

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.2265 of 2015

Orders reserved on : 05.02.2020

Orders pronounced on : 05.03.2020



**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)**

Udai Vir Singh (Retd).
S/o Late Sh. Khachera Singh, Age 61 years
A-886, Gharoli Diary Colony,
Mayru Vihar, Ph.III,
Delhi-110096.

.... Applicant

(By Advocate : Shri Deepak Verma)

VERSUS

Govt. of NCT of Delhi/Union of India
through

1. The Chief Secretary,
Govt. of NCT of Delhi,
5th Level, Delhi Sachivalaya Bldg.,
I.P. Estate, New Delhi.
2. The Principal Secretary (Planning Dept.),
Govt. of NCT of Delhi,
5th Level, Delhi Sachivalaya Bldg.,
I.P. Estate, New Delhi-110002.
3. The Secretary,
Dept. Of Personnel & Trg. (DP&T)
North Block,
New Delhi-110001.

..... Respondents

(By Advocate : Shri Amit Yadav and Shri Ankur Chhibber)

ORDER

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J) :

The applicant is a Scheduled Caste candidate, who had joined Govt. service with Govt. of NCT of Delhi on 15.10.1981. On 04.08.2008, he was promoted as regular Statistical Officer



(Plg./Stats.), which is a Group 'B' Gazetted Officer post, in the pay scale of Rs.9300-34800 with Grade Pay of Rs.4600/-. The next promotional post from the feeder cadre of Statistical Officer (Plg./Stats.) was to the post of Assistant Director (Plg./Stats.) in the pay scale of Rs.15600-39100 with Grade Pay of Rs.5400/- for which 9 vacancies (8 for General and 1 for Scheduled Tribe) for the period from 1.4.2013 to 30.3.2014 were considered. The name of the applicant was included in the zone of consideration at 9th position. However, the applicant, being at 9th position and also because there was no vacancy for a Scheduled Caste candidate at that time, was not promoted. The vacancy for the post of Assistant Director (Plg./Stat) for SC candidate, however, arose on 13.3.2014, i.e. during the vacancy year, due to the unfortunate demise of one Shri Dharampal Singh, who was also a Scheduled Caste official.

2. The grievance of the applicant is that his name was not considered by the DPC held on 7.4.2014 and it was decided at that time that his name would be considered in the supplementary DPC, to be held for the said purpose. In pursuance thereof, the respondents called for applicant's vigilance clearance etc. and started the process of DPC on 9.6.2014. Meanwhile, the applicant had already retired on 30.4.2014. Hence, in the meeting of supplementary DPC, it was held, that as the applicant has retired, the vacancy cannot be filled physically by him and the same is to be carried forward to the next vacancy year, i.e. 2014-15.

3. Being aggrieved, the applicant moved a representation on 5.1.2015 to the respondents to give him notional promotion from retrospective date on the ground that when he was already empanelled and was in the zone of consideration, he should be given notional promotion to the post of Assistant Director (Plg./Stats.) against the Scheduled Caste vacancy of late Shri Dharampal Singh (SC). But the respondents by the impugned order dated 9.1.2015, declined to do so.



4. The applicant, by means of the present OA, has challenged the legality and correctness of the aforesaid order dated 9.1.2015, passed by the respondents, whereby rejecting his claim for notional promotion, mainly on the following grounds:-

(i) The respondents committed undue delay in convening the DPC. As a result, the applicant could not be promoted in time i.e. before his retirement. Therefore, the respondents cannot take advantage of their own wrong in view of the settled legal position, that if the DPC is delayed, the persons, who in the meantime have retired, but who were in the zone of consideration/empanelled for the previous vacancies, shall be entitled to notional promotion for the purpose of fixation of pay, increment and pensionary benefits etc.

(ii) The applicant being the only eligible SC candidate for the vacancy which fell on 13.3.2014 due to demise of Shri Dharampal Singh, should have been promoted.



(iii) The stand of the respondents to empanel the applicant against the said vacancy in the DPC on one hand and to carry forward the vacancy to the next year on the other hand, as the same cannot be filled physically on account of retirement of the applicant on 30.4.2014, is totally arbitrary, illegal and self contradictory in view of the law as laid down by the Hon'ble Delhi High Court in the case of ***Union of India and another vs. P.G. George*** (W.P.(C) No.4864/2010 decided on 23.07.2010), a copy whereof has been annexed as Annexure-A2.

