



2024:DHC:8219-DB



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

+ W.P.(C) 4380/2024, CM APPL. 17942/2024

UNION OF INDIA & ANR.Petitioners

Through: Mr. Vijay Joshi, Sr. PC with
Mr. Shubham Chaturvedi, Adv.

versus

NANDKISHORE MEENA & ORS.Respondents

Through: Ms. Esha Mazumdar, Adv. with
Mr. Setu Niket, Ms. Unni Maya, Mr. Ishan
Singh and Mr. Devansh, Adv.

+ W.P.(C) 6350/2024, CM APPL. 26367/2024

UNION OF INDIA & ANR.Petitioners

Through: Ms. Pratima N. Lakra, CGSC
with Mr. Chandan Prajapati, Adv.

versus

MOHAN SINGH BAISRespondent

Through: Mr. Mrinendra Singh and Ms.
Preeti Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% **21.10.2024**

C. HARI SHANKAR, J.

1. These writ petitions are directed against judgment dated 13 July
2023 passed by the learned Central Administrative Tribunal Principal



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Bench, New Delhi¹ in OA 2262/2019² and OA 139/2018³.

2. The applicants in the aforesaid OAs, who are the respondents before us in these writ petitions, had superannuated by the time they had preferred the OAs. Their prayers before the learned Tribunal was that they be granted the selection grade w.e.f.⁴ the date on which their juniors had been granted the said grade.

3. The case of the respondents for notional promotion from the date of grant of promotion to the juniors was not considered on the ground that the respondents had already superannuated by the time the DPCs were convened.

4. The learned Tribunal has held in favour of the respondents and allowed the OAs, following OM dated 12 October 1998 passed by the Department of Personnel and Training⁵, the relevant portion of which read thus:

“The matter has been examined in consultation with the Ministry of Law. (Department of Legal Affairs). It may be pointed out in this regard that there is no specific bar in the aforesaid Office Memorandum dated April 10, 1989 or any other related instructions of the Department of Personnel Training for consideration of retired employees, while preparing year-wise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion also it would not be in order if eligible employees, who were, within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held are not considered while preparing year-wise zone of consideration/panel and, consequently, their juniors are considered

¹ “the learned Tribunal”, hereinafter

² **Nandkishore Meena v UOI**

³ **Mohan Singh Bais v UOI**

⁴ With effect from

⁵ “DOPT” hereinafter



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(in their places) who would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year(S). 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 DPC(s), may, if need be, prepare extended panels) following the principles prescribed in the Department of Personnel and Training Office Memorandum No.22011/8/87-Estt.(D) dated April 2, 1996.”

5. Aggrieved by the aforesaid decision, the UOI has preferred the present writ petitions, submitting that, in view of the judgment of a Division Bench of this Court in *P.P. Verma v Chief Secretary*⁶, which has specifically considered the aforesaid OM dated 12 October 1998, the impugned judgment of the learned Tribunal cannot sustain.

6. We have heard Ms. Pratima N. Lakra, learned CGSC appearing for the UOI, Ms. Esha Mazumdar, learned Counsel for the respondents in WP (C) 4380/2024 and Mr. Mrinendra Singh, learned Counsel for the respondent in WP (C) 6350/2024 in these petitions.

7. To the extent that Ms. Pratima N. Lakra submits that the interpretation, by the learned Tribunal, on the OM dated 12 October 1998 may not be in sync with the judgment of the Division Bench of this Court in *P.P. Verma*, she is correct. The Division Bench of this Court has interpreted the aforesaid OM in *P.P. Verma*, referred to the following passages from an earlier judgment of the Division Bench of this Court in *UOI v Rajendra Roy*⁷:

“16. In *Rajender Roy's case* this Court has held as under:-

⁶ MANU/DE/4048/2013

⁷ ILR (2007) 1 Delhi 378



Reliance placed by the Tribunal on OM No. 22011/4/08/Estt. (DS) dated 12.10.1998 issued by the DOP & T also appears to be misplaced. The Tribunal has read words into the language used in the said office memorandum which presumably was issued after the judgment of the Supreme Court in the case of **Baij Nath Sharma**⁸. The relevant extract of the said office memorandum reads as follows: "according to the legal opinion it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are also considered while preparing year wise, zone of consideration/panel, and consequently, their juniors to consider (in their places), who would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year(s)". This part of the office memorandum is in consonance with the judgment of the Supreme Court in **Baij Nath Sharma** since it provides that the superannuated employees should not be considered by the DPC, which is being held after their superannuation and in their place juniors, who are otherwise eligible should be brought into the zone of consideration.

20. However, we notice that, curiously, the next two sentences used in the same office memorandum go contrary to the earlier part. It goes on to say "names of the retired officials may also be included in the panel(s) such retired officials would, however, have no right for actual promotion.

