

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 417 of 2010

Thursday, this the 12th day of January, 2012

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

M.P. Muraleedharan,
Director (Selection Grade) (Retired),
Geological Survey of India,
Kerala Unit, Dharani Bhavan,
Manikanteswaram P.O.,
Thiruvananthapuram : 695 013

... Applicant.

(By Advocate Mr. P. Chandrasekhar)

v e r s u s

1. Union of India represented by
Secretary to Government of India,
Ministry of Mines, New Delhi.
2. The Director General,
Geological Survey of India, Kolkata.
3. The Union Public Service Commission
Represented by its Chairman,
Dholpur House, New Delhi. ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC for R1-2 and
Mr. Thomas Mathew Nellimoottil for R-3)

This application having been heard on 16.12.11, the Tribunal
on 12-01-12 delivered the following :-

ORDER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant was appointed as Junior Geologist in the Geological Survey of India (GSI) on 02.09.1974. After 28 years of service, he was

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promoted as Director, Geological Survey of India, in June, 2002. As per the Recruitment Rules, a Director with 7 years regular service in the grade is eligible to be considered for promotion to the post of Dy. Director General (Geology). The Departmental Promotion Committee (DPC) meeting to consider promotion to the post of Dy. Director General (Geology) against 20 vacancies pertaining to the year 2009-10 was held on 19.01.2009. There were only 8 eligible officers fulfilling the qualifying service of 7 years in the feeder category. All of them were recommended for promotion and they have been promoted. Subsequently, the respondent No. 1 sought approval of the Government of India to relax the qualifying service of 7 years varying from 5 months and 20 days to 6 months and 21 days in respect of the next 12 officers in the seniority list which included the applicant also. The Union Public Service Commission (UPSC) was requested to hold supplementary DPC vide proposal dated 05.06.2009. Further relaxation ranging from 1 year to 1 year and 31 days in respect of another 18 officers was obtained by the respondent No.1 and vide letter dated 14.10.2009, the UPSC was requested to hold a supplementary DPC which was held on 20th and 21st January, 2010. The applicant had retired on 30.11.2009. In the meanwhile, he had approached this Tribunal in O.A. No. 774/2009, which was disposed of on 08.03.2010 directing the respondents to give a reasoned and speaking reply to the applicant in response to his representation to hold a supplementary DPC, within a period of 2 months from the date of receipt of the order. In compliance, the impugned order dated 20.04.2010 at Annexure A-11 is issued. Aggrieved, the applicant has filed this O.A for the following reliefs:

(i) Call for the records leading to Annexure A-11 order and quash or set aside the same;

(ii) Issue a direction directing the respondents 1 and 2 to promote the applicant to the post of Deputy Director General (Geology) from the date on which the applicant became eligible for promotion to the said post and grant to him all consequential monetary and other benefits, including arrears of pay and allowances, revision of pension, arrear of pension and other pensionary benefits; and

(iii) Pass such other orders as this Hon'ble Court may be pleased to grant on the facts and circumstances of the case.

2. The applicant contended that he is entitled to promotion to the post of Deputy Director General (Geology) in view of letter dated 21.04.2009 from the Ministry of Mines, Government of India, relaxing their residency period. Had the respondents acted swiftly and convened the DPC without delay, several officers including the applicant would not have retired without getting their promotion. The promotion was to be made on the basis of seniority alone and there were only 12 officers to be appointed in 12 vacancies. The delay in convening the DPC was to benefit the juniors of the applicant who were also granted relaxation in the residency period subsequently.

3. The UPSC submitted that the respondent No.1 had sought approval of the Government of India to relax the residency period in two spells and supplementary DPCs were scheduled at the earliest available dates, i.e. 20th and 21st January, 2010 by the Commission. There were a number of similarly placed officers who were in service on the crucial date of eligibility viz. 01.01.2009 but had retired before the date of supplementary DPC, i.e. on 20th and 21st January, 2010. The applicant was included in the zone of consideration and also recommended for promotion by the supplementary DPC. The applicant has no legitimate claim for promotion as he retired



before the DPC could be held.

