

OA No. 291/111/2015 & OA No. 291/112/2015

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/111/2015
&
ORIGINAL APPLICATION NO. 291/112/2015**

Order reserved on 16.08.2021

DATE OF ORDER: 24.08.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

OA No. 291/111/2015

Brij Mohan Saxena son of Late V.D. Saxena, aged about 74 years, resident of M/13, Income Tax Colony, Durgapura, Jaipur.

....Applicant

Shri Amit Mathur, counsel for applicant.

VERSUS

1. The Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block New Delhi.
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi.
3. The Chief Commissioner of Income Tax, NCR Building, Statue Circle, Jaipur.

.... Respondents

Shri Gaurav Jain, counsel for respondents.

OA No. 291/111/2015 & OA No. 291/112/2015

OA No. 291/112/2015

Govind Verma son of Late Rajjan Singh, aged about 74 years, resident of M/18, Income Tax Colony, Durgapura, Jaipur.

....Applicant

Shri Amit Mathur, counsel for applicant.

VERSUS

1. The Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi.
3. The Chief Commissioner of Income Tax, NCR Building, Statue Circle, Jaipur.

.... Respondents

Shri Gaurav Jain, counsel for respondents.

ORDER

Per: Hina P. Shah, Judicial Member

With the consent of learned counsels for the parties, OA No. 291/111/2015 & OA No. 291/112/2015 are taken up together for disposal as common question of law and facts is involved in the aforesaid cases.

2. For the sake of convenience, the brief facts of OA No. 291/111/2015 (Brij Mohan Saxena vs. Union of

OA No. 291/111/2015 & OA No. 291/112/2015

India & Ors.) are taken up. The OA No. 291/111/2015 has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "(i) the present original application may kindly be allowed and the directions may be issued to the respondents to give notional promotion to the applicant w.e.f. 2001 to the post of Assistant Commissioner Income Tax and further give him all consequential benefits. The pay fixation of the applicant made accordingly and after pay fixation the benefits admissible to the applicant may be advanced.
- (ii) any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.
- (iii) Cost of this original application also may be awarded in favour of the applicant."

3. The brief fact of the case, as stated by the applicant, are that the applicant has initially joined services with respondents-department as UDC on 20.07.1964. He was promoted as Head Clerk and thereafter as Supervisor and later on as Inspector. In November 1991, he was promoted to the post of Income Tax Officer (ITO) and thereafter he was to be promoted as Assistant Commissioner of Income Tax (ACIT). Though the applicant was promoted as Income Tax Officer in 1991 and became eligible for

OA No. 291/111/2015 & OA No. 291/112/2015

promotion as Income Tax Officer, but he was not promoted due to non-convening of regular DPC every year. For the years 2000-01 and 2001-02, respondents prepared a list of eligible candidates for promotion to the post of Assistant Commissioner of Income Tax and the applicant was placed at Sr. No. 892 in the said list. The applicant attained the age of superannuation on 30.06.2001. The DPC recommended names of more than 910 ITO eligible for promotion to the post of Assistant Commissioner of Income Tax including the name of the applicant. In June 2001, the applicant was cleared by the Vigilance for the purpose of promotion. But in the promotion order dated 07.11.2001, applicant's name did not find place though many of his juniors names were shown as promoted. The applicant submitted representation to the respondents for granting him promotion and for giving him notional benefits and that he is not demanding actual benefits. But instead, the respondents rejected the claim of the applicant vide order dated 28.01.2015 on the ground that he has attained the age of superannuation on 30.06.2001 while DPC was held on 3, 06 and 17 October 2001. It was also mentioned that "the DPC while providing the

OA No. 291/111/2015 & OA No. 291/112/2015

two panels for both the vacancy years has clearly stated that the officers who have retired on superannuation / voluntarily retired/expired after the crucial dates prescribed for the respective panel years have been considered / empanelled in pursuance of DOPT OM dated 12.10.1998 and extended panels have been given for the relevant years in place of empanelled officers who retired during the respective panel years, therefore, order for promotion to the grade of ACIT for the vacancy year 2001-02 in your case could not be issued as by superannuation you stood retired from government service on 30.06.2001." But in the said OM, there was no bar for any notional benefits and only actual benefits could have been denied. Thus, as the act of respondents is arbitrary, illegal and contradictory to the rules, the applicant has filed the present Original Application for his denial of promotion though he was declared fit for promotion.

