 1, 2012, but still he was treated as being eligible to be promoted w.e.f. September 24, 2015, i.e., the date on which his juniors were promoted to that post. It was his representation for promotion to the post of Director (AE) w.e.f. April 1, 2012, which was dismissed vide order dated May 1, 2017.

7. It was urged before the Tribunal that once the wrong done to him on account of delay occurred in promoting him to the post of Deputy Director (AE) has been remedied; he is entitled to be promoted as Director (AE) against the vacancy of the year 2013-2014. According to him, despite a clear vacancy existing on the post of Director (AE) in that year, he was not promoted on the ground no eligible candidate was available and DPC was not constituted.

8. It was his case that, it was only on convening of the review DPC for the post of Deputy Director (AE), in compliance of the Judgment of this Court, that he came to be promoted w.e.f. 2009, and thereby acquiring eligibility to the post of Director (AE), at least from the vacancy year 2013-2014. The respondents are required to consider him for promotion as Director (AE) in that panel year.

9. The case of the respondents before the Tribunal was that the petitioner cannot insist that he is entitled to be promoted against a vacancy, in a particular year, much less with retrospective effect. It was their case that the occasion to promote an officer

with retrospective effect would arise only when his junior is promoted from an earlier date. As no junior was promoted, he cannot be promoted from the panel year 2013-2014.

10. The Tribunal rejected the OA by holding in paragraphs 7 to 9 as under:

“7. The particulars of the service of the applicant, ever since he joined the organisation are furnished in the preceding paragraphs, within the permissible limits of brevity. The promotion of the applicant to the post of DD (AE), and thereafter to the post of Director, were delayed. The pendency of disciplinary proceedings became the cause for delay in promotion to the post of DD (AE). Though he was promoted from an earlier date, he did not acquire eligibility for promotion to the post of Director, for want of minimum standing in the feeder post. According to the applicant, he became eligible to be considered for promotion to the post of Director against a vacancy of the year 2013-14, with the convening of the review DPC, and the grant of retrospective promotion to the post of DD (AE) from the year 2009. Had it been a case where the applicant was not promoted to the post of Director by the time his promotion to the post of DD (AE) was pushed back to an earlier date, things would have been different altogether. He was promoted to the post of Director, that too from a date on which his juniors were promoted. The very claim of the applicant that he must be treated as having been promoted against a vacancy of the year 2013-14 is under a mistaken impression of law and fact. The reason is that no employee can insist that he is entitled to be promoted against a vacancy of a particular year. In other words, even if there exists a clear vacancy and the employee had acquired eligibility, no right accrues to him to be promoted.

8. Secondly, the promotion cannot be effected from a date earlier to the date of actual promotion. The only exception is where an employee was not considered for

promotion on account of an impediment, even while his juniors were promoted. On removal of such impediment at a later stage, he becomes entitled to be promoted with effect from the date on which his juniors were promoted. Even this is for the purpose of seniority, and not as a measure of recognition of his right against a vacancy of a particular year. These and other related principles are enunciated and reiterated by the Hon'ble Supreme Court in Union of India v K. K. Vadera & others [1989 Supp. (2) SCC 625].

9. Once the applicant has been extended the benefit of promotion to the post of Director with effect from a date on which his junior was promoted to that post, he cannot have any genuine grievance, and his claim that his promotion deserves to be treated against the vacancy of the year 2013-14 is totally untenable."

11. Even before us, the learned counsel for the petitioner would reiterate the same submissions as made before the Tribunal. We are not in agreement with the submissions made by the learned counsel for the petitioner for the reason that the claim of the petitioner for promotion to the higher post from a particular date / vacancy year would arise only, if a person junior to him, has marched over him from an earlier date. Admittedly, it is not the case of the petitioner that the junior has been promoted to the post of Director (AE) from the panel year 2013-2014.

12. The Tribunal is right in holding in paragraph 8, as no junior has been promoted, the petitioner cannot have any grievance with regard to non-promotion.

