

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3524 OF 2011

New Delhi, this the 23rd day of December, 2016

CORAM:

**HON'BLE SHRI P.K.BASU, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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1. Surender Singh Yadav,
S/o Sh.Laxman Singh,
r/o H.No.68, Nimri Colony Old,
Ashok Vihar, Phase-IV, New Delhi-52
 2. Rajeev Kumar Sinha,
S/o Sh.Dindayal Prasad,
r/o H.No.A-2, Fire Station,
Moti Nagar, New Delhi-15
 3. Rajesh Shukla,
S/o Sh.Brij Kisore Shukla,
R/o A-5, Headquarters,
DFS, Cannaught Place, New Delhi-1
 4. Prakash Veer Rathi,
S/o Sh.Pyage Lal,
R/o H.No.07, Fire Station,
Paschim Vihar, New Delhi-63
 5. Bhupender Prakash,
S/o late Sh.Lakhandar Prakash,
R/o H.No.A-1, Fire Station,
Hari Nagar, Near Clock Tower, New Delhi
 6. Sarabjeet Singh,
S/o late Sh.Ramasahan Singh,
r/o C-1, Sector 05, Rohini,
Fire Station, New Delhi
-Applicants

(By Advocate: Mr.Ajesh Luthra)

Vrs.

1. Govt. of NCT of Delhi,
Through the Chief Secretary,
5th Floor, Delhi Sachivalaya,
New Delhi.
 2. The Principal Secretary,
GNCT of Delhi,
5th Level, 'C' Wing,
Delhi Sachivalaya, New Delhi.
 3. The Director,
Delhi Fire Service,
GNCT of Delhi,
Connaught Place,
New Delhi
- Respondents

(By Advocate: Mr.Amit Anand)

ORDER

Per Raj Vir Sharma, Member(J):

The applicants have filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- “(a) direct the respondents to immediately take all necessary steps to grant ante-date promotion to the applicants to the post of Station Officers and modify their date of promotion accordingly and grant all consequential benefits thereof including monetary and seniority benefits.
- (b) award costs of the proceedings and
- (c) pass any other order/direction which this Hon’ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.”

2. Resisting the applicants' claim, the respondents have filed a counter reply. The applicants have also filed a rejoinder reply thereto.

3. We have perused the records, and have heard Mr.Ajesh Luthra, the learned counsel appearing for the applicants, and Mr.Amit Anand, the learned counsel appearing for the respondents.

4. The brief facts of the case, which are not in dispute, are as follows:

4.1 The applicants, six in number, joined the respondent-Department as Sub Officers. They were assigned seniority from 5.7.2005, 5.7.2005, 15.6.2004, 15.6.2004, 5.7.2005 and 15.6.2004 respectively.

4.2 The Departmental Promotion Committee (DPC) met on 5.1.2011 to consider the cases of officers for promotion against the vacancy year 2010-11. On the basis of the recommendation of the DPC, applicant nos. 3, 4 and 6, along with five others, were promoted to the grade of Station Officers with immediate effect, vide order dated 17.1.2011.

4.3 The DPC again met on 12.5.2011 to consider the cases of officers for promotion against the vacancy year 2011-12. On the basis of the recommendation of the DPC, applicant

nos.1, 2 and 5, along with three others, were promoted to the grade of Station Officer with immediate effect, vide order dated 24.5.2011.

5. In the above backdrop, it has been contended by the applicants that the DPC meetings had not been convened from the year 2007 in clear violation of the instructions issued by the Government of India. The DPC, which met on 5.1.2011, did not recommend applicant nos. 1, 2 and 5, though 16 vacancies remained unfilled, and they fulfilled the eligibility qualifications for promotion to the grade of Station Officers in accordance with the recruitment rules. The DPC, or for that matter the respondent-Department, has failed to adhere to the Model Calendar suggested in the DoP&T's O.Ms. dated 8.9.1998 and 13.10.1998, and to draw year-wise panel against each vacancy year. Therefore, the respondent-Department should be directed to antedate their promotion to the post of Station Officers, modify the dates of their promotion accordingly, and grant them all consequential benefits.

5.1 In support of their case, the applicants relied on the decisions in *P.N.Premachandran Vs. State of Kerala and others*, (2004)1 SCC 245; *Dr.Sahadeva Singh Vs. UOI and ors*, W.P. (C) No. 5549/2007, decided on 28.2.2012; and *Y.S.Chaudhary & others Vs. Union of India and others*, OA

No.280 of 2008 and O.A.No.2661 of 2010, decided on 7.3.2012.

