

CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH

OA/310/01254/2013

Dated the 03rd day of January Two Thousand Nineteen

PRESENT

HON'BLE MR. P. MADHAVAN, Member (J)

&

HON'BLE MR. T. JACOB, Member (A)

P. Namasivayam,
S/O. Mr. V. Periyasami,
No. 10, 10th Street Extension,
Gandhinagar, Mangalsutra,
Chennai 600061.

....Applicant

By Advocate M/s. R. Ramesh

Vs

1. Union of India rep by,
The Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhawan,
2&4, Rafi Marg,
New Delhi 100001.

2. The Director General/Joint Secretary,
Directorate General of Employment and Training,
Ministry of Labour and Employment,
Shram Shakti Bhawan,
2&4 Rafi Marg,
New Delhi 100001.

....Respondents

By Advocate Mr. J. Vasu .

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

Heard the counsel for the parties.

2. The applicant has filed this OA seeking the following relief:

"To call for the records pertaining to seniority list of Training Officer bearing no. DGET-A-23022/03/2013-TA-1 dated 21.05.2013 of the 1st respondent and order bearing No.DGET-A-23022/01/2013-TA-1 dated 11/12.02.2013 of the 2nd respondent and set aside the same consequently direct the respondent to fix the applicant's seniority position in the appropriate place in the seniority list of Training Officer and grant promotion to the post of Assistant Director of Training with effect from 16.02.2009 on par with his juniors and grant all consequential benefits and pass such further or other orders which this Hon'ble Court may deem fit and proper under the circumstances of the case and render justice."

3. The facts of the case as stated by the applicant are as follows:

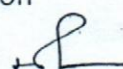
(a) Based on the recommendation of the Union Public Service Commission vide its letter No. f1/433/95-R-V/R.No.65, dated 31.12.1996, the applicant entered the services of the 2nd respondent as a Direct Recruit in the cadre of Training Officer on 08-08-1997 in the pay scale of Rs 2,000 - 3,500 vide the order No. DGET.A.19019/2/97/TA-1.

(b) The post of Training Officer is filled up 50% by Direct Recruitment and 50% by promotion. While this post carried a scale of pay of Rs 2000 - 3500, certain other posts such as STA/Surveyor/Group Instructor/Store Officer /Millwright Maintenance in the field Institutes/offices of DGE&T had the pay scale of Rs 2000 - 3200/- till 31-12-1995.

(c) After the 5th Pay Commission, the pay scales of Rs. 2000-75-3200 and 2000-3500 were merged and replaced by a common pay scale of Rs. 6500-200-10500. As a result of the same, the pay scale of Rs. 2000-3200 for the post of STA/Surveyor/Group Instructor / Store Officer / Millwright Maintenance in the field Institutes/offices of DGE&T was merged with the promotional cadre of Training Officer's in the pay of Rs. 2000-3500.

(d) The officers in the STA/Surveyor/Group Instructor/Store Officer/Millwright Maintenance in the field institutes/offices of DGE&T were granted the merged pay scale with effect from 01.01.1996, by the order dt. 15.10.1998.

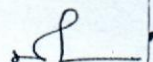
(e) The applicant would submit that on 09.12.2003, the respondent fixed tentative seniority list in which the position of the applicant was reflected at Sl. No. 363 in the seniority list of Training Officers as on



31.10.2003. The officials were given opportunity to make objections for the said seniority list and thereafter, issued order fixing the final seniority list of training officers from Sl. No. 214 to 275. On 16.02.2009, the respondent issued ad hoc promotion order for 22 Training Officers which did not include the name of the applicant. On 26.08.2009, the respondent had issued tentative seniority list of Training officers as on 31.07.2009 and once again objections and comments were called for. The applicant submitted his representations to the 2nd respondent for revision and correction of the seniority of Training Officer as on 31.10.2003. On 08.08.2011, the respondent issued the seniority list of Training Officers as on 30.06.2011, wherein the seniority list of juniors were shown over and above that of the applicant. The 1st respondent issued order for appointment/promotion to the higher post of Assistant Director of Training in which all the juniors were promoted and the applicant is left out due to alleged irregular seniority. By the impugned order dt. 11.02.2013 of the 1st respondent, the applicant's representation was rejected. Aggrieved by the impugned seniority list and the order of the 1st and 2nd respondent in not assigning the correct seniority position of the applicant in the post of Training Officer, the applicant has filed this OA.