4. In the reply statement filed by the respondents 1 and 2, it was submitted that the DoP&T was requested on 10.11.2008 for relaxation in the qualifying service in respect of 30 Directors (Geology). The DoP&T had agreed to the said requisition in respect of 12 officers only in the first instance. As some of the officers were likely to retire within the vacancy year, the DoP&T was again requested to consider giving their approval to the relaxation of qualifying service in respect of 18 more officers, which was granted and the supplementary DPC taking into account all the 30 officers of feeder grade for the 12 vacancies for the year 2009-10 was held on 20th and 21st January, 2010. There was no delay in holding the first DPC. The applicant was not eligible for promotion at that time as such there is no denial of promotion. It was further submitted that the Hyderabad Bench of this Tribunal in O.A. No. 313/2008 regarding alleged non action on the part of the respondents in holding the DPC for the post of Dy. Director General (Geology) thereby denying his rightful claim for promotion prior to his retirement on 31.05.2008, held that there is no rule or provision for providing promotion to a retired employee except in situation where he has been superseded in violation of principles of natural justice or in violation of law/rules.

5. In the rejoinder, it was submitted by the applicant that in O.A. No. 1519/2008, the Principal Bench of this Tribunal held that there is no prohibition in granting notional promotion to an eligible officer even after his retirement. A similar view was taken by this Tribunal in O.A. No. 911/2010 wherein it was held that when the promotion due to the applicant was denied

for no fault of his, he was entitled to notional promotion though he had retired prior to convening of DPC. The denial of promotion to the applicant solely for the reason that he retired prior to holding of supplementary DPC is unfair and unreasonable. The order in O.A. No. 313/2008 referred to in the impugned order has no application to the facts of this case. The question of entitlement of a retired employee for notional promotion is not a question that arose in that case.

6. We have heard Mr. P. Chandrasekhar, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC for the respondents No.1 and 2 and Mr. Thomas Mathew Nellimoottil, learned counsel for the respondent No. 3 and perused the records.

7. The DoP&T, Government of India, had approved relaxation of residency period for the senior most 12 officers varying from 5 months and 20 days to 6 months and 21 days for considering them against 12 vacancies pertaining to the year 2009-10 which remained unfilled for want of eligible officers. The respondents moved UPSC to hold supplementary DPC vide letter dated 05.06.2009. The inaction thereafter on the part of the respondents defeated the very intention of the relaxation of the residency period specifically given in respect of the 12 officers, some of whom were to retire shortly. The fact that 12 officers including the applicant became eligible for consideration on the basis of relaxation in the residency period for about 6 months or so does not impact his right for consideration for promotion in time. The inertia developed after getting approval in the first instance for relaxation of the residency period in pursuing promotion of the 12 eligible officers is not explained by the



respondents. They could have vigorously pursued the matter to hold supplementary DPC to consider promotion of the 12 eligible officers including the applicant. Had they succeeded in holding the DPC earlier, say in the month of July, 2009 or so, the applicant would have been promoted before his retirement.

8. Relaxation in residency period, in the first instance, was given specifically to 12 officers. There were 12 vacancies in the cadre of Deputy Director General (Geology) too. The respondents could have given them ad hoc promotion, pending regular promotion on the recommendation of the DPC. Sensitivity to the legitimate expectation for promotion before retirement of officers including the applicant is not at all evident on the part of the respondents.

9. In O.A. No. 1519/2008, the Principal Bench of this Tribunal held as under :

"16. It is noteworthy that the procedure prescribed vide DoP&T O.M. dated 12.10.1998, while making it clear that retired officers would have no right for actual promotion, does not prohibit grant of notional promotion to them. While promotion may not be claimed as a matter of right from the date of attaining eligibility for promotion, we are of the considered view that once an employee has been illegally and arbitrarily denied consideration for promotion while in service, he cannot continue to be denied the benefit of the same only because he has since retired on superannuation....."

10. In O.A. No. 911/10, this Tribunal held that when the promotion due to the applicant was denied for no fault of his, he was entitled to notional promotion though he had retired prior to convening of DPC. The order of the

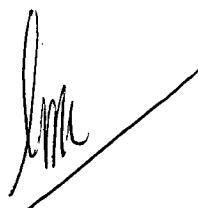


Hyderabad Bench of this Tribunal in O.A. No. 313/2008 is not applicable to the present case as the question of entitlement of a retired employee for notional promotion did not arise therein. Even if no junior is promoted depriving the applicant of promotion, it will not be fair and just in the facts and circumstances of the present case, if the applicant is denied the benefit of notional promotion only because he retired on superannuation, before the DPC could meet.

11. In the light of the above discussion, the O.A. is allowed as under.

12. The Annexure A-11 order dated 20.04.2010 is quashed. The respondents 1 and 2 are directed to grant the applicant notional promotion to the post of Deputy Director General (Geology) with effect from the date he became eligible for promotion, on the basis of the recommendation of the supplementary DPC held on 20th and 21st January, 2010 and to revise his pensionary benefits accordingly within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(Dated, the 12th January, 2012)



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

cvr.