5.1.1 In *P.N.Premachandran Vs. State of Kerala and others* (supra), the brief facts of the case are that in the Department of Agriculture (Soil Conservation Unit) in the State of Kerala, the posts of Assistant Director (Soil Survey) were to be filled by promotion from the posts of Soil Survey Assistant. The Govt. of Kerala in exercise of power under Rule 17-A of the Kerala State and Subordinate Services Rules, 1958, also decided to reserve one post to be filled up from amongst the members of SCs and STs through direct recruitment. Since there was an administrative delay in convening the DPC the respondent departmental candidates were promoted as Assistant Directors on a temporary basis under Rule 31(a)(i) of the Rules from the years 1964 to 1980 pending convening of DPC. As no qualified person was available for direct recruitment under Rule 17-A, the qualification therefor was relaxed in 1980. The appellant was thereafter appointed directly as Assistant Director on or about 19.8.1982. Subsequently, DPC was convened on 5.7.1984 and it, upon considering the respective cases of the private respondents, prepared a select list which was approved by the State and was published in the Kerala Gazette dated 20.11.1984. The private respondents, therefore, were

promoted to the post of Assistant Director (Soil Survey)/Senior Chemist with retrospective effect from the date from which they were holding the said post, i.e., from 1964 to 1980. The appellant filed a writ petition before the High Court challenging the promotion of the respondents with effect from the date of their temporary promotion but the same was dismissed. Dismissing the appeal, the Hon'ble Supreme Court held that there was no irregularity in the matter of grant of promotion to the respondents with effect from 1964 onwards. In view of the administrative lapse, the DPC did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on their part. In ordinary course, they were entitled to be promoted to the post of Assistant Directors, in the event a DPC had been constituted in due time. Therefore, the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time, although on a temporary basis, but were qualified at the time when they were so promoted and found to be eligible by the DPC at a later date, should be promoted with retrospective effect. Such exercise of power on the part of the State is not unknown in service jurisprudence. Even assuming that such a power did not exist in Rule 31 of the Rules, the same can be

traced to Rule 39 of the Rules. Rule 39 of the Rules is a residuary provision conferring overriding power and thus in terms thereof grant of promotion/appointment with retrospective effect is permissible. The appellant was appointed in the year 1984 and was not even qualified to hold the post in 1964, thus cannot be permitted to question the promotion of the private respondents.

5.1.2 In *Dr.Sahadeva Singh Vs. UOI and ors (supra)*, it has been held by the Hon'ble High Court of Delhi that if the Department is able to justify the delay in convening the DPC as per the schedule laid down in the Model Calendar, an employee would not be entitled to seek a direction to consider him for promotion in terms of the time schedule stipulated in the Model Calendar. But, if there is no explanation given by the Department for not convening the DPC within the time stipulated in the Model Calendar or the explanation given by the Department is not found acceptable, there would be no justification for making the employees suffer merely on account of inaction or delay on the part of the Department for not convening the DPC and postpone his promotion till the DPC actually met. It is true that no employee has vested right for promotion, but, the respondents cannot act arbitrarily and without any reasonable excuse defer the meeting of DPC and

thereby deprive the employee of his legitimate expectations for being considered for promotion to a post to which he is eligible for being promoted.

5.1.3 In *Y.S.Chaudhary and others Vs. Union of India and others* (supra), the Tribunal, following the decision of the Hon'ble Supreme Court in *P.N.Premchandran Vs. State of Kerala and others* (supra), directed the respondents to grant regular promotions to the applicants from the date of their respective ad hoc promotions or from the date of occurrence of the regular vacancy by constituting a Review DPC.

6. On the other hand, it has been contended by the respondents that in the absence of any rule, promotion of the applicants cannot be given retrospective effect. In support of their contention, the respondents have relied on the decision of the Hon'ble High Court of Delhi in *Union of India and another, etc. Vs. K.L.Taneja and another, etc.*, W.P. (C) No. 8102 of 2012 and connected writ petitions, decided on 12.4.2012.

6.1 In *Union of India and another, etc. Vs. K.L.Taneja and another, etc.* (supra), the Hon'ble High Court of Delhi, after referring to a large number of decisions, observed thus:

“21. The cornucopia of case law above noted brings out the position:

- (i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.
- (ii) If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.
- (iii) Since mala fides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act, i.e., deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.
- (iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.”

7. After giving our thoughtful consideration to the facts and circumstances of the case, and the rival contentions, we have found no substance in any of the contentions raised by the applicants.

