

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 143/2013

Thursday this the *9th* day of February, 2017

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

Hally Ittyipe,
Assistant Commissioner of Central Excise (Retd)
Aryattuparambil, 27/2649
Samajam Road, Kadavanthara
Cochin-682020.

...Applicant

(By Advocate Mr. C.S.G. Nair)

Versus

- 1 Union of India represented by its
Secretary, Department of Personnel &
Training, North Block, New Delhi-110 001.
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi-110 001.
3. Chief Commissioner of Central Excise &
Customs, Central Revenue Building,
IS Press Road, Cochin-682018.
4. Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S.Press Road, Cochin-682018.

...Respondents

(By Advocate Mr. N.Anil Kumar, Sr.Panel Central Govt. Counsel)

This application having been finally heard on 23.01.2017, the Tribunal on 9.2.2017 delivered the following:

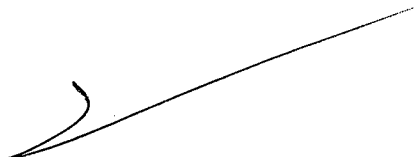
REVISED ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

This application was earlier allowed by this Tribunal and it was directed that the applicant shall be given notional promotion as Dy. Commissioner with effect from 21.8.2009 and shall pay all consequential and monetary benefits including retirement benefits. The matter was taken up by the respondents before the Honble High Court filing OP(CAT) No. 208 of 2015. By judgment dated 9.6.2016 the Hon'ble High Court set aside the order passed by this Tribunal and it was remanded for considering the aspects dealt with therein with liberty to the parties to raise supplementary proceedings. It was directed that this Tribunal is to consider and pass the verdict in accordance with the declaration of law made by the Hon'ble High Court in the said judgment.

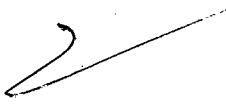
2. The case of the applicant is stated in brief as follows:

The applicant joined the service as Preventive Officer in Customs Department on 20.2.1976. He was promoted as Superintendent of Customs (Group B) on 9.8.1994. He was later promoted as Assistant Commissioner (Group A) on 22.8.2005. As per Rule 19(2) of Annexure A.3 Rules, on completion of 4 years service in Group A (Grade VI- Junior Time Scale), the

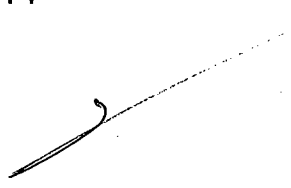


Assistant Commissioners are entitled for promotion to Senior Time Scale as Deputy Commissioner of Central Excise and Customs, as Grade V. The applicant completed 4 years of service on 21.8.2009 but no promotion order was issued to him as per the rules mentioned above. Though he had sent representations vide Annexures.A6 to A8 to the second respondent, there was no response. In similar cases this Tribunal had directed the respondents to grant the applicants therein arrears of pay and allowances from the date of notional promotion as Deputy Commissioner. Though that order was challenged before the Hon'ble High Court the same was dismissed by the Hon'ble High Court. Hence the applicant contends that he should be granted notional promotion w.e.f. 21.8.2009 as Deputy Commissioner and he is entitled to all consequential benefits.

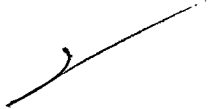
3. The respondents resisted the claim contending as follows. Though the officers who have completed 4 years of regular service in Grade VI are eligible for consideration for regular promotion to Grade V there is no stipulation in the rules that the promotions shall be effective from the date of completion of 4 years in Grade VI. The appointment to the vacancies in Grade V are made by promotion on principle of selection on merit of officers and subject to availability of vacancies. In a similar matter filed before the Madras Bench of this Tribunal as OA



