

Central Administrative Tribunal Principal Bench, New Delhi

M.A. No.2178/2016 in O.A. No.1943/2013

Order reserved on 21st December 2016

Order pronounced on 9th February 2017

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

K.N. Tewari
s/o late M R Tewari
group B (Retired)
aged 60 years
r/o C-6A/74B, Janak Puri
New Delhi

..Applicant

(Mr. Ashish Nischal, Advocate)

Versus

National Productivity Council
Through its Chairman
Udyog Bhawan, New Delhi – 08

..Respondent

(Mr. Gaurav M Liberhan, Advocate)

O R D E R

Mr. K.N. Shrivastava:

The applicant has filed the instant M.A. under Section 27 of the Administrative Tribunals Act, 1985 praying for the following relief:-

“(i) the respondent be directed to implement the Order dated 21.08.2014 in Original Application No.1943/2013.

2. The brief facts of the case are as under:-

2.1 The applicant joined the National Productivity Council (NPC) on 01.11.1980 as an Accounts Clerk. After securing regular promotions, he became Technical Assistant (Accounts) in the year 1989. As he was not

getting promotion to the next grade of Junior Accounts Officer, he approached this Tribunal in O.A. No.1943/2013 praying therein for the following relief:-

“ii. Direct the respondent-council to promote the applicant to the next higher grade of Accounts Officer w.e.f. 01.06.2011 with all consequential benefits.”

2.2 O.A. No.1943/2013 came to be disposed of by the Tribunal vide order dated 21.08.2014, which reads as under:-

“Shri D.D. Lahiri, Legal Officer, Departmental Representative of the respondent, who is present in the court, has submitted that since the financial crunch of the Council is over, the applicant has already been given the benefit of financial upgradation. He further submitted that the respondent is in the process of considering the case of applicant for promotion to the post of Accounts Officer and the action in this regard would be finalized within a period of three months.

2. In view of the above statement made by Shri Lahiri, Legal Officer, Departmental Representative of the respondent, the instant OA stands disposed of. No costs.”

The applicant, through the medium of this M.A., is primarily seeking execution of the *ibid* order dated 21.08.2014.

3 Pursuant to the notice issued, the respondent filed its reply. Applicant thereafter filed his rejoinder. With the completion of pleadings, the M.A. was taken up for hearing the arguments of the parties on 21.12.2016. Mr. Ashish Nischal, learned counsel for applicant and Mr. Gaurav M. Liberhan, learned counsel for respondent argued the case.

4. Learned counsel for applicant submitted that the respondent has failed to implement the order of this Tribunal dated 21.08.2014 and that the said order was passed on the assurance of the Departmental

Representative of the respondent before the Tribunal that the case of the applicant for promotion to the post of Accounts Officer was in the process of consideration and a decision in that regard would be taken within a period of three months. As the respondent has failed in its obligation, it may be directed to implement the order dated 21.08.2014 and the prayer made in the M.A. may be allowed.

5. *Per contra*, learned counsel for respondent submitted that the applicant has not approached this Tribunal with clean hands. He argued that the *ibid* order of the Tribunal was passed on 21.08.2014 and the applicant was due to retire from service on 31.08.2014. The factum of his retirement within 10 days from the date of the order was not revealed by the applicant before the Tribunal. Undoubtedly, the NPC had been facing financial crunch, as a result of which normal service benefits, including promotions, were not being accorded to the NPC officials. However, after the improvement of NPC's financials, exercise was undertaken for promoting the eligible officers to the next grades. In fact, a Departmental Promotion Committee (DPC) was constituted on 19.11.2014 and certain staff members were promoted on 21.11.2014 on the recommendations of the DPC. Since the applicant had already retired from service of NPC on 31.08.2014 itself, his case could not have been considered, Mr. Liberhan argued.

6. The learned counsel vehemently argued that there is no legal provision for granting retrospective promotion. In this connection, he placed reliance on the following judgments:-

Judgment of Hon'ble Supreme Court

- i) **Sanjay Kumar Sinha & others v. State of Bihar & others**,
AIR 2004 SC 3460.
- ii) **State of Uttaranchal & others v. Dinesh Kumar Sharma**,
2006 (13) SCALE 246.
- iii) **Nirmal Chandra Sinha v. Union of India & others**, (2008)
14 SCC 29

Judgment of Hon'ble High Court of Delhi

- iv) **Union of India & others v. Vijender Singh & others etc.** (W.P.
(C) Nos.1188-90/2005) decided on 01.03.2011.

Judgment of Tribunal

- v) **P.P. Verma v. Govt. of NCT of Delhi & others** (O.A.
No.383/2011) decided on 18.01.2012.

Concluding his arguments, the learned counsel prayed for dismissal of the M.A.

7. Replying to the arguments of learned counsel for respondent, Mr. Ashish Nischal, learned counsel for applicant submitted that the order of the Tribunal is dated 21.08.2014 whereas the applicant was to superannuate on 31.08.2014 and that the Tribunal passed the *ibid* order only on the submission made by the Departmental Representative that applicant's case for promotion would be considered. Hence, it is not a case of retrospective promotion.

8. We have given our thoughtful consideration to the arguments put-forth by learned counsel for the parties and perused the pleadings.

9. From a plain reading of the Tribunal's order dated 21.08.2014, one gets a clear impression that the Tribunal was not in know-of the fact that the applicant was retiring within ten days. We have also perused the paper book of the O.A. No.1943/2013, which also indicates that the applicant had never brought to the notice of the Tribunal as to his eminent retirement. Hence we are quite convinced that the Tribunal did not know that the applicant was retiring within ten days when the order dated 21.08.2014 was passed. Be that as it may, the fact remains that the applicant superannuated from service of the respondent on 31.08.2014. If the request made in the M.A. is to be considered, then it would amount to grant of promotion to him from a retrospective date. It is settled position of law that retrospective promotion cannot be granted.

10. In the conspectus of the discussions in the foregoing paragraphs, we do not find any merit in the M.A. It is accordingly dismissed. Before parting, we would like to express our displeasure to the applicant for not informing the Tribunal that he was due to retire within ten days when the *ibid* oral order dated 21.08.2014 was passed.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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