



2024:DHC:766-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 02.02.2024

+ W.P.(C) 2781/2015
UNION OF INDIA & ANR Petitioners
Through: Mr.Akshay Amritanshu, SPC with
Mr. Samyak Jain, Ms.Anjali Kumari and Mr.
Ayush Raj, Advs.

versus
SHRI B. VENKATESAN & ORS Respondents
Through: Mr.P.B.A.Srinivasan, Mr.V.Arvind,
Ms.Srishti Bansal, Mr.Sumit Swami, Advocates

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE GIRISH KATHPALIA

REKHA PALLI, J(ORAL)

1. The present writ petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 23.02.2012 passed by the learned Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') in O.A. No.3091/2010. Vide the impugned order, the learned Tribunal has allowed the Original Application preferred by the respondents by directing the petitioner to examine the case of each of the respondents, along with other eligible officers of DPA Grade A, for promotion to the post of DPA Grade-B against each vacancy year w.e.f. 1995. The Tribunal has further directed that in case any of them are found eligible for promotion against a vacancy for any year prior to 2005, they be granted promotion on notional basis, with those



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already working on the promotional post on ad hoc be also granted consequential benefits.

2. Learned counsel for the petitioner submits that the learned Tribunal has erred in passing the impugned directions to consider the respondents for promotion to the post of DPA Grade-B against vacancies from year 1995. He submits that the Tribunal has failed to appreciate that in fact there was no vacancy in this post for the years prior to 2005. Furthermore, the Recruitment Rules for the said post were notified only in 2010 and therefore no promotions could be made prior thereto. He, therefore, prays that the impugned order be set aside.
3. On the other hand, learned counsel for the respondent supports the impugned order and submits that the learned Tribunal has found that not only were the Model Recruitment Rule available with the petitioners but there were a number of vacancies available since 1998. He further submits that the Tribunal has neither granted promotion to any of the respondents from any particular year nor directed the petitioners to consider them for any particular year, but has merely directed the petitioner to consider the respondents along with other eligible officers of DPA Grade A for promotion to the post of DPA Grade B against vacancies from 1995, as may be available on year to year basis. He, therefore, prays that the writ petition be dismissed.
4. Having considered the submissions of the learned counsel for the parties, we would begin by noting the relevant extracts of the impugned order as under:



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“11. Pursuant to the above, the 2nd respondent undertook further processing and pending notification of RR convened the DPC on 10.06.2005 and granted regular promotion to the applicants in the DPA Grade B with effect from 13.06.2005. Our careful scrutiny of the pleadings manifest that the respondents are responsible for not granting regular promotion. Non-availability of vacancy was problem initially but once some posts were revived and Model RR of 1998 was available with the respondents, even if the DPC met in the year 2005 and RR was notified in the year 2010, the respondents were duty bound to draw up annual promotion panel for regular promotion to the post of DPA Grade-B. However, the applicants may have fulfilled 4 years of regular service on the dates from which they are claiming regular promotion to DPA Grade B, but there are many other factors which are to be examined by the respondents even to consider their claim. Those factors are vacancy position year wise, seniority list of DPA Grade-A officers and eligibility of the applicants in all aspects including educational qualification. It is trite law that the DPC must meet for every vacancy year to prepare a Panel for promotion. In the present case, the above position would be fully applicable. For the above reasons, we direct the 2nd respondent to examine the case of the applicants along with other eligible officers of DPA Grade-A for each vacancy year for the post of DPA Grade-B w.e.f. 1995 and if the applicants are found fit for any earlier year prior to 2005 (the year of their regular promotion), they shall be granted promotion to DPA Grade-B on notional- basis. As three of the applicants have been promoted on ad hoc basis on 6.03.2000, and 19.06.1998 they shall be granted actual pay benefits from their respective date of ad hoc promotion.”

5. From a perusal of the aforesaid extract of the impugned order, we find that, as urged by the respondent, the Tribunal has only directed the petitioners to consider the case of the respondents for promotion from vacancy year 1995 and has not directed grant of promotion from any



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particular year. This direction, as is evident, has not only been made subject to availability of vacancies but also subject to all other relevant factors including their eligibility. We are, therefore, unable to appreciate the plea of the petitioner that promotions have been directed to be given to the respondents despite there being no vacancy.

6. We also do not find any infirmity with the Tribunal's conclusion that once Model Recruitment Rules were already available with the petitioner since 1998, the consideration for promotion against the available vacancies for DPA Grade-B could be carried out on the basis of these Recruitment Rules itself.
7. In the light of the aforesaid, once the impugned order only directs the petitioner to consider the cases of the respondents for promotion against available vacancies and that too by taking into all relevant factors, we find no reason to interfere with the same.
8. The writ petition is, accordingly, dismissed. The petitioners are, as prayed for, granted six weeks time to comply with the impugned order.

(REKHA PALLI)
JUDGE

(GIRISH KATHPALIA)
JUDGE

FEBRUARY 2, 2024/acm