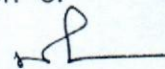
4. The respondents have filed reply. For better appreciation of the facts, we deem it appropriate to refer to paragraphs 4 & 5:-

"4. With regard to the averments made in paras 5 to 14 of the OA, it is submitted that pursuant to the fifth pay commission and its acceptance by the Government by the Government vide Ministry of Finance (Department of Expenditure) Notification No. GSR.569(E) dated the 30th September, 1997, the posts of Senior Technical Assistant, Surveyor, Group Instructor, Store Officer and Maintenance Mechanic/Millwright in the pre revised pay scale of Rs. 2000-3200 and



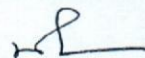
their promotional post of Training Officer in the pre-revised pay scale of Rs.2000-3500 have been granted the same replacement scale of Rs.6500-10500 (S-12 of Part A of the Ministry of Finance Notification to GSR.569(E) dated the 30th September 1997. Consequent to this, the President is pleased to re-designate the posts of STA, Surveyor, Group Instructor, Store Officer and Maintenance Mechanic/Millwright in the field Institutes/offices and DGE&T Head quarters of the Training Officer (Group B Gazetted) in the revised pay scale of Rs. 6500/- to 10500/- w.e.f 1st January 1996. The incumbents of the posts of STA/Surveyor/Group Instructor/Store Officer/Maintenance Mechanic/Millwright working on regular basis as on 31st December 1995, shall be deemed to be holding the post of Training Officer w.e.f 1st January 1996 and such officers who had joined on the post of Training officers on promotion on or after 1st January 1996 will not be entitled for benefit under rule FR 22(1)(a)(i). However, such officers will continue to be posted at their present places of posting. In the instant case, the applicant was appointed to the post of Training Officer vide OM No. DGE & T-A-19019/2/97-TA-I dated 08.08.1997 (Annexure R-1) pursuant to UPSC's recommendation made on 31.12.1996. Accordingly he was given seniority at Sl.No. 57 in the said Seniority list as on 30.06.2011. All other officers featuring Sl.Nos 12 to 56 were placed senior to the applicant as these officers were appointed earlier to that of applicant.

5. It is submitted that further in terms of DoPT's instructions as contained in the OM No. 2011/1/2006-Estt(D) dated 03.03.2008, it has been clarified that while the inter-se seniority of direct recruits and promotes is to be fixed on the basis of the rotation of quota of vacancies, the year of availability both in the case of direct recruits as well as the promotees for the purpose of rotation and fixation of



seniority shall be the actual year of appointment formalities as prescribed. It is further clarified that when appointments against unfilled vacancies are made in subsequent year or years either by direct recruitment or promotion the persons so appointed shall not get seniority of any earlier year (viz year of vacancy/panel or year in which recruitment process is initiated) but should get the seniority of the year in which they are appointed on substantive basis. The year of availability will be the vacancy year in which a candidate of the particular batch of selected direct recruits or an officer of the particular batch of promotes joins the post/service. Since the seniority of the applicant has been allotted at Sl No. 57 ie, the date on the which the UPSC's recommendation was made, the applicant may not be given seniority earlier than that of date of recommendation of the UPSC."


