

Reserved
(On 21.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 30th day of August 2018

Original Application No. 330/01201 of 2008

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Munindra Nath Rai, S/o Late Shiv Kumar Rai, R/o Village and Post:
Sohaon, District: Ballia.

. . .Applicant

By Adv: Shri Sudama Ram

V E R S U S

1. Union of India through the General Manager, Northern Railway, Head Quarter, Baroda House, New Delhi.
2. General Manager, Northern Railway, Baroda House, New Delhi.
3. Dy. Chief Commercial Manager (Claims), N. Railway, Varanasi Cantonment.

. . . Respondents

By Adv: Shri P. Mathur

ORDER

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The applicant has filed this OA with the following reliefs:-

- “i. The Hon'ble Tribunal may graciously be pleased to call for the records relating to the impugned orders and issue a writ of Certiorari quashing the impugned orders dated 104.4.2008 (Annexure A-1) and order dated /8.2005 (Annexure A-2).*
- ii. The Hon'ble Tribunal may further graciously be pleased to issue a writ of Mandamus in the nature of direction to the respondents to given proforma promotion and arrears of pay to the applicant of higher grades in the pay scale of Rs. 2000 – 3200 and Rs. 2375 – 3500 in respect of his juniors persons viz. S/ Shri Shailendra Kumar and Rakesh Pathak, V.N. Mishra, HJ.N. Sinha, U.S. Singhand S.S. Lal Srivastava (CMIs) in Grade Rs. 6500 – 10500/- w.e.f. 20.12.1992 and in Grade Rs. 2375 – 35// / 7450 – 11500/- w.e.f. 31.3.1995.*
- iii. The Hon'ble Tribunal may graciously further be pleased to direct the respondents to given the arrears of salary with 9% compound interest from the date of proforma promotion.*

iv. Any other writ or order or direction which the Hon'ble Tribunal deems fit and proper in the circumstances of the case may also kindly be issued in the interest of justice.

v. Cost of the Application may also be awarded."

2. The facts as per the OA, in brief, are that the applicant, a retired employee of Indian Railways, claims seniority and promotion at par with other employees, stated to be the applicant's juniors, who were assigned higher seniority and promotion ignoring his case as stated in the OA. The applicant was initially appointed as Clerk on 6.1.1960 and applied for the post of Claim Tracer in Commercial department against 33.33% quota. He was selected and subsequently confirmed as a Claim Tracer. The seniority list dated 30.8.1989 (Annexure A-7) reflected his seniority. Some of the colleagues of the applicant filed OA No. 1233/1987 disputing their seniority, which was disposed of vide order dated 3.11.1995 (Annexure A-5) which was implemented. The applicant represented for similar benefit, as he was similarly placed, but as his representation was not considered, he filed an OA No. 1077/1996 before this Tribunal.

3. It is stated in the OA that the respondents promoted some of the juniors of the applicant to higher post ignoring the case of the applicant, who was not given the benefit of the judgment of the Tribunal in OA No. 1233/1987 for revision of this seniority position. The OA No. 1077/1996 was disposed of with a direction to decide the representation of the applicant dated 26.2.1996. The applicant filed a Review Application, which was dismissed with liberty to file fresh OA. It is stated that the respondents fixed up the pay of the applicants at par with one of his junior Shri Ansar Ali, but the benefit of the OA No. 1233/1987 was still not extended to him. The applicant filed a fresh OA No. 725/2007 which was disposed of with a direction to the respondents to decide the representation dated 20.2.2006 of the applicant (Annexure A-15). In compliance, the respondents have passed the order dated 10.4.2008 (Annexure A-1) giving the promotion benefit to the applicant at par with some of his juniors like Shri Ansar Ali, who had retired on pay scale of 1660-2600, without extending the benefit of arrear of pay and further promotion to the next higher grade of Rs. 2000-3200 which some other junior employees of the applicant had already got, overlooking the case

of the applicant and in spite of his representations filed earlier. The applicant is aggrieved by the order dated 10.4.2008, which has extended benefit partly to him at par with Shri Ansar Ali, and hence, the present OA has been filed by the applicant.

