

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 426 OF 2013

Friday, this the 19th day of February, 2016

CORAM:

**HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

A.S. Chellappan, S/o. V.S. Raju (late)
(Retired Technical Officer,
Strategic Electronics Group,
Centre for Development of Advance Computing)
Residing at : "Rohini", TC 3/503(4),
Reshmi Nagar, Kallara Moola,
Kuravan Konam, Muttada (P.O),
Trivandrum - 695 025.

- Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

1. The Director General,
Centre for Development of Advanced Computing (C-DAC),
Pune University Campus,
Ganesh Khind, Pune – 411 007.
 2. The Executive Director,
Centre for Development of Advanced Computing (C-DAC),
Vellayambalam, Trivandrum – 33.
- Respondents

(By Advocate Mr. N. Anil Kumar, Senior PCGC)

The application having been heard on 19.02.2016, the Tribunal on the same day delivered the following:

ORDER (oral)

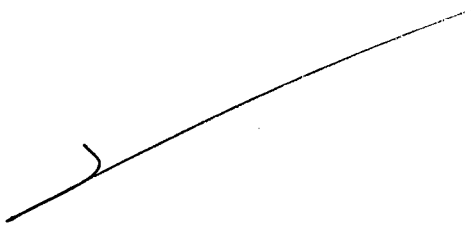
Per: Justice N.K. Balakrishnan, Judicial Member

The applicant seeks a declaration that he is entitled to be considered afresh and be granted the benefit of promotion to PB 3 + Grade Pay of Rs. 6600/- with effect from 01.04.2011 or at least with effect from 01.04.2012 and he also seeks for a direction for grant of consequential benefits including arrears of pay, allowances and retirement benefits arising

therefrom.

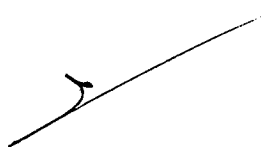
2. The gist of the case as advanced by the applicant is stated thus:

The applicant retired on superannuation on 31.03.2013 as Technical Officer in PB-2 with Grade Pay of Rs. 5400/- from C-DAC (Centre for Development of Advanced Computing). The applicant was initially appointed on 15.05.1979 and was granted promotion from time to time and later became Technical Officer in PB 2 with effect from 30.03.2006. In accordance with the promotion policy, on completion of five years service, the applicant was entitled to be considered for promotion to PB-3 with Grade Pay of Rs. 6600/-. The respondents issued an order to carry out a one time exercise of screening and promotion of below Group 'A' S &T of C-DAC and non S &T staff of C-DAC in the pre-revised A,B, C and D categories as evident from Annexure A-1. Since the applicant was not promoted he submitted a representation on 09.01.2013 contending that he had already completed six years and nine months service vide Annexure A-2. There was no response. Hence he submitted a representation on 07.02.2013 (Annexure A-3). Since he was again not considered, he submitted a representation to the Assistant Director, National Commission for Scheduled Castes vide Annexure A-4. The Commission took up the matter whereupon Annexure A-6 reply was given subsequently. The applicant obtained his ACR for the period from 01.04.2006 to 26.02.2013 as per Annexure A-8 letter. The reason stated in Annexure A-6 for denial of promotion and denial of consideration for promotion are arbitrary and unacceptable. Hence, he has approached this Tribunal.



3. The respondents filed reply statement contending as follows:

C-DAC is an autonomous organisation under the Department of Communications and Information Technology. It has its own rules and bye-laws for recruitment and promotion for their own employees. All eligible persons including the applicant were considered for promotion. The procedure involved screening and interview of the screened-in candidates. The Screening Committee did not find the applicant eligible for interview. The minimum marks required for screening-in was 85, whereas the applicant scored only 80.5. C-DAC informed the Assistant Director, National Commission for SC and ST that the C-DAC was contemplating a new promotion policy for the staff working in the Department and pending convening of the DPC. No DPCs were held for promotion of C-DAC staff including Scientific, Technical and Ministerial staff after 2011. The retirement of a single staff cannot be a reason for convening a DPC for the retired person alone. At the time of his superannuation, the applicant was holding the post of Technical Officer in the Pay Band of 9300-34800 with a Grade Pay of Rs. 5400 (Group-B post). His last promotion was on 30.03.2006 when he became Technical Officer. During 2011, he was considered for promotion, but he was not found suitable in screening stage itself. Subsequently, DPCs were not conducted in C-DAC. O.M dated 28.09.2012 were issued to maintain status quo until a larger Bench of the High Court finally decides the issue vide Annexure R-1. Appeal against the ACR ratings should be filed within 15 days of its coming to his knowledge, and more than three months have elapsed since he knew about his ratings. Respondents contend that the application is devoid of merit and is liable to be dismissed.

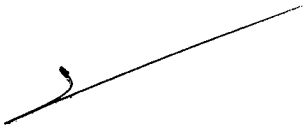


4. The point for consideration is whether the applicant was entitled to be promoted to PB 3 with Grade Pay of Rs. 6600/- as claimed by him?

