

Reserved on 16th July, 2018

**Central Administrative Tribunal, Allahabad Bench
Circuit Bench at Nainital**

Original Application No.331/00723/2017

This the 27th day of August, 2018

**Hon'ble Mr. Justice Bharat Bhushan, Member (J)
Hon'ble Mr. Gokul Chandra Pati, Member (A)**

Trilok Nath Sharma s/o late Hari Das Sharma retired as Officer Surveyor from the office of respondent No. 2, r/o 66/199, Salawala, Dehradun, Uttrakhand.

Applicant

By Advocate: Sri Ram Prasad

Versus

1. Union of India through Secretary, Ministry of Science and Technology, New Mehrauli Road, New Delhi.
2. The Surveyor General of India, Survey of India, Dehradun.

Respondents

By Advocate: Sri P.K. Rai

ORDER

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

The applicant has filed the present Original Application u/s 19 of the Administrative Tribunals Act, 1985 with the prayer to quash the order dated 3rd^h April, 2017 passed by respondent No.2, by which, the claims of the applicant for promotional benefits accrued due to promotion orders dated 5.4.2016 passed by respondent No. 2 based on the Review DPC, has been rejected. It is further prayed to revise the pay of applicant in the scale of Rs. 10000-325-15200 treating him promoted to the grade of STS i.e. Superintending Surveyor against panel year 1993 in pursuance of order dated 5.4.2016 passed by respondent No. 2. It is also prayed that arrears of pay and other consequential benefits accrued due to revision of pay of applicant be paid along with 18% interest. Applicant also prayed for revision of pension based on revision of his pay due to promotion to higher grade as shown in the order dated 5.4.2016 and arrears of pension and other consequential benefits i.e. gratuity, leave encashment etc. based on the above revision of pension along with 18% interest thereon.

2. The facts in this case are not disputed. The applicant was initially appointed as Topo Training Type B, Group C on 16.9.1961 and thereafter appointed as TTT 'A' on 6.8.1962 and after completion of two years rigorous training in Surveying and Mapping, he was classified as Surveyor on 2.7.1964. The applicant was promoted from the post of Surveyor to Officer Surveyor (Group B) on 1.3.1978. The applicant was further promoted from the post of Office Surveyor to Superintending Surveyor on adhoc basis for the period from 16.6.1992 to 15.6.1993 and continuously from 28.7.1993 to 16.1.1996.

3. The applicant retired on 30.4.1998 as Office Surveyor but holding the current duty charge of a unit which is headed by Superintending Surveyor for the period from 16.6.1992 up to date of superannuation on 30.4.1998.

4. In pursuance of the judgment and order dated 4.1.2006 passed by Hon'ble CAT, Bangalore Bench in OA. No. 737/2004 in the case of Rajshekhar Vs. UOI and others (Annexure No. A-8), respondent No. 2 has passed a promotion order dated 5.4.2016 (Annexure A-3) in which the applicant has been shown as promoted from the post of Officer Surveyor to the post of Superintending Surveyor (STS) against the panel year of 1993.

5. Para 6.4.4 of DOP&T O.M. dated 10.4.1989 which has been referred by the respondents states that "**while promotions will be made in the order of the consolidated select list. Such promotions will have only prospective effect even in cases where the vacancies related to earlier years.**" The applicant's case is that he was already in service and holding the post of Superintending Surveyor on adhoc basis and during the same period, he was discharging the duties and responsibilities of higher post i.e. Superintending Surveyor and hence, the aforesaid provision of prospective effect as stipulated in O.M. dated 10.4.1989 of DOP&T (Annexure A-4) will not be applicable in his case.

6. Applicant submitted a representation dated 30.11.2016 (Annexure A-5) stating that legitimate promotion of the applicant from the post of Officer Surveyor to Superintending Surveyor has been deprived to the applicant during his service period. Now, the applicant has been promoted vide order dated 5.4.2016, as such pay and pension of the applicant be revised and make payment of arrear with all consequential benefits.

7. In response to the representation of applicant, respondents have passed an order dated 4.1.2017 (Annexure A-6) stating that "**you were not holding the post of Superintending Surveyor on regular basis on the date of superannuation, hence your request is not permissible in terms of CCS (Pension) Rules, 1972.**"

8. Applicant again filed a representation dated 15.3.2017 (Annexure A-7) which was also turned down vide order dated 3.4.2017 (Annexure A-1) which is impugned in the present O.A.

9. Notices were issued to the respondents, who in turn filed the counter reply, through which it is stated that the order dated 4.1.2006 of Bangalore Bench of this Tribunal disposed off the O.A. No.737/2004 was challenged before the Hon'ble High Court of Karnataka in Writ Petition No. 2485 of 2006 and the Hon'ble High Court dismissed the Writ Petition vide order dated 4.8.2011. After dismissal of the writ petition, respondents decided to implement the order dated 4.1.2006 passed by the Bangalore Bench of this Tribunal in O.A. No. 737/2004.

