

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 13th day of April 2011

Original Application No. 1406 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. S. N. Shukla, Member (A)

R.N. Suman, Son of Late J. Ram, S.A.O. Grade-II (Retired), R/o
Village Fatooha, P.O. Hanumanganj, Allahabad.

..... Applicant

By Adv. : Shri Rakesh Verma
 Shri Arvind Kumar
 Shri Komal Mehrotra

V E R S U S

1. Union of India, through the Director General , Quality Assurance (D.G.O.A.) (Adm-10) & (D.G.Q.A.)/(Adm-6B), Department of Defence Production, Government of India, Ministry of Defence, D.H.Q. P.O. New Delhi-110 011.
2. The Controller, C.Q.A. (M), P.B. 229, Kanpur 208 004.
3. Director General & Research Development, Defence Research and Development Organization Ministry of Defence, Government of India D.H.Q. P.O. New Delhi.
4. The Chairman, Union Public Service Commission, New Delhi.

..... Respondents

By Adv. : **Shri R. K. Srivastava**

ORDER

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member-Judicial)

A success on the first time, pointing out the error committed by a department perhaps makes a litigant to feel that at every stage the respondents are wrong and justice has been denied. This is one such case. A Civilian School Master in 1963, the applicant was, on account of having been rendered surplus, appointed as LDC and as due seniority was denied to the applicant, he moved the Tribunal in OA No. 665 of 1989 which was allowed vide order dated 16-09-1994. The operative portion is as under:-

The petitioner shall be granted seniority in the cadre of Senior Store Keeper/U.D.C. from the date of their initial appointment as Civilian School Master in equivalent pay scales with all consequential benefits."


2. In strict compliance with the above the respondents have granted the seniority and after conducting review DPC for promotion to the each higher post, the applicant was also afforded promotion to the applicant as under:-

UDC: Seniority :	30-11-1963
Promotion as O.S. Grade II	13-03-1972
Promotion as O.S. Grade I	09-01-1978
Promotion as A.O.	15-12-1980
Promotion as SAO:	06-08-1990

And, the applicant retired on 31-01-1996. The notional benefits and actual pensionary benefits have all been made available to the applicant in the wake of the above promotions. The applicant has no grievance as to the fixation of pay etc., at each stage of the above stated promotions.

3. The applicant, perhaps not having been satisfied with the date of promotion to the post of S.A.O., claimed promotion from 1986 on the ground that his immediate junior Shri Har Prasad got his promotion on 02 July 1986 and as such he should also be so promoted. And for this purpose, he filed a contempt petition which came to be dismissed due to non prosecution. Application for recall of the dismissal of the contempt petition was also rejected, however, granting liberty to agitate the matter in a fresh O.A. And hence, this O.A. has been filed. And the claim of the applicant in this O.A. is that he should have been got promoted as SAO Grade II w.e.f. 02-07-1986 and not 1990. This date has been chosen by the applicant as this was the date when, according, to the applicant, his junior was promoted.

4. Respondents have contested the O.A. According to them, the Review DPC did consider the case of the applicant for the post of Senior Administrative Officer, right from 1985 -90 but the Review DPC could, on the basis of his records, find him suitable only in the year 1990 and accordingly, his promotion was made from 06-




08-1990, which was just prior to the date of his actual junior by name Shri De.

5. The applicant has filed his rejoinder, reiterating his contentions as raised in the OA and supplementary counter has also been filed by the respondents, reflecting their version as contained in their counter.

6. When the case came up for hearing, counsel for the parties agreed to file their respective written arguments and accordingly, written arguments were furnished. The counsel for the applicant had taken the pain of enclosing a copy of the decision by the Supreme court in the case of Dev Dutt, which mandates communication of below bench mark grading. Counsel for the respondents has in his written submission raised the principles of constructive res-judicata and also stated that the applicant cannot claim any promotion on the basis of the date of promotion of Hari Singh, since the promotion depends upon the recommendations of the Review DPC and his date of promotion was prior to the date of promotion of his immediate junior Shri De.

7. Written arguments were considered and also the pleadings. The post of Senior Administrative Officer is a selection post and thus mere seniority is not the guiding factor for promotion to that post. The entitlement of the applicant is only consideration for



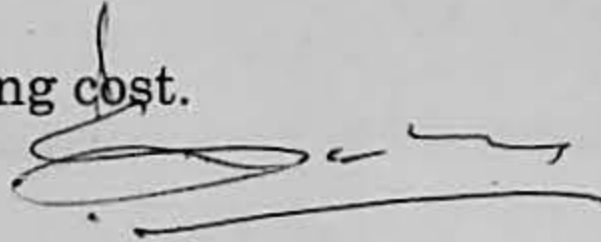
that post and promotion is on the basis of comparative merits. The UPSC, a Constitutional Authority, which held the Review DPC for the post of SAO considered the case of the applicant right from 1985 -90 and the Review DPC on the basis of assessment of the ACRs of the applicant recommended him for inclusion in the panel for the year 1990 only. The UPSC has in its counter stated that the applicant has not challenged the proceedings of the DPC which were held strictly in accordance with the provisions of the Recruitment Rules and DPC instructions prevailing at that time. The applicant was duly informed of this position vide letter dated 13-09-1996 CA 3 filed along with the counter. The contention of the applicant is that when the applicant was being given promotion from the date of his next junior was promoted, then the question of DPC does not arise at all and on the date of DPC the applicant had already retired and therefore, and only notional benefits were to be given and A.C.R. have no relevance at all. The applicant was woefully given the promotion w.e.f. 06-08-1990.


8. The applicant has a misconception that at all the stage promotion would be on the basis of the date of promotion of his junior when his seniority is revised. For Group A post, the records were also to be duly scanned and merit cum seniority would be the criterion. This is trite and obvious. The applicant was considered in the review DPC for 1985 to 89 and could not be found fit and it was for the year 1990 that he was found fit. It is to be observed here that the bench mark system was introduced only from 09-02-

2002 and thus, the decision in the case of Dev Dutt, relied upon by the counsel for the applicant would not apply to the facts of the case.

9. Perusal of the records clearly show that the applicant has got his dues as per his entitlement and the decision to promote the applicant w.e.f. 06-08-1990 cannot be faulted with. The application is thoroughly misconceived. Hence the O.A. is dismissed.

10. But for the fact that the applicant is now a pensioner and a septuagenarian, we would have saddled the applicant with deterrent cost for this luxurious litigation. We refrain ourselves from imposing cost.


(S.N.Shukla)
Member (A)


(Dr.K.B.S.Rajan)
Member (J)

Uv/