

12

Central Administrative Tribunal, Principal Bench

O.A. No.2613 of 2004

New Delhi this the 7<sup>th</sup> day of March, 2006

**Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**  
**Hon'ble Mr. N.D. Dayal, Member (A)**

Shri Manohar Khosla  
S/o Late Shri G.S. Khosla  
R/o 283 Nanakpura,  
New Delhi-110 021.

....Applicant

By Advocate: Shri D.R. Gupta.

Versus

Union of India through

1. Secretary,  
Planning Commission,  
Yojna Bhavan,  
New Delhi.
2. Secretary,  
Department of Personnel and Training,  
North Block,  
New Delhi. ..Respondents

By Advocate: Shri N.S. Mehta.

**ORDER**

**By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)**

There is one month and 24 days delay in filing of the OA. An application for condonation of delay has been filed. In the counter-reply, the plea of bar of limitation has been raised. But in order to do substantial justice, we are inclined to condone the delay in filing of the present OA. Accordingly, the application for condonation of delay is allowed and the plea of bar of limitation is rejected.

2. The applicant has filed this OA for the grant of the following relief:-

- (i) To quash and set aside the order dated 4.9.2003 as communicated by respondent No.1 on the advice of respondent No.2 after declaring it illegal
- (ii) to direct the respondents to treat the applicant as having been promoted to the post of Assistant on long term basis w.e.f. 7.11.1984, i.e., the date on which his immediate junior Shri Jagjit Singh was promoted on the basis of the wrong seniority in the grade of UDC, which has since been cancelled and recast by the respondents themselves pursuant to the order of the Hon'ble Tribunal referred to earlier;
- (iii) to direct the respondent to refix the pay of the applicant in the grade of Assistant by treating him as having been promoted w.e.f. 7.11.1984, i.e., the date on which his immediate junior was promoted to that grade ignoring

*Murali*

the claim of the applicant on the basis of wrong seniority which has since been cancelled and recast by the respondents themselves.

(iv) to grant all consequential benefits including monetary benefits and promotion to the next higher grade of Section Officer on the basis of Select List of Assistants – 1989 by preponing the date of promotion of the applicant as Section Officer on ad hoc basis and also cost as well as interest on delayed payment.

3. The factual background of the case is as follows. The applicant was appointed as LDC on his qualifying Clerk Grade Examination, 1974 in the Department of Petroleum with effect from 23.6.1975. He qualified UDC Grade Limited Departmental Competitive Examination, 1981 and was nominated to the Planning Commission where he was appointed as UDC w.e.f. 16.2.1984. The applicant's representation for his reallocation to the Department of Petroleum was rejected in accordance with the OM dated 26.5.1984 of the Department of Personnel and Training. The seniority list of UDC was drawn up and circulated vide circular dated 12.8.1985. Pursuant to the order of the Principal Bench of this Tribunal, the seniority list of UDC of Planning Commission was revised by circular dated 24.6.1991. With the revision of the seniority list of UDC, the seniority of promotee UDC vis-a-vis the Limited Departmental Examinee UDC belonging to the select list of the years 1980-81 got changed. The applicant was promoted as Assistant on ad hoc basis with effect from 12.3.1991 on the basis of the seniority list, which existed at that time. With the revision of seniority list of UDC by circular dated 24.6.1991, some of the UDCs who were senior to the applicant in the pre-revised seniority list and who had been promoted as Assistant on ad hoc and long term basis, became junior to him. The applicant represented for his promotion from the date his immediate junior Shri Jagjit Singh was appointed as Assistant on ad hoc basis as per pre-revised seniority list, i.e. 31.5.1984. This representation did not find favour with the department and the opinion of the Department of Personnel and Training. His request for refixing his pay from a retrospective date was also not accepted. The applicant set forth his claim for pay and allowances of the post of Assistant from 31.5.1984 on the ground that the his claim is liable to be reviewed by a DPC as a consequence of the revision of his seniority in the UDC grade; he is entitled to the benefits of the higher grade of Assistant for the year 1989 on the basis of the revised seniority list of UDC to the post of Assistant from the date his immediate junior was wrongly promoted, i.e., 7.11.1984 ignoring the claim of

