

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.2632/2014

New Delhi this the 28th day of February, 2017

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

Shri Anil Kumar Gupta (DGM)
Aged 54 years,
S/o Shri A.R. Gupta,
R/o D-1050, New Friends Colony,
New Delhi-110 025.

(By Advocate: Shri Som Dutt Sharma)

-Applicant

India Tourism Development
Corporation Ltd.
Scope Complex, Lodhi Road,
New Delhi-110 033
Through its CMD

(By Advocate: Shri V.K. Jha)

-Respondent

Versus

Hon'ble Mr. K.N. Shrivastava, Member (A):

The applicant through the medium of this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs:

- “i) Set aside the impugned letter/order dated 03.07.2014 and declare that the applicant is entitled to the post of General Manager (E&M);
- ii) issue direction to the respondent Corporation to promote the applicant as Deputy General Manager (E&M) w.e.f. 22.01.2008 as per the then applicable Recruitment and Promotion Rules.

- iii) issue further direction to the respondent Corporation to take into account the period w.e.f. 22.01.2008 during which the applicant officiated as Deputy General Manager (E&M) as qualifying period and hold DPC meeting to fill up the vacant post of General Manager (E&M) as was due in July, 2013 and promote the applicant to the post of General Manager w.e.f. July 2013.
- iv) Such other or further relief or reliefs, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice, may also be awarded in favour of the applicant".

2. The brief facts of this case are as under:

2.1 The applicant joined India Tourism Development Corporation Ltd. (ITDC)-respondent organization in the year 1985 as an Assistant Manager (E&M). In the year 1993, he was promoted to the post of Manager (E&M). On 17.03.2003, he was appointed to officiate as Senior Manager (E&M) against an existing vacancy, being the senior-most in the grade of Manager (E&M). He was regularized as Senior Manager (E&M) on 01.09.2006 following the Departmental Promotion Committee (DPC) procedures.

2.2 The applicant was appointed to officiate as Deputy General Manager (DGM) (E&M) vide Annexure A-2 order dated 22.01.2008, which reads as under:

"OFFICE ORDER"

Sh. A.K. Gupta, Sr. Manager (E&M) presently working in the scale of pay of Rs. 10000-15200 (CDA) is hereby appointed to officiate against the post of Dy. General Manager (E&M) in the pay scale of Rs.12000-18500 (CDA) with immediate effect. He is entitled to the payment of officiating pay at the rate of 10% of his basic pay w.e.f. 22nd Feb. 2008 i.e. after he has worked against the higher post for one month subject to the following conditions:-

- i) His basic pay plus officiating pay shall not exceed the pay which would have been admissible to him had he been promoted to the next higher post of Dy. General Manager (E&M) in the pay scale of Rs. 12000-16500 (CDA) with effect from 22nd Jan. 2008.
- ii) The officiating pay as sanctioned above shall cease to be admissible to him with effect from the date, the duties and responsibilities of higher post entrusted to him are withdrawn or from the date he ceases to hold the charge of the said post.
- iii) The grant of officiating pay as above shall not by itself confer on him any right or title for claiming regular appointment to the higher post.

This issues with the approval of the Competent Authority.”

2.3 On 22.03.2010 a charge-sheet was issued to him. He, however, got exonerated from the charges on 14.06.2011. Another charge-sheet was issued to him on 24.05.2010, which resulted in imposition of punishment of ‘censure’ on him vide order dated 20.04.2011. The Recruitment, Promotion and Seniority Rules (for short, RP&S Rules) of ITDC were amended on 04.10.2010. As per the amended rules in case an employee is already due for promotion from back date, he will be given promotion after expiry of one year from the date of punishment of censure.

2.4 The applicant was promoted as DGM on 11.10.2012 on regular basis.

2.5 The applicant, vide his representation dated 31.10.2013, represented that his seniority as DGM should be reckoned from the date of his officiating as DGM, i.e., 22.01.2008 and that he should

be promoted as GM (E&M) against the vacancy that arose in July, 2013.

2.6 As his representation was not being considered, the applicant approached this Tribunal in OA-2182/2014 but hastened to withdraw it on 15.07.2014.

