



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

% Date of decision: September 01, 2023

+ W.P.(C) 11574/2023 & CM Appls. 45090-45092/2023

**33 UNION OF INDIA THROUGH SECRETARY MINISTRY OF
URBAN DEVELOPMENT & ORS. Petitioners**

Through: Mr. Sushil Kumar Pandey, SPC with
Mr. Kuldeep Singh and Ms. Neha,
Advts.

versus

MRS SHOBHANA SHARMA & ORS. Respondents

Through: Mr. R. V. Sinha, Mr. A. S. Singh,
Mr. Amit Sinha & Ms. Nidhi Singh,
Advts.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM Appl. 45092/2023

Allowed, subject to just exceptions.

Application disposed of.

W.P.(C) 11574/2023 & CM Appls. 45090/2023 & 45091/2023

1. The challenge in this petition is to an order dated January 19, 2023 passed by the Central Administrative Tribunal in O.A. 3634/2018 whereby the Tribunal has allowed the O.A. filed by the respondents herein by stating in paragraph 6 as under:-

"6. The issue is no more res-integra and we have no hesitation in applying the ratio of the decision already rendered by this Tribunal. Hence, we are of this view that the



respondents shall consider the applicants for the said post with effect from the date of declaration of result i.e., 30.04.2013 and if they are otherwise eligible, they would be given promotion and seniority. However, the said promotion would be on the notional basis with all consequential benefits. This exercise shall be completed by the respondents within a period of three months from the date of receipt of a certified copy of this order.”

2. The facts as noted from the petition are, the respondents were working as Section Officer with the respondents. The next hierarchy of promotion is post of Office Superintendent, for which the recruitment rules prescribe 50% post to be filled by promotional quota and 50% by LDCE. It is the conceded case that the respondents were eligible for the said post.
3. On July 23, 2012, an advertisement was published for filing 47 vacancies of the Office Superintendent. It was the case of the respondents that though on December 08, 2012 they along with others were found successful but on April 30, 2013 only 22 persons were promoted because there was some wrong calculation of the vacancies. The matter was dealt with by the Tribunal in O.A. 347/2014 decided on August 31, 2017 when a direction was issued to the respondents to recalculate the vacancies.
4. Accordingly on February 15, 2018, a review DPC was held and the respondents were given promotion w.e.f. February 15, 2018 onwards. The respondents have made a claim before the petitioners and subsequently, approached the Tribunal for getting their promotion from the date of qualifying the examination.



5. The Tribunal was of the view that the persons who were duly eligible and qualified for the posts and when vacancies are also there, ought to have been considered and given promotion. In fact, the Tribunal held that the petitioners admitted their mistake and because of various litigations before the Court respondents have given promotion from February 15, 2018, whereas, the claim was made from the date on which the result was declared. It was also of the view that the issue is no more *res-integra* and directed the petitioners to consider the case of the respondents w.e.f. the declaration of the result, and if they are otherwise eligible, they would be given promotion and seniority.

6. The only submission made by counsel for the petitioners is that the Tribunal could not have granted the promotion from a back date, contrary to the instructions issued by the DoP&T.

7. The other submission made by counsel for the petitioners is that the initial recruitment, where 22 persons were promoted, no vacancies were determined and hence, in that sense no right could have accrued to the respondents herein seeking promotion/recalculation of the vacancies, and also their promotion from a back date.

8. We are unable to agree with the submissions of the counsel for the petitioners for the reason that in the earlier round of litigation being O.A. 347/2014 decided on August 31, 2017, the Tribunal has held as under:-

“12. In the light of our above discussions, the O.A. is allowed. The impugned communication dated 24.1.2014 (Annexure A/1) is quashed. The official respondents are directed to recalculate the vacancies in the post of Office Superintendent both under the seniority quota and LDCE quota for the year



2012-13 in accordance with the law laid down by the Hon'ble Supreme Court in State of Punjab and Others v. Dr. R.N. Bhatnagar and another (supra) and in All India Federation of Central Excise v. Union of India and others (supra), and the instructions contained in the DoP&T's O.M. dated 19.1.2007(ibid) and to consider the cases of the applicants and other similarly placed persons for promotion to the post of Office Superintendent under LDCE/examination quota on the basis of the results of the LDCE held on 8th and 9th December 2012. After completing this exercise, the official respondents shall publish the result of the LDCE conducted by them on 8.3.2014 for filling the vacancies under LDCE quota which arose during 2013-14."

9. Concedingly, the said judgment of the Tribunal has not been challenged by the petitioners. Rather, the petitioners herein have implemented the order. The effect of the order passed by the Tribunal is that the petitioners were to recalculate the vacancies for the post of Office Superintendent both under the seniority quota and LDCE quota for the year 2012-13 and pursuant thereto, the petitioners were to consider the case of the respondents and others, similarly placed persons for promotion to the post of Office Superintendent under LDCE/examination quota on the basis of the result of the LDCE held on December 8th and 9th, 2012.

10. It is pursuant thereto that the exercise was carried out by the petitioners recalculating the vacancies and granting promotion to the respondents w.e.f. 2018 and not from 2013 the year of declaration of the



result. The claim of the respondents before the Tribunal was that their promotion must relate back to the year 2013 which in effect has been accepted by the Tribunal which we feel, rightly so because of the directions of the Tribunal in the earlier round of litigation being O.A. 347/2014 which we have reproduced above, from which it is clear that the promotion has to be on the basis of the result of the LDCE held on December, 8th and 9th, 2012, i.e., 2013.

11. The aforesaid conclusion of ours shall answer both the pleas urged by counsel for the petitioners.

12. We do not see any merit in this petition, the same is dismissed along with the pending applications.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

SEPTEMBER 01, 2023/ds