

**Central Administrative Tribunal
Principal Bench**

**OA No.475/2013
With
OA No.476/2013
And
OA No.477/2013**

New Delhi, this the 15th day of February, 2016

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

I - OA No.475/2013

Jai Bhagwan,
S/o Late Giani Ram,
Group 'B',
Age 63 years,
R/o RZE 188, Nihal Vihar,
New Delhi-110041.

...applicant

(By Advocate : Shri Ashish Nischal)

Versus

1. Union of India,
Through Secretary,
Ministry of Defence,
South Block,
New Delhi-110001.
2. Joint Secretary (Training),
And Chief Administrative Officer,
E-Block Hutmants, Dalhousie Road,
New Delhi-110001.

...respondents.

(By Advocate : Shri S.M. Arif)

II - OA No.476/2013

Jagmal Singh Mehra,
S/o Late Sishu Pal,
Group 'B',
Age 63 years,
R/o 244, Baba Faridpuri,
West Patel Nagar,
New Delhi-110008.

...applicant

(By Advocate : Shri Ashish Nischal)

Versus

1. Union of India,
Through Secretary,
Ministry of Defence,
South Block,
New Delhi-110001.
2. Joint Secretary (Training),
And Chief Administrative Officer,
E-Block Hutmants, Dalhousie Road,
New Delhi-110001.

...respondents.

(By Advocate : Shri S.M. Arif)

III - OA No.477/2013

Banarsi Dass,
S/o Late Het Ram,
Group 'B',
Age 62 years,
R/o H-281, Nanak Pura,
New Delhi-110021.

...applicant

(By Advocate : Shri Ashish Nischal)

Versus

1. Union of India,
Through Secretary,
Ministry of Defence,
South Block,

New Delhi-110001.
2. Joint Secretary (Training),
And Chief Administrative Officer,
E-Block Hutmants, Dalhousie Road,
New Delhi-110001.

...respondents.
(By Advocate : Shri S.M. Arif)

ORDER (ORAL)

Mr. A.K. Bhardwaj, Member (J) :-

The issue raised by the applicants in these three OAs is regarding their promotion to the grade of Deputy Director on the basis of the fact that once after their retirement, they were considered for such promotion and found fit, the benefit of promotion cannot be denied to them.

2. During the course of hearing, Shri Ashish Nischal, learned counsel for applicant emphasised that once the name of Shri Kamal Kant Prasad, retired Section Officer, was included in the list of officers approved for promotion to the grade of Deputy Director on regular basis, similar benefits should be given to the applicants herein also.

3. Shri S.M. Arif, learned counsel for respondents submitted that in terms of OM No.22011/4/98-Estt.(D) dated 12.10.1998, it would not be in order, if eligible officers, who are within the zone of

consideration for the relevant year but are not actually in service when the DPC is being held, are not considered while preparing yearwise zone of consideration 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. In view of such legal opinion on the issue, it was considered imperative to identify correct zone of consideration for relevant years by including the names of the retired officers in the panels. In the OM, it has specifically been provided that such retired officers would have no right for actual promotion. The OM read thus :-

“Procedure to be followed by the Departmental Promotion Committees in regard to retired employees.-

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 and Training for consideration of retired employees, while preparing yearwise 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 yearwise 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 and Training, O.M. No.22011/8/87-Estt.(D), dated 9.4.1996.”

4. Once indubitably before the consideration for promotion to the post of Deputy Director the applicants herein had retired from service, in order to identify the correct zone of consideration, their names were to be considered for promotion and included in the Select List in case of being found fit but they could not be given actual promotion. The inclusion of name of Shri Kamal Kant Prasad, junior of the applicants in the panel after his retirement may be in terms of the aforementioned OM only.

