



Central Administrative Tribunal
Principal Bench

OA No. 658/2016

New Delhi, this the 27th day of February, 2020

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A. K. Bishnoi, Member (A)**

A.T. Daryani, aged about 73 years,
S/o Shri TD Daryani,
R/o C-101, First Floor,
Shivalik, Malviyanagar,
New Delhi-110017
(Retd. As Chemical Examiner Grade-II
New Customs House, Mumbai)

- Applicant

(By Advocate: Shri Yudhvir Dalal)

Versus

1. Union of India through
The Secretary to Govt. of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001
2. Chairman,
Central Revenue of Excise & Customs,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001
3. Director,
Central Revenue Control Laboratories,
Ministry of Finance, Department of Revenue,
Hill Side Road, Pusa Camp,
New Delhi-110012

- Respondents

(By Advocate: Shri Gyanendra Singh)



: O R D E R (ORAL) :

Justice L. Narasimha Reddy:

The applicant joined the service of Opium Factory, Ghaziabad under the Ministry of Finance, as Chemical Assistant, Grade-II (Group C) in the year 1968. He was promoted to the post of Chemical Assistant Grade – I in 1971, and Assistant Chemical Examiner (Group B) in 1985. The next higher post is Chemical Examiner Grade-II (CE-II) which is in Group A. He was promoted to that post on *ad hoc* basis on 1997. He retired from service on 31.07.2003.

2. The applicant and 12 others filed OA Nos. 526/2002 and 87/2003 before this Bench, requesting the drawal of panel by the DPC held in the year 2000 for promotion to the post of CE-II only in respect of vacancy year 1997, as illegal and for the direction to the respondents to convene the DPC for promotion to the posts of CE-II that arose in the years 1998 to 2002; and to grant consequential benefits to them. Both the OAs were disposed of on 22.10.2003, directing that the respondents shall take steps for filling up the vacancies that have arisen, and for preparation of seniority list.



3. The respondents have undertaken an exercise in that behalf and passed an order on 28.07.2006. Not satisfied with the order dated 28.07.2016, the applicant and two others filed OA No. 314/2007 before the Bombay Bench of this Tribunal. The OA was disposed of on 22.12.2011 with a set of directions. In compliance with that, the respondents passed a detailed speaking order dated 29.10.2012. The Contempt Case No. 117/2012 filed in this behalf was rejected on 18.12.2012, leaving it open to the applicant to file a fresh OA. Accordingly, the present OA is filed, challenging the order dated 29.10.2012, and for a direction to the respondents to extend him, the benefit that was granted to Sh. K.V. Balachandran and Sh. S.Sankaran during 28.11.1997 to 31.12.2000. Reliance is also placed upon an order dated 14.01.2004 in OA No. 487/2002 passed by the Bombay Bench of the Tribunal.

4. The applicant states that there were several vacancies existed between 1997 and 2003 and had the DPC been conducted in time, he would have been promoted. It is also stated that in the DPC that was convened at a later point of time, he was found fit to be



promoted against the vacancy of the year 2001, but he was not given the notional benefit. He submits that Sh. S.N. Tyagi and Sh. K.C. Cherian, who, too, have filed OA No. 487/2002 before the Bombay Bench of the Tribunal, were granted the notional benefit of promotion. Comparison was also drawn with two other persons.

5. The respondents filed a short counter affidavit as well as a detailed counter affidavit. The entire history pertaining to the case of the applicant is stated. They contend that the applicant retired from service on 31.07.2007, and the question of his being granted the relief of actual or notional promotion by a DPC which met at a long thereafter, does not arise. Various contentions urged by the applicant are also denied.

6. We heard Shri Yudhvir Dala, learned counsel for the applicant and Shri Gyanendra Singh, learned counsel for the respondents.

7. This is the third round of litigation by the applicant in his pursuit of the relief for promotion to the post of CE-II. It has already been mentioned that he was promoted on ad hoc basis to that post in the year 1997. He and 12 others approached this Tribunal



by filing OA Nos. 526/2002 and 87/2003. The Tribunal took the note of the plea of respondents in their sur-rejoinder and disposed of the OA in the following terms:-

“9. The respondents in their sur-rejoinder have stated in the following manner:

“k) The applicants themselves have stated that their prayer is to regularise their service against the substantial vacancies existing in the grade in promotion quota. The six regular vacancies available in the grade for the year 1997-98 had already reported to the UPSC and further vacancies had occurred only in 2000-01 and thereafter. In accordance with the instructions contained in D.O.P &T's OM No.28036/1/2001-ESTT(D) dated 23.07.2001 (Annexed as Exh.9) the applicants cannot be regularized with retrospective effect and they would be granted promotion with effect from the date of communication of U.P.S.C.conveying the recommendation of the DPC against the regular vacancies available in the promotion quota in the grade. Accordinlgy, it is respectfully submitted that the prayer of the applicant at (d) in O.A. are not consistent with the stand taken by the applicant.”

