



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

% Date of decision: September 19, 2023

+ W.P.(C) 12213/2023 & CM APPLs. 47993-47996/2023

(55) UNION OF INDIA AND ANR.

..... Petitioners

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kumar Saxena, Mr. Mukesh Kr. Tiwari, Ms. Poonam Shukla, Ms. Reba Jena Mishra and Mr. Vipul Pathak, Advs.

versus

BISHAN DASS

..... Respondent

Through: Mr. Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (ORAL)

CM APPLs. 47994-47995/2023

Allowed, subject to just exceptions.

Applications disposed of.

W.P.(C) 12213/2023, CM APPLs. 47993/2023 & 47996/2023

1. The challenge in this petition is to an order dated January 17, 2023 passed by Central Administrative Tribunal in O.A. 2451/ 2017, whereby the Tribunal has allowed the OA by stating in paragraphs 8 and 9 as under:-

“8. Heard counsel for the parties at length, perused the records and gone through the legal position as well. The applicant who has since been retired on 30.06.2005, was left out for the reason that he was not in service on the date when the DPC took place for consideration to the aforesaid post. According to the respondents, the applicant is not entitled for



consideration for promotion because he has not actually shouldered responsibilities of the said post. If we apply the above ratio of P. G. George and Jagdish Lal (Supra), the applicant is liable to be considered for promotion even after his retirement on notional basis. Even according to the DoPT OM dated 12.10.1998, retired employee who were within zone of consideration in the relevant year are entitled for notional promotion.

9. In view of the fact and circumstances of the case as well as the legal position perused, we are of this view that the applicant is entitled for consideration for the post of Under Secretary, with effect from the date he is eligible for promotion, but the promotion shall be given on notional basis with all consequential benefits. This exercise shall be completed within a period of two months from the date of receipt of a certified copy of this order.”

2. The facts as noted from the record are that the respondent was appointed as Section Officer, on regular basis on December 24, 1991 in terms of LDCE held in the year 1990. He superannuated on June 30, 2005. In the year 2009, a select list for the post of Under Secretary was issued by petitioner no.1 wherein the respondent was placed at serial No. 650. He could not get any promotion till the date of his superannuation. It is the conceded case of the parties that in the year 2009, person junior to the respondent was promoted to the post of Under Secretary w.e.f. July 01, 2003.

3. Respondent feeling aggrieved by the promotion of his junior made a representation dated April 20, 2012 which was rejected on June 29, 2012. We have already reproduced relevant paragraphs of the order of the Tribunal while allowing the O.A.

4. The only submission made by Mr. Mishra by drawing our attention to page 87 of the paper book is that the Rule 6(3)(c) of The Central Secretariat



Service Section Officers' Grade (Competitive Examination) Regulations, 1966, which reads as under, stipulates that, on retirement of an officer, his name is removed from the select list:-

“xxx xxx xxx
6.(3)(c) *Persons who die or retire from service or whose services are otherwise terminated; and*”

5. His submission is that the Select List included the name of the respondent though he had retired. On the date of DPC, as he stood retired and in terms of Rule 6(3)(c), he could not have been considered for promotion.

6. We are unable to agree with the submission made by Mr. Mishra for the simple reason that the promotion of the so called Junior was not w.e.f., 2009, i.e., prospective but from a retrospective date/year i.e., July 1, 2003 when the respondent was working with the petitioners.

7. We are of the view that the Tribunal is justified in relying upon its judgment in ***P. G. George v. GOI & Anr., OA No. 1409/2009*** decided on April 22, 2010. Suffice to state, the writ petition filed by the UOI being ***W.P.(C) 4864/2010, (UOI and Anr. v. P.G. George)*** has been dismissed by this Court. In fact, this Court had also decided a similar issue in ***W.P.(C) 2053/2020*** titled as ***Bhagwan Singh v. Union of India and Ors.*** wherein this Court has in paragraphs 8, 9 and 10 has stated as under:

“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."

8. In view of the position of law, we are of the view that present petition is without any merit. The Tribunal is justified in allowing the O.A. in the manner it did in paragraphs 8 and 9.

9. The petition along with the pending applications is dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 19, 2023/ds