RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 7th day of March 2011

Original Application No. 964 of 2006

Hon'ble Mr. S.N. Shukla, Member (A)
Hon'ble Mr. Sanjeev Kaushik, Member (J)

Rajendra Prasad Mishra, aged about 60 years,
S/o Late Raj Deo Mishra, r/o III/95, Ganga Vihar Colony,
Top Khana Bazar, New Cantt., Allahabad.

..... Applicant.

By Advocate: Sri H.S. Srivastava

VERSUS

1. Union of India, through the Secretary, Ministry of Finance (Department of Expenditure), New Delhi.

2. The Financial Advisor, Ministry of Defence (Finance), New Delhi.

3. The Controller General of Defence Accounts, West Block-V, R. K. Puram, New Delhi.

4. The Principal Controller of Defence Accounts (Pensions), Draupadighat, Allahabad.

..... Respondents.

By Advocate: Shri Anil Dwivedi
Shri Ajay Singh

ALONGWITH

Original Application No. 1130 of 2006

Gopi Nath Kushwaha, aged about 66 years, S/o Late Chhedi Lal Kushwaha, R/o 117-B/2 B-1, Radha Nagar Colony, Daraganj, Allahabad.

..... Applicant.

By Advocate: Sri H.S. Srivastava

VERSUS

1. Union of India, through the Secretary, Ministry of Finance (Department of Expenditure), New Delhi.

2. The Financial Advisor, Ministry of Defence (Finance), New Delhi.

3. The Controller General of Defence Accounts, West Block-V, R.K. Puram, New Delhi.

4. The Principal Controller of Defence Accounts (Pensions), Draupadighat, Allahabad.

..... Respondents.

By Advocate: Shri Ajay Singh

ALONGWITH

Original Application No. 574 of 2007

Khub Chand Gupta, aged about 60 years, S/o Late Hanuman Prasad, R/o Quarter No.662, W-II, Damodar Nagar, Kanpur.

..... Applicant.

By Advocate: Sri H.S. Srivastava

VERSUS

1. Union of India through the Secretary, Ministry of Finance (Department of Expenditure), New Delhi.
2. The Financial Advisor, Ministry of Defence (Finance), New Delhi.
3. The Controller General of Defence Accounts, West Block-V, R.K. Puram, New Delhi.
4. The Principal Controller of Defence Accounts (Pensions), Draupadighat, Allahabad.

..... Respondents.

By Advocate: Shri Ajay Singh

ORDER

Delivered by Hon'ble Mr. S.N. Shukla, Member (A)

The issues involved in filing of these OAs being common, the OAs are being disposed of by taking OA No.964/2006 as a leading case. The facts are that the applicant born on 14.02.1946 and was initially appointed as Upper Division Clerk in the office of respondents no.4 in due course. His last promotion was in the grade of Accounts Officer w.e.f. 16.01.2002 in the scale of Rs.7500-250-12000/-. Vide an Office Memorandum dated 22.09.1992

(Annexure A-2) the Government of India created a promotional grade of Rs.2200-4000 for the Audit and Accounts Officers of the Organized Account cadre. The number of posts in the promotional scale was to be 80% of the sanctioned strength of the respective cadres. The eligibility was completion of minimum of three years of regular service (in the grade of revised 7500-250-12000) and was to be on the post of seniority cum fitness. The applicant was promoted to the grade of Accounts Officer in the pay scale of Rs.(7500-250-12000) w.e.f. 16.01.2002 and he completed three years of regular service as Accounts Officer on 15.01.2005 and accordingly he claims to be eligible for promotion to the post of Senior Accounts Officer (2200-4000) w.e.f. 01.02.2005. Since he did not receive promotion after completion of three years of service in the Accounts Officer grade he made several representations keeping in mind that he was to superannuate w.e.f. 28.02.2006. However, he failed to elicit a favourable response. Vide communication dated 18.12.2005 (Annexure A-4) he was informed that he will become eligible for consideration for the DPC to held for vacancy year 2006-07 only. No DPC was held before his retirement and finally when it was held vide an order dated 05.06.2006 (Annexure A-10) some officers including one Shri B.D. Tiwari were promoted (Annexure A-10) by that time the applicant has already superannuated w.e.f. 28.02.2006. To this OA the applicant seeks to quash the letter dated 18/20.10.2005 (Annexure A-4) with request for directions to the respondents to consider the case of the applicant for promotion to the grade of Senior Accounts Officer w.e.f. 01.02.2005 with all consequential benefits.

