



2024:DHC:300



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

% Judgment reserved on: 09.01.2024
Judgment pronounced on: 15.01.2024

+ W.P.(C) 15768/2023 & CM APPL.63333/2023 (stay)

ANIL KUMAR BHARTI

..... Petitioner

versus

INDIAN RAILWAYS CATERING AND
TOURISM CORPORATION LIMITED

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. K.C. Mittal and Ms. Mobina Khan,
Advocates

For the Respondent : Mr. Priyanka Das, Advocate

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. The present writ petition has been preferred by the petitioner seeking the following reliefs:

“(a) quash and set aside the Circulate dated 13.11.2023 to the extent where the eligibility date for consideration for LDCE has been notified as 13.11.2023 instead of 01.07.2022

(b) hold and declare that as per the RRs applicable, the Petitioner is entitled to be reckoned with his eligibility with effect from 01.07.2022 in the post of AM (E-2) as per rule 4.6 of the RRs. Consequently, the Petitioner is entitled to be



considered for promotion to the post DGM (E-4) and is entitled to appear in the written examination.

(c) pass such other or further order(s) as may be deemed fit and proper in facts and circumstances of the present case.”

2. The case of the petitioner as culled from the writ petition is as under:

2.1 That the petitioner was appointed as Supervisor (Finance) (S-2 Grade) as a SC candidate with effect from 03.04.2006 by the respondent. It is the case of the petitioner that he became eligible for promotion as Senior Supervisor (S-3 Grade) on completion of three years. However, the petitioner was promoted on 06.04.2009.

2.2 The petitioner was promoted from Senior Supervisor to Chief Supervisor (S-3 Grade) as per Rule 7.1 of the Recruitment Rules since the petitioner became eligible for promotion on completion of three years and was promoted with effect from 09.10.2012. That since the cadre of the petitioner was changed, as such, in terms of Rule 8 for promotion under the recruitment rules, the petitioner was promoted to the Executive Cadre in the Grade of (E-0), by positive act of selection, with effect from 02.02.2016 through examination and subsequently was promoted as Senior Executive in E-1 Grade with effect from 08.02.2019 without positive act of selection as time bound promotion. The petitioner was promoted to the Post of Assistant Manager (Grade of E-2), after qualifying the departmental selection as per Rule 10 of the Recruitment Rules.

2.3 It is the case of the petitioner, the petitioner accordingly became eligible for promotion to the post of Assistant Manager



(E-2) in July, 2022, however, was not considered although the vacancy was also available, *malafide* and arbitrarily to deprive further promotion.

2.4 That the Respondents *vide* their Circular dated 13.10.2014 introduced the LDCE policy against direct recruit quota vacancy for which the educational/professional qualification was prescribed under the Recruitment Rules of 2007 and the said examination was conducted against 50% of direct recruit quota posts. It was open for the post of Executive (E-0 level) and AM (E-2 level) but no period of one year was prescribed, rather the length of service in IRCTC were to be taken as years of experience for eligibility for concerned post in LDCE.

2.5 That Respondent issued a Circular for LDCE policy dated 12.12.2018 for conducting the examination for the post of Executive (E-0 level), AM (E-2 level) and DGM (E-4 level) and in the said Circular, the Respondents required one year service in minimum eligible category/grade for appearing in the examination.

2.6 That the Respondent issued a Circular dated 13.11.2023 purported to be in terms of LDCE policy dated 13.10.2014, 12.12.2018, 23.05.2019 and 09.01.2020, which is impugned hereunder for the post of DGM Grade E-4 through LDCE. It is the case of the petitioner that by this policy, the Respondents changed the cutoff date for eligibility to 13.11.2023 which is totally contrary to the RRs applicable to the Respondent as RRs provide



cut-off date for eligibility as on 1st July of every year. It was further contended that the promotion of the Petitioner to E-2 level was delayed *malafide* and arbitrarily by the Respondents, since the Petitioner became eligible as per the RRs on 1st July, 2022 when the vacancies were also available in the Schedule Caste (SC) category and the Petitioner should have been promoted without any delay.

2.7 That the Respondents issued Circular dated 21.09.2020 for filling up posts in the Finance Department in Grade E-2.

2.8 That *vide* letter dated 02.11.2022, the Petitioner made representation to the Respondent that the Petitioner has completed tenure of 3 years and 4 months in Grade E-1 and as per the Policy, he became eligible on completion of three years in E-1 Grade through the selection process but even after eight months time, the selection process was not initiated. The Petitioner also made repeated requests at various levels.

2.9 That the Petitioner made representations to the Respondent but the Respondent rejected the representation of the Petitioner and decided not to allow the Petitioner to appear in the written examination and be considered for promotion to the post of DGM (E-4). The Petitioner further requested the Respondent *vide* letter dated 16.10.2023, with a request to permit the Petitioner to appear in the written examination and consider for the post of DGM (P-4).

