

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.426/95
DATED THE 20TH DAY OF NOV, 2001**

**CORAM: HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)**

M.Kochummen,
serving as Section Officer,
Department of Atomic Energy,
C.S.M.Marg, Bombay-400 039.

... Applicant

By Advocate Shri P.A.Prabhakaran

V/s.

1. Union of India, through the
Secretary, Department of Atomic Energy,
C.S.M.Marg, Bombay - 400 039.
2. The Additional Secretary,
Department of Atomic Energy,
Bombay - 400 039.
3. Shri S.D.Mishra, Under Secretary,
Department of Atomic Energy,
Government of India, Anushakti Bhavan,
C.S.M.Marg, Bombay - 400 039.
4. J.S.Mane, Administrative Officer,
III Department of Atomic Energy,
C.S.M.Marg, Bombay - 400039.

... Respondents

By Advocate Shri R.R.Shetty

(ORAL) (ORDER)

Per Smt.Shanta Shastri, Member(A)

The relief sought by the applicant in this OA is to cancel the panel for appointment of Administrative Officer - III prepared in 1993 and to consider the applicant through a fresh DPC for appointment to the post of Administrative Officer-III ignoring the prescribed service conditions of 7years qualifying service as per the guidelines of the Department of Personnel and Training (Exhibit-A) and to promote him to the post of Administrative Officer - III in appropriate place. Further to promote the applicant to the post of Administrative Officer-III from the date when the respondent no.4 was appointed alongwith

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benefits on the basis of the seniority published by the respondents.

2. The main grievance of the applicant in this OA is that he was not considered for promotion to the post of Administrative Officer-III in 1993 when his junior i.e. Respondent No.4 was considered and promoted.

3. The applicant initially joined the Bhabha Atomic Research Centre (BARC) sometime in 1965 as a LDC and progressed thereon to the post of Section Officer. After appearing for a departmental examination held in 1984, he was selected for the post of Section Officer in 1986 and was actually promoted in 1989. The respondent no.4 was also selected in 1986 and was placed at Sr.No.4 in the panel of Section Officers while the applicant was placed at Sr.No.3. A seniority list was published by the respondents in 1991 and 1993 wherein the applicant was shown senior to respondent no.4 inspite of the applicant being promoted later than the respondent no.4 as Section Officer. Thereafter, a selection was held on 7th and 8th December 1993 for the post of Administrative Officer III. Respondent No.4 was called for interview but the applicant was not called. When the applicant did not hear anything from the department, he had sent a letter on 17/11/92 followed by a reminder on 6/12/93 for including him in the list of eligible officers to be considered for promotion to the post of Administrative Officer-III. However, he was informed that he could not be considered as he had not completed 7years of regular service as Section Officer for becoming eligible for consideration for the post of Administrative Officer-III as per the recruitment rules. The applicant represented further on 14/12/93. The representation was replied on 13/5/94 repeating that he could not be called for ...3.

the interview as he had not completed 7years of regular qualifying service in the grade of Section Officer. The applicant also preferred an appeal on 8th and 9th June, 94 and was again informed vide letter dated 30/11/94 by the respondent no.3 that his appeal was considered but he could not be considered eligible as per the recruitment rules and that the provision of para 3.1.2 of the DOP&T OM dated 18/3/1988 was not applicable as the same had not been incorporated in the recruitment rules in force for the post of Administrative Officer - III in the BARC.

4. It is the contention of the applicant that as he had been senior to respondent no.4 in the panel for Section Officer, he should have been considered eligible for promotion to the post of Administrative Officer-III before considering respondent no.4. The learned counsel for the applicant has drawn our attention to the DOP&T OM dated 18/3/88 wherein in para-3.1.2, the DOP&T have laid down that "it may so happen that in some cases of promotion, the senior officers would not have completed the required service whereas the juniors would have completed the prescribed eligibility condition for promotion. In such cases, seniors will be left out from consideration for the higher post. To avoid such a situation, a suitable Note may be inserted in the recruitment rules so that the seniors who have completed the probation period; are also to be considered where the juniors who have completed the requisite service are being considered." Based on this the applicant feels that merely because he was promoted later than the respondent no.4 should not have deprived him of consideration for promotion since respondent no.4 who is junior to him and had the requisite qualifying service was considered for promotion to the post of Administrative Officer-III. By virtue

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of the guidelines of the DOP&T as mentioned above, the applicant should also have been considered for promotion to the post of Administrative Officer-III.

