

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/00160/2020

HYDERABAD, this the 30th day of March, 2021

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



Musthaq Ahmad Baig, Aged 45 years,
Sr.Assistant (ad hoc), TOMD/SDSC SHAR,
Sriharikota, SPSR Nellore District, AP.

...Applicant

(By Advocate : Mr. K. V. Manikya Rao)

Vs.

- 1.Union of India Represented by
Secretary, Department of Space,
Antix Bhavan, Bangalore.
2. Director, SDSC SHAR,
Sriharikota, SPSP Nellore District, AP.
- 3.Sr Administrative Officer, Establishment,
SDSC SHAR, Sriharikota, SPSP Nellore
District, AP.
- 4.Sisir Gandhi Ch, Sr. Assistant, SDSC-SHAR,
Sriharikota, SPSP Nellore District, AP.
- 5.Rohini Seku, Sr. Assistant, SDSC-SHAR,
Sriharikota, SPSP Nellore District, AP.

....Respondents

(By Advocate : Mr. V. Vinod Kumar, Sr. CGSC)

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

Through Video Conferencing:

2. The OA is filed in regard to the promotion of the applicant to the post of Sr. Assistant.



3. Brief facts are that the applicant is an ex-Air Force personnel, who on being discharged on 31.5.2014, was appointed as a Trainee for the period from 5.10.2015 to 20.01.2016 in the respondents organisation pending verification of character and antecedents. Thereafter, he was offered appointment as Assistant with GP of Rs.2400/- on 25.1.2016 and the applicant joined on 5.2.2016. Applicant represented to count the training period towards service rendered for considering the eligibility of the applicant to the post of Sr. Assistant. When it was not considered, OA 485 of 2019 was filed, which was disposed and the respondents rejected the request of the applicant. Aggrieved, the OA is filed.

4. The contentions of the applicant are that for ex-service personnel, there is no need to verify the character and antecedents as per DOPT OM dtd. 23.7.1987, but the respondents did so by approaching the Gwalior and Thanjavur Air Stations where the applicant previously worked. Seniority list of Assistants was released on 1.1.2017 wherein he was shown at Sl.No.84, whereas R-4 & R-5 shown at Sl. Nos.89 & 90 were promoted, though junior. The Supreme Court judgment in U.O.I. v Smt. Sadhana Khanna in Appeal (Civil) No.8208 of 2001, cited in OA 485/2019, was not considered while rejecting his request on 9.10.2019 and also intimated that the applicant would be eligible for promotion only on 1.7.2020. Further, the report from the Collector, Krishna District about the character and antecedents was received on 15.12.2015, whereas the

appointment was given on 25.1.2016 with a delay of 41 days. For the delay in the issue of the appointment letter, the applicant is not responsible. The rejection of the request for promotion as Senior Assistant for being short of requisite length of service by 35 days is violative of Articles 14 & 16 of the Constitution.



5. Respondents *per contra* inform that if the interval between the date of discharge and date of re-employment of an ex-serviceman is more than a year, as is the case of the applicant, character and antecedents are to be got verified as per DOPT OM dated 23.7.1987. Blank attestation forms and special security questionnaire sent to the applicant on 22.5.2015 were returned and on resending them to the alternative address given on 18.6.2015, the forms were received duly signed on 28.6.2015. Pending verification of the character and antecedents, applicant was engaged as Trainee w.e.f. 5.10.2015 as per respondents letter dated 22.3.2013 wherein it was also mentioned that the training period would not be counted as service rendered or towards seniority/promotion. To be promoted on 1st July as Sr. Asst., the minimum service of 4 years required to be rendered is reckoned up to the 31st December of the relevant year. Relaxation of the service up to 6 months is allowed as per respondents letter dated 15.12.2008. Applicant was short by 35 days even after granting the relaxation of 6 months and hence, was not considered for promotion as on 1.7.2019. Further, as per the directions in the OA 485/2019, the issue was examined and rejected and hence, filing the OA for the same relief is against the principle of *Res judicata*. R-4 & R-5 are compassionate appointees, who joined the respondents organization much earlier to the applicant, but in the seniority list of the direct recruits, they have to be placed at the bottom of the seniority list as per DOPT

orders and hence, they are junior to the applicant, but have rendered the minimum requisite service of 4 years to be promoted as Sr. Assistant.

6. Heard both the counsel and perused the pleadings on record.

7. I. We agree mostly with the respondents responses in answering the contentions of the applicant, as made out in para 5 supra, except in respect of one aspect and that is, when the report of the verification of the Character and Antecedents was received on 15.12.2015, as admitted by the respondents even in OA 485/2019, it is not explained as to why it took 41 days to issue the offer of appointment to the applicant on 25.1.2016. The period by which the applicant was short to be considered for promotion to the post of Sr. Assistant is 35 days as adduced by the respondents in the reply statement. Therefore, had the appointment letter been issued promptly, the applicant would have had the minimum requisite length of service of 4 years to be considered for promotion. The delay was on part of the respondents and therefore, the said mistake should not recoil on to the applicant as observed by the Hon'ble Supreme Court in a cornucopia of judgments as under:

*The Apex Court in a recent case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna**, C.A. No. 8208/01) held that the mistake of the department cannot recoiled on employees. In yet another recent case of **M.V. Thimmaiah vs. UPSC**, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.*

*(iii) It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India**, 1991 Supp (2) SCC 363 wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."*

Therefore, in view of the above legal principle laid down, the applicant would be completing 4 years of service by 15.12.2019 by taking the date



of appointment as 15.12.2015 and hence, would be eligible to be promoted as on 1.7.2019

II. In view of the aforesaid circumstances, the respondents are directed to consider the case of the applicant for promotion to the post of Sr. Assistant as on 1.7.2019 on a notional basis with consequential benefit of seniority, pay fixation etc but not back wages.



With the above direction the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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