

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.454/2001.

DATE OF DECISION : 24 .09.2003

S.K.Sarkhel

... Applicant.

Vs.

Union of India & Ors.

... Respondents.

Shri R.R.Shetty

... Advocate for
Respondents.

Coram: Hon'ble Shri S.G.Deshmukh, Member (J),
Hon'ble Shri S.P.Arya, Member (A).

1. To be referred to the reporter or not? —
2. Whether it needs to be circulated to other Benches —
of the Tribunal?
3. Library? *Yes*


(S.G.DESHMUKH)
MEMBER(J) —

B.

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.454/2001.

Wednesday this the 24th day of September, 2003.

Hon'ble Shri S.G.Deshmukh, Member (J),
Hon'ble Shri S.P.Arya, Member (A).

S.K.Sarkhel,
Flat No.35/36,
Building No.10, Ambanagari,
Dhanori Road,
Vishrantwadi,
Pune - 411 015.
(By Advocate Shri S.P.Saxena)

...Applicant.

v.

1. Union of India through
the Secretary,
Ministry of Defence,
D. HQ. Post Office,
New Delhi - 110 011.
2. The Chairman,
Ordnance Factory Board,
10-A, Shaheed Khudiran
Bose Road,
Kolkatta - 1.
3. The Secretary,
U.P.S.C., Dholpur House,
New Delhi - 110 011.
(By Advocate Shri R.R.Shetty)

...Respondents.

: ORDER :

{S.G.Deshmukh, Member(J)}

The applicant has filed this O.A. for a direction to the respondents to reconsider the case of the applicant who has already superannuated w.e.f. 30.11.2000 and was empanelled in the selection panel for the promotion to the post of SAG by the DPC held on 8/9.3.2000 from the date the vacancy occurred and for other consequential benefits.

2. The applicant was appointed as an Assistant Foreman in the Chief Inspectorate of Metals at Ishapur w.e.f. 1.11.1966.

Thereafter, he was selected to an open advertised post of

...2.

Assistant Manager in Ordnance Factories Organisation through the U.P.S.C. and he joined the post on 25.6.1975. He was promoted to the next higher post of Deputy Manager in November, 1979, thereafter, as Deputy General Manager in May, 1988 and then to the post of Joint General Manager in October, 1999 and was continued in the said post till he retired on 30.11.2000. The promotion to the post of Senior Administrative Grade from the post of Joint General Manager is on the basis of merit-cum-seniority. It is contended that the DPC which met in the month of March, 2000 for preparing promotional panel for SAG has considered the case of the applicant. The name of the applicant was figured in the panel for the promotion of Additional General Manager (S.A.G.). The recommendation of the DPC was submitted by the respondents to A.C.C. for approval. But, due to general administrative and procedural delay the ACC could not clear the panel for issuing the promotional orders in time before the applicant retired on 30.11.2000. The applicant had made representation to Respondent No.2 on 24.2.2000 and requested that in view of his approaching the age of superannuation necessary action may be taken to expedite the clearance of the panel by ACC and issuance of promotion orders thereafter. The applicant was informed that necessary D.P.C. for promotion to the post of Additional General Manager (S.A.G.) level has already been completed and the same is with the Competent Authority and further communication will be followed as and when the decision of the matter is conveyed by the Ministry of Defence. Respondent No. 2 issued the promotional order dt. 9.5.2001 wherein promotion of 46 Officers from the post of Joint

...3.

General Manager to Additional General Manager were ordered. However, the applicant's name did not figure in the promotion order and the promotion order was made effective from 9.5.2001. The promotiona orders are against the vacancies of S.A.G. posts occurred in the years 1997, 1998, 1999 and 2000, but instead of preparing separate D.P.C. panels for appropriate time period, the panel has been prepared in March, 2000 and the promotions are given from 9.5.2001. It is the grievance of the applicant that for no justified reasons, the DPC Rules were flouted by the Respondents by not holding DPC meetings for number of years as per Schedule and thereby deprived the applicant of his right for consideration for promotion to S.A.G. cadre. The DPC met belatedly in March, 2000 without meeting for number of earlier years and had included the name of applicant in the panel of promotion, but unfortunately due to gross inaction, the benefit of promotion to Additional General Manager's post could not be given to the applicant, as he had retired in November, 2000 and approval was received on 9.5.2001. It is also contended that the Respondents ordered promotion from the cadre of Dy. General Manager by Ordnance Factory Board letter No.402/A/G dt. 24.4.2001 and had given the benefit of promotion from retrospective date i.e. from June 1996, May 1998, September 1998, June, 2000 and August, 2000. The respondents have not given the same treatment of retrospective promotion from earlier date in respect of the applicant.