4. The main grounds advanced by the applicant in support of the OA are as under:-

- Applicant did not hesitate to shoulder higher responsibility, it was the responsibility of the respondents to take work from the applicant who was assigned the work in the court case section. The applicant was entitled to be treated at par with his juniors who were given promotion to higher grade.
- The order dated 10.4.2008 is self contradictory. On one hand it states that benefit of judgement of the Tribunal was extended to the applicant by treating him at par with some of his juniors, while stating that since these juniors had retired in pay scale of 1660-2600, his pay parity can be given only upto that scale, overlooking the fact that some other juniors of the applicant like V.N. Mishra had got promotion to higher scale of 2000-3200 w.e.f. 20.12.1992 and to scale 2375-3500 w.e.f. 31.3.1995. It was incorrect to treat the applicant to be at par with Shri Ansar Ali who had retired prior to the judgment in OA No. 1233/1987.
- Applicant's juniors like Shri Shailendra Kumar and Shri Rakesh Pathak were given promotion to the grade of 2375-3500 w.e.f. 31.3.1995, ignoring the case of the applicant.
- The applicant is entitled for the benefit of promotion with arrear pay as per the judgment of Hon'ble Apex Court in the case of K.V. Janakiraman.

5. The respondents have filed Counter Reply and 2 Supplementary Counter Affidavits in reply to Rejoinder/Supplementary Affidavits filed by the applicant from time to time. The main grounds of the respondents mentioned in these pleadings are summarized as under:-

- The OA No. 1233/1987 was filed by Ansar Ali and others and the respondents complied the order of the Tribunal to fix the inter-se seniority in a particular manner. Not satisfied with the compliance, the applicants in OA No. 1233/87 filed contempt application, which was finally dismissed vide order dated 27.6.2000 with a direction to consider their subsequent promotion as per the extant guidelines. Accordingly, some of the applicants of OA No. 1233/87 who were in service, were considered for promotion to the next higher scale of Rs. 2000-3200 for the post of Commercial Inspector (CMI) and then to the grade of Rs. 2375-3500/- for the post of Senior Commercial Inspector (SCMI) through selection as per the revised guidelines of the Railway Board dated 1.3.1993, by considering their service records without any screening test.
- By the time the promotion to the grade of CMI and SCMI for some of the applicants of OA No. 1233/87 was considered, as the other applicants of that OA as well as application of the present OA had retired. The applicant in this OA had retired on 31.08.1996. Another applicant of OA No. 1233/87 Ansar Ali had retired on 31.07.1995. Hence, the case of the applicant was similar to the case of Ansar Ali and the benefits which were granted to Ansar Ali as per order passed by this Tribunal in OA No. 1233/1987 were also granted to the applicant of this OA. It was further stated in the counter affidavit that other similarly situated employees were also given same benefit. However, at the time of consideration rest of the applicants of OA No. 1233/87 were promoted to the post of CMI and SCMI, since the applicant was retired, he could not have been considered for promotion to these posts. Therefore, the claim for the pay scale of Rs. 2000 – 3200 and grade of Rs. 2375 – 3500 applicable for CMI and SCMI respectively, is not admissible to the applicant.
- It was denied that Shri Shailendra Kumar was junior to the applicant as stated in the OA. It is also submitted that in seniority list which was filed by the applicant, Shailendra Kumar is at Sl. No. 21 whereas the applicant is at Sl. No. 38. Similarly, Shri R.S.

Lal and Shri Rakesh Pathak are at Sl. No. 10 and 22 respectively. Hence, the applicant cannot get any benefit at par with these employees, who were senior to the applicant.

- In compliance to the order of this Tribunal passed in OA No. 1077/2006, to consider the applicant's representation was duly considered by the competent authority who had passed a detailed speaking order dated 23.07.2004. As stated in this order dated 23.07.2004 (Annexure 1 to the CA), the respondents considered the representation of the applicant and passed the following order:-

“Keeping in view the facts and circumstances mentioned above the representation of S/Sri D.J. Agarwal, R.Y. Updhayay, P.N. Srivastava and M.N. Rai are disposed of with the direction that they may also be extended the benefit as has been extended to their junior Shri Ansar Ali, V.N. Mishra, J.N. Sinha, U.S. Singh and S.S. Lal Srivastava upto grade Rs. 1600 – 2660 only because they have retired in this grade, on proforma basis. However, the actual benefit will be admissible only from the date of shouldering higher responsibility.”

- The claim of the applicant is also barred by period of limitation as the applicant had delayed in moving appropriate forum for redressal of his grievance.
- It was further stated in the counter affidavit that the applicant has not shouldered higher responsibility attracting the pay scales which have been claimed by the applicant.

6. The applicant filed Rejoinder in which he mentioned about the Railway Board Circular dated 21.4.1993 (copy annexed to Rejoinder) under which the modified criteria for promotion is not be adopted as a one-time measure for this vacancy as on 1.3.1993 and the benefits are also to be extended to employees who retired after 1.3.1993 and the date on which the provisions of the said circular are implemented. A number of Supplementary Affidavits (in short SA) were filed by the applicants. In one SA filed on 10.7.2013, the applicant referred to the order dated 10.8.1994, by which it is stated that some of the applicant's were promoted to higher scale of Rs. 2000 – 3200. However, we have not considered such additional pleas of the applicant as these were not mentioned in the main pleadings in this OA.