3. Aggrieved by the rejection of the representation by the



respondent, the present petition was filed.

4. Mr. K.C. Mittal, learned counsel appearing for the petitioner submits the following:-

i. The petitioner challenges the circular dated 13.11.2023, whereby the respondent has issued notification in respect of Limited Departmental Competitive Examination (LDCE) in DGM (E-4) Grade in Finance Cadre of IRCTC, being aggrieved by the Clause 2 of the Eligibility Conditions as laid therein.

ii. The Eligibility Conditions aggrieved of, if as under:-

“2. The cut off date for determining eligibility criteria is the date of issue of this notification i.e. 13.11.2023.”

iii. According to Mr. Mittal, the condition for cut off itself is arbitrary and contrary to the promotion policy invoked so far as the respondent no.1 is concerned.

iv. Mr. Mittal invites attention of this Court to Annexure P-10, the ‘Revised IRCTC Promotion Policy and Rules-2014’ dated 21.04.2014 particularly to Clause 4.6, which is assessment of the vacancies in respect of a particular promotion year.

v. Clause 4.6 is extracted hereunder:-

“4.6 The assessment of vacancies shall be done on 1st July of every year. The vacancies shall be assessed as follows:-

(a) Existing as on 1st July of the year.

(b) Existing vacancies in the higher grade of the same group.



- (c) *Anticipated vacancies in the grade and higher grades of the same group in the next one year.*
- (d) *20% of the post in the grade to cater for unforeseen circumstances.*

The cutoff date of eligibility would be 1st July of the year.”

- vi. Relying upon the aforesaid policy and particularly Clause 4.6, Mr. Mittal, learned counsel submits that so far as the promotion is concerned, it was incumbent upon the respondent to assess all the vacancies, whether by promotion or by direct recruitment, which arose on 1st July of every year and the incumbents, who are within the consideration zone, ought to have been considered by the Departmental Promotion Committee.
- vii. Learned counsel submits that in the present case though the vacancies for the E-2 Grade were available as on 01.07.2022, however, by notification of 29.11.2022, the said vacancies were notified for the purpose of promotion from E-1 to E-2 Grade, belatedly.
- viii. The petitioner had participated in the examinations held subsequently and was finally promoted as E-2 on 24.02.2023.
- ix. According to Mr. Mittal, the promotion of the petitioner as on 24.02.2023 is contrary to the promotion policy in existence since 2014 and as such he submits that the petitioner ought to have been considered as having been promoted with retrospective effect from 01.07.2022.
- x. Learned counsel submits that, if so considered, the petitioner



would fall within the eligibility criteria of the notification dated 13.11.2023, in that, the petitioner would have notionally completed one year of service of minimum eligibility as per the eligibility criteria.

- xi. Mr. Mittal submits the challenge in the present petition is not only to the notification dated 13.11.2023 but also to the promotion letter dated 24.02.2023, insofar as the retrospectivity of the promotion is concerned.
- xii. Though there is no prayer clearly indicating challenge to the order dated 24.02.2023, however, Mr. Mittal invites attention to Grounds C and D as also Prayer (b) to the present petition to submit that the challenge to the promotion order dated 24.02.2023 is very much in existence in the present petition.
- xiii. Learned counsel relies upon the judgments of the Hon'ble Supreme Court in ***Union of India and Others vs. N.R. Banerjee and Others***, delivered on 16.12.1996 reported in (1997) 9 SCC 287 as also ***P.N. Premchandran vs. The State of Kerala and Others*** reported in (2004) 1 SCC 245.
- xiv. Learned counsel relies upon the aforesaid judgment to buttress his arguments that if the DPC is not held in time due to administrative lapse, the same cannot be prejudicial to the date of promotion of the incumbent. He submits that in case the said ratio is applied to the case of the present petitioner, the delay in notification of the vacancies as also the delay in passing the promotion order on 24.02.2023 would not be attributable to the petitioner.



xv. He further submits that in case the ratio of the aforesaid judgments is followed in its correct letter and spirit, the petitioner should be deemed to have been promoted as on 01.07.2022 and would automatically become eligible for purposes of the circular dated 13.11.2023.

5. Contrary to the arguments raised by Mr. Mittal, Ms. Priyanka Das, learned counsel for the respondent submits by referring to the counter affidavit, particularly to para 14, that the notification for the vacancies having been issued on 29.11.2022, the written examination being conducted on 23.12.2022 and having regard to the fact that on 30.12.2022, the results of the written examination for the promotion from Senior Executive (E-1) to Assistant Manager (E-2) Grade was declared, finding the present petitioner successful alongwith two other candidates and subsequently the promotion of the petitioner vide the order 20.02.2023, cannot be read in isolation.

