

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3011/2013

**Reserved On:31.10.2015
Pronounced On:05.11.2015**

HON'BLE MR. SHEKHAR AGARWAL, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)

Hansraj
S/o Late Shri Rishal Singh
R/o H.No.305, VPO Nangal Thakran,
Delhi-110039.

...Applicant

By Advocate: Shri M.K. Bhardwaj.

Versus

Govt. of NCT of Delhi and Others Through

1. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi.
2. The Principal Secretary,
Directorate of Training and Technical
Education,
Muni Maya Ram Marg,
Pitampura,
Delhi.
3. The Joint Secretary,
Directorate of Training and Technical
Education,
Muni Maya Ram Marg,
Pitampura,
Delhi.
4. The Deputy Director (E-1),
Directorate of Training and Technical
Education,
Muni Maya Ram Marg,

Pitampura,
Delhi.

...Respondents

By Advocate: Ms. Sumedha Sharma.

ORDER

Shekhar Agarwal, Member (A)

The Applicant was appointed as Workshop Attendant in Arya Bhatt Polytechnic on 15.07.1993. According to him, after rendering 10 years of regular service on the aforesaid post, he became eligible for promotion to the post of Workshop Instructor. At that time, the respondents had 19 vacancies of this post. They initiated a proposal to fill up 50% of these vacancies by promotion. Six of these vacancies were in Fitter trade in which the applicant had done ITI and was, therefore, fit for promotion against them. The respondents, however, did not hold the DPC. The applicant and some other similarly placed persons made repeated representations but respondents did not pay any heed to their prayers. Finally, the applicant was promoted vide order dated 18.08.2010. His grievance is that he was eligible for promotion from 15.07.2003. Sufficient vacancies were also available on that date. However, his promotion was delayed on account of inaction of the respondents by almost 7 years and was granted to him only with effect from 18.08.2010. He made several representations even after

grant of promotion for ante-dating the same. However, no action was taken by the respondents. Hence he has filed this OA seeking the following relief:-

“(a) To declare the action of respondents in promoting the applicant as Workshop Instructor from 18.08.2010 instead of 15.07.2003 and direct the respondents to promote the applicant t as Workshop Instructor/Instrument Repair from 15.07.2003 with all consequential benefits including arrears of pay.

(b) To direct the respondents to promote the applicant to the post of Workshop Instructor/Instrument Repair from 15.07.2003 as recommended by the DPC with all consequential benefits including arrears of pay.

(c) To allow the OA with cost.

(d) To pass such other and further orders which their lordships of this Tribunal deem fit and proper in the existing facts and circumstances of the case”.

2. His contention is that the respondents have acted in a most arbitrary and unjustified manner by delaying the DPC by almost 7 years without any cogent reasons. They have further humiliated him by granting promotion prospectively from the year 2010 and have thus taken advantage of their own wrongs. He has stated that Hon’ble Supreme Court in the case of ***U.O.I Vs. Hem Raj Chauhan*** 2010(4) SCC 290 has held that a Government servant has a right for fair consideration in the matter of promotion. Further in the case

of ***U.O.I. VS. Vipin Chandra Hira Lal Shah*** 1996 (6) SCC 721 Apex Court has held that the State is not justified in not holding the Selection Committee meeting every year. The respondents ought to have fixed responsibility for undue delay in holding the DPC. Instead of that they have harmed the applicant by delaying his promotion. They have shown scant regard for the law laid down by the Hon'ble Supreme Court in ***P.N. Premachandran Vs. State of Kerala*** 2004 (1) SCC 245 wherein Hon'ble Supreme Court had affirmed the decision of the State of Kerala in granting retrospective promotion from the date from which vacancies were available. The applicant has further stated that in the case of Shri Kapil Gupta the respondents have issued promotion order in 2012 but made it effective from 18.08.2010 with all consequential benefits.

3. In their reply, the respondents have not disputed the facts of the case narrated above. They have, however, submitted that the applicant has concealed the fact that he had been granted benefit of ACP Scheme in the next higher grade of Rs.5000-8000 i.e. the grade of Workshop Instructor w.e.f. 15.07.2005 on completion of 12 years of service. Further, they have submitted that a proposal to convene DPC was initiated on 07.12.2009 and after completing all

formalities, the applicant was promoted as Workshop Instructor against a vacancy of year of 2002-03. In accordance with DOP&T OM No.22011/5/86-Estt.(D) dated 10.04.1989 promotion of the applicant has been given prospective effect.

4. As far as the case of Shri Kapil Gupta is concerned, the respondents have mentioned that Shri Gupta inadvertently got omitted from consideration in the original DPC in which even his juniors were promoted in the year 2010. Hence, Shri Gupta, who was fulfilling all eligibility conditions, was promoted after convening a review DPC from the date of promotion of his juniors.

5. We have heard both sides and have perused the record.

6. The respondents in their reply had submitted that the applicant had been granted ACP benefit w.e.f. 15.07.2005 thereby implying that he cannot now claim retrospective promotion for this reason. In our opinion, this argument of the respondents is totally misconceived. ACP benefit is given in lieu of promotion to avoid stagnation but does not in any manner take away right of the Government servant to get promotion on time. With promotion, not only higher pay scale but higher designation and higher duties may also be

assigned which bring with them higher status. As such, merely because ACP benefit had been granted, promotion cannot be denied on that basis.

