

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

Original Application No.330/01456 of 2017.

This the 31st day of October, 2018

HON'BLE MR. GOKUL CHANDRA PATI, ADMINISTRATIVE MEMBER
HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

Amar Pal Singh a/a 65 years, S/o Late Ram Kripal Singh, Retired Technician Gr. I under Divisional Electrical Engineer/TRS, N.C. Railway, Kanpur, R/o 252/206, Sulem Sarai, Allahabad.

-Applicant

(By Advocate – Mr. Archit Mandhyan

Versus

1. Union of India, through Secretary Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, North Central Railway, Subedarganj, Allahabad.
3. The Divisional Railway Manager (P), North Central Railway, Allahabad.
4. Divisional Electrical Engineer (TRS), North Central Railway, Kanpur.

-Respondents

(By Advocate – Shri S.K. Rai)

ORDER

BY HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

1. A chronological list of case of applicant Amar Pal Singh as projected by applicant is as below:
 - 1) Appointed as Khalasi on 15.11.1977
 - 2) Working in Grade pay of Rs.2800/- from 11.01.1995
 - 3) Retired on 31.12.2011 in grade pay of Rs.2800/-
 - 4) Due for promotion in September 2011 to MCM in grade pay of Rs.4200/- in general category

- 5) In October 2011 eligibility list in pay scale of Rs.9300-34800 in GP of Rs.4200/- for promotion to Senior Technician/fitter, he figured as S. No. 6 in general category
- 6) 17 promotion arose in October – 11 for general category, 3 for SC and 3 for ST
- 7) Department proceeded for promotion on 12.01.2012 and his promotion rejected on ground that he retired on 31.12.2011
- 8) Suitability test list on 18.01.2012 wherein name of application not mentioned and his pay not fixed in grade pay of Rs.4200/- for post of MCM
- 9) Applicant case that if DPC held in December, he would have been promoted to post of Senior Technician (MCM)
- 10) Applicant ran from pillar to post to get the promotional matter decided as he was due to retire on 31.12.2011 but of no avail.

2. The applicant seeks the following reliefs:

- (i) To issue writ, order or direction in the nature of certiorari quashing the order dated 03.08.2017 passed by the Divisional Railway Manager (P), North Central Railway, Allahabad.
- (ii) To issue writ, order or direction in the nature of mandamus directing the respondents not to give effect of the order dated 03.08.2017.
- (iii) To issue writ, order or direction in the nature of mandamus commanding the respondents to provide promotion to the applicant from September, 2011, which was due to the applicant.
- (iv) To issue such other and further order or direction which this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case.
- (v) To award cost of the petition to the applicant".

3. In reply, respondents have taken the plea that since the applicant superannuated on 31.12.2011, he has no cause of action to seek promotion to the post of MCM. It has been averred in the counter affidavit that after assessing the vacancies, the process is initiated for promotions and which process takes time. The Committee recommends for approval of

select list to the competent authority. In the instant case, the Committee met on 12.01.2012 and since the applicant had already retired from services, his name was not considered for promotion to the post of Senior Technician/ Fitter. The O.A. being meritless deserves to be dismissed.

4. In rejoinder, applicant besides reiterating the pleas taken in the O.A., has averred that the impugned order itself mentions that the Rules provide for promotion with retrospective effect and respondents have made no efforts to provide the benefit to the applicant.
5. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record. The learned counsels have during their arguments reiterated the pleas raised by them in their respective pleadings.
6. Mr. S.K. Rai, Advocate, appearing for the respondents has referred to and relied upon the judgment of the Hon'ble Supreme Court in Union of India & others v K. K. Vadera & others [1989 Supp (2) SCC 625]; a judgment of the Hon'ble High Court of Delhi in A. N. Bardaiyar & others v Union of India [WP(C) No.8545/2011, decided on 07.12.2011]; and a judgment of this very Bench dated 08.09.2016 passed in OA No.3811/2012 – J. D. Vashisht & others v Union of India & others, to argue that no retrospective promotion is permissible.
7. The learned counsel for respondents further contended that there was no delay on the part of the respondents in holding DPC till the date of retirement of the applicant. For holding DPC, various steps are required to be taken, which, *inter alia*, include constitution of the DPC, collection of the service record/ACRs of the eligible officers within the zone of consideration, and so on. His further submission is that the applicant having retired is not entitled to be considered for promotion.

8. Mr. Archit Mandhyan, Advocate, appearing on behalf of the applicant has strenuously argued that consideration for promotion of a public servant is a valuable right and denial of such a right is violative of Articles 14 and 16 of the Constitution of India. His further submission is that delay in processing the promotions and delay in holding the DPC was a mala fide action on the part of respondents. The DPC should have been held immediately in December 2011 to fill up the vacancies of Senior Technician/Fitter which were lying vacant for quite some time. The attempts of the applicant to convince the respondents to convene the DPC did not fructify, resulting in violation of the applicant's valuable right. Learned Counsel's contention is that under the given circumstances when the holding of the DPC has been delayed without any valid reason, the applicant is entitled to be considered for promotion with effect from the date the vacancy was available on the said date, and subject to being found fit by the DPC, he is entitled to promotion. The submission of the applicant is that this is not to be construed as a retrospective promotion and even his superannuation should not be an embargo for his consideration for such promotion.
9. There is no rule that promotion should be given from the date of creation of promotional post or from the date of occurrence of vacancy; if promotion is effected prospectively from the date of issue of the order of promotion, those employees who have retired prior to such date would not be eligible for promotion retrospectively, and even if retired employees are in the select list or panel of promotion, they cannot be given retrospective promotion when the promotion is prospective; and only if the promotion is granted retrospectively and a person junior to the retired employees has been promoted from the date when the retired person was in service and if the retired employee has been found fit by the DPC and is available in the panel or select list, would such retired employee be entitled to promotion

retrospectively on notional basis from the date his immediate junior has been promoted. So, it is a settled law that retrospective promotion is impermissible unless the rules so prescribe or where a junior has been promoted.

10. In *Union of India & others v K. K. Vadera & others* (supra), while considering the question of grant of promotion from the date of occurrence of vacancy, the Hon'ble Apex Court observed as under:

"5. There is no statutory provision that the promotion to the post of Scientist "B" should take effect from July 1 of the year in which the promotion is granted. It may be that, rightly or wrongly, for some reason or other, the promotions were granted from July 1, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientist "B" should be with effect from the date of the creation of these promotional posts. 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. 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 the 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. In the circumstances, it is difficult to sustain the judgment of the Tribunal."

11. In the present case, whatever may be the reasons, the fact remains that the DPC was not held. At the same time, there is no specific averment in the OA to establish deliberate attempt on the part of the respondents not to hold the DPC before superannuation of applicant. In the case of K. K. Vadera (supra), the law laid down by the Hon'ble Supreme Court is that promotion from the date of eligibility or occurrence of vacancy is impermissible except where the rules so prescribe or a junior has been promoted. The promotion is to take place from the date of such promotion and not retrospectively. It is not the case of the applicant that any rule prescribes grant of promotion from the date of eligibility or occurrence of vacancy, no such rule has been brought to our notice and nor is it his case that any junior to his has been promoted.
12. In these circumstances, we do not find any merit in this O.A. and it is accordingly dismissed. No orders as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

Manish/-