



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

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Date of decision: February 20, 2024

+ W.P.(C) 11307/2016

(3) **BALBIR SINGH**

..... Petitioner

Through: Mr. S.N. Kaul, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. G.G. George, Adv. with
AC Indra Singh, SI Amit Kumar &
SI Prahlad, (CISF)

AND

+ W.P.(C) 11896/2016

(4) **BC MEHTA**

..... Petitioner

Through: Mr. S.N. Kaul, Adv.

versus

UOI AND ORS

.... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Kushagra Kumar, Mr.
Abhhinav Bhardwaj and Ms. K.
Kamaswini, Advs. for UOI with
AC/Fire PA Sheejo, CT/GD Palve
Nilesh, SI/E Amit Kumar and SI/E
Prahald Devendra

AND

+ W.P.(C) 609/2017

(5) **P.S. BALAKRISHNAN NAIR**



..... Petitioner

Through: Mr. S.N. Kaul, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Himanshu Pathak, SPC with
Ms. Khusboo Sharma, Adv. with
SI Prahlad and SI Amit Kumar, CISF**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE SAURABH BANERJEE****V. KAMESWAR RAO, J. (ORAL)**

1. As these three petitions involve an identical issue, the same are being decided by this common order. The issue which arises for consideration is whether the petitioners are entitled for notional promotion after their retirement/VRS to the post of Assistant Commandant (JAO) in W.P.(C) 11307/2016, DIG in W.P.(C) 11896/2016 and also DIG in W.P.(C) 609/2017. The facts are narrated separately of each petition.

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2. The case of the petitioner as contended by Mr. S. N. Kaul, learned counsel for the petitioner, is that the petitioner was appointed in CISF as Constable in the year 1975 and thereafter, in the year 1984, he was directly appointed as an Assistant Sub Inspector (Ministerial). He was promoted as Sub Inspector (Ministerial) on January 13, 1990 and Inspector (Ministerial) on March 03, 2011. His next promotion under



the Recruitment Rules was to the post of Assistant Commandant (JAO) in CISF.

3. It is his case that being eligible for promotion as Assistant Commandant (JAO), under the Recruitment Rules, the respondent No.2/ Director General, CISF, issued the letter dated October 30, 2015, to all field formations whereby the petitioner's service record and ACR Dossier were called for the purpose of DPC to be held against the vacancies for the year 2016 and the same were required to be sent by November 25, 2015.

4. He states that on February 2-3, 2016, he had requested the respondent No.2 to process his promotion on priority basis to ensure that the promotion order is issued before his date of retirement, i.e., March 31, 2016. On March 15, 2016, the petitioner was informed by the respondent No.2 that DPC proposal for the year 2016 has been submitted to UPSC on February 15, 2016 and he would be informed the outcome of DPC.

5. He states that, as per DoP&T OM dated September 08, 1998, as amended vide, OM dated January 28, 2015, the respondent No.2 failed to follow strict timelines to process his case of promotion to the post of Assistant Commandant (JAO).

6. According to him, as per the OM dated January 28, 2015, ACRs are to be written based on calendar year. In the present case, the proposal was required to be sent by the respondent No.2 to UPSC by September 30, 2015. The DPC was to be held in the year 2015 and approval for DPC proceedings was to be accorded by December 31, 2015. Unfortunately, there has been inordinate delay caused by the



respondent No.2 to process his case with the UPSC and also by the UPSC to finalize the DPC proceedings. It is only on August 23, 2016, the respondent No.2 issued promotion order wherein the name of the petitioner did not figure whereas his immediate junior viz., R. Muralidharan was promoted as Assistant Commandant (JAO) in CISF.

7. On September 2, 2016, a legal notice was sent by the petitioner to the respondent No.2. On October 6, 2016, the respondent No.2 informed the petitioner that the DPC was held on July 5, 2016, wherein though he was found fit for promotion, person junior to him was empanelled in his place on the ground that the petitioner stood retired on March 31, 2016.

W.P.(C) 11896/2016

8. The petitioner has filed this petition seeking promotion to the post of DIG based on the DPC held on January 19, 2010. The petitioner herein was appointed in CISF as a Sub Officer. Consequently, he was promoted on the Non-Gazetted post of Inspector (Executive) in his own turn along with his batch mates in CISF. Between 1996-2005, the petitioner was promoted as Assistant Commandant, Deputy Commandant, Commandant and Senior Commandant in the years 1988, 1995, 2000 and 2004, respectively.

