

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



OA No.472/2020

Today, this the 2nd day of November, 2020

Through video conferencing

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

Gurcharan Singh
Age 60 years, Group 'A'
Retired as Sr. Accounts Officer
R/o 2/28, Double Storey
Tilak Nagar, New Delhi-110018.

..Applicant

(Through Mr. Vidya Sagar, Advocate)

Versus

1. Union of India through
The Controller General of Accounts
Ministry of Finance
Department of Expenditure
Maha Lekha Niyantrak Bhawan
Block-E, GPO Complex
INA, New Delhi-110023.
2. The Secretary
Department of Personnel & Training
North Block, New Delhi-110001.
3. The Secretary
Union Public Service Commission
Shajahan Road, New Delhi-11.

..Respondents

(Through Mr. Anil Kumar Singh for respondent No.1 &2 and
Mr. R.V. Sinha for respondent No.3, Advocates)

ORDER (Oral)



Justice L. Narasimha Reddy:

The applicant retired from service as Senior Accounts Officer from the Establishment of the Controller General of Accounts, the 1st respondent herein, on 30.11.2019. Just before his retirement, the process of promotion to the Junior Time Scale (JTS) took place. The matter was entrusted to the Union Public Service Commission (UPSC), the 3rd respondent herein. Two vacancies were notified and the eligible persons were selected and appointed.

2. The applicant contends that though there existed some more vacancies, the 1st respondent did not notify them to the UPSC and, on account of that, he lost an opportunity of being promoted. This O.A. is filed with a prayer to direct the respondents to hold the review DPC to consider the case of the applicant for promotion against a vacancy, since he was otherwise eligible, and to re-fix his pay from the date of his notional promotion and to revise his pensionary benefits.

3. The applicant contends that there was lapse on the part of the 1st respondent in notifying the JTS vacancies and there was absolutely no justification for the respondents in not promoting him.



4. We heard Mr. Vidya Sagar, learned counsel for the applicant, Mr. Anil Kumar Singh, learned counsel for respondent No.1 and Mr. R.V. Sinha, learned counsel for respondent No.2.

5. By the time he attained the age of superannuation, the applicant was holding the post of Senior Accounts Officer. The next promotion from that post is to JTS.

6. It is fairly well settled that an employee does not have a right to be promoted and it is only to the extent of being considered for promotion, if he is eligible. Much would depend upon the availability of the vacancy and the need, felt by the department to effect promotions. In the matter of calculation of vacancies the last word is to be uttered by the department and not by the employee, waiting for promotion.

7. The DPC, for promotion to the post of JTS met on 25.10.2019 and only one additional vacancy in general category, on account of long leave of Smt. Saroj Gupta, was notified. The DPC considered the case of eligible officers and made its recommendations. It is not even alleged that anybody junior to the applicant was considered for promotion.

8. The applicant made strenuous efforts to convince us that there existed some more vacancies on account of retirement of Shri B.S. Choudhary and extension of deputation term of Shri



Sahib Singh. The timing at which the relevant vacancy became available, is to be decided by the department. They have got their own norms to be followed in this behalf. At any rate since the applicant is retired from service, the question of a retired person for being considered for promotion does not arise.

9. The law is fairly well settled in this behalf by the Hon'ble Supreme Court in **Union of India & others v. K K Vadera & others**, 1990 AIR 442. It was held that a retired employee cannot be promoted. The only exception is where a junior to an officer is promoted in preference to him, while he was in service. Such a situation does not exist in this case. Extension of the benefit of promotion just to enable an employee to draw higher amount of pension is unknown to service law. The practice of enabling the officer to draw salary attached to the post, even if he did not work for one day, needs to be discouraged.

10. We do not find any merit in the O.A. and accordingly the same is dismissed. There shall be no order as to costs.

(Mohd. Jamshed) (Justice L. Narasimha Reddy)
Member (A) Chairman

November 2, 2020

/sunil/jyoti/rk/sd