873/2007 it was ordered that the applicants therein were entitled for up-gradation and therefore, the respondents therein were directed to consider the case of the applicants therein and pass appropriate orders as per the Board's decision in BMB No.190/2006. The said decision of the CAT was based on the decision taken by the Board in its meeting held on 16.1.2007 wherein the Board felt that Senior Time Scale benefits in respect of 1997 and subsequent batch officers can be made retrospective from the date when the officers completed 4 years in the Junior Time Scale. Based on that decision Senior Time Scale on completion of 4 years was granted. The decision taken by the Board in its meeting held on 16.1.2007 based on which the Tribunal passed its order was apparently not in line with the DoP&T's instructions. Based on the instructions given by the DoP&T the Board re-considered the matter in its meeting held on 3.6.2009 and decided to reverse its earlier decision dated 16.1.2007. Thus for the Assistant Commissioners, after 2004 batch, Senior Time Scale has not been granted merely on completion of 4 years service in Junior Time Scale. Promotions will have only prospective effect even in cases where the vacancies relates to earlier years. Thus the respondents contended that the applicant is not entitled to the relief claimed in this OA.



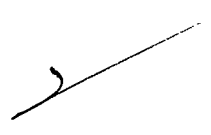
4. It was contended by the applicants before this Tribunal and also before the High Court, when the matter was taken in OP CAT 208 of 2015, that the applicant was entitled to promotion immediately on completion of four years for which the applicant had also placed reliance on the order passed by this Tribunal in OA 296 of 2012. With respect to the observation made in that case it was observed by the Hon'ble High Court, in the remand order (as can be seen from the remand order) that the question whether promotion is automatic (immediately on completion of four years\ or not) was not the subject matter of OA 296/2012 but on the other hand the relief sought for was in view of the undisputed fact of having granted notional promotion to the cadre of Deputy Commissioner w.e.f. 1.1.2006 in that case and in turn to grant the consequential benefits as well attached to the said post. In support of that observation reference was made to Rule 20 which deals with promotion to the post of Grade V from Grade VI ie., from the post of Assistant Commissioner to Deputy Commissioner. It was held by the Hon'be Division Bench in the remand order that there is an ocean of difference between Rule 19 and Rule 20. In so far as Rule 19, regarding promotion to Grade VI from Grade V, ie from Assistant Commissioner to Deputy Commissioner is concerned it shall be on the basis of seniority subject to satisfaction of minimum requirement of 4



years service in Grade VI and on satisfactory declaration of probation; of course against the vacancies available weeding out the unfit. But when it comes to Rule 20 ie., for further promotion from Grade V to Grade IV it is a matter of selection and not based on seniority. The relevant portion of the judgment is extracted hereunder:

"16....As observed by us in the previous paragraphs, there is an ocean of difference between Rule 19 and Rule 20. In so far as Rule 19 dealing with promotion from Grade VI to grade V. ie., from Assistant Commissioner to Deputy Commissioner is concerned, it shall be on the basis of seniority, subject to satisfaction of minimum requirement of four years' service in Grade VI and on satisfactory declaration of probation. Of course, against the vacancies available, weeding out the unfit. When it comes to Rule 20 ie., for further promotion from Grade V to Grade IV, it is a matter of selection and not based on seniority. The words "in the order of seniority" appearing in Rule 19 are conspicuously absent in Rule 20. This being the position, we find that the culmination of the proceedings with reference to the verdict passed by the Tribunal in OA No.296 of 2012 and dismissal of the original petition filed by the Union of India before this Court as OP (CAT) 2617 of 2013 cannot support the case of the respondents to hold that the promotion is "automatic".

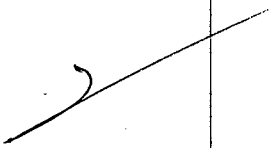
As observed above, the Hon'ble Division Bench made it clear that the words "in the order of seniority" appearing in Rule 19 are conspicuously absent in Rule 20, Therefore, it was made clear in the remand order that it is not a case of automatic promotion. In other words, it was taking note of the difference in the words employed in Rule 19 and Rule 20 the Hon'ble High Court held that further promotion from Grade V to Grade IV is a matter of selection. The argument advanced by the learned counsel for the applicant that it was only an inadvertent observation is thus



found to be devoid of any merit.

