



2024:DHC:7057-DB



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

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Date of decision: 05th September, 2024

+ W.P.(C) 5997/2007

R.P.DABAS

.....Petitioner

Through: Mr. P. Ramesh Kumar, Advocate.

Versus

UNIVERSITY GRANTS COMMISSION

.....Respondent

Through: Mr. Apoorv Kurup, Ms. Nidhi Mittal
and Ms. Aanchal Dubey, Advocates.**CORAM:****HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T (oral)**

1. The present petition has been filed by the petitioner seeking setting aside of impugned judgment and order dated 05.04.2007 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 616/2005. In addition, a direction is sought to the respondent to convene a DPC to fill up vacancy arisen on 01.03.1997 pursuant to retirement of R.K. Dureja, Under Secretary and to declare an empanelment and promotion of V.K. Mahajan as illegal.
2. The brief facts of the case are that the petitioner had preferred O.A.616/2005 before the learned Tribunal with prayer to declare him



eligible for promotion to the post of Under Secretary in the DPC held on 11.06.1997 by treating the cut-off date as 01.10.1996. Prior thereto, the petitioner had also preferred a Civil Suit in the Court of Senior Civil Judge, Delhi on the ground that the cut off date had been changed to defeat his right for promotion. The said suit was filed before the learned Civil Court as then the respondent-UGC was not covered under Administrative Tribunals Act, however, after the year 2000, as the jurisdiction lied with the learned Tribunal, thus, his case was transferred to the learned Tribunal as TA 4/2004. The said petition was withdrawn by the petitioner with liberty to file detailed application.

3. The petitioner thereafter preferred OA 616/2005 before the learned Tribunal claiming that he was eligible for being promoted to the post of Under Secretary as on 01.10.1996 however, the cut off date was changed to 01.10.1997.

4. The challenge was made to DO Letter dated 24.04.1997 whereby as a special case, the cut off date was changed from 01.10.1996 to 01.10.1997.

5. The petitioner pleaded before the learned Tribunal that in the DPC held on 11.06.1997 as on 01.10.1996, the persons considered did not possess the necessary qualification and therefore, in order to accommodate certain persons, the cut off date was changed from 01.10.1996 to 01.10.1997 and had there been no change, he would have been the second person to be promoted in the DPC held on 11.06.1997.

6. Learned counsel for the petitioner has submitted that he ought to have been promoted along with Shri V.K. Mahajan against the vacancy of R.K. Dureja, which occurred on 28.02.1997 and thereafter, since V.K. Mahajan



was promoted against the vacancy of Baldev Datt, the petitioner ought to have been given promotion with all consequential benefits w.e.f. 01.04.1997 till the date of his retirement i.e. 31.03.1998.

7. Learned counsel for the respondent on the other hand contended before the learned Tribunal that the post of Under Secretary is a Group A post in UGC and is made on 100% promotional basis in respect of those section officers and Private Secretaries, who have at least five years of continuous regular service, in the ratio of 4:1. In view of the fact that ACRs are written financial year wise in UGC and the eligibility date of officers for promotion was from 01st October of the calendar year, DoPT vide OM dated 17.10.1994 in order to streamline the work, notified that the vacancy may be calculated upto 31.03.1997.

8. The respondent further pleaded before the learned Tribunal that UGC vide Letter dated 19.03.1997 sought relaxation in Recruitment Rules from the MHRD. However, vide it's letter dated 09.04.1997, the MHRD informed that the Government was not in favour of UGC's proposal to relax the prescribed eligibility criteria. The next DPC for the post of Under Secretary was held on 11.06.1997 and since the petitioner was appointed as Section Officer on 23.03.1994, he was not eligible on 01.10.1997 for consideration to the post of Under Secretary, having not completed five years of regular service as Section Officer.

9. On the pleading of the parties, the learned Tribunal vide impugned judgment dated 05.04.2007 held that as on the date of convening of DPC on 11.06.1997, the petitioner was not eligible and even if DPC had been held on or after 01.10.1997, he would not have been eligible for consideration in



the absence of the relaxation of Rules which ended in May, 1997.

10. Learned Tribunal took note of the fact that till 31.05.1997, no junior of petitioner was promoted. Having observed the above, learned Tribunal dismissed O.A. filed by the petitioner which is assailed in the present petition.

11. At the hearing before this Court, learned counsel for petitioner has submitted that the learned Tribunal has failed to consider that the DPC had wrongfully noted that four vacancies of Under Secretary were available upto 31.03.1997 pertaining to the year 1996-1997 whereas only three of Under Secretaries were available for the promotion of Section Officers against which six Section Officers were considered. Another one vacancy of Under Secretary, was meant for promotion of Private Secretary, against which names of six Private Secretaries were considered. It was submitted that since only three vacancies for promotion to the post of Under Secretary from Section Officers were available, V.K. Mahajan could not have been promoted due to non-availability of vacancy despite his empanelment. Therefore, the impugned judgment deserves to be set aside.

12. To the contrary, learned counsel for respondent submits that the order passed by the learned Tribunal does not call for interference by this Court.

13. Upon hearing learned counsel for the parties and on perusal of material placed on record, this Court finds that the petitioner was promoted to the post of Section Officer on 23.03.1994 and the criteria for promotion to the post of Under Secretary was to have five years' regularized service in the rank of Section Officer. As per respondent's Office Order No. 167/95 dated 20.06.1995 [as per DoPT OM dated 17.10.1994], the crucial date for



determining the eligibility for promotion was 1st October of each calendar years.

14. The petitioner has claimed that in the DPC convened on 26.11.1996, he was one of the eligible candidates considered for promotion to the post of Under Secretary, however, despite relaxation granted by Ministry of Human Resource Development vide D.O. letter dated 13.01.1994, he was not considered in the next DPC held on 11.06.1997.

15. It is pertinent to mention here that as per aforesaid D.O. letter dated 13.01.1994 issued by Ministry of Human Resource Development, the life of relaxation extended was till May, 1997. Thus, in the DPC held on 11.06.1997, petitioner's name did not fell in consideration zone for promotion to the post of Under Secretary. Moreover, it is not the case of petitioner that any of his junior was promoted upto 31.05.1997.

16. In afore-noted facts of the case, the learned Tribunal rightly held that even if DPC for the vacancy year 1997-98 was held on or after 01.10.1997, the petitioner was not eligible for consideration in the absence of relaxation.

17. In aforesaid view of the case, finding no error in the impugned judgment dated 05.04.2007 passed by the learned Tribunal, the present petition is dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 05, 2024
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