



2023:DHC:7614



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

% **Date of order : 3rd October, 2023**

+ **W.P.(C) 10340/2018**

DEEPAK THUKRAL Petitioner
Through: **Ms.Anjna Masih, Advocate**

versus

DELHI TRANSCO LTD Respondents
Through: **Ms.Laavanya Kaushik, Advocate**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

“(i) Issue an appropriate writ/order or direction in the nature of Mandamus directing the Respondent to grant the Time Bound Promotion Scale of Foreman(Electronics) to the petitioner w.e.f September 2009 and other consequential benefits and interest as per enhanced scale applicable to petitioner.

(ii) Allow the cost of this Writ Petition to the Petitioner and against the respondent.



(iii) Pass any such other or further order as this Hon'ble Court may deem fit and proper in the circumstances of the present case."

2. The factual matrix has been recapitulated herein below:

- a) The petitioner was appointed to the post of 'Senior Electronic Fitter (VHF)' in the erstwhile Delhi Electric Supply Undertaking (DESU) on dated 20th September 1983. Further, in 1997, DESU was incorporated into a separate electricity board called Delhi Vidyut Board, i.e., functioning under the Govt. of NCT.
- b) The Delhi Vidyut Board on 1st July 2002, had re-assembled the list of successors companies, thus, six successor companies had designated thereto are; Delhi Power Supply Company Limited - Holding Company, Delhi Transco Limited - TRANSCO, Indraprastha Power Generation Company Limited - GENCO, BSES Rajdhani Power Limited (BRPL) - DISCOM; BSES Yamuna Power Limited – DISCOM, North Delhi Power Limited - DISCOM.
- c) The Delhi Electric Supply Undertaking in its letter bearing no. E/Tech/95-96/AO (P.I)/ 6 dated 7th April, 1995, permitted the petitioner to be appointed to the post of 'Senior Electronic Assistant' on a revamped pay scale of Rs. 1800-3500 w.e.f. 1st October, 1994.
- d) During the course of the petitioners' employment with the erstwhile Delhi Electric Supply Undertaking, he was promoted to the post of 'Foreman' vide office order dated 24th June, 1998 on a pay scale of Rs. 6000-10800.



e) Hereinafter, the erstwhile Delhi Vidyut Board in its office order dated 23rd July 1997 *vide* the resolution no. 216 endorsed the introduction of Time-Bound Promotional Scales and had granted the same to the petitioner on 7th April 1995.

f) The Delhi Vidyut Board *vide* their Office Order bearing no. F.5(11)/A&G/PRC/97/Part-III/63, dated 21st December 1999 stated that benefit of grant third time bound promotional scale shall be given to members of subordinate/ministerial staff who have been appointed on regular basis as per the recruitment rules.

g) The Delhi Vidyut Board *vide* order dated 19th October 2000, modified and approved the time- bound promotional scale furthermore, in its resolution no. 37.00/565-A *vide* office order dated 1st November 2000, modified/amended the office order of dated 19th October 2000 concerning the eligibility provisions of Time Bound Promotional Scale.

h) On 15th January 2002, the petitioner working as Foreman (Electronics) was given the Second Time Bound Promotional Scale benefits who had served on the post of 'Foreman (Electronics)' on a pre-revised pay of Rs. 2200-3900.

i) Pursuant to the office order dated 23rd July 1997 the Second Time Bound Promotional Scale benefit was given to the petitioner who had served on the post of 'Foreman (Electronics)' on a pre-revised pay of Rs. 2200-3900.

j) Thereafter, the respondent *vide* office order dated 10th July, 2007 bearing no. DTL/1010/HR (A&G)/ 2007/173, removed the condition of



2nd promotion on regular basis and granted Third Time Bound Promotional Scale with regard to ministerial/subordinate employees, who were serving as below the rank of 'Assistant Manager' i.e., category-B, C & D.

k) The respondent *vide* office orders dated 7th June, 2013 and 11th November, 2014 has given Third Time Bound Promotional Scale to other employees of the respondent. *Vide* office order dated 26th August 2014 the petitioner's request for Third Time Bound Promotion which was rejected.

l) Hence, aggrieved by the said order the petitioner filed the said writ.

3. The learned counsel on behalf of the petitioner submitted that the respondent has allowed Third-Time Bound Promotional Scale to their employees, however, the petitioner was denied the same.

4. It is submitted that vide Office Order dated 21st December 1999, wherein it was stated that all the ministerial/subordinate employees who are in service on below the rank of 'Assistant Engineer' shall be entitled to the benefits of Third Time Bound Promotional Scale the said promotions were not granted to the petitioner, despite being eligible for the same.

5. It is further submitted that the reason upon which the respondent denied to grant the benefits of Third Time Bound Promotional Scale is baseless, arbitrary and does not have any substance in it. Moreover, the respondent had illegally withheld those benefits without providing any reason.