(iv) The respondents should have immediately convened the supplementary DPC for the applicant after 13.3.2014 on which date the vacancy for SC candidate arose due to demise of Shri Dharampal Singh (SC candidate). But failure of the respondents to convene the DPC in this regard within time, deprived the applicant from promotion at the time when he was in service and even if that he was retired, he should at least be granted notional promotion as per the law laid down by the Hon'ble Delhi High Court in ***P.G. George's*** case (supra).

(v) Learned counsel for applicant has also placed reliance on the following judgments in support of his contentions:-

(a) ***Mr. R. S. Gupta Vs. GNCTD & Ors.*** in OA No. 1519/2008 delivered on 24.02.2009 by Central Administrative Tribunal, Principal Bench, New Delhi.

(b) **Satish Kumar Khetarpal Vs Director General CISF and Ors.** in WP (C) No. 571/2016 delivered on 10.03.2017 by Hon'ble High Court of Delhi.

(c) **Shri Krishan Kumar Lal Vs. CPWD & Ors.** in OA No. 3418/2016 delivered on 13.08.2018 by Central Administrative Tribunal, Principal Bench, New Delhi.



(d) **Rajendra Prasad-II Vs. Union of India & Anr.** in OA No.681/2016 decided on 07.05.2018 by Central Administrative Tribunal, Principal Bench, New Delhi.

(e) **T. Rajendran, IPS (Retd.) Vs. State of Tamil Nadu & Anr.** in OA No.917/2016 decided on 08.08.2019 by Central Administrative Tribunal, Madras Bench, Madras.

5. The respondents have vehemently opposed the OA. In the counter reply filed by them, it has been contended that the DPC for filling up the nine posts of Assistant Director (Plg./Stats.) (8 general + 1 ST), which was held in UPSC on 7.4.2014 recommended 9 Statistical Officers (8 General + 1 ST) for promotion to the post of Assistant Director. The name of Shri Udai Vir Singh (applicant) was on the 9th position as per the seniority of the officers empanelled for promotion. As per the vacancy available at that time, 08 General and 01 ST candidate were already promoted to the post of Assistant Director (Plg./Stats.). Applicant, who happens to be a SC candidate, was on the 9th position and since all vacancies were covered by senior candidates, was not promoted to the post of Assistant Director (Plg./Stats.).



6. With regard to the delay in convening the DPC, it has been stated by the respondents in their counter reply that the DPC in UPSC was held on 07.04.2014 for the vacancy year 2013-14, having no vacancy for SC candidate. All the posts due for promotion i.e. 08 General Category and 01 ST category were already exhausted. The next vacancy for SC candidate arose after the sudden demise of Shri Dharam Pal Singh on 13.3.2014, for which the applicant became eligible. However, due to the reason that this vacancy was intimated to Planning Department vide the concerned department's letter dated 09.04.2014 which was received only on 16.04.2014, the vacancy of Shri Dharampal could not be considered in the DPC held on 07.04.2014, despite the fact that the applicant, being the only eligible SC candidate, was in the zone of consideration by the DPC for the vacancy year 2013-14. Since the applicant retired in the meantime i.e. on April 30th, 2014, the vacancy could not be filled physically and was carried forward to the next vacancy year 2014-15.

7. Learned counsel for the respondents has submitted that there was no deliberate delay on the part of the respondents in conducting the DPC well within time. The department initiated the process of supplementary DPC by asking for the required documents, i.e., IC/VC/M&M Report from the eligible officers from the various departments as per the consideration zone. However, in the meantime, applicant retired on 30.04.2014, therefore, he could not be promoted as per DOP&T's OM dated 14.11.2014.



8. It has been next contended that the applicant cannot be given any benefit of the law as laid down in **P.G. George's** case (supra) because each case has to be decided on the basis of the facts peculiar to it and the facts in **P.G. George's** case were absolutely different. Moreover, DOP&T's OM dated 14.11.2014, on the basis of which, the impugned order has been passed, was never challenged by the applicant.

