

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 549/2013

Reserved on : 15.11.2016

Jodhpur, this the 6th December, 2016

CORAM

Hon'ble Ms Praveen Mahajan, Admn. Member

Vijayanand Dwivedi S/o Late Shri Khushali Ram Dwivedi, aged about 71 years, Resident of House No. 1154, Sector-11, Hiran Magri, Udaipur-313 002.

.....Applicant

By Advocate: Mr Ashok Chhangani.

Versus

1. Union of India through the Secretary, Department of Atomic Energy, Chhatrapati Shivaji Marg, Mumbai – 400 001.
2. The Director, Atomic Minerals Directorate (Exploration & Research), 1-10-153-156, Begum Pet – 16, Hyderabad – 500 016.
3. The Director, Bhabha Atomic Research Centre, Trombay, Mumbai – (Whole some authority for Guidelines for promotion interview and results).

.....Respondents

By Advocate : Mr Salil Trivedi.

ORDER

The present Original Application has been filed U/s 19 of Administrative Tribunals Act, 1985 seeking following reliefs:

- (i) In view of the facts and grounds mentioned in para 4 and 5 of the OA, the effect and operation of the impugned orders Annex. A/1 and Annex. A/2 may be stayed and the respondents may kindly be

directed to provisionally revise the basic pay of the applicant while treating it to be Rs 24,295/- instead of Rs 23,050/-.

- (ii) Any other interim relief which is found just and proper be passed in favour of the applicant.

2. The case of the applicant is basically that the applicant was considered for promotion to the post of Scientific Officer – G while he was posted at Nagaur. However, promotion of the applicant was deferred in the year 2001. He got to know this fact when he was called for, interview in 2001, and intimated that his promotion has been deferred. This was done without assigning any reasons for the deferrment. In the year 2002, again the applicant was considered for the post of Scientific Officer Grade – G and his promotion was deferred without assigning any reasons in writing to him. The documents, when he was called for interview on 28.05.2002 are annexed as Annexure A/3. The applicant submitted representation dated 23.09.2013 in the matter of his promotion to respondent No. 1 but no response was received by him. The applicant submits that since his promotion was not rejected and was merely deferred, hence, he did not find it necessary to approach a court of law at that point of time. Had he been communicated the reasons for said deferment or informed categorically that his case for promotion has been rejected, he would have approached CAT at the relevant time. But he was kept in a state of confusion since he thought that his case has only been deferred which is not akin to rejection. It was in 2013, when,

vide OM dated 28.01.2013 of Ministry of Personnel (PG & Pensions) basic pension was revised, that the applicant again gave a reminder to the respondents regarding number of points raised in his earlier representation, regarding deciding the issue of his promotion on the post of Scientific Officer-G so that he could avail the benefit of revised pension as per OM dated 28.01.2013 (Annex. A/5). By virtue of the Revised norms, his basic pension now 23,050/- would get revised to Rs 24,295/-. The respondents vide their communication dated 19.09.2013 informed him that his case for promotion was deferred and since he superannuated on 30.09.2002 his request for extension of service cannot be considered at this belated stage. The applicant states that his case was not for granting him extension but for wanting to know why promotion had been rejected in his case. His prayer for grant of extension in service, was limited to the extent, that he may receive his due promotion by way of extension. Copy of impugned order dated 19.09.2013 has been annexed as Annex. A/1. The applicant again represented vide letter dated 23.09.2013 desiring to know the action taken as well as rules under which he has been denied promotion in the name of deferment. He also sought to know the relevant procedure with the rules in regard to other officers who were accorded promotions (Annex. A/7). The applicant was informed vide letter dated 24.10.2013 that his case was referred to the Department of

Atomic Energy for promotion to the post of Scientific Officer-G on 01.08.2001 and 01.08.2002 alongwith others, for consideration. However, his case was deferred by the selection committee. He was also informed vide letter dated 24.10.2013 that in future no correspondence in this regard will be entertained. He submits, that finally, the stand taken by respondent No. 1 is that since the case of the applicant has been deferred, therefore, his request for promotion cannot be granted (Annex. A/2). The applicant states that due to deferment of promotion, he is deprived of financial benefits which would otherwise have accrued to him in view of OM dated 28.01.2013. Had he been promoted to the post of Scientific Officer -G, his basic pay would have been Rs 24,295/- per month and consequently his basic pension would have also got revised, upwards. This is a recurring cause of action, and the applicant is getting less pension purely due to administrative inaction of the respondents by illegal deferment of his promotion. This is violative of Article 14 and 16 of Constitution of India. He has, therefore, filed the present OA to redress his grievances.

