



2024:DHC:7856



\$~1 and 2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 23rd September, 2024*

1

+ W.P.(C) 2948/2013

ROSHAN LAL

.....Petitioner

Through: Mr. Bhim Sain, Advocate

versus

GOVT OF NCT OF DELHI & ORS

.....Respondents

Through: Mr. Sandeep Prabhakar and Mr. Vikas
Mehta, Advocates for R-2.

Mr. S.K. Singh, Advocate for R-3.

2

+ W.P.(C) 6399/2013 and CM APPL. 14506/2022

SH. AKHTAR ALI

.....Petitioner

Through: Mr. Bhim Sain, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Sandeep Prabhakar and Mr. Vikas
Mehta, Advocates for R-2.

Mr. S.K. Singh, Advocate for R-3.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. These writ petitions have been filed by the Petitioners seeking implementation of order dated 21.12.1999 issued by Delhi Vidyut Board ('DVB') providing for grant of 3rd Time Bound Promotion ('TBP') scales to members of subordinate/ministerial staff. Since both petitions raise an



identical question of law, with the consent of the learned counsels they were heard together and are being decided by this common judgment.

W.P.(C) 2948/2013

2. Petitioner was selected and joined the post of Junior Clerk/Telephone Operator in Delhi Electric Supply Undertaking ('DESU'), erstwhile DVB on 20.10.1964. He was promoted to the post of Senior Clerk in DESU vide office order dated 16.06.1981 w.e.f. 01.07.1981. DESU (DMC) Employees Higher Scale of Pay Regulations, 1995 ('Regulations 1995') were approved by Municipal Corporation of Delhi ('MCD') and were notified on 30.03.1995. Petitioner got his second promotion to the post of Head Clerk on *ad-hoc* basis vide order dated 10.07.1997 w.e.f. 24.07.1997 and retired on superannuation from DVB on 31.10.1997 after completing more than 26 years of service.

3. It is averred that on 23.03.1997, DVB issued an office order providing for grant of 1st and 2nd TBP Scales to its employees who did not get promotion after completing 10 and 18 years of service respectively. On 21.12.1999, another office order was issued for grant of 3rd TBP Scales on completion of 26 years of service.

4. Case of the Petitioner is that he was inducted on the post of Junior Clerk in DVB on 20.10.1964 and while he was given 1st and 2nd TBP Scales, he was deprived benefit of 3rd TBP Scale on the next higher post of Superintendent (Clerical) on completion of 26 years of service from the date of induction.

W.P.(C) 6399/2013

5. Petitioner was appointed as Junior Clerk in DESU vide order dated 11/12.07.1963 and joined on 24.07.1963. He was given 1st promotion to the



2024:DHC:7856



post of Senior Clerk in DESU vide order dated 16.06.1981 w.e.f. 25.09.1974. Petitioner got his 2nd promotion to the post of Head Clerk on *ad-hoc* basis w.e.f. 17.02.1992 vide office order dated 29.01.1992. A charge-sheet was served on the Petitioner on 15.10.1992 and he retired from the service of DVB on the post of Head Clerk (*Ad-hoc*) on 31.03.1996.

6. It is averred in the writ petition that from 01.04.1996, Petitioner was drawing his pension as Head Clerk but pursuant to a penalty imposed on 21.01.1998 in the disciplinary proceedings there was a cut of 20% in his monthly pension for 2 years. Post the retirement of the Petitioner, DVB issued an order providing for grant of 3rd TBP for those employees who had completed 26 years of service and had not got 3rd promotion. On 29.07.2011, Sh. Madan Lal Sharma, who was junior to the Petitioner and was appointed as Head Clerk on *ad-hoc* basis was given 3rd TBP Scale to the next higher post of Superintendent (Clerical).

7. Common contentions of the Petitioners are that on completion of 26 years of service from the respective dates of their induction, they ought to have been given 3rd TBP Scales as both had not earned 3rd promotion in the normal course and had completed 26 years of service on the dates from which they seek the said scale. The argument is that Regulations 1995 were notified by DESU on 30.03.1995 which provided that service means regular service in the cadre including *ad-hoc* service and after the enactment of Delhi Electricity Reforms Act, 2000 ('2000 Act'), vide notification dated 26.06.2002, DVB was unbundled into 6 companies, i.e. one holding company (Delhi Power Company Limited), one generation company (IPGCL) and 3 distribution companies (BSES-YPL, BSES-RPL and Tata Power Delhi Distribution Limited). Employees of erstwhile DVB were



transferred to IPGCL, DTL, BSES-RPL, BSES-YPL and Tata Power Limited on as-is-where-is basis. Section 16 of 2000 Act provided that on transfer of personnel to the new entities their terms and conditions of service shall not be inferior to those applicable immediately before the transfer and therefore, the service rendered by the Petitioners even on *ad-hoc* basis has to be treated as regular service. In this view of the matter, appointments of the Petitioners as Head Clerks cannot be considered as an *ad-hoc* service for grant of 3rd TBP Scale, which is the sole reason for declining the said scale. It is also urged that juniors of the Petitioners have been regularised and therefore, even assuming that the appointments of the Petitioners were on *ad-hoc* basis as Head Clerks, the same would have to be regularised as differential treatment cannot be meted out to them qua their juniors.