5. The applicant filed rejoinder. The applicant would submit that according to the 3rd column of the final seniority list circulated vide DGET letter dt. 08.08.2011, the officials from Sl. No. 3 to 56 who were all re-designated as deemed to hold the post of Training Officer by way of merger of pay scale are neither Direct Recruits nor promotees. It is further submitted that the officials who hold the post of STA/Surveyor/Group Instructor/Store Officer/Maintenance Mechanic/Mill Wright were then re-designated as deemed to hold the post of Training Officer through office order dt. 15.10.1998. Even if the said process of re-designation is valid under any settled law, they can be enlisted in the post of Training Officer only on or after 15.10.1998. In line with the terms of said DoPT OM, the year of availability in their case can be determined to 1998 only as the order put into force only with effect from 15.10.1998. But, they were all accommodated in the year of 1996 in violation of this settled principle by fixing an identical date of '1-Jan-1996' to



all the officials under the column of 'date of regular appointment' and thus the action of the respondent in this regard is undoubtedly discriminatory and illegal. He has also relied on the decision of the Hon'ble Supreme Court in the case of The state of Maharashtra and anr. Vs. Chandrakant Anant Kulkarni and ors in support of his contention.

6. Learned counsel for the applicant has relied upon DoPT OM No. 20020/4/2010-Estt [D], dated 13.09.2012 and contended that the officials holding the posts having higher pay scale or posts which constituted promotion posts for the post in the feeder grade will rank en bloc senior to those holding post having lower pay scale or the post in the feeder cadre. Further he submitted that where posts having different pay scales prior to 6th Pay Commission and now after merger have come to lie in the same Pay Band with same Grade Pay, the inter-se seniority of all the employees will be fully maintained with employee in a higher pre-revised pay scale being placed higher vis-a-vis an employee in a lower pay scale. He argued that the applicant who was holding the higher post of Training Officer as on the date of merger when compared to the officials in the lower grade who got merged with the Training Officer post ought to have been placed below the applicant's seniority position by applying the same analogy.

7. It has further been contended by the counsel for the applicant that it is an admitted fact that not only that the applicant had been functioning in the promotional post but also had been so far supervising those who were in the feeder cadre. Though equated with the promotional post, the functional responsibilities of Training Officers are higher than that of the other posts. As such, merely because of merger with retrospective effect, it is illogical and unfair to permit the subordinates to have an edge over the applicant with reference to seniority.



8. Learned counsel for the respondents would submit that the respondents have correctly fixed the seniority of the applicant as per the extant instructions on the subject and prayed for dismissal of the OA.

9. We have carefully considered the relevant material and the rival submissions.

10. The recommendations of the V CPC are all focussed only with the pay scale and cadre restructuring by way of merger of certain posts. That far and no further. Notwithstanding the fact that merger of posts was recommended and accepted and the pay got revised, the fact remains that in so far as seniority is concerned, the lone authority is the Nodal Ministry i.e. DoP&T.

11. The new pay of Rs.6500-10500 apparently was only an upgradation of the pay due to merger of pre-revised pay scales of Rs.2000-3200 and Rs.2000-3500. The new pay benefit has only to be extended to all those officials w.e.f 1.1.1996 and the Government of India has not issued any order to fix their seniority from 1.1.1996 while merging these two pre-revised pay scales. It is trite that seniority of the promotional posts and the feeder posts are always disparate and in the event of merger, should there be a need to have single seniority, the holder of posts having higher pay scale or post which constituted promotion post for the posts in the feeder grade will rank enbloc senior to those holding posts having lower pay scale over the posts in the feeder cadre. The analogy has been again laid down in para 2(I) and para 2(II) of DOP&T OM No.20020/4/2010-Estt[D] dated 30.9.2012 to fix the seniority of officers holding the posts/grades in grades merged in pursuance of recommendations of VI CPC, which is reproduced below:-

I. The status of a government servant as on 29.08.2008 including those who have earned promotion between 01.01.2006 to 29.08.2008 will be protected as appointment/promotions are made as per the provisions of statutory recruitment rules applicable to the post/grade. The merger of the pay scale(s) as recommended by 6th CPC have been made effective w.e.f. 01.01.2006, the seniority of

government servant which existed on 29.08.2008 (date of acceptance of recommendation of 6th CPC) will be maintained i.e., the holder of post having higher pay scale or post which constituted promotion post for the posts in the feeder grade, will rank enbloc senior to those holding post having lower pay scale or the posts in feeder grade.