4. The respondents have filed their reply stating that as regards provisions for grant of the notional promotions/ benefits, the same are extended to those officers, who were in service at the time of DPC

OA No. 291/111/2015 & OA No. 291/112/2015

meeting and in those cases vigilance clearance are withheld on account of their pending disciplinary actions/proceedings. With regard to the claim of the applicant for grant of notional promotion in terms of DOPT OM dated 12.10.1998 that there was no bar for any notional benefit, respondents state that in the said OM, it is nowhere mentioned that retired employees are entitled to be treated as promoted or grant notional promotion because of empanelled zone of consideration. But it is mentioned that names of the retired officials may also be included in the panel(s) and such retired employees have no right for actual promotion. It was further stated that the DPCs may, if need be, prepare extended panel(s) following the principles prescribed in the DOPT OM dated 09.04.1996 (Annexure R/1). They have also relied on para 5 of the DPC Minutes. It was also stated that there was no deliberate delay on the part of the respondents in holding of DPC. After restructuring of the Income Tax Department, respondents sent two proposals for two panel years i.e. 2000-01 and 2001-02 to UPSC. The respondents further submitted that holding of DPC depends upon availability of certain documents such as ACR Dossiers, Vigilance clearance,

OA No. 291/111/2015 & OA No. 291/112/2015

certificates etc. of all the eligible officers in the zone of consideration and completion of all the requisite formalities laid down in the DOPT instructions. The applicant has already retired from service on 30.06.2001 and none of the applicant's juniors have been promoted before the said date, thus, the applicant cannot be promoted as per rules. The respondents have disposed of the representation of the applicant vide order dated 28.01.015 (Annexure A/1) which is the impugned order in challenge. It is a settled law that a Government Servant has right to be considered for promotion but cannot claim promotion as such. It was made clear that while the applicant was in service, none of his juniors were promoted and has no right to claim retrospective promotion after his retirement. Also the present Original Application is barred by limitation as the applicant is claiming promotion for the years 2000-2001 and 2001-2002. Though the applicant was within the zone of consideration for promotion but as DPC was conducted on 03, 06 and 17 October 2001 and as the promotions vide order dated 07.11.2001 were prospective and the applicant had already retired from service on 30.06.2001, thus, he has no right for promotion.

OA No. 291/111/2015 & OA No. 291/112/2015

Therefore, the action of the respondents in passing the order dated 28.01.2015, which is only a reply to his representation dated 15.12.2014, is just and proper. Thus, the present Original Application deserves to be rejected.

5. The applicant has not filed any rejoinder rebutting the submissions of the respondents.

6. We have heard learned counsels for the parties at length and examined the pleadings minutely and perused the judgments.

7. The applicant and the respondents reiterated their submissions as stated earlier.

8. The short question which requires our consideration is whether the applicant is entitled for grant of notional promotion after his retirement.

9. The facts of the case pertaining to applicant's initial appointment as well as his several promotions upto the post of Income Tax Officer is not in dispute. For the years 2000-01 and 2001-02, respondents

OA No. 291/111/2015 & OA No. 291/112/2015

prepared a list of eligible candidates for promotion to the post of Assistant Commissioner of Income Tax and the applicant was placed at Sr. No. 892 in the said list. The DPC recommended names of more than 910 ITO eligible for promotion to the post of Assistant Commissioner of Income Tax, including the name of the applicant. In 2001, the applicant was cleared by the Vigilance for the purpose of promotion. Also thereafter reference was made to UPSC for approval of the panel. The applicant was assessed as Very Good and his name was placed at Sr. No. 321 in the panel. The respondents thereafter convened a DPC for promotion to the post of Assistant Commissioner of Income Tax from the post of ITO on 3rd, 6th and 17th October 2001. On 07.11.2001, respondents issued the promotion order from the post of ITO to Assistant Commissioner of Income Tax but in the said list, applicant's name was not included as promoted.

10. We have observed that the applicant attained his age of superannuation on 30.06.2001. In the present Original Application, he seeks notional promotion to the post of Assistant Commissioner of Income Tax against the vacancies of 2000-01 and 2001-02 on the

OA No. 291/111/2015 & OA No. 291/112/2015

premise that the said promotion are given to his juniors. But it is a fact that none of the juniors of the applicant have been promoted while the applicant was in service. The process of considering ITOs for promotion for the said years was initiated way back and 910 candidates including the applicant were in the zone of consideration. But the process for conducting DPC being lengthy and time consuming and several procedures to be completed and all documents being sent to UPSC, the said DPC was held on 03, 06 & 17th October 2001. By the said time, the applicant had already retired from service. The said promotions were prospective and as the applicant had retired, no promotion orders in the case of the applicant could be issued. Thus, the promotion orders dated 07.11.2001 were prospective and, therefore, as stated in catena of judgments, the applicant has neither any right for any retrospective promotion nor for notional promotion as no officer junior to the applicant has been promoted while applicant was in service.

