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

% *Date of decision: 20th November, 2023*

\+ W.P.(C) 7066/2020

(19) MEENAKSHI B IYER

..... Petitioner

Through: Mr. A.K. Srivastava, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Nidhi Raman, CGSC with Mr. Akash Mishra, Mr. Debcharan De and Mr. Vipul Kumar, Advs. for UOI/R-1 to R-3

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed challenging the order dated March 05, 2020 of the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) whereby the Tribunal has dismissed the OA bearing OA 611/2020 by stating in paragraphs 4 to 6 as under:

> *"4. It may be true that some Senior Accountants in the Department, who were juniors to the applicant, were promoted on ad hoc basis, to the post of Assistant Accounts Officer. Things would have been different, had it been a case the applicant approached the Tribunal at a time when she was in service. The respondents were also under obligation to respect the seniority even in the*

> *context of making ad hoc promotions. That relief could have certainly been considered. The fact, however, remains that the applicant retired from service on 30.04.2019.*
>
> *5. Whatever be the circumstances, though rare, under which an employee can be extended the benefit of notional promotion even after retirement, such a facility does not exist in the case of ad hoc promotions. By their very nature, the ad hoc promotions are granted only to meet the immediate exigencies in the service and no employee would have any right to be promoted on ad hoc basis. At the most, in the context of making ad hoc promotions, the seniority can be required to be respected. Since the applicant has retired from service, such a relief cannot be granted.*
>
> *6. We do not find any merit in this O.A. It is accordingly dismissed. There shall be no order as to costs."*

2. The claim of the petitioner before the Tribunal was with regard to promotion to the post of Assistant Accounts Officer ('AAO', for short) on *ad hoc* basis. The petitioner while working as Senior Accountant in the Ministry of External Affairs, made a representation dated January 30, 2019 to the respondents with a request to promote her to the post of AAO on the ground that juniors to her were promoted on *ad hoc* basis to the said post. The representation was rejected on March 8, 2019 by the respondents. It is a conceded case that on April 30, 2019, the petitioner retired from service. We have already reproduced the relevant paragraphs of the order of the Tribunal rejecting the OA.

3. The submissions advanced before us by the learned counsel for the petitioner are primarily the same as made before the Tribunal. Additionally, he would submit that the petitioner is one of the Senior

Accountants with 10 year of experience. The promotion to the post of AAO on *ad hoc* basis being a non-selection post has to be on the basis of seniority. In fact, her willingness for promotion was called for by the respondents and she submitted her willingness on August 16, 2018. However, vide order dated November 6, 2018 she was denied promotion and 7 officers junior to her have been promoted as AAOs on *ad hoc* basis.

4. Though the Tribunal has not referred to the stand of the respondents before it in detail, on a perusal of the counter-affidavit filed by the respondents, it is noticed that because of acute shortage of AAOs in all the Civil Ministries / Department of Civil Accounts Organization and as the post is crucial to the functioning of the Pay and Accounts Office for scrutiny of bills payment functions in the accounting organization, it was decided vide Office Memorandum (OM) dated December 30, 2016 that the appointment of *ad hoc* AAOs shall be made on the following conditions:

i. From amongst suitable / eligible Senior Accountants for a period not exceeding 12 months or joining of regular incumbent provided by the Office of the Controller General of Accounts, New Delhi, whichever is earlier.

ii. Appointment as *ad hoc* AAOs will be made against regular vacancies and leave vacancies exceeding 45 days for which regular incumbent is not provided by the Office of the Controller General of Accounts.

iii. Senior Accountants with 10 years of regular service in the Grade can be considered for promotion as *ad hoc* AAOs.

iv. The appointment of *ad hoc* AAOs may be done through DPC by non-selection method, i.e., on the basis of seniority-cum-fitness.

5. In response to the OM dated December 30, 2016, an OM dated February 07, 2017 was issued inviting willingness from eligible candidates. During scrutiny of the eligible working Senior Accountants, 20 Senior Accountants who had rendered 10 years of regular service in the grade were found eligible, which included the name of the petitioner.

6. Out of the 20 eligible Senior Accountants, only 7 Senior Accountants submitted their willingness for promotion as *ad hoc* AAOs. However, according to the learned counsel for the respondents the petitioner's willingness was not acceded to by the competent authority due to her non-punctuality, as reflected by her attendance record. An erratic and inconsistent pattern was found in her Biometric Attendance Report.

7. An office order dated August 13, 2018 was issued with regard to evaluation of the officials to be appointed as *ad hoc* AAOs as an interim measure. The Evaluation Committee did not find the petitioner fit for promotion as *ad hoc* AAO on the basis of performance and attitude towards her work, and also on the basis of her APAR gradings as mentioned below:

> *"J. The Evaluation Committee vide its report dated 21.08.2018 did not consider the Petitioner to be 'FIT' for promotion as Ad-hoc AAO on the basis of her performance and attitude towards work. The Petitioner was not considered fit on the basis of her APAR gradings as mentioned below:*

Year	*2013-14*	*2014-15*	*2015-16*	*2016-17*	*2017-18*
APAR Grading	*7.4*	*4.54**	*7.87*	*6.0*	*8.0*

"

8. In the year 2014-15, the petitioner's grading was 4.54 with specific remarks in Column 1 Part IV by the Reporting Officer that she is less accessible to the public and less responsive to their needs and in the year 2016-17 the petitioner's grading was 6 with specific remarks in Column 3 Part V by the Reporting Officer that she was unable to manage her desk work independently.

9. Though the petitioner had made a representation, the fact remains that she was due for retirement on April 30, 2019. Any reconsideration of her case for appointment as AAO for two months would not serve the purpose for which provision of *ad hoc* appointment as AAOs has been made.

10. Having noted the stand of the parties, we are of the view that considering the fact that the appointment is only on *ad hoc* basis though on the basis of non-selection process criteria since the APARs of the petitioner being in the manner reflected above, and also since she was due to retire in April 30, 2019, there was some basis for the competent authority to overlook her case for appointment to the post of AAO on *ad hoc* basis.

11. *Prima facie*, promoting persons junior to the petitioner while overlooking her does not appear to be tenable, however keeping in view that it is a settled law that *ad hoc* promotion is not a matter of right, in the facts of this case considering her APAR gradings and the issue with her attendance inasmuch as she was not punctual, we are of the view that this Court in exercise of its power under Article 226 of the Constitution of India need not interfere with the impugned order of the Tribunal.

12. The petition is dismissed. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

NOVEMBER 20, 2023/*jg*