7. We have heard learned counsel for the applicant, who, besides reiterating the averments in the pleadings, stressed on the point that as per the Railway Board instructions dated 27.1.1993 (R.B.E. No. 19/93), the restructuring of Group C and D cadres was approved with effect from 1.3.1993 which inter-alia provided for modification of selection criteria for promotion to a selection post for the railway servant who became due for promotion to such selection post, would be based on service record without any written or interview test. This has been approved as a onetime exception by special dispensation. This modified procedure will apply for the posts lying vacant as on 1.3.1993 and any vacancy arising from 2.3.1993, will be filled by the normal selection procedure. It was also submitted by learned counsel for the applicant that the restructuring was also applicable to those employees who retire/resign between the period from 1.3.1993 to the date of implementation of the restructuring order, vide para 11 of the said circular. It was submitted that as per para 11 of the said circular, the benefit of promotion w.e.f. should have been given to the applicant who retired on 31.8.1996 and whose juniors were given the benefit of such restructuring. Another point stressed by learned counsel for the applicant was that the applicant's case was overlooked, when his juniors were given promotion to the grades of Rs. 2000-3200 and Rs. 2375-3500/- as per the direction of the Tribunal in OA No. 1233/1987.

8. Learned counsel for the respondents reiterated the stand taken in the Counter Reply and Supplementary Counter Affidavit filed by the respondents. He also stressed on the averment in the counter that the OA is barred by limitation.

9. We consider first the objections of the respondents on the ground of delay. Reviewing the steps taken by the applicant for redressal of his grievances pertaining to his seniority and promotion like filing of representations before the respondents and then filing the OAs in case of inaction on the part of the respondents on his grievances, it is seen from the OA that the applicant had submitted a representations dated 6.6.1989 (Annexure A-4). In this representation, the applicant raised the

issue of his regularization on 24.6.1985, compared to the date 27.3.1984 when some of his juniors were stated to have been regularized. Hence, the applicant's seniority got disturbed and he requested the respondents in the said representation to correct the date of his regularization and fix his seniority appropriately modifying the defective seniority list issued dated 30.10.1987. It is stated in the OA that no decision was taken by the respondents. Then the applicant remained quiet about his grievance till some of his colleagues got the relief regarding their seniority in OA No. 1233/1987 vide order dated 3.11.1995 of this Tribunal (Annexure A-10). It is obvious that his grievance raised in the representation dated 6.6.1989 had become stale on account of inaction on the part of the applicant. But after decision in OA No. 1233/87 and its subsequent implementation by the respondents, the applicant got a fresh opportunity to raise his grievances. The applicant represented for similar benefit and again no action was taken by the respondents. The applicant filed OA No. 1077/1996, which was disposed of vide order dated 18.11.2003, with a direction to the respondents to decide the applicant's representation dated 26.2.1996. In compliance, the respondents issued the order in August, 2005 (Annexure A-2) by which the pay parity of the applicant with Sri Ansar Ali was allowed upto the scale of Rs. 1600-2660/- and this became a fresh cause of action. The applicant represented for reconsideration of this decision vide the letter dated 20.2.2006 (Annexure A-15). Earlier he also filed a review against the order in OA No. 1077/1996, which was dismissed with liberty to the applicant to file fresh OA for disposal of his representation dated 20.2.2006. Then the applicant filed the OA No. 725/2007 challenging the letter of August, 2005, which was disposed of by the Tribunal vide order dated 25.1.2008 (Annexure A-14) with a direction to the respondents to dispose of the representation dated 20.2.2006. In compliance of the order dated 25.1.2008 of the Tribunal, the respondents have rejected the representation dated 20.2.2006 of the applicant by passing the order dated 10.4.2008 (Annexure A-1) which is impugned in this OA. The order dated August, 2005 has also been impugned in this OA, by which parity with Sri Ansar Ali was allowed in terms of pay and promotion/designation.

10. To sum up, the applicant had grievance about his inter-se seniority with others for which he had submitted a representation dated 6.6.1989, which was not followed up by the applicant till the order dated 3.11.1995 was passed in OA No. 1233/1987 in which the applicant was not a party. After 3.11.1995 and when this order was implemented, the applicant moved the authorities for parity with the applicants in OA No. 1233/1987. Then after filing two OAs, including a Review application in first OA, the applicant is before us in this OA, not being satisfied with the decision of the respondents to allow parity with Sri Ansar Ali.

