

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 207/2021

This the 29th day of January, 2021

(Through Video Conferencing)

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



Shri A.K. Varshney
S/o Late G.P. Varshney
R/o 1002, Tower-4, M3M Merlin
Sector 67, Gurugram-122102
Retired Scientist 'F'
Ministry of New and Renewable Energy
B-14, CGO Complex
Lodhi Road, New Delhi-110003.

.. Applicant

(In person)

Versus

1. Union of India
Through Ministry of New and Renewable Energy
B-14, CGO Complex
Lodhi Road, New Delhi-110003
Through its Secretary.

2. The Secretary, Govt. of India
Department of Personnel and Training
North Block, New Delhi-110001.

.. Respondents

(Through Shri Ashok Sharma, Advocate)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy, Chairman :-

The applicant joined the service of the Ministry of New and Renewable Energy in the year 1989 as Senior Scientific



Officer Grade I. He was promoted to the post of Principal Scientific Officer on 02.09.1994. The next promotion under the Flexible Complimenting Scheme (FCS) is to the post of Director, on completion of five years residency in the feeder category. The applicant became eligible in the year 1999 but the DPC did not select him. Same thing was repeated in the year 2001 and 2002. Ultimately, the applicant was promoted through order dated 22.11.2004. He retired from service on 30.09.2004.

2. The applicant made a representation stating that he was entitled to be promoted to the post of Director (Scientist G) w.e.f. 01.01.2003 whereas the DPC was convened only on 09.11.2004. He prayed for ante-dating of his promotion to 01.01.2003. That was earlier rejected through order dated 02.08.2013. Feeling aggrieved by that, the applicant filed OA No. 3510/2014. It was disposed of on 10.10.2019 directing the respondents to reconsider the matter, duly taking into account, certain factors indicated therein. In compliance with the same, the respondents passed an order on 27.01.2020. It was mentioned that the case of the applicant was considered at the relevant stages and that no modification is needed as regards the effective dates. This OA is filed challenging the order dated 27.01.2020.

3. Further grievance of the applicant is that though he became eligible to be considered for promotion to the post of Scientist G in the year 2009 itself, no DPC was convened till he retired from service and thereby he was put to serious hardship.

4. We heard the applicant, who argued the case in person and Sh. Ashok Kumar, learned counsel for the respondents.

5. This is the second round of litigation by the applicant, in the context of getting the ante-dating his promotion to the post of Director (Scientist F). It is mentioned that the case of the applicant was considered by the DPC on completion of five years of service in the post of Principal Scientist. Successively, the DPC found the applicant not fit for promotion in the years 1999, 2001 and 2002. His case was considered by the DPC which met on 09.11.2004 and he was found fit. The reasons on account of which the DPC did not meet in the year 2003 or earlier part of 2004 are not immediately before us, nor we can take them into account at this stage. The fact however remains that the DPC met on 09.11.2004, and on its recommendation, the applicant was promoted to the post of Director on



22.11.2004. The effort of the applicant is to get the date of promotion to the post of Director be pushed back to 01.01.2003. According to him, the DPC was required to meet on that date.

6. Assuming that there was delay in convening of the DPC between 2003 and 2004, there is nothing the Tribunal can do at this stage. If he felt aggrieved, the applicant could have knocked the doors of this Tribunal at the relevant point of time. He cannot complain, at this stage.

7. The issue in this behalf is no longer *res integra*. The mere fact that there existed a vacancy or that the incumbent acquired eligibility, would not be a ground to treat the promotion with reference to those dates. It is only on being cleared by the Selection Committee or DPC, that an occasion for promoting an individual arises. In **Union of India & Ors. vs. K. K. Vadera & Ors.**, 1989 SCC Supl. (2) 625, the Hon'ble Supreme Court held that ante-dating any promotion earlier to the one on which the DPC met, would amount to extending the benefit even before he is evaluated. The relevant paragraph reads as under:

“There is no statutory provision that the promotion to the post of Scientist 'B' should take effect from 1st July of the year in which the promotion is granted. It may be that, rightly or wrongly, for some reason or other, the promotions were granted

from 1st July, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientists 'B' should be with effect from the date of the creation of these promotional posts. 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."

Therefore, the question of ante-dating the promotion of the applicant to the post of Director earlier to 22.11.2004 does not arise.

8. The second grievance of the applicant is about the alleged failure of the respondents in convening the DPC between 2009 and 2014. Assuming that the DPC was not convened during that period for promotion to the post of Scientist G, the Tribunal cannot grant any relief at this stage. The applicant ought to have approached the Tribunal at the relevant point of time, in which case the facts could have been verified and necessary directions could have been issued. It is fairly well settled that the right of an employee is only to be considered for promotion, and that, naturally would take place as and when the DPC meets. If there was

delay in convening the DPC, it would not be factor to promote an official, without the assessment by DPC.

9. We do not find any merit in the OA and the same is accordingly dismissed.

There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/lg/pj/jyoti/ns/