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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 22.11.2022

+ W.P.(C) 1600/2019 & CM APPL. 7371/2019

UNION OF INDIA AND ANR. Petitioners

versus

PYARE LAL Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. Ripu Daman Bhardwaj, CGSC for UOI with Mr. Kushagra Kumar, Advocates.

For the Respondent : Mr. M.K. Bhardwaj, Advocate.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners impugn order dated 11.07.2017, whereby the Original Application ('OA') filed by the respondent challenging the rejection of his claim for grant of Non-Functional Upgradation in the grade of Additional Secretary (HAG) has been allowed and petitioners have been directed to grant Non-Functional Upgradation to the respondent in the grade of Additional Secretary (HAG) w.e.f., 01.01.2014.

2. Respondent was appointed as an Assistant Executive Engineer (E) in 1981. He received his regular promotions and was lastly promoted as a Chief Engineer (Electrical) on 20.03.2013. Respondent superannuated on

31.03.2014. Respondent gave a representation seeking grant of Non-Functional Upgradation in the grade of Additional Secretary (HAG), which was rejected on the ground that he was not found eligible as he did not complete the requisite qualifying service of one year as Chief Engineer on the crucial date i.e., 01.01.2013.

3. As noticed hereinabove, respondent was promoted to the post of Chief Engineer (Electrical) on 20.03.2012 and on 01.01.2013, he did not have the qualifying service of one year and thereafter, superannuated on 31.03.2014. The rejection letter dated 27.03.2014 referred to DoP&T clarification dated 09.09.2010 to state that if an officer did not meet the eligibility requirement as on 1st January of the corresponding vacancy year then he is to be considered for grant of Non-Functional Upgradation in the subsequent year on completion of qualifying service w.e.f., 1st April of the next vacancy year.

4. The Tribunal in the impugned order has noticed that similar submission was made by the petitioner, however, petitioner could not produce the relevant rule or office memorandum directing so. Reference was drawn to answer to certain Frequently Asked Questions (FAQ). The Tribunal rejected the reference of the petitioners to the FAQs on the ground that petitioners were merely relying on answer to an FAQ and had not been able to produce any rule to the said effect.

5. The contention of the respondent was that though respondent did not have one year of qualifying service of 01.01.2013, he did possess one year qualifying service on 01.01.2014 and superannuated only on 31.03.2014 and as such was entitled to grant of Non-Functional

Upgradation.

6. Reference may be have to the Office Memorandum ('OM') dated 28.05.2014, which is relied upon by the petitioner. The OM dated 28.05.2014, *inter alia*, reads as under :

“No.22011/6/2013-Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

North Block, New Delhi
Dated the 28th May, 2014

OFFICE MEMORANDUM

**Subject: - Eligibility of officers to be considered for promotion by DPC-
Fixing of Crucial Date - Regarding.**

The undersigned is directed to invite reference to the Department of Personnel and Training's Office Memorandum No. 22011/3/98-Estt(D) dated September 17, 1998 regarding subject mentioned above, which provides that the crucial date for determining eligibility for promotion in case of financial year-based vacancy year would fall on January 1, immediately preceding such vacancy year and in case of calendar year-based vacancy year also, the first day of the vacancy year i.e. 1st January itself would be the crucial date.

2. *In case of financial year-based vacancy year, there is a clear gap of 3 months between the crucial date of eligibility and the date of commencement of vacancy year i.e. between January 1 and April 1. Due to this gap, for any such vacancy year, even if the Departmental Promotion Committee (DPC) meeting is held in time as per the Model Calendar, there is always a possibility of few officers not fulfilling the eligibility criteria as on the crucial date of eligibility, though they are fulfilling the same as on the date of commencement of the vacancy year.*

3. *The matter has been examined in consultation with Union Public Service Commission. It has been decided that the crucial date of eligibility shall be 1st April of the vacancy year in case of financial year based vacancy year i.e. where the Annual Performance Appraisal Reports (APARs) are written financial year-wise. In case of calendar year based vacancy year, i.e. where APARs are written calendar year-wise, the crucial date of eligibility shall remain as 1st January of the vacancy year. These*

instructions shall come into force in respect of vacancy year 2015-16 (financial year) commencing from April 1, 2015 and vacancy year 2015 (calendar year) commencing from January 1, 2015 and shall, accordingly, be applicable to all such subsequent vacancy years.

4. *These instructions shall be applicable to all services/posts. All Ministries/Departments are requested to bring these instructions to the notice of all concerned including attached and subordinate offices.*

*(Mukta Goel)
Director(E-I)
Tele. No. 23092479”*

7. Perusal of the OM dated 28.05.2014 shows that the OM has been made applicable in respect of vacancy year 2015-16 (Financial Year) commencing from 01st April, 2015 and vacancy year 2015 (Calendar Year) commencing from 01st January, 2015. Clearly, the OM is inapplicable to the case of respondent, who superannuated on 31.03.2014.

8. The OM in fact records that the position as existing prior to the issuance of the OM was covered by an OM dated 17.09.1998, referred to in the first paragraph of the said OM, which provided that the crucial date for determining eligibility for promotion in case of financial year based vacancy year would fall on January 01, immediately preceding such vacancy year and in case of calendar year based vacancy year also, the first day of vacancy year i.e., 01st January itself would be the crucial date.

9. The position as existing as on 31.03.2014, when respondent superannuated was governed by OM dated 17.09.1998 and the subject vacancy is a financial year based vacancy. The crucial date for determining eligibility for promotion, as per the OM even in cases of financial year based vacancy, would be January 01 immediately preceding such vacancy year i.e., for the financial year 2014-15, the eligibility for

promotion would fall on January 01 of 2014.

10. Clearly, the impugned order of the Tribunal is in consonance with the OM dated 17.09.1998 as explained by the OM dated 28.05.2014 relied upon by the petitioners.

11. In that view of the matter, we find that there is no infirmity committed by the Tribunal in allowing the OA filed by the respondent. We, accordingly, do not find any merit in the petition. The petition is dismissed. The pending application is also disposed of.

12. Petitioners shall give effect to the order of the Tribunal within a period of six weeks from today, if not already done so.

SANJEEV SACHDEVA, J

TUSHAR RAO GEDELA, J

NOVEMBER 22, 2022/nd

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