11. The issue of the limitation has been raised by the respondents in para 10 of their counter reply, stating that the applicant cannot file a subsequent OA after disposal of OA No. 1077/1996 to decide his representation and the respondents have passed the order dated 23.7.2004 giving him the parity with Sri Ansar Ali, which has not been disclosed in the present OA and the present OA is not maintainable on the ground of non-disclosure of material information and limitation in the light of the decision of Hon'ble Supreme Court in the case of C. Jacob vs. Director Geology and Mining 2008 (SCC) (10) 115. In reply, the applicant states that he was given liberty by the Tribunal vide order dated 17.1.2007 (Annexure A-13) in Review Application no. 130/2003 in OA No. 1077/1996. The said order dated 17.1.2007 of the Tribunal stated as under:-

"We think there are no good ground to review as this order was passed in the light of another order passed in O.A. No. 740/1996. Secondly, the directions given by this Tribunal have been complied with by passing order in August, 2005. In case, the applicant has any grievance, he should challenge that rejection of August, 2005. So, this Review Petition is dismissed with liberty to the applicant to challenge the order of August, 2005."

The applicant had filed the OA No. 1077/1996 for similar benefit given to his juniors in pursuance to the order dated 3.11.1995 in OA No. 1233/1987, which was disposed of by order dated 18.11.2003 directing the respondents to dispose of the representation of the applicant in pursuance to order dated 3.11.1995 in respect of other applicants. Then the applicant filed Review application no. 130/2003 on which above order was passed granting liberty to the applicant to file fresh OA. Thereafter, the applicant filed fresh OA No. 725/2007 challenging the order of August, 2005 which is nothing but fixation of pay of the applicant in

pursuance to the order dated 23.7.2004, which allowed parity of the applicant with Sri Ansar Ali, with pay fixation as per the said order of August, 2005. Hence, it cannot be said that by not challenging or not disclosing the order dated 23.7.2004, there was non-disclosure of a material fact, as the order of August, 2005 was disclosed and it has been challenged in this OA.

12. The OA No. 725/2007 was disposed of with a direction to dispose of the representation dated 20.2.2006 of the applicant by which, the applicant had placed his grievances relating to the order of August, 2005 allowing him parity with Sri Ansar Ali. The respondents have disposed of the said representation by rejecting it for the reasons communicated to the applicant vide the impugned order dated 10.4.2008 (Annexure A-1). It is seen that the order dated 10.4.2008 was passed on a cause of action which arose after passing the order dated 3.11.1995 of the Tribunal followed by timely representations on which decision was not taken in time. Hence, it is considered as a fresh cause of action and not a stale grievance or claim and his claim / grievance at present is with reference to the order dated 3.11.1995 claiming parity with the applicants in OA No. 1233/1987 and hence, the OA is not barred by limitation.

13. In the case of C. Jacob (*supra*), the petitioner-employee had represented the employer after a lapse of 20 years for re-joining in service. He was under unauthorized absence during these years. When no action was taken on the representation, he approached the Court and a direction to consider the representation was passed. When the representation was rejected in compliance of the direction, it was challenged in Hon'ble High Court. Hon'ble Apex Court observed in this case that the courts are required to be careful while giving direction to consider the representations which are stale and hit by long delay. The cited case is distinguishable from the present OA in view of the discussions in para 11 and 12 above. Further, in this case, the cause of action being pursued by the applicant after order dated 3.11.1995 did not suffer from delay or laches when the respondents were directed by this Tribunal to consider the representation dated 20.2.2006. Hence, the order dated 10.4.2008 passed by the respondents is considered to be a

fresh cause of action for the purpose of limitation in the OA, which is, therefore, not barred by limitation and such ground advanced by the respondents has no force.

