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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **Date of Decision: 10.02.2026**% **LPA 540/2023****PRADEEP KUMAR SINGH**AppellantThrough: Mr. Rajiv Ranjan Dwivedi, Adv. with
Appellant in person

versus

THE UNION OF INDIA & ANR.RespondentsThrough: Mr. Riupdaman Bhardwaj, CGSC
with Mr. Rahul Kr. Sharma, GP and
Mr. Amit Kr. Rana, Advs. for UOI
Mr. Anil Mittal and Mr. Shaurya
Mittal, Mr. Atul Chauhan, Mr. Bhim
Singh, Advs. for R-2**CORAM:**
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJAS KARIA**DEVENDRA KUMAR UPADHYAYA, CJ. (ORAL)**

1. Heard learned counsel for the appellant and learned counsel for respondent no.2. The appellant in person, who appeared through video conferencing, has also been heard. We have also perused the records available before us.

2. Before delving into the rival submissions made on behalf of the respective parties, we need to note certain facts which are essential and relevant for the purposes of adjudicating the issue involved in this Letter Patent Appeal.



3. The appellant before being appointed on the post of General Manager (HR) in Central Electronics Limited - respondent no.2 (*hereinafter referred to as the 'CEL'*), a Central Public Sector Enterprise (*hereinafter referred to as the 'CPSE'*), was working in another CPSE, namely, Coal India Limited/Central Coal Fields Limited (*hereinafter referred to as the 'CCL'*).

4. While he was working with CCL, an advertisement was issued by CEL - respondent no.2 in the year 2017 bearing advertisement no.98/PERS/1/2017, for appointment on various posts, including the post of General Manager (HR).

5. Clause 8 of the General Instructions appended to the advertisement clearly stated that candidates in Grade E6 and above will be on probation for a period of one year, and candidates below Grade E6 will be on probation for two years. The said Clause is extracted herein below:

“8. The selected candidates in Grade E6 and above, will be on Probation for a period of one year and candidates below Grade E6 will be on probation for two years”

6. Clause 14 of the General Instructions stipulated that candidates employed in Central/State Government, Autonomous Bodies, PSUs, should apply through the proper channel or submit a No Objection Certificate at the time of interview from their employer. It is noteworthy at this juncture itself that advertisement was issued for direct recruitment, as is apparent from such a stipulation contained in the advertisement itself. The appellant, pursuant to the said advertisement, applied for being appointed on the post of General Manager (HR) and, having been selected, was issued an Offer of Appointment by respondent no.2, dated 22.07.2017.

7. Clause 2(a) of the Offer of Appointment dated 22.07.2017, provided



that the appellant shall be on probation for a period of one year or until such time thereafter when confirmation is intimated in writing. It further provided that during the probationary period his services shall be liable to be terminated without notice and without assigning any reason, and further that during the probation the appellant may leave the company's service after giving one month's notice in writing. Further stipulation in Clause 2(a) of the Offer of Appointment dated 22.07.2017 provided that the period of probation can be extended at the discretion of the competent authority. Clause 2(a) of the Offer of Appointment dated 22.07.2017 is extracted hereunder:

“2. (a) You will be on probation for a period of one year or until such time thereafter when confirmation is intimated in writing. During the probationary period, your services shall be liable to be terminated without notice and without assigning any reasons whatsoever. During the probation you may leave the Company's service after giving one month's notice in writing. The period of probation can be extended at the discretion of the competent authority.”

8. The appellant accepted the said Offer of Appointment dated 22.07.2017 without any protest or demur, and joined respondent no.2 on the post of General Manager (HR) and simultaneously submitted his technical resignation from his erstwhile employer.

9. *Vide* an order dated 04.10.2018 the appellant's pay fixation was done and his pay was fixed at Rs.1,58,290/- with effect from 18.10.2017 in the Pay Scale of Rs.1,00,000-3%-2,60,000/-. The said pay fixation was done, as is apparent from a perusal of the Pay Fixation Order dated 04.10.2018, on the basis of last pay certificate received from his erstwhile employer, according to which his pay as on 17.10.2017 was Rs.1,53,670/- in the pay scale of Rs.90,000-3%-2,40,000/-. Pay fixation of the appellant *vide* order



dated 04.10.2018 was approved on 15.12.2018 by the competent authority, namely, CMD of respondent no.2, as is apparent from a communication dated 17.12.2018-18.12.2018 made in this regard by the AGM (HR) to AGM (Finance) of respondent no.2.

