



2024:DHC:4851



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

% Judgment reserved on: 10.05.2024
Judgment pronounced on: 01.07.2024

+ **W.P.(C) 495/2010**

R. K. CHOUDHARYPetitioner

versus

GOVT. OF N.C.T. OF DELHI AND ORSRespondents

+ **W.P.(C) 5478/2013**

SHAM SUNDER MAGOPetitioner

versus

GOVT. OF N.C.T. OF DELHI & ORSRespondents

Advocates who appeared in this case:

For the Petitioners : Mr. N. K. Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

For the Respondents : Mr. Sandeep Prabhakar and Mr. Vikas Mehta, Advocates for R-2 and M. S. K. Singh, Advocate for R-4, Advocates.

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]

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W.P.(C) 495/2010 & connected matter

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1. These are writ petitions under Article 226 of the Constitution of India, 1950, seeking *inter alia* the following reliefs:-

W.P.(C) 495/2010:-

"I. Issue a writ of certiorari or mandamus or any other appropriate writ, order or direction, in the nature thereof directing the respondents to implement resolution No. 216 dated 16.07.1997 notified vide Office Order No. F. 51 (11)/A&G/PRC/217 dated 23.7.1997;

II. Issue a writ of certiorari or mandamus or any other appropriate writ, order or direction, in the nature thereof directing the respondents to release the difference in salary and also difference in pension and any other consequential benefits of the petitioner;

III. Pass such other orders or further orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and to meet the end of justice;

IV. To award interest, costs and the litigation expenses of the present writ petition in favour of the Petitioner and against the respondent."

W.P.(C) 5478/2013:-

"I. issue a writ of certiorari or mandamus or any other appropriate writ, order or direction, in the nature thereof directing the respondents to implement Office Order No. F. 51 (11)/A&G/PRC/217 dated 23.7.1997 issued by D.V.B.

II. issue a writ of certiorari or mandamus or any other appropriate writ, order or direction, in the nature thereof directing the respondent No.2 to release the difference in salary and also difference in pension and any other consequential benefits thereof to the petitioner;

III. Pass such other orders or further orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and to meet the end of justice.

IV. To award interest, costs and the litigation expenses of the present writ petition in favour of the Petitioner and against the respondent."



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2. Facts of the case, *germane* to the dispute and as culled out from the petitions are as under:

- a) The petitioner i.e., Mr. R. K. Choudhary was employed in May, 1975, in Delhi Electric Supply Undertaking (hereinafter referred to as “*DESU*”), the erstwhile organization of the successor company, the B.S.E.S. Rajdhani Power Company Limited, the erstwhile organization of Delhi Vidyut Board (hereinafter referred to as “*DVB*”).
- b) The petitioner i.e., Mr. R. K. Choudhary, while working in DESU, was promoted to the post of Executive Engineer with effect from 29.06.1994 *vide* DESU’s Office Order dated 29.06.1994.
- c) The petitioner i.e., Mr. R. K. Choudhary retired from the services of Planning (South) of DESU, Office situated at New Delhi.
- d) The petitioner i.e., Mr. R. K. Choudhary, asserted that he became entitled *for* the time bound promotion for the period 01.04.1994 to 30.09.1996 in view of the Resolution dated 16.07.1997 passed by DVB and notified *vide* Office Order dated 23.07.1997 assuring time bound promotion to the erstwhile employees of Delhi DVB who completed more than 18 years of service.
- e) The second/another petitioner i.e., Mr. Sham Sunder Mago, was inducted on 21.10.1974 to the post Assistant Engineer against E. No. 7558 in Delhi Electric Supply Undertaking, the erstwhile organization of the successor company the DVB/ B.S.E.S. Rajdhani Power Company Limited.
- f) The petitioner i.e., Mr. Sham Sunder Mago got his 1st promotion to the post of Executive Engineer on *ad hoc* basis *vide* DESU’s Office Order dated 02.10.1989.



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- g) After the retirement of the petitioners, DESU was succeeded by the DVB which came into existence *w.e.f.* 24.02.1997.
- h) Under the privatization policy of the government, DVB was unbundled into various new legal entities incorporated under the provisions of the Companies Act, 1956, which came into existence on 01.07.2002. Delhi Power Company, was constituted as a Holding company with residuary/ contingent liabilities of the erstwhile DVB *w.e.f.* 01.07.2002. Delhi Transco Company Limited, B.S.E.S. Rajdhani Power Company Limited, B.S.E.S. Yamuna Power Company limited, North Delhi Power Company came into existence as successor of DVB. B.S.E.S. Rajdhani Power Company Limited and B.S.E.S. Yamuna Power Company Limited became the successor companies in case of the petitioners and their service record was transferred by DVB to these Companies and DVB ceased to exist with effect from 30.06.2002.
- i) The Deputy Secretary of Power, Government of Delhi *vide* reference dated 21.01.2004 had removed doubts, dispute and difference under the procedure of Delhi Electricity Reforms (Transfer Scheme) Rules, 2001 and had issued a Clarificatory Order under Rule 12 of the said rule.
- j) The relief claimed by the petitioners in this petition is asserted to be covered by the judgement passed by this Court in W.P.(C) Nos. 4316/2001 and 3134/2002, wherein the respondents were directed to implement the aforesaid resolution in respect of those erstwhile employees of DVB who had retired between 01.04.1994 and 23.07.1997.



