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

+ W.P.(C) 6215/2014

C.K. JAIN

.....Petitioner

Through: Mr. Avadh Bihari Kaushik, Mr. Rishabh Kumar, Ms. Saloni Mahajan and Mr. Prateek Goyal, Advocates.

versus

DELHI TRANSCO LTD.

.....Respondent

Through: Mr. Lokesh Malik, Mr. Shreesh Pathak, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

28.10.2024

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1. This writ petition has been filed on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to impugned communication dated 14.08.2014, whereby Petitioner was informed of the rejection of his representation dated 17.05.2014 with respect to grant of 3rd time bound promotion to the post of Deputy General Manager (Civil) in terms of the policy of the Respondent. Writ of *mandamus* is sought for a direction to the Respondent to grant benefit of 3rd time bound promotion to the Petitioner in the pay scale of DGM (Civil) w.e.f. 24.08.2007.

2. Case of the Petitioner as set out in the writ petition is that Petitioner joined Delhi Electrical Supply Undertaking ('DESU') in June, 1972 as Overseer/Inspector/Junior Engineer (JE) (Civil) and was promoted as Assistant Engineer (AE) Civil on 27.12.1991 on *ad hoc* basis upto 31.03.1992 or till such time the post was filled up on regular basis or till further orders, whichever was earlier. The erstwhile Delhi Vidyut Board



(‘DVB’) issued an Office Order dated 23.07.1997 introducing Time Bound Promotional Scheme (‘TBPS’) approved vide Board Resolution dated 16.07.1997.

3. It is averred that by order dated 21.12.1999, DVB declared that the Board had vide its Resolution dated 02.11.1999 approved that all the ministerial/subordinate employees who were in service below the rank of AE shall be entitled to 3rd Time Bound Promotion (‘TBP’) on completion of another 08 years of service i.e. on completion of 26 years of service from the date of entry into service at the base level on regular basis. It was also mentioned in the order that the benefit of 3rd TBP will be given to such members who have been appointed on regular basis as per Recruitment Rules (RRs) in their own right to the 2nd promotional scale, however, by a subsequent Office Order dated 10.07.2007, the condition of 2nd promotion on regular basis for grant of 3rd TBP was removed in respect of ministerial/subordinate employees who were below the rank of Assistant Manager i.e. Category-‘B’ and ‘D’ employees, w.e.f. 01.07.2006.

4. Petitioner was given 1st TBP scale of Rs.10000-15200/- (pre-revised Rs.3000-4875/-) vide order dated 13.05.2002 w.e.f. 27.12.2001. As per the hierarchy of the posts in DVB, Petitioner was entitled to next TBP in the post of Executive Engineer (‘EE’)/Manager (Civil). Petitioner asserts that vide Office Order dated 01.01.2003, he was assigned the duty charge of the post of Manager (Civil) without any extra remuneration till the post was filled up on regular basis. This arrangement continued till Petitioner was given officiating charge of Manager (Civil) in the pay scale of Rs.12500-19100/- which was to continue till the post was filled up on regular basis. The officiating charge was withdrawn vide order dated 10.07.2009 and



subsequent thereto, Petitioner retired on 30.11.2009, on attaining the age of superannuation.

5. It is further averred that before retirement, Petitioner had become entitled to 2nd TBP on completion of 18 years from the date of induction to the post of JE but the same was not given and post the retirement of the Petitioner, Respondent/Delhi Transco Limited ('DTL') formed after unbundling of DVB, issued Office Orders dated 02/03.04.2012 and 20.07.2012 allowing 2nd TBP scales to some of its employees. Not being part of this benefit, Petitioner represented on 21.09.2012 for grant of 2nd TBP scale of Rs.12500-19100/- to the post of XEN from 28.08.1999. DTL acceded to the request of the Petitioner and granted him the scale of Manager (Civil) w.e.f. 24.08.1999 by order dated 28.01.2013, which entitled the Petitioner for grant of 3rd TBP in the scale of DGM w.e.f. 24.08.2007 in terms of the Office Order dated 21.12.1999 as by that time, Petitioner had completed 26 years of service reckoned from the date of his entry as JE. Numerous representations made in this respect did not yield any positive result and Petitioner approached this Court.

