

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Reserved on 13.05.2015.
Pronounced on 27.05.2015.**

Original Application No.311/2009

**Hon'ble Mr. Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)**

Virendra Kumar Tiwari, aged about 68 years, s/o Sri R.N. Tewari, Ex. Assistatn Superintending Archaeologist, R/o 14/453, Vikas Nagar, Lucknow-226022.

-Applicant.

By Advocate: Sri Praveen Kumar.

Versus.

1. Union of India, through the Secretary Culture Department of Human Recources Development, Government of India, Shastri Bhawan, New Delhi-11.
2. The Director General, Archaeological Survey of India, Janpath, New Delhi-11.
3. Director (Administration) Archaeological Survey of India, Janpath, New Delhi-11.

-Respondents.

By Advocate: Sri S.P. Singh.

O R D E R

By Ms. Jayati Chandra, Member (A)

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

(a). To quash the order dated 02.01.2009 contained as Annexure no.A-1 to this OA and direct the respondents to accord promotion on the post of Dy.

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Superintending Archaeologist with all consequential benefits and accord fixation of pensionary benefits accordingly.

(b). To release the withheld gratuity, which has been withheld in order to adjust the sum allegedly recoverable for working on the post of Dy. Superintending Archaeologist on ad-hoc basis with interest @ 18% per annum.

(c). Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed."

2. The facts of the case are that the applicant was initially appointed in the department as Exploration Assistant w.e.f. 19.01.1965 and continued on various levels of posting till he was promoted on ad-hoc basis on the post of Dy. Superintending Archaeologist (DSA) from the substantive post of Assistant Superintending Archeologist. The applicant continued to function on the post of (DSA) on ad-hoc basis till 31.03.1997 vide order dated 19.2.1993, 08.10.1995, 18.02.1994, 15.09.1994, 11.01.1995, 18.07.1995, 14.05.1996 and 15.11.1996. However, he was neither regularized on the post of Dy. Superintending Archaeologist nor given regular promotion despite the fact that he had function on ad-hoc basis for the last five years. During this period the post of Dy. Superintending Archaeologist was vacant but DPC could not met for the reasons best known to them. Finally, regular promotions were given vide order dated 25.02.1997 after the DPC meeting held in the year 1997 and many persons junior to the applicant were given regular promotion. The applicant's ad-hoc promotion came to an end vide order dated 01.04.1997. During the period of ad-hoc functioning as Dy. Superintending Archaeologist, he was regularly given annual increments. His pay was also fixed in accordance with the

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recommendations of 5th Pay Commission on the post of Dy. Superintending Archaeologist. He was also given annual increments of the pay-scale of Dy. Superintending Archaeologist at the due time i.e. August, 1997. The applicant moved a representation against the Order No.76/97 Admn.1 Dated 25.02.1997 in which his name was not mentioned in the list of regularly promoted Dy. Superintending Archaeologist but with no result. He gave several representations. He was made to work on substantive post of Assistant Superintending Archaeologist till his retirement on January, 2002 and by an order dated 28.05.1999 the respondents re-fixed his pay on the post of Assistant Superintending Archaeologist and certain recovery of excess payment w.e.f. 18.08.1992 to 30.04.1999 were made but only Rs.1000/- was recovered in the month of October, 1999. Thereafter, the recovery was stopped. Subsequently, the DPC was convened in the September, 2002 and the applicant was selected for the vacancy for the year 1997-98 as per the minutes of the DPC meeting dated 03.10.2002. But, totaling ignoring the minutes of DPC the respondents had passed the impugned order dated 02.01.2009. The respondents have held that his reversion to the substantive post i.e. ASA w.e.f. 01.04.1997 and he retired in the same capacity on superannuation w.e.f 31.01.2002 is valid and his demand for fixation of his pay in the grade of Dy. Superintending Archaeologist is not valid.

3. The respondents have contested the claim of the applicant by filing their Counter Affidavit stating therein that the applicant alongwith certain other were promoted on ad-hoc basis as Dy. Superintending Archaeologist as