*Malles*

the applicant which is factually wrong as the seniority in the grade of UDC has been recasted and he has been included on that basis in the list of Assistants; he was entitled to all the consequential benefits arising out of the revision of this seniority list both in the grade of UDC and Assistant by treating him as proforma promotee from the date his immediate junior was promoted with all monetary benefits; without holding the review DPC, the respondents have included the name of the applicant in the select list of Assistants in 1989 and, therefore, he cannot be denied the benefit form the date his immediate junior was promoted; the decision of the respondents was unjust and inequitable and not in accordance with law and; the applicant cannot be made to suffer because of administrative lapse on the part of the Planning Commission and Department of Personnel and Training in drawing wrong seniority list.

4. The respondents contesting the OA have pleaded that the applicant was promoted as Assistant on ad hoc basis with effect from 12.3.1991 on the basis of the seniority list which existed at that time. With the revision of the seniority list of UDC by OM dated 24.6.1991, some UDCs, who were senior to the applicant in the pre-revised seniority list and who had been promoted as Assistant on ad hoc and long term basis became junior to him. The representation of the applicant for promoting him as Assistant with retrospective effect, i.e., 31.5.1984, the date his immediate junior Shri Jagit Singh was appointed as Assistant on ad hoc basis as per the pre-revised seniority list, has been rejected by the Department in consultation with the Department of Personnel and Training.

5. In accordance with the order of this Tribunal dated 10.7.1990 in the case of Venkitaraman and Others Vs. Union of India and in accordance with the provisions of CSCS Rules, 1962 and OM dated 17.4.1984 of the Department of Personnel and Training, the seniority of UDC was revised vide circular dated 24.6.1991. The applicant has not been given any proforma promotion to the post of Assistant and only his seniority has been refixed in accordance with the instructions of the DOP&T vide OM dated 24.5.2001. The request of the applicant for giving him notional promotion with effect from 31.5.1984 with actual benefit with effect from 12.3.1991 was also considered in consultation with the DOP&T but was not found tenable. The question of convening review DPC also did not arise. Other allegations have also been controverted.

*M. A. Deen*

6. In the rejoinder, the applicant has reiterated his own case and has controverted the allegation of the respondents.

7. We have heard the learned counsel for the parties and perused the record.

8. The only question which has been raised on behalf of the applicant before us is that the applicant has been denied promotion from the date his immediate junior was promoted on ad hoc basis with effect from 31.5.1984 for no fault of him but on account of administrative lapses. After the administrative mistake was rectified and the seniority of the applicant was revised in the grade of UDC, he could not be deprived of the pay and allowances of the post of Assistant from the date his immediate junior was promoted to the post of Assistant in 1984. It is submitted that the respondents should, therefore, be directed to pay to the applicant the pay and allowances from 31.5.1984 when his junior Shri Jagjit Singh was appointed as ad hoc Assistant.

9. Pursuant to the order of this Tribunal dated 10.7.1990, the list of the cadre of UDC was revised and circulated vide order dated 24.6.1991. The applicant's name was included in the select list of 1989 and he was promoted to the post of Assistant with effect from 12.3.1991. As a result of the revision of the seniority in the cadre of UDC, some of the UDCs who were senior to the applicant in the pre-revised seniority list and who had been promoted as Assistant from an earlier date, became junior to him. This led to the grievance of the applicant that he ought to have been promoted factually or notionally with effect from 31.5.1984 and should have been granted the pay and allowances of the post of Assistant from 31.5.1984 when his junior Shri Jagjit Singh was appointed as Assistant on ad hoc basis as per the pre-revised seniority list. The respondents have turned down his request. Before us, as observed earlier, the only argument submitted is that since the applicant's junior was appointed to the post of Assistant on 31.5.1984, the applicant, who has been deprived of such promotion by convening a review DPC or otherwise, was entitled to be paid the pay and allowances of the said post. In short, it is submitted that the respondents should be directed to pay him the pay and allowances at par with his junior from the date on which Shri Jagjit Singh was appointed to the post of Assistant in May, 1984.