6. She submits that the petitioner, having been promoted on 24.02.2023 would automatically be ineligible for the purposes of the LDC examination *vide* circular dated 13.11.2023, since as per the eligibility conditions, the employee should have one year service in minimum eligible category/grade for appearing in the examination.

7. Learned counsel also draws attention of this Court to Clause 2 of the said circular and submits that the cut off date for determining eligibility was 13.11.2023, and having regard to the fact that the petitioner did not complete the one year service as on that date, would be automatically ineligible to fall within the consideration zone so far as



the LDC examination is concerned.

8. Ms. Das, learned counsel also relies upon the judgment of the Hon'ble Supreme Court in ***Union of India and Another vs. Manpreet Singh Poonam and Others*** reported in (2022) 6 SCC 105, to submit that unless there are rules which permit retrospective promotion, the promotion of an incumbent shall be considered to be the date on which DPC has been held and the incumbent selected.

9. She relies particularly on para 18 of said judgment, which is as under:-

"18. A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post are specifically prescribed under the rules, which also mandate the clearance through a selection process. It is also to be borne in mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules."

10. In rejoinder, Mr. Mittal placed reliance on the judgment of Supreme Court in ***Nirmal Chand Bhattacharje and Others vs. Union of India*** reported in 1991 Supp (2) SCC 363 to submit that the promotion could be granted retrospectively from the date when the vacancies arose in respect of a particular promotional post. In particular, learned counsel relied upon paras 4 to 6 to buttress his arguments.

11. Learned counsel also tried to distinguish the ratio laid down by the Supreme Court in ***Manpreet Singh Poonam (Supra)*** by submitting that the rules which were called for interpretation in the aforesaid



judgment were not identical or even similar to the rule position in the present case. He submitted that it is trite that ratio laid down in a particular case interpreting a particular set of rules cannot be without ascertaining as to their applicability as to the facts of another case, being applied blindly. As such, according to learned counsel, the judgment in ***Manpreet Singh Poonam (Supra)*** is not applicable to the facts of the present case.

ANALYSIS AND FINDINGS

12. This Court has heard the arguments of Mr. Mittal, learned counsel for the petitioner and Ms. Priyanka Das, learned counsel for the respondent. Learned counsel also taken this Court through the documents on record and the judgments relied upon.

13. The fundamental question which arises in this case, for this Court to consider, is as to whether an incumbent is entitled to promotions with retrospective effect.

14. The law in this regard is fairly well settled inasmuch as the Supreme Court in a catena of judgments commencing from the case of ***Union of India and Others vs. K.K. Vadhera and Others*** reported in **1989 Supp 2 SCC 625** had held that once 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.

15. The next judgment in the same line is that of ***Union of India and Others vs. N.C. Murali and Others*** reported in **(2017) 13 SCC 575**, while relying upon the judgment of ***K.K. Vadhera (Supra)***, the Supreme



Court had held that unless there is a specific rule entitling the incumbents to receive promotion from the date of occurrence of vacancies, the right of promotion does not crystallize on the date of occurrence of vacancy and the promotion is to be extended on the date when it is actually effected. In the same case, the Supreme Court had also held that there could be cases where promotions may have to be given retrospectively with or without financial benefits. As an example, the giving of retrospective promotions in cases of sealed cover procedure was considered to be one of the exceptions and where the benefit of retrospective promotion could be given in a case where statutory rules mandate effecting promotion by particular time or on occurrence of vacancy.

16. The recent judgment of the Supreme Court in **Manpreet Singh Poonam (Supra)** also considered the ratio laid down in **K.K. Vadhera (Supra)** and rendered the following observations in para 18, 19 and 20:-

“18. A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post are specifically prescribed under the rules, which also mandate the clearance through a selection process. It is also to be borne in mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules.

19. In the present case, the authority acting within the rules has rightly granted promotion after clearance of DPC on 17-4-2012 with effect from 1-7-2011, when the actual vacancies arose, which in any case is a benefit granted to the respondent in Civil Appeal No. 518 of 2017. In our view, this



exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification.

20. *This Court in Union of India v. K.K. Vadera [Union of India v. K.K. Vadera, 1989 Supp (2) SCC 625 : 1990 SCC (L&S) 127] has clearly laid down that the promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen, and has observed that : (SCC p. 627, para 5)*

“5. ... 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. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. 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 giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”

17. On an overall conspectus of the ratio laid down by the Supreme Court in the aforesaid judgments postulates that retrospective promotion is not prohibited in certain exceptional cases, however, unless the rules exist permitting the retrospectivity to a promotion with effect from the date when the vacancy arose specifically, there could not be a situation where promotion can be granted retrospectively.