5. The learned counsel for the applicant has further relied on several judgements. According to the learned counsel, for eligibility or for qualifying service what is material is the date when the Officer is included in the select panel and not the date of promotion. Since the applicant was included in the panel in 1986, he would be entitled for consideration for promotion as he would have completed seven years qualifying service by 1993. The learned counsel has relied on the judgement in the case of Gurudev Singh Mahey V/s. Union of India (1987) 5 ATC (Del.). It was held in this case that the petitioner's eligibility for promotion to next higher post is to be determined on the basis of length of service rendered by him after his selection by a regularly constituted DPC - Governments' plea that on that date a regular substantive vacancy was not available and therefore eligibility should be determined from the date of regularisation rejected. The learned counsel has further relied on the judgements in the case of Ajith Singh II & Ors V/s State of Punjab & Ors 1999 SCC (L&S) 1239, Scheduled Castes and Scheduled Tribes Welfare Council V/s. UP & Another 1997 SCC (L&S) 194 (para-19), Ajit Singh Januja & Ors. V/s. State of Punjab & Ors (1996) 33 ATC 239. The applicant has also cited the judgements in the cases of M.Nageshwar Rao V/s. Union of India (1991) 17 ATC 909 (Hyd) and Vasant Waman Pradhan V/s. State of Maharashtra (1991)16 ATC 805 (Mum). In the first case of M.Nageshwar Rao, it was held that fitness for promotion when not affected by want of

actual experience - Applicant completing requisite length of service as Deputy Bullion Keeper without actually working in the post, on account of suspension which was ultimately quashed - no finding as to inability to act as Bullion Keeper - Notional experience whereas in the other case it was held that Notional service counts for seniority/Length of service. According to the applicant this principle was followed in OA-30/2000 by this Bench of the Tribunal.

6. The case of the respondents is that since the applicant did not have the requisite qualifying service of 7 years in the post of Section Officer on a regular basis, he could not have been considered as per the recruitment rules specifically provided for such a situation. The respondents have further submitted that though the applicant was placed at Sr.No.3 in the select panel in 1986 and the respondent no.4 was placed at Sr. No.4, the respondent no.4 was given posting as Section Officer in 1986 against a reserved point and since there was no vacancy in general category, the applicant came to be promoted only in 1989 on a regular basis and naturally in his case the length of qualifying service had been considered from the date of his actual promotion. Further, the respondents point out that though the DOP&T has issued guidelines vide OM dated 18/3/1988, these guidelines have actually not been incorporated in the recruitment rules. When the respondents amended their recruitment rules, they did not adopt the specific guidelines as in para 3.1.2 from the aforesaid guidelines regarding inserting the note that seniors who have completed the probation period, are also be considered where the juniors who have completed the requisite service are being considered. And since one has to go in

accordance to the recruitment rules, the applicant was not found eligible. As regards, the length of service, the respondents have relied on the judgement in the case of R.Prabha Devi & Ors V/s. Government of India, Through Secretary, Ministry of Personnel and Training, Administrative Reforms and Ors (1988)7 ATC 63. The Hon'ble Supreme Court observed in this case that "the rule making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. Seniority will be relevant only amongst persons eligible. Seniority cannot be sustituted for eligibility nor can it override in the matter of promotion to the next higher post." In fact, the DAE have referred to this very judgement while considering the revision of guidelines for framing/amendment of recruitment rules with respect to the post of Administrative Officer, Accounts Officer and Auxillary cadres. Though these instructions have been issued later, but the judgement is of an earlier date and the respondents have therefore rightly followed the principles laid down in the aforesaid judgement. The respondents further submit that the BARC is exempted from adopting the guidelines of the DOP&T and the BARC are empowered under the Atomic Energy Act 1962 to frame their own guidelines and recruitment rules and the condition regarding considering the case of the senior if a junior with requisite qualifying service is considered for promotion has not been actually inserted in the

recruitment rules, the action of the respondent in not considering the applicant for the post of Administrative Officer III is in order.