14. On merit, it is seen that the impugned order dated 10.4.2008 rejected the claim of the applicant for parity with the applicants in OA No. 1233/1987 who were allowed retrospective promotion to the scale of Rs. 2000-3200 and Rs. 2375-3500 as per the modified procedure for promotion, and not with Sri Ansar Ali who had retired prior to the applicant. The said order states as under:-

***"Office of the Chief Comml. Manager/Claims,
Station Building, Varanasi.
Dated 10.04.2008***

No. 70-E/1(BSB-CAT/ALD) M.N. Rai

***Shri M.N. Rai,
Village & Post – Sohaon,
Distt: BALLIA.***

***Sub: Implementation of the order & direction passed by the
Cat/ALD in O.A. No. 725 of 2007 M.N. Rai – vs – Union of
India (CAT/ALD).***

***Ref: Your representation dated 20.2.06 attached at Annexure –
A – 12 in O.A. No. 725 of 2007 M.N. Rai – vs 0 Union of
India (CAT/ALD).***

***As per direction of the Hon'ble CAT/ALD OA No. 1077/96
your representation dated 26.2.96 (Annexure A7 of the OA. No.
1077/96) were considered by the Competent Authority of Northern
Railway who passed the following order, and communicated to
you vide this office letter no. 70E/1 (BSB-CAT/ALD) M.N. Rai d. t.
23.7.2004.***

***"XX XX XX XX XX
the representation of S/Shri D.J. Agrawal, R.Y. Updhayay,
P.N. Srivastava and M.N. Rai are disposed of with the direction
that they may also be extended the benefit as has been extended
to their junior Shri Ansar Ali, V.N. Mishra, J.N. Sinha, U.S. Singh
and S.S. Lal Srivastava upto grade Rs. 1600 – 2660 only, because
they have retired in this grade, on proforma basis. However, the
actual benefit will be admissible only from the date of shouldering
higher responsibility."***

***Now in reference to your representation dated 20.2.06
(Annexure A-A-12 of OA No. 725 of 2007), it is further clarified that benefit
of proforma fixation has already been extended to you upto grade Rs.
1600 – 2660 as given to your junior Shri Ansar Ali.***

***It may be pointed out here that while implementation the order of
CA/ALD in OA No. 1233/87 Ansar Ali & Others – Vs – U.O.I. the matter for
promotion to applicants in O.A. No. 1233/87 were put up to the competent
authority who passed the orders for holding modified selection for the
grade Rs. 2000 – 3200. Four applicants out of 5 in OA No. 1233/87 viz V.N.
Mishra, U.S. Singh, J.N. Sinha and S.S. Srivastava were given promotion
in grade Rs. 2000 – 3200. Shri Ansar Ali was not given the benefit of***

promotion of this grade because he had retired from the railway service well before decision in OA. No. 1233/87.

In view of the above, the benefit of promotion in grade Rs. 2000 – 3200 were not extended to you, because you retired from service on 31.8.96, well before the decision in OA. No. 1077/96 and 740/96, modified selection in grade Rs. 2000 – 3200 were not possible, as such benefit of promotion fixation was allowed upto the grade Rs. 1600 – 2660.

S/Shri Shailendra Kumar, and Rakesh Pathak etc. as mentioned in your representation, it is clarified that they are in service and they appeared in normal selection and qualified the exam for promotion in grade Rs. 2000 – 3200.

As such, your case is quite different from S/Shailendra Kumar and Rakesh Pathak. Your case is identical to Shri Ansar Ali and the benefit of proforma fixation in grade Rs. 1600 – 2660 viz-a-viz to Ansar Ali is well within order.

This disposes of the direction to Hon'ble CAT/ALD in OA. No. 725/2007 and your representation dated 20.2.06.

Sd/-

Dy. Chief Comml. Manager r/C.”

From above, the reasons for rejection mentioned in above order are as under:-

- (i) The applicant and three other employees were allowed the benefits extended to their juniors who were the applicants in OA No. 1233/1987 upto the grade of 1660-2600, because they have retired in this grade, on proforma basis and actual benefit will be admissible from the date of shouldering higher responsibility.
- (ii) One of the applicant in OA No. 1233/1987 i.e. Sri Ansar Ali was also allowed the benefit upto the scale Rs. 1660-2600 since he was retired before the decision in O.A. No. 1233/87.
- (iii) The applicant was also given same benefit as Sri Ansar Ali, as he had also retired before the decision in this OA and modified selection to higher scales allowed to other applicants of OA No. 1233/87 was not admissible for the applicant.

- (iv) Shri Shailendra Kumar and Shri Rakesh Pathak had qualified in the selection test while in service, for which their case was different from the case of the applicant.

15. There is nothing on record to question the reason no. (iv) above, as the applicant failed to produce any evidence to contradict the contentions. Hence, the applicant is not eligible for any comparison with two employees mentioned at (iv) above. Regarding other reasons, it is clear that the respondents have decided to allow parity to the applicant with the applicants of OA No. 1233/1987, but only upto the level of the grade Rs. 1660-2600, as his case was similar to Sri Ansar Ali who had retired before the decision in OA No. 1233/1987. Subsequent averment of the respondents that the applicant is not entitled for the benefit of the OA No., 1233/1987 as he was not an applicant in that OA, will not have much force, particularly after allowing him the benefit at par with one of the applicant of OA No. 1233/1987. Further, the respondents have stated in the order dated 10.4.2008 that the beneficiary of the OA No. 1233/1987 were juniors to the applicant, hence, as per existing rules, the applicant would be eligible for similar benefit.

