

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-1515/2014
MA-1590/2014**

Reserved on : 01.03.2016.

Pronounced on : 08.03.2016.

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Bhuvnesh Kumar Grover,
Working as UDC, NCDC, aged 45 years,
S/o late Sh. L.C. Grover,
R/o Flat No. 214, 2nd Floor,
Pocket-I, Phase-I,
Netaji Subash Apartments,
Sector-13, Dwarka,
New Delhi.

.... Applicant

(through Sh. M.K. Bhardwaj, Advocate)

Versus

1. Director,
National Centre for Disease Control,
22, Shyam Nath Marg,
Delhi-110054.
2. Ministry of Health and Family Welfare
through Directorate General of Health Services,
Nirman Bhawan, New Delhi.

..... Respondents

(through Sh. R.K. Sharma, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was appointed as Lower Division Clerk in the office of the respondents vide Office Order dated 23.09.1987. On 24.07.2002, he got promoted as Upper Division Clerk. During the period 04.04.2011 to 03.06.2011 he successfully completed the Cash & Accounts course from Institute of Secretariat Training and Management (ISTM). According to him, after completion of this course and having put in the requisite length of service of 10 years in the grade

of UDC, he had become eligible for promotion to the post of SAS Accountant. He gave a written representation on 22.01.2014 to the Director, NCDC requesting him to consider his candidature for promotion to the aforesaid post. On 06.02.2014, he sent a reminder but there was no response from the respondents. From various RTI applications made by him he came to know that the respondents were showing undue favour to one Sh. Virendra Singh and were waiting for him to complete the training course in ISTM before holding a DPC. The applicant, therefore, made another representation on 03.04.2014 in which he stated that it was unjustified on the part of administration to favour any one and requested the Director to intervene immediately and hold the DPC. However, no response to the same was received. Hence, he has approached this Tribunal seeking the following relief:-

- “(1) To pass an order directing the Respondent No. 1 to promote the applicant to the post of SAS Accountant since the applicant has fulfilled all the required eligibility conditions;
- (2) To pass an order against the Respondent No.1 and 2 to put a stay on the appointment to the post of SAS Accountant in NCDC, Delhi which became vacant on 01.01.2014 till the pendency of this matter;
- (3) To pass such other and further order(s) as this Hon'ble Tribunal deem fit and proper in the circumstances of the case.”

2. The contention of the applicant is that the Recruitment Rules to the post of SAS Accountant (page-38 of the paper-book) provide that UDCs with 10 years of service were eligible for promotion to that post provided they had successfully completed the Cash & Accounts course conducted by ISTM. He has further stated that he was the only eligible person for this post. However, the respondents were trying to favour one Sh. Virendra Singh by not holding DPC till he completes the ISTM course and becomes eligible for promotion. His contention is that the attitude of the respondents was totally unjustified. Further,

he has stated that the post of SAS Accountant has fallen vacant on 01.01.2014. DoP&T Instructions provide that eligibility of an officer for promotion in a particular vacancy year has to be seen from 1st January of that year. In this regard, he has relied on judgment of this very Bench of this Tribunal in **OA-2765/2012** (Smt. Anjana Saha Vs. DDA & Ors.) dated 23.11.2015, in para-8 of which the following has been observed:-

"8. We, however, find merit in the contention of the applicant that on the date of regular promotion on 11.06.2012, the respondent No.4 had not put in prescribed eligibility service of 05 years as Deputy Director and was, therefore, not eligible to be considered for promotion as Director. This is because DoP&T Instructions provide that eligibility of an officer for promotion in a particular vacancy year has to be seen on 1st January of that year. Thus, for vacancy year 2012-2013 the eligibility of the officer was to be seen as on 01.01.2012. Since the DPC in the instant case was held on 07.06.2012, the eligibility of respondent No. 4 for promotion should have been seen as on 01.01.2012. Since the respondent No. 4 admittedly was promoted as Deputy Director only on 03.05.2007, he would not have completed 05 years of regular service as on 01.01.2012. Thus, he was not eligible to be promoted on regular basis by the DPC. From the minutes of DPC made available by the respondents, we notice that DPC was wrongly informed by the office of the respondents that respondent No. 4 was eligible for promotion as per the amended Recruitment Rules. While the respondent No. 4 did have the required technical qualification, he did not have the prescribed length of service for promotion on that date. Hence, he could not have been promoted on regular basis by the DPC."

Thus, he has contended that since this post fell vacant on 01.01.2014, eligibility of persons for promotion to this post have to be seen from 01.01.2014 only and on that date he was the only eligible candidate in the department for promotion to this post, since Sh. Virendra Singh had not completed the ISTM course on that date. Therefore, the respondents be directed to hold the DPC and grant him promotion on this post.

3. In their reply the facts of the case have not been disputed by the respondents to the extent that the applicant has been working as UDC and has also completed the ISTM course. They have, however, stated that one Sh. Virendra Singh was senior to the applicant. Further, from the departmental

records shown to us during the course of arguments, it became evident that both Sh. Virendra Singh and the applicant were recommended by the department for Cash & Accounts course at ISTM together. However, ISTM then accepted only the applicant and rejected the candidature of Sh. Virendra Singh as his application was found to be incomplete. Subsequently, Sh. Virendra Singh was again nominated for this programme and is admittedly undergoing this training now.

4. We have heard both sides and have perused the record. It is an admitted position that one post of SAS Accountant is lying vacant in the department and the respondents have not held the DPC for the same. In judicial review it will be premature for us to give any finding regarding eligibility or otherwise of the applicant or Sh. Virendra Singh for promotion, since the respondents themselves have yet to take a view on the same. Therefore, without going into the merits of the case of the applicant for such promotion and without adjudicating on the eligibility of the applicant as well as Sh. Virendra Singh for such promotion, in our opinion, this O.A. can be disposed of with a direction to the respondents to hold the DPC for promotion to this post within a period of eight weeks from the date of receipt of a certified copy of this order, in accordance with law. Ordered accordingly. Needless to say that if the applicant is still aggrieved by the decision of the respondents, he shall be at liberty to approach this Tribunal again, if so advised. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/