10. In compliance of the aforesaid order passed by the Bangalore Bench of the Tribunal, the revised seniority list in the Grade of Superintending Surveyor was issued by the Surveyor General of India vide order dated 2.2.2012 and on the basis of revised seniority list, the DPC proposal for promotion from Superintending Surveyor to Deputy Director from the year 1991 to 2014 was sent to Union Public Service Commission (in short UPSC). Then based on the advice of UPSC, a proposal for Review DPC was

sent to UPSC for promotion for the position of Superintending Surveyors, DD/Director was initiated by submitting proposal of Review DPC to UPSC.

11. It is stated in the counter reply that the DOP&T O.M. dated 12.10.1998 (Annexure No. 2 to the C.A.), it has been clarified that there is no specific bar in the O.M. dated 10.4.1989 or any other related instructions of the DOP&T for consideration of retired employees but such retired officials would have no right for actual promotion. It is also submitted that order dated 5.4.2016 clearly stipulates that promotion will have only prospective effect even in cases where vacancies relates to earlier years as per DOP&T O.M. dated 10.4.1989. Thus, it is clear that applicant is neither entitled to get his pay fixed and arrears of pay and allowances nor revision of pension etc. It is also submitted that as per Rule 33 & 34 of the CCS (Pension) Rules, 1972, on the basis of which the pension and pensionary benefits of an employee are calculated is "average emoluments drawn during the last 10 months of service by the employee." The pay which is not actually drawn cannot be taken into account for revision of pension/family pension in terms of CCS (Pension) Rules, 1972.

12. It is further stated in the counter reply that the applicant was promoted on adhoc basis from officers Surveyor to Superintending Surveyor from time to time on temporary capacity only to cater the administrative as well as technical requirement of the Department and the adhoc promotion is purely provisional and would not bestow any benefit of seniority and can be terminated at any time.

13. Rejoinder reply is filed by the applicant through which he has reiterated the facts as stated in the O.A. and denied the contents of the counter reply. However, it is further stated that provision of prospective promotion contained in O.M. dated 10.4.1989 is not applicable in the case of the applicant as in the instant case, the applicant was wrongly denied promotion by the respondents against the panel year 1993.

14. Learned counsel for applicant was heard. He has also filed Supplementary Affidavit on 15.7.2018 through which he has annexed the judgment and order dated 22nd May, 2018 passed by this Tribunal in O.A. No. 579/2017 in the case of Chaman Singh Chauhan Vs. Union of India and others and stated that on similar facts and circumstances to the instant O.A., this Tribunal has already decided the O.A. No. 579/2017. Learned counsel for the respondents was also heard. He reiterated the stand taken in the counter reply. In pursuance of order dated 16.7.2018 of this Tribunal, written submission is also filed by the learned counsel for respondents through which he has reiterated the facts as stated in the Counter reply.

15. We have considered the submissions and perused the pleadings and material available on record. The relevant portion of the order dated 22nd May, 2018 passed in O.A. No. 579/2017 on which, reliance is placed by the applicant's counsel, is reproduced below:-

"2. The brief facts of the case are that the applicant retired as Deputy Director (JAG) on 30.04.2003. Prior to that he was promoted as Superintending Surveyor or in Group 'A' service on adhoc basis on 1988 and then on regular basis in 1990. The applicant was further promoted to the post of Deputy Director on 07.06.2002. Thereafter, the applicant retired as Deputy Director after attaining the age of superannuation on 30.04.2003 and his pension was fixed as per his last pay drawn as Deputy Director (JAG). The respondent No. 2, thereafter, passed an order dated 17.05.2016 (Annexure-A-5) promoting the applicant to Deputy Director with effect from 01.08.2001 in pursuance of the Judgment and the order passed by CAT, Bangalore Bench in OA No. 737/2004 in the case of Rajshekhar Vs UOI & Ors. The order dated 17.05.2016 is reproduced below for ready reference.

"SURVEY OF INDIA

Telefax:+91-135-2744064, 2743331

OFFICE OF THE SURVEYOR
OF INDIA
POST BOX NO. 37
DEHRADUN-248001(UTTARAKHAND),

Website: www.surveyofindia.gov.in

Fax-cum-Telephone: 0091-135-744064

Email: sgo.soi@gov.in

Sgo.conf.soi@gov.in

No. C-2555/853-Director

Dated: 17 May, 2016

To

The Addl SGs: Eastern Zone/Northern Zone/Southern Zone/North Zone/Western Zone/Central Zone/Printing Zone/Specialised Zone/II&SM.