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k) This Court in W.P.(C) No. 9610 of 2005 in the matter between *Sh. Nathu Ram vs. Govt. of N.C.T. of Delhi and Others* vide order dated 14.08.2007, directed the North Delhi Power Company Limited to release the sum of Rs. 71,228/- as well as Rs. 617/- in favour of Sh. Nathu Ram, an ex-employee towards his claim of Time Bound Promotion for the period he was in the service of the erstwhile organization, namely, DVB. The LPA bearing No. 1273/2007 captioned *North Delhi Power Limited vs. Nathu Ram & Others*, filed against the writ petition bearing W.P.(C) No. 9160/2005 was also dismissed. The Supreme Court in Special Leave Petition No. 23901/2007 filed by the North Delhi Power Limited against Nathu Ram, passed an interim order stating that the Court could not see any reason why the worker should not be paid his dues, particularly when the dispute is with regard to the sharing of liability between the holding companies and directed the petitioner/ company i.e., North Delhi Power Limited to deposit the entire arrears in the Court.

l) This Court in various Writ Petitions, taking note of the above order by the Supreme Court in SLP No. 23901/2007, was of the view that the *inter se* dispute between GNCTD and the successor electricity company should not become a roadblock for the petitioners to get their revised pension to which they are admittedly entitled. The liability for paying the increased component of pension to the petitioners in terms of Resolution No. 216 dated 16.07.1997 read with order of this Court dated 11.02.2004 in W.P (C) Nos.4316/2001 and 3134/2002 would be that of the successor electricity company and their said liability shall be treated as an interim arrangement and will be subject to the final



outcome of the decision of the Supreme Court on its liability in proceedings pending there in the Supreme Court. The successor electricity company was directed to provide additional funds to the Pension Trust that may be required for payment of revised pension to the petitioners and the Pension Trust was directed to release the revised pension to the petitioners on the receipt of the additional amount from the successor electricity company.

m) The Public Information Officer of GNCTD *vide* its letter dated 10.09.2009 informed the Board of B.S.E.S. Rajdhani Power Company Limited to maintain *status quo* till the disposal of the SLP, since the case was pending before the Supreme Court.

n) A legal notice dated 01.12.2009 by the petitioner i.e., Mr. R.K. Choudhary was issued upon the office of B.S.E.S. Rajdhani Power Company Limited for payment of difference in salary and pension within fifteen days for which no reply has been received.

o) A legal notice dated 02.03.2013 by the petitioner i.e., Mr. Sham Sunder Mago was issued upon the office of B.S.E.S. Yamuna Power Company Ltd for implementation of the Time Bound Promotion.

p) Since, there was no reply to the above said legal notice, the petitioners filed the present writ petition seeking implementation of the Resolution dated 16.07.1997 and release of difference in salary and also difference in pension and any other consequential benefits of the petitioners.

CONTENTIONS ON BEHALF OF PETITIONERS:

3. Ms. Laavanya Kaushik, learned counsel appearing for the petitioners submits that the petitioner i.e., R.K. Choudhary was inducted into service of



the erstwhile Delhi Electric Supply Undertaking as an Assistant Engineer Group 'A' Post (hereinafter referred to as "AE") on 13.05.1975. She submits that the petitioner was regularized on such post *w.e.f.* 23.08.1976 *vide* letter dated 27.09.1979.

4. Learned counsel submits that the petitioner was promoted to the post of Executive Engineer (hereinafter referred to as "Ex.En.") on *ad hoc* basis *w.e.f.* 29.06.1994 upto 31.03.1995, till his date of superannuation on 31.10.1995. According to Ms. Kaushik, the petitioner had completed 18 years of service on induction post/base level post of AE on 12.05.1993 and as such is entitled to the second time bound promotion scale (hereinafter referred to as "2nd TBPS") to the post of Superintendent Engineer *w.e.f.* 13.05.1993 and is entitled to consequential difference in salary for the period from 01.04.1994 to 31.10.1995 and also to the difference in pension *w.e.f.* 01.11.1995.

5. Ms. Kaushik, learned counsel appearing for the petitioner submits that the petitioner i.e., Sham Sunder Mago was inducted into service of DESU as an AE Group 'A' Post on 21.10.1974.

6. Learned counsel submits that the petitioner was promoted to the post of Ex.En. on *ad hoc* basis *w.e.f.* 02.10.1989 upto 31.01.1998 till his date of superannuation on 31.01.1998. According to Ms. Kaushik, the petitioner had completed 18 years of service on induction post/base level post of AE on 31.03.1994 and as such is entitled to 2nd TBPS to the post of Superintendent Engineer *w.e.f.* 01.04.1994 and is entitled to consequential difference in salary for the period from 02.10.1989 to 31.01.1998 and also to the difference in pension *w.e.f.* 01.02.1998.



7. In order to support her contention, Ms. Kaushik invites attention of this Court to the Office Order dated 23.07.1997 of the erstwhile Delhi Vidyut Board (hereinafter referred to as “DVB”). Learned counsel submits that by way of the said Order, the DVB had approved the introduction of TBPS for its employees as per certain conditions stipulated therein.

8. Ms. Kaushik submits that in terms of Clause (i) of the said Office Order, the petitioners alongwith other employees of DVB were entitled to first TBPS on completion of 10 years of regular service, irrespective of whether he is a subordinate/ministerial staff member or a Group ‘A’ officer. She submits that the petitioners were also granted the said benefit and there is no quarrel or grievance raised in the present writ petition to that extent.

9. Learned counsel submits that it is only the 2nd TBPS conferred by Clause (ii) of the Office Order dated 23.07.1997 that the petitioners seeks entitlement to and has been agitated in the present writ petition. According to learned counsel the petitioners had completed 8 years of further service apart from the 10 years regular service covered under Clause (i) making a total of 18 years of service in all from the date of induction of the officer at the base level on regular basis. Learned counsel submits that since the petitioners had also completed 18 years of service as an AE by 12.05.1993, the petitioners would be entitled to 2nd TBPS. As per her, all those officers who were retiring between 01.04.1994 to 23.07.1997 were entitled to the TBPS Scheme.

