



2024:DHC:8644



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

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Date of Decision: 06th November, 2024

+ W.P.(C) 3651/2012

V.P. KATHURIA AND ORS

.....Petitioners

Through: Mr. Kapil Gulati, Advocate.

versus

CEMENT CORPORATION OF INDIA AND ANR.....Respondents

Through: Mr. A.P. Singh, Mr. Naman Saraswat,
Mr. Varnit Vashistha and Ms. Saloni Jagga,
Advocates for Respondent No.1/CCIL.Mr. Shoumendu Mukherji, Senior Panel Counsel
with Ms. Megha Sharma, Mr. Arya Jha and
Mr. Aniruddha Ghosh, Advocates for Respondent
No.2/UOI.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioners under Articles 226/227 of the Constitution of India seeking a direction to the Respondents to consider the cases of the Petitioners for promotion to the next posts by duly constituted Departmental Promotion Committees (DPCs) and if recommended, to grant them promotions w.e.f. 01.01.2008 along with all consequential benefits.

2. Factual matrix to the extent necessary is that Petitioner No.1 retired from Cement Corporation of India Limited ('CCIL') on superannuation on 31.03.2008 holding the post of Manager (Finance) and Petitioner No.2 retired on superannuation on 31.01.2008 holding the post of Senior Manager



(Finance). Petitioner No.3 was relieved by CCIL on resignation w.e.f. 23.01.2008 from the post of Senior Manager (Geology & Mining).

3. It is averred that Petitioner No.1 was promoted as Manager (Finance) on 01.06.1994 and Petitioner No.2 was promoted as Senior Manager (Finance) on 01.01.1997, while Petitioner No.3 received promotion as Senior Manager (Geology & Mining) on 01.01.1997 and were thereafter stagnating without their promotions till their retirements/resignation *albeit* promotion policy of CCIL stipulates a qualifying period of three years for next promotion. Petitioner No.1 was eligible for promotion to the post of Senior Manager (Finance) from 01.06.1997 while Petitioner No.2 was eligible for promotion to the post of Deputy General Manager (Finance) w.e.f. 01.01.2000. Petitioner No.3 is stated to have become eligible for promotion to the post of Deputy General Manager (Geology & Mining) w.e.f. 01.01.2000.

4. It is averred that lack of promotions was leading to severe frustration amongst all employees, both at Executive and lower levels and therefore, in order to alleviate this acute stagnation and give some relief to the employees, Board of Directors in their 285th Meeting held on 31.12.2007 resolved to grant promotions to all eligible employees as soon as possible. It was also decided that all Executives and other employees, who were eligible as on 01.01.2008, would be considered for promotions and that promotions will be given effect to from 01.01.2008.

5. It is further averred that pursuant to the said decision, CCIL promoted eligible employees, whether working at Plants, Zonal Offices or Corporate Office, to the next higher grades w.e.f. 01.01.2008 though DPCs were convened in June/July 2008, however, for some unknown reason, Petitioners



were not considered and being aggrieved, they represented to the concerned Authorities but to no avail, compelling the Petitioners to file the present writ petition.

6. Learned counsel for the Petitioners submits that the action of CCIL in not considering the Petitioners for promotions to higher grades despite a decision taken by the Board of Directors on 31.12.2007 to consider all eligible employees to alleviate stagnation, was wholly illegal and arbitrary. CCIL conducted DPCs in June/July 2008 and all eligible employees who were promoted, were given promotions w.e.f. 01.01.2008, on which date all the Petitioners were in service of CCIL. The reason for non-consideration of the Petitioners, as orally informed, was that they were not in service on the date of issuance of the orders of promotions of other employees. This reasoning was completely flawed as the prime objective of granting promotions retrospectively to employees across the Board was that they were stagnating for a number of years due to inaction of CCIL in not carrying out the exercise of promotions and therefore, CCIL was not justified in ousting the Petitioners who were similarly placed, from consideration by the DPCs.