The Directors: UK&West UP GDC/DMC/AP GDC/G&RB/IBD (SGO)/Rajasthan GDC/East UP GDC/Survey (Air) & Delhi GDC/Odhisa GDC/Meghalaya & Arunachal Pradesh GDC/Bihar GDC/West Bengal & Sikkim GDC/Mah & Goa GDC/NGDC/Karnataka GDC/MP GDC/NPG/Chattisgarh GDC/Jharkhand GDC/Gujrat, Daman & Diu GDC/Assam & Nagaland GDC/EPG.

The Estt. & Accounts Officer (A) SGO

SUB:

PROMOTION FROM DEPUTY DIRECTOR TO THE POST OF DIRECTOR AGAINST THE VACANCIES FOR THE YEAR 2001 TO 2015 AS PER RECOMMENDATIONS OF DPC.

In implementation with the Hon'ble CAT, Bangalore Bench, Bangalore order dated 04.01.2006 passed in OA No. 737/2004 and subsequent Orders issued in this regard by the competent authorities, the seniority in the grade of Superintending Surveyor has been revised and according to revised seniority list of SS, fresh DPC's from the year 2001 to 2015 for promotion from Superintending Surveyor to Deputy Director (JAG) has been convened. The following officers have been empanelled yearwise for promotion to the post of Deputy Director (JAG). The following empanelled officers are promoted to the post of Deputy Director (JAG) in the pre-revised pay scale of Rs. 12000-16500 and revised in PB-3 of Rs. 15600-39100+GP of Rs. 7600:-

SI No	Name of the Officer	Office	Vacancy against which recommended	Date of promotion	Remarks
1	Shri G S Dhiman	UK & West UP GDC, D. Dun	2001	01.08.2001	Retired
2	.....	.....	.....	.....	.....
3	.....	.....	.....	.....	.....
4	.....	.....	.....	.....	.....
5	.....	.....	.....	.....	.....
14	Shri C S SGO, Dehra	2001	01.08.2001	Retired	

	Chauhan (ST)	Dun		1	
.
.
67	Shri D.N. Pathak	Survey (Air) & Delhi GDC, New Delhi	2013	--	--

2. The promotions will have only prospective effect even in case where vacancies relates to earlier years as per DoP &T's OM No. 22011/5/86-Estt. (D) dated 10.04.1989, in respect of officers who have already not been promoted to the post of DD/Director.

3. Promotion in case of officers promoted to the post of Director from SS directly will be based on DPC to the post of Director being held subsequently and separate orders will be issued as necessary.

4. The pay of officers shall be fixed on promotion on notional basis from the new date of promotion but actual benefits will be given from the date of officer actually assumed the charge of the post as directed vide Joint Secretary, DST's email dated 16.05.2016.

5. The above officers may assume their charge on promotion and charge assumption certificate on Form 0.115 (ACC) in triplicate may please be forwarded to this office at an early date for further necessary action.

6. On promotion, the individual officers are required to exercise an option under FR 22(1)(a)(i) for fixation of his pay in the new scale within one month of reporting.

In case of any vigilance case disciplinary proceedings or pendency of punishment against any of the above mentioned officers is noticed at your end, the orders of promotions may not be implemented.

This is issued with the approval of the Surveyor General of India.

Authority: DST's letter No. SM/01/07/2016 dated 15th June, 2016.)

**(Amardeep Singh)
Col
Deputy Surveyor General for
Surveyor General of India"**

3. So far as actual promotion of the applicant with effect from 07.06.2002 as Deputy Director, it is not in dispute. In the revised DPC held in 2016, his promotion as Deputy Director was preponed by virtue of aforesaid order to 01.08.2001. Thereafter the applicant was again considered for promotion to the post of Director against the vacancies of 2002-2016. Vide order dated 16.06.2016 (Annexure-A-6), his name was shown as serial No. 13 and he was

recommended against the vacancies of 2002. This order dated 16.06.2016 stated as under :-

"SURVEY OF INDIA

Telefax:+91-135-2744064, 2743331 OFFICE OF THE
SURVEYOR OF INDIA

POST BOX NO. 37
DEHRADUN-

248001(UTTARAKHAND),

Website: www.surveyofindia.gov.in

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Sgo.conf.soi@gov.in

No. C-3086/853-Director

Dated: 16th June, 2016

To

The Addl SGs: Eastern Zone/Northern Zone/Southern Zone/North Zone/Western Zone/Central Zone/Printing Zone/Specialised Zone/II&SM.

The Directors: UK&West UP GDC/DMC/AP GDC/G&RB/IBD (SGO)/Rajasthan GDC/East UP GDC/Survey (Air) & Delhi GDC/Odhisa GDC/Meghalaya & Arunachal Pradesh GDC/Bihar GDC/West Bengal & Sikkim GDC/Mah & Goa GDC/NGDC/Karnataka GDC/MP GDC/NPG/Chattisgarh GDC/Jharkhand GDC/Gujrat, Daman & Diu GDC/Assam & Nagaland GDC/EPG.