10. For the aforesaid purpose, Ms. Kaushik relies upon the judgment of Coordinate Bench of this Court in W.P.(C) No.4316/2001 titled as ***B.S. Goswami and Others vs. Delhi Vidyut Board***, rendered on 11.10.2004, whereby this Court had directed the respondents therein to grant TBPS to all the employees who retired between 01.04.1994 till 22.07.1997 *w.e.f.* the date



when they become eligible for it as per the scheme notified *vide* Office Order dated 23.07.1997. She also relies upon the judgment in W.P.(C) 237/2004 titled as ***K.R. Jain and Others vs. Government of NCT of Delhi***, decided on 23.03.2004, to substantiate her aforesaid stance.

11. Ms. Kaushik lays great emphasis on the interpretation of Clause (ii) read with para 2 and 6 of the Office Order dated 23.07.1997 to submit that the petitioners are clearly entitled to the 2nd TBPS having been in regular service for a period of 18 years from the date of induction at the base level. The base level being the AE. Ms. Kaushik greatly stressed on the fact that both the juniors as well as seniors of the petitioners have been granted 2nd TBPS either by virtue of the Court orders or by the erstwhile DVB or the respondent/BSES on its own. As such, she makes out a case of discrimination under Article 14 and 16 of the Constitution of India. She also argues that once the respondents, whether the erstwhile DVB or the present respondent/BSES, had granted 2nd TBPS to similarly situated officers, there is no ground available to the respondents to deny the petitioners the benefit of the said Office Order dated 23.07.1997.

12. Though this was not the part of the petition, however, Ms. Kaushik in the additional affidavit dated 29.09.2012 and the written submissions, has tried to demonstrate the discrimination by the following charts:-

Name	Promoted to the post of Supt. to Asst. Engineer vide O.O. dated 09.05.1975	Promoted to the post of XEN (ad-hoc) and granted 2 nd TBPS
S.C. Sharma	Sl. No. 02	Sl. No. 12 of O.O. dated 20.12.2001
K.L. Katyal	Sl. No. 14	Successor entity DTL vide letter dated 24.01.2013
R.K. Choudhary	Sl. No. 15	NOT GRANTED

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Name	Induction Post (Inspector)	Suptt.	Promotion Dates			
			Asst. Engg.	AXEN	XEN	S.E.
R.S. Virdhi	21.03.1963	N.A.	20.05.1972	01.05.1979	17.01.1983	12.07.1996
B.L. Chadha	11.02.1963	N.A.	17.01.1970	21.06.1979	08.03.1985	05.02.1997

Ms. Kaushik submits that from the aforesaid charts, the discrimination is apparent and this Court ought to interfere and direct the respondent to grant 2nd TBPS to the petitioners with all consequential benefits including the impact of the 2nd TBPS even on the pension.

CONTENTIONS OF THE RESPONDENT No.2/ B.S.E.S.-

13. Ms. Prabhakar, learned counsel appearing for the respondent no. 2, at the outset, attacks the submissions of the petitioner namely, R.K. Choudhary in W.P.(C) 495/2010 on the basis that the same is barred by delay and laches and as such not maintainable. He submits that though the benefits, if at all, were granted by the Office Order dated 23.07.1997, the petitioner waited till 2010 to file the present writ petition. He submits that there is no explanation much less a sufficient explanation or a reason as to why the petitioner did not file the present writ petition within a reasonable period of time. He submits that on account of lack of explanation detailing the delay in approaching this Court, the present writ petition ought to be dismissed with costs.

14. That apart, Mr. Prabhakar vehemently opposed the applicability of the ratio laid down by this Court in the case of **B.S. Goswami** (*supra*) on the ground that the same is not at all applicable to the facts of the present case. According to Mr. Prabhakar, the said Office Order is applicable only to those



employees who are either not promoted or not eligible for promotion. He submits that the TBPS Scheme was in the nature of ACP/MACP Scheme and only those employees who were stagnating in the same post for a particular period of time alone were eligible for TBPS. Learned counsel submitted that the petitioner having been promoted from time to time, as per their entitlement right upto 29.06.1994 as Ex.En, though on *ad hoc* basis, was clearly disentitled to seek the TBPS.

15. For the aforesaid argument, learned counsel relies upon additional affidavit filed on 21.04.2016, whereby the details of the petitioner original induction right upto their promotion to Ex.En. has been referred to in great detail. Learned counsel draws attention of this Court particularly to sub-para (f) of para 2 of the additional affidavit filed on 21.04.2016. Learned counsel submits that the petitioner was originally inducted into service as an Inspector on 25.01.1961 and promoted to the post of Superintendent (T) on 27.05.1968, which was the first promotion. He submits that the petitioner was promoted to the post of AE on 13.07.1975 which is the 2nd promotional post. He contends that the petitioner was thereafter promoted, though on *ad hoc* basis, as Ex.En. on 30.06.1994, which is the third promotion in his line. According to learned counsel the petitioner had already been granted the 1st TBPS on the post of AE having completed 10 years of regular service on the said post as per the Office Order dated 23.07.1997. He submits that for being eligible to the 2nd TBPS, the petitioner ought to have completed 8 years regular service as Ex. En. *w.e.f* 30.06.1994, which the petitioner could not complete as, admittedly, the petitioner superannuated on 31.10.1995. Thus, the argument of learned counsel is two folds: (i) that the petitioner having been promoted three times in his career, was disentitled from seeking 2nd TBPS; and (ii) that the



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petitioner did not have the requisite 8 years regular service as Ex En. Therefore, the non-grant of 2nd TBPS is strictly as per Office Order dated 23.07.1997.