5. We have heard the learned counsel for the parties and have gone through the pleadings and documents.

6. It is the admitted case that the last promotion of the applicant in C-DAC as Technical Officer was on 30.03.2006. By virtue of that promotion order he was holding the post of Technical Officer in the Pay Band of 9300-34800 with Grade Pay of Rs. 5400/- (Group-B post). It is also not in dispute that one time oriented promotion was announced on the basis of merit of the candidates as judged from the Annual Performance Report of the staff members. Applicant also does not dispute the facts that eligible persons including the applicant were considered for promotion during 2011. It is also not in serious dispute that the procedure for consideration involved screening and interview of the screened-in candidates. According to the respondents, the Screening Committee did not find the applicant eligible for interview as he did not secure the required 85 marks whereas he scored only 80.5 marks. Accordingly, the applicant could not get promotion. Therefore, according to the respondents there was nothing wrong in denying promotion to the applicant. It is also pointed out that no allegation was made against the members of the Expert Screening Committee. In the absence of any such allegation it has to be held that the Screening Committee did the screening/interview fairly, correctly and properly and there was no arbitrariness in granting promotion.

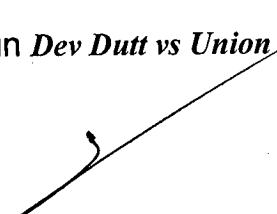
7. It is also not in dispute that going by the Recruitment Rules, an Officer who completed five years in the Grade (Group B Post) was entitled to



be promoted to the next higher Grade that is PB 3 with Grade Pay of Rs. 6600/-. Since the applicant scored only 80.5 marks in the Screening Committee, he was found ineligible to be promoted. Therefore, according to the respondents, there was nothing illegal in not granting promotion to the applicant.

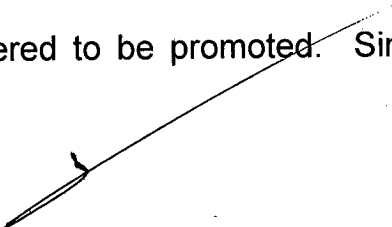
8. The applicant would contend that the so called decision of the DPC was not conveyed to the applicant and that only when the complaint was given to the Assistant Director and the Assistant Director called for a report from the respondents, they have chosen to send a reply. The respondents would also contend that the case of the applicant and all similarly placed persons were considered and persons who were found eligible were granted promotion. Only because the applicant did not get promotion, he contends that the DPC did not do their job correctly or properly or that he was deliberately singled out, the respondents would further contend. According to the respondents, the applicant did not submit any such request though according to the respondents the applicant was aware of the ACR gradings on 22.02.2013 itself.

9. The respondents would contend that the ACR gradings of the applicant for five years was "very good" but it was below the benchmark "outstanding". If the benchmark "very good" shown in the ACR of the applicant was adverse then the applicant should have been communicated of that fact. It is further submitted that 'un-communicated adverse remarks' cannot be basis for denying promotion. Reliance has been placed by the applicant on the decision in *Dev Dutt vs Union Of India & Ors* – (2008) 8 SCC 725.



10. Page 7 of Annexure A-1 shows the ACR ratings scale and screening. For outstanding performance 10 marks is granted whereas for persons who secured the remark "very good" the mark allotted is 8 and for the Officer securing the remarks "good" the mark allotted is only 6. Admittedly the applicant was not graded "outstanding" and so his percentage of marks for the grading "very good" was only 08. According to the respondents, for the five years in the grade the minimum percentage of marks based on ACRs for eligibility should be 85% whereas the applicant got only 80%. But in this connection the learned counsel for the applicant would submit that the applicant had served for 6 years and 9 months in the grade to which he was earlier promoted. According to the applicant for six years period, the minimum percentage of marks required is only 80% and not 85%. Since the applicant had served 6 years and 9 months for considering his claim for the vacancy year 2002, it can be found that the applicant had secured 80% marks. As such, it is seen that the applicant is entitled to be promoted to PB-3 with Grade Pay of Rs. 6600/- with effect from 01.04.2012.

11. It is contended by the respondents that it was only on a one time promotion policy the applicant and others were considered for the year 2011. According to them no subsequent DPC was convened as there were no sufficient posts and also because of the policy then existed. Since it is found that the applicant had been in PB-2 with Grade Pay of Rs. 5400/- for 6 years and 9 months it is clear that he has the required residency period in PB2 and as such he was considered to be promoted. Since he was graded "very



good” it can be found that he has secured 80% marks and as such the applicant is entitled to be promoted to PB-3 with Grade Pay of Rs. 6600/- with effect from 01.04.2012. The applicant is also entitled to get his pay fixed accordingly and he shall be paid the arrears of pay and allowances with effect from that date. The retirement benefits and pensions shall also be re-fixed accordingly. No order as to costs.

(Dated, the 19th February, 2016.)



(Mrs. P.GOPINATH)
ADMINISTRATIVE MEMBER



(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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