8. As per the recruitment rules (Annexure A/3), the recruitment to the posts of Station Officer is made 50% by promotion, and 50% by direct recruitment. A Sub Officer with 5 years of regular service in the grade and possessing Matriculation qualification from a recognized Board or equivalent and having passed Station Officer Course from

NFSC, Nagpur, or equivalent, is entitled for promotion to the post of Station Officer against the promotion quota.

9. As per the decision of the Government of India, vide Department of Personnel & Training's O.M. No.22011/3/98-Estt.(D), dated 17.9.1998, the crucial date for determining eligibility of officers for promotion in case of financial year-based vacancy year would fall on January 1 immediately preceding such vacancy year and in the case of calendar year-based vacancy year, the first day of the vacancy year, i.e., January 1 itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise.

10. As already noted, on the basis of the recommendation of the DPC which met on 5.1.2011 to consider the cases of officers for promotion to the grade of Station Officer for the vacancy year 2010-11, applicant nos. 3,4 and 6, along with five others, were promoted to the grade of Station Officers with immediate effect, vide order dated 17.1.2011. In terms of the DoP&T's O.M. dated 17.9.1998, *ibid*, the crucial date for determining the eligibility of the officers for promotion for the vacancy year 2010-11 was 1.1.2010. It is the admitted position between the parties that applicant nos. 3, 4 and 6 were assigned seniority w.e.f.

15.6.2004, and applicant nos.1, 2 and 5 were assigned seniority w.e.f. 5.7.2005. Having put in the requisite period of regular service of 5 years in the grade of Sub Officer as on 1.1.2010, applicant nos.3, 4 and 6 became eligible to be considered for promotion to the grade of Station Officer for the vacancy year 2010-11. Accordingly, the DPC considered and recommended their promotion, and they were promoted to the grade of Station Officer, vide order dated 17.1.2011. As applicant nos.1, 2 and 5 did not put in 5 years of regular service in the grade of Sub Officer as on 1.1.2010, i.e., the crucial date, for being considered for promotion to the grade of Station Officer against the vacancy year 2010-11, they cannot be said to have any grievance with regard to their non-promotion against the vacancy year 2010-11. The DPC, which met on 12.5.2011, considered the cases of officers for promotion to the grade of Station Officer against the vacancy year 2011-12, for which the crucial date for determining the eligibility of officers was 1.1.2011. Having been assigned seniority with effect from 5.7.2005, applicant nos.1,2 and 5 completed five years of regular service in the grade of Sub Officers as on 1.1.2011. Therefore, they along with others were considered and promoted to the grade of Station Officer

against the vacancy year 2011-12, vide order dated 24.5.2011 (Annexure A/1).

11. As applicant nos. 3, 4 and 6 completed 5 years of regular service in the grade of Sub Officer as on 1.1.2010, and applicant nos. 1, 2 and 5 completed five years of regular service in the grade of Sub Officer as on 1.1.2011 so as to be eligible to be considered for promotion to the grade of Station Officers only against the vacancy years 2010-11 and 2011-12 respectively, and as the applicants were so considered, recommended, and promoted, they cannot be said to have any grievance as regards the purported non-adherence to the Model Calendar and non-preparation of year-wise panel for any previous vacancy year/years, more so when the applicants did not complete 5 years of regular service in the grade of Sub Officers as on the crucial dates, i.e., 1.1.2007, 1.1.2008 and 1.1.2009 and were, thus, ineligible to be considered for promotion to the grade of Station Officers against the vacancy years 2007-08, 2008-09 and 2009-10, if at all there were vacancies under the promotion quota for the said years. Furthermore, the applicants have not placed before this Tribunal any material showing the breakup of vacancies purported to be available under the promotion quota for the vacancy years 2007-08, 2008-09, 2009-10, 2010-11 and

2011-12. In this view of the matter, we do not find any substance in the claim of the applicants to ante-date their promotion to the grade of Station Officers. As applicant nos. 1, 2 and 5 are found to be ineligible to be considered for promotion to the grade of Station Officer against the vacancy year 2010-11, the purported availability of vacancies for the year 2010-11 would not clothe them with a right to claim promotion for the said vacancy year.

12. The decisions cited by the applicants, besides being distinguishable on facts, do not go to support their case.

13. In the light of our above discussions, we do not find any merit in the O.A. The O.A., being devoid of merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(P.K.BASU)
ADMINISTRATIVE MEMBER

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