The Estt. & Accounts Officer (A) SGO

SUB: PROMOTION FROM DEPUTY DIRECTOR TO THE POST OF DIRECTOR AGAINST THE VACANCIES FOR THE YEAR 2001 TO 2016 AS PER RECOMMENDATIONS OF DPC.

In implementation with the Hon'ble CAT, Bangalore Bench, Bangalore order dated 04.01.2006 passed in OA No. 737/2004 and subsequent Orders issued in this regard by the competent authorities, the seniority in the grade of Superintending Surveyor had been revised and according to revised seniority list, the DPCs for promotion from SS to DD (JAG) had also been convened and the recommended officers have been promoted. Accordingly, the seniority in the grade of Deputy Director (JAG) from the year 2001 to 2016 has been prepared and finalized and in accordance with the final seniority list of DD, review/fresh DPC for promotion from DD to Director has been convened in the DST. The competent authority has recommended following officers yearwise for promotion to the post of Director (JAG) in the PB-4 of Rs. 37400-67000 + GP of Rs. 8700 (Pre-revised scale of Rs. 14,300-18000):-

SI No.	Name of the Officer	Office	Vacancy against which recommended	Remarks
1	Shri G S Dhiman	UK & West UP	2002	Retired

		GDC, D. Dun		
2	.....	.....	.....	.....
3	.....	.....	.....	.....
.
.
13	Shri C S Chauhan (ST)	SGO, Dehra Dun	2002	Retired
.
53	Shri D.N. Pathak	Survey (Air) & Delhi GDC, New Delhi	2016	--

2. The notional data (s) of promotion in respect of the above officers will be 1st July of the vacancy year against which their names have been empanelled. However, the actual benefits will be admissible w.e.f. actual assumption of the charge of the post.

3. The pay of officers shall be fixed on promotion on notional basis from the notional date of promotion but actual benefits will be given from the date of actual assumption of the charge of the post.

4. The officers may assume their charge on promotion and charge assumption certificate on Form 0.115 (ACC) in triplicate may please be forwarded to this office at an early date for further necessary action. Charge assumption certificate in respect of already promoted officers to the post Director are not required.

5. On promotion, the individual officers are required to exercise an option under FR 22(1)(a)(i) for fixation of his pay in the new scale within one month of reporting.

6. In case of any vigilance case/disciplinary proceedings or pendency of punishment against any of the above mentioned officers is noticed at your end, the orders of promotions may not be implemented.

7. The recommendations of the Review cum Regular DPC will be subject to the final outcome of various Court Cases on the seniority issues pending before different benches of the Hon'ble Cat/High Courts.

8. Provisionally the officers may assume charge at their present place of posting to the new position. In case of two Directors in an Office, senior officer will be appointed as Director and junior officer will function as DSG. Transfer/Posting orders will be issued in due course.

This is issued with the approval of the Surveyor General of India.

Authority: DST's letter No. SM/01/07/2016 dated 15th June, 2016.)

(Amardeep Singh)
Col
Deputy Surveyor General for
Surveyor General of India"

Thus as per above order dated 16.06.2016 the applicant was promoted as Director with effect from 01.07.2002.

4. In pursuance of the aforesaid order, the applicant submitted a representation dated 14.03.2017 for fixation of his revised pay and pension, on which the impugned order dated 29.03.2017 was passed by the respondents, which is annexed as Annexure A-I to the OA. The order dated 29.03.2017 states as under :-

"SURVEY OF INDIA

Telegram "SURVEYS"	SURVEYOR GENERAL'S OFFICE POST BOX NO. 37 DEHRADUN-248001(UTTARAKHAND), Fax-cum-Telephone: 0091-135-744064 Email: sgo.soi@nde.vsnl.net.in
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No. C-1712/853-Director

Dated: 29th March, 2016

To

Shri C S Chauhan,
Opposite DEAL,
Raipur Road,
Adhoiwala, Dehra Dun 248001 (Uttarakhand)

SUB: Fixation of Pension and removal of anomalies due to review DPCs held to settle ambiguities in seniority/promotion for SS, DD and Director.

Ref:- Your representation No. 103/CSC dated 14.03.2017.

With reference to your above mentioned representation it is found that your representation on the same issue has already been considered and replied vide this office letter No. C-6842/853-Director dated 06.12.2016 and No. C-521/853-Director dated 03.01.2017. The reply already given to you, is in order and your request for revision of Pension is not permissible in terms of CCS (Pension) Rules, 1972.

This is issued with the approval of the Surveyor General of India.

(Amardeep Singh)
Col
Deputy Surveyor General for
Surveyor General of India

5. The Counter Affidavit has been filed by the respondents, wherein the factual matrix has not been disputed,. So far as the

promotions of the applicant to Deputy Director and Director on the basis of revised DPC of 2016 are concerned, the main contention of the respondents is that in view of the OM dated 12.10.1998, copy of which annexed as Annexure CA-I, the applicant is not entitled to any benefit of promotion because the applicant was already retired on 30.04.2003.