7. Learned counsel further argues that it is a settled law that right to be considered for promotion is a fundamental right and despite being aware that Petitioners though eligible, had not been considered for promotions since 01.06.1997 and 01.01.2000 respectively, CCIL illegally excluded them from the zone of consideration, without any rationale or justifiable reason to discriminate. It is pointed out that several other Corporations such as National Building Construction Corporation Limited, a Government of India Enterprise, while granting retrospective benefit of promotions to their



employees, considered and promoted not only those employees who had retired but also those who had expired and granted them retrospective promotions. In this context, learned counsel relies on a judgment of the Division Bench of this Court in ***Union of India and Another v. Bishan Dass, 2023 SCC OnLine Del 5914***, where the Division Bench, relying on an earlier judgment of the Division Bench of this Court in ***Union of India v. P.G. George in W.P. (C) 4864/2010*** decided on 23.07.2010, upheld the order of the learned Central Administrative Tribunal ('Tribunal') passed in O.A. No.2451/2017, whereby the Tribunal had directed consideration of the Applicant before it for promotion even after his retirement on notional basis, as he was falling within the zone of consideration in the relevant year.

8. Mr. A.P. Singh, learned counsel for CCIL, *per contra*, strenuously opposes the writ petition and submits that there was no delay on the part of CCIL in considering its Executives and/or other employees for promotions and therefore, no reliance can be placed on the judgment in ***Bishan Dass (supra)***. It is explained that CCIL was declared as a sick Corporation in 1996 under the Sick Industrial Companies (Special Provisions) Act, 1985 and the plan for its revival was approved only in the year 2006. Soon after revival, DPCs were convened in June/July 2008 after a conscious decision was taken in this regard by the Board of Directors on 31.12.2007. Since Petitioners No.1 and 2 had retired on 31.03.2008 and 31.01.2008 respectively and Petitioner No.3 was relieved on resignation on 23.01.2008, before the DPCs were convened, they were not considered for promotions and no infirmity can be found with this action of CCIL. It is emphasized that in ***P.G. George (supra)***, on which the judgment of ***Bishan Dass (supra)*** is primarily based, there was a categorical finding by the Court that if the



Department fails to convene a DPC in time and gives no reasons for delay and then considers all eligible candidates on the date of vacancy, by which time a few empanelled officers have retired, they cannot be denied notional promotion to the posts in question, whereas in the present case, no delay can be attributable to CCIL as it was beyond the control of CCIL to carry out the exercise of promotions on account of the Corporation having been declared sick.

9. In rejoinder, learned counsel for the Petitioner refutes the stand of Mr. Singh that no delay can be attributed to CCIL for not holding DPCs between 1996 to 2006. It is submitted that promotions were given during this period and to demonstrate the same, attention of the Court is drawn to Annexure P-5, whereby Shri Karuna Bhatta was promoted to the post of Assistant General Manager (Marketing) vide order dated 09.01.2002. Even otherwise, it is urged that DoPT O.M. dated 12.10.1998 provides that eligible employees who were within the zone of consideration for the relevant years and are not in actual service when DPCs are held, are to be considered *albeit* they will have no right for actual promotions.

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

11. The moot point for consideration before this Court is whether the Petitioners are entitled for consideration for promotion to the next higher grades despite their retirements/resignation prior to the convening of the DPCs, keeping in view that retrospective promotions were given to all employees promoted pursuant to DPCs held in June/July 2008 w.e.f. 01.01.2008.

12. It is common case of the parties that due to lack of promotions for



nearly a decade, employees at both levels, i.e. Executive and below were stagnating leading to frustration amongst them. In order to alleviate this acute stagnation and give some relief to its employees, Board of Directors in the 285th Meeting held on 31.12.2007 consciously resolved to consider eligible employees for promotions as expeditiously as possible. Keeping this objective in mind, it was consciously resolved that promotions will be given effect from 01.01.2008. In deference to this decision, DPCs were convened in June/July 2008 and several employees at all levels were granted promotions and indisputably, w.e.f. 01.01.2008. It is here that the Petitioners raise their grievance.

13. *Albeit*, it is the case of the Petitioners that they were in service on 01.01.2008, the date from which effect was given to the promotions of others recommended by the DPCs and are entitled for consideration for promotions to the next higher grades, CCIL contends that since there was cessation of employer-employee relationship between the Petitioners and CCIL prior to the dates on which the DPCs were convened, they were not included in the zone of consideration. To my mind, the argument of CCIL is wholly flawed and cannot be accepted in light of the judgments of the Division Benches of this Court and also DoPT O.M. dated 12.10.1998.

