



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

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Date of decision: January 22, 2024

+ W.P.(C) 11278/2019

(10) DILBAG SINGH

..... Petitioner

Through: Mr. Tapas Das, Adv.

versus

DIRECTORATE GENERAL BORDER ROADS THROUGH ITS
DIRECTOR GENERAL

..... Respondent

Through: Mrs. Amrita Prakash, CGSC with
Mr. Vishal Ashwani Mehta, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:

“In view of afore-said facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

(i) Declare the order dated 18/7/2019 passed by respondent as arbitrary and illegal to the extent of not considering the case of petitioner for promotion to the post of AE (Civil) and promoting the juniors as AE (Civil), as the same being against the DOPT OM dated 12/10/1998; and

(ii) Direct the respondent to consider the case of petitioner for promotion to the post of AE (Civil) for the panel year 2018 and if found fit grant him notional promotion with all consequential benefits; and



(iii) Issue such other orders as are deemed fit and proper under the circumstances of the case along with the costs of litigation.”

2. In substance, the challenge is to the order dated July 18, 2019, which has been issued by the respondent / Border Roads Organisation, to the extent that the petitioner’s case for promotion to the post of Assistant Engineer (Civil) (‘AE (Civil)’, for short) was not considered, though, persons junior to him have been promoted as AE (Civil) which according to the petitioner is contrary to the OM dated October 12, 1998.

3. Mr. Tapas Das, learned counsel for the petitioner submits that the petitioner retired from the post of Junior Engineer (Civil) on December 31, 2018. He had completed the eligibility period to the post of AE (Civil) in the year 2014 itself but was not be considered for promotion till the year 2016 due to lack of vacancies in the cadre of AE (Civil). Thereafter, vide order dated November 15, 2016, the Cadre Review of Group B and C employees of the respondent / organisation was carried out wherein the sanctioned strength of AE (Civil) was increased from 230 to 634 and the posts became available in the grade of AE (Civil).

4. He submits that, a special course for promotion which is relevant for being promoted to the post of AE (Civil) was conducted by the respondent only in January 2017. The petitioner passed the course with overall grading as “High Average”. After passing of the said course, the petitioner became eligible for promotion to the post of AE (Civil) in February 2017.



5. He states that, as per DoP&T OM dated October 12, 1998, the respondent should convene the DPCs at regular annual intervals to draw panels which could be utilised on making promotions against the vacancies occurring during the course of a year. But no DPC was convened for the years 2017 and 2018. He also submits that the said OM with regard to retired employees provides that, it is imperative to identify the correct zone of consideration for relevant years (s) and the names of the retired officials may also be included in the panel(s).

6. His submission is also that, as the petitioner had retired in the year 2018, he made representation to the respondent on August 8, 2019 with a reminder on September 13, 2019, but no satisfactory answer was given to him. He also states that the respondent being at fault for the delay in holding the DPC, it has caused grave prejudice to the petitioner, as he had to retire on the lowest post of Junior Engineer (Civil).

7. The case of the respondent has been summed up in paragraphs 1 to 5 of the counter affidavit, which reads as under:

“1. That Ex GS-158487Y JE (Civ) Dilbag Singh i.e. the Petitioner has filed the instant petition on the matter of promotion to the rank of AE (Civ) alongwith all consequential benefits with retrospective effect.

2. That in this context, it is brought out that approval of Cadre Review in respect of Group 'B' and 'C' employees of General Reserve Engineer Force (GREF) (BRO) was accorded vide Govt of India, Ministry of Defence letter No. BRDB/02/21/2010/GE.I (Vol.11) dated 15 Nov 2016, increasing the authorization of the post of Assistant Engineer (Civil) from 230 to 634, amongst other cadres. However, out of the total revised authorization of 634 AE (Civ) in GREF, 02 (two) posts are not functional/



operational due to Non-raising/ upgradation of certain Establishments. Similarly, 11 posts are kept as 'Under Posting Plan' (UPP) and 28 posts are kept as 'Suspended Animation' due to organisational requirement. Hence, a total of 41 posts are not to be filled. Accordingly, 593 posts [634 (-) 41] of AE (Civ) are accounted for as functional authorization in the Organisation. As per the Recruitment Rules for the post [I.e. "Ministry of Road Transport and Highways, Border Roads Development Board, General Reserve Engineer Force (Border Roads Organisation) Assistant Engineer (Civil) and Assistant Engineer (Electrical and Mechanical), Group 'B' } Post Recruitment Rules, 2012", the mode of recruitment to the post of Assistant Engineer (Civil) is 100% by promotion from Junior Engineer (Civil) with five years regular service in the grade and has passed Junior Officer (Civil Engineering) course of duration of not less than four weeks. A true copy of the said Recruitment Rules, 2012 is annexed herewith as ANNEXURE R-1.