10. As already noticed above, the Offer of Appointment of the appellant dated 22.07.2017 clearly stipulated that his appointment was on probation for a period of one year or until such time thereafter when confirmation is intimated in writing. However, the appellant could not complete his probation period successfully, as a result of which by means of an order dated 29.12.2018 his services were terminated in terms of Clause 2(a) of the Offer of Appointment dated 22.07.2017, for the reason that on assessment of performance of the appellant during his probationary period, he was not found suitable for the job. The said order of termination of the services of the appellant was challenged by him by instituting the proceedings of *W.P.(C) 1010/2019* with the following prayers:

1. *Issue a writ of Certiorari and/or mandamus and/or any other appropriate writ, order or direction quashing the termination of Services through the board resolution of Respondent No. 2 which culminated into the patently illegal termination order read with Respondent No. 2's order dated 29.12.2018 bearing NO. C-1(B)/SECY/2018; and*
2. *Pass an order directing the Respondent No. 2 to reinstate the Petitioner with full back salary and all benefits from the date of termination of services; and*
3. *Pass an order directing that clause 2(a) of the Letter of Appointment dated 22.07.2017 does not apply to the Petitioner and the Petitioner be considered as permanent in the services of the Respondent No. 2.*
4. *Grant costs in favour of the Petitioner.*
5. *The Hon'ble Court may pass any order that it may deem fit and proper."*

11. From a perusal of the prayer clause of the writ petition, it is apparent that essentially the appellant had challenged the order terminating his



services dated 29.12.2018 with a further prayer to reinstate him with full back wages and consequential benefits. It is relevant to note that apart from the prayer for quashing the Termination Order dated 29.12.2018 and seeking a direction for reinstatement and payment of full back wages with consequential benefits, the appellant in the said writ petition had also made a prayer seeking a declaration that Clause 2(a) of the Offer of Appointment dated 22.07.2017, does not apply to him and that the appellant be considered as permanent in service of respondent no.2.

12. Learned Single Judge, however, by means of the judgment and order dated 04.05.2021, dismissed the writ petition and while doing so, granted the appellant liberty to exercise his rights emanating from the technical resignation with his erstwhile employers, namely, CCL.

13. The judgment and order dated 04.05.2021 passed by the learned Single Judge was challenged by the appellant by instituting the proceedings of LPA 330/2021 which, however, was permitted to be withdrawn with liberty to file a review petition by a Division Bench of this Court *vide* order dated 28.07.2022.

14. Pursuant to the liberty granted by the Division Bench *vide* order dated 28.07.2022, the appellant filed a Review Petition bearing no. *REVIEW PET. 235/2022*, seeking review of the judgment and order dated 04.05.2021 passed by the learned Single Judge, which, too, has been dismissed by the learned Single Judge *vide* order dated 22.05.2023. It is this order dated 22.05.2023, which is under challenge herein.

15. Coming to the contentions made on behalf of the appellant in the instant appeal, we may note that the main plank of the argument on behalf of the appellant is that his appointment on the post of General Manager (HR)



with the respondent no.2, was an appointment by way of promotion and therefore, his appointment could not be treated to be an appointment on probation. His submission, thus, is that since the appointment of the appellant with respondent no.2 was not on probation, therefore, his services could not have been terminated by an order of termination simpliciter dated 29.12.2018.

16. It has emphatically been submitted on behalf of the appellant that initial pay fixation of the appellant was made by giving him benefit of one yearly increment, as such, in terms of the provisions contained in the Office Memorandum dated 14.12.2012 issued by the Department of Public Enterprise, Ministry of Heavy Industries & Public Enterprises, Government of India, his appointment ought to be treated as an appointment on promotion, which could not be on probation and therefore, termination of his services, *vide* order dated 29.12.2018 is absolutely unlawful and unsustainable.

17. Drawing our attention to the said circular dated 14.12.2012, it has been stated on behalf of the appellant that the said Office Memorandum classifies various categories of appointments, which include appointment from Board Level to Board Level, within the same CPSEs and also between different CPSEs.