13. The Supreme Court in the case of ***Life Insurance Corporation of India and Ors. v. Jagmohan Sharma and Ors., (1998) 9 SCC 210***, held as under:

“6. In the facts, as noticed by the learned Single Judge, in our opinion, the appropriate direction would have been to the appellants to consider the case of Respondent 1 for his promotion to the post of Assistant Divisional Manager/Senior Branch Manager from the date his juniors from amongst Respondents 5 to 67 in the writ petition were promoted on the same criteria on which those respondents were promoted. We, therefore, modify the direction of the learned Single Judge, as noticed above, and direct that the appellants shall consider the case of Respondent 1 for his promotion with effect from the date his juniors from amongst Respondents 5 to 67 in the writ petition were promoted and if found fit for promotion, to grant to him all the consequential benefits. The consideration of Respondent 1 for promotion shall be on the same basis and on such material as was considered for promoting Respondents 5 to 67. The needful shall be done by the appellant within three months. The order of the Division Bench dismissing the LPA shall also, thus, stand modified accordingly. The appeal is allowed and disposed of to the extent indicated above. No costs.”

(emphasis supplied)

14. The three Judge Bench of the Supreme Court in the case of ***U.P. Jal Nigam v. S.C. Atri, (1999) 1 SCC 241***, held as under:

“4. On the date on which the respondent was considered along with other Executive Engineers for promotion to the post of Superintending Engineer, there was an adverse entry for the year 1974-75 in his character roll on account of which he was not promoted although a representation against the adverse entry was pending. This adverse entry was subsequently expunged as his representation was allowed. The effect of the order allowing the expunction of the adverse entry would be that on the date on which he was considered for promotion to the post of Superintending Engineer, there existed no adverse entry in his character roll. Subsequently, it cannot be said that the respondent

was not promoted on account of his unsuitability. That being so, the High Court was justified in ordering that the respondent on being promoted, though subsequently, shall be entitled to reckon his seniority with effect from the date on which a person junior to him was promoted to the post of Superintending Engineer. We are also informed that the respondent has since retired from service. We do not, therefore, see any reason to interfere in the matter. The appeal is dismissed. No order as to costs.”

(emphasis supplied)

15. The Supreme Court in the case of **Sulekh Chand and Salek Chand v. Commr. of Police, 1994 Supp (3) SCC 674**, held as under:-

“2. These appeals arise from the order of the Central Administrative Tribunal in OA No. 1218 of 1988 dated 12-12-1993. The appellant was promoted from the post of ASI to SI but he was confirmed w.e.f. 4-1-1989 though it was stated that his case for promotion had to be considered with effect from 1-10-1982. This claim was resisted by the respondents on the ground that in 1983, he was charged for an offence under Section 5(2) of the Prevention of Corruption Act and he was kept under suspension and he was also communicated of adverse remarks for the period from 7-6-1980 to 31-3-1981 and that he became eligible to be considered for promotion as SI w.e.f. 16-12-1985. Therefore, his case was considered and he was promoted in 1989. Counsel for the respondent was directed to produce the record relating to the DPC proceedings. We have perused the proceedings of DPC which would clearly show that the reasons which prevailed with the DPC were the prosecution under Section 5(2) of Prevention of Corruption Act and the departmental enquiry, against the appellant. It is not in dispute that the proposed departmental enquiry also is related to the selfsame offence under Section 5(2) of the Prevention of Corruption Act. The judgment acquitting the appellant of the charge under Section 5(2) became final and it clearly indicates that it

was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the selfsame allegations and take appropriate disciplinary action. But, here, as stated earlier, the acquittal was on merits. The material on the basis of which his promotion was denied was the sole ground of the prosecution under Section 5(2) and that ground when did not subsist, the same would not furnish the basis for DPC to overlook his promotion. We are informed that the departmental enquiry itself was dropped by the respondents. Under these circumstances, the very foundation on which the DPC had proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date his immediate junior was promoted with all consequential benefits. The appeals are allowed. No costs.”

(emphasis supplied)

16. Concedingly, as no person junior to the petitioner, has been promoted in the panel year 2013-2014, the petitioner has no right to seek promotion from that year.

17. There is no arbitrariness in the action of the respondents. We do not see any merit in the petition. The same is dismissed.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

FEBRUARY 13, 2023/aky