9. In support of his contention that the information about the death of Shri Dharampal Singh was received in the Planning Department on 16.4.2014, learned counsel for the respondents has drawn our attention to Annexure no.6, i.e. the office order dated 09.04.2014, passed by General Administration Department, GNCTD, whereby the information about sudden demise of Dharam Pal, Assistant Director has been circulated to all concerned. The stand of the respondents is that as the applicant retired within 15 days i.e. on 30.4.2014 from receiving the information about death of Dharampal. The DPC could not possibly be held before 30.4.2014, in any case, without completion of the requisite formalities, like calling the dossiers of all the eligible SC candidates in the zone of consideration for this vacancy and taking the convenient date from the UPSC etc. Therefore, it cannot be said that it was a case of inordinate delay in holding the DPC as was there in **P.G. George's** case (supra).

10. We have considered the rival submissions advanced by the learned counsel for the parties and have carefully perused the pleadings available on record.

11. The applicant is a retired employee, who has sought notional promotion retrospectively. On this issue, all the controversies have now been set at rest by a catena of judgments rendered by Hon'ble Apex Court. In **Union of India & Ors Vs. K K Vadera & Ors.**, AIR 1990 SC 442, the Hon'ble Apex Court in para 5 has observed 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 fall 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.”

The Hon'ble Delhi High Court in **Union of India and another vs. K.L. Taneja and another** in Writ Petition No.8102/2012 and three other connected petitions decided on 12.4.2013, after discussing extensively the law laid down by the Hon'ble Apex Court in the cases of **K.Madhavan vs.UOI**, reported in 1987 (4) SCC 566, **UOI & Ors. vs. N.R.Banerjee & Ors.**, reported in 1997 (9) SCC 287, **P.N.Premchandaran vs. State of Kerala & Ors.**, reported in 2004 (1) SCC 245, **Union of India & Ors. vs. K K Vadera & Ors.**, reported in AIR 1990 SC 442, **Baij Nath Sharma vs. Hon'ble Rajasthan High Court At Jodhpur & Anr.**, reported in (1998) 7 SCC 44, **Sanjay K.Sinha & Ors. vs. State of Bihar & Ors.**, reported in AIR 2004 SC 3460, **State of Uttaranchal & Ors. Vs. Dinesh Kr.Sharma**, reported in 2006 (13) SCALE 246, and **Nirmal Chandra Sinha vs. UOI &**

Ors., reported in 2008 (14) SCC 29, **UOI vs. B.S. Aggarwal**, reported in 1997 (8) SCC 89, **Union of India & Anr. vs. Santhanakrishnan & Ors.** in Civil Appeal No.1655/1997, **P.N. Premachandran vs. The State of Kerala & Ors.**, reported in AIR 2004 SC 255, **Vinod Kumar Sangal vs. UOI & Ors.**, reported in 1995 (4) SCC 246, and **UOI & Anr. vs. Hemraj Singh Chauhan & Ors.**, reported as 2010 (4) SCC 290, has summarized the law on this issue as under:-



“(i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.

“(ii) If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.

“(iii) Since mala fides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act i.e. deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.

“(iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.”

12. Learned counsel for the applicant has himself filed a copy of DOP&T's OM No.22011/1/2014-Estt(D) dated 14.11.2014, which provides that the names of the retired officials may also be included in the panels. However, such retired officials would have no right for actual promotion.



13. Thus, the legal position is very clear having no ambiguity that as a general rule, neither there is any right nor any provision of retrospective promotion. The only exception to this is that when a person junior to the retired employee was promoted when the retired employee was still in service. The applicant has nowhere stated that any person junior to him was promoted to the post of Assistant Director before his retirement. There is no allegation about any tainted or mala fide exercise of the power by the employers. In the counter affidavit, the respondents have satisfactorily explained about the allegation of delay in conducting the DPC. Therefore, we are of the firm view that there was no delay on the part of respondents in conducting the DPC.

14. For the aforesaid reasons, the judgments cited by the applicant are not applicable to the instant case, as the facts are entirely different.

15. In view of the above discussion, the OA appears to be devoid of merit and is liable to be dismissed. Accordingly, OA is dismissed. No order as to costs.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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