16. Mr. Prabhakar next argues that the submission of the petitioners in respect of Clause (ii) of the Office Order dated 23.07.1997 is purely misreading or truncated reading of the said clause. He explains this by referring to the further stipulation in Clause (ii) to submit that first part of reckoning of regular service of 8 years in respect of Officers, particularly in respect of Class-I Officers, would be counted towards qualifying service only if they have been appointed on regular basis as per the Recruitment Rules in their own right to the first promotional grade. He submits that in the present case, admittedly, neither have the petitioner been promoted on regular basis nor have the petitioner rendered 8 years of regular service as Ex.En. According to learned counsel, the aforesaid clause if read harmoniously and holistically, the petitioner would not at all be eligible for the 2nd TBPS. In the same breath learned counsel also submits that the aforesaid arguments, apply equally to the case of petitioner namely, Shyam Sunder Mago in W.P.(C) No. 5478/2013.

17. Learned counsel sought to clear the misconception raised by the counsel for the petitioners on similar benefits being granted to the other Ex.En. numbering around 50, by submitting that those were cases where the said employees were considered by the DPC for the post of Ex.En. and the results were kept in sealed cover owing to Court cases. In those cases, wherever the sealed covers were subsequently opened and those employees found eligible, the benefits under the TBPS Scheme was granted. He submits that in the case of the present petitioners, neither any such DPC took place nor were their

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results kept in abeyance on account of pending Court cases. As such, the petitioners cannot take advantage of those cases. Moreover, learned counsel referred to the minutes of the meeting dated 22.03.2001, held in the Chamber of Chairman DVB, wherein as per para 4, in respect of those 50 officers who were working on *ad hoc* basis, it was resolved to grant benefits after proper deliberations and resolution being passed in their favour. However, the same was stated to be a special case and not be quoted as precedent.

18. Learned counsel distinguished the judgment of the Coordinate bench of this Court in **Goswami** (*supra*) to submit that the same is distinguishable on facts. However at the same time, Mr. Prabhakar relies upon para 4 of the said judgment to submit that even the learned Coordinate Bench had infact, referred to the terms of Office Order to state that, the employees who retired between 01.04.1994 and 23.07.1997 would be entitled as and when they complete the requisite period of service. In other words, learned counsel submits that the question of eligibility criteria stipulated in the said Office Order was neither tinkered with nor diluted even by this Court in **Goswami** (*supra*). As such, learned counsel submits that even the judgment of this Court in **Goswami** (*supra*) does not further the case of the petitioners due to lack of eligibility. So far as the other judgments are concerned, he submits that those were in relation to deciding the apportionment of the liability as to which of the respondents would defray the arrears rather than on the entitlement of those petitioners *qua* the said Office Order. On that basis, Mr. Prabhakar submits that in no case have the petitioners been discriminated against nor the petitioners are entitled under the Office Order dated 23.07.1997. He additionally submits that those of such employees who were found eligible as per the conditions stipulated, have all been granted the benefits without

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discrimination. He prays that the present writ petitions be dismissed with costs.

19. In any case, Mr. Prabhakhar vehemently contends that there can be no question of implementation of negative equality in law. In that, in case the employees like the petitioners have been granted benefits of 2nd TBPS by virtue of incorrect interpretation of law or following the previous judgments without examining its applicability to the facts arising in those cases, the present petitioners cannot get any advantage out of it. He submits that this Court, after considering the issue on merits can and ought to distinguish the previous judgments, which according to him were not on merits, and pass a separate and even a divergent opinion qua the previous precedents. He submits that in the previous cases, barring the case of *Goswami (supra)*, in no other judgment subsequent thereto did this Court interpret the conditions of the Office Order dated 23.07.1997. Hence, the same is still open to this Court to consider, interpret and implement without being influenced by the previous precedents. For the said proposition he relies upon the following judgments:-

- a) *Union of India vs. Arulmozhi Iniarasu & Ors*, reported in AIR 2011 SC 2731.
- b) *U.P. State Corporation Limited vs. Sant Raj Singh & Ors*, reported in (2006) 9 SCC 82.
- c) *State of Karnataka & Ors vs. Gadilingappa & ors*, reported in AIR 2010 SC 2458.

CONTENTIONS OF RESPONDENT NO.4/PENSION TRUST :-

20. Mr. S.K. Singh, learned counsel for the respondent no. 4/ DVB Employees Terminal Benefits Fund, 2002 (Pension Trust) submits that the



pressing issue in the present petitions is that whether the petitioners are entitled for 2nd TBPS or not. He further submits that the respondent no. 4 need not make any submissions on the aforesaid issue because, the respondent no. 4 is the Trust created for the disbursement of the pension of the employees of the DVB and certain other retirement benefits.

21. Learned counsel submits that if in case, this Court is inclined to entertain the present petitions and grant the petitioners the Time Bound Promotion as they prayed for, then the consequential benefits would also have to be paid by the respondent no. 2. He relies upon the judgement of the Supreme Court in *NDPL vs. K.R. Jain & Ors*, reported in (2010) 4 Scale 546, whereby the Supreme Court had fastened the liability upon the concerned employer. He submits that *K.R.Jain (supra)* has categorically held that the consequential benefits has to be borne by the deemed employer i.e., respondent no. 2 in this case. So, he submits that the respondent no. 4 has no role *qua* the issue at hand, as all the liabilities of the employees is have to be handled by the transferee company i.e., respondent no. 2 in this case and therefore all the consequential benefits has to be borne by the respondent no. 2.

22. Mr. S.K. Singh, learned counsel submits that the respondent no. 4 is the Pension Trust and as it is already disbursing the pension to the retired employees of the DVS, the respondent no. 4 would only be paying the difference in pension once the salary is enhanced on account of the promotion with effect from as and when the petitioners are entitled, subject to the contribution to the Trust by the respondent no. 2. He further explains his contention by submitting that once an employee retires, certain contribution is made on behalf of the concerned employer on account of the leave salary,



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pensionary benefits etc., and from that the respondent no. 4 would disburse the pension to the employees.