3. In reply, the respondents have stated that in this issue, no prima-facie case is made out, and there is no substance at all, in the OA filed by the applicant. The applicant retired after attaining the age of superannuation in the grade of Scientific Officer- F on 31.08.2002. The promotions of Scientific and Technical personnel

of respondents directorate are governed under the "merit promotion scheme" which, as the name suggests, is purely on merit and is delinked with the availability of vacancies applicable to other categories of staff and is exempted from the purview of UPSC. The respondents have then discussed the merit promotion scheme and its salient features in detail. Coming to the case of the applicant, they state that he was considered for promotion w.e.f. 01.08.2001 by the committee of the respondent's directorate, for promotion, to the next higher grade i.e. Scientific Officer Grade - G. The applicant was not recommended by the selection committee which interviewed him. His case was, therefore, deferred for promotion. The case of the applicant was again considered for promotion during the year 2002 by the selection committee which again did not find him fit for promotion. Citing the case of S.S. Rathore Vs. State of MP AIR 1990 p.10 of the Hon'ble Apex Court, the respondents submit that OA deserves to be dismissed not only on merits but also on the ground of delay. It is also submitted by the respondents that as per norms under Merit cum Promotion Scheme in the Department of Atomic Energy, if the promotion of the official is deferred twice, his case is to be considered thereafter, only after a cooling off, of 02 years. Since the case of the applicant was deferred twice by the Selection Committee during 2001 and 2002 in the grade of Scientific Officer-F, his case could not have again been referred to

the Selection Committee, since he retired on 31.08.2002. Explaining the case of Shri Om Prakash Sahu whose case has been cited by the applicant as an exception, the respondents have explained that the case of Shri Sahu was based on merit, as well as on his performance in the interview. Summing up, the respondents state that no prima-facie case is made out in favour of the applicant, either on merit looking to the position of rules, and coupled with the fact of extreme delay on part of the applicant to file the OA. The balance of convenience, thus, squarely lies in favour of the respondents.

5. The applicant has filed rejoinder to the OA reiterating averments made in the OA and annexed documents from Annex. A/8 to A/15. He has further filed documents from Annex. A/16 to A/18 by way of additional rejoinder.

6. The respondents have filed additional affidavit to strengthen their stand and to counter the contentions of the applicant in the rejoinder. The applicant filed additional reply to the additional affidavit filed by the respondents and annexed more documents (Annex R/19) to substantiate his claim.

7. Heard both the counsels.

8. Ld. Counsel for applicant, Mr Ashok Chhangani reiterated the issues already raised by him in his various written submissions i.e. the OA, rejoinder & additional rejoinder etc.

Continuously hammering on the point of 'deferment', Ld. counsel for the applicant, Mr Chhangani tried to distinguish that 'deferment' does not tantamount to 'rejection'. Hence, the case of the applicant can, and, should have been considered for promotion by the respondents since it was never rejected.

Contention of the Ld. Counsel for the applicant was that the applicant stood promoted, though formal orders to this effect have not been issued, as the formal orders could only be issued by the administrative department. Going over the points raised in additional reply of the respondents, he submitted that the respondents have not placed on record any proof to substantiate the averments of the applicant that he was sufficiently informed about the rejection of his promotion. It is, therefore, a falsehood to state that selection committee found the applicant 'unfit' for

promotion. Ld. Counsel for the applicant, Shri Chhangani then stated that the reply of the respondents is fallacious since it does not contain any official record whatsoever, as is obvious from the index of the reply filed by the respondents. He further submitted that, the additional affidavit filed by the applicant, shows the list of officers who were "recommended" for promotion to the post of Scientific officer Grade - G w.e.f. 01.08.2002 where the name of the applicant figures. Hence, the respondents are duty bound to explain as to why the applicant has been denied promotion in the grade of Scientific Officer Grade - G since they have no material

on record to suggest that the promotion was rightly denied to the applicant. In support of his arguments, he relied upon the following judgments :

- (i) The Manager, Govt. Branch Press & Anr. V. D.B. Belliappa reported in AIR 1979 Supreme Court 429
- (ii) Mohinder Singh Gill & Anr v. The Chief Election Commissioner, New Delhi reported in AIR 1978 Supreme Court 851.