10. From the counter reply it appears that the respondents have not accorded promotion to the applicant to the applicant in parity with his junior Shri Jagjit Singh with

*M. A. L.*

retrospective effect, i.e. 31.5.1984. On the basis of the revised seniority position of the applicant in the seniority list of the grade of UDC, he has been put in the select list of 1989 and has been promoted to the post of Assistant in 1991.

11. The contentions of the applicant before us are twofold. Firstly, the applicant is entitled to be paid the actual monetary benefit at par with his junior Shri Jagit Singh with effect from 31.5.1984 and secondly that the applicant had been discharging the duties and functions, which are performed by Assistant, therefore, he should be paid the pay and allowances of the post of Assistant.

12. We take up the second contention first. Pertinently, in the OA, it is not the ground for grant of the pay and allowances of the post of Assistant for the period during which the applicant was actually working on the post of UDC. It is argued that such a plea was raised in the rejoinder, which has not been rebutted by the respondents by filling the additional reply to the rejoinder. The learned counsel has tried to support his argument by drawing our attention to the transfer orders of the applicant, copies of which have been filed as Annexure A-1 to A-4. On careful scrutiny, we do not find that these documents support the argument. None of these orders show that the applicant had been performing the duties of an Assistant while holding the post of UDC. The applicant would have been entitled to the grant of pay scale attached to the post of Assistant had he been appointed/promoted to the post of Assistant in any capacity whether ad hoc or otherwise or regular etc. and had been discharging duties and functions and shouldering responsibilities of the post of Assistant. In case, while holding the post of UDC, the applicant in addition to his own duties was asked to perform certain duties which an Assistant performs, that by itself will not entitle the applicant to claim pay and allowances of the post of Assistant. The transfer orders do not show that the applicant has been transferred to the post of Assistant or the post which carried the pay scale of Assistant or that he had been promoted to the post of Assistant and had been discharging the duties and functions and shouldering responsibilities of the higher post of Assistant prior to his own promotion to the post of Assistant in 1991. The argument of the learned counsel for the applicant, therefore, is devoid of any merit and is repelled.

13. Now we revert to the first argument which is the basic case of the applicant that he should be paid pay and allowances of the post of Assistant from retrospective date

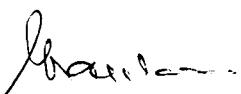
*re. dec.*

from 31.5.1984 when his junior Shri Jagjit Singh was promoted on ad hoc basis. The learned counsel for the applicant has placed strong reliance on the decision of the Full Bench of the Tribunal in the case of Devi Lal and Others Vs. Union of India reported in 2002 (1) ATJ 485. The question referred for the decision of the Full Bench was whether the applicants, who were not promoted earlier due to the administrative lapse on their retrospective notional promotion to higher posts subsequently with effect from the date their juniors have been promoted, would be entitled to arrears of pay and allowances with retrospective date or not? The Tribunal after referring to the orders of the Division Benches of the Ernakulam and Jodhpur and a decision of the Karnataka High Court in the case of Saikh Mehboob Vs. Railway Board and Others, 1982 (1) SLR 455 and also a Full Bench decision of the Principal Bench in the case of B.S. Tyagi Vs. Shri S.P. Mehta and Another decided on 2.1.2002, answered the reference that an employee who was not promoted earlier due to administrative lapse, on his retrospective notional promotion to the higher post subsequently with effect from the date his juniors had been promoted, would be entitled to arrears of pay and allowances with retrospective date etc. etc. Though the facts of the present case are slightly different in as much as no promotion from a retrospective date, i.e., 31.5.1984 has been granted to the applicant even on notional basis, yet the ratio of the judgment may be made applicable to the case of the applicant.

