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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25.09.2025

+ W.P.(C) 2431/2024

NARESH KUMAR SOLANKI

.....Petitioner

Through: Mr. Rajesh Kumar Gautam,
Mr. Bhumit Solanki,
Mr. Chaitanya Kharbanda,
Mr. Rishi Chauhan, Advs.

versus

GOVT OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Amit Tiwari, CGSC,
Mr. Chetanya Puri, SPC,
Mr. Ayush Tanwar,
Ms. Ayushi Srivastava,
Mr. Arpan Nainwal, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. By way of the present petition, the petitioner challenges the Order dated 02.01.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in O.A. No. 3648/2022, titled ***Sh. Naresh Kumar Solanki v. Govt. of NCT of Delhi & Ors.***, whereby the O.A. filed by the petitioner was dismissed by applying the principle of constructive *res judicata*.

2. To give a brief background in which the present petition arises, the petitioner was recommended for Out of Turn Promotion to the



post of Inspector by the Incentive Committee of the respondents on 04.12.2006. The said recommendation is claimed to have been accepted and approved by the Commissioner of Police, Delhi, on 05.12.2006. In 2010, another Incentive Committee was constituted, which, by its recommendation dated 08.11.2010, rejected the Out of Turn Promotion to the petitioner.

3. The petitioner being aggrieved of the same, filed an OA before the learned Tribunal, being O.A.2335/2011, which was disposed of by the learned Tribunal *vide* its Order dated 30.09.2011. As it has a vital bearing on the adjudication of the present petition, and the Order is rather short, we reproduce the same in whole, as under:

“The applicant while holding the post of Sub-Inspector was recommended for out of turn promotion by the Incentive Committee vide order dated 4.02.2006 which was approved by the then Commissioner of Police vide order dated 5.12.2006. This order has been cancelled by order dated 8.11.2010 by the then Commissioner of Police. The challenge in the present OA is to set aside the order canceling the order of Incentive Committee approved by the Commissioner of of Police for out of turn promotion of the applicant.

2. It could not be disputed during the course of arguments that the matter is covered by the decision of this Tribunal in the matter of HC Sukhbir Singh Vs. GNCT of Delhi & Ors. (OA No.2304/2010 decided on 18.01.2011). On the basis of the aforesaid judgment, other case also came to be disposed of by us in the matter of Sub Inspector (Exe.) Dharmender Kumar versus GNCT of Delhi & Ors. (OA No.557/2011 decided on 5.09.2011).

3. For parity of reasons given by a Coordinate Bench of this Tribunal in HC Sukhbir Singh



(supra) and followed in Dharmender Kumar (supra), present Original Application is allowed in the same terms.”

4. A bare reading of the above would show that the learned Tribunal, by its Order dated 30.09.2011, disposed of the OA, placing reliance on its earlier decision in case of **HC Sukhbir Singh v. GNCT of Delhi & Ors.** and in case of **Sub Inspector (Exe.) Dharmender Kumar v. GNCT of Delhi & Ors..** It did not specifically consider the date from which the petitioner is entitled to Out of Turn Promotion.

5. In this regard, the directions with which the OAs filed by HC Sukhbir Singh and Sub Inspector (Exe.) Dharmender Kumar have been disposed of, are also relevant. We reproduce the same as under:

HC Sukhbir Singh:

“5. In view of the discussions made above, we find that the impugned order is illegal and arbitrary to a very high degree and, therefore, the same is quashed. Respondents are directed that the applicant be given OTP as ASI either w.e.f. 31.10.2005 or when the first vacancy under the OTP category became available, whichever is earlier. It is further directed that he is entitled to all consequential benefits including seniority, difference in pay and arrears thereof etc. as the case may be. Since the impugned order was made disregarding salutary provisions of law and justice and against confirmed orders of superior judicial authorities, Original Application is allowed with cost quantified at Rs.5,000/-.”

Sub Inspector (Exe.) Dharmender Kumar:

“4. For parity of reasons given by this Tribunal in the matter of HC Sukhbir Singh Vs. GNCT of Delhi & Ors. (OA No.2304/2010



decided on 18.01.2011), present Original Application is allowed in the same terms. However, question of seniority between the applicant and the seven persons, who have been arrayed as private respondents, is left open.”

6. From the above, it is apparent that even in the cases of HC Sukhbir Singh and Sub-Inspector (Exe.) Dharmender Kumar, the learned Tribunal did not consider the date from which these personnel were entitled to seek Out of Turn Promotion, and the only issue decided by the learned Tribunal was that once these personnel have been recommended for Out of Turn Promotion, a subsequently appointed Committee could not have overturned this decision. The decision of the learned Tribunal was therefore one on principle rather than on facts and did not specifically consider the date from which the petitioner would be entitled to Out of Turn Promotion.

7. The respondents, in compliance with the above Order of the learned Tribunal, *vide* Order dated 11.11.2011, gave Out of Turn Promotion to the petitioner with effect from 14.11.2008. The petitioner claims that he was entitled to the Out of Turn Promotion from 15.12.2006.

8. As the respondents gave Out of Turn Promotion to Sub-Inspector (Exe) Dharmender Kumar from 30.03.2006, the petitioner, claiming parity with Sub-Inspector (Exe) Dharmender Kumar, filed the above OA seeking retrospective grant of Out of Turn Promotion.

