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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4605/2024**

Date of decision: 28.03.2024

MINISTRY OF HOME AFFAIRS & ANR. Petitioner
Through: Mr. Sushil Kumar Pandey, SPC.
versus

SHRI JAGMINDER SINGH & ANR. Respondent
Through: None.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAVINDER DUDEJA

REKHA PALLI, J (ORAL)

CM APPL. 18855/2024 -Ex.

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 4605/2024, CM APPL. 18854/2024 -Stay & CM APPL. 18856/2024 -Addl. doc.

3. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 22.12.2022 passed by the Central Administrative Tribunal (the Tribunal) in O.A. No. 2161/2017.
4. Vide the impugned order, the learned Tribunal has allowed the original application filed by the respondents by directing the petitioners to consider the respondents for grant of Senior Administrative Grade (SAG) in DANIPS, w.e.f. the date they became eligible for consideration of the said scale. The learned Tribunal has, however, made it clear that if found eligible, the respondents will be granted SAG only on notional basis with all consequential benefits.



5. In support of the petition, learned counsel for the petitioners submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate that even though as per OM dated 12.10.1998, cases of persons who already stand superannuated on the date of consideration for grant of SAG can be considered by the employer, the same does not entitle any employee to claim such consideration as a matter of right. He submits that the respondents having not assailed the aforesaid OM dated 12.10.1998, the learned Tribunal erred in issuing directions to the petitioners to consider the respondents for grant of SAG against the vacancies of 2013. He further submits that in the present case, the respondents had already superannuated on 29.02.2016, i.e, before the convening of the DPC on 31.08.2016, and therefore, once it was found that they were not available for actual physical service, their names were rightly not considered by the DPC, which aspect the learned tribunal has failed to appreciate.
6. In support of his plea that as per the OM dated 12.10.1998, the respondents did not have any vested right to claim consideration of their cases for grant of SAG, the learned counsel for the petitioners has drawn our attention to the relevant extracts of the said OM as reproduced in the counter affidavit filed by them before the learned Tribunal. He, therefore, prays that the impugned order be set aside.
7. Having perused the impugned order and considered the submissions of learned counsel for the petitioners, we may begin by referring to the relevant extracts of this OM on which not only both sides but even the learned Tribunal has relied. The same read as under-

" there is no specific bar in the aforesaid Office Memorandum



*dated April 10, 1989 or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing year-wise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are not considered while preparing year-wise of consideration/panel and, consequently, their juniors are considered in their places), who would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year(s). **Name of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The DPC(s) may, if need be, prepare extended panel(s) following the principles prescribed in the Department of Personnel and Training Office Memorandum No.22011/4/98-Estt(D) dated April 9, 1996.**"*

(emphasis supplied)

8. Having noted the extracts of the OM dated 12.10.1998, we may now turn to the relevant findings of the learned Tribunal as contained in para 6 and 7 of the impugned order. The same read as under-

6. Heard counsel for the parties at length, perused the records and gone through the legal position as well. The applicants who were since been retired on 29.02.2016 were left out for the reasons that they were not in service on the date when the DPC took place for consideration to the post of SAG, DANIPS and junior to the applicants are stated to have been promoted in the SAG grade of Rs.15,600-39,100/- with Grade Pay of Rs.6600/- and they have relied upon a judgment of UOI Vs. B. K. Singh and others (supra), pursuant to which, a review DPC for the years 1997 to 2010 was convened and 163 persons were given notional promotions. The respondents have also referred to an OM dated 12.10.1998. From the plain reading of the said OM it is apparent that names of the retired employees may also be included in the



panel/ zone of consideration even those who have been retired from service. As per the said OM, the person who was eligible on the date when the promotion is due but could not get promotion because of the non conducting of the DPC which was conducted only after their retirement, then they are entitled for consideration for notional promotion because they have not actually shouldered responsibilities of the said post hence they are entitled for notional promotion only. The applicants herein are sailing in the similar boat. They are otherwise eligible for that post of SAG, DANIPS but they have not been promoted as per the reply submitted by the respondents as they were retired and they were not entitled for the actual promotion.

7. In view of the fact and circumstances of the case as well as the legal position perused, we are of this view that the applicants are entitled for consideration for the post of DANIPS SAG with effect from the date, they are eligible for promotion but the promotion shall be given on notional basis with all consequential benefits.

The OA stands allowed with no order as to costs.

9. From a perusal of the aforesaid OM, we are of the view that the intent behind the aforesaid OM is to ensure that employees, like the respondents, who are eligible for promotion on the date when the same became due, should not be deprived of their right to be considered for promotion only on account of the delay on the part of the employer to hold the DPC in time. Merely because such employee superannuated before the DPC is held, they cannot be denied their due consideration for promotion. The OM, therefore, clearly envisages inclusion of names of such superannuated employees in the promotion panel, if they are otherwise found fit for promotion. The only rider being that even if they are found fit, they will, on account of their superannuation, not be entitled to claim actual promotion at that stage.



We are, therefore, of the considered opinion that though the OM uses the word ‘may’, the same has to be construed as a positive direction to the employer to consider the case of all such superannuated employees for promotion or grant of higher grades, even if the said consideration takes place after their superannuation, provided the said consideration is for a period when they were in service.

10. In the light of the aforesaid, we are unable to accept the petitioners’ plea that it would be in the discretion of the employer to consider or not to consider cases of superannuated employees. Such an interpretation would, in our view, indeed lead to arbitrariness and cannot be permitted. We, therefore, have no hesitation in rejecting the petitioners’ plea that since the respondents had already superannuated before the DPC was convened, their names were rightly left out of consideration by the DPC. We may note, that though the respondents had already superannuated on 29.02.2016, which was before the DPC for grant of SAG was held in August 2016, the said DPC was for consideration of grant of SAG to employees with reference to the vacancies available in 2013, when both the respondents were admittedly in service.

11. Furthermore, learned counsel for the petitioners has not been able to deny that as per the existing guidelines issued by the DoPT, DPCs are required to be held in a timely manner. He concedes that as per the instructions issued by the DoPT, DPC for consideration for promotion against the vacancies of a particular year is required to be held in July of the following year by taking into account the eligibility criteria as applicable in January of the said year. In the present case, even as per



the petitioner, the DPC for consideration for grant of SAG against vacancies of 2013, with which we are concerned in the present case was required to be held, if not earlier, at least by July 2014 when both the respondents were in service. The said DPC was, however, convened only in August 2016 after the respondents had superannuated in February 2016. We are, therefore, of the considered opinion that the Tribunal was justified in holding that the respondents could not be deprived of their right to be considered for promotion to SAG against the vacancies of 2013.

12. We also find that while allowing the original application filed by the respondents, the learned Tribunal has relied on the order passed by this Court in W.P.(C) 598/2014 titled *UOI vs. B. K. Singh and Others*, wherein also a review DPC was directed to be held in similar circumstances. Learned counsel for the petitioner has not denied that this decision has attained finality. On this ground as well, we find no reason to interfere with the impugned order

13. For the aforesaid reasons, we find absolutely no merit in the writ petition, which is, along with all pending applications, accordingly, dismissed. As prayed for, the petitioners are granted six weeks' time to comply with the impugned order.

REKHA PALLI
(JUDGE)

RAVINDER DUDEJA
(JUDGE)

MARCH 28, 2024/al