

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No.04/2013

Reserved on: 18.05.2015

Pronounced on:07.10.2015

Hon'ble Mr. Sudhir Kumar Member (A)
Hon'ble Mr.Raj Vir Sharma, Member (J)

Budh Prakash S/o Shri Hira Lal
r/o C-262, LIG Flat, East of Loni Road
Shahdara, Delhi-93.

.. Applicant

(By Advocate: Shri Ravindra S Garia)

Versus

DTC
Through Chairman
Delhi Transport Corporation
D.T.C. H.Q. I.P. Estate,
New Delhi-110002.

...Respondent.

(By Advocate: Ms.Rashmi Priya for Shri J S Bhasin)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA is aggrieved by the delay in the promotion having been accorded to him, for which he claims to have become eligible with effect from the date of promotion of his juniors, i.e., at least with effect from 05.03.2008, on which date certain employees of Delhi Transport Corporation (DTC in short), posted as Assistant Traffic Inspectors (ATI in short), were promoted to the posts of Traffic Inspectors. The applicant claims that he ought to have been promoted, with those employees promoted as ATI on 04.06.1999, granting him parity.

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2. The Respondent-Corporation had issued an order dated 20.05.2011, granting the applicant an "out of turn promotion" for an act of bravery, with effect from 09.09.1998. On 10.10.2011, these employees, who had earlier been promoted as Traffic Inspectors on 05.03.2008, were further promoted as Traffic Supervisors, and on 25.11.2011, a consequential order was issued promoting several employees of the Respondent-Corporation to the posts of Traffic Inspectors which had been rendered vacant on 10.10.2011, with their promotions being given effect to from 28.11.2011. The applicant was also communicated his promotion to the post of Traffic Inspector in the same list, with effect from 28.11.2011, and, after his promotion, vide letter dated 01.12.2011, he was posted to the East Region for further duties.

3. On 23.12.2011, the applicant represented stating that since he had been given an "out of turn promotion" to the post of ATI with retrospective effect from 09.09.1998, some other persons, who were actually promoted later to the post of ATI on 04.06.1999, had been given promotions to the post of Traffic Supervisors on 10.10.2011, but he being senior to the employees so promoted to the posts of Traffic Supervisors, he should have been promoted as such before them. However, on 31.01.2012, the claim of the applicant was rejected by the competent authority.

4. Thereafter, the applicant approached this Tribunal earlier in OA No.967/2012. However, a coordinate Bench of this Tribunal, including one of us, dismissed that OA, vide order dated 10.10.2012, with the following findings:

"6. In view of the aforementioned judgment of the Honble Supreme Court, which has been followed by this Tribunal, since the applicant has not yet completed three years service from the date of his promotion as TI (eligibility condition)

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merely on the basis of his seniority and promotion of his juniors as Traffic Supervisor, he would not be entitled to promotion to the said post. The applicant may work out his right for promotion on completing required length of service as TI. It is not his case before us that his promotion as T.I. should be antedated to the dates of promotion of his juniors (T.I.s). In the present OA he has sought promotion as T.S. for which he is ineligible.

7. OA is devoid of merits and is accordingly dismissed. No costs."

5. Taking a cue from that Order, the applicant has now filed the present OA, covering the ground, which had been pointed out in the order dated 10.10.2012, that it was not his case in that O.A. before us that his promotion as T.I. itself should be antedated to the date of promotion of his juniors (T.I.s), which request has now been made in the prayer portion of the present OA. The applicant has taken the following grounds:

- (a) He should have been promoted to the post of Traffic Inspector at least with effect from 05.03.2008, i.e., the date of promotion of his juniors to the posts of Traffic Inspectors.
- (b) The date of his promotion to the post of Traffic Inspector ought to have been in accordance with his seniority among the ATIs.
- (c) Consequent to his out of turn promotion to the post of ATI with effect from 09.09.1998, he should have been promoted to the post of Traffic Inspector with effect from 05.03.2008;
- (d) The employees, who were promoted to the post of ATI with effect from 04.06.1999, were further promoted to the posts of Traffic Supervisors on 10.10.2011, and because of the respondents not promoting him to the post of TI, his further

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promotional chances to the higher post of Traffic Supervisor has also been affected;

- (e) Despite his being senior to the other employees, who were promoted to the posts of ATIs on 04.06.1999, he is getting less salary and other benefits than his juniors.

