



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

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Date of decision: December 19, 2023

+ W.P.(C) 15793/2023, CAV 629/2023, CM APPLs. 63573/2023,
63574/2023, 63575/2023 & 63576/2023

(2) UNION OF INDIA

..... Petitioner

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

Versus

RENU CHHABRA

..... Respondent

Through: Mr. Asish Nischal, Mr. Arun Nischal,
Mr. Amit Suden and Ms. Rinku Shah,
Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPLs. 63574/2023 & 63575/2023 (for exemption)

Exemption allowed subject to just exceptions.

Applications are disposed of.

CAV 629/2023

As the learned counsel for the Caveator has put his appearance,
the Caveat stands discharged.

CM APPL. 63576/2023

This is an application filed by the petitioner seeking permission
to file lengthy synopsis and list of dates.

For the reasons stated in the application, the same is allowed.

Application stands disposed of.



W.P.(C) 15793/2023

1. The challenge in this petition is to an order dated March 22, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA 2023/2019 whereby the Tribunal has allowed the OA filed by the respondent herein by stating in paragraphs 4 to 6 as under:

"4. Learned counsel for the applicant has submitted that this issue is no more res-integra as this Tribunal has already decided this issue in OA No. 2451/2017 wherein it has been held in paras 4, 5, 6, 7 and 8 as under :-

*"4. To buttress his claim, learned counsel for the applicant relied upon the decision of this Tribunal in OA No. 1409/2009 decided on 22.04.2010 in **P. G. Gorge Vs. GOI & Anr.** The relevant portion of the said order reads as under:-*

"In the result, the Original Application is allowed. The Respondent No.1 are directed to grant notional promotion to the Applicant from the date his immediate juniors were promoted in the various Select Lists of the years 2003, 2004, 2005, and 2006. The promotion would be notional, but it would count towards increments and consequently in recalculation of post-retirement dues. The Respondent No.1 would recalculate the dues and make these over to the Applicant as expeditiously as possible, but not later than 15-06-2010."

*5. He further relied upon the decision of this Tribunal in OA No. 204/2010 decided on 10.05.2010 in **.Jagdish Lal Jokhani Vs. DoP& T & Anr.** The relevant portion of the said order reads as under:-*

"The Respondent No.1 are directed to grant notional promotion to the Applicant from the date their



immediate juniors were promoted in various Select List of 2003, 2004, 2005 and 2006. The promotion would be notional but it would count towards increments and consequently in recalculation of postretirement dues. The Respondent No.1 would recalculate the dues and make these over to the Applicant as expeditiously as possible, but not later than 15-06-2010."

6. Notices were issued to the respondents who put appearance and filed separate replies wherein vide paras 3, 5, 6, 7, 8 and 1.1 it is stated as under:-

"3. That Shri Bishan Dass, the applicant/party superannuated from Government service on 30.06.2005 as Section Officer. Subsequent to his superannuation he was included in the Under Secretary Select List 2003. He superannuated as Section Officer and he did not assume charge of the next higher grade i.e., Under Secretary as order for his inclusion in select list of Under Secretary was issued subsequent to his superannuation.

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5. That consideration of retired employees for promotion is governed by the provisions contained in DOPTS OM No.22011/4/98-Estt(D) dated 12.10.1998 (Annexure-R-1). As per this O.M., retired employees, who were within the zone of consideration in the relevant year, would be considered while preparing year-wise panel(s). This is considered imperative to identify the correct zone of consideration. Names of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The applicant/party, who was in service during the Select List year 2003, was considered for inclusion in the Under Secretary Select List for the year 2003 and on being found fit, was included in the Select List. Since at the time of issue of the Select List i.e., on 25.08.2009 the applicant/party had already retired



from Government service, he was not actually promoted as Under Secretary and, hence, he was not entitled to any financial benefits of the post of Under Secretary, in keeping with the provisions of the O.M. dated 12.10.1998.

6. That the applicant/party has referred the judgment dated 22.04.2010 of this Hon'ble Tribunal in the case of Shri P. G. George (OA No.1409/2009). The Hon'ble CAT (PB), New Delhi in its judgment ordered that if promotion is granted retrospectively and a person junior to the retired employee has been promoted from the date when the retired person was in service and if the retired person has been found fit by the DPC, such retired person would be entitled to promotion retrospectively on notional basis from the date his immediate junior has been promoted. The Tribunal further directed for grant of notional promotion to the applicants from the date the immediate juniors were promoted. However, it is submitted that the Respondent/Department cannot go beyond its policy vide DOPTS OM No.22011/4/98-Estt(D) dated 12.10.1998 (Annexure R-1).