5. In view of what is stated above the attempt now made by the applicant to rely upon the judgment in OP CAT 2617/2013 which was against the order in OA 296/2012 is of no avail to the applicant since the judgment in OP CAT 2617/2013 has already been distinguished by the Hon'ble High Court as can be seen from the remand order itself. Since it is a remand order parties are bound by the observations made in the said remand order. Since that remand order has become final it is not open to the applicants to contend that the observations made in the said remand order is inapplicable to the case of the applicants. In para 17 of the remand order also it was made clear that the case projected by the applicant that promotion is automatic' once four years of service is over is untenable But it was stated that the position may be different if sufficient number of vacancies were available after acquiring the eligibility and before the date of retirement of the respondent on 30.9.2010. Again it has been observed in the remand order that promotion to the vacancies had to be effected in terms of Rule 19 strictly based on the seniority subject to rejection of the unfit. (underlined by the Division Bench of the High Court.)

6. An additional statement was filed by the respondents after the case was remanded by the High Court. The following



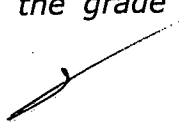
information was furnished by the respondents in the said statement dated 8.12.2016.

(i) A DPC was held on 28.5.2009, 29.5.2009 and 19.6.2009 for considering the name of officers who were promoted to the post of Assistant Commissioner upto 31.12.2004 and completed 4 years of qualifying service in the grade of Assistant Commissioner as on 1.1.2009. A total number of 626 vacancies in the grade of Deputy Commissioner as on 31.3.2008 was reported to the above referred DPC, against which a total number of 510 officers were promoted to the grade of Deputy Commissioner, vide order No.138/209 dated 30.6.2009.

(ii) The promotee officers who were promoted in the grade of Assistant Commissioner upto 31.12.2005 were considered in the DPC dated 4.11.2010 for promotion to the grade of Deputy Commissioner. However, Shri Hally Itty Ipe though promoted to the grade of Assistant Commissioner on 30.8.2005, was not considered by the DOPC held on 4.11.2010 for promotion to the grade of Deputy Commissioner, as he had retired from the service on 30.9.2010 after attaining the age of superannuation i.e., prior to the date of DPC held on 4.11.2010.

(iii) The DPC held on 4.11.2010 was for considering promotion to the grade of Deputy Commissioner on adhoc basis. Officers who were fulfilling the eligibility criteria for promotion to the grade of Deputy Commissioner was considered for promotion on adhoc basis. The seniority list in the feeder grade of Assistant Commissioner beyond the vacancy year 2001-02 has not been finalized so far. The eligibility list considered by the said DPC dated 4.11.2010 was thus not on the order of seniority.

(iv) Due to pending litigations in the feeder grade for promotion to the grade of Assistant Commissioner on



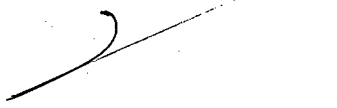
regular basis, promotion to the grade of Assistant Commissioner on regular basis, promotion to the grade of Deputy Commissioner was held on adhoc basis. The DPC held on 4.11.2010 on adhoc basis was not vacabct year based.

(v)357 vacancies were lying vacant in the grade of Deputy Commissioner as on 30.4.2010. Shri Hally Itty Iype was not considered by the DPC held on 4.11.2010 for promotion to the grade of Deputy Commissioner, as he had retired from the service on 30.9.2010 after attaining the age of superannuation i.e., prior to the date of DC held on 4.11.2010."