6. In Para 6 of the OA, in respect of the remedies exhausted, the applicant has claimed that he had already availed of all the remedies, and the respondents had vide their order dated 31.01.2012, rejected his representation dated 23.12.2011, and a fresh cause of action, different from the OA No.967/2012, had, therefore, emanated. In the result, the applicant has prayed for the following reliefs:

- "a) Grant promotion to the post of Traffic Inspector from the date of promotion of his juniors to the post along with consequential benefits including pay and promotions, in accordance with the seniority consequent to the promotion of the applicant to the post of Assistant Traffic Supervisor with effect from 09.09.1998 and:
- b) That the applicant ought to be given salary and all other benefits which are being given to his juniors according to his promotion and seniority w.e.f. 09.09.1998 before his juniors.
- c) Pass such any other and further reliefs as this Hon'ble Tribunal may deem fit and fine in the interest of justice."

7. The respondent filed the counter reply on 30.04.2013. By way of preliminary objections, it was submitted that when the applicant and the Driver had shown extra ordinary devotion to their duties, and had foiled the attempt of robbery in their bus, the respondent had rewarded both of them, by way of cash reward/advance increments. Being aggrieved by the

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quantum of the said reward, the applicant had filed a Writ Petition before the Hon'ble Delhi High Court, and had prayed for "out of turn promotion" from the date of the incident, as was awarded in the earlier case of two Drivers. The Single Bench of the Delhi High Court had then directed the Respondent-Corporation to grant to the applicant "out of turn promotion" to the post of ATI from the date of the incident. That judgment was later confirmed by the Division Bench of the High Court through judgment dated 06.05.2009 in LPA No.705/2008.

8. In view of this, through DTC Board Resolution No.62/2011, the applicant, along with the concerned Driver, was given an "out of turn promotion" on 20.05.2011, with effect from 09.09.1998, the date next to the date of the incident. The Board, at the same time, approved that both the applicant and the Driver were, as a result, not entitled to the benefit of the earlier decision of the Corporation, of awarding them two increments, and the payments already made on that account were ordered to be adjusted accordingly.

9. It was submitted that by virtue of such "out of turn promotion" to the post of ATIs with effect from 09.09.1998, granted on 20.05.2011, the applicant and his companion Driver were rendered senior in the Seniority List of ATIs, and their service records were accordingly placed before the DPC in its very next meeting held during September-October 2011, for consideration of their cases for promotion to the posts of Traffic Inspectors. Since the applicant, and his companion Driver, were found fit, they were promoted to the post of Traffic Inspector w.e.f. 28.11.2011.

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10. It was submitted that since the applicant was only recently promoted to the post of Traffic Inspector, and he was still performing such duties on officiating basis, and had not yet been confirmed, therefore, his claim seeking promotion to the next higher post/cadre of Traffic Supervisors is neither sustainable, nor applicable, in terms of the Memorandum of Settlement arrived between the Management & Workers Union in 1979, which requires rendering at least three years of service in the next lower category/feeder cadre essential for being eligible to be considered for promotion to the next post (Annexure R-1).

11. It was further submitted that since the applicant was granted an "out of turn promotion" on 20.05.2011 in compliance of the order of the High Court, therefore, he cannot be allowed to take advantage of his ante-dated promotion to the post of ATI for claiming further promotion to the post of Traffic Supervisor as a matter of right, unless he completes the essentially required three years of service in the post of Traffic Inspector.