6. The Para 3 office memorandum dated 12.10.1998 of Department of Personnel & Training states as under:-

"Office Memorandum

Sub: Procedure to be followed by the departmental promotion committee (DPCs) in regard to retired employees.

The undersigned is directed to invite reference to the Department of Personnel & Training (DOP&T) Office Memorandum No.22011/5/86-Estt. (D) dated April 10, 1989 containing the consolidated instructions on DPCs. The provisions made in paragraph 6.4.1 of the aforesaid Office Memorandum lay down the following procedure for preparation of year-wise panel(s) where for reasons beyond control, DPCs could not be held for the years even though vacancies arose during the year(s) :

- (i) Determined the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.
- (ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.
- (iii) Prepare a select list by placing the select list of the earlier year above the one for the next year and so on.

2. Doubts have been expressed in this regard as to the consideration of employees who have since retired but would also have been considered for promotion if the DPC(s) for the relevant year(s) had been held in time.

3. The matter has been examined in consultation with the Ministry of Law (Department of Legal Affairs). It may be pointed out in this regard that there is no specific bar in the aforesaid Office memorandum dated April 10, 1989 or any other related instructions of the Department of Personnel & Training for consideration of retired employees, while preparing year-wise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are not considered while preparing year-wise zone of consideration/panel and, consequently their juniors are considered (in their places) who would not have been in the zone of

consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year(s). Names of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The DPC(s) may, if need be, prepare extended panel(s) following the principles prescribed in the Department of Personnel & Training Office Memorandum No. 22011/8/87-Estt. (D) dated April 9, 1996.

4. Ministries/Departments are requested to bring these instructions to the notice of all concerned including their attached and subordinate offices.

Sd/-
(K.K.JHA)
Director (Establishment)"

7. Rejoinder affidavit has also been filed by the applicant, stating that the aforesaid OM dated 12.10.1998 is not applicable in the case of present applicant.

8. Heard learned counsel for the applicant and learned counsel for the respondents. Learned counsel for the applicant argued that once the applicant was recommended by the revised DPC held in 2016 for promotion as Deputy Director w.e.f. 01.08.2001, he would be entitled for the benefit of revised pay for the period he was in service. His second contention is that since the applicant was considered for promotion on the post of Director w.e.f. 01.07.2002 and as he could not join the post due to his superannuation, he could not be denied the benefit of notional promotion as well as fixation of notional pay and revised pension along with consequential and other retiral dues on the basis of the notional pay.

9. Refuting the contention of the learned counsel for the applicant, learned counsel for the respondents pointed out that in view of the specific provision contained in OM dated 12.10. 1998, the applicant would not be entitled to any benefit actual or notional of promotion since the applicant was already retired.

10. In view of the aforesaid submissions, the controversy rests on the interpretation of the aforesaid OM dated 12.10.1998. The Para 3

of the OM provides that there is a specific bar in the office memorandum of 10.04.1989 or any other related instructions of the DOPT for consideration of the retired employees while preparing year-wise list, who are within zone of consideration in the relevant years. However, as per legal opinion, it would not be in order if the eligible employees, who were within the zone of consideration for the relevant years, but not in service when the DPC was being held, but their juniors were promoted based on the recommendations of the review DPC and if the DPC would have been held in time the retired senior employee would have been promoted. Hence, such retired officers should also be included in the panel. But they would have no right for actual promotion. This has been interpreted by the respondents to imply that retired officers will not be entitled for any benefit. The OM dated 12.10.1998 does not state that the benefit of notional promotion and notional fixation of pay will not be given to retired officers included in the panel of review DPC, although they will not be entitled for actual promotion. The OM does not imply that the benefit of notional promotion and notional fixation of pay would not be allowed to such retired officers if they are included in the panels of the review DPC.

11. In this case, the applicant was considered for promotion as Deputy Director from 01.08.2001 and as Director from 01.07.2002 on the basis of the review DPC and on both the dates, the applicant was in service, as admittedly he retired from service on 30.04.2003. It is also not denied that the applicant was actually promoted to the post of Deputy Director w.e.f. 07.06. 2002 and was actually working on the post till his retirement. Then his promotion was postponed to 01.08.2001. Similarly the notional date for promotion as Director was decided to be 01.07.2002 as per order dated 16.06.2016 (Annexure A-6), but he could not be promoted to the post of

Director, because no DPC was held for promotion to the post of Director when the applicant was in service.