7. It is stated that a review DPC was held on 12.11.2010 for reviewing the DPCs held on 29.11.2002, 27.3.2003, 27.4.2004, 27.2.2005, 17.4.2006 and 19.6.2009 for considering promotion to the grade of Deputy Commissioner on adhoc basis in respect of officers from 1997 batch to 2004 batch. It was further stated that the DPC held on 4.11.2010 considered the cases of directly recruited officers of 2005 batch and officers who were promoted to the grade of Assistant Commissioners upto 31.12.2005. The applicant was promoted to the grade of Assistant Commissioner on adhoc basis on 30.8.2005. It was stated by the respondents before the Hon'ble High Court that due to pending litigations in the feeder grade for promotion to the grade of Assistant Commissioner on regular basis promotion to the grade of Deputy Commissioner was held on adhoc basis and that the DPC held on 4.11.2010 was on adhoc basis and was not

on vacancy year based. The statement made available to the Hon'ble High Court would show that 357 vacancies were lying vacant in the grade of Deputy Commissioner as on 30.4.2010. The applicant was not considered by the DPC held on 4.11.2010 for promotion to the grade of Deputy Commissioner since he had already retired from service on 30.9.2010, after attaining the age of superannuation. Therefore, the stand taken by the respondents is that though review DPC was held on 4.11.2010 the applicant was not considered for promotion to the post of Deputy Commissioner on the ground that the applicant had retired on 30.9.2010.

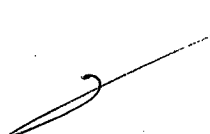
8. The stand so taken by the respondents has been taken exception to by the learned counsel for the applicant pointing out that there were vacancies so as to consider the applicant for promotion during the period from 30.8.2009 to 30.9.2010. Admittedly the applicant was promoted to the grade of Assistant Commissioner on 30.8.2005. Therefore, he could complete the four years eligibility criteria only on 30.8.2009. Earlier the plea was that on completion of 4 years that is on 30.8.2009, the applicant was entitled to be promoted to the post of Deputy Commissioner because it was an automatic promotion. That has been set aside by the Hon'ble High Court and so the other point that deserves consideration is whether there were vacancies for



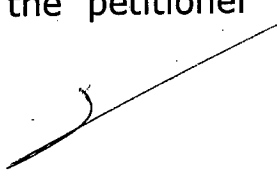
the period from 30.8.2009 after he acquired the qualification and before he retired on superannuation on 30.9.2010. It is not disputed by the respondents that there were vacancies. According to the applicant had the DPC been convened regularly the case of the applicant could have been considered during that period, in which case the applicant could have got promotion.

9. A stated earlier the contention raised by the applicant that the promotion is based on seniority alone has already been negated by the Hon'ble High Court. It was clearly held that the promotion from grade V to Grade IV ie., from Assistant Commissioner to Deputy Commissioner is by way of selection and not based on seniority. The respondents would contend that since it has already been held by the High Court, by pointing out the different words used in Rule 19 and Rule 20, that promotion from the Assistant Commissioner to Deputy Commissioner ie., from Grade V to Grade IV is by selection and not based on seniority, whether, without considering the review DPC the applicant is entitled to be promoted to that post.

10. The learned counsel for the applicant has relied upon a decision of the Hon'ble High Court of Delhi (judgment dated 28.2.2012) in ***Dr.Sahadeva Singh Vs. Union of India and others.(WP(C) No. 5549/2007)***. In that case the petitioner therein became eligible for being considered for promotion to the




post of Deputy Commissioner in the vacancy year 2005, relevant date for reckoning eligibility being 1.1.2005 and the applicant had completed 5 years service in the grade of Assistant Commissioner on 28.6.2004. It was contended that no DPC was held in the year 2005. During the pendency of the original application, the petitioner therein was promoted as Deputy Commissioner w.e.f. 4.10.2006. In view of the said promotion the original application filed by the applicant was dismissed and his prayer for promotion with effect from 26.6.2004 was declined. It was observed by the Hon'ble High Court of Delhi that had the respondents adhered to the time schedule laid down in the model calender, the petitioner would have been considered for promotion for the vacancy year 2005 sometime in 2004 and since he has been found fit for promotion, had the DPC been held in the year 2004, he would have been granted promotion with effect from 1.1.2005 which was the crucial date to determine the eligibility for the vacancy year 2005. The facts dealt with therein are entirely different, the learned counsel for the respondents submits. It is pointed out that in that case nobody was either promoted or directly appointed as Deputy Commissioner between 1.1.2005 when the petitioner therein became eligible to be considered for promotion on 26.6.2006 when he was actually promoted and so it was held that the promotion of the petitioner w.e.f. 1.1.2005 will not



