

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

% Judgment delivered on 03.05.2012

+ W.P.(C) No.561/2003

V.K.JAIN ... Petitioner

versus

UOI & ORS. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Deepak Khadaria, Adv.
For the Respondent : Thakur V.P. Singh Charak, Ms. Shubhra and
Mr. Pushpender Charak, Adv.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

BADAR DURREZ AHMED, J. (ORAL)

1. The petitioner is aggrieved by the order dated 12.09.2002 passed in OA No.1750/2000 by the Central Administrative Tribunal, Principal Bench, New Delhi. The facts are that the petitioner had joined the Indian Railways as an Apprentice in the year 1973. Subsequently, he was appointed as an Assistant Transportation Manager w.e.f. 02.11.1983 which is a Group 'B' post and was promoted to a Group 'A' post in Senior Times Scale on ad hoc basis. While he was so working, he was inducted into Group 'A' Junior Scale by a notification dated 22.07.1992. The petitioner represented to the Secretary, Ministry of

Railways to the effect that his induction to the Group 'A' post should be regularized against the vacancy of the year 1985 instead of the actual induction in 1992. The representation of the petitioner had been rejected on the plea that his promotion w.e.f. 01.06.1992 had been done as his name had been approved by the Union Public Service Commission in 1992 itself.

2. The main plea raised by the petitioner before us is that as per the Recruitment Rules, the DPC should have been convened annually. As per the instructions of the DoPT, the DPC ought to have been convened annually and a selected list ought to have been prepared in respect of each vacancy year. The present post to which the petitioner is claiming promotion arose in the year 1985 but he became eligible for the same only in 1986 on completion of three years in the Group 'B' service w.e.f. 2.11.1983. Before the Tribunal, the respondents had taken the plea that for the preparation of the select panel for promotion, the DPC assesses the suitability of officers on the basis of their record of service with particular reference to the Annual Confidential Reports for five preceding years. According to the respondents, the said reports had to be collected from various Zonal Railways and, therefore, it was taking some time. Ultimately, the petitioner was selected by a regular DPC held in 1992 and, therefore, his regular promotion has been made effective from 01.06.1992.

3. After considering the arguments advanced by the parties before the Tribunal

and certain decisions of the Supreme Court, the Tribunal arrived at the following conclusions:-

“(a) A DPC meeting should be convened at regular intervals to draw panels which could be utilized for making promotions against the vacancies occurring during the course of a year.

(b) A person does not have a right to be appointed or to be promoted, but if there is a mala fide or any other such act of the department, the same can be taken into consideration on those peculiar facts.

(c) If there is delay, the same can be explained.”

4. From the above conclusions, we find that the Tribunal has not discussed the situation where the delay is unexplained. The Tribunal has also only considered the case where there are no mala-fides on the part of the department. In other words, the Tribunal did not at all consider a situation where there are no mala-fides on the part of the department but the delay is unexplained with regard to holding of the DPC.

5. Recently, we had occasion to deal with the aspect of convening of DPCs and as to whether they are mandatorily to be held annually or not, in the case of **Dr. Sahadeva v. Union of India and Ors., W.P.(C) No.5549/2007** decided on 28.02.2012. In that decision, after considering the entire case law on the subject, we had observed and held as under:-

“13. In the case before this Court, the Recruitment Rules are silent as to at what intervals the DPC should meet and make recommendations for promotion against existing/anticipated vacancies. We are not dealing with a case, where there is no Rule or instruction, fixing a schedule for convening DPC and finalizing the promotions. We have, before us, a case where instructions have been issued by the Government, for making promotions in terms of a particular calendar. In our opinion, in the absence of any rules to the contrary, the OMs issued by DoP&T on the subject, from time to time, including the OM suggesting the Model Calendar for DPCs, became applicable and, therefore, it was obligatory for the respondents to adhere to the time schedule laid down in the Model Calendar circulated by DoP&T, for making promotions against the vacancies occurring during the course of a year. The OM, issued by DoP&T enjoined upon the respondents to initiate action, in advance, to fill up the vacancies arisen during the course of the vacancy year. The obvious purpose behind issue of the OMs is to ensure that the work of the Government does not suffer due to the posts remaining vacant, without any reasonable justification.

14. This is not the case of the respondents that OMs dated 08.09.1998 and 13.10.1998, issued by Government of India are not binding on them. The OMs, which reflect the consistent policy of the Government, require all the Ministries/Departments to take note of the instructions contained therein for strict compliance so that the objective of convening DPC meeting and preparing approved select panels as per the prescribed time-frame may be achieved. The concern of the Government on account of delay in convening DPC was conveyed to all the Ministries and Departments vide OM No. 22011/9/98-Estt.(D) dated 14.12.2000 and they were also directed that in case of non-adherence to the prescribed time-frame, steps should be taken to fix the responsibility for the lapse in this regard. Such

instructions issued by the Government are meant for compliance and not for being ignored in an arbitrary manner and unless repugnant to the Recruitment Rules, they supplement the Recruitment Rules and, therefore, have a binding force. The mandatory nature of the OMs can also be gathered from the instruction to fix responsibility for non-adherence to the time schedule fixed therein. We also take note of the view taken by Supreme Court in **N.R. Banerjee** (*supra*) that in the absence of a certificate from the appointing authority that no vacancy would arise or no suitable candidate was available, the preparation and finalization of the yearly panel is a mandatory requirement.

