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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.16/2009

Jodhpur this the 18th day of September, 2013

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J),

Hon'ble Ms. Meenakshi Hooja, Member (A)

Karam Prasad Gorwal S/o Shri Mohan Lal, aged 49 years, by caste Gorwal, R/o F-9, Heavy Water Colony, Rawat-Bhata, District Chittorgarh, at present Holding the post of Scientific Officer "D" under the respondents.

.....Applicant

Mr. Harish Purohit, counsel for applicant.

Versus

1. The Union of India, through the Secretary to the Government of India, Department of Atomic Energy, Anu-Shakti Bhawan, C.S.M. Marg, Mumbai.
2. The Chief Executive Officer, Heavy Water Board, 5th Floor, VYS Bhawan, Anu-Shakti Nagar, Mumbai.
3. The Administrative Officer, Heavy Water Plant, Anu-Shakti via Kota, District Chittorgarh.
4. Asstt. Personnel Officer, Heavy Water Plant, Anu-Shakti via Kota, District Chittorgarh.

.....Respondents

Smt. K. Parveen, counsel for respondents.

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

The present application has been filed by the applicant, Karam Prasad Gorwal, to challenge the legality of the order dated 27.08.2007 (Annexure-A/1), and further prayed to direct the respondents to promote the applicant to the post of Scientific Officer "D" w.e.f. 01.08.1999 and further to consider the case of

the applicant for the purpose of promotion at all stages treating him as Scientific Officer "D" w.e.f. 01.08.1999.

2. The short facts of the case are as averred by the applicant are that the applicant was initially appointed to the post of Scientific Assistant/ B in the year 1981 in the respondent department, and in the year 1987 he was promoted to the post of Scientific Officer/C. It has been averred in the application that the applicant acquired the qualification of AMIE which entitled the applicant to be considered for the purpose of promotion to the next higher post and subsequently the applicant was promoted to the post of Scientific Officer /SB in the year 1991 on the count that the applicant has cleared the AMIE. It has further averred in the application that the applicant was entitled to be promoted to the post of Scientific Officer Grade 'C', which is a promotional post from the cadre of Scientific Officer Grade 'B', but the respondents instead of promoting the applicant as Scientific Officer Grade 'C' on acquiring the qualification of AMIE, promoted the applicant as Scientific Officer Grade 'B'. When the similarly situated persons were promoted on the higher post than the applicant, the applicant submitted various representations before the competent authority. It has been further averred in the application that when the promotion was not given to the applicant on the post of Scientific Officer Grade 'C' then the applicant had also applied for the post of Chemical Inspector of Factories in National Capital Territory of Delhi on 16.09.1994 and the same was forwarded by the respondent

department to the officer concerned on 02.11.1994, and while forwarding the application of the applicant, a note was inserted to the effect that the applicant shall not be eligible for the next higher promotion in the parent department for one year i.e. to say till 15.09.1995 as he applied for appointment on a post outside the department. It has been further averred that vide an advertisement dated 18/24.03.1995, the State Trading Corporation of India Limited invited applications from the eligible candidates for the purpose of appointment to the post of Assistant Manager. But the applicant was not eligible to face the selection process for the above posts. However, the applicant in the third week of 1995 was called by the respondents to face an interview for the purpose of promotion by way of selection to the post of Scientific Officer Grade 'C' and in pursuance to that the applicant faced selection process and acquiring entitlement to hold the promotional post and he was allowed to assume the charge of the post of Scientific Officer Grade 'C' in the month of February, 1996. The respondents vide communication dated 03.04.1999 communicated to the applicant that as he has applied for appointment out side the department therefore he will become eligible for promotion only from 01.08.1997 and further the promotion to the post of Scientific Officer Grade 'C' was denied on irrelevant consideration. Being aggrieved of that, the applicant filed an original application before this Tribunal bearing OA No.209/1998, which was dismissed by the Tribunal and being aggrieved by the order of the Tribunal, the applicant approached the Hon'ble High Court and preferred a D.B.