16. It is necessary to decide the issue as to whether the case of the applicant is similar to his junior Sri Ansar Ali or other juniors who were also applicants of OA No. 1233/1987. As stated in the impugned order dated 10.4.2008, the respondents have not allowed any benefit to Sri Ansar Ali beyond the scale Rs. 1660-2600, since he was retired prior to the judgment of the Tribunal in OA No. 1233/1987 i.e. prior to 3.11.1995, when the said OA was disposed of by the Tribunal. Sri Ali had retired on 31.7.1995, prior to 3.11.1995 when the said OA was decided by the Tribunal. But admittedly, the applicant had retired from service on 31.8.1996, which is after the date of the order in OA No. 1233/1987. In other words, the applicant was in service when the Tribunal passed the order dated 3.11.1995 in OA No. 1233/1987. Hence, the applicant's case is not exactly same as that of Shri Ansar Ali.

17. As per the operative part of the order dated 3.11.1995 (Annexure A-6) of the Tribunal in OA No. 1233/1987, the following directions were given to the respondents:-

“8. The respondents are directed to re-fix the seniority of the applicants vis-a-vis Respondent Nos. 4 to 16 on the basis of principle as enunciated above within a period of two months from the date of communication of this order.”

Therefore, the order dated 3.11.1995 was on re-fixing seniority and not for consequential promotions. When these directions in OA No. 1233/1987 were implemented by the respondents vide order dated 23.1.1996 (Annexure R-2 to the counter reply), the applicants of OA No. 1233/1987 filed a contempt petition claiming subsequent promotion to higher scale, as stated in para 8 of the counter reply. This was considered and the contempt petition filed against the respondents was disposed of by the Tribunal vide order dated 27.6.2000 (Annexure R-3 to the counter reply), stating as under:-

“8.....The applicants claim is that their juniors were selected under modified selection scheme for the post of C.M.I. and they should also be considered under the same modified selection scheme for promotion. Such a claim of the applicant should have been considered by the opp. Parties after the applicants seniority was decided by them. This should have been done in the same manner as was done in case of the juniors to the applicants including private respondents in the O.A. because the applicants were entitled to be considered retrospectively on the basis their seniority in place of the private respondents when vacancy arose in 1989 onwards and the juniors to the applicants were selected through modified selection.

9. With the above clarification, we dispose of the contempt petition by dropping the proceedings for contempt and discharging the notices issued to the Opp. Parties.”

After passing of the above order of the Tribunal dated 27.6.2000, the respondents considered the applicants of the OA No. 1233/1987 who were in service, for promotion as per the modified procedure and promoted them on proforma basis from 20.12.1992 with monetary benefit w.e.f. 19.7.2001, when they were posted against promotional post and actually shouldered higher responsibility. But this promotion was not allowed to Sri Ansar Ali who was also an applicant in OA No. 1233/1987, since he was retired by the time others were considered in 2001 for such promotion. It is clear that when the promotion of the applicants of OA No. 1233/1987 (except the case of Sri Ansar Ali) was considered, the applicant had also retired by that time, like Sri Ansar Ali. Such promotion

could not have been considered by the respondents prior to 27.6.2000 when there was an order/clarification by the Tribunal for such promotion in the Contempt Petition. Hence, although on the date of order of the Tribunal in OA No. 1233/1987, the applicant was in service, there was no direction for promotion or no consideration for such promotion had taken place, as the direction was for re-fixing the seniority. At best the applicant could have asked for a similar benefit in terms of his seniority vis-a-vis his juniors. But even if that was allowed, by the time their consequential promotion was considered by the respondents after the order dated 27.6.2000 of the Tribunal the applicant had retired from service.

18. In view of above, it is clear that the respondents have not considered the applicant for promotion as per the modified scheme when his juniors were considered for promotion to the scale of Rs. 2000-3200 from 19.7.2001 in pursuance of the order dated 27.6.2000, since by that time, the applicant had already retired from service. Hence, the case of the applicant was similar to the case of Sri Ansar Ali as both were retired by the time consideration for promotion to the scale Rs. 2000-3200 took place in 2001.