12. In view of the above, we are of the view that the impugned order denying benefits including notional promotion and fixation of pay to the applicant is not in accordance with the aforesaid OM dated 12.10.1998 of the DOPT and the specific directions contained in the promotional orders relating to the applicant are relevant for granting consequential benefits for such notional promotion. So far as promotion with regard to post of Superintending Surveyor w.e.f. 1989 is concerned, it will not have any material impact as per the applicant's counsel since he was already working in that post on ad-hoc basis since 1988. But so far as the promotion from the post of Deputy Director (JAG) against vacancies from year 2001-2015 is concerned, the applicant was actually promoted w.e.f. 07.06. 2002, when he was in service, but as per the review DPC held in 2016, his promotion as Deputy Director was postponed to 01.08.2001. Therefore, in our opinion, the applicant would be entitled to get the benefit of promotion as Deputy Director with effect from 01.08.2001 and he would be entitled to notional fixation of his salary as Deputy Director from 01.08.2001 to 07.06.2002 and the applicant would be entitled for arrear salary as Deputy Director from 07.06.2002 till his retirement.

13. So far as his promotion to the post of Director is concerned, the actual promotion could not be given because the applicant has already retired on 30.04.2003. But he was promoted on the basis of revised DPC from 01.07.2002 vide order dated 16.06.2016 (Annexure-A-6) as stated in Para 2 of the order dated 16.06.2016. In Para 3 of the said order it is clearly stated that the pay of the officers shall be fixed on notional basis from the date of notional promotion, but actual benefit will be given from the date of actual

assumption of the charge of the post. In this case, the applicant retired on 30.04.2003, for which benefit of actual promotion w.e.f. 01.07.2002 cannot be allowed to the applicant in view of the OM dated 12.10.1998. We are of the view that the applicant would be entitled to get the benefit of notional promotion from 01.07.2002 to the post of Director without any arrear pay. He is entitled to fixation of notional pay for the post of Director from 01.07.2002 till the date of his retirement. No benefit of the arrears of pay as Director would be permissible in this case. Based on fixation of his notional pay as Director w.e.f. 01.07.2002, the notional pay of the applicant as on 30.04.2003 should be worked out and based on such notional pay as on 30.04.2003, , his revised pension and other revised retiral dues as per the rules shall be payable to the applicant.

14. Accordingly, this OA is partly allowed in terms of para 12 and 13 above. The benefits to which the applicant is entitled as above along with consequential revised pension and other retiral benefits shall be allowed to the applicant and the differential amount shall be paid to the applicant within a period of three months from the date of receipt of a copy of this order. No order as to costs."

16. In view of the submissions of learned counsel for the applicant that his case is squarely covered by the facts and circumstances in O.A. No. 579/2017, it is noted that the applicant in that O.A. No. 579/2017 was regularly promoted to the post of Deputy Director w.e.f. 7.6.2002 when he was in service. Subsequently, his promotion as Deputy Director w.e.f. 1.8.2001 was considered by the Review DPC held when the applicant in O.A.No. 579/2017 was in service (vide paragraph 11 of the order dated 22.5.2018, extracted in paragraph 15 of the order). In pursuance to the Review DPC, his promotion as Deputy Director was preponed to 1.8.2001 while he was in service. Further, the order dated 17.5.2016 of the

applicant in O.A. No. 579/2017 promoting him to Deputy Director had the following stipulations in paragraph 2 of the order dated 17.5.2016 (vide para 2 of the order dated 22.5.2018 which is extracted in para 15 of this order):-

"2. The promotions will have only prospective effect even in case where vacancies relates to earlier years as per DOP&T's O.M. No. 22011/5/86-Estt (D) dated 10.4.1989, in respect of officers who have already not promoted to the post of DD/Director."

Hence, the order dated 17.5.2016 is to have prospective effect as per DOP&T O.M. dated 10.4.1989 for officers who have not been promoted already as DD/Director and as such, the said condition will not apply for the case of the applicant in O.A. No. 579/2017, who was already promoted as Deputy Director by the time the order dated 17.5.2016 was passed. In this background and circumstances, this Tribunal vide order dated 22.5.2018 directed to give the notional benefit of promotion to the applicant in the O.A. No. 579/2017 as Deputy Director w.e.f. 1.8.2001 since he was already working as Deputy Director on regular basis when the promotion order dated 17.5.2016 was issued in pursuance to the recommendations of the Review DPC. As regards his promotion as Director, it was noted that no DPC was held when the applicant in O.A. No. 579/2017 was in service. Further, it is noted that the promotion order dated 16.6.2016 (vide para 3 of order dated 22.5.2018), did not have any reference to the DOP&T O.M. dated 10.4.1989 stipulating that the promotion as per that order will have prospective effect. In other words, the order dated 16.6.2016 promoting the applicant in O.A. No. 579/2017 as Director (vide para 3 of the order dated 22.5.2018 extracted above), did not have prospective effect in terms of DOP&T O.M. dated 10.4.1989. Hence, this Tribunal vide order dated 22.5.2018, allowed the benefit of notional pay as Director to the applicant in O.A. No. 579/2017 retrospectively, but without benefit of any arrear pay as stated in

paragraph 13 of the aforesaid order dated 22.5.2018. To sum up, the promotion order dated 17.5.2016 as Deputy Director for the applicant in O.A. No. 579/2017 did not attract the para relating to prospective effect as he was already promoted as Deputy Director earlier and his promotion order dated 16.6.2016 as Director did not have the stipulation of prospective effect.

