

**Central Administrative Tribunal
Principal Bench**

OA No.291/2014

New Delhi, this the 11th day of May, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

B. S. Chahalia
Group 'A'
Aged 65 years,
S/o Shri Hari Ram,
R/o B-92, 2nd Floor,
Near Mata Mandir
Arjun Nagar,
Delhi 110 029.

.... Applicant.

(By Advocate : Shri Ashish Nischal)

Vs

1. Union of India
Through its Secretary
Ministry of Personnel,
Public Grievances & Pensions,
Department of Personnel & Training,
Lok Nayak Bhawan,
Khan Market, New Delhi.

2. Union of India
Through its Secretary
Ministry of Rural Development,
Krishi Bhawan,
New Delhi 110 0114.

.... Respondents.

(By Advocate : Shri Rajeev Kumar)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman :

The applicant was working as a member of the Central Secretariat Services (CSS). He retired on attaining the age of superannuation on 31.12.2008 while holding the post of Under Secretary.

2. During the period he was in service, he was never considered for promotion to the post of Deputy Secretary. It may be noticed that earlier the applicant was working as Under Secretary on ad hoc basis and he came to be regularized vide order dated 07.09.2007 (Annexure A-1) w.e.f.

01.07.2001 and assigned Serial No.4479 in the Select List. The Departmental Promotion Committee met on 21.01.2009 to consider the Under Secretaries for promotion to the post of Deputy Secretary. The applicant being within the zone of consideration was also considered by the DPC and found eligible. However, his promotion was deferred on account of his retirement as is evident from the Minutes of the Selection Committee held on 22.01.2009, Annexure R-I with the counter of the respondents. On the recommendations of the DPC, the respondents issued Office Memorandum dated 28.07.2009, and promoted as many as eleven officers of CSS to the selection grade of Deputy Secretary for the year 2007. The applicant's name did not figure in the said promotion list. Grievance of the applicant is that persons junior to him have been promoted to the grade of Deputy Secretary of CSS for the year 2007 ignoring his claim and entitlement, even though in the year 2007, he was also in service.

3. We have also noticed that while regularising the applicant as Under Secretary vide order dated 07.09.2007, he was granted benefit of such regularisation retrospectively w.e.f. 01.07.2001 as he was working on ad hoc basis.

4. From the perusal of the Office Memorandum dated 28.07.2009, it appears that the promotee officials at Sl. Nos.4, 5 & 6 of the annexure attached thereto, namely, N C. Bhanwal, B. L. Tikania and Sukar Singh have been shown against Serial Nos.4483, 4504, 4505 respectively of the select list for the year 2007. Against Sl. No.6, Shri Sukar Singh, representing Sl. No.4505 of the select list, it is noted as "Retd. (Pension & PW)". It is contended on behalf of the applicant that person junior to him in the grade of Under Secretary has been promoted with retrospective effect when he was in service, and denial of benefit of such promotion to

the applicant is totally illegal, unjustified and violative of Article 14 of the Constitution of India being arbitrary in nature. The applicant also relies upon judgment dated 22.04.2010 passed by a coordinate bench of this Tribunal in OA No.1409/2009 and connected matters titled as **P. G. George & Ors. vs. UOI and ors.**

5. We have perused the aforesaid judgment. The question for consideration before the Bench was noticed in para 2 of the aforesaid judgment which is reproduced hereunder:-

“2. The question before us for consideration is whether the retired employees of the Government would be eligible for notional promotion retrospectively, if the meeting of Departmental Promotion Committee, held after their retirement, considers them fit for promotion and persons juniors to them in service are promoted retrospectively from the dates, when such retired employees were in service.”

On consideration of the aforesaid question, the Tribunal held as under:-

“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.”

Following the aforesaid judgment, this Tribunal took a similar view in OA No.204/2010 **Jagdish Lal Jokhani vs. DOP&T & Another** decided on 10.05.2010, and directed that the applicant therein would be granted notional promotion from the date his immediate junior in the select list of the relevant year was promoted, if such promotion was from a date prior to the date of retirement of the applicant, and to revise his pension accordingly. In para 2 of the judgment, the Tribunal also observed that since the issue involved was regarding re-fixation of pay and pension, the applicant had a recurring cause of action, and the OA would not be barred by limitation.

6. We find that the aforesaid judgments of the Tribunal are squarely applicable to the present case and there appears no reason for us to hold any other view. Apart from that, we also notice that while granting promotions vide order dated 28.07.2009, one of the juniors, namely, Shri Sukar Singh (Sl. No.4505 of the select list) had already retired when the promotion was granted to him as per the endorsement made against his name showing him to be retired.

7. Shri Rajeev Kumar, learned counsel appearing for the respondents has, however, opposed the contention of the applicant primarily on two counts, i.e., (i) the OA is barred by limitation; and (ii) the applicant could not be considered for promotion as his ACRs were not available.

8. Insofar as the plea of limitation is concerned, it is contended that the order of promotion was passed on 28.07.2009, and the first representation filed by the applicant was dated 24.07.2013 and this Application has been filed before the Tribunal on 27.01.2014. It is accordingly argued that the controversy having been clinched by giving promotion, the applicant has approached this Tribunal after a long delay and much beyond the period of limitation, and for this reason the OA is liable to be dismissed.

9. As regards the other ground for opposing the Application that the applicant could not be accorded consideration for promotion as his ACRs were not available, the learned counsel referred to para 4 of the counter affidavit filed on behalf of the respondents. From the perusal of the said paragraph, we find that the only averment made therein is that the ACRs of the applicant for ten years from 1996-97 to 2005-2006 are not available. Non-availability of ACRs is not attributable to the applicant in any manner. The department having itself failed to discharge its obligation, the applicant cannot be denied the relief, particularly, that of

promotion despite his entitlement and eligibility, on account of non-availability of ACRs.

10. Apart from that, the issue of delay and laches in such circumstances is no more *res integra* having been settled by this Court in OA No.204/2010 (supra). Even Hon'ble Supreme Court in ***M. R. Gupta versus Union of India and Others*** (AIR-1996-SC-669) has taken a similar view. The relevant observations of the Hon'ble Supreme Court are noticed hereunder:-

ö6. The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao v. Mattapalli Raju, AIR 1950 Federal Court 1).ö

11. In view of the dictum of the aforesaid judgment and the view taken by this Tribunal in OA No.204/2010 (supra), the contention regarding limitation cannot be accepted.

12. For the above reasons, this Application is allowed. Respondents are directed to grant benefit of notional promotion to the applicant w.e.f. the date of promotion of his junior, i.e., 01.07.2007 when he became eligible for such promotion and his juniors namely, officials at Sl. No.4, 5 & 6 of the annexure to memorandum dated 28.07.2009, namely, N C. Bhanwal, B .L. Tikanian and Sukar Singh (Retd.) representing Serial Nos.4483, 4504, 4505 respectively of the select list for the year 2007 were so promoted.

13. The pay of the applicant shall be accordingly refixed from the date of such notional promotion, and he will be entitled to all consequential benefits as regards fixation of pay, i.e., he will be entitled to all

increments thereafter. His pensionary benefits shall also be re-determined accordingly. Needless to say that the applicant shall not be entitled to any arrears on account of re-fixation of his pay though he would be entitled to the financial benefit on re-fixation of his pension. The actual benefits may be released within a period of four months from the date of receipt of copy of this order.

(K. N. Shrivastava)
Member (A)

(Permod Kohli)
Chairman

/pj/