



2025:DHC:2397-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 07.04.2025***+ **W.P.(C) 4412/2025****GOVT OF NCT OF DELHI AND ANR**Petitioners

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD Services with
Mr. Nitish Kumar Singh, Ms.
Laavanya Kaushik, Ms. Aliza
Alam & Mr. Mohnish
Sehrawat, Advs.

versus

PURNIMA GUPTARespondent

Through: Mr. Viraj R. Datar, Sr. Adv.
with Mr. Nitish Chaudhar, Mr.
Shrikant Singh & Mr. Vaibhav
Kaul, Advs.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE RENU BHATNAGAR****NAVIN CHAWLA, J. (Oral)****CM APPL. 20316/2025 (Exemption)**

1. Allowed, subject to all just exceptions.

W.P.(C) 4412/2025 & CM APPL. 20315/2025 (Stay)

2. This petition has been filed by the petitioner, challenging the Order dated 04.10.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in O.A. No. 2168/2024, titled ***Purnima Gupta v. Directorate of Prosecution and Ors.***, allowing the said OA filed by the respondent herein with the following direction:

"13. In view of the observations recorded



hereinabove, the OA is allowed. It is directed that the period of ad hoc service rendered by the applicant on the post of Chief Prosecutor would be reckoned from 31.05.2017, i.e. the date when the vacancies on that post arose, for counting eligibility towards the post of Director (Prosecution)."

3. As a brief background in which the present petition arises, the respondent was promoted to the post of Chief Prosecutor, on an *ad hoc* basis, *vide* Order dated 20.03.2017, on the recommendations made in the meeting of the Departmental Promotion Committee ('DPC') held on 11.01.2017.
4. The UPSC, *vide* Letter dated 02.05.2023, later recommended the names of the candidates duly selected for the post of Chief Prosecutor and based on the same, *vide* Order dated 29.05.2023, the respondent was promoted to the said post on regular basis.
5. The respondent filed the above O.A. before the learned Tribunal, claiming that she should be assigned seniority by counting the period of her *ad hoc* services from 20.03.2017 to 29.05.2023 as regular services for the purpose of promotion to the next post of Director, Prosecution.
6. The learned Tribunal, in its impugned order, has held that though the respondent being at Serial No. 6, could not have been given regular promotion by the Order dated 20.03.2017, as there were only five vacancies, at the same time, thereafter, two further vacancies became available in the year 2017 itself due to the retirement of two persons. Therefore, it was observed that the petitioners did not convene a DPC to promote the respondent on regular basis between



the years 2017 to 2023 and that no justified reasons whatsoever were given by the petitioners for not convening the DPC during this period, except mentioning administrative reasons and the reason of Covid-19 Pandemic, which cannot be accepted. The learned Tribunal, therefore, directed that the respondent's service as Chief Prosecutor should be reckoned from 31.05.2017.

7. In light of the above, the learned counsel for the petitioners submits that the respondent, having been appointed to the post of Chief Prosecutor only on an *ad hoc* basis, cannot claim retrospective seniority and a right to be considered for a promotion to the post of Director, Prosecution from a retrospective date. She submits that having been appointed on a regular basis only by the Order dated 29.05.2023, the seniority of the respondent and her tenure of services as Chief Prosecutor shall commence only from that date.

8. She further submits that the Recruitment Rules for the post of Chief Prosecutor had been amended on 27.05.2022. It was only thereafter that the DPC considered the case of the respondent for promotion to the post of Chief Prosecutor, and finding the respondent fit for such promotion, the said granted promotion was *vide* Order dated 29.05.2023. Placing reliance on the judgement of the Hon'ble Supreme Court in ***State of Himachal Pradesh v. Raj Kumar***, (2023) 3 SCC 773, the learned counsel for the petitioners also submits that even the vacancies arising prior to the promulgation of the amended rules are to be considered under the amended rules and not under the rules which prevailed earlier.

9. She further submits that at best, the respondent only had a right



to be considered for the promotion and cannot claim a vested right for such promotion. She submits that the respondent was considered for the promotion in the meeting of the DPC held on 01.05.2023, and was granted promotion *vide* order dated 29.05.2023, therefore, she cannot claim retrospective seniority and insist on the counting of her *ad hoc* period of services as regular services for the purposes of promotion. She places reliance on the judgement of the Supreme Court in ***Union of India & Anr. v. Manpreet Singh Poonam & Ors.***, (2022) 6 SCC 105, in support of her submissions.

10. On the other hand, the learned senior counsel appearing for the respondent, places reliance on the judgements of this Court in ***Rajan Bhagat v. Union of India & Anr.***, 2014:DHC:7444-DB, ***Union of India v. Deep Chand Sharma***, 2019 SCC OnLine Del 10302, and in ***Municipal Corporation of Delhi v. Rakesh Gupta***, 2024 SCC OnLine Del 2896, to submit that in similar circumstances, this Court has held that where a person, though appointed on *ad hoc* basis, was not considered for a promotion on regular basis only because of non-convening of the DPC, the *ad hoc* period of services should also be considered for promotion and seniority be determined from the retrospective date of *ad hoc* appointment.