12. It was further submitted that all the persons who are promoted to the posts of Traffic Inspectors on 05.03.2008, were eligible, having acquired three years' experience, and had, therefore, been given next promotion to the posts of Traffic Supervisors, after completion of three years of their service as T.I.s through letters dated 20.05.2011 and 25.11.2011 (Annexure R-2 Collectively). However, since the applicant and the concerned Driver had been granted only an ante-dated "out of turn promotion", and were thereby rendered senior in the Seniority List of ATIs, therefore, their case had been duly placed before the DPC meeting held during September-October 2011 for consideration of their cases for promotions to the posts of Traffic

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Inspectors and on being found suitable for such promotions, they were promoted to officiate as Traffic Inspectors with effect from 28.11.2011.

13 The respondents relied upon the judgment of this Tribunal in the applicant's earlier OA No.967/2012, decided on 10.10.2012, and submitted that in accordance with the aforesaid judgment itself, without first acquiring the requisite three years' work-experience in the post of T.I. to which he was promoted on 20.05.2011, the applicant is not eligible for grant of further promotion from the post of Traffic Inspector, from the date of promotion of his juniors, along with consequential benefits, including pay and promotion in accordance with the seniority.

14. It was submitted that the respondents have once given him the benefit of his seniority granted with retrospective effect from 09.09.1998 on 20.05.2011, and he was even promoted to the post of Traffic Inspector with effect from 28.11.2011, without insisting upon his having put in three years' required experience in the post of A.T.I. But, since he had not yet completed the minimum required period of three years in the higher category of Traffic Inspector, he is not at all eligible for promotion to the still higher post of Traffic Supervisor. It was submitted that the benefit of his "out of turn promotion" at A.T.I. was to be extended to him for one time, and not on all the occasions. Therefore, the promotion of the applicant to the post of Traffic Inspector was given with prospective effect, and not in conjunction with the benefit of grant of notional seniority with retrospective effect. It was further submitted that the minimum three years' service in the category of Traffic Inspector for his seeking promotion to the next higher post was now mandatory. The respondents had, therefore, prayed that the OA be dismissed, in the interests of justice.

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15. The applicant filed his rejoinder on 08.08.2013. In the rejoinder, he had submitted that when he was promoted as ATI effective from the year 1998, in accordance with the orders of Delhi High Court, other persons, who had been promoted as ATI in the year 1999, were his juniors, and such juniors of his were promoted to the posts of Traffic Inspectors with effect from 05.03.2008. Further, he had submitted that when he was promoted as Traffic Inspector, he ought to have been given seniority in accordance with the date of his retrospective promotion as ATI on 09.09.1998, and he could not have been placed below his juniors, who were promoted as ATI subsequently, from the year 1999 onwards, which has resulted in a situation whereby his juniors were promoted to the still higher post of Traffic Supervisors in the year 2011, while the applicant himself has not been promoted to the post of Traffic Supervisor till date. He had submitted that the Respondent-Corporation is trying to take undue advantage by stating that he has not completed three years' experience in the post of Traffic Inspector, since he was promoted as Traffic Inspector only with effect from 28.11.2011, and he had again prayed that in accordance with his retrospective seniority in the post of ATI granted to him with effect from 09.09.1998, he should also have been simultaneously promoted as Traffic Inspector with effect from 05.03.2008, and that the respondent-corporation cannot be allowed to derive benefit from its wrong of not promoting the applicant as T.I. at least from 05.03.2008.

16. He denied that it is necessary to work on the lower post for three years to be promoted on the next higher post, as per the policy of the Respondent-Corporation, and cited the case of one Shri Hanuman Prasad Kataria in this context, but the full facts of that case are not before us. He

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had, therefore, prayed that the policy adopted in the case of the said Shri Hanuman Prasad Kataria ought to be made applicable to his case also.

17. It was submitted that in this previous order, this Tribunal had observed "it is not the case before us that the promotion as T.I. should be antedated to the dates of promotion of juniors (T.I.s)", and that in the light of this observation, the present OA had been filed for seeking antedating of the promotion of the applicant as T.I. at par with his juniors, i.e. at least with effect from 05.03.2008, the date when his juniors were promoted to that post. It was, therefore, prayed that the OA be allowed, and the applicant be promoted as Traffic Supervisor, giving seniority over his juniors.