2. The genesis of the dispute seems to arise on account of interpretation of (i)DOPT OM dated 1992 (Annexure A-2),(ii)DOPT OM dated 10.03.1989 (Annexure CA-2 in OA No.574/06) and,(iii) DOPT OM dated 17.09.1998 (Annexure CA-3 in OA No.574/06) as also (iv)DOPT OM dated 14.08.2003 (Annexure CA-4 in OA No.574/06). The relevant paragraphs of these OMs which will come up for consideration before this Tribunal are being extracted below for the sake of convenience.

1. **OM dated 22.09.1992**

> *"These orders shall be effective from 1.4.1992. However, the benefit of fixation of pay on notional basis in the promotional scale of Rs.2200-75-2800-BH-100-4000 may be allowed w.e.f. 1.4.1987 or from the first of the month following the month in which the officer completed 3 years regular service as Audit/Accounts Officer in the scale of Rs.2375-75-3200-EO-100-3500, whichever is later, subject to the availability of posts in the promotional grade. No arrears of pay will be admissible for the period prior to 1.4.1992."*

2. **OM dated 10.03.1989**

> *"2.4.1 Where for reasons beyond control, the DPC could not be held in an year(s), even though the vacancies arose during that year for years), the first DPC that meets thereafter should follow that following procedure:*
>
> *(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 staring 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."*

3. **OM dated 17.09.1998**

> *"The undersigned is directed to say that where the Recruitment/Service Rules lay down promotion as one of the methods of recruitment, some period of service in the feeder grade is generally prescribed as one of the conditions of eligibility for the purpose of promotion. Vide the Department of Personnel and Training Office Memorandum No.22011/7/86-Estt(D) dated July 19,1989, the crucial date for determining*

the eligibility of officer for promotion has been prescribed as under:-

(i) 1st July of the year in cases where ACRs are written calendar year-wise.
(ii) 1st October of the year where ACRs are written financial year-wise.

2. The matter has been reconsidered by the Government and in supersession of the existing instructions it has now been decided that the crucial date for determining eligibility of officers for promotion in case of financial year-based vacancy year would fall on January I immediately preceding such vacancy year and in the case of calendar year-based vacancy year, the first date of the vacancy year, (i.e. January 1) itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise. For the sake of illustration, for the panel year 2000-2001 (financial year), which covers the period from April 1, 2000 to March 31, 2001, and the panel year 2000 (calendar year), which covers the period from January 1, 2000 to December 31, 2000, the crucial date for the purpose of eligibility of the officer would be January 1, 2000 irrespective of whether ACRs are written financial year-wise or calendar year-wise.

3. The crucial date indicated above is in keeping with para 9 of the Department of Personnel and Training Office Memorandum No.22011/9/98-Estt(D) dated September 8,1998 which prescribes a Model Calendar for DPCs. In accordance with paragraphs 10 and 11 of the said Office Memorandum, these instructions will come into force in respect of vacancy years commencing from January 1/April 1, 1999 and will, accordingly, be applicable to all such subsequent vacancy years."

4. **OM dated 14.08.2003**

"2. While preparing an eligibility list for reference to the DPC for preparation of a panel for the financial year based vacancy year, a doubt has been expressed whether those persons who are in the feeder grade as on the crucial date of Ist January, but who are due to retire before the commencement of the relevant financial year based vacancy year, are to be considered for inclusion in the eligibility list.