Civil Writ Petition No.833/2002, which was allowed by the Hon'ble High Court vide its order dated 18.09.2003 and set aside the order of this tribunal and held that the applicant is held to be entitled for promotion w.e.f. 16.09.1995 to the post of Scientific Officer Grade 'C'. The order of the Hon'ble High Court was pleased to pass on 18.09.2003 and prior to this date the applicant was considered for the post of Scientific Officer Grade 'D' treating his date of promotion as 01.08.2005 whereas as per the order of the Hon'ble High Court the respondents were directed to promote the applicant on the post Scientific officer Grade 'C' w.e.f. 16.09.1995. Therefore, it has been averred in the application that the applicant is entitled to get his consideration/promotion treating his date of promotion as Scientific Officer Grade 'C' from 16.09.1995. The applicant by way of this application has sought the following reliefs:-

- (i) *To declare the order dated 17.08.2007 Annexure-A/1 illegal to the extent it denies the promotion to the post of SO/D w.e.f. 01.08.1999.*
- (ii) *To direct the respondents to promote the applicant to the post of SO/D w.e.f. 01.08.1999 and to pay all the consequential benefits including the arrear etc.*
- (iii) *To further direct the respondents to consider the case of the applicant for the purpose of promotion at all stages treating his SO/D w.e.f. 01.08.1999.*
- (iv) *To pass any other relief to which applicant appear entitle to from the facts and circumstances of the case.*
- (v) *To pay the costs of the OA."*

3. By way of reply, the respondent department denied the right of the applicant for consideration treating his date of promotion as 16.09.1995 and further it has been averred in the reply that he was interviewed in the year 2002 and 2003 for his promotion w.e.f. 01.08.2002 and further on 01.08.2003, and on both occasions the applicant was not found fit for promotions. Therefore the applicant was not promoted in the year 2002 and 2003, and further he was

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given the promotion to the post of Scientific Officer Grade D w.e.f. 01.08.2005. It has been further averred that as the case of the applicant was not recommended by the selection committee therefore, he was not promoted w.e.f. 01.08.2002 or 01.08.2003. It has been further averred in the reply that the representation filed by the applicant vide dated 27.11.2006 was examined by the competent authority and the request of the applicant was not acceded by the competent authority because the applicant was not found fit by the Screening Committee for promotion in the year 2002 and 2003.

4. Heard both the parties. Counsel for the applicant contended that judgment of the Hon'ble Rajasthan High Court was delivered on 18.09.2003 and the case of the applicant should have been considered as per the judgment, because by this judgment the Hon'ble Rajasthan High Court directed the respondents to promote the applicant w.e.f. 16.09.1995 to the post of Scientific Officer Grade C and in compliance to that order the applicant has been promoted and the consequential benefits were given to the applicant including the arrears of pay and salary. Therefore, he is entitled to be considered for the post of Scientific Officer Grade D considering his promotion at the Scientific Officer Grade C w.e.f. 16.09.1995 and the same has not been done by the respondents. Therefore, the application of the applicant be allowed.

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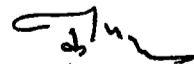
5. Counsel for the respondents contended that as per the pleading averred in the reply, the applicant was considered for promotion on 01.08.2002 and 01.08.2003 and he was not found fit and ultimately he was promoted w.e.f. 01.08.2005, he contended that the case of the applicant cannot be considered treating his promotion w.e.f. 16.09.1995 because when he was interviewed in the year 2002 and 2003 he was not found fit for promotion.

6. We have considered the rival contentions of both the parties and perused the judgment passed in D.B. Civil Writ Petition No.833/2002 dated 18.09.2003. From the facts as emerged from the pleadings of the parties, the Hon'ble High Court vide order dated 18.09.2003 directed the respondents to promote the applicant w.e.f. 16.09.1995 to the post of Scientific Officer Grade C, and in compliance to that order the applicant has been promoted w.e.f. 16.09.1995. Therefore, this application is requires to be allowed.

7. Accordingly, the OA is allowed and the respondents are directed to consider the case of the applicant for the post of Scientific Grade 'D' treating his promotion to the post of Scientific Officer Grade 'C' as on 16.09.1995. The respondent department is further directed to complete the process of consideration within four months from the date of receipt of a copy of this order. No order as to costs.



(Meenakshi Hooja)
Administrative Member



(Justice K.C. Joshi)
Judicial Member