18. Along with his rejoinder, the applicant had filed a copy of the order dated 22.11.2012, which is a reply sought under the RTI Act in respect of record of the said **Shri Hanuman Prasad Kataria**, and also a copy of order dated 17.06.2003 with regard to the same person.

19. Heard. The case was argued on the lines of the pleadings. Learned counsel for the applicant tried to cover that ground which had been left out in the previous OA, and had been pointed out in the operative portion of the order passed in the previous OA, as recorded above. He also placed reliance on the ratio of the case in **Union of India & Ors. vs. K.B. Rajoria** (2003) 3 SCC 562, judgment dated 28.03.2000, in which the Supreme Court had held that service means qualifying service, and the word regular does not mean actual, and in the case of supersession, actual service for the prescribed period is not required. It was further laid down that if in a case a minimum period of qualifying service is prescribed for promotion to the higher grade, the period from which the officer concerned was promoted to the higher

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grade should be reckoned towards the qualifying period of service for the purpose of determining eligibility for promotion to the next higher grade. But, on a closer scrutiny, we find that the facts of the present case are not at all on all fours with the case before the Supreme Court, and that the benefit of that judgment cannot accrue to the present applicant.

20. It appears to us that the case of the applicant is still covered on the point of *res judicata*, as mentioned in para 5 of the same order, citing the ratio laid down by the Supreme Court in the case of **R. Prabhadevi v. Union of India & others**, 1988 SCC (L&S) 475, as follows:

"5. As has been held by the Honble Supreme Court in the case of R. Prabhadevi v. Union of India & others, 1988 SCC (L&S) 475, which judgment has been circulated by the Ministry of Personnel, Public Grievances and Pension to different Departments on 22.5.1998, **seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he could be considered for promotion. Seniority cannot be substituted for eligibility nor can it override in the matter of promotion to the next higher post.** The said view was followed by the Cuttack Bench of this Tribunal in Sri R.K. Satapathy v. Union of India & others (OA-293/2009 with other connected matters) decided on 8.12.2010. (not reproduced here).

21. Therefore, in a sense, the issue at hand in the present OA had been settled in the order passed in the earlier OA itself. The antedated promotion as ATI granted to the applicant through order dated 20.05.2011 with effect from 09.09.1998, may be good enough for counting his *inter se seniority* in the cadre of ATIs, but when the eligibility criteria for promotion to the next higher post itself prescribes for three years' actual hands on experience in

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the lower category post for promotion to the higher cadre post, as per the Memorandum of Settlement produced by the respondents at Annexure R-1 of their counter reply, the applicant cannot expect from this Tribunal for this condition of hands on experience for grant of promotion to him to be waived on the basis of his antedated promotion as ATIs with effect from 09.09.1998, only to fetch him higher salary. For further promotion to the next higher posts, it is essential that the applicant should have fulfilled the eligibility criteria required, of three years' actual hands on experience, as already laid down and explained by this Tribunal in order passed in the earlier OA filed by the applicant.

22. However, it is clear that the applicant would have crossed that eligibility criteria, after completion of three years' period from 28.11.2011, in terms of Memorandum of Settlement at Annexure R-2 (collectively), from the date on which he had been granted promotion to officiate as Traffic Inspector, on 27.11.2014. Therefore, the applicant would now be eligible for grant of further promotion in any DPC meeting, which is held on any date after 27.11.2014, though not before that.

23. Since we do not have the facts of the case of Shri Hanuman Prasad Kataria, we cannot explain as to in what circumstances the relevant orders were passed, as mentioned by the applicant in his rejoinder at Annexures A-1 and A-2, and the benefit of the same cannot be granted to him. In any case, there is no concept of a negative equality, and if the orders in that case were passed in a wrong manner, the applicant cannot be allowed to claim for similar wrong orders to be passed in this case also.

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24. Therefore, the OA is disposed off, with the observations, as above, in view of the observations already made earlier in para-5 of the order passed in the applicant's earlier OA No.967/2012. No costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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