3. That last DPC for promotion from JE (Civ) to the rank of AE (Civ) against the Vacancy Year 2014-15 has been held at Secretariat Border Roads Development Board (BRDB) on 24 Nov 2014. Thereafter, since the matter of reservation for SC/ST categories in promotion was subjudice before the Hon'ble Supreme Court in a case filed by the Samta Andolan Samiti, any action on the DPC proceedings involving the reservation aspect was held up till further orders as per Govt of India, DoP&T OM No. 26012/11/2016-Estt (Res) dt 30 Sep 2016. Accordingly, any DPC Proposal including that of filling up the posts of AE (Civ) by promotion from JE (Civ), where the reservation aspect is involved, could not be processed till receipt of further orders. A true copy of Govt of India, DOPT OM dated 30.09.2016 is annexed herewith as ANNEXURE R-2.

4. That the Interim Orders dated 17.5.18 and 05.06.18 passed by the Hon'ble Supreme Court, giving clearance for conducting DPCs of the categories involving the



reservation aspect, was communicated vide DoP&T OM No.36012/11/2016-Estt (Res-.I) {Pt-II} dated 15.06.18 which was received from Ministry of Defence on 04.07.18. Thereafter, DPC Proposal for Transitional Vacancy Year 2018 (i.e. 2018-19) in respect of AE (Civ) was finalized and submitted -by HQ DGBR to the Ministry of Defence on 27.09.18, duly including the name of the Petitioner in the Eligibility List alongwith all other eligible candidates failing within the zone of consideration. However, since it required more clarification on the matter, case remained under correspondence at the Ministry level and finally the DPC was held on 11.07.19 and accordingly the Promotion Order bearing No.16007/AE. (Civ)/DPC/TRNL Yr/ 2018/DGBR/E1D/BRDB dated 11 Jul 2019 had been issued by the Ministry of Defence (BR Wing). However, since the Petitioner had already proceeded on superannuation w.e.f 31 Dec 2018 on attaining the age of 60 years, i.e. well before the date of holding of DPC (11.07.19), and therefore he had not been assessed by the DPC for promotion to higher rank. A true copy of DoP&T CM No.36012/11/2016- Estt (Res-I) {Pt-II} dated 15.06.18 and a true copy of the Promotion Order bearing No.16007/AE (Civ)/DPC/TRNL Yr/ 2018/DGBR/E1D/BRDB dated 11 Jul 2019 are annexed herewith as ANNEXURE R-3 R-4 respectively.

5. That it is therefore most respectfully submitted that the delay in holding the DPC for promotion from JE (Civ) to the rank of AE (Civ) was caused as the result of court case filed before the Hon'ble Supreme Court, and as per the direction issued vide Govt of India, DoP&T CM No. 26012/11/2016- Estt (Res) dt 30 Sep 2016.”

8. In substance, the stand of the respondent is that, because of the pending litigation, the promotions could not take place.



9. Having noted the respective stand of the parties, we are of the view, that as no Junior to the petitioner has been promoted to the post of AE (Civil) from a back date, the petitioner is not entitled to any relief.

10. Even, the OM on which reliance was placed by the petitioner dated October 12, 1998, would not help the case of the petitioner, in view of clear stipulation, which reads as under:

*“3. 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 and 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 I panel and, consequently, their juniors are considered (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 identity 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 panel(s) following the principles prescribed in the Department of Personnel and Training, O.M, No, 22011/8/ 87-Estt. (D), dated 9-4-1996. [Copy enclosed].”
(emphasis supplied)*

11. In fact, the position of law is no more *res-integra*, in view of the judgment of this Court in the case of ***Union of India v. Renu***



Chhabra, W.P.(C) 15793, decided on December 19, 2023 wherein an identical issue arose for consideration and this Court in paragraphs 5 to 7 has held 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)

12. Similarly, in **Dr. Ramakant Singh v. Union of India through the Secretary and Ors., W.P.(C) 6177/2019**, decided on February 13, 2023, this Court in paragraphs 9, 11, 12 and 16 has 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.



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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.

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16. Concedingly, as no person junior to the petitioner, has been promoted in the panel year 2013-2014, the petitioner has no right to seek promotion from that year."

(emphasis supplied)

13. In view of the above position of law and, the said judgments are applicable on all fours, the petition being without any merit, is dismissed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 22, 2024/aky