6. Mr. Kaushik, learned counsel for the Petitioner submits that the action of the Respondent in denying the benefit of 3rd TBP to the Petitioner despite his being fully eligible having completed 26 years of service from the date of entry in service as JE in terms of Office order dated 21.12.1999 read with order dated 10.07.2007 is illegal, arbitrary and discriminatory. Petitioner was initially denied the 2nd TBP while the same was granted to 50 retired employees on completion of 18 years of qualifying service but later, on his representation, Petitioner was granted the 2nd TBP scale in the post of Manager (Civil) w.e.f. 24.08.1999 vide order dated 28.01.2013, which entitled him to the 3rd TBP in the pay scale of DGM from 24.08.2007, but he



was erroneously deprived of the same on the frivolous and incorrect plea that Petitioner was not promoted to the post of Manager (Civil) in his own right under the RRs on regular basis. This, according to Mr. Kaushik, was wholly illegal as Petitioner was promoted as Manager (Civil) on regular basis and assuming for the sake of argument that he was appointed only on work charge/officiating basis, Respondent overlooked its own order dated 10.07.2007, whereby the condition of 2nd TBP on regular basis was withdrawn for category 'B', 'C' and 'D' employees of DTL w.e.f. 01.07.2006 and therefore, this pre-condition could not be imposed on the Petitioner to deprive him of the benefit of 3rd TBP.

7. Learned counsel for the Respondent, *per contra*, opposes the writ petition and submits that by order dated 23.07.1997 erstwhile DVB had introduced TBPS whereby an employee became eligible for grant of 1st TBP on completion of 10 years of regular service from the date of entry into service at base level and 2nd TBP on completion of further 8 years i.e. 18 years from the date of induction at base level, subject to the condition that in case of Class I officers, 2nd TBP was to be given only to those officers who had been appointed on regular basis as per RRs in their own right to the 1st promotional grade. By another order dated 21.12.1999, it was notified that ministerial/subordinate employees below the rank of AE shall be entitled to 3rd TBP on completion of another 8 years of service i.e. 26 years from induction at base level, but this was also subject to the condition that the 2nd promotion was on regular basis as per the RRs.

8. It is pointed out that Petitioner and two other Assistant Manager (AM) (Civil) were given officiating charge of Manager (Civil) keeping in view the fact that no degree holder in the feeder cadre was eligible for promotion on regular basis and this was subject to the condition that the arrangement was



temporary till the posts were filled on regular basis. The *Recruitment and Promotion Regulations* for the post of Manager (Civil) provides for 90% of the posts to be filled from degree holders and 10% from diploma holder AM (Civil). The available vacant post at the relevant time were only under the degree quota but no degree holder was eligible and it is in this backdrop that the Petitioner was given the officiating charge, which was however, withdrawn on 10.07.2009, when the degree holders became eligible and resultantly, posts of Manager (Civil) were filled by promotion from amongst the degree holders.

9. It is further submitted that Petitioner was a diploma holder in Civil Engineering and was only eligible in the 10% quota of diploma holders. Out of the total sanctioned strength of 06 posts of Manager (Civil), 01 post was for diploma holder AM (Civil) and Sh. Sambharwal, who was senior to the Petitioner was promoted against the available vacancy. Since Petitioner was not promoted to the post of Manager (Civil) as per RRs on regular basis in his own right, he was ineligible for 3rd TBP as per which it was mandatory that the 2nd TBP should be on regular basis as per RRs.

10. I have heard learned counsels for the parties and examined their submissions.

11. The moot point arising for consideration before this Court is whether Petitioner is entitled to the benefit of 3rd TBP scale in the post of DGM w.e.f. 24.08.2007, when he completed 8 years of service from the date he was granted 2nd TBP and 26 years of service reckoned from date of his entry into the service as JE (Civil).

12. Broadly understood, case of the Petitioner is that on grant of 2nd TBP scale as JE (Civil) vide order dated 13.05.2002, Petitioner became entitled to 3rd TBP on completion of 8 years under Office Order dated 21.12.1999,



while Respondent contends that for being eligible for grant of 3rd TBP scale, member of subordinate/ministerial staff should have been appointed on regular basis as per RRs in his/her own right to the 2nd promotional scale and Petitioner failed to fulfil this condition as his appointment to the post of Manager (Civil) was initially on work charge basis and later on officiating basis and he was never appointed on regular basis to the said post.

13. Petitioner joined erstwhile DESU in June, 1972 as Overseer/Inspector/JE (Civil). By Office Order dated 27.12.1991, Petitioner was promoted as AE/XEN (Civil) on *ad hoc* basis for a period upto 31.03.1992 or till such time a regular incumbent was appointed or till further orders, whichever was earlier. By order dated 23.07.1997, DVB introduced TBPS whereby all employees/officers of DVB were entitled for 1st TBP scale on completion of 10 years of regular service, be he a subordinate/ministerial staff member or a Group 'A' officer. 2nd TBP was to be given on completion of further 8 years of service i.e. 18 years of service from the date of induction of the employee at the base level on regular basis subject to the condition that in case of Class-I officer, 2nd TBP shall be given to those officers who were appointed on regular basis as per RRs in their own right to the 1st promotional grade. It was further provided that the TBP scale will be the next higher scale as per promotional channel and that benefit shall neither confer upon the employee the higher designation of the promotional post nor dilute the service rules or recruitment/promotion to such post according to his entitlement in due course.