9. As noted hereinabove, the learned Tribunal has dismissed the OA, finding the same to be barred by the principle of constructive *res judicata*. We quote from the impugned order as under:



“5. We have heard the learned counsel for the parties at great length on more than one occasion. We have also gone through the pleadings on record. We find that the applicant has made innumerable representations to the respondents and some of these representations are prior to the earlier round of litigation in O.A. No. 2335/2011. The respondents have given due consideration to the contents of the said representations. We have also compared the prayer made in the present O.A. with the one made in O.A. No. 2335/2011 and are agreeable with the learned counsel for the respondents that there is a close similarity between the two. What the applicant had sought in O.A. No. 2335/2011 was a direction to the respondent to promote the applicant on Out of Turn basis with effect from April, 2006 by way of a modification of the promotion order dated 27.01.2010. The Tribunal has already adjudicated this issue without any direction of a specific date for promotion and has left it open to the respondents to make the promotion, however, adhering to the principle of parity with Sukhbir Singh and Dharmender Kumar. The respondents have since complied with the directions and given promotion on OTP basis to the applicant from a date which was considered appropriate and accordingly, assigned him seniority. No doubt the applicant may be nursing a grievance, genuine or otherwise, but we find that the prayer made in the present O.A. is also a direction to the respondents to grant OTP with effect from 15.12.2006. In fact in the earlier O.A. the date was prior to 15.12.2006, that is, April, 2006. Once the issue of promotion from a relevant date has been constructively adjudicated upon in an earlier round of litigation, we are of the considered with that we should not be reopening the issue at this stage.

6. There is no doubt in our minds that the principle of constructive res judicata would be



applicable in the instant case, and judicial propriety and discipline binds us not to venture into a fresh adjudication of the matter.”

10. The learned counsel for the petitioner submits that the learned Tribunal, in its Order dated 30.09.2011, did not go into the date from when the petitioner is entitled to Out of Turn Promotion, rather it was kept open for the department to decide on the grounds of parity. He submits that the learned Tribunal simply decided that the recommendation of Out of Turn Promotion that was granted to the petitioner, could not have been re-visited by the subsequently appointed Incentive Committee. He states that therefore, the principle of constructive *res judicata* would not apply in the facts of the present case.

11. He further highlights that in fact, Sub-Inspector (Exe.) Dharmender Kumar, post the Order dated 05.09.2011 passed by the learned Tribunal in O.A. No. 557/2011, had been successful in a subsequent OA filed by him seeking grant of ante-dated seniority in the rank of Inspector from 30.03.2006.

12. On the other hand, the learned counsel for the respondents submits that the learned Tribunal has rightly held that the petitioner, in the earlier OA having already agitated the date from which he was entitled to Out of Turn Promotion, is now barred by re-agitating the same in the subsequently filed OA.

13. He submits that even on merits, the claim of the petitioner is not only barred by limitation but also not maintainable as the



petitioner has been granted Out of Turn Promotion from the date he became entitled to the same in accordance with the policies of the respondents.

14. We have considered the submissions made by the learned counsels for the parties.

15. As noted hereinabove, the learned Tribunal, in its earlier OA, that is, O.A. No.2335/2011, did not go into the issue of the date from which the petitioner is entitled to the grant of Out of Turn Promotion. It simply disposed of the O.A. in terms of the directions issued in the case of HC Sukhbir Singh and in the case of Sub Inspector (Exe) Dharmender Kumar. In the said Orders also, the learned Tribunal did not determine the date from which these personnel were entitled to Out of Turn Promotion and left it to the respondents to determine the same in accordance with the policies. The learned Tribunal merely considered whether the recommendation of Out of Turn Promotion to these personnel could have been re-visited by subsequently appointed Committee, and found no justification for the same. In the above facts, the principle of constructive *res judicata* can have no application as issue either overtly or impliedly has not been considered by the learned Tribunal. For principle of *res judicata* to apply, the issue must have been heard and finally decided by the Court. Even non-grant of a prayer in an earlier litigation, in particular facts of a case, may amount to constructive *res judicata*. However, where, like in the present case, the OA has been disposed of remanding the matter back to the competent authority to take a decision, a decision taken by the competent authority shall give a new cause of action to which



principles of *res judicata* or constructive *res judicata* cannot apply.

16. Furthermore, it is also pertinent to mention that in the case of Sub Inspector (Exe) Dharmender Kumar, on the basis of which the learned Tribunal passed the Order dated 30.09.2011, a subsequent OA, being OA No. 1149/2015, was also filed seeking grant of ante-dated seniority. The same was allowed by the learned Tribunal *vide* its Order dated 19.09.2023.

17. Therefore, we set aside the Impugned Order passed by the learned Tribunal and remand the matter back to the learned Tribunal for determining the OA filed by the petitioner in accordance with the law. All objections and submissions of either party shall remain open to be agitated before the learned Tribunal.

18. The parties shall appear before the learned Tribunal on 16.10.2025.

19. The learned Tribunal is requested to decide of the OA as expeditiously as possible, preferably within a period of six months from the first listing.

20. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

MADHU JAIN, J

SEPTEMBER 25, 2025/Arya/ik