3. For matter has been considered. It is clarified that crucial date is only a fixed reference date or a cut off date on which the eligibility of officers in the feeder grade in terms of the provisions of the relevant Recruitment Rules e.g. educational qualification, length of service etc. is to be checked before they are considered for inclusion in the eligibility list for reference to the DPC.

It eligibility is to be checked only in respect of those will be in service as on the date of

commencement of the relevant vacancy year for which the panel is to be prepared. The eligibility is not to be checked in respect of those officers who may be in position as on the crucial date but who are due to retire before commencement of the relevant vacancy year. Such officers were entitled for consideration for promotion, subject to eligibility, only against vacancies arising, if any, in the vacancy year in which they are due to retire on superannuation. The Ministry of Law has also agreed that consideration of officers for promotion who retire before the vacancy year actually begins would be open to challenge as arbitrary and violative of Article of 14 of the Constitution. Therefore, while preparing the eligibility list for reference to DPC for preparation of a panel for promotion against vacancies arising in the ensuing vacancy year linked to financial year, eligibility as on the crucial date of 1st January is to be checked only in respect of those officers in the feeder grade who are not due for retirement before the date of commencement of the relevant financial year based vacancy year."

(emphasis supplied)

The case of the applicant is based on the OM No.22022/9/98-Estt. dated 8.9.1998 is extracted below:-

"***Frequency at which DPC should meet***

3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned Appointing Authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, Integrity Certificates, Seniority List, etc. for placing before the DPC. DPCs could be convened every year if necessary on a fixed date, e.g. Ist April or May. The Ministries/Departments should lay down a time-schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly....."

The applicant and respondents both seek support from the OM dated 14.08.2003 (supra) (underlined) by interpreting it in their favour. In addition the applicant seeks support from OA No.1366 of 1998 dated 07.04.2004 in the case of Jagat Narain Singh Vs. U.O.I. & Ors. The facts of that case are that *"the applicant retired from service on attaining superannuation on 31.07.1996, whereas he had become eligible for promotion on completion of 03 years of service on the post of Accounts Officer on 29.04.1996. The criterion*

for promotion being seniority-cum-fitness, the case of the applicant ought to have been considered, but the D.P.C. which met in Sept.1992, illegally declined to consider the case of the applicant for promotion merely on the ground that on superannuation, he was not entitled for the benefit." It was observed that *"the applicant had become eligible on 29.04.1996, but as stated in the counter affidavit he was denied promotion, by D.P.C. held in Sept. 1996 not for the reason of non availability of post but for reasons that he had become non-effective being superannuated on 31.07.1996, though he has completed 08 years of regular service as Account Officer on 29.04.1996. The stand that the office memo dated 22nd Sept. 1992 become effective on 01.04.1992 and applicant was promoted to the grade of Accounts Officer w.e.f. 29.04.1993 hence the benefit of notional fixation of pay on completion of 03 years service in Accounts Officer grade was not admissible to him, cannot be accepted. Office memo dated 22.09.1992 was issued in consideration of recommendation of IVth Central Pay Commission that there should be board parity in the pay structure of Accounts and Audit Staff. The re-structuring scheme was extended to the Accounts staff w.e.f. 1.4.1987, for the purpose of computation of requisite regular service of 03 years in order to grant the scale of Rs.2200-75-3800-EB-100-4000. The fact that the applicant was promoted to the post of Accounts Officer subsequent to 01.04.1992 would not be relevant. In our opinion, the applicant was denied the scale of Rs.2200-75-2800-EB-100-4000 on misconstruction of the office memo dated 22.09.1992 and on erroneous basis that he has retired in July 1996 whereas the D.P.C. meeting was held in Sept.1996. The impugned order dated 20.07.1998 is, therefore, liable to be set aside..... It is, however, made clear that since*

the applicant has already superannuated he will only be entitled to fixation of his pension and other retiral benefits treating him to have retired in the scale of Rs.2200-75-2800-EB-100-4000....."