REBUTTAL ON BEHALF OF THE PETITIONERS :-

23. Ms. Kaushik reiterated her submissions as put forward earlier. She also relies upon the minutes of the 46th Board Meeting dated 22.11.2001 of the DVB to submit that even as per the said minutes of the meeting, the period of *ad hoc* appointments followed by regular appointments will count for the grant of time bound scale, there should have been a continuity between the period of *ad hoc* appointment and that of regular appointment. She submits that if the minutes of the meeting are taken into consideration the petitioners would be entitled to 2nd TBPS.

ANALYSIS AND CONCLUSION OF THE COURT:-

24. This Court has heard the arguments of Ms. Kaushik, learned counsel for the petitioners, Mr. Prabhakar learned counsel for respondent no. 2/BSES, Mr. S.K.Singh for respondent no.4/Pension Trust, carefully scrutinized the documents on record and considered the judgments relied upon by the parties.

25. From the arguments and averments in the writ petition as also the counter affidavit, it is apparent that the substratum of the case of the petitioners as also that of the respondent no.2 is primarily predicated on the pure interpretation of the Office Order dated 23.07.1997. Before commencing upon the analysis and interpretation, it would be apposite to reproduce hereunder the complete Office Order dated 23.07.1997:-

“DELHI VIDYUT BOARD

No. F.5 (ii)/A&G/PRC/217

Dated: 23.7.97

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OFFICE ORDER

The Delhi Vidyut Board vide its Resolution NC. 216 dated 16.7.97 has been pleased to approve the introduction of time-bound promotional scales in Delhi Vidyut Board as detailed below:-

(i) All the employees/officers of Delhi Vidyut Board shall be entitled for the first time-bound promotional scale on completion of ten years of regular service, be he a subordinate/ministerial staff member or a group 'A' officer.

(ii) The second time-bound promotional scale shall be given on completion of further eight years of service i.e., 18 years of service in all from the date of induction of an official/officer at the base level on regular basis subject to the condition that in the case of Class-1 officers, second time-bound promotional scale shall be given to such of the officers who have been appointed on regular basis as per Recruitment Rules in their own right to the first promotional grade.

2. Time-bound promotional scale to be allowed under the Scheme shall be next high scale available as per the channel of promotion or in case where either a selection or trade test has been provided as condition precedent to promotion, then the next available scale shall be the time-bound promotional scale of the category.

3. The benefit of time-bound promotional scale shall neither confer on the employee the higher designation of the promotional post nor will dilute the service Rules on recruitment/promotion to such post according to his entitlement in due course.

4. The benefit of time-bound promotional scale shall be given to all the employees of DVB placed in identical scales whether in the ministerial/subordinate cadre or in the Group-A scale provided that the base level in such case shall be induction by direct recruitment and not by promotion as such.

5. The Medical Officer and Teaching staff or any other category of the Board already enjoying the benefit of time-bound promotional scale too shall not be entitled for the above scheme.

6. Once an employee/officer enters into class-I service, in his own right or in the time-bound promotional scales, he shall be dealt with at par with the direct recruits in that grade for the purpose of benefit of next promotional scales.



7. The promotional scale of pay as mentioned above, shall be given on the basis of seniority and requisite qualifying services which means that the period of extra-ordinary leave for private affairs and dies non period, if any, shall not be counted towards qualifying service subject to the following conditions: -

(i) Such employees are fit for promotion on the basis of over-all performance on the recommendation of a D.P.C.

(ii) The scheme will come into force w.e.f. 1.4.94, which means that such of the employees falling under any of the categories shall become eligible for the benefit if next promotional time-scale provided they have put in the requisite service on a regular basis as on 1.4.1994 or thereafter as and when they complete the requisite period of service.

(iii) Such employees will continue to perform the same duties and functions and carry the same designation through their pay under these orders will be fixed under FR- 22(1) (a) (i), if they are absorbed against regular vacancies in the line of their promotion and shall not be entitled to the benefit of any fixation of pay in that scale again.

(iv) Such employees are not continuing in the same category of post as a measure of any disciplinary action against them. The case of persons who were awarded punishment shall be considered, after the punishment period is over. In case of those who have been reverted to a lower post as a result of disciplinary action, their cases shall be considered after the revocation of reversion, if and when it takes place.

(v) Such employees will also be entitled to the benefits such as special pay, conveyance allowance, uniform, washing allowance, including date of retirement, which they were drawing along with the lower post, i.e., in the present scale of pay.

(vi) No anomaly of pay may be claimed by a senior employee vis-a-vis another junior employee merely on the strength of latter getting his placement into the time-bound promotional scale. However, the employees shall have the option to get the timebound promotional scale of pay on completion of the prescribed period or from the date following his next increment in his scale of pay.

8. The above scheme shall be in supersession of earlier Higher Pay Scales Scheme introduced vide Office Order No. F. 2(40)/A&G/PRC/80 dated 16.7.1992.

Sd/-
(Y.D.MEHTA)



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Administrative Officer
(General)

Copies to:

1. *Secretary to Channan, DVB.*
2. *Member (Tech)/Member(Fin)/AGM(A)/AGM (T)/Secretary, DVB*
3. *All Heads of Departments/sections*
4. *Recognised Unions/associations."*

(emphasis supplied)

So far as the entitlement under clause (i) is concerned, since there is no grievance raised thereon and admittedly the petitioners having already received the benefits thereunder, this Court refrains from rendering any opinion thereto.