9. It is the case of the petitioner and as contended by Mr. Kaul that the petitioner was entitled to promotion to the post of DIG in CISF. The petitioner became eligible for being promoted as DIG in CISF in the year 2008, but no DPC was held in time. The petitioner was given to understand that notwithstanding finalisation of Recruitment Rules for the post of DIG in CISF, the DPC was held for the post of DIG in CISF



on January 19, 2010 wherein the case of the petitioner was considered for promotion as DIG along with his batch mates and was found fit. He states that the petitioner stood retired on June 30, 2009. As a result of the said DPC, a person junior to the petitioner was promoted as DIG in CISF on having been found fit.

10. According to Mr. Kaul, the petitioner has a right to have the benefit of notional promotion if not the benefit of regular promotion having retired on superannuation w.e.f. June 30, 2009.

W.P.(C) 609/2017

11. It is the case of the petitioner and contended by Mr. Kaul that the petitioner is entitled to notional promotion to the post of DIG based on the DPC held on December 23, 2011.

12. The facts as noted from the petition are, the petitioner was appointed as Sub-Officer in CISF in the year 1974. Based on his service record, he earned promotions along with his batch mates from time to time. He was promoted as Assistant Commandant (Executive), Deputy Commandant, Commandant and Senior Commandant in the years 1990, 1999, 2004 and 2007, respectively.

13. According to Mr. Kaul, the petitioner took voluntary retirement w.e.f. July 5, 2011. This according to Mr. Kaul, was without prejudice to his right for promotion as DIG in CISF for which the process of DPC was pending with the respondents. Otherwise, in the normal course, the petitioner was to retire on superannuation on August 31, 2011.

14. Be that as it may, it is his submission that the DPC was held on December 23, 2011, wherein the case of the petitioner was also considered for promotion. He states that, eight Senior Commandants



including the petitioner were found fit for promotion as DIG in CISF. Since, the promotion was not given to the petitioner, he made representations which were rejected on November 17, 2016 by the respondents by stating that the petitioner proceeded on voluntary retirement on July 5, 2011, i.e., before the date of DPC which was held on December 23, 2011 and as on the date of DPC, the petitioner was not in service, he cannot be given the benefit of notional promotion vis-a-vis his juniors.

15. According to Mr. Kaul, the action of the respondents not granting notional promotion to the petitioners in the petitions under consideration is totally illegal and contrary to the law laid down by this Court in the cases of *Union of India and Anr. v. P.G. George, W.P.(C) 4864/2010*, decided on July 23, 2010 and *S. Narayanaswamy v. Union of India, W.P.(C) 4699/2012*, decided on September 19, 2012. He contends that this Court on identical facts had granted notional promotion to the respondent / petitioner therein and as such there is no reason why the petitioners being similarly placed are not entitled to the said benefits.

16. On the other hand, learned counsel appearing for the respondents would contest the petitions by stating that, on the date of the DPCs, the petitioners were not in service and as such even though their names were considered in the DPCs, they could not have been given promotion.

17. It is also their submission that the promotion given to the juniors of the petitioners in all the three cases was prospective in nature that is effective from the date when the promotion orders were issued.



In that sense, as the promotion was not given from a retrospective date, i.e., from the date when the petitioners were in-service with the respondents they are not entitled to promotion.

18. Having heard the learned counsel for the parties, suffice to state the issue in hand is no more *res integra*, in view of the judgment of the Coordinate Bench of this Court in the case of **P.G. George (supra)**, wherein in paragraph 10, it has been held as under:

“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.”

(emphasis supplied)

19. The above judgment relied upon by Mr. Kaul has no applicability in the cases in hand for the reason that the juniors who got promotion in the above judgment were given the benefits from a retrospective date, i.e., from the date P.G. George was in the service, which is not the case in these petitions.