17. Now coming back to the instant O.A., we are of the considered view that the facts and circumstances of the applicant in the instant O.A. are different from the facts in the O.A. No. 579/2017 as discussed above. In the instant O.A., the applicant was not regularly promoted as Superintending Surveyor (in short SS) and his juniors were promoted as SS in 1995 superseding the applicant while he was in service (as stated in para 25 and 27 of the counter affidavit, which have not been specifically denied by the applicant in his pleadings). Further, the promotion of his juniors in 1995, which has also been referred in para 4.15 of the instant O.A., was not challenged by the applicant when he was in service. The same has also not been challenged in the instant O.A. The contention of the applicant that he was promoted as SS on adhoc basis from time to time will not have any effect in the face of the factual position that he was not found fit for regular promotion as SS by the DPC vis-à-vis his juniors and as a consequence, he was superseded by the respondents and there is nothing on record to show that such decision of the respondents to promote the juniors of the applicant on the basis of DPC in 1995 had been challenged by the applicant when he was in service. In other words, the applicant had accepted the fact that he was not found fit by the DPC held in 1995 for regular promotion as SS vis-à-vis his juniors. Hence, in this respect, the facts in O.A. No. 579/2017 are different from the facts in the instant O.A.

18. In the instant O.A. before us, it is noted that the promotion order dated 5.4.2016 (Annexure A-3 to the O.A.), by which the applicant has claimed the benefit of retrospective promotion, states as under:-

" "SURVEY OF INDIA

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No. C-2057/853-SS

Dated: 05.04. 2016

To

The Addl SGs: Eastern Zone/Northern Zone/Southern Zone/North Zone/Western Zone/Central Zone/Printing Zone/Specialised Zone/II&SM.

The Directors: Jammu & Kashmit GDC/Punjab, Haryana & Chandigarh GDC/Himachal Pradesh GDC/Rajasthan GDC/NGDC/DMC/C&RB/UK & West UP, GDC/MA&DC/Survey (Air) & Delhi GDC/WPG/IBD/MPGDC/ Maharashtra & Goa GDC/ Chhattisgarh GDC/ Jharkhand GDC/West Bengal & Sikkim GDC/EPG/Assam & Nagaland GDC/Meghalaya & Arunachal Pradesh GDC/TMMz GDC/ Orisha GDC/ Karnataka/ GDC/SPG/APGDC/GIS&RS/ Kerala & Lakshdweep GDC/TNP & ANI GDC.

The Estt. & Accounts Officer (A) SGO

**SUB: PROMOTION FROM OFFICER SURVEYOR TO THE
POST OF SUPERINTENDING SURVEYOR AGAISNT
THE VACANCIES FOR THE YEAR 1989 TO 2015 AS
PER RECOMMENDATIONS OF REVIEW/FRESH DPC.**

In implementation with the Hon'ble CAT, Bangalore Bench, Bangalore order dated 04.01.2006 passed in OA No. 737/2004 and subsequent Orders issued in this regard by the competent authorities, the review/fresh DPCs from the year 1989 to 2015 for promotions from Officer Surveyor to Superintending Surveyor have been convened and the following officers have been empanelled year-wise for promotion to the post of Superintending Surveyor. The following empanelled officers are promoted to the post of Superintending Surveyor in the pre-revised pay scale of Rs. 3000-4500, 10000-15200 and revised pay scale of Rs. 15600-39100+GP of Rs. 6600:-

Panel for the year 1989 (fresh):-

Panel for the year 1990 (Review)

Panel for the year 1991 (Review)

Panel for the year 1992 (Review)

Panel for the year 1993 (Review)

Sl.No.	Name of Officer
1	Sri Sukumar Das
2	.....
3	.....
4	Sri Tilak Raj
5	Sri T.N. Sharma
6	Sri P.G.P.Panikar
7	.....
8	.....
9	.....
10	.....
11	.....

2. The promotions will have only prospective effect even in case where vacancies relates to earlier years as per DoP &T's OM No. 22011/5/86-Estt. (D) dated 10.04.1989.

3. The pay of officers shall be fixed on promotion on notional basis from the new date of promotion but actual benefits will be given from the date of officer actually assume the charge of the post. In case of post-dated promotion, the period between the actual date of charge assumption and new date of promotion shall be treated as adhoc appointment and therefore, there shall be no recoveries from such officers as directed vide DST's letter No. SM/01/03/2013 dated 29.3.2016.

4. The direction in respect of officers already promoted to the post of Superintending Surveyor in the earlier DPC and excluded in review DPC will be issued separately.

5. The date of promotion in respect of the above mentioned officers may be the date of immediate senior/junior officer already promoted against that vacancy year.