19. It is admitted in the impugned order dated 10.4.2008 that the employees like V.N. Mishra and others who were promoted to higher scale in 2001, were juniors to the applicant. In case these employees had been promoted prospectively, the applicant would have no case. But these employees were actually promoted from 19.7.2001, but were given proforma promotion w.e.f. 20.12.1992, as stated in para 8 of the counter reply, and by 20.12.1992, the applicant was in service. In such a situation, the question before us is: whether the applicant is also entitled for promotion on proforma basis at par with his juniors like V. N. Mishra and others whose proforma promotion was given w.e.f. 20.12.1992.

20. This question has been decided by the Principal Bench of this Tribunal in the case of **Shri P.G. George vs. Union of India in OA No. 1409/2009** (<https://indiankanoon.org/doc/70182123/>) alongwith other

similar OAs, which were disposed of vide order dated 22.4.2010, which held as under:-

“7. We have perused the aforesaid judgement with great care. The Union of India had challenged the order dated 8.07.2005 of this Tribunal in OA number 192/2005. The Tribunal had directed the appellant Union of India to consider Rajendra Roy the respondent in the writ petition for promotion to the Junior Administrative Grade, from the date vacancy occurred in JAG. It was further directed that if the vacancy was prior to 31.01.2005, when the respondent retired on superannuation, the promotion should be given on notional basis, if the name of the respondent figured in the select list recommended by the Departmental Promotion Committee (DPC). The High Court then framed the issue thus:

“2. The short question which arises for consideration in this petition is whether the respondent, who had superannuated before the consideration of his case for promotion by the DPC, could be granted promotion on a notional basis, by requiring his case to be considered by the DPC, as and when it is held, and in the event of his being empanelled by the DPC, from the date the vacancy against which he could be promoted becomes available. The Tribunal has answered this question in favour of the respondent and that is how the Union of India is before us in this writ petition to challenge the said direction issued by the respondent Rajendra Roy’s claim was that there were sufficient vacancies in JAG since the year 2002 but the DPC did not meet to consider the eligible persons for promotion. He also claimed that he was senior to one Monideepa Mukherjee, who had been promoted to JAG on 10.07.2002. However, the petitioner successfully demonstrated before the High Court that Monideepa Mukherjee was senior to the Applicant. The petitioner also explained that the meetings of DPC could not be convened for vacancies for the years 2002-03 to 2004-05 because ACRs of certain officers in the zone of consideration were not available. The contention on behalf of the petitioner is that promotion cannot be granted from the date of occurrence of the vacancy. It can only be granted from the date the recommendations of the DPC have been approved by the competent authority. Yet another contention in Rajendra Roy (supra), which has been raised by the learned counsel for the Respondents herein also was that it would be anomalous that a retired person would be promoted from the date of occurrence of the vacancy whereas the serving employees would be given promotion from the date of his actual promotion following the approval of the panel. This is extremely crucial point for distinguishing this judgement and we shall revert back to it after considering the judgement further. The Honourable Delhi High Court then considered the judgements of Honourable Supreme Court in Union of India and others Vs. K.K. Vadera and others, 1989 Supp (2) SCC 625 and Baij Nath Sharma Vs. Honble Rajasthan High Court at Jodhpur and Anr., 1988 SCC (L&S) 1754. In K.K. Vadera (supra), the order of this Tribunal was under challenge before the Honourable Supreme Court. The Tribunal had directed that K.K. Vadera and others should be given promotion from the date of creation of the promotional post. The Honourable Supreme Court held thus:

“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. In Baij Nath Sharma (supra), the appellant before the Supreme Court sought promotion on notional basis to Rajasthan Higher Judicial Service on the ground that there were vacancies in the said service before he retired. It was noted that no Judicial Officer junior to the appellant had been promoted before his retirement. The appellant sought notional promotion from the date of occurrence of vacancy."

The High Court has summed up the decision of the Supreme Court thus:

16. The Hon'ble Supreme Court held that the appellant would certainly have a grievance if any of his juniors had been given promotion from a date prior to his superannuation which was not the case before the Court. The Court also noticed that there was no rule under which promotion could be granted from the date of occurrence of the vacancy. The Court relied upon its earlier decision in K.K. Vadera (supra) and the dismissed the appeal of Baijnath Sharma. This decision in our view, seals the fate of the respondent. No doubt, the Hon'ble Supreme Court regretted the inaction on the part of the High Court to make timely promotions since delays and inaction, resulted in deprivation of promotion to the deserving candidates without any fault of theirs. The Supreme Court also expressed the desire that such occurrences should not recur. But that by itself cannot give a right to the respondent to go against the jurisprudence evolved in the main part of the judgment.