5. Learned counsel for applicant tried to emphasise that once the aforementioned junior was given promotion in terms of order dated 23.10.2012, the applicants should also be given such promotion. The plain reading of the promotion order reflect that the promotion was made with immediate effect i.e. from 23.10.2012. Promotion of no retired officer can be effective from a date after his retirement. The issue regarding retrospective promotion was addressed to by this Tribunal in OA Nos.2820/2012 with OA No.2822/2012 decided on 03.07.2014. Relevant part of the order read thus :-

“17. The arguments put forth by the respondents counsel mainly relate to non-

promotion of the applicants to the grade of Principal Director because of the aforesaid sequence of events, which was beyond the control of the respondents. Moreover, in the absence of any enabling rule and further because of the constraints placed under the provisions of FR-17 wherein an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post. The respondents have further drawn attention to the judgment in OA No.1409/2009 dated 22.04.2010 wherein the Tribunal had allowed grant of notional benefits on the date from which the applicants juniors in that OA were granted the benefit of promotion. We also observe that the sequence of events explained by the respondents were such that the approval of the competent level was accorded only on 22.05.2011 for promotion to the grade of Principal Director with the specific stipulation that it would be effective from the date of assumption of charge of the post. The applicants had by then retired and could not therefore assume charge of the post and were thus denied the benefit of promotion to the post of Principal Director as aforesaid in the light of the provisions of FR-17 (1).

18. The aspect relating to entitlement to consequential benefit on account of revision of seniority as directed by the Tribunal in order dated 20.11.1992 has also been considered. In para-25 of the said order the Tribunal had observed as under:-

“25. Though the present writ petition is only of academic interest because all the three petitioners have since retired after having been promoted to the grade of CSO soon after the filing of the Writ Petition, but since there have been interveners promotes as well as

direct recruits, so the Writ Petition/T.A. is disposed of in the following manner....

(emphasis provided)

It would appear from the aforesaid extract that the Tribunal had taken note that the petitioners had retired and, therefore, it was only of academic interest. In para-25 (g) the Tribunal had directed ...the petitioners, who have since retired, shall be entitled to any consequential benefits occasioned on account of the revision of the seniority list.. It is true that the Tribunal had directed consequential benefits to be given to the petitioners who retired, on account of revision of seniority. Such consequential benefits would in any case have to be granted within the purview of rules and instructions as existed, unless that very rule was to be specifically relaxed in favour of the petitioners by specific directions of the Tribunal. In the instant matter, it has been noted above that FR-17(1) would not permit any such grant of benefits as claimed by the applicants in these OAs. As long as the provisions of FR-17(1) are operative, consequential benefits have to be regulated within the purview of the rules. It is also noticed that no relaxation of any rule including FR-17 was directed by the Tribunal in the related order. The Honble Supreme Court in the matter of K.K. Vadera and others (supra) had held that promotion to the post should be from the date of grant of promotion to juniors. Similar was the view taken in the matter of Baij Nath Sharma (supra) wherein in similar circumstances, the Honble Court had regretted the delay and inaction resulting in deprivation of promotion to the deserving candidates without any fault on their part. The Honble Supreme Court had also further expressed the desire that such occurrences should not recur. In the instant matter also, although delay has taken

place but in terms of the judgment in Baij Nath Sharma (supra), that itself would not justify the benefit of promotion to the applicants and to that extent, we are unable to take a different view in the present case of the applicants. In the present OAs, the argument advanced by the learned counsel for applicants is that these cases need to be decided differently on the ground that regular promotion has not been made for decades together due to court cases and other administrative reasons. We, however, do not subscribe to their view in the light of the settled legal position as aforesaid.

19. In view of the above rules cited by the respondents and the aforesaid judgment of the Honble Supreme Court in K.K. Vadera and others (supra) and in Baij Nath Sharma (supra), we are unable to grant the relief sought in these OAs. In consequence, all the three OAs are dismissed."

6. In view of the aforementioned OM dated 12.10.1998, though the retired officers from Govt. Service may be considered for their promotion to identify correct zone of consideration but they cannot be given promotion. Accordingly, the OAs stand rejected. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

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