

(Open Court on 22.05.2018)

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

This the 22nd day of May, 2018

**Hon'ble Mr. Justice Vishnu Chandra Gupta-JM
Hon'ble Mr. Gokul Chandra Pati, AM**

**Original Application No. 331/00579/2017
(U/s 19, Administrative Tribunals Act, 1985)**

Chaman Singh Chauhan S/o Late P.C. Chauhan retired as
Deputy Director, from the office of respondent No. 2, R/o
Raipur Road, Infront of DEAL, Dehra Dun, Uttarakhand.

..... Applicant

**By Adv: Shri A Srivastava
Shri 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, Dehra Dun.

..... Respondents

By Adv: Shri P K Rai

ORDER

**Delivered by Hon'ble Mr. Justice Vishnu Chandra Gupta,
Member (J)**

The present Original Application has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “(a) Quash the order dated 29th March 2017 passed by respondent No. 2, whereby the claims of the applicant for promotional benefits accrued due to promotion orders dated 17th May 2016 & 16th of June 2016 passed by the Respondent No. 2 has been rejected.*
- (b) Issue the directions commanding the respondents to revise his pay in the scale of Rs. 12,000/- _375_18,000/- of the applicant treating him promoted to the grade of JAG i.e. Deputy Director from the grade of Senior Time Scale, i.e. Superintending Surveyor w.e.f. 01.08.2001 instead of 07th of June 2002 as per order dated 17th May 2016 passed by the Respondent No. 2.*
- (c) Issue the directions commanding the respondents to revise his pay in higher pay scale of Rs. 14,300-400-18300 w.e.f. 2002 on grant of NFSG vide order dated 16th June 2016 passed by the Respondent No. 2.*
- (d) Issue the directions commanding the respondents to pay arrears of pay and other consequential benefits accrued due to revision of pay of the applicant as sought in Para (a) & (b) above with 18% interest thereon.*
- (e) Issue the directions commanding the respondents to revise the pension of the applicant based on revision of his pay due to promotion to higher grade as shown in order dated 17th May 2016 and 16th June 2016.*
- (f) Issue the directions commanding the respondents to pay arrears of pension and other consequential benefits i.e. gratuity, leave encashment etc. based on the above revision of pension with 18% interest thereon.*

(g) *Issue any Order which this Hon'ble Tribunal may deem fit and proper in the light of facts and circumstances of the present case.*

(h) *Award costs."*

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

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

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 AGAISNT 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:-

Sl 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	.....	.....	.....	.....	.....
.					
.

.					
14	Shri C S Chauhan (ST)	SGO, Dehra Dun	2001	01.08.2001	Retired
.
.
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 :-

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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 AGAISNT 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):-

Sl No.	Name of the Officer	Office	Vacancy against which recommended	Remarks
1	Shri G S Dhiman	UK & West UP GDC, D. Dun	2002	Retired
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”

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Email: sgo.soi@nde.vsnl.net.in

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.

08. 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 preponed 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 preponed 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.

(Gokul Chandra Pati)
Member-A

(Justice V.C. Gupta)
Member-J

Rkm/-