14. The Division Bench of this Court in *Bishan Dass (supra)* was examining an order dated 17.01.2023 passed by the Tribunal, whereby the Tribunal had directed the Respondents therein to consider the case of the Applicant for the post of Under Secretary with effect from the date he was eligible for promotion despite his retirement prior to the date when the DPC was convened, applying the ratio of the judgment in the case of *P.G. George (supra)*. Order of the Tribunal was upheld by the Division Bench noting the



judgments of the earlier Division Benches in *P.G. George (supra)* and *Bhagwan Singh v. Union of India and Others, 2023 SCC OnLine Del 5545* as well as in the case of *S. Narayanaswamy vs. Union of India & Ors., 2012 SCC OnLine Del 4949*. In order to avoid prolixity, I may allude to passages from the judgment in *Bishan Dass (supra)*, wherein there is reference to the relevant paragraphs from the aforesaid judgments as follows:

“3. The challenge in this petition is to an order dated January 17, 2023 passed by Central Administrative Tribunal in O.A. 2451/2017, whereby the Tribunal has allowed the OA by stating in paragraphs 8 and 9 as under:—

“8. Heard counsel for the parties at length, perused the records and gone through the legal position as well. The applicant who has since been retired on 30.06.2005, was left out for the reason that he was not in service on the date when the DPC took place for consideration to the aforesaid post. According to the respondents, the applicant is not entitled for consideration for promotion because he has not actually shouldered responsibilities of the said post. If we apply the above ratio of *P.G. George and Jagdish Lal (Supra)*, the applicant is liable to be considered for promotion even after his retirement on notional basis. Even according to the DoPT OM dated 12.10.1998, retired employee who were within zone of consideration in the relevant year are entitled for notional promotion.

9. In view of the fact and circumstances of the case as well as the legal position perused, we are of this view that the applicant is entitled for consideration for the post of Under Secretary, with effect from the date he is eligible for promotion, but the promotion shall be given on notional basis with all consequential benefits. This exercise shall be completed within a period of two months from the date of receipt of a certified copy of this order.”

4. The facts as noted from the record are that the respondent was appointed as Section Officer, on regular basis on December 24, 1991 in terms of LDCE held in the year 1990. He superannuated on June 30, 2005. In the year 2009, a select list for the post of Under Secretary was issued by petitioner no. 1 wherein the respondent was placed at serial No. 650. He could not get any promotion till the date of his superannuation. It is the conceded case of the parties that in the year 2009, person junior to the respondent was promoted to the post of Under Secretary w.e.f. July 01, 2003.



5. Respondent feeling aggrieved by the promotion of his junior made a representation dated April 20, 2012 which was rejected on June 29, 2012. We have already reproduced relevant paragraphs of the order of the Tribunal while allowing the O.A.

6. The only submission made by Mr. Mishra by drawing our attention to page 87 of the paper book is that the Rule 6(3)(c) of The Central Secretariat Service Section Officers' Grade (Competitive Examination) Regulations, 1966, which reads as under, stipulates that, on retirement of an officer, his name is removed from the select list:—

“xxx xxx xxx

6.(3)(c) Persons who die or retire from service or whose services are otherwise terminated; and”

7. His submission is that the Select List included the name of the respondent though he had retired. On the date of DPC, as he stood retired and in terms of Rule 6(3)(c), he could not have been considered for promotion.

8. We are unable to agree with the submission made by Mr. Mishra for the simple reason that the promotion of the so called Junior was not w.e.f., 2009, i.e., prospective but from a retrospective date/year i.e., July 1, 2003 when the respondent was working with the petitioners.

9. We are of the view that the Tribunal is justified in relying upon its judgment in P.G. George v. GOI, OA No. 1409/2009 decided on April 22, 2010. Suffice to state, the writ petition filed by the UOI being W.P.(C) 4864/2010, (UOI v. P.G. George) has been dismissed by this Court. In fact, this Court had also decided a similar issue in W.P.(C) 2053/2020 titled as Bhagwan Singh v. Union of India wherein this Court has in paragraphs 8, 9 and 10 has stated as under:

“The law in this regard is well settled, as relied upon by Mr. Behera in the case of Union of India v. P.G. George, W.P.(C) 4864/2010, decided by this Court on July 23, 2010, wherein this Court in paragraphs 6 to 16 held as under:

“6. We note that learned counsel for the petitioner seeks to urge the same very points which have been dealt with by the Tribunal. Since we agree with the entire process of reasoning of the Tribunal, we need not reiterate the said reasons and unnecessarily pen a lengthy order, which would be nothing else other than rewriting, in our own words, the language of the impugned order.