18. Referring to Clause 9 of the said Office Memorandum dated 14.12.2012 it has been submitted that the said Clause provides that pay fixation principles which apply in respect of Board Level Executives of CPSEs would also be applicable *mutatis mutandis* in respect of below Board Level Executives.

19. Pointing to example 1 contained in the appendix appended to the



Office Memorandum dated 14.12.2012, it has been submitted that since the appellant's pay fixation was done in terms of the said example and according to the appellant, if pay fixation is done on the basis of last pay draw by an employee in the erstwhile organisation where he was working prior to his appointment with respondent no.2 with one notional increment, it will amount to promotion. His submission is that since while fixing the pay of the appellant on his appointment with respondent no.2, benefit of one notional increment was granted over and above the last pay drawn by him while he was working with CCL and therefore, his appointment cannot be termed to be appointment on direct recruitment basis; rather it should be treated to be an appointment by way promotion and accordingly, terminating his services, treating his appointment to be an appointment on probation, runs contrary to the said Office Memorandum dated 14.12.2012. Example 1 as given in the appendix appended to the Office Memorandum dated 14.12.2012 is extracted herein below:

"1. Appointment from Board level post to another Board level post (like appointment from Director's post to CMD) within the same CPSE, or different CPSE, but within the same schedule and same pay scales of same pay revision. [Para 4 (A) (i), and (ii) refer]

<i>Lower post prior to appointment</i>	<i>Director, Schedule 'A'</i>
<i>Lower scale</i>	<i>Rs. 75000 - 100000</i>
<i>Basic Pay in lower scale as per LPC</i>	<i>Rs. 90000</i>
<i>Higher Post after appointment</i>	<i>CMD, Schedule 'A'</i>
<i>Higher scale of the appointed post</i>	<i>Rs. 80000 - 125000</i>
<i>Pay fixation in the higher scale on selection as CMD</i>	
<i>Pay plus one notional increment @3%</i>	<i>Rs. 2700</i>
<i>Pay to be fixed in the higher scale on promotion (Pay + one notional increment)</i>	<i>Rs. 92700 (90000 + 2700)</i>

20. It has further been argued that since the appointment of the appellant was made by way of promotion, as such, Clause 2(a) of the Offer of



Appointment dated 22.07.2017 did not apply to his appointment and in this view, terminating his services, treating his appointment to be on probation, cannot be justified.

21. *Per contra*, learned counsel representing respondent no.2 has opposed the instant appeal. Defending the order passed by the learned Single Judge, which is impugned herein, it has been argued by learned counsel on behalf of respondent no.2 that appointment of the appellant was made on consideration of his application submitted by him pursuant to the advertisement which clearly stipulated that advertisement was issued for making appointment on direct recruitment basis. He has also argued that Clause 8 of the advertisement clearly stipulated that selected candidate will be on probation for a period of one year. He has further argued that the Appointment Order dated 22.07.2017, also, in no uncertain terms, provided that appellant's appointment will be on probation for a period of one year until such time thereafter, when confirmation is intimated in writing. It has, thus, been argued that in terms of the stipulations made in the advertisement and the Appointment Order, the appointment of the appellant was made on direct recruitment basis, that too, on probation for a period of one year. However, since he was not found suitable during the probation period, his services were terminated by means of an order of termination simpliciter dated 29.12.2018.

22. Further submission on behalf of respondent no.2 is that reliance placed by the appellant on Office Memorandum dated 14.12.2012, is highly misconceived for the reason that the said Office Memorandum has been issued by the Government of India in the Department of Public Enterprise, Ministry of Heavy Industries & Public Enterprises, for the purposes of



finalisation of pay fixation in respect of the appointees of CPSEs which provides for a procedure for the said purpose. It is, thus, the argument of respondent no.2 that terms of appointment of the appellant has to be discerned not from the procedure prescribed in the Office Memorandum dated 14.12.2012 but from the stipulations made in the advertisements and his Appointment Order dated 22.07.2017 which clearly establishes that his appointment was made on direct recruitment basis on probation for a period of one year.