2.7 As per the RP&S Rules, 40% posts of DGM (E&M) are to be filled up through the Direct Recruitment (DR) and the remaining 60% through Departmental Promotion (DP) from amongst the Senior Managers (E&M) who have put in minimum of three years of service in the grade of Senior Manager (E&M) following the principle of seniority and assessing their performance records. Likewise, the posts of General Manager (GM) (E&M) are to be filled up from amongst the DGM (E&M) who have put in minimum five years of service in the grade of DGM (E&M) following the principle of seniority and assessing their performance records. Since his request for regular promotion as DGM (E&M) and GM (E&M) from the dates mentioned in the previous paras has not been considered by the respondents, the applicant has filed the instant OA, praying for the reliefs indicated in para-1 supra.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. With the completion of the pleadings the case was taken up for hearing the arguments of the parties on 28.02.2017.

4. Shri Som Dutt Sharma, learned counsel for the applicant referring to the averments made in the OA and rejoinder, broadly submitted as under:

- i) The applicant became officiating Senior Manager (E&M) on 17.03.2003 and was confirmed in the grade on 01.09.2006. On the date of his confirmation, he had already put in 3-1/2 years of service in that grade and hence he became eligible for regular promotion to the grade of DGM (E&M).
- ii) The respondents have delayed holding of DPC meetings in time and consequently the applicant has suffered for no fault of his.
- iii) Where the officiating appointment is followed by confirmation, unless contrary rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning the length of continuous service for determining the place in the seniority list and for fulfilling the eligibility criteria. In this regard, reliance is placed on the following judgments:

- i) Judgment of the Hon'ble Supreme Court in **G.P. Doval v. Secretary, Govt. of UP**, [AIR 1984 SC 1527],

Held: Officiating service rendered prior to approval cannot be ignored unless contrary rule is shown,

- ii) Judgment of the Hon'ble Supreme Court in **D.K. Mitra v. Union of India**, [1985 (2) SLR 791];

Held: Officiating promotees should be treated as having been appointed to permanent vacancies for determining seniority. Entire officiating period is to be taken into account for determining seniority.

iii) Judgment of the Hon'ble Supreme Court in the case of **J.L. Gera and another v. The State of Haryana and others**, [1991 (1) SLR 1];

Held: Officiating appointment cannot be ignored for the purpose of seniority.

iv) Judgment of the Hon'ble Supreme Court in **S.L. Chandrakishore Singh vs. State of Manipur & Ors.**, [AIR 1999 SC 3616];

Held:-

Officiating appointment of appellant has to be treated as date of regular appointment. Seniority is directed to be computed by giving benefit of officiating service.

v) Judgment of the Hon'ble High Court of Delhi in **Raghuvir Singh vs. Union of India & Ors.** [W.P. (C) No. 2723/1987] decided on 29.08.2011;

Held:-

The policy whereby the ad hoc period was to be excluded was subsequently made and would not apply retrospectively to deny the

petitioner his right to have the ad hoc period counted for the purpose of seniority.....The petitioner is justified in contending that the period of officiating/ad hoc service in the post of EA should be counted for his eligibility for promotion to the post of Office Manager.

vi) Judgment of the Hon'ble High Court of Delhi in **C. Ruthnaswamy vs. Union of India & Anr.** [CW No.2995/97] decided on 26.09.1997;

Held:-

Period of officiating promotion followed by regular promotion without break will also be taken into account for the purpose of calculating minimum qualifying period.

4.1 Concluding his arguments, Shri Sharma submitted that if the officiating periods of the applicant in the grades of Senior Manager and DGM are taken into consideration, he becomes eligible for the grant of the reliefs claimed by him in the OA.