3. The respondents have resisted the claim of the applicant by filing a written statement. According to the respondents, the question of promoting the applicant did not arise, because on the

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date on which the promotion orders were issued i.e. 9.5.2001, the applicant had already retired from service. It is also contended that the promotion to the post of Additional General Manager cannot be granted without approval of A.C.C. The approval of competent authority was received on 9.5.2001 on which date the applicant was no longer in service. It is contended that the promotions are always prospective after approval of the competent authority. It is also contended that the posting of Dy. General Manager as Joint General Manager is not a promotion, it is only a placement in the scale and is without assumption of higher responsibility. It was subsequent to the implementation of Vth Pay Commission and applicable w.e.f. 1.1.1996. It is upgradation of pay scale. It is also contended that the applicant has not alleged any mala fides against respondents or any authority for issuing promotion orders. The applicant has been unable to show any rule position or any circular to the effect that the promotion has to be granted to higher grade w.e.f. the date on which the vacancy arose or has to be granted retrospectively even in case of government servants who has retired from service. It is also contended that the promotion of S.A.G. i.e. the post of Additional General Manager cannot be granted without approval of ACC. The panel becomes valid only on the approval by the ACC and not from the date of DPC. It is also contended that the applicant has not impleaded the officers who have been promoted vide order dt. 9.5.2001 and who may and who will be affected by any revision of this order and thus the O.A. deserves to fail for non-joinder of necessary parties.

4. It is also contended that the Rules and Procedure have

...5.

strictly been followed. The applicant has not challenged any procedural lapse. It is contended that the promotion to S.A.G. was issued August, 1994 and subsequently in 1998 and in 1999 on the basis of the D.P.C. held in 1997 and 1998 respectively. On each occasion, year-wise panels were prepared by the DPC as per laid down procedure. The applicant was duly considered for promotion earlier, his merit and seniority did not warrant inclusion of his name in the select panel of earlier years. The claim of the applicant that on receipt of approval by the Competent Authority, the promotion should have been granted to the officers included in the panel retrospectively is not supported by any rules. It is also contended that the delay was due to administrative reasons and the time taken in obtaining the approval of the competent authority for according promotion cannot be the ground for the applicant to seek relief of retrospective promotion.

5. The applicant has filed a Rejoinder and contended that the delay in issuing the annual promotion order on account of lapses/omission on the part of the Respondents cannot be a ground for depriving the applicant of his promotion retrospectively against the vacancies for which he was empanelled. It is also contended that the issue whether an employee is entitled for regular promotion from the dates when vacancies arose has been finally settled by a judgment of the Principal Bench of the Tribunal in the case of N.K.Anand & anr. Vs. Union of India & Ors. {1991 ATC 340 (ND)}, in which the applicants were held entitled to be promoted from a retrospective date with all consequential benefits. It is also contended that the applicant

had already retired on 30.11.2000 and thus it is not necessary for the applicant to implead his junior officers as necessary parties since the order of promotion has been issued only on 9.5.2001. It is also contended that Ordnance Factories S/Sh Palani Pandi, S.R.Sridharan, M.L.Dutta and M.P.Singh who had already retired were given promotion retrospectively by order dt. 29.01.1999 to higher post of Senior General Manager. The applicant also relied on the Judgment of CAT Calcutta Bench of the Tribunal in the case of Sunit Bhattacharya Vs. UOI & Ors. {A.I.S.L.J. 2002 (2) CAT 294}

6. The Respondents have filed a reply to the Rejoinder and submitted that the panel becomes valid only after the approval of the Appointments Committee of the Cabinet. It is also contended that the case of Shri M.L.Dutta & Ors. is not at all relevant in this case, since retrospective promotion was ordered as a result of review DPC by the Tribunal. The Respondents also relied on O.A. No.996/92 filed by Dewaji Ramaji Gurmukhi in which the Tribunal has held that the claim for granting promotion from the date of occurrence of vacancy is not legally tenable. The respondents have also relied on the O.A. Nos. 718/99 and 719/99 filed by Shri R.O.Rastogi and B.S.Shiroor which have also been dismissed by the Tribunal. The Respondents also contended that it is not the case of the applicant that his juniors were promoted while he was in service. It is further contended that as per rules and procedures promotions are always to be given with prospective effect and there is no question of giving promotion retrospectively. It is also contended that Apex Court *has* also held that the promotions can be made only prospectively

and never from the date on which the vacancy arose.

7. We have heard Shri S.P.Saxena, learned counsel for the applicant and Shri R.R.Shetty, counsel for the respondents at length.

8. The respondents have affirmed that promotions to Senior Administrative Grade was issued in 1998, 1999 on the basis of DPCs held in 1997 and 1998 respectively. On each occasion yearwise panels were prepared as per laid down procedure. The applicant was considered for promotion earlier, but his merit and seniority did not warrant inclusion of his name in the select panel. There is no dispute that the applicant was considered by DPC held in March, 2000 and his name was included in the select panel. The approval of the competent authority was received on 9.5.2001 and the promotion orders were issued w.e.f. 9.5.2001. The applicant had already retired from service on 30.11.2000. The only question which arise for consideration in the present case is whether the applicant can be given retrospective promotion from the date of vacancy though he has retired from service.

