



2024:DHC:9301



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

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Date of Decision: 18th November, 2024

+ W.P.(C) 5434/2004

T.K.ROY

.....Petitioner

Through: Mr. Ranjay Roy, Advocate.

versus

DELHI UNIVERSITY THR. VICE CHANCELLOR AND ORS.

.....Respondents

Through: Mr. Anurag Mathur, Advocate.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking quashing of order dated 24/30.12.2003 passed by Respondent No.1/University of Delhi ('University'), whereby the representation of the Petitioner dated 06.06.2003 has been rejected. Writ of mandamus is sought for a direction to the University to grant promotion to the Petitioner to the post of Technical Officer ('TO') from the date of eligibility with consequential effect in computation of retiral benefits.

2. Case of the Petitioner as set out in the writ petition is that Petitioner was appointed as Research and Reference Assistant ('RRA'), a post equivalent to Senior Technical Assistant ('STA') on 01.03.1973 in the Department of Geography, University and was allegedly the senior-most



STA at the relevant time in the Department. On 14.01.1993, University notified the upgraded post of TO in the Department. A memorandum was issued by the Department on 07.04.1993 calling upon the Petitioner for submitting the self-assessment form on or before 15.04.1993 so that his case could be considered for promotion as TO and no other person was asked to fill up the self-assessment form. Petitioner submitted the requisite self-assessment form on 15.04.1993 and a Screening/Evaluation Committee for considering promotion to the post of TO was scheduled for 16.04.1994, but the same was deferred and Petitioner was not considered.

3. It is averred that on 04.03.1995, University promoted 08 persons in the Departments of Chemistry, Physics and Zoology to the post of STA from the dates of their eligibility. On 07.03.1997, University promoted two juniors of the Petitioner in his Department namely, Krishan Kumar and Bachi Ram to the post of TO with effect from 01.01.1993 i.e. the date of their eligibility. Years later, on 29.01.2003, Petitioner was called upon to attend an interview before the Screening/Evaluation Committee wherein he was recommended and consequently promoted but from 29.01.2003 and not from 14.01.1993, the date on which according to the Petitioner he was eligible.

4. Petitioner superannuated on 31.01.2003 on attaining the age of superannuation. On 06.06.2003, he made a representation for grant of promotion as TO from the date of his eligibility, which was rejected and Petitioner was so informed by communication dated 04.08.2003. Petitioner filed a writ petition being CWP No. 5959/2003 challenging the communication, which was disposed of vide order dated 16.09.2003 directing the University to pass a speaking order. Pursuant to the said order,



Petitioner was given personal hearing on 07.11.2003 after which the representation was rejected and his request for ante-dating the promotion to 14.01.1993 was not acceded to.

5. Learned counsel for the Petitioner submits that the impugned order dated 24/30.12.2003 is illegal and arbitrary and overlooks the position of law that an employee is entitled to promotion from the date of eligibility as has been given by the University in all cases. Impugned order is a non-speaking order which does not reflect the reason for rejection of the representation. University has promoted more than 10 persons in different Departments to the post of TO retrospectively from the dates of their eligibility and Petitioner cannot be discriminated against. Post of TO was notified on 14.01.1993 and Petitioner was asked to submit his self-assessment form, which he did and this was because Petitioner was the senior-most of the 03 persons at that point in the Department. Meeting of Screening/Evaluation Committee was scheduled on 16.04.1994 but for some unexplained reason, the same was deferred and was convened after nearly a decade on 29.01.2003, in which the Petitioner was considered.

6. It is urged that Petitioner was appointed to the post of RRA which is equivalent to STA in the Department of Geography and therefore the Petitioner was eligible for promotion from 14.01.1993, however, for unknown reasons, University postponed the DPC and in the meantime without considering the Petitioner, vide Resolution of the Executive Council (EC) dated 07.03.1997, University promoted Krishan Kumar and Bachi Ram to the post of TO retrospectively, from 01.01.1993 i.e. the date from which they were eligible. The post remained vacant from 01.01.1993 to 07.03.1997. It is also urged that while Petitioner was stagnating, the



University once again without considering the Petitioner, granted benefit of senior scale of Rs.3000-5000/- (pre-revised) to the said officers. In sum and substance, the argument of the Petitioner is that Petitioner was the senior-most RRA in the Department of Geography and ought to have been given promotion from 14.01.1993, the date of his eligibility and while denying the same to him illegally, two of his juniors have been promoted with benefit of promotion from a retrospective date.

7. Mr. Anurag Mathur, learned counsel appearing for the University, on the other hand, submits that Petitioner is not entitled to any relief from the Court as he has made material concealments in the writ petition. It is pointed out that Petitioner had earlier filed a writ petition being CWP 279/1997 before this Court wherein he had questioned the seniority of Krishan Kumar and Bachi Ram in addition to the relief of consideration for promotion as TO ahead of them. Court disposed of the writ petition vide order dated 07.03.2003 as infructuous in view of the order passed on 13.02.2003 by the University promoting the Petitioner to the post of TO w.e.f. 29.01.2003 and directing that for the purpose of computation of pension and other benefits, his promotion shall have a bearing and benefit shall be given to him in accordance with law. Petitioner accepted the order recording his date of promotion and directing the University to grant benefits taking the said date into consideration and did not assail the same and hence this order has attained finality. Therefore any claim at this stage for re-opening the date from which the promotion was given is barred by principle of *res judicata* and/or constructive *res judicata*.