adversely affect any other person nor will it disturb the existing seniority. But it was held that had someone been appointed or promoted as Deputy Commissioner between 1.1.2005 and 26.6.2006, the position would have been different.

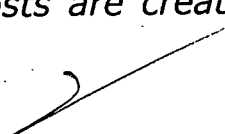
11. The judgment rendered by the Hon'ble Supreme Court in Civil Appeal No.6770/2013 (judgment dated 14.8.2013) also has no application to the facts of this case. There the question was whether a person can be deprived of his pension without the authority of law which is the constitutional mandate enshrined in Article 300A of the constitution. Here, there was no attempt on the part of the respondents to take away any part of pension, gratuity or even leave encashment and as such the said decision has no relevance at all.

12. The decision of the Hon'ble Supreme Court in ***Union of India and other Vs. K.K. Vadhera and others - 1989 Supp. (2)SCC 625 : AIR 1990 SC 442*** has been relied upon by the learned Sr. Panel Central Govt. Counsel appearing for the respondents. That was a case where there were total number of 512 posts available in the grade of Scientist-B in 1979. In view of Rule 8(1)(a) of the Rules mentioned therein the Junior Scientific officers were entitled to be promoted to the 50% of the posts; that is to say 256 posts. Those 256 posts were filled up by promotion of the Junior Scientific Officers between 1979 and 1983. According to



the respondents the posts of Scientist B to which they have been promoted w.e.f. 16.10.2005 were created between 1984 and 1985 and accordingly the respondents should have been promoted to those posts with effect from 1.7.1984. It was observed therein that the promotions of the Junior Scientific Officers to the posts of Scientist-B are vacancy based and such promotions are granted after the assessment is made by the Board as provided in the Rules. Normally the promotions will take effect only from the date of granting such promotions. The only ground on which the Tribunal has directed that the promotions of the respondents should take effect from the date the posts of Scientist-B were created was that up to 1983 such promotions were given effect to from the 1st July of the year in which the promotions were granted. In that case the Tribunal directed that the promotions of the applicants therein should take effect from the date, the posts of Scientist B were created; that is up to 1983. Such promotions were given effect to from 1st July of the year in which the promotions were granted. Dealing with that issue it was held:

"We do not know of any law or any rule under which the promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever a promotion to that post should be from the date the promotion is granted and not from the date on which such posts fall vacant in the same way when additional posts are created promotions to

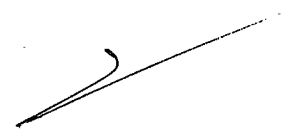


those posts can be granted only after the assessment board has met and made its recommendations for promotions being granted. If on the contrary promotions are directed to become effective from the date of creation of additional post then it would have the effect of giving promotions even before the assessment board has met and assessed the suitability of the candidates for promotions."

13. According to the respondents this decision is per force applicable to the case on hand.

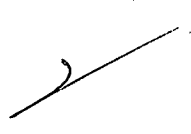
14. The decision of the Supreme Court in ***Union of India and others Vs. N.R.Banerji and others – Judgment dated 16.12.1996*** has also been relied upon by the respondents. It was observed that filling up of the posts are done in clear or anticipated vacancies arising in the year. But it was also held that it is a settled law that mere inclusion of one's name in the list does not confer any right in him/her to appointment. It is also not incumbent that all posts should be filled up but the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary.

