



2024:DHC:8003-DB



\$~58

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

+ **W.P.(C) 1052/2024, CM APPL. 4412/2024**

**MAHANAGAR TELEPHONE NIGAM
LIMITED**

.....Petitioner

Through: Ms. Eccha Shukla and Ms.
Smridhi Singh, Advs. with Mr. Alok Kumar,
AR.

versus

UNION OF INDIA AND ANR

.....Respondent

Through: Mr. Anshuman, Sr. PC for UOI
Mr. Pranaynath Jha, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

14.10.2024

%

C. HARI SHANKAR, J.

1. This is a writ petition challenging judgment dated 22 December 2022 passed by the learned Central Administrative Tribunal Principal Bench, New Delhi¹, whereby the learned Tribunal has directed thus:

“6. In view of the above discussion, we are of the considered opinion that the instant case has merit and, therefore, the instant OA is allowed. The impugned order dated 21.10.2014 is quashed and set aside. The respondents are hereby directed to extend the

¹ “the learned Tribunal”, hereinafter



2024:DHC:8003-DB



benefit of out of turn promotion to the applicant and requisite number of increments for his medal winning performances in national/international events, from the due dates as per the Recruitment Rules, quoted above, with all consequential benefits arising therefrom.”

2. The aforesaid order stands complied with, to the extent it directs grant of increments to Respondent 2 for medal winning performances in national and international events. However, to the extent it directs grant of out of turn promotion to Respondent 2, the petitioner has challenged the order by way of the present writ petition.

3. This is the third round of litigation, insofar as Respondent 2 is concerned.

4. Respondent 2 is a sportsperson, who earned laurels for the country in the Commonwealth Wrestling Championships. Aggrieved by the fact that the petitioner had not taken any decision on his representation for grant of advance increments and out of turn promotion to which, according to the Respondent 2, he was entitled as a consequence of the plaudits earned by him in international sporting events, the Respondent 2 instituted OA 810/2012 before the learned Tribunal. The said OA was disposed of, by the learned Tribunal, on 13 December 2012, with a direction to the petitioner to consider Respondent 2's representation and take a decision thereon.

5. On the decision continuing to remain unfavourable, Respondent



2 instituted a second OA, i.e., OA 2728/2012. The said OA was disposed of by the learned Tribunal by judgment dated 25 March 2014. On the aspect of entitlement of the Respondent 2 to out of turn promotion, the learned Tribunal observed as under in the said decision:

“9.As regards the out of turn promotion provided in Rule 13 Ibid is concerned, it is distinct and different from the incentive of additional Increment provided in Rule 10 *ibid*. *It could have been granted to Applicant in 2003 itself in relaxation of rules, but in any case in July, 2006 when he completed 3 years service in the grade. The Respondents have arbitrarily delayed the Increments and denied the promotion to the Applicant.*

11. We in the above facts and circumstances of the case, allow this OA and direct the Respondents to prepone the date of granting him the additional increment to the Applicant from 06.05.2011 to 06.07.2003, i.e., the date on which he won the Silver Medal in the Commonwealth Wrestling Championship held in Canada. *As the Applicant has also fulfilled all the conditions for out of turn promotion from 06.07.2006, the Respondents shall reconsider his case for granting the same from the said date with all consequential benefits.* The aforesaid directions shall be complied with within a period of two months from the date of receipt of a copy of this order.”

6. *Thus, there was a categorical finding by the learned Tribunal that Respondent 2 was entitled to out of turn promotion and satisfied all conditions requisite in that regard from 6 July 2006.*

7. Nonetheless, apparently taking advantage of the fact that the learned Tribunal had, in para 11 of its judgment, allowed the petitioner



2024:DHC:8003-DB



to “re-consider” the case of the Respondent 2, the petitioner went on to pass an order dated 21 October 2014, which read thus:

“Sub: Grant of out of turn promotion to Sh. Pawan Kumar, TOA (G), MTNL Delhi-Reg. decision of the Board of Directors in 301st meeting held on 9th Oct, 2014.

