

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.1060/97

FRIDAY, THE 24TH DAY OF SEPTEMBER, 2001

CORAM: SHRI JUSTICE V.RAJAGOPALA REDDY. VICE CHAIRMAN
SMT. SHANTA SHAstry. MEMBER (A)

Dr. Dattatray V.Jayant,
C-1 Vishwakutir Co-Op Housing
Society, Vidya Wadi, Shankar
Ghanekar Marg, Dadar (West),
Bombay~400 028. Applicant

By Advocate Shri P.A. Prabhakaran.

Versus

1. The Union of India,
(through Secretary to Govt of India),
Dept. of Atomic Energy,
Anushakti Bhavan, CSM Marg,
Bombay~400 036.
2. Director,
Bhabha Atomic Research Centre,
Dept. of Atomic Energy,
Central Complex, Trombay,
Bombay - 400 097. Respondents

By Advocate Shri R.K. Shetty.

O R D E R (ORAL)

Shri Justice V. Rajagopala Reddy, Vice Chairman (J)

The applicant was working as Scientific Officer Grade "E" in the Atomic Energy, Bombay (now BARC). As per the Merit Promotion Scheme, he was interviewed and selected for promotion to the next higher grade namely Scientific Officer Grade "F" in March, 1994. His grievance in this case is that he was deprived of the said promotion on the ground of his retirement on superannuation on 30.11.1994 and that the approval of the Appointment Committee for Cabinet (ACC for short) was obtained on 14.12.1994. His representation dated

OR

S.12.95 seeking promotion has been rejected by the ~~intended~~ order dated 9.1.96 which is now impugned in this OA.

2. The learned counsel for the applicant submits that as per the Merit Promotion Scheme, the members for promotion to the Scientific Officers in the department has to take place on fixed dates in a year, either on the 1st February or 1st August and immediately thereafter as per the recommendations of the DPC the promotion should be effected to whoever had been selected in the selection. Since the applicant was successful in the selection and the question of date of approval is not relevant for the purpose of Merit Promotion Scheme, the applicant, though stood retired in November, 1994, ~~should~~ ^{should} have been given the benefit of promotion which would be beneficial for granting the pensionary benefits. The learned counsel further argues that there was no valid reason for getting the approval of the ACC ~~in~~ December, 1994. According to the learned counsel for the applicant, the approval should be given within two months from the date of selection.

3. The respondents state in the reply that the process of selection had taken place right from march, 1994 and the applicant was considered for promotion along with other officers and he was interviewed by the DPC. it is also admitted by the respondents that the applicant had been selected and the ACC inadvertently

Ch

accepted the selection for promotion on 14.12.94 ~~as~~^{though} the applicant retired on the said date. The respondents also raised the plea of limitation stating that there is inordinate delay in filing this OA and the applicant also is guilty of laches.

4. Heard the counsel for the applicant and respondents and perused the pleadings. The Merit Promotion Scheme is shown in Exhibit R1. The following needs to be extracted to appreciate the contention of the learned counsel for the applicant.

"Promotions are made in DAE from one grade to the other higher grade not on the basis of vacancies but on the basis of development and work of the individual Scientific - research/ technical personnel. Under the Scheme, a Scientific Officer/ Engineer or a technical personnel deserving promotion because of the merit of this work is never denied for want of vacancy. A suitable post will always be created at the level required for accommodating the promotion. While creating such posts, the lower posts vacated by the personnel concerned are abolished.

Normal increments and promotions of scientific and technical personnel in this Department, take place on fixed dates in a year, either on the 1st February or 1st August in the case of Scientific category and on the 1st May or 1st November in the case of technical staff."

"Approval of the recommendation for promotion both under scientific/ technical categories are required to be approved by the Appropriate authority who has been delegated with powers. While processing these cases, it is necessary to ascertain whether:

- a) the candidates were on duty on the dates from which they are recommended for promotion.
- b) there is no disciplinary action pending or contemplated against them."

Off

It is, therefore, clear that the existence of vacancies is not required for Merit Promotion Scheme. Every year the process of promotion to Scientists to take place on 2 occasions i.e. 1st February and 1st August. In the instant case, it is stated that the 1st August is the relevant date. It is stated that the applicant's case has been considered by the DPC and along with the applicant several other scientists who were found eligible had been considered for promotion right from March, 1994. It is an admitted fact that the applicant had been selected by the Selection Committee. In the reply, it is stated that after the completion of interview on 4.7.94, approval of the selection together with CR dossier was sent to the Department of Atomic Energy ~~after~~ ^{after} getting approval of the Minister Incharge to the DOP&T for getting approval of the ACC. The said committee approved the names of the officers for promotion with effect from 4.12.94 and the promotion would take effect from the said date.

5. The learned counsel placing reliance upon the Merit Promotion Scheme submits that it was sufficient that the candidates were on duty on the dates when they were recommended for promotion. The aforesaid scheme ~~as~~ ^{seen} ~~intended~~ above, makes it abundantly clear that the approval of the recommendation for promotion ~~was~~ ^{was} required to be approved by the appropriate authority. In this case the appropriate authority is ACC. It is also a requirement of the scheme that the candidate



2-15

should be on duty on the date when they are recommended for promotion. Thus two requirements are to be fulfilled for a candidate to be promoted: (1) The candidate should be on duty from date of process; (2) Approval of the ACC is the second requirement. It therefore follows that the candidate should continue to be on duty till the approval was obtained. In this case the first requirement was fulfilled. However, as he retired from service by the time the approval of the ACC was obtained, he could not be promoted, though he was selected by the DPC. The recommendations of the DPC would remain in the realm of proposal until the ACC approve the said proposal and to give the benefit of approval, as and when it was approved the applicant should continue in service.

6. We find no basis for the contentions that the respondents wantonly and with malafide intention delayed the approval of the ACC till he retired as no material is placed in support of it.

7. We also find sufficient force in the contention of the learned counsel for the respondents that the OA is barred by limitation. Though the applicant retired from service on 30.11.94, he made a representation only on 8.12.95 against his non-promotion. Though, it was rejected on 9.1.96 he waited till 24.11.97 i.e. nearly for eleven months excluding the period of one year as allowed under Section 21 of the Administrative Tribunals

Act to file the OA. The applicant filed MP for condonation of delay. Two reasons are given in the affidavit, they are : (a) ignorance of the rules and (b) wrong advice given by the earlier advocate. The above grounds are not acceptable as except his ipsi dixit one material is brought on record in support of the same. There is no proper explanation for the delay. The learned counsel for the applicant cites M.R. Gupta Vs. Union of India (1995 (5) SCALE 29 (SC) to contend that the cause of action being continuous and pertains to payment of the salary which the employee was entitled to every month, the OA cannot be said to be barred by limitation under the Act. We do not agree. The cause of action in this case is is single point cause of action namely non-promotion of the applicant before the date of his retirement. The grievance as to non-promotion cannot be said to be a continuous cause of action. We are of the view that the OA is hit by Section 21 of the Administrative Tribunals Act.

8. For the above reasons the OA is liable to be dismissed and is accordingly dismissed. No costs.

Shanta
Shastri

(SMT. SHANTA SHAstry)
MEMBER (A)

Om Rajagopal Reddy

(V. RAJAGOPALA REDDY)
VICE CHAIRMAN (J)