23. It is also the submission of respondent no.2 that merely because benefit of one additional increment was granted to the appellant while fixing his pay, it will not make the nature of appointment as appointment by way of promotion, rather, as is apparent from what was prescribed in the advertisement and in the Appointment Order of the appellant, it was an appointment by way of direct recruitment and therefore, the submission of the appellant that Clause 2(a) of the Offer of Appointment dated 22.07.2018 will not apply to the appellant, is absolutely incorrect and misleading.

24. Learned counsel representing respondent no.2 has also argued that learned Single Judge was justified in dismissing the review petition for the reason that by instituting the proceedings of the review, the appellant sought to set up altogether a new case different and distinct from the case set up by him in the writ petition and therefore, the review has rightly been dismissed.

25. We have considered the respective submissions and argument made and advanced on behalf of the parties carefully, however, the following analysis leads us to the infeasible conclusion that the entire submission made on behalf of the appellant that his appointment with respondent no.2 was made by way of promotion, is highly misconceived and appears to be



based on misconception of basic service jurisprudence.

26. As is understood in service jurisprudence, there are various sources of recruitment which can broadly be categorised into Internal and External Sources. Recruitment to any service can be made from different sources i.e. direct appointment, by promotion or by absorption/transfer etc. The Internal Source of recruitment/appointment covers the cases of appointment by way of promotion and appointment by way of absorption etc., differently put, the Internal Source of appointment would comprise of those, who are already in service in an organisation to which recruitment is to be made. As a matter of fact, appointment by promotion is an Internal Source of recruitment within the organisation, that is to say, appointment by way of promotion is made from amongst the eligible employees already working in the organisation and further, that promotion means advancement to a higher position or rank and advancement to a higher grade of an employee already working.

27. The External Source of recruitment is different from Internal Source of recruitment and the External Source comprise all eligible persons who are not already in service in the organisation to which recruitment is to be made. In other words, the persons seeking appointment to an organisation through External Source are the candidates from the open market whereas, in case of recruitment by way of promotion, the person to be considered for such appointment by way of promotion is a person already working in the organisation and therefore, no person from the open market can be a part of the selection by way of promotion to higher post or grade or scale in such organisation.

28. In view of what has been observed above regarding the distinction between appointment through direct recruitment and appointment through



promotion, if we analyse the facts of the instant case and the background in which appointment of the appellant was made in the organisation of respondent no.2, what we find is that prior to his appointment *vide* Appointment Order dated 22.07.2017, he was not working with respondent no.2 rather, he was working with all together a different and distinct organisation, namely, CCL. Thus, the appointment of the appellant was not from any Internal Source in the sense of this term as discussed above, rather, his appointment was made from External Source. It is also to be noted that in the process of direct recruitment, all eligible candidates from the open market are given opportunity to participate in the selection whereas, in case of appointment by way of promotion, it is only those persons who are already working in an organisation and fall within the eligibility zone for promotion who can participate in such a process of selection leading to appointment.

29. As is apparent from a perusal of the advertisement pursuant to which the appointment of the appellant was made, the applications were invited for the post in question by respondent no.2 from all eligible candidates from the open market. The advertisement, itself, in absolutely clear terms, has stated that the posts advertised were to be filled on a direct recruitment basis. It is also to be noticed that the Offer of Appointment dated 22.07.2017 does not mention that the appellant was in any manner promoted; rather, it clearly states that he is being appointed in reference to his application submitted by him, pursuant to the advertisement and the subsequent interview.

30. Accordingly, we are of the considered opinion that the entire edifice of argument raised on behalf of the appellant that his appointment with respondent no.2 was made by way of promotion, is absolutely fallacious,



misconceived and is based on a misconception of the principles governing recruitment through various sources. The appointment of the appellant, as already observed, was not from any Internal Source within the organisation of respondent no.2; rather, it was from an External Source i.e. open market by way of advertisement and therefore, his appointment cannot be said to be an appointment by way of promotion.

31. The sole basis of submission of the appellant that his appointment was made by way of promotion is the provisions contained in the Office Memorandum dated 14.12.2012 issued by the Department of Public Enterprise, Ministry of Heavy Industries & Public Enterprises, Government of India. However, we at the outset, while considering the provisions of the said Office Memorandum, may observe that the said Office Memorandum has been issued for the purposes of pay fixation of an employee appointed/working with a CPSE and not for the purposes of regulating the source of recruitment.