It is the Clause (ii) which is in controversy. A plain reading of Clause (ii) brings to fore that as per the first part of the same, an employee would be entitled to 2nd TBPS on completion of further 8 years of service, i.e. 18 years of service in all from the date of induction of an official/officer at the base level on regular basis. Till this point in time, it appears that the Clause (ii) takes within its ambit all officers and employees who have fulfilled 18 years of regular service in all, till the effective date. However, it is relevant to note that the first part of the Clause (ii) is subject to certain conditions which are more clearly enumerated in second part of the same. More particularly, it appears from the plain reading that the conditions are stipulated with respect to the cases of Class I Officers alone. It is relevant to note that the conditions stipulate that in the case of Class I Officers, 2nd TBPS shall be given to such of the Officers who have been appointed on regular basis as per the RRs in their own right in the First Promotional Grade.

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26. Two things become clear, **(a)** that an employee apart from having completed 10 years, as stipulated under Clause (i), ought to have also completed further 8 years of service, making it a total of 18 years of service in all from the date of induction; and **(b)** in case of Class I Officers, 2nd TBPS would be granted to those Officers only who have been appointed on regular basis as per the RRs. It is clear that in case the petitioners fulfill both the conditions, then they would be entitled to 2nd TBPS. So far as the first condition of 8 years service is concerned, there appears to be no impediment in interpretation as it is plain and simple. However, the condition that the said 8 years of service ought to be on regular basis as per the RRs on the First Promotional Grade i.e., in the case of the petitioners, who claim to be appointed as Ex.En. seek an entitlement of 2nd TBPS to the post of Superintending Engineer, is the one that needs closer scrutiny.

27. The aforesaid stipulation appears to be reiterated in clause (ii) of para 7 of the aforesaid Office Order. According to the said Clause of para 7, the employees falling under any of the categories stipulated above, would become eligible for the TBPS to the next promotional scale, “*provided*” that such employees have put in the “*requisite service*” on a regular basis as on 01.04.1994 or thereafter, as and when they complete the requisite period of service. Clause (ii) of para 7 makes it clear that the conditions stipulated in Clause (ii) at the outset of the said Office Order has to be read conjunctively and harmoniously with each other to bring out the true purport and import of the Office Order dated 23.07.1997.

28. The petitioners in these cases are not seeking 2nd TBPS from the post of AE to the post of Ex.En. in which they would have, in all probability, completed the 18 years of continuous regular service. The petitioners are



seeking the 2nd TBPS for the promotional post of Superintending Engineer from the post of Ex.En. Thus, this Court needs to consider whether the services rendered by the petitioners as Ex.En. falls within the Clause (ii) of the Office Order read with Clause (ii) of para 7 of the Office Order dated 23.07.1997.

29. Before advertng to the facts of each of the petitioners, this Court also finds it imperative to consider the judgment of Coordinate Bench of this Court in **B.S. Goswami** (*supra*). A perusal of the said judgment brings to fore that the facts obtaining in respect of the petitioners therein was not adverted to in detail, and only the effect of the Office Order dated 23.07.1997, as to from when it would become applicable and under what circumstances alone was considered by this Court. In those particular circumstances, this Court held as under:-

“3. By a resolution dated 16.7.1997, being Resolution No. 216, DVB accepted the said recommendation of Justice J. D. Jain (retired) Committee and passed a resolution to implement the same. Office order dated 23.7.1997 was issued in terms of the resolution dated 16.7.1997.

Inter-alia, the office order stipulates as under:-

XX XX XX XX XX XX

(ii) This scheme will come into force w.e.f. 1.4.1994, which means that such of the employees falling under any of the categories shall become eligible for the benefit of next promotional time scale provided they have put in the requisite service on c. regular basis as on 1.4.1994 or thereafter as and when they complete the requisite period of service.”

XX XX XX XX XX XX XX

4. To my mind, the resolution and the office order containing the stipulation aforesaid is quite clear and admits of no exception and needed to further interpretation. The language of the office order clearly reveals that tile riglht to the benefit of tile next time bound promotional scale as per



the scheme came into effect as on 1.4.1994, meaning thereby that such of the employees who became eligible for the benefit of next promotion, on fulfilling the eligibility criteria of having put in the requisite service as on 1.4.1994 became entitled to the next promotional scale. Further, employees who became eligible after 1.4.1994 were also entitled to the said benefit as and when they completed the requisite period of service.

5. Notwithstanding the aforesaid clarity in the resolution and the office order, DVB had certain doubts as to whether employees who had otherwise become eligible for benefit of the next promotional time bound scale as on 1.4.1994, on ceasing to be in service as on the date when the office order dated 23.7.1997 was issued were or were not eligible for the benefit under the scheme. Reference made to the Government of India was replied to by the Government with a clarification that benefit would ensure to only such employees who had ceased to be in service of the DVB on or after 23.7.1997. Acting under the clarification issued by the Government of India, DVB implemented the office order and granted benefit to the employees who ceased to be in service after 23.7.1997. With the implementation aforesaid by the DVB, some of the petitioners got the benefit but those who ceased to be in service between, 1.4.1994 and 23.7.1997 are still deprived the benefit.

6. The resolution of the DVB as contained in the office order dated 23.7.1997, relevant extract whereof has been noted by me above, is clear and hardly need any elaborations. The time bound promotion envisaged under the scheme has to be implemented with effect from 1.4.1994 and all those who had put in the requisite service on regular basis as on 1.4.1994 or thereafter are entitled to the benefit of the next promotional time bound scale.

7. Writ petitions are accordingly allowed. Mandamus is issued to be Delhi Power Company limited or any other successor company of DVB to forthwith give benefit to the petitioners who ceased to be in the employment of DVB between the dated 1.4.1994 till the date 23.7.1997, with effect from the date they became eligible for the benefit of the time bound promotional scale as per the scheme notified, vide office order dated 23.7.1997. Arrears be paid within four- months, failing which the arrears would be paid with interest at the rate of 6% per annum from the date of this order till the date of payment. Needless to state, pensionary benefits of the petitioners would be suitably revised.

