

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00681/2014

HYDERABAD, this the 7th day of October, 2020

(Reserved on 30.09.2020)



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

N.Pydi Raju S/o Late N.Ramulu,
Age 59 yrs, Occ : Asst. Naval Store Officer-1,
R/o H.No.58-16-95/1, Shanti Nagar,
NAD Kotha Road, NAD Post,
Visakhapatnam-530009.

...Applicant

(By Advocate : Mrs. Anita Swain)

Vs.

1. The Union of India,
Rep by its Secretary, Ministry of Defence,
South Block, New Delhi-110011.
2. Chief of Naval Staff,
IHQ,MOD (Navy),
Integrated Headquarter,
Sena Bhavan, New Delhi-110011.
- 3.Chief of Personnel,
Integrated Headquarter of Ministry of Defence (Navy),
“C” Wing, Sena Bhavan, New Delhi-110011.
4. Flag-Officer-Commanding-in-Chief,
Head Quarter, Eastern Naval Command,
Naval Base, Visakhapatnam 500014.
5. The Director General Naval Project,
Naval Base, Visakhapatnam 500014.

....Respondents

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

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

2. The OA is filed questioning the inaction of the respondents in not promoting the applicant as Naval Stores Officer (for short “*NSO*”).



3. Applicant joined as Fireman grade II on 7.4.1978 and rose to the rank of Asst. Naval Stores officer (ANSO) grade I on 12.1.2012. The applicant was promoted as ANSO grade –II on 11.6.2007 and claims that by 12.6.2010, as per Recruitment Rules (RR), having rendered 3 years service in ANSO grade -II he was due for promotion as ANSO –I. However, the said promotion was granted only on 12.1.2012. The next promotion is as Naval Store officer, (NSO) for which the eligibility criteria is 5 years service in ANSO-grade –I against 25% seniority quota. DOPT vide order dated 24.3.2009 directed to amend the RR based on OM dated 9.3.2009. As per the DOPT OM cited the promotion from grade pay of Rs.4200 to Rs.6600 is 10 years and from Rs.4600 to Rs.6600 is 7 years. Applicant was in foreman grade on 24.9.2003, ANSO grade –II with GP Rs.4600 on 11.6.2007 and ANSO Grade–I with GP of Rs.5400 from 12.1.2012 onwards. Based on the DOPT memo, applicant claims that he is eligible to be promoted as NSO in October 2013 and since the applicant was due to retire on 30.6.2014, a representation was made on 9.6.2014 which was not responded to. Aggrieved, OA has been filed.

4. The contentions of the applicant are that 2 other employees namely Mr. Sanjay Dinakar and Mr. K.S. Jadav who did not have 5 years service were promoted as NSO. Despite 11 vacancies being available in NSO cadre

promotions were not effected. RRs were not amended even after DOPT instructions.

5. Respondents in the reply statement submit that the applicant retired on 30.1.2014. Based on the availability of vacancies and in accordance with Recruitment Rules (SRO 32/2009), the applicant after rendering 3 years of service in the grade of ANSO –II with GP of Rs.4600 was promoted as ANSO–I on 12.1.2012 . For further promotion as NSO –I , the requirement is 5 years service in ANSO –I Grade (SRO 47/2002) which the applicant did not have and was hence not promoted. As per DOPT memo dated 24.3.2009 promotion from the post with GP Rs.4200 to the post with GP Rs.6600 is 10 years service and from the post with GP Rs.4600 to the post with GP Rs.6600 is 7 years, provided there are no functional grades available in between. The applicant was in the grade of ANSO –I at the time of retirement and hence he cannot seek promotion from ANSO grade II to NSO because the feeder post of NSO is ANSO-I. RRs were revised subsequently (28/2016) on 8.6.2016 and the applicant is not eligible as per old or new Recruitment Rules, to be promoted as NSO. DPC for the years 2011-12 to 2015-16 for the post of NSO were not conducted due to non availability of eligible candidates. Sri S.Y Keny ANO-I and Sri Amit Mittal ANSO –I were promoted since they were senior to the applicant and were promoted against 2016-17 vacancies on 10.10.2018. As per SRO 47/2002 a onetime relaxation was provided for promotion to the grade of NSO in respect of those employees who had a combined service of 8 years in ANSO –I and ANSO –II cadre as on the date of the notification. However, on the date of notification i.e. February 2002 the applicant was not holding



the post of ANSO-II and hence was ineligible for promotion. Representation received was duly replied. The delay in notification of RR has in no way effected the promotion of the applicant as NSO since he did not have the requisite qualifying service even as per the new Recruitment Rules.



We have carefully gone through the rejoinder filed by the applicant and noted the contents therein.