21. While as per the earlier part the superannuated employees are not to be placed in the zone of consideration/panel, contradicting the said statement, the later part states that names of the retired officials may also be included in the panel. The use of the expression "actual promotion" in the following sentence gives the impression that the same has been used in contradistinction with "notional promotion". It appears that the Tribunal was influenced by the latter portion of the said OM and, therefore, construed it in favour of the respondent.

22. We feel that the Tribunal erred on this count as well. The thrust of the OM, which was issued soon after the

⁸ **Baij Nath Sharma v Hon'ble Rajasthan High Court at Jodhpur, (1998) 7 SCC 44**



decision of the Hon'ble Supreme Court in **Baij Nath Sharma** is to clarify that the superannuated employees should not be considered for promotion where the DPC is being held after their superannuation. The later part of the OM, which is contradictory to the dictum of the Hon'ble Supreme Court in **Baij Nath Sharma** obviously cannot be given effect to. Pertinently even the said OM does not in clear terms say that the retired/superannuated employees, if considered and recommended by the DPC would be granted notional promotion from a back date. However, the Tribunal has read this aspect into the OM which, in any event, it could not have done.

23. In view of the aforesaid, we find that the decision of the Tribunal is erroneous and the directions given therein are contrary to the judgments of the Hon'ble Supreme Court in **K.K. Vadera**⁹ as well as **Baij Nath Sharma**.”

8. The Division Bench in **Rajendra Roy** interpreted the OM dated 12 October 1998 has held that the OM dated 12 October 1998 could not be interpreted as grating superannuated employees a right to be promoted from the dates prior to their retirement. It was clarified that the OM dated 12 October 1998 merely required such employees to be also included so as to determine the zone of consideration in the relevant years and thereby assessed the employees, who would be entitled to be considered by the DPC.

9. To that extent, therefore, Ms. Pratima N. Lakra is justified in her submission that the manner in which the learned Tribunal has interpreted the OM dated 12 October 1998 is not correct.

10. That said, however, Ms. Esha Mazumdar and Mr. Mrinendra Singh have pointed out that the principle that an employee, who has

⁹ 1989 Supp (2) SCC 625



retired, cannot be considered for notional promotion from a date prior to his retirement would not apply where juniors to the said employee have in fact been granted notional promotion from the said date. In such a case, Ms. Esha Mazumdar and Mr. Mrinendra Singh submit that the said employee would also be entitled to be considered for notional promotion from the date on which his juniors were granted the said promotion.

11. We may note that this position is also recognised by the Division Bench in *P.P. Verma* itself, para 19 of which extracts the following passages from the earlier decision of the Division Bench in *UOI v R.N. Malhotra*¹⁰:

“19. Even in *R.N. Malhotra's case* this Court referring to the judgments of the Supreme Court in *Union of India v. K.K. Vadera* and *Baijnath Sharma v. Hon'ble Rajasthan High Court at Jodhpur & Anr.*, which were referred to by this Court in *Rajender Roy's case (supra)* has held as under:-

11. *Baij Nath Sharma* followed the earlier decision of the Supreme Court in the case of *Union of India v. K.K. Vadera* which categorically stated as under:-

“We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant.”

12. It was further observed in *K.K. Vadera* as under:-

If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of

¹⁰ 2012 SCC OnLine Del 3477



giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion.

13. The clear view taken by the Supreme Court is that a promotion cannot be granted prior to the convening of the Departmental Promotion Committee which considered the question of promotion. *The only rider is where a junior has been promoted prior to the superannuation of the retired employee.*”

(Emphasis supplied)

12. When one turns to the decision of the Supreme Court in ***Baij Nath Sharma***, the position in law becomes clear. The Supreme Court while holding, in the said case, that ordinarily a person, who has superannuated from service would not have a right to be considered and granted notional promotion from a date prior to his superannuation, clarified the position in para 6 of the judgment thus:

“6. The appellant could certainly have a grievance if any of his juniors had been given promotion from a date prior to his superannuation. It is not the case here. From the promotional quota, four promotions were made only on 30-12-1996, i.e., after the appellant had retired. Those promoted were given promotions from the dates the orders of their promotions were issued and not from the dates the posts had fallen vacant. It is also the contention of the High Court that these four officers, who were promoted to the RHJS, were senior to the appellant as per the seniority list. The question which falls for consideration is very narrow and that is, if under the rules applicable to the appellant promotion was to be given to him from the date the post fell vacant or from the date when order for promotion is made. We have not been shown any rule which could help the appellant. No officer in the RJS has been promoted to the RHJS prior to 31-5-1996 who is junior to the appellant. Further decision by the Rajasthan High Court has been taken to restore the imbalance between the direct recruits and the promotees which, of course, as noted above, is beyond challenge.”