14. But this Bench is bound by the judgment of the Hon'ble Supreme Court in State of Haryana and Others Vs. O.P. Gupta and Others, 1996 (7) SCC 533 wherein the facts were almost similar to the facts which were before the Full Bench in the aforementioned case. Proforma promotion had been granted from a retrospective date on the basis of the revised seniority list. The question raised before the ~~High~~ Court was whether the respondents were entitled to arrears of salary for which admittedly they had not worked but had been given notional promotion from the deemed date. The Hon'ble Court referred to its own decision in Paluru Ramkrishnaiah Vs. Union of India, (1989) 2 SCC 541 wherein it was held that there had to be no pay for no work, i.e., a person will not be entitled to any pay and allowances for the period for which he had not worked on the higher post although he was given a proper place in the gradation list with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay

*Manohar*

retrospectively from the deemed date but will not be entitled to payment of arrears of salary. The Hon'ble Supreme Court observed that the same ratio was reiterated in the case of **Virender Kumar, G.M., Northern Railways Vs. Avinash Chandra Chadha, (1990) 3 SCC 472**. The Hon'ble Supreme Court also distinguished its earlier order in **U.O.I. Vs. K.V. Jankiraman (1991) 4 SCC 109** where the Hon'ble Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of his is entitled to the payment of arrears of salary. It was observed that it was a case where the applicant was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, the court held that he was entitled to the arrears of salary. It is held that the ratio has no application to the case where the claims for promotion are to be considered in accordance with the rules and promotions are to be made pursuant to the judgment in the case of State of Haryana and others (Supra) and in the cases which have been referred to, fully cover the present case also. In the instant case the applicant did not become entitled to automatic promotion to the post of Assistant on his revision of seniority from a retrospective date of 1984 when his junior was promoted on ad hoc basis on the basis of the pre-revised seniority list. He was to be promoted to the post of Assistant on the basis of Recruitment Rules. He was included in the select list of 1989 and was granted promotion with effect from 1991. In the instant case the applicant has not been given even notional promotion from the date his junior Shri Jagjit Singh was given ad hoc promotion on 31.5.1984. His case is also not of deemed promotion to the post of Assistant from 31.5.1984. But if the case of the applicant is taken at its best, i.e. his notional promotion from the same date his junior Shri Jagjit Singh was promoted in 1984, he never performed the duties of the post of Assistant. Therefore, on the basis of the principle of no work no pay, he would not be entitled to be granted the actual pay and allowances of the post of Assistant from retrospective date of 31.5.1984, as claimed by him. It has not been stated to us that the applicant's prayer for stepping up of his pay with that of the pay of his junior has been rejected by the respondents. It is, in fact, not the case of the applicant in the present OA.



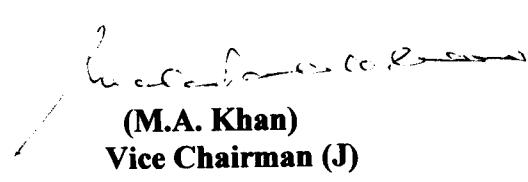
15. We find ourselves unable to agree with the order of the Jodhpur Bench of this Tribunal relied upon by the learned counsel for the applicant in view of the judgment of the Hon'ble Supreme Court cited above.

16. As a result of the above discussion, we do not find merit in the case of the applicant and dismiss it. But we allow the applicant to approach the respondents to consider his request by making a representation for stepping up of his pay with that of his junior Shri Jagjit Singh from the date he has assumed the charge of the post of Assistant, in accordance with the rules.

No costs.



(N.D. Dayal)  
Member (A)



(M.A. Khan)  
Vice Chairman (J)

Rakesh