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

+ **LPA 761/2023 & CM APPL. 60803/2023**

DEEPAK THUKRAL

..... Appellant

Through: Ms. Anjna Masih, Advocate.

versus

DELHI TRANSCO LTD.

..... Respondents

Through: Mrs. Avnish Ahlawat, St. Counsel
DTL with Mrs. Tania Ahlawat, Mr.
Nitesh Kumar, Ms. Laavanya
Kaushik, Ms. Aliza Alam and Mr.
Mohnish Sehrawat, Advocates.

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Date of Decision: 24th November, 2023

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

1. The present appeal has been filed challenging the order dated 3rd October, 2023 passed by the learned Single Judge in *W.P.(C). 10340/2018*, by which the writ petition filed on behalf of the appellant was dismissed thereby holding that the appellant was not entitled to Third Time Bound Promotion Scale, as claimed by him.

2. The appellant was appointed to the post of Senior Electronic Fitter (VHF) in the erstwhile Delhi Electricity Supply Undertaking (DESU) on 20th September, 1983. He was granted higher pay scale as Senior Electronic Assistant of Rs. 1800-3500/- w.e.f. 1st October, 1994 vide letter dated 7th



April, 1995 issued by the erstwhile DESU. Thereafter, the appellant was promoted to the post of Foreman in the pay scale of Rs. 6000-10800/- vide office order dated 24th June, 1998 issued by the erstwhile DESU.

3. The DESU was subsequently incorporated as a separate Electricity Board called Delhi Vidyut Board (DVB) functioning under the Government of NCT of Delhi.

4. The erstwhile DVB by its Office Order dated 23rd July, 1997 approved the introduction of Time Bound Promotional Scales (TBPS). Thus, employees were entitled to the First TBPS on completion of 10 years of regular service and Second TBPS on completion of further 8 years of service. Subsequently, vide Office Order dated 21st December, 1999, the erstwhile DVB approved that all ministerial/subordinate employees who are in service below the rank of Assistant Engineer shall be entitled to the benefit of Third TBPS on completion of another 8 years of service.

5. The scheme of TBPS was modified in terms, that are detailed by the respondent in its Additional Affidavit filed before the learned Single Judge, which reads as under:

“3. That the TBPS policy was further modified vide Office Order No. 143 dated 17.04.2002 wherein it stated that it has unanimously resolved to allow two time bound promotional scale to the categories of employees where there is no channel of promotion by any way for which time bound promotional scale to be allowed under the TBPS scheme shall be next scale as in the case of categories which are required to be considered for promotion either by selection of trade test provide where an employee has been or is given the scale of pay equivalent to Maintenance Officer as time bound promotional scale only when person junior to him who was promoted as AE is given the scale of XEN otherwise he will not be eligible for the second time bound promotional scale.”

6. As is manifest from the documents, the appellant was granted the



benefit of the First Time Bound Promotion and promoted to the post of Foreman on 24th June, 1998. He was granted the Second Time Bound Promotional Scale benefit on 15th January, 2002 w.e.f. 28th September, 2001.

7. The erstwhile DVB was thereafter designated into six successor companies on 1st July, 2002, one of them being the Delhi Transco Ltd. (DTL), where the appellant was transferred upon re-designation of the DVB.

8. The appellant vide letters dated 1st October, 2009 and 27th January, 2010 made request for grant of Third TBPS. He again made a representation in the year 2000 followed by representation dated 26th August, 2014 requesting for grant of Third TBPS to him. Vide reply dated 2nd January, 2015, the request of the appellant for grant of Third TBPS was declined.

9. The appellant retired in the year 2015. Subsequently, he filed writ petition in year 2018, being *W.P.(C) 10340/2018* praying for direction to the respondent for grant of Third TBPS to him. Upon dismissal of the said writ petition filed on behalf of the appellant by the learned Single Judge vide the impugned order dated 3rd October, 2023, the present appeal has been filed challenging the same.

10. Having heard learned counsel for the parties and having perused the record, this Court at the outset notes that the appellant approached this Court for grant of Third TBPS to him three years after his retirement, despite the fact that the appellant's request for Third TBPS had been rejected by the respondent way back by its letter dated 2nd January, 2015. There is no plausible explanation as to why the appellant approached this Court so belatedly. Besides, this Court notes that the appellant never challenged the decision of the respondent dated 2nd January, 2015 by which his request for grant of Third TBPS was rejected.



