

**Uoi and ors. Vs. Misri Lal**

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**SooperKanoon Citation :** [sooperkanoon.com/958106](http://sooperkanoon.com/958106)

**Court :** Delhi

**Decided On :** Apr-18-2013

**Judge :** Pradeep Nandrajog

**Appellant :** Uoi and ors.

**Respondent :** Misri Lal

**Judgement :**

\$~19 \* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision : April 18, 2013 + W.P.(C) 678/2012 UOI & ORS. Represented by: ..... Petitioners Mr.R.V.Sinha, Advocate with Mr.R.N.Singh, Advocate versus MISRI LAL Represented by: ..... Respondent Mr.Sunil K.Jha, Advocate with Mr.Ashish Kumar Mahor, Advocate. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE V. KAMESWAR RAO PRADEEP NANDRAJOG , J.

(Oral) 1. On the subject of entitled to be retrospectively promoted, reviewing various decision, being 10 in number pronounced by the Supreme Court, and in respect of which a Division Bench of this Court was noticing that different Benches of the Central Administrative Tribunal were reaching different conclusion, on April 12, 2013 a Division Bench of this Court of which Pradeep Nandrajog, J.

was a Member of, had decided a batch of writ petitions, lead matter being WP(C) No.8102/2012 UOI & Anr. vs. K.L.Taneja & Ors. in which following decision were noted:(i) 1987 (4) SCC 56.K.Madhavan & Anr. vs.UOI & Ors. (ii) 1989 Supp (2) SCC 62.Union of India & Ors. vs. K.K.Vadera & Ors. (iii) 1995 (4) SCC 24.Vinod

Kumar Sangal vs. UOI & Ors. (iv) 1998 (7) SCC 4. Baij Nath Sharma vs. Honble Rajasthan High Court At Jodhpur & Anr. (v) AIR 200. SC 25. P. N. Premachandran vs. The State of Kerala & Ors. (vi) AIR 200. SC 346. Sanjay K. Sinha & Ors. vs. State of Bihar & Ors. (vii) 2006 (13) SCALE 24. State of Uttaranchal & Ors. Vs. Dinesh Kr. Sharma. (viii) 2007 (1) SCC 68. State of Uttaranchal & Anr. vs. Dinesh Kumar Sharma. (ix) 2008 (14) SCC 2. Nirmal Chandra Sinha vs. UOI & Ors. (x) 2010 (4) SCC 29. UOI & Anr. vs. Hemraj Singh Chauhan & Ors.

2. We had held that the cornucopia of case law above noted brings out the position : (i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date. (ii) If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so. (iii) Since mala fides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act i.e. deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice. (iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.

3. Thus, the issue of retrospective promotion has to be decided by looking at the applicable promotion rules, for if such a power exists, the issue would reach a different destination vis-a-vis a destination reached if no such power exists. Further, facts would have to be seen which led to DPCs not being held each year.

4. In the instant case we find pleadings to be deficient. We are surprised that without there being proper pleadings before it, the Tribunal has decided the matter. If there are deficient pleadings, it is the duty of the Tribunal to seek clarification from the parties.

5. Permitting the parties to file supplementary pleadings disclosing facts having a bearing as to what resulted in DPCs not being held within time, as also to bring on record the relevant promotion rules, we dispose of the writ petition quashing the

impugned order dated October 14, 2011. We restore O.A.No.2979/2010 with a direction that the same shall be re-decided keeping in view the law declared by this Court on April 12, 2013 in WP(C) 8102/2012.

6. No costs.

7. DASTI. CM No.1466/2012 (stay) Dismissed as infructuous. (PRADEEP NANDRAJOG) JUDGE (V. KAMESWAR RAO) JUDGE APRIL 18 2013 skb

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