6. The above officers may assume their charge on promotion and charge assumption certificate on Form 0.115 (ACC) in triplicate may please be forwarded to this office at an early date for further necessary action.

7. On promotion, the individual officers are required to exercise an option under FR 22(1)(a)(i) for fixation of his pay in the new scale within one month of reporting.

8. In case of any vigilance case disciplinary proceedings or pendency of punishment against any of the above mentioned officers is noticed at your end, the orders of promotions may not be implemented.

This is issued with the approval of the Surveyor General of India.

Authority: DST's letter No. SM/01/03/2013 dated March 29, 2016)

**(Amardeep Singh)
COL
Deputy Surveyor General**

19. From the stipulations in paragraph 2 in the order dated 5.4.2016, it is clear that the promotions to SS as per that order will have prospective effect for all employees named in the said order as per the DOP&T O.M. dated 10.4.1989, where as the similar stipulation in paragraph 2 of the order dated 17.5.2016 in case of the O.A. No. 579/2017 was not applicable to the applicant in O.A. No. 579/2017 as discussed in paragraph 16 above. These stipulations of prospective effect to promotion in the order dated 17.5.2016 were not applicable for the applicant in O.A.No. 579/2017, who was allowed the benefit of notional promotion retrospectively but the same logic will not be applicable for the applicant in view of the stipulations in paragraph 2 of the order dated 5.4.2016, which are applicable for all employees mentioned in the order dated 5.4.2016, as discussed above. Although the applicant was found fit in the Review DPC for promotion as Superintending Surveyor as per the order dated 5.4.2016, but the applicant is not entitled for benefit of such promotion retrospectively in view of the stipulations of prospective effect in the order dated 5.4.2016 (Annexure A-3). Hence, the benefit of the order dated 22.5.2018 in O.A. No. 579/2017 in another case, will not apply to the instant O.A. in view of the difference in facts in both the cases.

20. A similar issue of giving promotional benefits to the retired officers was 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** alongwith a bunch of other OAs involving similar issue, vide order dated 22.4.2010, reported in indiankanoon.org/doc/70182123. After discussing the case laws on the

subject, the Principal Bench of this Tribunal in the order dated 22.4.2010 held as under:-

"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.

.....

12. In the result, the OAs are allowed. The Respondents are directed to grant notional promotion to the Applicants from the date their immediate juniors were promoted in various Select Lists of the years 2003, 2004, 2005 and 2006. The promotion would be notional but it would count towards increments and consequently in recalculation of post-retirement dues. The Respondents would recalculate the dues and make these over to the Applicants as expeditiously as possible but not later than 15.06.2010. There will be no order as to costs."

In one case, the applicant who was a party in P.G. George (supra), claimed interest by filing another OA before Tribunal and the later OA was allowed partly, against which a Writ petition was filed and Hon'ble Delhi High Court in the case of **K.R. Sachdeva vs Union Of India in W.P.(C) 6710/2015** observed vide order dated 27.01.2017 as under:-

"4. The aforesaid OA was filed as a sequel and follow up to an earlier adjudication by the Tribunal vide order dated 22nd April, 2010, whereby OA No.1409/2009, P.G. George Vs. Union of India & Anr. and other OAs were disposed of directing that the applicants therein would be granted notional promotion from the date their immediate juniors were promoted by virtue of various Select List of the years 2003, 2004, 2005 and 2006. The term „notional“ was clarified to mean that back wages would not be paid, but increments would be taken into account while calculating the post retirement dues. Pertinently, interest was not directed to be paid.

5. Grant of retrospective promotion, that too after an employee is retired, would be unusual, but in the facts of the present case, the Tribunal had issued the said direction. The Union of India had challenged the aforesaid decision of the Tribunal dated 22nd April, 2010 in W.P. (C) No. 4864/2010, Union of India & Anr. Vs. P.G. George, which was dismissed vide order dated 23rd July, 2010."

From above, it is clear that the order dated 22.4.2010 of this Tribunal in the case of P.G. George (supra) has been upheld by Hon'ble Delhi High Court.

21. In view of the discussions above, the applicant in the instant O.A. is not entitled to the benefit of the order dated 5.4.2016 taking into account the stipulations in paragraph 2 of the order dated 5.4.2016, stating that the said promotion order will have prospective effect as per the DOP&T O.M. dated 10.4.1989. Further, the applicant was not regularly promoted as Superintending Surveyor while he was in service, unlike the applicant in O.A.No. 579/2017 in whose case the conditions of prospective effect of promotion as Deputy Director and Director were not applicable as discussed earlier. Hence, we do not find adequate justifications to interfere in the decision taken by the respondents in the matter.

22. Accordingly, the O.A. being devoid of merit, is liable to be dismissed. Hence, the O.A. is dismissed. No costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

(JUSTICE BHARAT BHUSHAN)
MEMBER (J)

HLS/-