9. In Baij Nath Sharma Vs. Hon'ble Rajasthan High Court at Jodhpur and Anr. {1998 SCC (L&S)}, it has been held that a retired employee could have a valid grievance if any of his juniors had been given promotion from a date prior to his superannuation, but he cannot complain when promotions were made prospectively after his retirement. It is also held that administrative action did not entitle the petitioner to retrospective promotion from the date the vacancy arose.

10. In Union of India & Ors. Vs. K.K.Vadera & Ors. {1990

SCC (L&S) 127}], their Lordships have held that promotion takes effect from the date of its being granted and not from the date of occurrence of vacancy or after creation of the post. It has been observed that there is no law or rule under which promotion is to be effective from the date of creation of the promotional post or after the post falls vacant for any reasons whatsoever, promotion to that post should be that the date of promotion granted and not from a date on which a post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after Assessment Board has met and made its recommendations for promotions being granted.

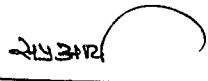
11. In the instant case, promotion to the S.A.G. i.e. the post of Additional General Manager cannot be granted without the approval of the ACC. The applicant's case was considered in the DPC held on 8/9th March, 2000. The recommendations of the DPC were sent to ACC for its approval. The approval of the ACC was received on 9.5.2001 and the promotion order was issued on 9.2.2001. The applicant had retired from the service on 30.11.2000. There is no provision to grant retrospective promotion under the rule and law. As per Apex Courts observations the promotion cannot be retrospective. The applicant did not point out any provision that the promotion has to be granted w.e.f. the date on which the vacancy arose or has to be granted retrospectively even if he has retired from service on the date on which the promotion order was issued. Applicant has not levelled allegations of motivated delay or mala fide intentions on the part of the respondents. Admittedly, approval of the competent authority was received after the applicant had

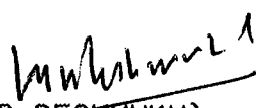
retired from service. There was no question of his name appearing in the list of promotion which was issued on 9.5.2001.

12. The observations made by the Tribunal in N.K.Anand's case (supra) are not helpful to the applicant. In that case the applicants were still in service when the O.A. was filed. The applicants were given ad hoc promotion against short term vacancy continuously from 3.1.1975. No DPC was held between 1975 to 1985. They were given regular promotion by virtue of their position in 1974 panel w.e.f. 1975 and 1976. They were reverted to their ad hoc status by withdrawing regular promotions. On the recommendation of DPC held in 1985, the applicants were given regular promotion w.e.f. 30.5.1985 against two vacancies which arose in 1978 which was challenged by the applicants. The applicants were given notional regular promotion from 1978 against vacancies which arose in that year. They were regularised w.e.f. 1978 with all consequential benefits. The facts in the instant case differ from the facts in Anand's case. The applicant has already retired and he is claiming retrospective promotion.

13. The applicant has also relied on Sunit Bhattachary (supra). In the said case the applicant was due to retire on 31.12.1996 and the O.A. was filed on 30.12.1996 i.e when he was still in service. The applicant was included in the panel for promotion in the DPC meeting held in the year 1996 and the recommendations were sent to ACC, 19 officers were given promotion by order dt. 2.11.1996. The applicant's name was not there. The reason was that he was having less than three months service for his retirement as on 2.11.1996 and he was not given the benefit of

promotion and it was his contention that it was arbitrary, illegal and unfair, violative of Articles 14 and 16 of the Constitution. In the instant case, the applicant has already retired and he is claiming promotion retrospectively. The respondents relied on O.A. Nos. 718/99 and 719/99 which have been dismissed by the Tribunal as the promotions granted cannot be made retrospective and promotions cannot be from the date when the vacancy had arisen. We have mentioned that the promotion to the S.A.G. cannot be granted without the approval by the ACC. The approval of the ACC was received on 9.5.2001 when the applicant was no longer in service. We have also mentioned that there is no provision to grant retrospective promotion under the law and rules. Also it has been mentioned that the applicant has not alleged any mala fides against any of the respondents. It is also not the case of the applicant that any of his juniors were promoted while he was in service. The applicant has not made out any case for intervention by the Tribunal. The O.A. therefore, is required to be dismissed. Before parting with the O.A., we would like to observe that care should be taken to hold DPC annually at appropriate time and to prepare the yearwise panels as per rules on the subject. The proposal with the recommendation of the DPC for approval of ACC should be submitted well in advance as per rules and the ACC should finalise the proposal as expeditiously as possible without unjustifiable delay, so that the eligible officers should not be deprived from the promotion because of their retirement. In the light of the above discussion, the O.A. is dismissed with no orders as to costs.


(S.P. ARYA)
MEMBER (A)


(S.G. DESHMUKH)
MEMBER (J)