

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/01482/2014

HYDERABAD, this the 16th day of February, 2021

(Reserved on 04.02.2021)



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

G. Siva Pasada Rao,
S/o G. Koteswara Rao, Aged 54 years,
Occ : Senior Scientific Officer Grade-I (SSO-I),
O/o MSQAA, Ministry of Defence,
C/o DRDL, Kanchanbagh, Hyderabad-500 058
And R/o Hyderabad.

...Applicant

(By Advocate : Mr. G.T. Gopal Rao)

Vs.

1. Secretary to the Government of India,
Ministry of Defence, Dept. of Defence Production,
South Block, New Delhi – 110 011.
2. The Director General,
Aeronautical Quality Assurance, (DGAQA)
Ministry of Defence, H-Block,
New Delhi – 110 011.
3. The Principal Director,
MSQAA, Ministry of Defence,
C/o DRDL, Kanchanbagh,
Hyderabad-500 058.

....Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed by the applicant seeking for a direction to the respondents to promote him from the date of occurrence of vacancy of SSO-II for the year 2005-06 and further promotion to the post of SSO-I for the years 2010-11 immediately after completion of 5 years in the feeder cadre of SSO-II by conducting the review DPC with all consequential benefits.

3. Brief facts of the case are that the applicant joined the respondents organisation as Sr. Scientific Assistant (SSA) on 9.8.1988 and was promoted as Jr. Scientific Officer (JSO) on 2.7.1991. Later, DPC was held for the post of Sr. Scientific Officer Grade II (SSO-II) against 2004-05 and 2005-06 vacancies on 1.5.2006 but the applicant was not considered. A review DPC was conducted again for the vacancies of the same years on 21.11.2008. The applicant was promoted for the said post on 8.12.2008 against the year 2005-06 and he joined the post on 12.3.2009. Thereafter, applicant rose to the rank of Sr. Scientific Officer Grade - I and is presently working in the said post. Applicant claims that he should have got the SSO Grade-I in 2010-11 and since it was not given, a representation was submitted claiming that the promotion of the applicant for the grade of SSO Grade -II for 2005-06 vacancies should be granted from the date of the vacancy, as observed by Hon'ble Chandigarh Bench of the Tribunal in OA 800 of 2011 vide order dt. 18.10.2011. Representation of the applicant was rejected on the ground that the Tribunal verdict applies only to the specific

case and the later representations submitted on 24.9.2013, 27.6.2014 & 26.8.2014 met the same fate. Aggrieved, the OA is filed.

4. The contentions of the applicant are that his case is covered by the judgments of the Principal Bench in OA 2757 of 2010 with MA Nos. 2152/2010, 468/2011 dated 18.4.2011 and OA 1467/2012 dated 13.9.2013 as well by the verdict of Chandigarh Bench in OANo.800-CH of 2011 dt. 18.10.2011. Representations have been rejected without application of mind. Not promoting the applicant as SSO –II from the date of vacancy is illegal, arbitrary and violation of Articles 14, 16 & 21 of the Constitution of the India.



5. Respondents in the reply statement state that a DPC for SSO-II was held on 1.5.2006 for 6 vacancies of 2004-05 & 10 vacancies of 2005-06 and the applicant was not selected. Subsequently, on revising the vacancies as 9 for 2004-05 & 11 for 2005-06, a review DPC was conducted on 21.11.2008 and revised panel was issued on 8.12.2008, selecting the applicant and he joined as SSO-II on 12.3.2009. Later, applicant was promoted as SSO-I on 23.6.2014. The seniority of the junior to the applicant Sri M.S. Sridhar promoted vide original panel dated 23.5.2006, who assumed charge on 24.05.2006, was revised by placing him below the Applicant in revised panel. Action has been taken as per DOPT instructions and the decisions taken are not violative of the verdicts of the Hon'ble Principal Bench. Regarding Hon'ble Chandigarh Bench details have not been furnished clearly to make any comments. Applicant did not seek step up of pay. Junior to the applicant Sridhar has been promoted as SSO II as per reply.

6. Heard the Respondent counsel and perused the pleadings on record. Ld. Counsel for the applicant was absent. The case pertains to 2014 and any further procrastination in hearing the case would be detrimental to the interest of justice and hence, was heard to arrive at a justifiable conclusion.



7. I. The dispute is in regard to promoting the applicant to the post of SSO-II from the date of occurrence of vacancy in 2004-05/2005-06. As is seen from the details of the case, respondents conducted a DPC for promotion to the post of SSO-II for the years 2004-05 & 2005-6 on 1.5.2006 and released the original panel on 23.5.2006 in which the applicant name was not shortlisted. However, respondents reviewed the vacancies for the said years and conducted review DPC wherein the applicant was selected and he joined SSO –II on 12.3.2009 as per revised panel dated 8.12.2008. The claim of the applicant is that he has to be promoted as per the original select list dated 23.5.2006. In this regard, we observe that it is well laid down in law that the promotion would be effective from the date of vacancy and not from the date of occurrence of vacancy. Exceptions could be those where the promotions are subject to sealed cover procedure or where the recruitment rule provides for retrospective promotions w.e.f. from the occurrence of the vacancy. Applicant did not submit any recruitment rule issued by the respondents to the effect that promotion has to be granted with retrospective date from the date of vacancy and his promotion does not come under the sealed cover procedure. Hence the applicant cannot be considered for promotion from the date of occurrence of vacancy as sought by the applicant. We rely on

the observations of the Hon'ble Apex Court in ***Union of India & Others v/s N.C. Murali & Others in Civil Appeal No.4156 of 2008*** decided on 14 February 2017, as under, in making the above remarks:



"12. Learned counsel appearing for the appellants also placed reliance on the judgment of this Court in the case of Nirmal Chandra Sinha v. Union of India and others and connected matter reported in (2008) 14 SCC 29. Paragraph 7 of the judgment reads as follows:

"7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide Union of India v. K.K. Vadera 1989 supp.(2) SCC 625 : 1990 SCC (L&S) 127, State of Uttaranachal v. Dinesh Kumar Sharma (2007) 1 SCC 683: (2007) 1 SCC (L&S) 594, K.V. Subba Rao v. Govt. of A.P. (1988) 2 SCC 201: 1988 SCC (L&S)506:(1988) 7 ATC 94, Sanjay K. Sinha-II v. State of Bihar (2004) 10 SCC 734: 2005 SCC (L&S) 169 etc."

13. In view of the law laid down in the above-mentioned cases, it is clear that unless there is specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy, the right of promotion does not crystallize on the date of occurrence of vacancy and the promotion is to extended on the date when it is actually effected."

II. However, it is noticed that while promoting the applicant as per the review DPC, respondents have taken care that his pay was stepped up on par with his juniors and the seniority of his Junior Sri M.S.Sridhar was revised by placing him below the applicant in the revised DPC panel. Therefore, the applicant has not lost on account of pay or in respect of seniority. Respondents on their own revised the pay of the applicant notionally w.e.f.24.5.2006 and actually from date of assuming the charge of SSO-II. The seniority of the applicant was fixed along with the other officials in the original panel of 2006. The action of the respondents is in accordance with instructions contained in DOPT memo dated 10.4.1989, which is extracted hereunder:

"If the officers placed junior to the officer concerned have been promoted, he should be promoted immediately and if there is no



vacancy, the juniormost person officiating in the higher grade should be reverted to accommodate him. On promotion, his pay should be fixed under Fr 27 at the stage it would have reached, had he been promoted from the date the officer immediately below him was promoted but no arrears would be admissible. The seniority of the officer would be determined in the order in which his name on review, has been placed in the select list by DPC. If in any such case a minimum period of qualifying service is prescribed for promotion to higher grade, the period from which an officer placed below the officer concerned in the select list was promoted to the higher grade, should be reckoned towards the qualifying period of service for the purpose of determining his eligibility for promotion to the next higher grade.”

III. No junior to the applicant was thus promoted prior to the applicant as is evident from the averments in the reply statement, as under, and not denied by the applicant by way of a rejoinder:

“3.6 Therefore, it transpires from the above that the points raised by the applicant in his representations were adequately addressed to by Respondent No.2. It is reiterated that the applicant has not been put to any loss for not being included in the original DPC so far his seniority, pay fixation and next promotional avenue is concerned vis-à-vis any of his junior. His seniority in the grade of SSO-II has been fixed along with officers promoted in the original DPC for year 2005-2006 and placed as per the position in the revised panel drawn by the Review DPC.

3.7 As regards promotion to the next grade of Senior Scientific Officer Grade I (GP Rs.6600), none of his junior was considered for promotion prior to him. In year 2014-15, though the applicant had not completed qualifying service of 05 years as on 01.01.2014 whereas his immediate junior had completed the same but was considered for promotion along with his junior under the protection of Junior-Senior clause at No.2 of the SRO 132 dated 06.12.2005.

3.8 Regarding fixation of pay on promotion to SSO-II grade under Review DPC, the applicant was asked to seek pay protection/ stepping up with respect to his junior, if any case comes to his notice. It is apparent from the original and the revised panels that Shri M.S. Sridhar who was included in the original panel dated 23.05.2006 and assumed charge of the post w.e.f. 24.05.2006 was placed below the applicant in the revised DPC panel. Hence, the applicant could have opted for stepping up his pay at par with Shri M.S. Sridhar on his promotion to SSO-II grade. However, no such request for stepping up of pay has been received from the applicant.

After examining the matter, the Respondent No.2 vide letter dated 15 April 2015 has directed the concerned Admin department to take up the case with concerned Audit authority for fixation of pay of the applicant in the grade of SSO-II notionally w.e.f. 24.05.2006 i.e. date of joining Shri MS Sridhar as SSO-II and actually w.e.f. 12.03.2009 i.e. date of assumption of charge of the post of SSO-II by the applicant.”

IV. In fact, though the applicant had not completed 5 years in the grade of SSO-II as on 1.1.2014 while his immediate junior had completed 5 years, the applicant was considered for promotion as SSO-I for the year 2014-15 following the junior – senior principle as per SRO 132 dated 6.12.2005. Thus we find the respondents were dot on in respect of the rules to be followed.



V. The judgments of the Hon'ble Benches of the Tribunal namely Principal Bench and Chandigarh Bench may not come to the rescue of the applicant in view of the observations of the Hon'ble Apex Court cited supra. However, respondents were liberal enough to protect the seniority and the pay of the applicant which requires no further review at this stage, since the rights of the applicant have been fully crystallized on his joining as SSO-II. Representations of the applicant were duly responded to as required.

VI. Therefore, in view of the above cited circumstances we have no scope to intervene on behalf of the applicant to grant the relief sought. Hence the OA is dismissed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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