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per his seniority in the feeder cadre. This was done only due to exigencies of service and the delay in convening the DPC. Accordingly, the promotion as Dy. Superintending Archaeologist was made for six months and the same was extended from time to time from the initial posting from 14.08.1992. It was clearly understood that such ad-hoc promotions were extended for a period of six months or till the posts are filled up on regular basis whichever is earlier. The DPC met for determining for the vacancies of 1986, 1987, 1988, 1989 and 1990. For these years the applicant was assessed as 'Unfit'. For the year 1990-1991, 1993-1994 and 1994-1995 while the applicant found "Good" but others officers, who are assessed by the DPC as "Very Good" were given promotion to the extent of the vacancies available. Hence, he was reverted to his substantive post of Assistant Superintending Archaeologist on availability of regular incumbent. Further, they have submitted that in the subsequent DPC meeting dated 03.10.2002 the name of the applicant was included as the DPC was held for selecting persons against the year 1997-98. He was found 'Fit' for promotion against the vacancy of 1997-98 but he had retired even before the holding of DPC meeting. His name was simply included on the direction of UPSC as the applicant was in service in the vacancy year. They have submitted that the applicant was allowed the benefit of MACP w.e.f 09.08.1999 for the post of Dy. Superintending Archaeologist and he received the same till his retirement. Moreover, in compliance with the directions of the earlier O.A.No.427/1999 the difference of pay and allowances as well as other retiral dues has already been paid and received by the applicant to the tune of Rs.17,055/- against pay and allowances,

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Rs.89,755/- as commuted value of pension and DCRG, Rs.4602/- against difference of leave encashment and Rs.46,777/- as a interest on the aforesaid amounts. Thus, nothing remains to be paid to him even if he would be treated to have been promoted to the post of Dy. Superintending Archaeologist w.e.f. due date as claimed by him on the basis of the recommendations made by the DPC. Thus, the OA filed by the applicant rendered infructuous.

4. The applicant has filed Rejoinder Affidavits to all the Counter Affidavits and Supplementary Affidavits filed by the respondents more or less reiterating his contentions as raised in the OA. The applicant has stated that the case not been infructuous as subsequent to grant of benefit of selection on the post of Dy. Superintending Archaeologist in 1997 he could have become entitled for consideration for the post of Superintending Assistant in January, 2002. Grant of benefit of MACP that too, w.e.f., 1999, simply grant him the pay-scale not the post. Moreover, Rs.54,000/- recovered as a result of alleged continuation of applicant after 1997, on the post of Dy. Superintending Archaeologist would have been regularized and the deduction of Rs.54,000/- would be refundable to him.

5. During the course of hearing the learned counsel for the applicant cited the orders passed by the **Hon'ble Supreme Court in Union of India Vs. Mohan Singh Rathore & Another (1996) 10 SCC-469** in which the applicant has been given the benefit of his promotion even after retirement.

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6. We have heard the learned counsel for both the parties and perused the material available on record.

7. The case of the applicant is simply that he was initially appointed on ad-hoc basis on the post of Dy. Superintending Archaeologist vide O/o dated 14.08.1992 (Annexure-4). This appointment from the appointment order is seen to be in pay-scale of Rs.2200-4000/- and was made purely on ad-hoc basis for a period of six months or the post filled-up on regular basis whichever is earlier. This arrangement was continued till the DPC. It is mentioned as a pre-condition that ad-hoc arrangement of the applicant ceased to be Dy. Superintending Archaeologist w.e.f. the date of joining of the person on the post on which he was promoted. In so far as his pay are concerned certainly he was entitled for the pay-scale of Assistant Superintendent Archaeologists w.e.f. the date of reversion. However, since by subsequent selection to the DPC, he has been selected on the post of Dy. Superintending Archaeologist for the vacancy of 1997-98 he is entitled to all benefits of the notional fixation of such promotion. The question therefore arises what is the benefit of the selection to an officer who had retired before the effect of his selection could be given to him. In our opinion every department must hold the DPC meetings at regular intervals and in no case after the lapse of too long a period after the vacancies arises. Such a delay creates the kind of anomaly as in this case. The DPC for the year 1997-98 had it been held within time, (as well the previous DPC) been timely perhaps the applicant could have been promoted on a regular basis. Be as it may, the cardinal principle of appointment or benefits of promotion can be

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given on the date of taking over the charge. In this case, no charge of Dy. Superintendent was taken by the applicant as he retired before the DPC. Therefore, the question arise, does no benefit lie to him on account of DPC?, The answer is no. The applicant deserves that his pay fixation on notional basis on the post of Dy. Superintending Archaeologist and his pension on the date of his retirement has to be fixed on the basis of salary, he would have drawn had he taken charge from the date of his next immediate junior. This notional pay fixation has to be calculated against the MACP granted to him and difference, if any, be paid to him. The respondents are also directed to issue the revise PPO treating him on the post of Dy. Superintending Archaeologist and on the basis of the pay-scale of Dy. Superintending Archaeologist his all admissible dues may be re-calculated. It is also made clear that no recovery will be made on account of such fixation.

8. In view of the above, the OA is allowed. The order dated 02.01.2009 is hereby quashed. The above exercise shall be completed within a period of three months from the date of receipt of the copy of this order. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

Amit/