10. In that view of the matter, we however direct the respondents to take steps for filing up the vacant posts on regular basis from the day/dates the vacancy/vacancies did arise and accordingly the seniority list be prepared. This exercise has to be done within four months from the date of communication of this order.”

8. From this, it is evident that no specific relief was granted to the applicants and on the other hand, the



steps were required to be completed for the vacancies that existed by that time.

9. It is fairly well settled that a retired employee does not have a right to be promoted. The only exception is when his junior is promoted to the next higher post with effect from a date, which occurs earlier to the date of retirement of the senior employee. Barring that, the question of a retired employee being promoted does not exist. Further, the consideration of the case of a retired employee by the DPC is only for the limited purpose of defining the size of the zone of consideration and not beyond that. The OMs issued by the DoPT are clear in their purport on this subject.

10. A detailed speaking order was passed on 28.07.2006 in compliance with the directions issued by the Tribunal in OA Nos. 526/2002 and 87/2003. Not satisfied with that, the applicant and two others filed OA No. 314/2007 before the Bombay Bench. It was found that though the question was about the entitlement of the retired employee to be considered for promotion at least on notional basis, the Bench applied the principle relating to inter se seniority between the promotees on the one hand and direct recruits on the



other hand, and the principle governing the counting of ad hoc service of the regularized employees. In the instant case, the applicant was not regularized at all, and the question of counting his ad hoc service did not arise. All the same, in compliance with the order passed in OA No. 314/2007, the respondents passed a speaking order dated 29.10.2012, reflecting the factual position. The applicant is not able to point out any factual or legal error in that. The Contempt Case filed against it was also rejected.

11. Heavy reliance is placed upon an order dated 14.01.2004 in OA No. 487/2002. That was also a case in which two ad hoc CE-II claimed the relief of notional benefit of promotion. The nature of disposal given to that OA is contained in paras, 5, 6 and 7 thereof. They read as under:-

“5. In oral submission on behalf of the Respondents, Shri V.S. Masurkar reiterated that the Constitutional right of the applicants is limited only to consideration of promotion and not to actual promotion and he has stated that the DoPT instructions dt. 12.12.1998 say that although the officers will be included in the panel, they will have no right of actual promotion.

6. We have considered the case. The order passed by the Tribunal in OA No.526/2002 and 87/2003 on 22.10.2003 squarely covers the case of the present applicants. Although they have retired, they have to be given the benefit of inclusion in the panel according to DoPT



instructions dated 12.10.98 and as per the direction given by the Tribunal in the said two OAs. However, in view of their already having superannuated, the benefit of promotion would be only notional and the consequential benefits will have to be restricted to pensionary benefits only.

7. In view of the above, we direct the respondents that while they take steps for filling up the vacant posts of Chemical Examiner Gr.II on regular basis from the day/dates the vacancy/vacancies arise, the applicants will also be considered and shall be given notional benefit of promotion till the date of retirement. However, they shall be eligible to get consequential benefits so far as their pension and other retiral dues are concerned. If DPC in implementation of the order of the Tribunal dt. 22.10.2003 in OA No.526/2002 and 87/2003 has already been held, then the Respondents shall hold a review DPC for the purpose. The entire exercise should be completed and consequential benefits given to the applicants within a period of six months from the date of communication of this order. O.A. is allowed. No costs.”

12. The perusal of Para 6 discloses that the only basis for granting of the relief is the order in OA Nos. 526/2002 and 87/2003. We have already extracted the relief granted in those OAs and not a word was about the entitlement of the retired CE-II who retired from service, by the time the DPC met.

13. The applicant has also claimed parity of the pay structure with two employees, by name, Sh. K.V. Balachandran and Sh. S.Sankaran. The comparison is referable to the year 1998 and it is not even pleaded



that those two employees were his junior. In the reply given to the OA, the respondents have stated that the discrepancy occurred mostly on account of break in service even as on ad hoc basis in respect of the applicant. At any rate, we cannot review the situation that existed in the year 1998, particularly when the applicant was not senior to those employees.

14. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(A. K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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