5. Per contra, learned counsel for the respondents, referring to the averments made in the reply, submitted as under:

(i) Clause-III (e) dealing with selection for promotion, stipulates that although amongst those who meet the prescribed bench-mark, their inter-se seniority in the feeder grade shall remain intact, eligibility for promotion will be subject to fulfilment of all the

conditions laid down in the ITDC Recruitment, Promotion & Seniority Rules including the conditions that **one should be the holder of the relevant feeder post on regular basis and that he should have rendered the prescribed eligibility services in the feeder post.** (Emphasis supplied)

- ii) For an officer to be eligible for promotion to the post of DGM, he must have put in minimum 03 years of regular service as Senior Manager.
- iii) The applicant was regularized to the post of Senior Manager on 01.09.2006 and hence his eligibility will be counted for further promotion from this date only. His officiating period as Senior Manager from 17.03.2003 to 31.08.2006 cannot be considered for working out residency period of 03 years to make him eligible for promotion to the post of DGM. The eligibility criteria clearly stipulate that the feeder post for the DGM is Senior Manager and only those officers would be eligible for consideration for promotion to the post of DGM who have rendered minimum 03 years of regular service in the feeder post.
- iv) Annexure A-2 order dated 22.01.2008 clearly states that applicant has been granted only 10% of the basic pay of the post of DGM as officiating pay. He has not been placed in the scale of DGM during the period when he was officiating in that post.

v) The applicant was promoted as regular DGM only in October, 2012 and thus he could not have become eligible for promotion to the post of GM in July, 2013 as he would not have completed 05 years of residency period. The applicant has chosen to file the instant OA only after he was regularized as DGM in October, 2012.

vi) The claim of the applicant for the post of GM on the basis of deemed promotion, first of Senior Manager to DGM and thereafter from DGM to GM is fallacious. The applicant was not eligible to become DGM on 22.01.2008, as claimed by him because he had not completed three years of regular service as Senior Manager. Likewise, he was not eligible to become GM in July, 2013 as he had not completed five years of regular residency period from the date of his promotion in October, 2012.

vii) The judgment of the Hon'ble Delhi High Court in **C. Ruthnaswamy** (supra) is not at all applicable to the instant case for the reason that the petitioner therein Mr. C. Ruthnaswamy was actually placed in the pay scale of GM when he was appointed to officiate as GM on 10.09.1992 by the ITDC whereas the applicant was getting only charge allowance @ 10% of the basic pay of the post of DGM when he was appointed to officiate in that post.

5.1 For the above reasons, the learned counsel for the respondents pleaded for the dismissal of the OA.

6. We have given our careful consideration to the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. Admittedly, in terms of RP&S Rules of ITDC, an officer becomes eligible for promotion to the post of DGM on regular basis only on completion of three years of residency period in the feeder grade of Senior Manager on regular basis. Likewise, the officer becomes eligible for regular promotion to the grade of GM on regular basis only after completion of five years of residency period in the feeder grade of DGM on regular basis. The applicant has officiated as Senior Manager from 17.03.2003 and was appointed to the grade on regular basis only on 01.09.2006. Again he officiated as DGM from 22.01.2008 and promoted to the grade of DGM on regular basis only on 11.10.2012 after he had rendered three years of regular service as Senior Manager. During the period when he officiated as Senior Manager and later as DGM, he was not placed in the pay scales of these posts. It is evident from Annexure A-2 order dated 22.01.2008 that the applicant was granted charge allowance @ 10% of the basic pay of DGM for the officiating period. Obviously, during the period of officiation as DGM he continued to draw the pay of Senior Manager.

7. The applicant has relied on several judgments mentioned in para-4 supra. The underline principle in all the judgements is that the officiating service rendered prior to appointment on regular

basis cannot be ignored. There is a fundamental difference between 'officiating' and 'In-charge'. In all the judgments cited by the applicant, the petitioners therein claiming seniority on the basis of officiation against the post, were actually given the pay scale of that post in the officiating period. To elaborate this point, we would like to analyse the judgment of the Hon'ble High Court of Delhi in **C. Ruthnaswamy** (supra) in which the judgments of Hon'ble Apex Court cited by the applicant have also been considered. The petitioner therein C. Ruthnaswamy had completed five years regular service as DGM in ITDC on 01.12.1989 and thus had become eligible to the post of GM. He, however, was appointed as GM on officiating basis on 10.09.1992. He continued to officiate as GM against the vacant post without interruption. Ultimately, in February, 1996, ITDC promoted him on regular basis against the very post of GM carrying the pay scale of Rs.4500-5700 (CDA). On 22.11.1996, ITDC issued a circular calling applications for the post of Vice President. The applicant applied for the post on 09.12.1996. He was not called for the interview on the ground that his tenure as officiating GM would not be considered for eligibility and thus he had not completed the requisite residency period in the feeder grade. The residency period prescribed was of five years. The Hon'ble High Court, deciding the Petition in favour of the petitioner therein, Shri C. Ruthnaswamy, observed as under:

"The eligibility criteria has already been quoted above. Keeping this criteria in mind we have to see whether the service rendered

by the petitioner as General Manager in officiating capacity in the pay scale of Rs.4500-5700 (CDA) w.e.f. 10th September, 1992 till he was regularly appointed against the same post 27th February, 1996 can be counted to make him eligible for being considered for the post of Vice President. The answer will be in the positive. For arriving at this answer facts are not in dispute. The petitioner became eligible for the post of General Manager as far back assist December, 1989 i.e. after he completed five years service as Deputy General Manager. Being eligible he was appointed on officiating basis to work as General Manager. It is also an admitted fact that the post of General Manager was a permanent post lying vacant. Petitioner being eligible was appointed to the same on officiating basis. It is also an admitted fact that he officiated continuously as General Manager in the pay scale of Rs.4500-5700 (CDA) till he was regularly appointed on that post on 27th February, 1996. A similar question came up for consideration before the Supreme Court in the case of **D.K. Mitra & Ors. Vs. Union of India & Ors.**, 1985 (2) SLR 791 when it observed that "confirmation cannot legitimately constitute the basic norm for drawing up seniority. Seniority should be related to the length of continuous service reckoned from the date of promotion to the post. However, such service should not include any period served in a fortuitous, stop-gap or on ad-hoc basis. Similarly in the case of **G.P. Doval & Ors. Vs. Chief Secretary, Govt. of U.P. and Ors.**, AIR 1984 SC 1527 the Apex Court observed that where the officiating appointment is followed by confirmation unless a contrary rule is shown, service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in the seniority list. To the same effect are the observations of Punjab & Haryana High Court in the case of **J.L. Ghera & anr. Vs. State of Haryana & Ors.**, 1991 (1) SLR page 1. Since in this case the petitioner was allowed to officiate continuously for a period of almost four years without any break and ultimately regularized against the same very post, it clearly indicates that it was not a stop-gap arrangement nor it was a fortuitous appointment. Therefore, the period spent by the petitioner on officiating basis as General Manager in the pay scale of Rs.4500-5700 (CDA) w.e.f. 10th September, 1992 cannot be ignored."

8. From the judgment of the Hon'ble High Court of Delhi in **C. Ruthnaswamy** (supra), it is quite clear that the officiating period was considered for reckoning the residency period only on the ground that the petitioner was actually placed in the pay scale of the post of GM during the period of officiation. In the present case, as is evident from Annexure A-2 order, the applicant was only given

a charge allowance @ 10% of the basic pay of the DGM when he was ordered to hold that post on officiating basis. Hence, we are of the view that the judgements cited by the applicant in support of his claim are of no avail to him. We would also like to reiterate that in terms of RP&S Rules, 2010 of ITDC, an officer becomes eligible for promotion as DGM on regular basis only after putting in 03 years of regular service as Senior Manager and he further becomes eligible for promotion as GM on regular basis only after putting in minimum 05 years of regular service as DGM. The applicant was appointed as Senior Manager on regular basis on 01.09.2006 and was promoted as DGM on regular basis on 22.01.2008, i.e., after completion of minimum residency period of 03 years and as such he can aspire for promotion as GM only after completion of the residency period of 05 years. Thus, we hold that the applicant was not eligible for promotion as DGM on 22.01.2008 and as GM in July, 2013, as claimed by him, as he had not completed the prescribed residency period for such promotions.

9. In the conspectus of the discussions in the foregoing paras, we do not find any merit in the OA. The OA is accordingly dismissed.

10. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’