3. The case of the respondents is, however, based on the eligibility date for consideration of a candidate for promotion being first of the year preceding the vacancy year. In their view the applicant did not completed three years in the grade as on 01.01.2005 and, therefore, he was not eligible to be considered for promotion for the vacancy year 2005-06. As against that he was to be considered for the year 2006-07, subject to his being in the service on the relevant date, which was not the case here as the applicant had retired. The respondents have also relied upon the decision of the Bangalore Bench of this Tribunal in OA No.349/2006.

4. The facts of the case in OA No.349/2006 (placed at Annexure A-4 in OA No.574/2007) are that *"Admittedly the applicant was promoted to the post of AO only on 10.04.2006 and consequently he had fulfilled the residency period of 3 years prescribed in the Recruitment Rules for promotion to the post of SAO only on 10.04.2006. Regarding the eligibility of officers to be considered for promotion by DPC-it is governed by OMs dated 17.07.1998 and 14.08.2003 (Annexure-R2 to R3). As per the said OMs the crucial date for determining the eligibility of the officers for promotion to the post of SAO for the vacancy year 2006-07 is 01.01.2006. "Admittedly the applicant was not eligible for being considered for promotion to the post of SAO as on 01.01.2006 since he has fulfilled the eligibility criterion only on 10.04.2006. This is*

what precisely stated by the respondents in the impugned order which is fortified by the aforesaid two Memorandums also. We do not find any illegality in the impugned order.

Confronted with the situation Mr. B. Veerabhadra learned counsel for the applicant submitted that the applicant's claim for promotion to the post of SAO should have been considered atleast for the vacancy year 2007-2008 for which the cut off date is 01.01.2007. Counsel in support has relied on an Office Memorandum dated 12.10.1998. We have perused paragraph-2 of the said Office Memorandum. This occurs under the caption "preparation of year wise panels by DPC where they have not met for a number of Years". It is in this context para-2 that doubts have been expressed in this regard as to the consideration of the employees who have since retired but would also has been considered for promotion if the DPC(s) for the relevant years had been held in time. According to us, in order to apply the said provision, the applicant should have been in service as on 01.01.2007. As already noted the applicant had retired from service on 31.05.2006 and consequently this provision has no application. The OA is without any merit....."

5. Heard learned counsel for the parties and perused the materials on record. We are of the considered view that the case of the applicant is identical to the case before Bangalore Bench of this Tribunal in OA No.349/2006 on all force. In this case also in the year of superannuation i.e. Financial Year 01.04.2005 to 31.03.2006 in the vacancy year 2005-06 the applicant has not fulfilled the critical condition of having completed three years of service as on the crucial date for determining the eligibility for

promotion i.e. as on 01.01.2005. For the similar reason as observed by the Bangalore Bench of this Tribunal the applicant could not be promoted in the year 2006-07 as well. The applicant's argument that the DPC was not held for a long time and this fact could have effect as prospects is also about without any foundation since he as an **individual** become eligible for promotion in the vacancy year 2006-07 and, therefore, regardless of the fact whether or not there was no DPC for a long time, his case does not become any better. For these reasons also there is no force in the contention of the applicant.

6. In view of the above observations the OA stands dismissed. No Costs.

OA No.1130 0f 2006

In this case the applicant has completed three years of regular service as Accounts Officer on 14.05.2000 and retired from service on 31.07.2000. His eligibility was to be checked as on 01.01.2001 for consideration for promotion against the vacancy year 2001-02. However, since he had already retired on 31.07.2000 before commencement of vacancy year 2001-02 he was not considered. The facts of this case are squarely covered by judgment and order in OA No.964 of 2006 and hence for the reasons as discussed there, this OA also stands dismissed. No Costs.

OA No.574 of 2006

In this case the applicant completed three years of regular service as Accounts Officer on 25.05.2006 and he superannuated on 31.01.2007. His eligibility date for consideration fell as on

01.01.2007 for the vacancy year 2007-08. However, since the applicant superannuated on 31.01.2007 before commencement of vacancy year 2007-08 he was not promoted. For the same reasons as recorded in OA No.964 of 2006 this OA also stands dismissed. No Costs.

Member-J

Member-A

/ns/