11. Pertaining to the relief prayed by the applicant for grant of notional promotion, we would like to refer to

OA No. 291/111/2015 & OA No. 291/112/2015

the DOPT OM No. 22011/4/98-Estt.(D) dated 12.10.1998 , which reads as under :

"Subject: Procedure to be followed by the Departmental Promotion Committee (DPCs) in regard to retired employees.

The undersigned is directed to invite reference to the Department of Personnel and Training (DOP&T) Office Memorandum No. 22011/5/86-Estt.(D) dated April 10, 1989 containing the consolidated instructions on DPCs. The provisions made in paragraph 6.4.1 of the aforesaid; Office Memorandum lay down the following procedure for preparation of year-wise panel(s) where for reasons beyond control, DPC(s) could not be held for the years(s) even though vacancies arose during the year(s):-

- (i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.
- (ii) Consider In respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year, starting with the earliest year onwards.
- (iii) Prepare a 'Select List' by placing the select list of the earlier year above the one for the next year and so on.

2. Doubts have been expressed in this regard as to the consideration of employees who have since retired but would also have been considered for promotion if the DPC(s) for the relevant year(s) had been held in time.

3. The matter has been examined in consultation with the Ministry of Law (Department of Legal Affairs). It may be pointed out in this regard that there is no specific bar in the aforesaid Office Memorandum dated April 10, 1989 or any other related instructions of the Department of Personnel

OA No. 291/111/2015 & OA No. 291/112/2015

and Training for consideration of retired employees, while preparing year-wise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are not considered while preparing year-wise zone of consideration/panel and, consequently, their juniors are considered (in their places) who would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year(s). Names of the retired officials are also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The DPC(s), may, if need be, prepare extended panel(s) following the principles prescribed in the Department of Personnel and Training Office Memorandum No. 22011/8/87-Estt.(D) dated April 9, 1996."

This Office Memorandum clearly reveals how the retired employees are to be considered. Thus, it clearly states that the persons who had retired but would have been considered by the DPC if the DPC had been convened in time had to be empanelled while considering the promotion of persons who are in service. According to the O.M., if this was not done then the correct zone of consideration for the relevant year would not be identified properly. This is so because the persons who had retired would not be empanelled and in their place persons junior to them would be considered. That would not be a proper

OA No. 291/111/2015 & OA No. 291/112/2015

identification of the correct zone of consideration had the DPC been convened in time. It is for this reason, the O.M. specifically provides that names of the retired officials may also be included in the panel. It further clarifies that such retired officials would have no right for actual promotion. The entire objective behind the same is only for the purpose of empanelment and not for promotion. Towards the grant of notional promotion, it is clear that unless a junior person to such a retired officer is promoted prior to the superannuation of the retired officer, then only the retired officer is entitled for grant of notional promotion. We are in agreement with the judgment of the Hon'ble Apex Court, relied by the respondents, in the case of **Baij Nath Sharma vs. Hon'ble Rajasthan High Court at Jodhpur & Another**, reported in (1998) SCC (L&S) 1754, wherein the Hon'ble Supreme Court has held as under:-

"The retired employee could have a valid grievance if any of his juniors had been given promotion from a date prior to his superannuation but he cannot complain when promotions were made prospectively after his retirement."

Thus, an employee could certainly have a grievance if any of his juniors had been given

OA No. 291/111/2015 & OA No. 291/112/2015

promotion from a date prior to his superannuation and such is not a situation in the present case as the juniors have been given promotion as per the orders dated 07.11.2001 that is much after his retirement dated 30.06.2001. Also none of the grounds raised by the applicant are convincing and, therefore, the same cannot be considered. Thus, the action of the respondents is just and legal and wholly justified.

12. The applicant has also relied upon the judgment dated 23.03.2010 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 2651-52 of 2010 (Arising out of SLP (C) Nos. 6758-6759/2009), Union of India & Anr. vs. Hemraj Singh Chauhan and Ors., and the order dated 21.01.2020 passed by the Hon'ble High Court of Karnataka at Bengaluru passed in Writ Petition No. 25502/2018 (S-CAT), Smt. Anuradha Goyal & Ors. vs. Central Board of Direct Taxes & Anr. After going through orders/judgments passed in the aforesaid cases, we are of the view that the facts and circumstances of the aforesaid cases are not applicable to the facts and circumstances of the present case.

OA No. 291/111/2015 & OA No. 291/112/2015

13. In view of the observations made herein-above, we do not find any illegality in the impugned order dated 28.01.2015 (Annexure A/1) passed by the respondents and do not wish to interfere in the same. As the present Original Application is devoid of merits, the same deserves to be dismissed.

14. Accordingly, Original Application No. 291/111/2015 and Original Application No. 291/112/2015 are dismissed with no order as to costs.

**(HINA P. SHAH)
JUDICIAL MEMBER**

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**

Kumawat