13. The case of the present respondents clearly falls within the excepted category noted in para 6 of ***Baijnath Sharma***. The impugned



judgment notes, in para 4, the fact that juniors of the respondents had in fact been granted selection grade by a notification dated 27 December 2018. Though the said notification, expressly read, states that they were granted the said grade with immediate effect, the petitioners has placed on record an additional affidavit dated 14 October 2024, Paras 3 and 4 of which read thus:

“3. That it is most respectfully submitted that the DPC meeting for the promotion to Selection Grade at DANIPS for the vacancy year 2016, 2017 and 2018 was held on 20.12.2018 in UPSC. It is further submitted that the serving employees were granted promotion on notional basis from the retrospective dates, i.e. the date they attained eligibility for promotion i.e. 01.07.2016 for the vacancy year 2018. However, the benefits of actual promotion was granted w.e.f. the date the officer concerned assumed the charge of the post.

4. That the details of employees who were considered and promoted by the DPC held on 20.12.2018 is reproduced as under-

a. Zone of Consideration for the year 2016

Sr. No.	Name	Date of Birth	Promoted (Remark) YES/NO
1.	Ram Lal Meena (ST)	15.06.1957	NO
2.	Lala Ram Meena (ST)	03.07.1956	NO
3.	Ajay Pal Singh	23.08.1962	YES

b. Zone of Consideration for the year 2017

Sr. No.	Name	Date of Birth	Promoted (Remark) YES/NO
1.	Krishan Kumar (SC)	01.04.1979	YES
2.	Ashish Anan	06.11.1984	NO
3.	Mohan Singh Bais	05.09.1957	NO
4.	Jaldhari Lal Meena (ST)	24.07.1957	NO



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5.	Anjitha Chepyala	10.02.1982	YES
6.	Nand Kishore Meena (ST)	12.08.1957	NO
7.	Sukhraj Katewa	16.07.1977	YES
8.	Sukant Shailja Ballabh	01.03.1979	YES
9.	Ram Chander Meena (ST)	01.10.1957	NO
10.	Kamla Devi Meena (ST)	20.02.1960	YES

c. Zone of Consideration for the year 2018

Sr. No.	Name	Date of Birth	Promoted (Remark) YES/NO
1.	Ashish Anan	06.11.1984	NO
2.	Kamal Pal Singh Malhotra	08.12.1981	YES
3.	Girraj Singh	15.10.1959	YES
4.	Pankaj Kumar	16.01.1982	YES
5.	Virendra Singh Meena (ST)	12.08.1958	NO
6.	Rashmi Sharma	24.10.1980	YES
7.	Sanjay Kumar	01.12.1981	YES
8.	Pawan Kumar	20.01.1981	YES
9.	Sikandra Singh	07.10.1984	YES
10.	Sandeep Byala	23.11.1967	YES
11.	Rajeev Kumar Ambasta	03.08.1980	YES
12.	Khiladi Ram Meena (ST)	13.04.1958	NO
13.	Sardar Singh Rana	10.06.1958	NO
14.	Surjit Singh Malik (SC)	07.08.1959	YES
15.	Shri Krishan Meena (ST)	01.09.1963	YES
16.	Lakshmi Kanawat (SC)	19.05.1969	YES
17.	Sardool Singh	02.03.1958	NO

14. Thus, there is a candid acknowledgement, in the additional affidavit filed by the petitioners that the employees, who were



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favourably considered by the DPC which convened on 20 December 2018, were granted notional promotion from the retrospective dates, i.e., the date when they had attained eligibility for promotion, i.e., 1 July 2016 for the vacancy year 2018.

15. That being so, it becomes clear that, though the notification dated 27 December 2018 uses the words “with immediate effect”, the persons who were promoted by the DPC on the basis of which the notification was issued were actually granted retrospective seniority, from the date when they attained eligibility for promotion.

16. In that view of the matter, the case is fully covered by para 6 of the judgment of the Supreme Court in *Baij Nath Sharma*.

17. The principle that the respondents, having superannuated, would not be entitled to be considered for notional promotion from a date prior to their superannuation would not, therefore, apply as their juniors were in fact considered and given retrospective promotion.

18. The ultimate conclusion on which the learned Tribunal has arrived at cannot, therefore, be faulted.

19. Accordingly, albeit for reasons different from those which weighed before the learned Tribunal, we find no reason to interfere with the judgment under challenge. The petitions are accordingly dismissed.



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20. Ms. Esha Mazumdar points out, quite fairly, that Respondent 5 in WP (C) 4380/2024 would not be entitled to this benefit, as he has superannuated a date prior to 1 January 2018, which was the crucial date to consider his eligibility for promotion to selection grade. As such, the relief granted by the learned Tribunal would not extend to Respondent 5 in WP (C) 4380/2024.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 21, 2024/aky

Click here to check corrigendum, if any