



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A. No.350/00956/2015.

Date of order : This the 24th Day of June 2020.

Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble Dr (Ms) Nandita Chatterjee, Administrative Member



Shri Susanta Kumar Mangaraj
Son of Late Pitabash Mangaraj,
Aged about 49 years, working as Junior Engineer,
Residing at 2G, Dum Dum Road, Cossipore,
Near Chiriamore, Kolkata 800 002.

.....Applicant

- Versus -

1. The Union of India
Through the Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan, New Delhi- 110001.
2. Under Secretary to the Government of India,
Ministry of Water Resources,
Shram Shakti Bhawan, New Delhi- 110001.
3. Chairman,
Central Ground Water Board,
Bhatal Bhawan, N.H.IV,
Faridabad 121001.

.....Respondents

Advocate for the applicant : Mr A. Chakraborty,

Advocate for the respondents : Ms A. Basu (Proxy) for Ms P. Goswami

ORDER

MS BIDISHA BANERJEE, MEMBER(J)

The applicant, seeking for a promotion to the post of STA(M) with effect from 2011 has preferred this O.A to seek the following reliefs.

"(i) An order do issue directing the respondents to

convene DPC for promotion to the post of STA(M) and to grant the applicant the benefit of promotion to the said post with effect from 2011 since he completed 6 years regular service in the post in 2010.

(ii) An order do issue directing the respondent to grant the benefit of promotion to the post of Assistant Engineer after completion of residential period of service in the post of STA(M).

(iii) An order do issue directing the respondents to grant all consequential benefit."



As evident from the materials on record the applicant was aspiring for promotion to the post of STA(M), which was the next higher post to JE in the hierarchy carrying a pay scale of Rs.6500-10500/- in the Grade Pay of Rs.4600/-. Due to pendency of amendment of the RRs at the material time no promotion to the grade of STA(M) from JE could be made. Upon obtaining approval from the Ministry, a DPC for STA(M) was initiated. A DPC proposal was approved by the Chairman, CGWB as ordered on 25.08.2015 which contained the name of the present applicant along with other eligible candidates recommended by the DPC for promotion to the post of STA(M). Promotion order was issued vide order dated 10.09.2015. Admittedly the applicant completed the required 6 years of service in the grade of JE on 17.10.2010 and became eligible for promotion to the post of STA(M) with effect from 01.01.2011. He could not be given promotion as no vacancy was available for the year 2011-12 and no UR vacancy had arisen in the year 2013 and therefore the posting orders granting promotion have been effected prospectively from 2015 after the DPC was held.

2. We have called for the records to ascertain the availability of vacancy in the promotional quota from the years 2011 onwards. The respondents have furnished the following information :

6

Promotion Quota

Year	UR	SC	ST	Total
2012-13 As on 31.03.2013	02	00	01	03
2013-14 As on 31.03.2014	03	00	01	04
2014-15 (as on 31.03.2015)	03	00	01	04
2015-16 (as on 31.03.2016)	00	00	01	01

Direct Quota

Year	UR	SC	ST	OBC	Total
2012-13 (as on 31.03.2013)	04	00	00	01	05



3. The Ld. Counsel for the applicant would vociferously contended that since the vacancies were available at the material time i.e. for the year 2012-13 the applicant's promotion ought to be antedated to 2012-13. In support, Ld. Counsel would place the decision in the case of one Devamalya Basu & 9 others vs. Union of India & Ors., where this Tribunal in O.A.1166/2003 having noted the decision in P.N.Premachandran v. State of Kerala, (2004) 1 SCC 245, held that applicants therein as admitted to have been promoted from an earlier date. The relevant extract of the decision would run thus :

"7.....Rules are specific that the DPC should be held annually and a certificate is expected to be given as to non availability of suitable candidates which means that holding of DPC annually is mandatory. Similarly, for maintaining the ratio, there should be annual direct recruitment process. If there be any deficiency in the number of candidates found suitable, the balance could be well be carried forward for subsequent years' recruitment. Under such circumstances also, guidelines have been prescribed as to how to fix the seniority of direct recruits and promotes. OM Dated 3rd July, 1986 refers.



8. In the instant case admittedly the applicants were eligible for consideration to the JTS cadre in 1991. Vacancies were also available, yet no DPC took place in that year. There may be justification in not holding the DPC during 1992 and 1993 in view of the temporary stay granted by the Apex Court but such is not the case with regard to DPC for the year 1991 when vacancies were existing under the promotion quota and also when the applicants were eligible to be considered. There is no justifiable reason in not holding the DPC in 1991. Ignoring filling up of the 40% vacancies under promotion quota, respondents had effected filling up of the 60% Direct Recruitment Quota for 1991. This has imbalanced the number of promotes and direct recruitments. Non holding of DPC when D.R. was processed was certainly an administrative lapse. The respondents, who had conducted the DPC in 1994 ought to have given retrospective promotion to the applicant wef 1991 or thereafter, on the basis of availability of vacancies under the 40% quota. That would have satisfied the applicants. This has not been done though it is permissible. It has been held by the Apex Court in the case of **P.N. Premachandran V. State of Kerala, (2004) 1 SCC**, as under:-

It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on their part. It is also not disputed, that in ordinary course they were entitled to be promoted to the post of Assistant Director, in the event, a Departmental Promotion Committee had been constituted in due time. In that view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time, although on a temporary basis, but were qualified at the time when they were so promoted and found to be qualified at the time when they were so promoted and found to be eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect.

9. Thus, in the event of non holding of DPC at the appropriate time, if subsequently DPC is held and promotion with retrospective effect granted, the same cannot be termed as illegal. What the applicants claim is the same in this O.A.

XXX

XXX

XXX

11. In view of the above, the OA is allowed. It is declared that the applicants are deemed to have been promoted to



JTS Cadre 1991, 1992 and 1993 as the case may be, depending upon their seniority position and availability of vacancies and correspondingly, they are deemed to have become eligible for consideration to the next post of STS after completion of three years of service in the JTS grade. The vacancy position of 1991, 1992 and 1993 shall be worked out @2/3 of the direct recruit appointment for these years (as this is the ratio of promotes and direct recruits under the rules). Such promotions shall be only notional till the date of filing of the OA and the actual financial effect will be from January 1996 as it is only then the applicants had moved this Tribunal challenging this delay in considering them for promotions vide O.A No. 67 of 1996. The respondents shall pass suitable orders after convening review DPC for JTS post and regular DPC in respect of STS post, work out the pay of the applicants on promotion both under JTS and STS and arrive at the pay due as on 1.1.1996. The arrears of pay and allowances for the period from 1.1.1996 shall be paid to the applicants xxxx(not legible) shall also be suitably revised. We are aware that the above drill would xxxx(not legible) complexity of the case, adequate time which the respondents may have to xxxx (not legible) hampering their day-to-day functional responsibilities. As such, no time is xxxx(not legible) but it is sanguinely hoped that the respondent shall complete this drill within xxxxx(not legible) months from the date of communication of this order."

4. In view of the admitted position as enumerated supra and the ratio of the decision cited by the applicant, we deem it appropriate to direct the competent authorities to consider the prayer for grant of deemed promotion, in the light of the decision cited and issue appropriate order within 3 months. No order as to costs.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)