15. In ***Sankarasen Das Vs. Union of India and others – 1991 (2) SCR 567*** it was held by the Constitution Bench that inclusion of the name of a candidate in a merit list does not confer any right to be selected unless the relevant Recruitment Rules so indicate. It was also held that the State is not under no legal duty to fill up all or any of the vacancies even though the



State acts in an arbitrary manner. Again it was held that mere inclusion of one's name in the panel does not confer on him/her any indefeasible right to appointment.

16. The decision rendered by the Hon'ble Supreme Court in ***Baij Nath Sharma Vs. Rajasthan High Court (decided on 2.9.1998)*** also has been relied upon by the respondents in support of the submission that the applicant herein can have a grievance if only his juniors had been given promotion from a date prior to his superannuation but that is not the case here. It is contended that the promotions were not granted to other officers, from the dates the post had fallen vacant, and as such the applicant can have no legitimate claim to contend that he should be promoted with effect from the date the post had fallen vacant. The decision in ***KK Vadera and others - AIR 1990 SC 442*** which has been referred to earlier was relied upon by the Hon'ble Supreme Court in ***Baijnath Sharma***. As stated earlier in ***Vadera's*** case it was held that after a post falls vacant for any reason whatsoever a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In ***Baij Nath Sharma's case*** cited supra it was held that the service is not constituted merely for the benefit of the officers in the service but with a certain purpose in the view and in that particular case it was for dispensing justice



to the public at large. It was also held in that decision that in the cases of posts created, promotion to those posts can be granted only after the assessment board had met and made its recommendations for promotion being granted and that if on the contrary, promotions are directed to become effective from the date of creation of additional posts then it would have the effect of giving promotions even before the assessment board has met and assessed the suitability of the candidates for promotion.

17. In para 7 of the judgment in ***Nirmal Chandra Sinha Vs. Union of India and others – Civil Appeal No.8058 of 2001 decided on 31.3.2008*** it was held by the Supreme Court:

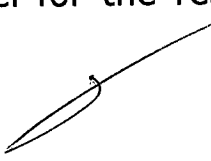
7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide Union of India and others vs. K.K. Vadera and others 1989 Supp (2) SCC 625, State of Uttaranchal and another vs. Dinesh Kumar Sharma 2007 (1) SCC 683, K. V. Subba Rao vs. Government of Andhra Pradesh 1988(2) SCC 201, Sanjay K. Sinha & others vs. State of Bihar and others 2004 (10) SCC 734 etc.”

Again in Para 10 it was held:

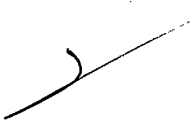
“It is settled law that the date of occurrence of vacancy is not relevant for this purpose”

namely; for the purpose of granting promotion.


18. The decision rendered by the High Court of Delhi in ***PP Verma Vs. Chief Secretary and others*** - WP(C) No. 7968/2012 (judgment dated 11.11.2013) has also been relied upon by the learned counsel for the respondents. In that case



the petitioner being aggrieved by his non-promotion to the post of Assistant Director approached the Court seeking that he be promoted to the post of Assistant Director with effect from 1.12.2007 ie., the date when the vacancy became available with all consequential benefits including arrears of pay. Though the Judicial Member of C.A.T agreed with the claim of the applicant the Administrative Member did not agree with the same and so it was referred to a third member. Agreeing with the Administrative Member the original application was dismissed. The view taken was to the effect that the case of review DPC and review promotion is made out only when due to default on the part of the respondents persons junior to the applicant got promoted and even then only the notional promotion is granted so that pensionary benefits are suitably modified. In the case dealt with therein the applicant had retired from service on 31.8.2000 and no person junior to him was promoted prior to that date. It was held that it was not necessary to create a supernumerary post as the applicant had already retired and was no longer eligible for promotion. In that case the respondents admitted that they have made a mistake in holding that the 6th point was of SC candidate whereas it should have been of a general candidate but no DPCs were held prior to the retirement of the applicant and two persons who are juniors to the applicant were promoted by