He emphasized that the name of the officer figures in the list of the officers "recommended" by the selection committee for promotion to the grade of Scientific Officer Grade G w.e.f. 01.08.2002. Recommendation of Selection Committee tantamounts to selection to the higher grade for which promotion orders were to be issued by the respondents. He submitted that out of 21 such officers whose names were recommended by Senior Selection Committee for promotion, the name of the officer figures at serial number 40 in the list (Anex. 2-A) of Annex. R/19. However, for reasons best known to the respondents and not explained in their reply, the promotion has been denied to the applicant. He argued that if no promotion is granted, obviously, the consequential retiral benefits/relief cannot be received by the applicant. The Ld. counsel for the applicant submitted that Annex. A/8 which is the information supplied by the respondents to the applicant, to his RTI application dated 21.10.2013 is defective, since it conceals more than what it reveals. He prayed that the

respondents may be asked to produce the record of selection committee before the Court and explain the basis on which the promotion was denied to the applicant despite the specific "recommendation" of the Selection Committee.

9. Rebutting the arguments advanced by Ld. Counsel for applicant, Mr K.S. Yadav, Ld. Counsel for the respondents, again taking the court over the facts of the case, explained that the name of the applicant was considered for promotion to the grade of Scientific Officer Grade – G, on two occasions. In the year 2001, the applicant was considered for promotion to the next higher grade i.e. Scientific Officer Grade – G as per norms of the "merit cum promotion Scheme". The selection committee which interviewed him, informed him, that his case has been deferred for promotion. In view of this deferment, the case of the officer was again taken up for consideration for promotion to the grade of Scientific Officer Grade G in the year 2002 but again selection committee did not find him fit for promotion. The applicant, subsequently, retired in August, 2002. Shri K.S. Yadav went on to submit that as per rules and norms on the subject, the promotions of Scientific Officer and Technical personnel of respondent's directorate are done purely on merit coupled with certain eligibility criteria and specific grading in the confidential reports of the preceding 04 years. Apart from these parameters, which

only make a candidate 'eligible' to be considered, it is actually the aptitude and the initiative of individual officers which determines the ultimate outcome of the selection committee for promotion to the next higher grade. In the instant case, the case of the applicant was considered twice. Each time, he was not found fit for promotion to the next higher grade. Ultimately, since the officer retired in August, 2002, there was no question of his being considered for promotion subsequent to his superannuation. This, notwithstanding the fact, that in any case he would have not been considered for promotion by the two subsequent "selection committees", since the Merit cum Selection Scheme, envisages *02 years cooling off period for promotion once the case of the applicant has been deferred/found wanting, twice, by the selection committee.* The applicant's case was considered for promotion by the Committee of the Respondent's Directorate for promotion to the next higher grade viz. Scientific Officer/G as per norms in the year 2001 and 2002, both times, the selection committees did not find him fit for promotion. Hence he was not eligible to be considered for promotion for the next two years. In support, he produced para 12.3 of "Merit Promotion Scheme" in the Department of Atomic Energy which reads as under :

"12.3 In cases of deferment by Standing Selection Committee for the first time, the cases can be put up again in the following year. In cases of candidates deferred twice by the Standing Selection Committees in 2 consecutive years, their cases

can be put up again only after a lapse of two years after the second deferment.”