20. Similarly, in **S. Narayanaswamy (supra)**, another Coordinate Bench of this Court after relying upon **P.G. George (supra)**, in paragraphs 5 and 6, has 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.”*

21. From the above, it is clear that the junior to P.G. George and S. Narayan Swamy were granted the benefit of promotion / higher scale from back dates, i.e., when **P.G. George / S. Narayanaswamy**, were working and had not retired. The cases under consideration are not of such nature, inasmuch as, the petitioners herein stood retired on March



31, 2016 in W.P.(C) 11307/2016, June 30, 2009 in W.P.(C) 11896/2016 and July 5, 2011 W.P.(C) 609/2017, respectively, much before the dates of respective DPCs and whereas their juniors were promoted on August 23, 2016 in W.P.(C) 11307/2016, January 19, 2010 in W.P.(C) 11896/2016 and December 22, 2011 in W.P.(C) 609/2017, respectively. Therefore, the relief of notional promotion being sought retrospectively cannot be given by relying on the aforesaid judgments.

22. Suffice to state, this Court in the case of ***Union of India v. Renu Chhabra, W.P.(C) 15793/2023***, decided on December 19, 2023, has decided the issue of entitlement to notional promotion of a retired employee at par with his junior(s) who had been promoted from a prospective date, i.e., after the employee had retired from the service. The relevant paragraph Nos. 5 to 7, are reproduced as under:

“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 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.”



(emphasis supplied)

23. Similarly, in **Dr. Ramakant Singh v. Union of India through the Secretary & Ors., W.P.(C) 6177/2019**, decided on February 13, 2023, this Court has in paragraphs 9 to 12, held as under:

“9. The case of the respondents before the Tribunal was that the petitioner cannot insist that he is entitled to be promoted against a vacancy, in a particular year, much less with retrospective effect. It was their case that the occasion to promote an officer with retrospective effect would arise only when his junior is promoted from an earlier date. As no junior was promoted, he cannot be promoted from the panel year 2013-2014.

10. The Tribunal rejected the OA by holding in paragraphs 7 to 9 as under:

“7. The particulars of the service of the applicant, ever since he joined the organisation are furnished in the preceding paragraphs, within the permissible limits of brevity. The promotion of the applicant to the post of DD (AE), and thereafter to the post of Director, were delayed. The pendency of disciplinary proceedings became the cause for delay in promotion to the post of DD (AE). Though he was promoted from an earlier date, he did not acquire eligibility for promotion to the post of Director, for want of minimum standing in the feeder post. According to the applicant, he became eligible to be considered for promotion to the post of Director against a vacancy of the year 2013-14, with the convening of the review DPC, and the grant of retrospective promotion to the post of DD (AE) from the year 2009. Had it been a case where the applicant was not promoted to the post of Director by the time his promotion to the post of DD (AE) was pushed back to an earlier date, things would have been



different altogether. He was promoted to the post of Director, that too from a date on which his juniors were promoted. The very claim of the applicant that he must be treated as having been promoted against a vacancy of the year 2013-14 is under a mistaken impression of law and fact. The reason is that no employee can insist that he is entitled to be promoted against a vacancy of a particular year. In other words, even if there exists a clear vacancy and the employee had acquired eligibility, no right accrues to him to be promoted.

8. Secondly, the promotion cannot be effected from a date earlier to the date of actual promotion. The only exception is where an employee was not considered for promotion on account of an impediment, even while his juniors were promoted. On removal of such impediment at a later stage, he becomes entitled to be promoted with effect from the date on which his juniors were promoted. Even this is for the purpose of seniority, and not as a measure of recognition of his right against a vacancy of a particular year. These and other related principles are enunciated and reiterated by the Hon'ble Supreme Court in Union of India v K. K. Vadera & others [1989 Supp. (2) SCC 625].

9. Once the applicant has been extended the benefit of promotion to the post of Director with effect from a date on which his junior was promoted to that post, he cannot have any genuine grievance, and his claim that his promotion deserves to be treated against the vacancy of the year 2013-14 is totally untenable."

11. Even before us, the learned counsel for the petitioner would reiterate the same submissions as made before the



Tribunal. We are not in agreement with the submissions made by the learned counsel for the petitioner for the reason that the claim of the petitioner for promotion to the higher post from a particular date / vacancy year would arise only, if a person junior to him, has marched over him from an earlier date. Admittedly, it is not the case of the petitioner that the junior has been promoted to the post of Director (AE) from the panel year 2013-2014.

12. The Tribunal is right in holding in paragraph 8, as no junior has been promoted, the petitioner cannot have any grievance with regard to non-promotion.”

(emphasis supplied)

24. In light of our discussion above, we are of the view that the petitioners have not made out any case which warrants interference with the impugned orders. The writ petitions are accordingly dismissed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 20, 2024/aky