

**(2023) 11 DEL CK 0170**

**Delhi High Court**

**Case No:** Civil Writ Petition No. 14939 Of 2023

Union Of India Through  
Secretary & Anr

APPELLANT

Vs

Mahipal Singh

RESPONDENT

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**Date of Decision:** Nov. 21, 2023

**Hon'ble Judges:** V. Kameswar Rao, J; Anoop Kumar Mendiratta, J

**Bench:** Division Bench

**Advocate:** Sushil Raaja, L. R. Khatana

**Final Decision:** Dismissed

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### **Judgement**

V. Kameswar Rao, J

1. The challenge in this petition is to an order dated November 23, 2022, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 787/2017, whereby, the Tribunal has allowed the O.A. filed by the respondent herein by directing in paragraphs 13 and 14 as under:-

**"13. Accordingly, while allowing the O.A., the impugned order dated 24.10.2016 is set aside and the respondents are directed to forthwith sanction and release NFSG in accordance with the terms and conditions set forth in the order dated 03.08.2016 bearing No. A-11015/1/2015-E.II, in favour of the applicant w.e.f. 28.02.2015. Pursuant to this sanction, the respondents shall revise the PPO also accordingly and release the arrears of the applicant's pay w.e.f. 28.02.2015 till the date of his retirement on 31.07.2015 and subsequently the arrears of pension along with arrears of other retiral dues.**

**14. All these directions shall be complied with within a period of eight weeks' from the date of receipt of a copy of this order. It is made clear that if actual payment as admissible to the applicant is not released within the period stipulated therein, he shall be entitled to the payment of the same along with interest to be calculated at the rate of such interest payable on GPF."**

2. The submission of the learned counsel for the petitioners is that the Tribunal could not have allowed the O.A. by directing the petitioners herein to grant benefit of Non-Functional Selection Grade ('NFSG', for short) to the respondent w.e.f. February 28, 2015 till the date of his retirement i.e., July 31, 2015, and pay the arrears of pension along with other retiral dues, as the respondent had retired on July 31, 2015 much before the DPC was held in December 2015. He also submits that without the respondent getting regular promotion against the select list of 2005, the benefit of NFSG could not have been granted.

3. We are unable to agree with the submission made by the counsel for the petitioners for the simple reason that one Karan Singh, who is junior to the respondent, received the benefit of regular promotion against the select list of 2005 as well as the benefit of NFSG w.e.f. February 28, 2015, when admittedly, the respondent was in service as he had retired only on July 31, 2015. We find that the respondent in the O.A. had also prayed for a direction against the petitioners for issuance of orders of regular promotion and the benefit of NFSG in the grade pay Rs. 4200/-. Regrettably, the Tribunal did not consider and/or grant the benefit of regular promotion to the respondent, but has straight away granted the benefit of NFSG of grade pay of Rs. 4200/- which it could not have done. In any case, on a specific query to the learned counsel for the petitioners as to why the benefit of regular promotion as has been granted to Karan Singh, was denied to the respondent against the select list of 2005, the only answer is that the respondent stood retired on the date of DPC. The reason for the petitioners for denying regular promotion to the respondent is also the same as the reason for denying the benefit of NFSG.

4. The issue in hand is well settled by the judgment of the Tribunal, which has been upheld by this Court in Union of India & Anr. v. P.G. George, W.P.(C) 4864/2010, decided on July 23, 2010, wherein it has been held as under:-

**"10. Learned counsel for the petitioner concedes that such Government employees who are empanelled at a later date and are still in service are granted notional promotion to the post in question with effect from the date of the vacancy, meaning thereby, these candidates are given the applicable pay scales with increments in the scale with effect from a retrospective date, but salary in the higher scale with increments is paid from the date they joined. This means that the benefit of notional promotion in the form of being placed in the higher pay scale with a retrospective date is given to them. Thus, there is no reason why the same benefit be also not extended to the retired employees who could not earn promotions for no fault of theirs."**

The decision in P.G. George (supra) has been followed by this Court in a recent opinion in the case of Union of India and Anr. v. Bishan Dass, W.P.(C) 12213/2023, decided on September 19, 2023.

5. Suffice it to state, the Tribunal has rightly held that the respondent is entitled to the benefit of NFSG as has been granted to Karan Singh on February 28, 2015.
6. We are of the view that though the Tribunal has confined the relief to the grant of NFSG to the respondent, he shall also be entitled to the notional benefit of regular promotion as has been granted to Karan Singh, followed by the benefit of NFSG which has already been granted by the Tribunal in the impugned order.
7. The plea of the learned counsel for the petitioners that the respondent was only working on ad-hoc basis on the date of the retirement which preceded the DPC, is also not appealing for the reason already stated above inasmuch as Karan Singh who was junior to the respondent has been given promotion and NFSG on February 28, 2015 when admittedly, the respondent was in service. He shall also be entitled to promotion and NFSG.
8. We do not see any merit in the petition, the same is dismissed. No costs.