



\$~
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 09.01.2024

+ W.P.(C) 252/2024

DELHI CO-COPERATIVE HOUSING FINANCE CORPORATION
LTD. Petitioner

Through: Mr. Yeeshu Jain, Addl. Standing
Counsel with Ms. Jyoti Singh, Ms.
Manisha and Mr. Hitanshu Mishra,
Advocates.

versus

SUBHASH CHANDER RANA

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

REKHA PALLI, J (ORAL)

CM APPL. 1189/2024 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 252/2024 and CM APPL. 1188/2024 (stay)

3. The present writ petition under Article 226 read with Article 227 of the Constitution of India seeks to assail the order dated 03.02.2023 passed by the learned Central Administrative Tribunal in O.A No. 2028/2019. Vide the impugned judgment the learned Tribunal has directed the petitioner-corporation to extend the benefits



of *in situ* promotion to the respondent from the date when he became eligible. While issuing these directions, the learned tribunal relied on the petitioner's communication dated 10.12.2018, wherein it was directed that the respondent's case for departmental promotion will be dealt as per the applicable rules.

4. Learned counsel for the petitioner submits that while the petitioner is not aggrieved by the direction to extend the benefits of *in situ* promotion to the respondent; their grievance is regarding the direction to grant the said benefits from the date of his eligibility in 2013 as the same would result in granting him arrears for more than 10 years. By placing reliance on the decision dated 12.08.2016 of a Coordinate Bench in W.P.(C) 7609/2014 titled as ***Delhi Cooperative Housing Finance Corporation Ltd. & Anr. vs. Love Gopal Bhardwaj and other connected petitions***, he submits that the learned tribunal has failed to appreciate that it has been the consistent view of this Court as also the Apex Court to restrict arrears payable to an employee for a period of three years prior to the date of his approaching the Court.

5. He, therefore, contends that respondent, having approached the learned tribunal in 2019, the arrears ought to have been granted to him only w.e.f., 2016, which aspect the learned tribunal has failed to appreciate. He, therefore, prays that the impugned order be modified by directing that the benefits of *in situ* promotion will be payable to the respondent only w.e.f., 2016 and the petitioner be granted further time to hold the necessary DPC to consider the respondent's case for promotion.



6. In order to appreciate the aforesaid plea of the petitioner, it would be apposite to note the relevant extracts of the impugned order, which read as under:

“4. We have heard the learned counsel and gone through the documents on record. We have also gone through the impugned order and find that while all the benefits to the applicant have been released, the only issue that remains is the departmental time-bound promotion. The respondents in the impugned letter have mentioned that departmental promotion "will be dealt as per the Recruitment Rules/Promotion Policy and applicable rules".

5. The said communication is dated 10.12.2018. There is nothing to substantiate, even after a lapse of three and a half years of this letter, whether the case of promotion of the applicant has been dealt with as per rules.

6. Against the background of what has been detailed above, and considering the fact that the applicant has retired without any stigma and in view of the submission of the respondents themselves that the applicant's promotion would be dealt with in accordance with rules and policy, we dispose of this O.A with the direction to the competent authority amongst the respondents to forthwith grant the said promotion/financial up-gradation to the applicant as per his entitlement w.e.f. the date of such eligibility /entitlement ignoring the fact that the applicant was subjected to disciplinary proceedings. The competent authority shall pass appropriate orders to this effect within a period of six weeks from the date of receipt of a copy of this order. Pursuant to that the applicant shall be entitled to all consequential benefits including the arrears of the same which



shall be released to him within a further period of six weeks from the date of receipt of such,(Orders. The terminal/retiral benefits of the applicant shall also be re-worked and released within this period. If such payments were to be made within the period specified, the applicant shall not be entitled to any interest. However, if the respondents do not make the payment within the specified period, the applicant shall be entitled to interest at the rate applicable upon GPF and such interest would increase by one per cent for delay of each month. The O.A. stands allowed against the aforesaid terms.”

7. From the factual matrix of the present case, what emerges is that though as per his seniority, the respondent was entitled to be considered for *in situ* promotion in the year 2013, his consideration was deferred on account of pendency of disciplinary proceedings against him. The said proceedings were concluded only on 06.04.2018 when the petitioner decided to drop the disciplinary proceedings against him and issue him only a displeasure. Since the displeasure was not a penalty under the Rules, the respondent immediately preferred a representation on 07.04.2018 and upon receiving no response thereto, immediately approached the learned tribunal by way of O.A No. 3283/2018. This O.A. was disposed of on 31.08.2018 with a direction to the petitioner to decide the respondent's representation by passing a speaking order. The petitioner then on 10.12.2018, passed an order granting the respondent, all consequential benefits except *in situ* promotion compelling him to once again approach the learned tribunal in 2019,



by way of a fresh O.A., which has been allowed vide the impugned order.

8. Thus it transpires that after the order dropping the disciplinary proceedings against the respondent was passed on 06.04.2018, he first approached the petitioner's way of a representation and then had to approach the learned tribunal by way of two successive O.A's for grant of his dues. Learned counsel for the petitioner is not in a position to deny that the respondent became entitled for being considered for *in situ* promotion only on 06.04.2018, i.e., when the disciplinary proceedings against him were dropped making him eligible for consideration of *in situ* promotion, for which he had otherwise become eligible in 2013. It is thus evident that the cause of action in favour of the respondent arose only after 06.04.2018, whereafter he approached the learned Tribunal without any delay whatsoever.

9. We have also considered the decision in ***Delhi Cooperative Housing Finance Corporation Ltd. (supra)***, relied upon by the petitioner but are of the considered view that the same is not applicable to the facts of the present case. In ***Delhi Cooperative Housing Finance Corporation Ltd. (supra)***, unlike in the present case, where the respondent/applicant had approached the learned tribunal within barely 2-3 months of the cause of action arising in his favour, there was delay in approaching the Court and it is in these circumstances that the Court in ***Delhi Cooperative Housing Finance Corporation Ltd. (supra)***, had restricted the grant of arrears to three years prior to the date of filing of the O.A. In a case like the present,



where the respondent approached the learned Tribunal with promptitude, there is no reason as to why he should be denied the benefits of arrears from the due date.

10. We are therefore of the view that the petitioner's plea that the respondent could not be granted arrears for more than three years on account of the decision in *Delhi Cooperative Housing Finance Corporation Ltd. (supra)*, though attractive on the first blush, has to be necessarily rejected. The learned Tribunal, was in our considered view, justified in directing that the respondent should be paid arrears of benefits of *in situ* promotion from the due date itself.

11. For the aforesaid reasons, we find no merit in the petition, which is accordingly dismissed.

12. As prayed for, the petitioner is granted eight weeks time to hold a DPC to consider the case of the respondent in terms of the impugned order. Arrears in terms of the decision of the DPC will be paid to the respondent within four weeks thereafter.

(REKHA PALLI)
JUDGE

(TUSHAR RAO GEDELA)
JUDGE

JANUARY 9, 2024

p