Coming to the point of inordinate delay in filing the OA, Shri K.S. Yadav emphasized that after superannuating in the year 2002, the applicant only woke up in the year 2013 i.e. after more than a decade of silence, to raise a totally well settled issue of his non-promotion, merely to avail the pensionary benefits of OM dated 28.01.2013. No justifiable or convincing reason is forthcoming from the applicant for this inexplicable delay of 12-13 years. Hence, on account of delay as well, this case is not sustainable. Replying to the query of Ld. counsel for applicant, regarding improper reply to his RTI applicant, Shri Yadav drew the attention of the Bench to Annex. A/8 letter dated 02.11.2013 of the respondents (Annex. R/19) and stated that the Ld. counsel for applicant is merely playing with the words since the respondents have clearly supplied him copies of list of candidates who were initially 'recommended' for promotion (Annex. A/1) as well as those who were 'approved' for promotion. He pointed out that Annex. A/19 on which the Ld. Counsel for applicant has based his argument, contains only the copy of list of candidates "recommended" for promotion, whereas the list of candidates, who were "approved" for promotion, has not been annexed, wherein the name of the applicant does not figure. He stated that in any promotion process, list of "recommended" eligible

candidates is to be finally "approved" and then promoted by the respondent-department, which is exactly what has been done in the instant case. In support of his submission, he supplied copy of Annex-II - containing list of "approved" candidates for promotion to the grade of Scientific Officer G from Scientific Officer F w.e.f. 01.08.2002 from Department of Atomic Energy, Mumbai.

10. On going through the facts of the case, I find that it is not the case of the applicant that he was discriminated against, nor has he alleged that there was a bias qua him, due to which, he was denied promotion by the respondents. His case hovers around two main points; firstly, that his case was "deferred" twice by the selection committee, but never "rejected". And, secondly, that his case alongwith others was "recommended" for promotion which in his view, tantamounts to "selection". This recommendation/selection according to the applicant, should have been followed by formal promotion orders (which were not issued), hence, he has illegally been denied promotion/financial benefits due to non-issuance of formal promotion orders. I observe from the arguments and record placed before me, that the case of the applicant was considered for promotion to the grade of Scientific Officer Grade-G, in the years 2001 and 2002 respectively. On both the occasions, the applicant's case was

deferred by the selection committee. Ld. counsel for applicant would want the court to presume that since the case was 'deferred' and not 'rejected', the applicant effectively stood "promoted" and that he has been denied the benefits of promotion because only a formal "promotion order", per se, was not issued in his case. This notion of the Ld. counsel for respondents is not only totally devoid of merit or but also lacks even a modicum of substance. The fact that the applicant's case was 'deferred' cannot lead to an automatic inference, that it meant 'promotion'. Due to this deferment in 2001, another chance was given to the applicant in the year 2002, for being considered for promotion. Had there been any merit in this 'deferment' means 'non-rejection' theory, the applicant could have ventilated his grievance on both the occasions, when he was informed of his deferment in 2001 & 2002. He had enough time to agitate the issue of non-issuance of promotion orders w.e.f. 2002, if he was convinced of his own inference or theory, of 'deferment' not being akin to 'rejection'. The other contention of the applicant that his name was "recommended" for promotion w.e.f. 01.08.2002, hence, should be treated as promoted, stands defeated by the 'approved' list of names for promotion, supplied to him by the respondents to explain their action. This, as succinctly explained by the Ld. Counsel for the respondents, is a normal selection process, followed by any DPC where consideration list of eligible

candidates is 'considered' and finally, an 'approved' and "promoted" list is issued. The same has been done in this case. The judgments cited by Ld. counsel for applicant do not apply in the instant case. It is apparent that after issuing of OM dated 24.01.2013, the applicant chose to rake up an issue, to which he had reconciled 11 years ago. This line of argument has only been adopted to mislead the court, to get the financial benefits envisaged under the above OM dated 28.01.2013 (Annex. A/5), issued by the Department of Pension & Pensioners' Welfare, Ministry of Personnel, PG & Pension, GOI.

11. In view of the facts and circumstances of the case, I find no infirmity in the action of the respondents nor is there any justifiable reason whatsoever, to interfere in an already settled and accepted issue, by the applicant himself, at this belated stage. OA is, therefore, dismissed lacking merit. No costs.


[Praveen Mahajan]
Administrative Member

Ss/-

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