7. The learned counsel for the applicant further argued that the BARC have adopted the guidelines of the DOP&T for framing the recruitment rules in all respects except para 3.2.1 of the DOP&T OM dated 18/3/1988. Therefore, it cannot be said that BARC could not have considered the insertion of a particular para. The learned counsel has also relied on a judgement of the Principal Bench of the Tribunal ^{in DA 2112/94} reported in 2000 (1) ATJ - 309. In this case in accordance with the OM dated 18/3/1988, for promotion to the post of Senior Research Officer, though the applicant therein had not completed the qualifying service for promotion he was directed to be considered. Further, the learned counsel for the applicant tried to distinguish the judgement in the case of R.Prabhadevi as well as in Ajit Singh II V/s. State of Punjab (supra).

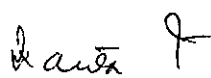
8. According to the learned counsel for the applicant, in the case of Prabhadevi & Anr., the applicants therein were ^{recruited} reiterated directly and they had not joined on the relevant date and therefore their services were to be counted only from the date of joining whereas in the present case the applicant has been empanelled in 1986 and therefore the judgement in Prabhadevi is not applicable to this case. The learned counsel has further contented that it has been clearly laid down that the seniority of the candidate has to be restored even if reserved candidate has been promoted against the reserved quota and thereafter the senior person has to be considered for the next promotion. Since the applicant has been shown senior to the respondent no.4 in the seniority list published on 1/1/93 and the applicant should have


been considered before considering the respondent no.4.

9. We have given careful consideration to the arguments and have perused the relevant OM as well as some of the judgements relied upon by both sides. We find that factually, the applicant was no doubt empanelled as Section Officer in 1986 and respondent no.4 also was empanelled and the applicant was shown senior to respondent no.4. There is therefore no dispute regarding the seniority of the applicant. This has been reflected also in the seniority list published on 1/1/93. However, actually respondent no.4 was promoted in 1986 whereas the applicant was actually promoted in 1989. This has made all the difference. The applicant has mainly relied on the DOP&T OM dated 18/3/1988 para 3.1.2. It is true that the DOP&T has provided for considering the seniors where they are wanting in the qualifying service as compared to their juniors having the requisite qualifying service. This is a hardship to the seniors. ^{But} Further as rightly pointed out by the respondents, the BARC has its own recruitment rules and is not bound to adopt the guidelines given by DOP&T. Unless and until the provision is actually incorporated in the recruitment rules, mere guidelines cannot override the recruitment rules and as such the applicant though actually senior was not eligible according to the recruitment rules. The learned counsel for the applicant has argued that applicant is senior to respondent no.4, he had a right to be considered for promotion to the post of Administrative Officer-III, as has been held in Ajit Singh II (supra). However, the judgement of the Supreme Court in the case of Prabhadevi is very clear and it says that even if a person is senior, unless he has the requisite

qualifying service he cannot be considered. The applicant has at no stage challenged the recruitment rules of the BARC. Further, the applicant does not seem to have challenged his promotion in 1989 when he knew fully well that respondent no.4 had been promoted in 1986. The applicant has worked in the promoted post of Section Officer actually from 1989 and therefore he had been lacking in the qualifying service of seven years when the selection for the post of Administrative Officer-III was made. Hence, the question of eligibility and not seniority only.

10. In our considered view, the judgements relied upon by the applicant do not help the applicant's case as his seniority has been kept intact. Unless the recruitment rules are relaxed as was directed in OA No.2112/94 the requisite qualifying service cannot be waived. We have to go strictly according to the recruitment rules and since the applicant did not have the qualifying service, as per the recruitment rules, the applicant could not be considered for promotion to the post of Administrative Officer - III. Therefore the application fails and is dismissed. We do not order any costs.


(SMT.SHANTA SHASTRY)
MEMBER(A)


(S.L.JAIN)
MEMBER(J)

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