18. In the present case, the petitioner relies upon clause 4.6 of the ‘Revised IRCTC Promotion Policy and Rules-2014’ dated 21.04.2014,



which is extracted hereunder:-

“4.6 The assessment of vacancies shall be done on 1st July of every year. The vacancies shall be assessed as follows:-

- (a) Existing as on 1st July of the year.*
- (b) Existing vacancies in the higher grade of the same group.*
- (c) Anticipated vacancies in the grade and higher grades of the same group in the next one year.*
- (d) 20% of the post in the grade to cater for unforeseen circumstances.*

The cutoff date of eligibility would be 1st July of the year.”

A perusal of the aforesaid clause of the promotion policy makes it clear that the authorities are to assess the vacancies which would arise as on 1st July of every year and that the cutoff date of eligibility would be the 1st of July of the said year. That apart, there is nothing even remotely indicating, in the aforesaid clause which could be construed to mean that the promotions or DPC if held on a date subsequent to 1st July of that year, would relate back either to the date when the vacancy arose or to 1st of July of that year. The argument that the combined reading of clause 4.6 would indicate that the rule position required the department/respondents to grant promotion retrospectively from either the date when the vacancy arose or from 1st July of that year, is noted to be rejected since no other rule or regulation, etc. in respect of the aforesaid promotion policy rules, 2014 was shown to support the said contention.

19. There is no doubt that when clause 4.6 indicate the cutoff date of eligibility would 1st July of that year, it would take within its ambit only those persons who were eligible to be considered for promotion to the next higher grade and were eligible as on 1st July of that year



irrespective of when the vacancy arose before that date.

20. Though, the petitioner had primarily challenged the notification/circular dated 13.11.2023 calling for eligible employees for participating in the LDCE, however, had not laid a proper challenge to the promotion order dated 24.02.2023 from E-1 to E-2 Grade Officer. Though, Mr. Mittal did refer to grounds C and D as also clause (b) of the prayer to submit that the challenge was laid also to the promotion order, however, the promotion order in view of the aforesaid law laid down by the Supreme Court would pale into insignificance.

21. It is the case of the respondent that the notification for vacancies was issued on 29.11.2022, the written examination thereof was conducted 23.12.2022 and the results were declared on 30.12.2022. The petitioner was successful in the written examination for promotion from Senior Executive (E-1) to Assistant Manager (E-2) Grade and the petitioner alongwith two other candidates were subsequently promoted by the respondent *vide* the order dated 20.02.2023. Applying the aforesaid ratio of the judgments of the Supreme Court, it is clear that the petitioner was promoted on 20.02.2023 and no retrospectivity could be granted to the petitioner.

22. Having concluded as aforesaid, it is clear that the eligibility condition of one year service in the minimum eligible category/grade, as stipulated in the circular dated 13.11.2023, could not have been fulfilled by the petitioner and hence would not be eligible to apply for or appear for the LDC Examination covered under the aforesaid circular.

23. The judgments relied upon by the petitioner, in that, the case of



N.R. Banerjee (supra), *P.N. Premachandran (supra)* and *Nirmal Chand Bhattacharje (supra)* were judgments rendered by the Supreme Court on different facts and in none of the said judgments did the Supreme Court consider the issue of whether promotions can or cannot be granted retrospectively and as such are inapplicable to the facts of the present case. In the case of *P.N.Premachandran (supra)*, the Supreme Court was dealing with an issue of retrospective promotions in cases where the incumbents were promoted on temporary basis pending convening of DPC, the DPC however, being convened with great delay and had held in such peculiar circumstances that delay in convening the DPC could not have disentitled those petitioners from being granted retrospective promotion. The case of *N.R. Banerjee (supra)* was in respect of the delay in convening DPC and as to how such delay affects the employees so far as their future promotions, ACRs etc, are concerned. The Supreme Court had laid down guiding principles to the departments as to how the DPCs ought to be conducted every year.

24. In the present case, the vacancies as on 01.07.2022 were notified in the same year and the promotional post of E-2 Grade being a selection post was subject to the petitioner first qualifying the written examination and was finally held successful on 30.12.2022. The promotion to the said post was granted to the petitioner vide the order dated 20.02.2023. This Court does not see any delay having occasioned on the part of the respondents.

25. The issue raised in the present case is squarely covered by the judgments of *Manpreet Singh Poonam(supra)*, *K.K. Vadhera(supra)* and *N.C. Murali (supra)*.



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26. As a consequence of the aforesaid analysis and findings, this Court finds no merits in the present petition and the same is dismissed with no order as to costs.

27. Pending application also stands disposed of.

TUSHAR RAO GEDELA, J.

JANUARY 15, 2024

Aj/rl