14. By a subsequent order issued on 21.12.1999 and which is the bone of contention between the parties to the *lis*, 3rd TBP was introduced, which was available to all subordinate/ministerial employees who were in service below the rank of AE, on completion of another 8 years service i.e. 26 years



in all from the date of their entry into service at the base level on regular basis. 3rd TBP was, however, like the 2nd TBP hedged with a caveat and the order dated 21.12.1999 itself provided that benefit of 3rd TBP scale shall be given to such of the members of the subordinate/ministerial staff who had been appointed on regular basis as per RRs in their own right to the 2nd promotional scale. It is here that the respective parties join issues.

15. Before proceeding further, it will be important to understand the hierarchy of posts in the Respondent, as brought forth in the writ petition and uncontroverted in the counter-affidavit and relevant paragraph from the writ petition demonstrating the hierarchy is as follows:-

“2.13 That it is apposite to mention here that the hierarchy of posts in the office of the Respondents from the cadre of Overseer/ Junior Engineer/ Inspector (Civil) is as under:-

- (i) Overseer/ Junior Engineer/ Inspector (Civil)*
- (ii) Assistant Engineer/ Asstt. Manager (Civil)*
- (iii) Executive Engineer/Manager (Civil)*
- (iv) Superintending Engineer/ Dy. General Manager (Civil)”*

16. Applying Office Order dated 21.12.1999, it is clear as day that in order to avail the benefit of 3rd TBP in the promotional scale of Superintending Engineer (‘SE’)/DGM (Civil), Petitioner was required to be appointed on regular basis as per RRs in his own right to the feeder post of EE/Manager (Civil). Petitioner admits that by order dated 01.01.2003 he was assigned the duty charge of the post of Manager (Civil) without any extra remuneration and till the post was filled up on regular basis and that by order dated 17.11.2006, Petitioner was given officiating charge as Manager (Civil) in the pay scale of Rs.12500-19100/- till the posts were filled on regular basis, as these are the averments in paragraphs 2.14 and 2.15 in the writ petition. Petitioner has been unable to point out any Office Order by



which he was appointed as Manager (Civil) on regular basis. *Per contra*, Respondent has elaborately explained in the counter-affidavit that Petitioner was never appointed as a regular Manager (Civil) since the posts under R&P Rules were to be filled to the extent of 90% from degree holder AMs (Civil) and 10% from diploma holder AMs (Civil). At the initial stage, no degree holder was eligible and therefore, Petitioner and two other AMs were appointed on work charge/officiating basis as Manager (Civil), pending appointments of degree holders and once the degree holders became eligible, officiating arrangement was withdrawn from 10.07.2009. As far as the quota of diploma holders was concerned, to which the Petitioner belonged, out of total 6 sanctioned posts of Manager (Civil), one post was meant for diploma holder AM (Civil) and this was filled by Mr. Sambharwal, who was senior to the Petitioner and thus Petitioner cannot claim that he was appointed on regular basis on the post of Manager (Civil).

17. This Court finds merit in the contention of the Respondent. A plain reading of the Office Order dated 21.12.1999 makes it clear that the grant of 3rd TBP scale was dependent on fulfillment of two conditions: (a) the subordinate/ministerial employee below the rank of AE should have completed 8 years of service from the date of grant of 2nd TBP and 26 years in all from the date of entry into the service at the base level on regular basis; and (b) the appointment to the 2nd TBP scale should have been on regular basis as per RRs in their own right. Petitioner indisputably fulfills the first condition but fails to meet the second, as he was not appointed on regular basis on the post of Manager (Civil), which was the post below the post of DGM in the hierarchy and to this extent, Petitioner's case has no merits.



18. Faced with this, learned counsel for the Petitioner sought to rely on the second argument that even if Petitioner was not appointed to the post of Manager (Civil) on regular basis as per RRs, he was still entitled to 3rd TBP as the second condition imposed vide order dated 21.12.1999 was subsequently withdrawn by the Respondent by an order dated 10.07.2007. In my view, this argument cannot be accepted. From a reading of the order dated 10.07.2007, it is clear that removal of condition of 2nd promotion on regular basis for grant of 3rd TBP as stipulated in order dated 21.10.1999 was only in respect of subordinate/ministerial employees, who were in service below the rank of Assistant Manager. Petitioner, by own showing, had been promoted as Assistant Manager, first on *ad hoc* basis vide order dated 27.12.1991 and thereafter regularized on the said post. Therefore, the benefit of order dated 10.07.2007 will not be available to the Petitioner and he has been correctly denied the benefit of 3rd TBP scale.

19. For all the aforesaid reasons, there is no merit in the writ petition and the same is dismissed.

JYOTI SINGH, J

OCTOBER 28, 2024/mk