6. Heard both the counsel and perused the pleadings on record.
7. I. The dispute is about the promotion of the applicant as NSO. The hierarchy of the NSO cadre with the respective grade pay is as under:
 1. Foreman- with GP – Rs.4200
 2. ANSO -- II with GP – Rs.4600
 3. ANSO –I with GP – Rs.5400
 4. NSO with GP – Rs.6600.

II. The initial grievance of the applicant is that he was promoted to the cadre of ANSO-II on 11.6.2007 and therefore was due to be promoted as ANSO –I after rendering 3 years of service in 2010 but was promoted only in 2012. Any promotion can be effected only if vacancies and eligible candidates are available. When the vacancies were available in 2012 the applicant was duly promoted to the ANSO –I cadre on 12.1.2012. Completion of 3 years of service in ANSO-II grade only makes the applicant eligible but he has no right to be considered/ promoted without

vacancies being available. Hence the question of promoting the applicant in 2010 does not arise.

III. The other contention raised by the applicant is that DOPT vide OM dated 24.3.2009 directed to amend the Recruitment Rules based on OM dated 9.3.2009. Based on the DOPT OM, applicant asserts that the promotion from grade pay Rs.4200 to Rs.6600 is 10 years and from Rs.4600 to Rs.6600 is 7 years. This is true when there are no functional grades in between the grade pays specified. However, as presented above, the hierarchy of NSO post, exhibits different levels in between foreman and NSO as well as between ANSO-II to NSO. The applicant himself having accepted the promotion as ANSO-I in 2012, it is surprising that he is seeking promotion as NSO from ANSO -II despite being aware of the functional grades being available as explained above. The feeder cadre for NSO is ANSO- I and not ANSO-II as per Recruitment Rules.



IV. Further as a one-time exception, respondents have issued SRO 47/2002 wherein it was decided, as a one time exception to promote the eligible among the 94 incumbent ANSO -I & ANSO -II, as NSO, who have rendered a combined service of 8 years in both the cadres as on the date of notification in February 2002. The applicant was not eligible since he was not in the ANSO-II cadre in 2002. He was promoted to the ANSO - II grade only in 2007.

V. Besides, respondents revised the Recruitment Rules in the 2016 and as per the revised Recruitment Rules too, those with 5 years of service in ANSO- I grade will be eligible to be promoted as NSO. Same was the condition as per old RR as well. Applicant joined as ANSO-II in

2012 and retired in 2014 and therefore he did not have the requisite 5 years service to be promoted as NSO.

VI. Regarding other employees who were reported to be promoted, they were promoted since they were senior to the applicant and that too in 2018.



VII. The applicant retired in 2014 and when questioned repeatedly as to whether any junior to the applicant was promoted before the applicant retired, learned counsel for the applicant had no answer. The very fact that the seniors to the applicant were promoted after the applicant retired goes to prove that no junior to the applicant was promoted before his retirement. Hence, expecting promotion after retirement is ruled out.

VIII. The Ld. Counsel for the applicant argued that the DPC did not meet though there were NSO vacancies. For the DPC to meet there should be eligible candidates too. Respondents have clearly explained that the DPC could not meet from 2011-12 to 2015-16 since there were no eligible candidates. Over and above the crucial aspect is that the applicant did not have the requisite 5 years service to be promoted as NSO in ANSO Grade-I. Hence, even on this count the applicant cannot expect the promotion sought for.

IX The applicant after retiring from service is now raising the issue of not promoting him when there were vacancies available in ANSO cadre. It is not explained in the rejoinder as to why the applicant has not raised the issue when it occurred. Conduct of DPC is based on many factors, like availability of vacancies, eligible candidates, updating of

records, clearing grievances related APAR and so on. We also note that there has been no malafide attributed to the respondents for not conducting the DPC. The respondents did explain that for want of vacancies/ eligible candidates DPCs were not conducted in respect of ANSO/NSO for certain years as explained above. Thus there are good reasons for not conducting the DPC. Hence the contentions of the applicant are not tenable in respect of non conduct of DPC. Moreover, applicant can have a right to be considered to be promoted but he does not have a right to be promoted. Recruitment Rules are to be followed in granting promotions and they cannot be granted as per the interpretation of the applicant. To observe as at above, we take support of the Hon'ble Supreme Court judgment in ***K. Madhavan v. Union of India, (1987) 4 SCC 566 : 1987 SCC (L & S) 496*** at page 577 as under:

But, if the cancellation or postponement of the meeting of the DPC is not arbitrary and is supported by good reasons, the employee concerned can have no grievance and the government will not be justified in appointing the employee to the higher post with retrospective effect. An employee may become eligible for a certain post, but surely he cannot claim appointment to such post as a matter of right

X. Thus, from the aforesaid circumstances, we do not find any merit in the OA and hence. is dismissed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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