32. The emphasis laid by the appellant on example 1 contained in the appendix appended to the said Office Memorandum dated 14.12.2012 is also absolutely misconceived. The said example has been cited in the appendix for the purposes of guiding the authority concerned for pay fixation of an employee appointed in the services of a CPSE.

33. The appellant has laid much emphasis on what has been stipulated in Column 8 of the said example contained in the appendix appended to the Office Memorandum dated 14.12.2012 which is referable to paragraph 4(a) of the said Office Memorandum. Paragraph 4(a) of the Office Memorandum dated 14.12.2012 is in relation to pay fixation of an appointment within the same CPSE and also between different CPSEs. Our reading of Column 8 of



the said example leads us to observe that the stipulation therein, provides that in case pay of an employee is to be fixed on a higher scale on promotion, then, pay shall be fixed on the basis of the pay plus one notional increment. It, however, does not mean that in case any one is appointed on the basis of direct recruitment and his pay is fixed by taking into consideration the last pay drawn by him while he was working in the earlier organisation plus one notional increment, such an appointment will be an appointment by way of promotion.

34. As a matter of fact it is this misconception, which is prevailing in the mind of the appellant that has led him to agitate his case. What Column 8 of the aforesaid example contained in the appendix appended to the Office Memorandum dated 14.12.2012 provides is that in a case an employee is promoted to a higher scale, then his pay shall be fixed by taking into account the last pay drawn by him plus one notional increment. As already observed, this does not, in our considered opinion, mean that in case an employee is appointed on direct recruitment basis and his pay is fixed taking into account the last pay drawn by him plus one notional increment, his appointment has to be treated to be one by way of promotion.

35. We may also note that the appellant had unequivocally accepted the Offer Of Appointment contained in the letter dated 22.07.2017 which is itself stipulated that his appointment was on probation for a period of one year or until such time thereafter when confirmation is intimated in writing to him, without any protest or demur and therefore, after his services were terminated, it was not open to him to contend that such a stipulation made in Clause 2(a) of the Offer of Appointment dated 22.07.2017 will not apply to him.



36. The learned Single Judge while dismissing the writ petition instituted by the appellant by means of the judgment and order dated 04.05.2021, has, thus, in our opinion, rightly concluded that the appellant was appointed on probation for a period of one year until confirmed in writing and during probation his services were liable to be terminated without notice and without assigning any reason. The said judgment of the learned Single Judge rightly concludes that since the appointment was subject to a caveat of satisfactory completion of probation, if the appellant would have satisfactorily completed his probation and was found suitable, an order of confirmation would have followed and it is only on confirmation that the appellant would have been a permanently absorbed employee of respondent no.2. Accordingly, the submission of the appellant was rightly rejected by the learned Single Judge.

37. As far as the order passed by the learned Single Judge on the review petition is concerned, what we find is that the learned Single Judge has discussed the case set up by the appellant in the review petition and has returned a finding that the appellant was seeking to re-argue the entire writ petition as original proceedings. The learned Single Judge has also found, while dismissing the review petition, that by placing new facts and documents, the appellant had failed to establish that new material or document or evidence sought to be produced by him in review petition was not in his possession when the writ petition or other pleadings in the writ petition were filed.

38. The learned Single Judge has also returned a finding that, “basic fallacy in the argument was and is that he wants this Court to hold that he was appointed on promotion, while it is clear from the advertisement itself



that the only mode of recruitment advertised was direct recruitment and nothing can be imported into an advertisement.” Order dated 22.05.2023 passed in the review petition by learned Single Judge which is under challenge herein, is a well considered order and the findings arrived therein are based on correct evaluation of the facts and the legal position.

39. Learned Single Judge has also rightly observed that while arguing a review petition, re-argument of the writ petition is impermissible, quoting various pronouncements of the Hon’ble Supreme Court in this regard.

40. For all the aforesaid reasons, we do not find any force in the instant letters patent appeal, which is hereby dismissed.

41. There will be no order as to costs.

DEVENDRA KUMAR UPADHYAYA, CJ

TEJAS KARIA, J

FEBRUARY 10, 2026/MJ