

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**



OA No. 2471/2014

New Delhi, this the 09th day of January, 2020

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Sh. Aabi Binju
Age 55 years
S/o late Sh. G.P. Binju
R/o Flat No. 339, Second Floor
Block – B, Pocket-05, Vivekanand Apartments
Sector-08, Rohini
New Delhi-110085. ... Applicant

(through Sh. S.K. Gupta)

Versus

1. Secretary
Govt. of India
Ministry of Water Resources
Sharam Shakti Bhawan
New Delhi-110001.
2. Director
Govt. of India
Central Soil & Materials Research Station
Ministry of Water Resources
Olof Palme Marg, Hauz Khas
New Delhi-110016.
3. Secretary
Govt. of India
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi. ... Respondents

(through Sh. R.K. Jain)



ORDER(ORAL)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

The applicant was working as Scientist 'D' in the Central Soil & Materials Research Station, respondent no. 2 herein. Promotion from Scientist 'D' to the post of Chief Research Officer (CRO), was under the Flexible Complementing Scheme (FCS). The Assessment Board for this purpose met on 11.03.2006. The applicant was found not fit, whereas his juniors were cleared and promoted as CRO.

2. The applicant filed OA No. 1076/2007 before this Tribunal, feeling aggrieved by the denial of selection for promotion. The OA was allowed on 11.10.2011, with direction to the respondents to constitute a review Assessment Board and to consider the case of the applicant with reference to those years. In Writ Petition No. 2726/2012 filed by the respondents before the Hon'ble High Court of Delhi, no interim order was passed. Accordingly, the review Assessment Board met and the applicant was promoted to the post of CRO through an order dated 07.03.2013 w.e.f 30.10.1998.



3. The applicant contends that his junior, Sh. N. Sivakumar filed OA No. 1435/2010 before this Tribunal pleading that he was entitled to be promoted from the year 1995, on account of the fact that the selection process was delayed and that the OA was allowed on 24.02.2011, directing that the applicant therein shall be promoted from the date on which, he became eligible in the year 1995, to the post of CRO, and that the said order has since been implemented. The applicant made a representation on 10.09.2013 with request to extend the same benefit to him. Through an order dated 25.09.2013, the respondents refused to accede to the request of the applicant, by stating that the relief granted in OA cited by him, was personal to the parties thereto. The same is challenged in this OA.

4. The applicant contends that once his junior was extended the benefit of retrospective promotion, with effect from the date on which he became eligible, he, too, is entitled for the benefit and the respondents are not justified in denying the same.

5. The respondents filed counter affidavit opposing the OA. It is stated that the order passed in OA No 1076/2007 filed by the applicant is a subject matter of Writ Petition, pending before the Hon'ble High Court of Delhi and his promotion is subject to the orders, that may be passed in the Writ Petition. It is stated that, by



the time OA No. 1076/2007 was disposed of, the OA No. 1435/2010 filed by Sh. M. Sivakumar was decided on 24.02.2011 and having not claimed relief with reference to that, in his OA, he cannot raise this plea at this stage.

6. We heard Sh. S.K. Gupta, learned counsel for the applicant and Sh. R.K. Jain, learned counsel for the respondents.

7. The applicant was found not fit by the Assessment Board and was denied promotion to the post of CRO. OA No. 1076/2007 filed by the applicant was allowed and on implementation of the order passed therein, the applicant was promoted as CRO through an order dated 07.03.2013. The present grievance of the applicant is that he ought to have been promoted with effect from the year 1995, with reference to which, his junior was promoted. In other words, the junior was promoted from the date on which he became eligible and accordingly, the applicant must also be extended that benefit.

8. Whatever be the circumstances, under which the promotions can be made with effect from retrospective dates, when it is purely on the basis of seniority, the law is fairly settled in the context of promotions which are to be made after assessment by the DPC or Assessment Board, i.e., through process of selection. It is



only when an employee is found fit to be promoted on assessment, that the promotion can take place. The only exception in such cases is where, the sealed cover procedure is adopted and by the time the occasion to open it has arisen, his junior was promoted. If it emerges that the DPC or Assessment Board found him fit and the result was kept in sealed cover, the promotion from the date on which the immediate junior was promoted, is to be extended to him.

9. The principle that the promotion can be only after an employee is found fit by the DPC or Assessment Board and not earlier there to, was enunciated, if not reiterated, by the Hon'ble Supreme Court in the case of ***Union of India and Others vs. K.K. Vadera and Others***, 1989 Supp (2) SCC 625. Their Lordships observed inter alia as under:

“5.....We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”



10. This was followed in number of subsequent judgments. It is categorically mentioned that any retrospective promotion, where selection process is involved, would amount to promoting an employee even before he is found fit by the selection committee. This principle becomes relevant in a higher degree for promotions in Research Stations. The promotion to a post, where selection is the basis, is not a matter of course. It is only when, the concerned Board finds the Scientist as eligible to be promoted, that it can take place. Unfortunately, this judgment was not brought to the notice of this Tribunal when it decided OA No. 1435/2010. This Tribunal took the view that an employee is entitled to be promoted from the date on which he became eligible. Para 11 of the same reads as under:

“11. On the basis of the above discussion the OA is allowed in the same terms as OA number 1810/2007. The Respondents are directed to promote the Applicant from the date of eligibility in the year 1995 to the grade of CRO as expeditiously as possible, but not later than one month from the receipt of a certified copy of this order. The Applicant would be eligible for all consequential benefits, which may accrue to him according to the rules. There will be no order as to costs.”

11. If this is examined, on the touchstone of the principle extracted above, it emerges that it is a clear case of *per incuriam*. The devastating effect of such indiscriminate promotions in



Scientific Organizations, decades before they are found fit by the Assessment Board, are not difficult to assess. It is hoped, that the administration in various scientific organizations will take note of this and ensure that no Scientist is promoted before the date, on which he is found to be fit by the Assessment Board.

12. The OA is, accordingly, dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/ns/