

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.2909/2014
M.A.No.3431/2014

Friday, this the 9th day of October, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B. K. Sinha, Member (A)

Mr. Vijay Anand s/o late Mr. Goverdhan Prashad
Age about 65 years
H.No.27, Gali No.37/E
Near Badari Nath Mandir
Kaushik Enclave, Block B
Burari, Delhi-84
Rtd. as Assistant Nt..

.. Applicant

(Mr. Nasir Ahmed, Advocate)

Versus

1. Union of India through Secretary
Ministry of Health & Family Welfare
Govt. of India
Nirman Bhawan, New Delhi-11
2. The Under Secretary
Ministry of Health & Family Welfare
Govt. of India
Nirman Bhawan, New Delhi-11
3. The Secretary
Department of Personnel & Training
CS Division, Lok Nayak Bhawan
Khan Market, New Delhi-3

..Respondents

(Mr. Ashish Nischal, Advocate for Mr. Rajinder Nischal, Advocate)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

Pursuant to the Department of Personnel & Training O.M. No.21/61/2005-CS-I dated 13.12.2005, the applicant herein, who was regular Upper Division Clerk (UDC) at that point of time, was promoted to the post of Assistant on *ad hoc* basis w.e.f. 25.3.2004 vide order dated

22.6.2004. Subsequently, the Department of Personnel & Training issued O.M. dated 15.5.2009 requesting inclusion of name of UDCs given *ad hoc* promotion w.e.f. 25.3.2004 in the extended Select List of 2003 of Assistant Grade against the seniority quota. Accordingly, the Ministry of Health & Family Welfare sent a list of regular UDCs of the year 1987 (Part) to 1992 to Department of Personnel & Training, including the name of the applicant herein. However, his name was not included in the final common seniority list issued by the Department of Personnel & Training vide O.M. dated 14.7.2009, for the reason he stood retired from service w.e.f. 31.7.2008, thus the applicant filed the present Original Application.

2. According to learned counsel for applicant, the issue involved in the present Original Application is, in all fours, of the Judgment of Hon'ble High Court of Delhi in Writ Petition No.7937/2011 – **C.B. Singh v. The Secretary, Ministry of Agriculture & others.**

3. On the other hand, in the counter reply filed by them, the respondents have explained that in terms of the O.M. dated 30.7.2014, a government servant, who is considered for promotional post after his retirement, may be included in the select list to determine the correct zone of consideration and identify the eligible candidates but should not be given actual promotion and in the present case, since before the date of inclusion of names of the UDCs of the year 1987 (Part) to 1992 in the select list of the Assistant for the year 2003, the applicant had retired from service, he was not given actual promotion.

4. We heard the learned counsels for the parties and perused the record.

5. As has been ruled by the Hon'ble Supreme Court in **Baij Nath Sharma v. Hon'ble Rajasthan High Court at Jodhpur & another**, 1988 SCC (L&S) 1754 and **State of Uttaranchal & another v. Dinesh Kumar Sharma**, 2006 (13) SCALE 246, no employee is vested with a right to promotion from the date of availability of vacancies. Paragraphs 8 & 9 of the judgment in **Baij Nath Sharma's** case (supra) read thus:-

“8. The appellant could certainly have a grievance if any of his juniors had been given promotion from a date prior to his superannuation. It is not the case here. From the promotional quota, four promotions were made only on 30.12.1996 i.e., after the appellant had retired. Those promoted were given promotions from the dates the orders of their promotions were issued and not from the dates the posts had fallen vacant. It is also the contention of the High Court that these four officers, who were promoted to RHJS, were senior to the appellant as per the seniority list. The question which falls for consideration is very narrow and that is if under the Rules applicable to the appellant promotion was to be given to him from the date the post fell vacant or from the date when order for promotion is made. We have not been shown any rule which could help the appellant. No officer in RJS has been promoted to RHJS prior to 31.05.1996 who is junior to the appellant. Further decision by Rajasthan High Court has been taken to restore the imbalance between the direct recruits and the romotes which, of course, as noted above, is beyond challenge.

9. In **Union of India and Ors. v. KKVadera and Ors.**, AIR1990SC442 this Court with reference to Defence Research and Development Service Rules, 1970, held that promotion would be effective from the date of the order and not from the date when promotional posts were created. Rule 8 of those Rules did not specify any date from which the promotion would be effective. This Court said as under:-

“There is no statutory provision that the promotion to the post of Scientist ‘B’ should take effect from 1st July of the year in which the promotion is granted. It may be that rightly, or wrongly, for some reason or the other, the promotions were granted from 1st July, but we do not find any justifying reason for the direction given by the Tribunal that the promotions of the respondents to the posts of Scientists ‘B’ should be with effect from the date of the creation of these promotional posts. **We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post**

should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”

(emphasis supplied)

Thus there is no such rule, which provided for retro promotion and the only exception to the principle is the promotion of junior ahead of senior and when the claim for retro promotion is by a retired employee, who is considered in terms of the O.M. dated 30.7.2014 or O.M. dated 12.10.1998, his right to actual promotion could be materialized only if some juniors are promoted when he was still in service. In the present case, the learned counsels for the parties could not bring out that whether any of the junior of the applicant could be given promotion from the date when he was in service.

6. In the wake, the Original Application is disposed of with direction to the respondents to verify whether any of the juniors of the applicant was given promotion as Assistant against select list of 2003. If the outcome of the examination is positive, the applicant will also be given promotion as Assistant against the select list of 2003 with notional benefits for the past period and with actual benefits from the date of this Order.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

October 9, 2015
/sunil/