(emphasis supplied)

The High Court has also considered the OM's of 12.10.1998 and held thus:

22. We feel that the Tribunal erred on this count as well. The thrust of the OM, which was issued soon after the decision of the Honble Supreme Court in Baijnath Sharma (supra) is to clarify that the superannuated employees should not be considered for promotion where the DPC is being held after their superannuation. The later part of the OM, which is contradictory to the dictum of the Honble Supreme Court in Baijnath Sharma (supra) obviously cannot be given effect to. Pertinently even the said OM does not in clear terms say that the retired/superannuated employees, if considered and recommended by the DPC would be granted notional promotion from a back date. However, the Tribunal has read this aspect into the OM which, in any event, it could not have done.

Eventually, it was held that:

25. Coming to the charge of discrimination against him by the petitioner, on the basis of that, the petitioner had promoted a large number of Sr. Grade officers of IIS Group `A to JAG notionally w.e.f. 10.7.2002 and on actual basis w.e.f. the date of the taking over a charge, many of whom in the meantime had retired. We find even this claim to be misplaced. He claims that four of his colleagues, who retired like him in the Sr. Grade of II Group `A have been given notional promotion to Junior Administrative Grade

from retrospective date i.e. 7.2.2002. However, what is being missed by the respondent is that all the persons promoted retrospectively notionally w.e.f. 10.7.2002 to the Junior Administrative Grade of the service were senior to the respondent as per the revised seniority list as on 31.3.2000. Had a junior of the respondent been promoted to the Junior Administrative Grade, certainly the respondent would have had a valid and enforceable claim to seek notional promotion from retrospective date i.e. from the date on which the junior was promoted. But this is not his case. (emphasis added)”

8. It is thus very clear that :

there is no rule that promotion should be given from the date of creation of the promotional post; if promotions are effected prospectively from the date of issue of the order of promotion, retired employees would not be eligible for promotion retrospectively; and if promotion is granted retrospectively and a person junior to the retired employee has been promoted from the date when the retired person was in service and if the retired person has been found fit by the DPC, such retired person would be entitled to promotion retrospectively on notional basis from the date his immediate junior has been promoted. This is clear from the judgement in Baijnath Sharma, as it has been paraphrased in Rajendra Roy (supra) in paragraph 16, quoted above. Moreover, it has further been clarified by the Honourable High Court in Rajendra Roy (supra) itself in paragraph 25 of the judgement, which has been quoted above.”

21. Applying the above judgment of the coordinate Bench of this Tribunal in the case of P.G. George vs. Union of India in OA No. 1409/2009, the present OA, the applicant, even after his retirement on 31.8.1996, would be entitled to be considered for proforma promotion from the date 20.12.1992, since his juniors like V.N. Mishra and others were allowed proforma promotion w.e.f. 20.12.1992 by the respondents as averred in para 8 of the counter reply and on 20.12.1992, the applicant was in service. It is noted that the applicant has claimed parity with Shri V.N. Mishra and others who were his juniors and who were promoted to the scale of Rs. 2000-32000 w.e.f. 20.12.1992 by adopting modified procedure. The applicant has also claimed parity with Shri Shailendra Kumar for parity for promotion to the scale of Rs. 2375-3500 w.e.f. 31.3.1995. As stated in the order dated 10.4.2008, Shri Shailendra Kumar's case is different from the applicant, for which, the parity with him for promotion to pay scale of Rs. 2375-3500/- is not admissible to the applicant. However, the claim of parity with Shri V.N. Mishra and others is admissible as they were admitted by the respondents to the applicant's junior vide the impugned order dated 10.4.2008 (Annexure A-1).

22. In view of the discussions above, the OA is allowed in part and the respondents are directed to consider the case of the applicant for

promotion to the scale of Rs. 2000-3200/- w.e.f. 20.12.1992 on proforma basis at par with his juniors like Sri V. N. Mishra who were allowed such promotion on proforma basis w.e.f. 20.12.1992 (when the applicant was in service) during selection in 2001 based on the modified procedure for selection. Further, if the applicant is found fit for such selection/promotion as per the rules, then he shall be allowed the benefits, including differential retirement benefits, permissible as per the rules applicable for proforma promotion at par with the benefits allowed to the applicant's juniors like Shri V.N. Mishra for the proforma promotion from 20.12.1992. But no arrear pay shall be allowed as he had not shouldered higher responsibility linked to the promotional post. The order shall be complied within six months from the date of receipt of a copy of the order.

23. The OA is partly allowed as above. No cost.

(Rakesh Sagar Jain)
Member – J

(Gokul Chandra Pati)
Member – A

/pc/