11. At this stage, it would be useful to refer to the letter dated 2nd January, 2015 issued by the respondent, which reads as under:

“2nd January, 2015

No.F.DTL/1011/2015/HR-DM(HR)I/1166

Sh. Deepak Thukral

Employment No.29451

Foreman (Electronics)

Office-Manager(Tech)Communication

Subject: With regard to Third Time Bound Promotional Scale

This is in reference to your letter dated 26/08/2014 in which you have claimed Third Time Bound Promotional Scale w.e.f. 28/09/2009.

You are hereby informed that you were appointed as Senior Asstt.(Electronics) which is a promotional post, on which no employee can be recruited directly. You have been already been given Two Time Bound Promotional Scale. Had you joined as Junior Asstt.(Electronics) than you would have given Third Time Bound Promotional Scale.

In this regard you are informed that Higher Authorities have declined your request for Third Time Bound Promotional Scale.

*Shirish Srivatava
Deputy Manager (HR)I”*

12. Reading of the aforesaid letter clearly shows that the appellant has been denied the benefit of Third TBPS as the post to which he was appointed i.e. Senior Assistant (Electronics) does not entail the benefit of Third TBPS.

13. This aspect regarding the appellant not being entitled to the benefit of Third TBPS has been detailed by the respondent in its Additional Affidavit filed before the learned Single Judge in the following terms:

“3. That the TBPS policy was further modified vide Office Order No. 143 dated 17.04.2002 wherein it stated that it has unanimously resolved to allow two time bound promotional scale to the categories of employees where there is no channel of promotion by any way for which time bound promotional scale to be allowed under the TBPS



scheme shall be next scale as in the case of categories which are required to be considered for promotion either by selection of trade test provide where an employee has been or is given the scale of pay equivalent to Maintenance Officer as time bound promotional scale only when person junior to him who was promoted as AE is given the scale of XEN otherwise he will not be eligible for the second time bound promotional scale.

4. *That the petitioner was appointed to the post of Sr. Electronic Fitter (VHF) on 28.09.1983. Thereafter, he was granted higher scale w.e.f. 10.10.1994 as per the policy existing at that point in time. The Petitioner was given benefit of First-time bound promotion under TBPS Policy and promoted to the post of Foreman on 24.06.1998. The post of Foreman is the last post in the hierarchy, and there is no further channel of promotion available.*

5. *That as per O.O. Dated 17.04.2002, where there is no channel of promotion by any way for which time bound promotional scale to be allowed under the TBPS scheme shall be next scale. Since there was no further channel of promotion available for the Petitioner, he was granted 2nd TBPS w.e.f. 28.09.2001 in the next scale.*

6. *That the factual position is that after joining, the Petitioner was granted Higher Scale, followed by promotion to the post of Foreman. Shri Thukral was further granted 2nd TBPS as prescribed by the TBPS Policy of the Answering Respondent. Therefore, as such since there is no policy for 3rd time bound promotion the question whether the Petitioner is entitled to the same does not arise."*

14. The respondent has further stated in its counter affidavit filed in the writ proceedings, as follows:

"v. That since, Sh. Deepak Thukral was not having degree/diploma in Engineering, he could not be further promoted to the next promotion post of AM(T). Further, as per Office Order dated 17.04.2002, wherein it is provided to allow two time bound promotional scale to the categories of employees where there is no channel of promotion by any way. He has not been given 3rd TBPS."

15. Dealing with the contentions raised on behalf of the appellant herein, the learned Single Judge has held as follows:

"25. The petitioner being appointed at a position on which he is eligible for two time bound promotion and has been accordingly given the same. There is no such illegality or error apparent on the face of it committed by the respondent. The respondent has cogent reason for



declining the third time bound promotion to the petitioner.

26. Furthermore, the petitioner is seeking parity with a junior employee, such plea cannot be entertained by this Court since it is a well- settled position of law that the parity in a writ petition may be prayed against the person which belongs to the same position/ cadre. In the instant petition, therefore, the petitioner may claim parity of perks/ benefits with the employee on the same cadre/ position but not with the employee of different cadre/ class.

XXX XXX XXX”

16. Considering the facts and circumstances of the present case as discussed hereinabove, this Court finds no infirmity in the impugned order passed by the learned Single Judge. The present appeal is accordingly dismissed along with the pending application.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

NOVEMBER 24, 2023

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