7. That the OA under reply, is barred by limitation, delay and laches and mere disposal of the belated representation would not extend the statutory period of Imitation. That the Select List 2003 was issued on 25.08.2009 on the basis of DPC conducted by the UPSC in August 2009. The said Select List has been uploaded in the website of Department of Personnel & Training and hence has been in the public domain since 25.08.2009. Therefore, after lapse of eight years the applicant/party has agitated his grievance which is barred by limitation. On this ground alone the present OA is liable to be dismissed.

8. That the common order/judgment dated 22.4.2010 of this Hon'ble Tribunal in OA No. 1409/2009 etc., titled "P.G. George Vs. UOI & Anr., etc., is



applicable only to the applicants/parties in the OA and the order has no general applicability to the present applicant/party and hence it could not automatically be extended to similarly placed persons. made hereinabove, it is clear that me impugned action is in accordance with the relevant rules and instructions on the subject.

Para 1.1 That consideration of retired employees for promotion is governed by the provisions contained in DOPTS OM No.22011/4/98-Estt(D) dated 12.10.1998 (Annexure-R-1). As per this:

Q.M. retired employees, who were within the zone of consideration in the relevant year, would be considered while preparing year-wise panel(s). This is considered imperative to identify the correct zone of consideration Names of the retired officials may also be included in the Panel (s). Such retired officials would, however, have no right for actual promotion. The applicant/party, who was in service during the Select List year 2003, was considered for inclusion in the Under Secretary Select List for the year 2003 and on being found fit, was included in the Select List. Since at the time of issue of the Select List Le on 25.08.2009 he had already retired from Government service, he was not actually promoted as Under Secretary Para 12 That the various judgment of the Hon'ble Tribunal are applicable only to the applicants/parties and have no general applicability to the present applicant/party. The Respondent/Department cannot go beyond its policy vide DOPTS OM No.22011/4/98-Estt(D) dated 12.10.1998 (Annexure R-1)."

7. In nut shell, respondents' counsel has tried to convince the Tribunal that applicant is not entitled for actual promotion since he has retired from the post before the date of DPC and DPC has to give effect to promotion from the prospective date.



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."

5. In view of this, we are of the considered view that the applicant is entitled for notional promotion since her junior has already been promoted to the higher post and she has otherwise qualified also by way of LDCE.

6. The OA has merit on its side which stands allowed. The applicant shall be given consequential benefits within a period of 90 days from the date of receipt of a certified copy of this order. OA stands disposed of accordingly in the above terms."

2. Few of the facts which are to be noted are that the respondent joined the petitioner as Postal Assistant on March 24, 1981, she was promoted as accountant on November 25, 1994, after qualifying the departmental examination. She was further promoted to the Lower Selection Grade on March 11, 2003 and Higher Selection Grade on April 26, 2011. She was granted 3rd MACP on completion of thirty years of service. For the purpose of promotion to the next higher post of Postal Service Group B, a Limited Departmental Competitive Examination was held on October 7, 2016 for various vacancy years



which included 2014-2015. The results were declared on April 10, 2018 and promotion orders were issued on September 6, 2018. In the meantime, the respondent retired on May 31, 2017, because of which promotion could not be given to the respondent. As she stood retired, the persons junior to the respondent were given the promotion though prospectively but with seniority from the year 2014-2015.

3. The submission of Mr. Ruchir Mishra, learned counsel appearing for the petitioner is that the Tribunal has erred in giving direction in the manner it has given because the respondent retired on May 31, 2017 and the promotion orders with regard to the juniors were issued only on September 6, 2018 having prospective effect with seniority from the vacancy year 2014-2015. According to him, the respondent having retired on May 31, 2017 the benefit of promotion w.e.f. September 6, 2018 could not have been given to the respondent.

4. On the other hand, Mr. Ashish Nischal, learned counsel appearing for the respondent though tried to support the order of the Tribunal by stating that the junior having been promoted the petitioner could not have denied the promotion to the respondent, we are of the view the fact that the promotion of junior was made effective from September 6, 2018 and not before that date, a senior cannot be given promotion.

5. Admittedly, the respondent stood retired on May 31, 2017 and hence was not working in the department for her to be granted the benefit of promotion w.e.f. September 6, 2018.

6. We have seen the promotion orders which have been issued for the juniors, the same clearly stipulate that the orders are for vacancy



years 2014-15 with seniority. Assuming for a moment, the benefit of seniority is given to the respondent w.e.f 2014-15, but she in any case cannot be granted the promotion that too from September 6, 2018, when admittedly she was not working in the department having superannuated on May 31, 2017.

7. The order of the Tribunal is without appreciating the facts in proper perspective. It has not considered as to in what manner the directions given could be implemented when the promotion of the junior was on September 6, 2018 on which date the respondent was not working. The order of the Tribunal is set aside. The writ petition is disposed of. No costs.

CM APPL. 63573/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

DECEMBER 19, 2023/jg