7. Suffice would it be to state that as correctly held by the Tribunal, if the Department fails to convene a Departmental Promotion Committee in time and gives no reasons for delay and then considers all the eligible candidates as on the date of vacancy and



by the time a few, who are empanelled, have retired they cannot be denied the benefit of a notional appointment to the post in question. As rightly held by the Tribunal, having not worked on the post in question they would not be entitled to wages, but for purposes of pension, after giving them notional appointment, pensionary dues would have to be paid in the applicable scale.

8. The Tribunal has rightly held that under the OM dated 12.10.1998, the only bar is that the benefit of actual promotion would not be given to these employees, meaning thereby, the retired employees would not get wages. But, the impact of the circular dated 13.2.2009 where it is clearly stated that the empanelled candidates would be benefit to the dues on notional basis would mean that such retired employees who could not get actual promotion would be entitled to notional promotion.

9. We may wish to add one extra reason in support of the finding returned by the Tribunal.

10. Learned counsel for the petitioner concedes that such Government employees who are empanelled at a later date and are still in service are granted notional promotion to the post in question with effect from the date of the vacancy, meaning thereby, these candidates are given the applicable pay scales with increments in the scale with effect from a retrospective date, but salary in the higher scale with increments is paid from the date they joined. This means that the benefit of notional promotion in the form of being placed in the higher pay scale with a retrospective date is given to them. Thus, there is no reason why the same benefit be also not extended to the retired employees who could not earn promotions for no fault of theirs.

11. As an extended limb of our aforesaid reasoning would be the argument that if the petitioner is permitted to not give notional benefits to the retired employees there would be chances of favouritism, corruption and nepotism for the reason it would be very easy to delay the declaration of result of the DPC and thereby ensure that an empanelled candidate stands retired and the benefit to go to the next one.

12. There is one more reason to be added. What is the use of including the names of retired persons by including them in the zone of consideration when as a matter of fact they have to be given no promotion! Besides, it is settled law that only those persons who are eligible to be promoted have to be put in the zone of consideration and it would be a case of inverted logic to say that the retired persons are not eligible to be promoted (notionally), but are eligible to be within the zone of consideration. One cannot



operate simultaneously in two mutually contradictory directions.

13. There can be an interested reasoning to bring the absurdity in what the petitioner says.

14. The analogy of holding DPCs after 2 to 3 years when the vacancies arose and consider the retired employees on the basis that they were in service when the vacancy arose would mean to go back in the past to recognize their right to stand in the zone of consideration but to deny them notional promotion on the ground that as of today they have retired would mean to derecognize a right by looking in the present, can be contrasted with a man 'A' who stands in presenti and with reference to the past has a dialogue with a man 'B'. The dialogue would be:

A. I am standing on a ground which was sea bed in the past.

B. Do I mean to understand that you are standing on the sea bed.

A. No. Today I am standing on the ground.

B. But you just said that in the past it was a sea bed.

A. I never said that ever in the past I stood on the sea bed.

B. But that is what it would mean if we go back in the past.

A. Please understand that the reference to the past is merely descriptive of the past and surely not indicative of the present. Therefore, I am standing on the ground.

B. Well-well. I cannot carry the dialogue any forward for I have run out of logic.

A. Well-well. You never had one at the first instance because you forgot that if the present has to be linked to the past it cannot be delinked from the actuality of the present.

15. We dismiss the writ petition in limine.

16. No costs."

9. Similarly, a Co-ordinate Division Bench of this Court in the case of S.N. Narayanswamy v. Union of India, (2012) 194 DLT 166 (DB), in paragraph Nos. 5 and 6 held as under:

"5. We have heard the learned counsel for the parties and it appears to us that the case of the petitioner is no different from the case of P.G. George (supra) which was dealt with by the Tribunal by virtue of the order dated 22.04.2010. The learned counsel for the respondent has been unable to distinguish the case of the petitioner from that of P.G. George (supra). Consequently, the observations of the Tribunal to the contrary cannot be accepted.