8. Without prejudice to the said objection, on merits it is argued that Petitioner has not challenged the order dated 13.02.2003 issued by the



University, whereby he was granted promotion from 29.01.2003 and the writ petition ought to be dismissed on this ground alone. Moreover, there was a dispute in regard to *inter se* seniority of the Petitioner and Krishan Kumar and Bachi Ram, which was resolved by EC in its Resolutions dated 27.08.1996 and 14.10.1996 declaring that Krishan Kumar and Bachi Ram were senior to the Petitioner. It is this seniority position which formed the basis of promoting the 02 officers as TOs ahead of the Petitioner but there is neither any challenge to the *inter se* seniority in the present writ petition nor to the said Resolution of the EC. Both the officers have not been impleaded as a party Respondents herein and therefore even otherwise it is not open to the Petitioner to lay any challenge to their seniority which is being sought to be done indirectly by the Petitioner by asserting that he be promoted from 14.01.1993 ahead of the 02 officers.

9. Mr. Mathur strenuously submits that in fact the very basis of the Petitioner to claim promotion as TO from 14.01.1993 is flawed inasmuch as he was never eligible from the said date. Petitioner has suppressed EC Resolution dated 23.04.1994 whereby eligibility for promotion to the post of TO is 20 years of service as on 01.01.1993 and this Resolution is not under challenge. Insofar as postponement of the Screening/Evaluation Committee's meeting fixed for 16.04.1994 is concerned, Mr. Mathur explains that the deferment was compelled by the fact that there was an *inter se* seniority dispute between the 03 officers and Petitioner was completely aware of the same. Last but not the least, Mr. Mathur also raises an objection on the writ petition being barred by delay and laches.

10. Heard learned counsels for the parties and examined their rival contentions.



11. Insofar as the objection of delay and laches is concerned, this Court does not find merit in the same. Petitioner had approached this Court in 1997 laying a claim to his non-promotion. He was finally granted promotion two days prior to his superannuation on 31.01.2003 by EC Resolution to this effect. Petitioner made a representation which was rejected on 04.08.2003 and on his filing CWP No. 5959/2003 challenging the same, the Court directed the University to pass a speaking order, which was done on 24/30.12.2003 and soon thereafter, this writ petition was filed. As far as concealment is concerned, I am unable to come to a conclusion that non-mentioning of the earlier writ petition being CWP No. 279/1997, wherein Petitioner had challenged the *inter se* seniority between him and Krishan Kumar and Bachi Ram as also sought a *mandamus* for promotion, amounts to a deliberate act of concealment, *albeit* ideally Petitioner ought to have disclosed the filing of the said petition. The writ petition was disposed of on 07.03.2003 as infructuous in view of the promotion of the Petitioner and in the perception of the Petitioner, as urged by the learned counsel, this fact was not relevant to the present issue. In my view, this could at best be an error of understanding the import of the order passed in the earlier writ petition.

12. On merit, however, Petitioner has failed to make out a case. Firstly, Petitioner has not challenged the order dated 13.02.2003, whereby the University granted him promotion as TO w.e.f. 29.01.2003 and the challenge is only to the order rejecting the representation on 24/30.12.2003. In the absence of challenge to the promotion order, Petitioner cannot raise disputes with regard to its validity. Secondly, Petitioner had filed CWP No. 279/1997, wherein he had laid a challenge to *inter se* seniority between him



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and Krishan Kumar and Bachi Ram and also sought promotion as TO ahead of them. This writ petition as flagged by Mr. Mathur was disposed of on 07.03.2003 as infructuous. There are legal fall-outs of this order which today stand against the Petitioner. In the said order, Court recorded that Petitioner was promoted w.e.f. 29.01.2003 and therefore, all his pensionary and other benefits be computed keeping this date as the date of promotion. This order was never challenged by the Petitioner and basis this order his benefits were given on retirement. No liberty was sought to challenge his promotion from a retrospective date and therefore, Mr. Mathur is right in his submission that the chapter of his promotion from 29.01.2003 stands closed and he cannot now agitate that he be given promotion from 14.01.1993.

13. There is yet another impediment in the way of the Petitioner to claim promotion as TO from a retrospective date of 14.01.1993. In the counter affidavit filed by the University, a categorical stand is taken in paragraph 8 that by a Resolution of the EC dated 23.04.1994, it was resolved that for promotion to the post of TO, 20 years of service was required as on 01.01.1993, as an eligibility condition. From the Resolution, it is clear that STAs and persons holding equivalent posts will have to complete 20 years of service on or before 01.01.1993 to be promoted as TOs. Admittedly, Petitioner was appointed as RRA which is equivalent to STA, on 01.03.1973 and does not therefore complete 20 years of service on the cut-off date i.e. 01.01.1993 and was thus not eligible for consideration by any Selection Committee at that stage. Thereafter, once the *inter se* seniority dispute was resolved between the Petitioner and Krishan Kumar and Bachi Ram in the Resolution dated 14.10.1996 by the EC, promotions were given to Krishan Kumar and Bachi Ram in 1997 as both were declared senior to the



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Petitioner. Petitioner did not succeed in his litigation with respect to the seniority dispute in the earlier round and the writ petition was disposed of being infructuous, which order as noted above, was never questioned by the Petitioner and even in the present writ petition, Petitioner has not claimed any relief with respect to the seniority list. As rightly urged by Mr. Mathur conscious of the fact that the seniority issue is a closed chapter in life of the Petitioner, he has not even impleaded the said officers as Respondents herein. In these facts, this Court is of the considered view that Petitioner is not entitled to claim promotion to the post of TO retrospectively, from 14.01.1993.

14. For all the aforesaid reasons, the writ petition is dismissed being devoid of merit.

JYOTI SINGH, J

NOVEMBER 18, 2024

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