8. Mr. Sandeep Prabhakar, learned counsel appearing for BSES-RPL in W.P.(C) 2948/2013 and BSES-YPL in W.P.(C) 6399/2013 submits that the claim of the Petitioners for 3rd TBP Scales is wholly misconceived besides the fact that the petitions are barred by delay and laches. It is argued that office order dated 21.12.1999, by which 3rd TBP Scale was introduced, clearly provides that benefit of 3rd TBP Scale shall be given to such of the members of subordinate/ministerial staff who have been appointed on regular basis as per Recruitment Rules in their own rights to the 2nd promotional scale. Petitioners were promoted to the post of Head Clerk on *ad-hoc* basis and their services were never regularised till the date of their superannuation and it is for this reason that the erstwhile DVB/DESU did not consider their claims for 3rd TBP Scale.

9. Reliance on regularisation of the services of the juniors of the Petitioners is misplaced for the reason that they were regularised after the



retirements of the Petitioners which is evident from the office orders regularising their services. Respondents have also raised arguments on the liability *inter se* them in case the writ petitions are allowed with respect to payments in wake of unbundling of DVB.

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

11. The first and foremost issue that arises for consideration before this Court is whether Petitioners were entitled to 3rd TBP Scales inasmuch as if the answer to this question is negative, Court need not detain itself with examining the next issue as to which of the Respondents will bear the liability of payments.

12. As brought out in the additional affidavit filed on behalf of BSES-RPL, prior to introduction of policy regarding grant of TBP Scales, a scheme to allow higher scale of pay on completion of 11 years of service in the grade to an employee based on overall performance was in existence. This policy was circulated on 16.07.1992 and employees who were eligible were paid remuneration either on 01st of April or 01st of October in any calendar year. TBP Scheme was issued by DVB vide order dated 23.07.1997 effective from 01.04.1994. As per clause (i) of the scheme, subordinate/ministerial staff member or Group-A officer became eligible for 1st TBP in the next promotional scale, provided he had put in requisite service of 10 years on regular basis as on 01.04.1994. The scheme also provided for 2nd TBP Scale on completion of further 8 years of service, i.e. 18 years of service from induction at base level. Subsequently, an office order was issued on 21.12.1999 introducing 3rd TBP on completion of 26 years of service at base level, subject to the condition that the incumbent had been



2024:DHC:7856



appointed on regular basis as per Recruitment Rules in his own right to the 2nd promotional scale.

13. Petitioner in W.P.(C) 2948/2013 was promoted to the post of Senior Clerk on 01.07.1981 and was promoted as Head Clerk on 24.07.1997 but on *ad-hoc* basis, which is very evident from the promotion order placed on record. Petitioner in W.P.(C) 6399/2013 was promoted to the post of Head Clerk as a 2nd promotion on 29.01.1992 also on *ad-hoc* basis. Therefore, as rightly pointed out by Mr. Prabhakar they cannot be granted 3rd TBP Scale in view of a clear stipulation in the office order dated 21.12.1999 that the 2nd promotion should be as per Recruitment Rules on regular basis. For ready reference, office order dated 21.12.1999 providing for 3rd TBP Scale is extracted hereunder:

“DELHI VIDYUT BOARD

No. F.5 (ii)/A&G/PRC/97/Part-III/63

Dated: 21st Dec, 1999.

OFFICE ORDER

In continuation of office order No. F.5 (ii)/A&G/PRC/217 dated: 23.7.97 it is hereby circulated that Delhi Vidyut Board vide Resolution No.43.99/574A dated 2-11-99 has been pleased to approve that all the ministerial/subordinate employees who are in service below the rank of Asstt. Engineer shall be entitled to the benefit of third time bound promotional scale on completion of another eight years service i.e. 26 years in all from the date of their entry into service at the base level on regular basis. The benefit of grant of third time bound promotional scales shall be given to such of the members of subordinate/ ministerial staff who have been appointed on regular basis as per recruitment rules in their own right to the 2nd promotional scales. The other terms and conditions will be same as mentioned in the office order dated 23-7-97 subject to the condition that arrears shall be paid in installments to be decided later on.

Sd/-

(Y.D.MEHTA)

Administrative Officer (General)

Copies to:

1. Secretary to Chairman, DVB.

2. Member (Tech)/Member (Fin)/AGM (A)/AGM(T)/Secretary, DVB



2024:DHC:7856



3. *All Heads of Departments/sections*
4. *Recognised Unions/associations.*”

14. Reliance by the Petitioners on Regulations 1995 or Section 16 of 2000 Act is misplaced for the reason that none of these even remotely deal with the TBP Schemes, provisions of which alone will govern the grant of 3rd TBP Scale. Petitioners have not been able to controvert that their services were ever regularised prior to their superannuation and there cannot be a deemed regularisation in service jurisprudence. Moreover, Petitioners even today in the present writ petitions do not seek a declaration for regularisation. Much was argued by learned counsel that the juniors have been regularised. Office orders placed on record clearly evidence that the juniors of the Petitioners were regularised post the retirements of the Petitioners and it is not the case of the Petitioners themselves that the regularisation orders were issued when the Petitioners were in service bypassing them or overlooking their rights.

15. For all the aforesaid reasons, there is no merit in the writ petitions and the same are hereby dismissed. Pending application also stands disposed of.

JYOTI SINGH, J

SEPTEMBER 23, 2024/kks