6. It is contended that the junior of the petitioner namely Mrs Aruna Gupta has already been promoted to post of AM(T) vide order dated 12th May, 2006 and there is no impediment in granting Third Time Bound Promotional Scale to the petitioner.

7. It is submitted that in view of the preceding paragraphs, the instant petition may be allowed and the petitioner may be granted third- time bound promotion.

8. *Per Contra*, learned counsel for the respondent vehemently opposed the averments made by the petitioner and submitted that the present petition is nothing but an abuse of the process of law.

9. It is submitted that the petitioner did not have any degree/ diploma in Engineering due to which he could not be promoted to AM(T).

10. It is submitted that as per the order dated 17th April, 2002, provided to the petitioner is eligible for the two time bound promotions to the categories of employees where there is no channel of promotion, therefore he has not been given Third- Time Bound Promotion Scheme.

11. It is contended that the petition may be dismissed on the ground of delay and laches. Since, the claim of the petitioner for Third- Time Bound Promotion Scheme accrued at the time of September 2009. Furthermore, the petitioner retired in 2015, however, the instant petition has been filed after three years from the retirement i.e., in the year 2018.

12. It is further contended that Arun Gupta, was appointed as Assistant Supervisor (Electronics) in the scale of pay Rs. 1640-3275 in May, 1991. The Assistant Supervisor (Electronics) post was re-designated as Foreman



Grade- II (Electronics) w.e.f. 16th November, 1994 and that she was eligible for the position of AM(T) and thus promoted in the year 2006 through feeder cadre as she was a diploma holder in Electronics on AM(T) post as per RRs of AM(T).

13. It is submitted that the petitioner cannot compare his case to that of a junior engineer from a different cadre.

14. It is further submitted regarding the petitioner's promotional eligibility, he could not be promoted to the next promotional post since, the position at which he was appointed was ineligible to be granted Third-Time Bound Promotion.

15. Hence, in view of the foregoing submissions, the respondent seeks that this Court may be pleased to dismiss this instant petition.

16. Heard the learned counsel for the parties and perused the pleadings on the record.

17. The petitioner has filed the instant petition seeking writ of mandamus directing the respondent to grant the Time- Bound Promotion Scale of Foreman (Electronics) to the petitioner w.e.f. September, 2009 along with other consequential benefits.

18. The respondent contended that petitioner did not have any degree/ diploma in Engineering due to which he could not be promoted to AM(T) and not given third- time bound promotion.

19. Mandamus is one of the prerogative writs issued by the High Court or the Supreme Court in the manner of command to any authority that falls under the definition of "State" as per Article 12 of the Constitution of India



for the purpose of fulfilling their constitutional/ statutory/ public duty. It is used as a last resort in cases where the Court is satisfied that without its intervention there will be denial to justice to the party invoking such writ.

20. The quintessential elements for issuing a writ of mandamus are firstly, the petitioner has claimed relief by invoking such writ has a legal right, secondly, the authority against whom the writ is seeking to be enforced has a legal duty towards such petitioner and has refused relief to petitioner, thirdly, such relief is claimed with a *bonafide* intention and fourthly, the petitioner has no alternative remedy.

21. It is pertinent to note that the petitioner has not challenged the order of the respondent as per which the respondent has declined the third- time bound promotion to the petitioner. This Court vide its extraordinary power under the writ petition has taken into account the said order dated 2nd January 2015.

22. Before delving into the instant petition on merits, this Court has reproduced the order dated 2nd January, 2015 in the instant petition as per which the petitioner was not granted third time- bound promotion as follows:

“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.”

23. As per the said order, the respondent replied to the petitioners concern for not been given third- time bound promotion stating that the petitioner was appointed as Senior Assistant (Electronics) which is a promotional post, on which no employee can be recruited directly and two- time bound promotions have already been given. The order further states that if the petitioner joined as Junior Assistant (Electronics), then he was eligible for third-time bound promotion and therefore, the petitioner’s position does not entitle him to third- time bound promotion accordingly, the higher authorities declined the promotion to the petitioner.

24. On perusal of the order, it is evident that the order declining the time-bound promotion to the petitioner is based on sound and logical reasoning and the respondent is acting as per its statutory rules of promotion.

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.

27. In view of the foregoing discussion, this Court is of the view that the petition is dismissed on the ground that the petitioner being at a job position which does not entail third- time bound promotion, accordingly, was not granted the same.

28. A prerogative writ, like a Mandamus cannot be demanded *ex debito justitiae* and it may be issued by the Court's discretion. The Courts under Article 226 must refrain from issuing a writ of mandamus in cases there is no such illegality in the functioning of the statutory authorities against which the writ has been preferred.

29. The Court should exercise its power under Article 226 very cautiously and sparingly in exceptional circumstances only in a given case where it is demonstrated that there is something palpably erroneous in the process of recruitment by the statutory authority.

30. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petition and is liable to be dismissed.

31. Accordingly, the instant petition stands dismissed.

32. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 3, 2023

Dy/db/av

[Click here to check corrigendum, if any](#)