11. He also places reliance on the judgement of the Hon'ble Supreme Court in ***P.N. Premachandran Vs. State of Kerala & Ors.*** (2004) 1 SCC 245 in support of his submission.

12. We have considered the submissions made by the learned counsels for the parties.

13. Admittedly, the respondent was appointed on an *ad hoc* basis to



the post of Chief Prosecutor, *vide* Order dated 20.03.2017, as she stood at Serial No. 6 in the said meeting of the DPC convened on 11.01.2017. Therefore, she was found eligible and suitable for promotion *albeit* due to non-availability of regular vacancies, she was given an *ad hoc* appointment.

14. It is also not disputed that at least two additional posts of Chief Prosecutor became available in the year 2017 itself, however, neither was the case of the respondent considered for regularisation against the said vacancies nor was a proposal for convening a fresh DPC was even issued by the petitioners. The next DPC meeting was held only in the year 2023, that is, after a period of six years, though the respondent continued to perform her duties at the post of Chief Prosecutor *albeit* on *ad hoc* basis.

15. Even though, the Recruitment Rules underwent an amendment in the meantime, the respondent was still declared fit for the promotion to the post of Chief Prosecutor by the meeting of the DPC held on 01.05.2023, and accordingly, the Promotional Order dated 29.05.2023 was issued by the petitioners, granting her such promotion.

16. The only question, therefore, which is left to be considered is whether the period of services rendered by the respondent as Chief Prosecutor on an *ad hoc* basis can be counted for the purpose of her being considered for the promotion to the post of Director, Prosecution.

17. In *Union of India v. Harish Chander Bhatia*, (1995) 2 SCC 48, the Hon'ble Supreme Court held that even where a person is



appointed on officiating basis and not on permanent basis, and continues to perform duties for a very long period, then, to deny the benefit of such long period of service for the purpose of seniority is an unjustified and arbitrary act. It was held as under:

“7. Shri Tulsi, however, contends that Rule 25 visualises officiating appointment and not permanent; and that appointment is required to be made when a member of the Service is not available. Though this is so, but the facts of the present case would show that though the appointments were stated to be officiating these continued for a very long period, which in the case of respondent 1 was of about 12 years as he came to be appointed under Rule 25 on 6-11-1972 and was fixed permanently in the slot meant for promotees on 28-7-1984. An officiating appointment for over a decade cannot be treated as fleeting appointment with no service benefits to be given. Any other view would very seriously prejudice such a service-holder who, even after having rendered service equal to those of permanent appointees for a long period, and that too for proper functioning of the Service, would be denied the benefit of the same for no cogent reasons. Any other view is bound to have a demoralising effect in the Service as a whole. As the appointments under Rule 25 are also to duty posts, which may form part of the strength of Service because what has been stated in Rule 4(3), we are of the view that justice of the case and the need to preserve the efficient functioning of the Service would require to treat the appointments of the respondents as permanent, despite their having been first appointment on officiating basis.”

18. In **Deep Chand Sharma** (supra), this Court held that though seniority cannot relate back to the year of vacancy, it should relate back to the date of appointment of a person on *ad hoc* basis. The



relevant extracts from the judgment are reproduced as under:

“14. Another dispute, which has direct bearing on the problem at hand, is as to whether seniority to Respondent Nos. 1 to 38 should be given from the date on which the vacancies arose or from the date on which the said Respondents started working on ad-hoc basis. The Tribunal has directed the present Petitioners to promote Respondent Nos. 1 to 38 on regular basis from dates of the vacancy year/the date of vacancy against which they had already been appointed on ad-hoc basis.

15. Even though the vacancies, against which the ad-hoc promotions took place, arose on different dates in the years 2008-09 and 2009-10, since the present Respondents were appointed on ad-hoc basis against the said vacancies in two tranches, the dates of appointments for the purposes of seniority cannot relate back to the dates when vacancies arose. Instead, seniority had to be counted from the date on which they started functioning on ad-hoc basis, provided vacancies existed on said dates.”

19. This Court, in ***Deep Chand Sharma*** (supra), also placed reliance on the judgement of the Hon’ble Supreme Court in ***P.N. Premachandran*** (supra), wherein it was held as under:

“7. It is not in dispute that the posts were to be filled up by promotion. We fail to understand how the appellant, keeping in view the facts and circumstances of this case, could question the retrospective promotion granted to the private respondents herein. It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on



their part. It is also not disputed, that in ordinary course they were entitled to be promoted to the post of Assistant Director, in the event, a Departmental Promotion Committee had been constituted in due time. In that view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time, although on a temporary basis, but were qualified at the time when they were so promoted and found to be eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect.”