II. Where posts having different pay scales prior to 6th CPC recommendations and now after merger have come to lie in the same Pay Band and same Grade Pay, the inter-se-seniority of all the employees will be fully maintained with employee in a higher pre-revised pay scale being placed higher vis-a-vis an employee in a lower pay scale. Within the same re-revised pay scale, seniority which existed prior to revision would continue.

12. Though at the material point of time when the V CPC recommendations were accepted by the Government, no separate general orders were issued relating to seniority, based on the general principle that persons holding the posts carrying higher pay scale shall, be enbloc senior to those placed in the lower scale of pay coupled with the fact the same principle has been adopted in the wake of the recommendations of the Sixth Pay Commission, the applicant who was holding the higher post of Training Officer as on the date of merger when compared to officials in the lower grade who got merged with the Training Officer post and they should have been placed below the applicant's seniority position.

13. A merger would be integration of various posts and taking them as a single cadre (V.K. Khanzode vs. R.B.I. (1982 (2) SCC 7). After the merger, the seniority in the faculties prior to merger would not be of any consequence as it is the subsequent seniority after the merger which would be effective. Therefore, the crucial question shall be as to from what date the merger came into effect as per law and from till which date the applicant belonging to Training Officer post is to be placed above those Senior Technical Assistant, Surveyor, Group Instructor, Store Officer, Maintenance Mechanic/Mill Wright. It is this question that has to be addressed to arrive at a just conclusion whether the claim of the applicant is justified and as per law.

14. As already observed, till 30-09-1997 there was no decision to merge the higher and lower posts. It is settled legal position that there will be no

change in the Inter se seniority of the Incumbents in the merged scale. The merger/redesignation of posts of STA / Surveyor / Group Instructor / Store Officer and Maintenance Mechanic / Mill Wright in the Institutes / Offices and DGET Headquarters of the Training Directorate of DGET was completed only on 30.9.1997 (on Implementation of the VI CPC) even though it was given effect from 1.1.1996. The actual effect of pay scale cannot mean that the same effect would be extended in respect of seniority. Till 30-09-1997 there did exist two disparate seniority, one for Training Officer and the other for the rest, whose pay scale was upgraded. Again, as rightly contended by the counsel for the applicant, the applicant was holding a post higher than that held by others and apart from the same he was supervising the job functions of such subordinates when the merger took place. Thus, those who were holding the posts of Training Officer as on that date did form the higher strata to be held as senior to those whose pay scale got revised and nomenclature changed on merger with the post of Training Officer. The respondents unjustifiably reckoned seniority of the lower grade officials with an undefined uniform date of 1.1.1996 or with varying date as per the date of assuming charges in the post of STA, Surveyor, Group Instructor, Store Officer, Maintenance Mechanic/Mill Wright. This is against the spirit of the settled legal position and the OM dated 30.9.2012 which is not sustainable.

15. In view of the above the impugned tentative seniority list is liable to be quashed and accordingly the same is quashed and the respondents are directed to revise the existing seniority list of Training Officers and right the wrong by retaining all who had been appointed against the Direct Recruit quota as Training Officer till the decision took place for merger, i.e. 30-09-1997 which alone is in accordance with law and extant instructions on the subject. And, accordingly the respondents shall consider the applicant for promotion to the post of Assistant Director of Training, if found eligible



otherwise along with or immediately after those Training Officers who were promoted singling out the applicant. In the event of his being found fit and on promotion, his seniority in the higher grade would also be suitably fixed. The above exercise shall be completed within a period of four months from the date of pronouncement of this order.

16. The OA is allowed on the above terms. No costs.