15. We are unable to accept the contention that failure of the respondents to adhere to the Model Calendar suggested in the OMs dated 08.09.1998 and 13.10.1998, would not entitle an employee to seek directions for considering him for promotion as per the time schedule stipulated in the Model Calendar, even if there is no justification for not convening the DPC in terms of the Model Calendar. In our view, if the Department is able to justify the delay in convening the DPC as per the schedule laid down in the Model Calendar, an employee would not be entitled to seek a direction to consider him for promotion in terms of the time schedule stipulated in the Model Calendar. But, if there is no explanation given by the Department for not convening the DPC within the time stipulated in the Model Calendar or the explanation given by the Department is not found acceptable, there would be no justification for making the employees suffer merely on account of inaction or delay on the part of the Department for not convening the DPC and postpone his promotion till the DPC actually met. In our view, in such a case, an employee is entitled to approach the Tribunal or the Court, as the case may be, for a direction to the Department to convene DPC for the relevant vacancy year and in case he is eligible and falls in the zone of consideration, to consider him for promotion, in the year

in which the vacancy against which he was eligible, arose. It is true that no employee has no vested right for promotion, but, the respondents cannot act arbitrarily and without any reasonable excuse defer the meeting of DPC and thereby deprive the employee of his legitimate expectations for being considered for promotion to a post to which he is eligible for being promoted. In such a case, the Tribunal or the Court, as the case may be, ought to step in and direct the respondents to convene DPC for the vacancy year and consider the petitioner if otherwise eligible and falling in the zone of consideration for promotion against the vacancies arise in the vacancy year. Any other view would negate the policy of the Government to prepare the Select List well in advance demoralize the employees and also result in the vacancies remaining unfilled without any reasonable excuse.”

(Underlining added)

6. In terms of the OM dated 08.09.1998 read with OM dated 13.10.1998, the Model Calendar for holding DPCs indicates that for the vacancy year 1987, the crucial date for determining eligibility would be 01.01.1987. Since the DPC was to be held in advance, it ought to have been held between 15th April and August, 1986 and of course the last date by which the approved select penal should have been prepared would have been 31.12.1986. Going by this, since the vacancy year in question is 1985 and because the said vacancy was carried forward to 1987, inasmuch as there was no eligible candidate prior to 01.01.1987, the petitioner's case ought to have been considered, in advance, by the DPC which ought to have been convened between 15th April, 1986 and August, 1986. It is true that the eligibility would have to be construed as on 01.01.1987 but the DPC would have to

be convened in advance in 1986 as indicated above. Unfortunately, this was not done. The only reason whereby the petitioner could have been deprived of his promotion w.e.f. 01.01.1987 would have been if there was some reasonable explanation forthcoming on the part of the respondents for not convening the DPC in 1986. The only explanation that has been offered by the respondents as per the counter affidavit is as follows:-

“The petitioner in his representation dated 10.06.1996 has mentioned about the retrospective effect given to promotion to Group-A/IRTS in respect of some officers. In this connection, it is mentioned that in pursuance of the judgments delivered by the High Courts of Delhi, Allahabad, Punjab & Haryana, Lucknow, the seniority of officers holding posts in Group-C (Traffic Apprentices) in the Northern Railway was revised in 1983. Further action for promotion of those officers on the basis of revised seniority list could not be finalized as seniority was again challenged before the Central Administrative Tribunal, New Delhi. The Hon’ble Tribunal vide their judgment delivered in June, 1986 upheld the seniority list revised in 1983 and directed that promotions be made on the basis of that revised seniority list. The Hon’ble Tribunal vide their judgment dated 14.09.1988 directed that on the basis of revised seniority in Group-C, officers are entitled not only for promotion within group-C but also for further promotion to Group-B, Group-A and Junior Administrative Grade and that these promotions have to be given in accordance with Rules i.e. the date when the juniors were given promotion. Accordingly, the seniority list in Group-C in the Northern Railway was revised and promotions to Group-B made on the basis of that revised seniority list, which had resulted in change in the seniority list in Group-B also. Because of the revised seniority position in Group-B, it became necessary to

review the proceedings of the DPCs held on 15.6.81, 14.9.82, 3.5.83, 23/24.4.85 & 17/18.7.86 for substantive promotion to Group-A/Junior Scale of IRTS in the Northern Railway. On the basis of the review DPC held on 21.5.91, some of the officers recommended by the original DPCs were excluded from the select lists and some officers had to be included. The newly included officers were promoted to Junior Scale of IRTS w.e.f. the same dates on which the officers, who were recommended by the original DPC were promoted. This does not amount to giving retrospective effect to the promotions but was only a revision of the promotions already made.”

(Underlining added)

7. Reading the purported explanation given by the respondents it would be apparent that the Tribunal had rendered its decision in June, 1986 upholding the seniority list revised in 1983 and, that too, with regard to Group ‘C’ posts. The said acceptance of the revised seniority list insofar as the Group ‘C’ posts are concerned did not bring about any change in the position of the petitioner who was holding a Group ‘B’ post. Therefore, there was no impediment in considering the petitioner’s case by convening the DPC in 1986. In any event, the judgment of the Tribunal had already come in June, 1986 and even if we assume that it had an effect on Group ‘B’ posts, the DPC could very well have been convened during the year 1986 itself. There is no explanation as to why that was not done. As such, according to us the respondents have not been able to give any explanation for not convening the DPC in 1986. As a result of this, the mandatory requirement of

convening the DPC in 1986 has been contravened, particularly, in view of our decision in the case of *Dr. Sahadeva* (supra). This being the position, the order passed by the Tribunal, which is impugned before us, cannot be upheld and is accordingly set aside.

8. In view of the facts and circumstances of the case and particularly that the petitioner was otherwise found suitable and had already been given ad hoc promotion, his promotion/induction into Group 'A' would take effect not from 1992 but from 01.01.1987. The petitioner shall get the consequential benefits.

9. The writ petition is allowed. There shall be no orders as to costs.

BADAR DURREZ AHMED, J

V.K.JAIN, J

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