holding DPC in the year 2009. (The applicant therein retired on 31.8.2008). Thus no claim was made out for either review DPC or for notional promotion in favour of the applicant. It was argued before the Delhi High Court on behalf of the petitioners therein that the respondents were required to convene a DPC much in advance to prepare a panel for a vacancy that may accrue in the next one year and that the petitioner had made representation to that effect to the authorities concerned. Thus according to the petitioner therein for the fault of the respondents the petitioner must not suffer. It was argued that if a promotion is denied to an employee because of the mistake of administration and due to no fault of the employee then the authorities are bound to pay the arrears of salary upon giving the benefit of retrospective promotion after realizing their mistake. It was pointed out that the respondents had realized their mistake as to whether the vacancy should go to the SC candidate or should it go to the general candidate. It was found that the vacancy in question was to be filled by a general candidate and not by a SC candidate. The DPC was convened on 10.12.2009. Since the petitioner therein stood retired on 31.1.2008 his candidature was not considered. Referring to the DOP&T OM dated 12.10.1998 it was held that the procedure is to be followed by DPC in regard to retired employees based on which it was



found that retired employees are not entitled to actual promotion after his retirement in terms of the said instruction. Though they were included in the zone of consideration for relevant years their names were not included in the panel for promotion. The learned counsel for the applicant would submit that the aforesaid decision would not negative the case pleaded by the applicant. Even in that case what was stated was with respect to the actual promotion and not the notional promotion.

19. According to the applicant though he had retired from service on 30.09.2010 before the date of DPC, there is nothing which would preclude the department from granting the applicant notional promotion so as to have hike in retiral benefits.

20. An earlier decision of the Delhi High Court in ***Union of India Vs. Rajinder Roy – 2010 (1) 66 DLT 706*** and other decisions were referred to by the High Court of Delhi in PP Verma's case, cited supra. The Memorandum which was referred to by the Delhi High Court reads as follows:

"We are conscious of the fact that instructions have been issued by the DOP&T, Government of India dated September 08, 1998 and September 14, 2007 to the extent that a panel for promotion must be prepared in advance against anticipated vacancies. As and when vacancy arises the promotion to that vacancy is made from the panel. At the same time, the OM dated October 12, 1998 issued by DOP&T, Government of India, also stipulates procedure to be followed by DPC in regard to retired employees. In terms of the said instructions, which have been reproduced by the Tribunal, it is revealed that a retired employee is not entitled to any actual promotion after his retirement. In terms of the said instructions the names of the retired employees are included in the zone of consideration so as

to determine the correct zone of consideration for relevant years except that their names are not included in the panel nor they are promoted."

Referring to the same it was held by the High Court of Delhi that this part of the Office Memorandum is in consonance with the the decision of the Hon'ble Supreme Court in **Baij Nath Sharma (supra)** since it provides that the superannuated employees should not be considered by the DPC which is being held after their superannuation and in their place juniors who are otherwise eligible should be brought into the zone of consideration. The argument advanced by the learned counsel for the applicant herein that since the applicant had retired he may not be entitled to get actual promotion, but he would be entitled to get notional promotion. But it was held by the Hon'ble Supreme Court in **K.K.**

Vadera's case – 1989 Supp(2) SCC 625 cited supra:

"We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant."

21. It was also held in the very same judgment in **K.K.**

Vadera:

"13. The clear view taken by the Supreme Court is that a promotion cannot be granted prior to the convening of the Departmental Promotion Committee which considered the question of promotion. The only rider is where a junior has been promoted prior to the superannuation of the retired employee."

22. Therefore, in view of the decisions aforesaid we are



unable to agree with the learned counsel for the applicant that applicant is entitled to be granted notional promotion especially when there is no case for the applicant that any of his juniors was given promotion during the period from 30.8.2009 till 30.9.2010 on which day he retired on superannuation. As such we find no merit in this Original Application. It is accordingly dismissed. No order as to costs.


(Mrs. P. Gopinath)
Administrative Member

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(N. K. Balakrishnan)
Judicial Member