According to us the Tribunal ought to have followed the decision of a coordinate bench and ought to have allowed the OA filed by the petitioner inasmuch as the case of the petitioner is not any different from that of P.G. George (supra). The said OM dated 03.08.2010 in P.G. George's case contains the following directions with regard to implementation:—

“3. The Ministry of Petroleum and Natural Gas are therefore hereby requested to implement the order of the CAT in respect of Shri P.G. George w.e.f. 1st July of 2007 by fixing of his pay notionally and granting notional increments if any due till his retirement and also granting pensionary benefits immediately under intimation to this Department”

6. Consequently, it is directed that the petitioner's pay be fixed notionally and he be granted notional increments, if any, due till his retirement and he be also granted pensionary benefits in accord with the directions given in P.G. George's case. We make it clear that the petitioner would be notionally promoted to the post of Deputy Secretary w.e.f. 01.07.2005. The writ petition stands allowed to the aforesaid extent. There shall be no order as to costs.”

10. Even this Court in Jasbir Singh Gill v. Union of India, 2014 SCC OnLine Del 1616, on an identical issue, wherein the juniors of the petitioner therein were given the benefits, observed that the petitioner therein would be entitled to benefit of notional promotion and consequential benefits arising therefrom.”

10. In view of the position of law, we are of the view that present petition is without any merit. The Tribunal is justified in allowing the O.A. in the manner it did in paragraphs 8 and 9.

11. The petition along with the pending applications is dismissed.”

15. It is pertinent to note that DoPT has also issued an O.M. dated 12.10.1998 stipulating that there is no embargo in considering retired employees while preparing year wise panels, who were within the zone of consideration in the relevant years *albeit* they will not be entitled to actual promotion. Relevant paragraph from the O.M. is as follows:

“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/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 identify 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 Office Memorandum No.22011/8/87-Estt.(D) dated April 9, 1996.”

16. Applying the aforesaid judgments and DoPT O.M. dated 12.10.1998, I am of the view that there is merit in the contention of the Petitioners that they were entitled for consideration for promotion to the next higher grades, by the DPCs convened in June/July, 2008 as they were in service on 01.01.2008, from which date retrospective promotions were granted to other employees and Petitioners could not have been ousted from the zone of consideration. Mr. Singh has made a subtle attempt to distinguish the case of Petitioner No.3 on the ground that he had resigned and did not retire on superannuation. This distinction is of no consequence as admittedly, Petitioner No. 3 was also in service on 01.01.2008 and would form a homogenous group with Petitioners No.1 and 2 with regard to the right to be considered for promotion. There is no gainsaying that right of eligible employees to be considered for promotion is a part of their fundamental right guaranteed under Article 16 of the Constitution of India *albeit* a person has no fundamental right of promotion. **[Ref: *Badrinath v. Government of Tamil Nadu and Others*, (2000) 8 SCC 395; *S.B. Bhattacharjee v. S.D. Majumdar and Others*, (2007) 10 SCC 513; and *Union of India and Another v. Hemraj Singh Chauhan and Others*, (2010) 4 SCC 290].**

17. There is no substance in the argument of Mr. Singh that CCIL cannot be blamed for delay in promotions and therefore, Petitioners cannot claim



any right to be considered for promotion. Although Petitioners have demonstrated that even in 2002, an employee was granted promotion despite the stand of CCIL that between 1996 to 2006, it was declared as a sick Corporation, however, keeping this as a side point, there is no merit in the argument for the simple reason that after the Corporation was revived in 2006, a conscious decision was taken by the Board of Directors on 31.12.2007 to carry out promotions expeditiously and in furtherance thereto, DPCs were convened. Once CCIL convened the DPCs in June/July 2008 and promoted the employees from 01.01.2008, the defence of CCIL having been declared a sick Corporation is neither here nor there.

18. For all the aforesaid reasons, Petitioners have made out a case for consideration for promotions to the next higher grades respectively, as mentioned in the earlier part of the judgment. It is accordingly directed that CCIL will consider the cases of the Petitioners for promotions to the respective higher grades as per the promotion policy applicable at the relevant time and if recommended, promotion orders shall be issued in favour of the Petitioners. Needless to state that in consonance with law on the subject, promotions shall be given on notional basis with all entitled consequential benefits. The entire exercise will be completed by CCIL within a period of eight weeks from the date of receipt of this judgment. In case of any surviving grievance(s), Petitioners will be at liberty to take recourse to legal remedies, if so advised.

19. Writ petition is allowed and disposed of in the aforesaid terms.

JYOTI SINGH, J

NOVEMBER 6, 2024

B.S. Rohella/shivam