

**Central Administrative Tribunal
Principal Bench**

OA No.1837/2013

New Delhi, this the 9th day of September, 2016

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

Manjit Singh [Foreman Instructor (Electronics)]
S/o Onkar Singh,
R/o I-204, 2nd Floor,
Karam Pura, New Delhi-110015
Presently posted at:
Kasturba Polytechnic for Women,
Pitam Pura,
Delhi-110088.

... Applicant

(By Advocate : Mr. Saurabh Ahuja)

Versus

1. Government of NCT of Delhi
through its Chief Secretary,
Delhi Secretariat,
Players Building, IP Estate,
New Delhi-110002.
2. Principal Secretary/Secretary
(Technical Education),
Department of Training &
Technical Education,
Government of NCT of Delhi,
Muni Maya Ram Marg,
Pitam Pura, Delhi-110088.
3. UPSC through its
Secretary, Dholpur House
Shahjahan Road, New Delhi.
4. DOPT through its Secretary
Union of India,
North Block, New Delhi.

5. Principal,
Kasturba Polytechnic for women,
Pitam Pura, Delhi-110088. ... Respondents

(By Advocate : Mr. Prashant Shivarajan for Mr. Ankur Chhibber; Mr. Ravinder Agarwal)

O R D E R

Justice Permod Kohli, Chairman :

This OA has been filed seeking retrospective promotion and modification of the order dated 09.05.2008 to the extent it grants promotion to the applicant to the post of Foreman Instructor (Electronics) in the pay scale of Rs.8000-275-13500 from the date of the order, with the further prayer to ante date the promotion from the year 2004.

2. Brief facts leading to the filing of the present OA are that the applicant was appointed as a Laboratory Technician (Electronics) on 14.05.1990 in the office of the respondents. On completion of two years probation he was confirmed on the post w.e.f. 14.05.1992 vide order dated 15.04.2002. At the relevant time, under the recruitment rules dated 02.05.1991, Lab Technician (Electronics) was not a feeder post for promotion to the post of Foreman Instructor. It is stated that various representations were made by the applicant for inclusion of Lab Technician (Electronics) as a feeder post for promotion to the post of Foreman Instructor. Recruitment rules were amended vide notification dated 13.01.2004 and the post of Lab Technician

(Electronics) was brought into the feeder category for promotion to the post of Foreman Instructor. The applicant claims to have acquired eligibility for promotion to the post of Foreman Instructor on completion of 11 years of regular service as Lab Technician, as per the eligibility criterion laid down in the recruitment rules. It is the case of the applicant that three posts of Foreman Instructor were lying vacant during the years 2004 to 2007. Every year, eligibility list was prepared which *inter alia* included the name of the applicant as well. However, no DPC was held and thus the case of the applicant was not considered. The further case of the applicant is that the DPC was delayed in contravention of the DOP&T office memoranda dated 08.09.1998, 13.10.1998 and 14.12.2000, and that the sole purpose for delaying the holding of the DPC was to grant benefit to Mr. Tarun Kumar and Mr. S. B. Tyagi, who were not eligible. A DPC was conducted for promotion to the post of Foreman Instructor in the year 2008, and on the recommendations of the DPC the impugned order dated 09.05.2008 has been issued granting promotion to the applicant along with the aforesaid Tarun Kumar and S. B. Tyagi, besides some others. The applicant's name appears at serial No.4 whereas the names of Tarun Kumar and S. B. Tyagi appear at serial Nos.5 and 6 respectively of the promotion order. The applicant made representations dated 21.06.2011 and 18.12.2012 seeking ante dated promotion w.e.f. 13.01.2004, the date when he acquired eligibility.

The prayer made in the present OA is thus seeking modification of the order dated 09.05.2008 so as to grant promotion to the applicant w.e.f. 2004. The further prayer is for regular promotion w.e.f. 13.01.2004.

3. The claim of the applicant is seriously contested, firstly on the ground of limitation, and secondly that there were three persons senior to the applicant who have also been promoted vide the impugned order dated 09.05.2008, and even if the aforesaid three vacancies are to be taken into consideration, the applicant would not be entitled for promotion. The respondents have also stated that the advice of UPSC and DOP&T was also obtained for retrospective promotion w.e.f. 13.01.2004. UPSC in its reply dated 06.12.2012 advised that the promotion has to be prospective in terms of para 6.4.4 of the DOP&T OM dated 10.04.1989. To same effect is the opinion of the DOP&T.

4. We have heard learned counsel appearing for the parties.

5. The controversy is clearly covered by a catena of judgments of the Apex Court in *Union of India & others v K. K. Vadrra & others* [1989 Supp (2) SCC 625]; *Nirmal Chandra Sinha v Union of India & others* [(2008) 14 SCC 29]; *State of Uttaranchal & another v Dinesh Kumar Sharma* [(2007) 1 SCC 683]; and *Sk. Abdul Rashid & others v State of Jammu & Kashmir* [(2008) 1 SCC 732]. A

similar view has been expressed by the High Court of Delhi in *Union of India & others v Vijender Singh & others* [(176) 2011 DLT 247 (DB)]. Another Bench of this Tribunal in its judgment dated 08.09.2016 in OA No.3811/2012 – *J. D. Vashisht & others v Union of India & others* considered the entire controversy. It has been ruled that retrospective promotion is impermissible unless the rules so provide. However, retrospective promotion may be granted where a junior has been promoted or a person was holding clearly available promotional post on *ad hoc* basis on being selected by some process of selection. The case of the applicant does not fall in any of the exceptional categories.

6. Apart from the above legal position, the applicant is otherwise also not entitled to retrospective promotion on facts. Admittedly, there were three available vacancies during the years 2004 to 2007. Three available candidates were above the applicant. They have been promoted along with the applicant vide the impugned order dated 09.05.2008. This fact is not disputed. Even if retrospective promotion is granted, those senior persons would get the benefit and not the applicant. Granting relief to the applicant would definitely disturb the seniority of the three senior persons in the promotion order who are not parties before us.

7. For the above reasons this OA is dismissed being without merit.

(V. N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

/as/