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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1692/1997

New Delhi, this 11th day of July, 2000

Hon'ble Justice Shri V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Sompal Pal
GB-86, Prahaladpur
New Delhi-44

... Applicant

(By Shri Sant Lal, Advocate)

versus

Union of India, through

1. Controller General of Accounts
Department of Revenue, M/Finance
Lok Nayak Bhavan
Khan Market, New Delhi
2. Secretary
Ministry of Rural Areas & Employment
Krishi Bhavan
New Delhi

... Respondents

(By Shri Madhav Panickar, Advocate)

ORDER(oral)

By Reddy, J. -

The applicant was appointed as Accountant on 12.4.82. He was promoted as Junior Accounts Officer w.e.f. 1.4.91. He became due for consideration for promotion to the cadre of Assistant Accounts Officer (AAO, for short) in June, 1995. In OM dated 9.6.95, 81 JAOs have been approved for promotion as AAOs. The grievance of the applicant is that though his juniors have been empanelled for promotion, he was not promoted though his service record was without any blemish. He made representation on 6.7.95 and it was rejected on 28.8.95. Another representation dated 29.8.95 was made to R-1 for a review of the matter. In the meantime the impugned order dated 24.4.96 was issued by which the applicant has been approved for promotion as AAO w.e.f. 17.4.96. The OA is filed seeking promotion with retrospective effect from the date his juniors were promoted in 1995.



2. It is contended by the learned counsel for the applicant that as there were no adverse remarks in applicant's service records, he should have been promoted w.e.f. 8.6.95 and the impugned order in so far as promotion giving only prospective effect is bad in law as violating Article 14 and 16 of the Constitution.

3. In the reply, two preliminary objections have been taken - one is limitation and another nonjoinder of parties. On merits it is stated that applicant was considered by the DPC held on 8.6.95 but he was not found fit for promotion. It was averred that a candidate could be declared unfit for promotion when his performance is assessed as "average", though there may be no adverse entries in the CRs. Instructions of the DoP&T in para 6.1.4 in OM dated 10.4.89 were followed as the promotion is by non-selection method i.e. promotion on seniority-cum-fitness. In the next DPC held on 17.4.96 as the applicant improved his performance, he was found fit and he was promoted w.e.f. 17.4.96.

4. We have given careful consideration to the contentions raised in this OA.

5. We take first, the preliminary objection as to the limitation. In OM dated 9.6.95 juniors to the applicant were approved for promotion. On finding that the applicant's name was not found, he made representation on 6.7.95 and the same was rejected on 28.8.95. According to the learned counsel for the respondents, limitation started from 28.8.95 itself. Hence under

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Section 21 of AT Act, 1985 OA should have been filed within one year i.e. 28.8.96 from that date but it was filed on 25.7.97. The counsel for the applicant however refutes the contention to submit that within the period of limitation of one year the respondents issued the impugned order dated 17.4.96 promoting the applicant from that date. Thereafter the applicant filed another representation seeking retrospective promotion from the date his juniors were promoted but those representations have not been considered or rejected by the respondents. Hence, it is argued that the OA was well within the limitation.

6. It appears from the above facts the limitation started only after the expiry of 6 months from 17.4.96. The applicant filed the OA within the stipulated period of one year thereafter as stated supra. The impugned order in this case was passed on 17.4.96 and the applicant was aggrieved by the said order, he had a right for making representation against the said order which he did. In the circumstances, it cannot be said that limitation started from 27.8.95. We are of the view that the OA is filed within the period of limitation.

7. It is next contended that the OA is not maintainable as necessary parties are not impleaded as respondents. However, the learned counsel for the applicant submits that the applicant is only aggrieved by the upgraded seniority. He says that the applicant has filed the present OA only for promoting him in the upgraded post to enable him to get higher scale in the upgraded post.

(AM) ✓

Because of the undertaking given by the counsel for the applicant, it is declared that the promotion will not have any effect on the date of promotion of juniors in this case. In the circumstances, non-joinder of parties to the OA cannot be held as fatal to OA.

8. It is an admitted fact that juniors to the applicant have been promoted by the impugned order dated 9.6.95. A perusal of the recruitment rules to the post of AAO shows that 80% of the posts sanctioned in the scale of Rs.1640-2900 are upgraded in the scale of Rs.2000-3200. The promotion in the present case actually is on account of upgradation of the posts of AAO. Though the post is upgraded, the method of promotion is shown as by non-selection i.e. "seniority subject to fitness". For the purpose of promotion to the upgraded post, DPC has been constituted on 8.6.95 in which the case of the applicant was also considered but he was not 'found fit' for promotion. The only reason given for not finding him fit was that he was assessed as "average". We have perused the ACRs of the applicant for the year 1991-92 and 1992-93. In the minutes of the DPC it was stated that the applicant has been categorised as "average" during the above periods and hence the Committee did not recommend him for promotion. It is the contention of the learned counsel for the applicant that the promotion being to upgraded post, the promotes continue to hold the same post but with higher scale of pay, hence it cannot be called "promotion". He relies upon the judgement in the case of Asha Nayar (Mrs.) Vs. UOI & Ors. (1992) 21 ATC 290. In this case it was held that there is no question of appointment from one post to

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another as the parties continue to hold the the same post. The observations made by the Full Bench of the Kerala High Court in N.G.Prabhu v. Chief Justice, Kerala (1973) 2 SLR 251 were relied upon, which read as under:

"....In other words, if the upgradation relates to all the posts in a category naturally there is no sense in calling it a promotion of all the persons in that category. That is because there is no question of appointment from one post to another. Parties continue to hold the same posts but get a higher scale of pay. It may be that it is not all the posts in a particular category that are so upgraded, but only a part of it. Normally, the benefit of such upgradation could go to the seniors in the category. They would automatically get a higher scale of pay. That is because though their posts continue in the same category, a higher scale of pay is fixed for those posts. It is appropriate then to say that the seniors have been nominated to the higher grade which has been so created by upgradation. The phenomenon does not differ from the case where all the posts are upgraded, and it appears to us that those who get the higher grade cannot be said to have been 'promoted' because here again there is no question of appointment from one post to another. They continue to hold the same post, but because of seniority in the same post they are given a higher scale of pay".

It was also held that persons so nominated to the higher grade will not leave behind their earlier posts vacant.

9. In the absence of any promotion in the real sense of the term to another post, unless there are any adverse remarks in the service records the promotion cannot be denied. Mere "average" gradation of the service records of the applicant cannot be taken as a ground for denying promotion to the upgraded post. The OM dated 10.4.89 para 6.1.4 of DoP&T, in our view, is not applicable for consideration of candidates for promotion to the upgraded posts, hence it was wrongly followed.

(Signature)

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10. In the circumstances, we are of the view that the action of the respondents in not promoting the applicant along with his juniors in the order dated 9.6.95 is illegal. We therefore direct the respondents to constitute a review DPC and consider the case of the applicant for promotion to the post of AAO w.e.f. the date his juniors were promoted to the said post. This exercise must be completed within a period of four months from the date of receipt of a copy of this order. It is made clear that the applicant is not entitled for any change in the seniority position. Hence he shall be eligible for ¹momentary consequential benefits only.

11. The OA is allowed accordingly. No costs.

Shanta Shastry

(Smt. Shanta Shastry)
Member(A)

V.Rajagopala Reddy

(V.Rajagopala Reddy)
Vice-Chairman(J)

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