

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 63 of 2011
Original Application No. 128 of 2011

FRIDAY, the 21st day of September, 2012

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 63 of 2011 -

Madhusoodanan K.M.,
 Aged 48 years, S/o. T.V. Balakrishnan Nair,
 Assistant Accounts Officer (Adhoc),
 Office of the Accountant General (A&E),
 Branch Office : Calicut, residing at
 Indeevaram, Edayar, Kannavam Post,
 Chittaripaamba, Cannanore-670 650. **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Comptroller and Auditor General of India,
 Government of India, No. 10, Bahadur Shah Safar Marg,
 New Delhi-110 012.
2. Accountant General (A&E), Kerala,
 Thiruvananthapuram, 695 001.
3. Senior Accounts Officer (Admn),
 Office of the Accountant General (A&E),
 Kerala, Thiruvananthapuram, 695 001.
4. Ms. Rekha Sreekumar, Assistant Accounts Officer
 (Adhoc), Office of the Accountant General (A&E),
 Kerala, Thiruvananthapuram, 695 001. **Respondents**

[By Advocate – M/s. Iyer & Iyer (R1-3)]

2. Original Application No. 128 of 2011 -

C.P. Raju, Aged 50 years,
 S/o. C.N. Parameswaran (late),

Assistant Accounts Officer (Ad-hoc),
 Office of the Accountant General (A&E),
 Kerala, Branch Office, Kottayam,
 Residing at "Deepshika",
 Green Valley Nagar, Ettumanoor PO,
 Kottayam-686 631.

..... **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. The Comptroller and Auditor General of India,
 Government of India, No. 10, Bahadur Shah Safar Marg,
 New Delhi-110 012.
2. The Accountant General (A&E), Kerala,
 Thiruvananthapuram, 695 001.
3. The Senior Accounts Officer (Admn),
 Office of the Accountant General (A&E),
 Kerala, Thiruvananthapuram, 695 001.
4. Ms. Manju R. Assistant Accounts Officer
 (Adhoc), Office of the Accountant General (A&E),
 Kerala, Thiruvananthapuram, 695 001. **Respondents**

[By Advocate – M/s. Iyer & Iyer (R1-3)]

These applications having been heard on 06.09.2012, the Tribunal on
21-09-12 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member-

In these OAs the facts are common and the issue involved is the same. Hence, they were heard together and are disposed of by this common order.

2. The DPC which met on 7.8.2009 had considered the applicants for promotion to the post of Assistant Accounts Officer (Ad-hoc) and found them unfit on the ground of non-amenability to discipline. The DPC which met on 23.4.2010 found them fit for promotion and they were promoted as

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Assistant Accounts Officers (Ad-hoc) on 7.7.2010. Thereupon the applicants have represented for restoration of seniority in the list of SOGE officials with attendant benefits with effect from 28.8.2009 when they were superseded by their juniors vide Annexure A1 order. Their request was rejected vide order dated 8/9.11.2010 (Annexure A2). Aggrieved the applicants have filed these OAs for quashing Annexures A1 and A2 and for a direction to the respondents to include their names at the appropriate places in Annexure A1 and to grant them the benefit of promotion on par with their juniors in that list with all consequential benefits.

3. The applicants contended as follows:-

They have been denied fair and just consideration for promotion to the post of Assistant Accounts Officer along with and in preference to their juniors. Annexure A2 order is not based on relevant considerations. There is no communication of any adverse remarks to deprive the applicants from being considered for promotion. Denial of promotion to the applicants therefore, based on the materials about which they have not been given a hearing is arbitrary and discriminatory. Even in selection promotions except where a person has been graded below the bench mark 'good' there is no chance of overlooking a senior as per Annexure A7(in OA 63/11) order of DOP&T.

4. Per contra the respondents submitted that the DPC held on 7.8.2009 carefully considered the service records of the applicants and also the fact of their repeated participation in the illegal agitations which were detrimental to office discipline and found them not fit for promotion to the

cadre of Assistant Accounts Officer (Ad-hoc). In respect of the applicant in OA No. 63 of 2011 the DPC considered his case as under:-

“17. In the case of Sri Madhusoodanan K.M. Senior Accountant (Sl. No. 39 in the list), the Committee noted that he had consistently participated in agitations during the recent past even as late as in November 2007. Administrative action had been initiated against him for the said participations and dies-non imposed. The Committee took into account the fact of the official participating in agitation after agitation, without heeding to the administrative action initiated against him each time. The committee noted that the traits of non-amenability to discipline exhibited by the official time and again are not commensurate with the higher responsibilities vested with the post and found him unfit to hold the gazetted post of Assistant Accounts Officer (Ad-hoc).”

In the case of the applicant in OA No. 128 of 2011 the DPC considered his case for promotion as under:-

“17. In the case of Sri Raju C.P., (Sl. No. 37 in the list) Senior Accountant, the Committee noted that he had consistently participated in agitations during the recent past even as late as in November 2007. Administrative action had been initiated against him for the said participations and dies-non imposed. The Committee took into account the fact of the official participating in agitation after agitation, without heeding to the administrative action initiated against him each time. The committee noted that the traits of non-amenability to discipline exhibited by the official time and again are not commensurate with the high responsibilities vested with the post and found him unfit to hold the gazetted post of Assistant Accounts Officer (Ad-hoc).”