8. In the facts and circumstances of this case, there shall be no order as to costs.

9. A copy of this order be given dasti to the learned counsel for the parties.”

(emphasis supplied)



As is clear from the above, the individual entitlements of the petitioners, in that case was not the subject matter of dispute as it appears. However, in the present case, learned counsel for the respondent no.2 had vehemently contended that even in the case of **B.S. Goswami** (*supra*) the Court had still emphasized on the employees being eligible after 01.04.1994 and the benefit accruing to them as and when they completed the requisite period of service. Considering the said argument, this Court also agrees with the said contention for the reason that even the coordinate bench in **B.S. Goswami** (*supra*) did not deal with the circumstances under which an employee would or would not be eligible to be entitled for the benefits of TBPS Scheme. Thus, the said issue in the opinion of this Court, with due respect and in all humility, would be open to consideration.

30. To the aforesaid observations, this Court draws support from the following judgments:-

i) **Sant Raj Singh & Ors** (*supra*) and the relevant para is extracted hereunder:-

“22. The first respondent admittedly did not possess the requisite qualification. He merely claimed a higher scale of pay only because Shri B.P. Srivastava and Shri Shyam Sunder Shukla had been paid. It has not been disputed before us that the case of Shri Srivastava stood on a different footing and his scale of pay had to be protected in terms of Section 16 of the Act. So far as Shri Shyam Sunder Shukla is concerned, we may proceed on the basis that the Corporation took a wrong decision. The said decision, however, was not questioned by the first respondent before the High Court. No foundational facts had been placed before the High Court in relation thereto. We would not like to enter into the controversy as to whether his case could have been considered by the Committee or on what basis the Committee considered the cases of seven candidates and granted higher scales of pay to four candidates as the validity thereof is not in question. Assuming that the Corporation was wrong, the same by itself would not clothe the first respondent even (sic with a) legal right to claim a higher scale of pay. On what basis the Selection Committee selected four employees out of the seven is not



known. Three persons admittedly were not selected. If the plea put forward by the respondent is accepted, these employees also would be entitled to the same scale of pay as given to the said Shri Shukla, although they have been found to be not fit therefor. Educational qualification was made the basis for a valid classification in the matter of payment of salary in a particular scale of pay by the Wage Board itself. Only in the year 1989, such a classification was obliterated. The first respondent had been granted the benefit of the recommendations of the Third Wage Board also. It was a matter of policy decision for the Corporation to consider as to whether a particular category of employees should be taken outside the purview of the pay scales recommended by the Wage Board and place them in a higher scale of pay. We, therefore, cannot accept the contention of Shri Dwivedi that only because no such qualification was prescribed at the time of recruitment, the classification made on that basis would be bad in law. Even otherwise the said contention is not correct as the scale of pay was determined by the award of the Wage Board."

ii) ***Union of India vs. International Trading Company***, reported in (2003) 5 SCC 437 and the relevant paragraph is extracted hereunder:-

"A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short 'the Constitution') cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case."

From the above judgments it is clear that this Court is not precluded from considering the issue agitated above. In that view of the matter, this Court is of the considered opinion that the case of the petitioners has to be appreciated and their eligibility tested on the basis of Clause (ii) of the Office Order read with Clause (ii) of Para 7 of the said Office Order dated



23.07.1997. Thus, respectfully, in the opinion of this Court, the earlier judgments would not be a binding precedent to the aforesaid extent only.

31. Ms. Kaushik had also relied upon the Minutes of the 46th Meeting of the Board dated 22.11.2001 of the DVB to draw support therefrom. This Court has perused the said minutes of the Board Meeting and is unable to agree with the contentions of Ms. Kaushik. This is for the reason that para 2 of the minutes of the said Board Meeting categorically provided that the continuity of the period between *ad hoc* appointment and that of regular appointment alone would entitle the employee to the benefits of TBPS. Though, it is true that *ad hoc* appointments were to be taken into consideration, however it was also simultaneously stipulated that the whole period would then be counted as a continuous service period. Thus, in case, the requisite period fell short on account of services not being regularized, the said para may not be applicable to an employee. As such, the reliance on the minutes of the said Board Meeting does not enure to the benefits of the petitioners.

32. Ms. Kaushik had also pointed out to the chart placed on record on behalf of the petitioners in respect of similarly placed employees who joined as Inspectors in DESU and were working as Superintendent (T) and were granted 2nd TBPS. Though Ms. Kaushik had referred to cases of one Mr. S.C. Sharma and Mr. K.L. Katyal who, according to her, were granted 2nd TBPS, however, nothing has been placed on record by way of a documentary proof to indicate or establish as to when the said Mr. Sharma and Mr. Katyal were appointed as Ex.En., either on *ad hoc* basis or on regular basis. As such, merely by filing the said office orders granting them TBPS *w.e.f.* 01.04.1994 would not enure to the benefit of the petitioners. That apart, Ms. Kaushik had also referred to two employees, namely, Mr. R.V. Virdhi and Mr. B.L.



Chaddha in order to find support for her case. As is clear from the chart, Mr. Virdhi was promoted as Ex.En *w.e.f.* 17.01.1983 and Mr. Chaddha from 08.03.1985 and hence had become eligible for the 2nd TBPS apparently after having completed 8 years of service at the post of Ex.En. Thus, even the comparative chart placed on record by Ms. Kaushik does not support the case of the petitioners.

33. That having been said, it is noticed that the Coordinate Bench in ***B.S. Goswami*** (supra) did infact take note of the fact that the employees would be entitled as and when they completed the requisite period of service. It is obvious that this Court needs to now consider as to whether the petitioners completed their requisite period of service in terms of Clause (ii) of the Office Order read with Clause (ii) of para 7 of the Office Order dated 23.07.1997.