In continuation of this office letter no. MTNL/ CO/ Legal/ CAT/49 O.A No. 2728/2012 dated 24th July, 2014 (copy enclosed), it is informed that in the 301st meeting of the Board of Directors of MTNL held on 9th October, 2014, the Board deliberated on the issue of Out of Turn Promotion to Shri Pawan Kumar, TOA (G), MTNL Delhi. The Board did not find any merit in awarding out of turn promotion to Shri Pawan Kumar in view of the performance over the period in service in MTNL and decided that case be defended accordingly. Extract of the Minute on the said item is enclosed for detail. This may be brought to the notice of the concerned.”

8. It appears to us that, in fact, the aforesaid order was *prima facie* contemptuous of the judgment dated 25 March 2014 passed by the learned Tribunal. The learned Tribunal had categorically held the Respondent 2 to be entitled to out of turn promotion w.e.f. 6 July 2006. The matter was remanded to the petitioner essentially to pass orders in that regard, as it apparent from the fact that the petitioner was also directed to grant all consequential benefits to Respondent 2.

9. In our opinion, it was clearly not open to the petitioner to again hold that the Respondent 2 was not entitled to out of turn promotion, thereby dragging the Respondent 2 into a third round of litigation.

10. Nonetheless, in view of the aforesaid order, the learned



2024:DHC:8003-DB



Tribunal disposed of CP 587/2014, granting liberty to Respondent 2 to challenge the order dated 21 October 2014.

11. Respondent 2 therefore challenged the order dated 21 October 2014 before the learned Tribunal by way of OA 4006/2015, which has come to be allowed by the impugned judgment dated 22 December 2022.

12. On the aspect of out of turn promotion, the learned Tribunal has, in the impugned judgment, observed as under:

“5.1 In the impugned order dated 21.10.2014 (Annexure A- 1), the reason for rejection of the claim of the applicant for out of turn promotion has been given as “The Board did not find any merit in awarding out of turn promotion to Shri Pawan Kumar in view of the performance over the period in service in MTNL and decided that case be defended accordingly.” As is clear from the language of the impugned order, the rejection is based on the performance over the period of service in MTNL and is not being linked to any achievement in a national/international event, which is the sole requirement of Rules 10, 11 and 13 of the Recruitment Rules. For his Silver Medal winning performance in Commonwealth Games in July 2003 in Canada, whereas two increments have been granted to the applicant, but he has not been granted the out of turn promotion as per Rule 13 of the Rules *ibid*. For his Bronze medal winning performance in 50th Senior National Wrestling Championship in December, 2003 in Orissa and for Gold winning performance in Federation Cup (Khashaba Jadhav Chashak) in March, 2004 in Maharashtra, the increments, as due under Rules 11 of the Rules *ibid*, have not been granted to the applicant.”

13. In para 5.2 of the impugned judgment, the learned Tribunal has also noted that Ms. Alka Rani Tomar, who was similarly placed, was



2024:DHC:8003-DB



granted out of turn promotion by letter dated 18 May 2011.

14. On being queried by the Court as to the justification for treating the Respondent 2 as not entitled to out of turn promotion, Ms. Eccha Shukla, learned Counsel for the petitioner, submits that this was a decision taken by the Board of the MTNL and it was the prerogative of the Board.

15. Absolute and uncanalised prerogative, if conferred, fosters arbitrariness and is, therefore, to be eschewed. Exercise of prerogative has therefore to be in accordance with law.

16. Ms. Eccha Shukla is also not able to enlighten to any justification on the basis of which Respondent 2's entitlement to out of turn promotion can be questioned. A representative of the MTNL, who is present in Court, has also only instructions to submit that it was the prerogative of the Board.

17. That, quite clearly, is an unsatisfactory submission, especially in the light of the decision already taken by the learned Tribunal in its order dated 25 March 2014 that the Respondent 2 was in fact entitled to out of turn promotion w.e.f. 6 July 2006.

18. No other reason justifying refusal of Respondent 2's request for out of turn promotion is forthcoming.



2024:DHC:8003-DB



19. It is unfortunate that Respondent 2 has been dragged to contest his case before the learned Tribunal thrice. We only hope that the petitioner could act more proactively and not drag him to the learned Tribunal a fourth time.

20. We find no reason whatsoever to interfere with the impugned judgment of the learned Tribunal which is therefore accordingly upheld in its entirety. The writ petition is devoid of merit and is accordingly dismissed in *limine*.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 14, 2024/aky

Click here to check corrigendum, if any