Annexure A1 dated 28.8.2009 was issued on the basis of the recommendations of the DPC which met on 7.8.2009. The applicants represented against their non-inclusion in Annexure A1 in the month of September, 2009. After carefully considering the confidential report and other information available, the DPC which met on 23.4.2010 decided to empanel the applicants for the post of AAO (Ad-hoc) for the year 2010. For empaneling the officials for promotion DPC enjoys full discretion to devise

their own methods and procedures for objective assessment of the suitability of candidates. While merit has to be recognized and rewarded, advancement in an officer's career should not be regarded as a matter of course but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the annual confidential reports and based on strict and rigorous selection process as per guidelines for DPC. Vide Annexure A2 the applicants were informed that as per the instructions regarding promotion, promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion, whichever is later. Where the person is considered for promotion and he is superseded by a junior, such person shall not if he is subsequently find promoted take seniority over the junior persons who have superseded him. Annexure A7 in OA/63/11 issued by DOP&T deals with instances of promotion by selection. The post of Assistant Accounts Officer is not a selection post where the criteria applied for promotion is seniority cum fitness. As per paragraph 2.2 of OM dated 3.7.1986 issued by the Department of Personnel & Training, the applicants cannot be restored their seniority. Respondents relied on the judgments of the Apex Court in Union of India & Ors. Vs. S.K. Goel & Ors. - 2009 (1) SCC (L&S) 873 and M.V. Thimmaiah & Ors. Vs. UPSC & Ors. - (2008) 2 SCC 119 in respect of their contentions.

5. We have heard the learned counsel for the parties and perused the records.

6. It is well settled in law that there is no indefeasible right to promotion but there is a right to be considered for promotion. The contention of the applicants is that they have been denied fair and just consideration for promotion. The extracts produced by the respondents in their reply statement would show that the applicants have been considered by the DPC which met on 7.8.2009. The DPC found them unfit for promotion to the gazetted post of Assistant Accounts Officer on the ground that they were not amenable to discipline. Promotion cannot be taken as a matter of course but it has to be earned by dint of hard work and good conduct as per promotion guidelines. The applicant in OA No. 63 of 2011 had expressed unconditional regret and heartfelt remorse for participation in demonstration and other activities and had assured that he would not indulge in activities which are detrimental to the office decorum and discipline as per his letter dated 09.09.2009. The DPC which met on 23.4.2010 had taken note of this aspect also as submitted by the respondents. Now he cannot turn back and challenge his non-inclusion in Annexure A-1 order. In the case of the applicant in OA No. 128 of 2011 his representations against Annexure A1 dated 4.9.2009 and 10.9.2009 are not placed on record. In his case also the DPC which met on 23.4.2010 had taken note of all available information and then decided to empanel him for promotion. If he was aggrieved by the non-inclusion of his name in Annexure A1 order of promotion dated 28.8.2009 he only made representations. He did not challenge the same within the period of limitation. He filed this OA only on 14.2.2011. Therefore the OA is barred by limitation to challenge the non-inclusion of his name in Annexure A1 promotion order. Promotion is not earned by participation in

agitations. The DPC which met on 7.8.2009 had considered 116 SOGE passed officials and recommended only 102 officials for promotion. Therefore, it cannot be said that they were singled out for discrimination. The applicants were not included in Annexure A1 on the basis of the DPC which met on 7.8.2009. The denial of promotion to the applicants is based on the finding of the DPC which met on 07.08.2009. As held by the Apex Court in **Union of India and Another vs. S.K. Goel and Others**, 2009 (1) SCC (L&S) 873, judicial interference in DPC proceedings is permitted only if such proceedings are conducted illegally or in gross violation of standing Government instructions and rules or mis-grading of confidential reports. Further, in (2008) 2 SCC 119, **M.V. Thimmaiah and Others vs. Union Public Service Commission and Others**, the Apex Court held that normally the recommendations of the Selection Committee cannot be challenged except on the ground of mala fide or serious violation of statutory rules. The courts cannot sit as an appellate authority to examine the recommendations of the selection committee like the court of appeal. In the instant cases, the applicants have failed to prove that there exists any ground for this Tribunal to interfere with the recommendations of the DPC held on 07.08.2009.

7. The promotion of the applicants in the instant cases is based on the principles of seniority cum fitness. The revised guidelines as per O.M. Dated 08.02.2002 (Annexure A-7) of DoP&T relied upon by the applicants pertain to promotion by selection. Paragraph 2.2 of O.M. dated 03.07.1986 of DoP&T which is applicable in the case of the applicants, reads as under:



"2.2. Where promotions are made on the basis of selection by a DPC, the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered unfit for promotion and is superseded by a junior, such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who have superseded him".

It is very clear that the applicants have no tenable case for fixation of their original seniority in the list of SOGE passed officials.

8. In the light of the above, we do not find any illegality or discrimination on the part of the respondents in issuing Annexures A-1 and A-2 orders. In the result, the O.As are dismissed with no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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