W.P.(C) 495/2010 (R.K.CHOUDHARY'S CASE)

34. Though the petitioner i.e., R.K. Choudhary had not given details of the employment of the petitioner with the erstwhile DVB and the respondent no.2, however, the respondent has in its additional affidavit dated 21.04.2016 succinctly brought out the various stages of the petitioner's status in the respondent company. As per the additional affidavit, which has not been rebutted or disputed by the petitioner, the petitioner was appointed as Inspector on 25.01.1959 and promoted to the post of Superintendent (T) on 27.05.1968. On 13.07.1975 the petitioner was promoted to the post of AE and subsequently to the post of Ex.En. on *ad hoc* basis on 30.06.1994. It is not disputed by the petitioner that he had retired on 31.10.1995. Even if this Court were to go by the contentions of the petitioners, that the petitioner was promoted as Ex.En. on 29.06.1994 *w.e.f.* 31.03.1993, even then till 31.10.1995, the petitioner did not complete 8 years of requisite service as



stipulated in Office Order dated 23.07.1997. In that view of the matter, it is apparent that the petitioner did not fulfill the basic conditions stipulated for Class I Officers in Clause (ii) read with Para 7 (ii) of the Office Order dated 23.07.1997. Consequently, the petitioner Mr. R.K. Choudhary, would not be entitled to 2nd TBPS in the considered opinion of this Court.

35. In that view of the matter, the contentions of the petitioner are wholly untenable and are rejected. The writ petition therefore, is dismissed without any order as to costs.

W.P.(C) 5478/2013 (SHYAM SUNDER MAGO'S CASE)

36. So far as the case of the petitioner Mr. Shyam Sunder Mago is concerned, as per the counter affidavit of respondent no.2, the petitioner was appointed as Inspector on 26.11.1959 in the pay scale of Rs.180-380/-. He was promoted as Inspector Grade I on 04.12.1964 in the pay scale of Rs.250-380/-. The petitioner was further promoted as Superintendent (T) on 08.08.1968 in the pay scale of Rs.325-575/-. He was promoted as AE on 21.10.1974 in the pay scale of Rs.450-4000/- and was allowed selection grade on 13.05.1982 on the pay scale of Rs.1700-2000/-. The petitioner is stated to have been promoted as Ex.En. on *ad hoc* basis on 07.12.1989 in the pay scale of Rs.3000-4875/-. It is also stated that the petitioner had retired on 31.01.1998. It was submitted by the respondent that the petitioner in the present case too is not entitled on account of, **(a)** having been granted three past promotions and ; **(b)** since the appointment as Ex.En. was on *ad hoc* basis and not regular basis, he would be disentitled under Clause (ii) of the Office Order dated 23.07.1997.



37. So far as the present petitioner is concerned, his case does not appear to be similar to that of the other petitioner i.e., Mr. R.K. Choudhary in W.P. (C) No. 495/2010.

38. In the present case, it is undoubted that the petitioner was appointed on *ad hoc* basis on 07.12.1989 as Ex.En. and had been discharging his duties and responsibilities on the said post through till 31.01.1998. It is apparent that the petitioner had already rendered service as Ex.En. for more than 8 years by the time he superannuated. Thus, to the extent of the period of service as stipulated in the Office order dated 23.07.1997, the petitioner fulfilled the said condition.

39. In so far as the contention that the petitioner had not rendered regular service as Ex.En. is concerned, the same is belied by the averments in the counter affidavit itself. To make things more clear, the relevant unnumbered sub-para of para (2) at page 126 of the paper book is extracted hereunder:-

“Shri S.S. Mago was a diploma holder and was promoted to the post of XEN against 10% quota whereas degree holders were being promoted against 90% quota and their regularization was to be made through UPSC. In the case of Shri Mago he was not regularized. Hence he was not eligible for the grant of second time bound promotional scale.”

From a reading of the aforesaid averment, in the counter affidavit it is apparent that the petitioner was promoted to the post of Ex.En. against 10% quota granted to Diploma holders. This promotion apparently is to be construed as having been granted against available vacancies to the extent of the 10% quota. The argument that the petitioner was not regularized is rendered untenable keeping in view the fact that the petitioner was indeed selected and promoted to such post even though on an *ad hoc* basis but against a regular and available 10% quota. That apart, there is no reason provided as



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to why in the present case, the decisions taken in the 46th Board Meeting dated 22.11.2001 ought not to be extended to the petitioner. Clearly, it cannot be the fault of the petitioner that from 07.12.1989 till 31.01.1998, the petitioner was not considered for regularisation. Nothing has been placed on record by the respondent to show or indicate as to what steps were taken to regularise the petitioner during the relevant period. Equally there is nothing placed on record to show that the petitioner was disqualified or disentitled for regularisation. For such serious lapses of respondent no.2, the petitioner cannot be put to a disadvantage or detriment.

40. In that view of the matter, this Court is of the considered opinion that so far as the petitioner in this writ petition is concerned, a case for grant of 2nd TBPS is made out and accordingly allowed.

41. As a consequence thereto, the petitioner would be entitled to all consequential financial benefits on the implementation of 2nd TBPS from the effective date till the date of superannuation and would be also entitled to the impact of the same on the pensionary benefits accruing to him on such application of 2nd TBPS.

42. The respondent no.2 and 4 are therefore, directed to calculate the financial benefits accruing to the petitioner as a consequence of the aforesaid directions, within a period of 12 weeks from today and release the same within the said timeline.

43. The present writ petition bearing W.P.(C) No. 5478/2013, to that extent, is allowed with no order as to costs.

TUSHAR RAO GEDELA, J.

JULY 1, 2024/aj

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