20. In **Rakesh Gupta** (supra), this Court, while accepting the legal proposition that generally *ad hoc* services should not be included towards regular services, in similar facts, found it to be highly unfair to deprive an employee of the benefit of *ad hoc* services when, despite the employee's eligibility and availability of vacancy, the *ad hoc* promotion had continued only due to the non-holding of the DPC, especially in cases where the *ad hoc* services were subsequently followed by regular appointment to the same post. The relevant extracts of the said judgment are reproduced hereinbelow:

“6. From a bare perusal of the aforesaid extract of the decision in K.C. Meena (supra), we find that in the aforesaid case, the Court after noticing the fact that the department was at fault for not conducting DPC for years together had directed that ad hoc service rendered by the employee concerned in the post of Superintending Engineer to which he was subsequently promoted on regular basis, be included for the purpose of considering his eligibility for the post of Chief Engineer. We are, therefore, unable to agree with the learned counsel for the petitioner that the said case did not pertain to the question of counting ad hoc service towards regular



service as an eligibility criteria for further promotion.

7. We have also considered the decision in Cyprian Kujur (supra) relied upon by the petitioner but find that the same is not applicable to the facts of the present case. In the said decision, the Court was dealing with a claim of an employee who was granted an ad hoc promotion as a LDC and was granted regular promotion as a LDC after he qualified the requisite typing test prescribed as a condition for promotion. In the present case, it is undisputed that the respondent was meeting the eligibility criteria for regular promotion to the post of Assistant Director on the date when he was granted ad hoc promotion to the said post. This decision therefore does not forward the case of the petitioner.

8. In the light of the aforesaid, even though we agree with the learned counsel for the petitioner, that generally ad hoc service is not to be included towards regular service, we are of the view that in a case like the present, where despite his eligibility and availability of vacancy, the respondent was considered only for ad hoc promotion as an Assistant Director on 29.08.2007, it will be highly unfair to deprive him of the benefit of the said ad hoc service specially when his ad hoc appointment as an Assistant Director was followed by regular appointment. In our considered opinion, when despite the respondent having rendered more than ten years of service as a Publicity Assistant as against the requirement of three years service for promotion to the post of Assistant Director, the petitioner granted him only ad hoc promotion as Assistant Director on 29.08.2007, no ground is made out to interfere with the directions issued by the learned Tribunal”



21. In *Manpreet Singh Poonam* (supra), the Hon'ble Supreme Court while considering a situation where an employee had taken voluntary retirement even prior to the holding of the DPC, the Hon'ble Court held that the said employee has only a right to be considered for the promotion and not a vested right to a promotional post, and this supervening fact would have a vital bearing on such right. However, for those who remained in services, the Hon'ble Court also approved that where the candidate was found successful in consideration by the DPC, the seniority should be fixed from the year of actual vacancy arising as per the rules therein. The relevant extracts of the judgment are reproduced as under:

“ 17. On facts, there is no dispute that the respondent in Civil Appeal No. 518 of 2017 was given promotion after the successful consideration by the DPC. On such clearance the appellant has rightly fixed the promotion with the year of actual vacancy, as per rules. Thus, the respondent neither on facts nor on law can claim retrospective promotion, and that too from the year 2009 being the year in which he was placed in the select list against a notional vacancy, especially when the then existing vacancy accrued only in the year 2011, when the JAG-I officers were actually inducted into IAS, against which he was promoted. As such, the promotion cannot be granted retrospectively and extended to give benefit and seniority from the date of notional vacancy, causing violence to Rules 4 and 7 of the 2003 Rules.

18. A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post are specifically prescribed under the rules, which also mandate the clearance through a selection process. It is also to be borne in



mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules.

19. In the present case, the authority acting within the rules has rightly granted promotion after clearance of DPC on 17-4-2012 with effect from 1-7-2011, when the actual vacancies arose, which in any case is a benefit granted to the respondent in Civil Appeal No. 518 of 2017. In our view, this exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification.”

22. In **Rajkumar** (supra), that has been relied upon by the learned counsel for the petitioner, the issue before the Hon'ble Supreme Court was whether the vacancy arising prior to the promulgation of the new rules is to be filled as per the old or as per the amended rules. In the present case, this controversy is not germane inasmuch as the respondent has been considered as per the amended rules as well and finding her to be fit for promotion in the meeting of the DPC held on 01.05.2023, she was granted promotion to the post of Chief Prosecutor *vide* order dated 29.05.2023. Therefore, the suitability and eligibility of the respondent to the said post stands established under both the Rules, that is the previous and the amended Rules.

23. As far as the plea of the petitioners is concerned, that the respondent, at the very best, has a right to be considered for promotion



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and cannot claim a vested right for a promotion, we find that the learned Tribunal has not passed any directions to grant promotion to the respondent to the post of Director, Prosecution, but has merely directed a consideration of the case of the respondent for such promotion.

24. The above plea, therefore, also cannot come to the aid of the petitioners.

25. Accordingly, we direct that the effect of the retirement of the respondent on 31.12.2024 shall also be considered by the petitioners, while considering the case of the respondent in terms of the impugned order.

26. In view of the above, we find no merit in the present petition. The same is, accordingly, dismissed. The pending application is also disposed of as having been rendered infructuous.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

APRIL 7, 2025/Pr/M/SJ

Click here to check corrigendum, if any