7. Learned counsel for the applicant argued that DOP&T have laid down a model calendar for holding of regular meetings of the Departmental Promotion Committees. The respondents violated the same and did not hold the DPC for several years thereby delaying the promotion of the applicant. Hence injustice has been caused to the applicant which needs to be rectified by granting him retrospective promotion.

8. We have considered the aforesaid submission. It is not disputed that a model calendar has been prescribed by DOP&T for holding DPC meetings at regular annual intervals. It is also not disputed that DPC in this case was inordinately delayed. No cogent reasons have also been advanced by the respondents for not holding DPC for almost 7 years. However, while DOP&T have laid down a model calendar, they have not prescribed that if the calendar is not followed then Government servants promoted at a later date would be entitled to retrospective promotion from the date of occurrence of vacancy or date of eligibility. In fact, where DPCs have been delayed the instructions are only to prepare

a year-wise panel. The relevant portion of the instructions as given in para 6.4.1 of Swamy's Compilation on Seniority and Promotion, 2008 Edition, are as follows:-

"6.4.1 Where for reasons beyond control, the DPC could not be held in year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedures:

(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a 'Select list' by placing the select list of the earlier year above the one for the next year and so on."

9. The respondents in the case at hand have prepared year-wise panel and have assigned vacancy year of 2002-03 to the applicant.

10. In the case of ***Union of India and Others Vs. K.K. Vadera and Others*** 1989 Supp.(2) SCC 625 Hon'ble Supreme Court in para 5 have observed as follows:-

"5.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 fall 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."

In the case of ***Baij Nath Sharma Vs. Hon'ble Rajasthan High Court at Jodhpur*** 1998 (7) SCC 44 Hon'ble Supreme Court upheld the judgment of the Rajasthan High Court denying retrospective promotion to Rajasthan Higher Judicial Service to the applicant therein. Similarly in the case of ***State of Uttaranchal and Another Vs. Dinesh Kumar Sharma*** 2007 (1) SCC 683 Hon'ble Supreme Court has observed as follows:-

"Respondent was working as a Subordinate Agriculture Services Group-I. Subsequently, he became eligible for promotion. A promotional post became vacant and thereafter, substantive appointment of Respondent to said post was made. Respondent claimed seniority and consequential benefit from date when promotional post became vacant. State Government rejected claim made by Respondent. On writ, Division Bench of High Court directed state to reconsider case of Respondent. Hence the appeal was filed which was allowed and it was held that under Rule 8 of Uttar Pradesh Government Servants Seniority Rules, 1991 a person appointed on promotion shall not get seniority of any earlier year but shall get seniority of year in which his/her

appointment is made. Hence respondent was not entitled to seniority from date when promotional post became vacant as no retrospective effect could be given to order of appointment order under the Rules."

11. After considering all the aforesaid judgments, Hon'ble High Court of Delhi in the case of ***Union of India and Others Vs. Vijender Singh and Others – W.P. (C) No.1188-90/2005 and other connected writ petitions*** has come to the conclusion as follows:-

"43. It is thus apparent that service jurisprudence does not recognize the jurisprudential concept of deemed retrospective promotion and unless there exists a rule or there exists a residual power and in exercise of the implementation of the rule or in exercise of power conferred by the residual rule a decision is taken or can be taken to grant retrospective promotion, no person can claim a right to be promoted from the date when the vacancy accrued and he must take the promotion with its benefits from the date of actual promotion".

12. A somewhat discordant note has been struck by Supreme Court in the case of ***P.N. Premachandran*** (supra) relied upon by the applicant. However, on going through the aforesaid judgment, we find that Rule 39 of the Rules governing the aforesaid promotion contained a residuary provision conferring overriding powers on the State of Kerala which were utilized by the Government of Kerala for granting promotions to the applicants therein from the date

from which they were working on the post on ad hoc basis. This is not the situation in the present case.

13. The applicant has relied on the judgment of this Tribunal in **OA No.1459/2012 – Rakesh Beniwal and Others VS. GNCTD and Others** which was also upheld by Hon'ble High Court of Delhi in **Writ Petition (C) No.7423/2013** by order dated 04.08.2014. However, on going through the facts of this case, we find that it is clearly distinguishable from the present case. In **Rakesh Beniwal's** case (supra), the appointment of the applicants to Grade-II of DASS was inordinately delayed due to delay and laches on the part of GNCTD. Subsequently, on intervention of this Tribunal as well as Hon'ble High Court of Delhi, Shri Beniwal and Others got appointment to Grade-II post in DASS several years after their other batch-mates had been appointed. Thereafter, when their batchmates were being considered for promotion to Grade-I of DASS, the respondents therein ignored them on the grounds that they had not completed six years of regular service in Grade-II as required under the rules of promotion. Under those circumstances holding that regular service prescribed under the rules was different from actual service and that it was due to a mistake on the part of the respondents only that the applicants got appointment late in Grade-II, it was

held that Beniwal and Others should be considered for promotion by holding that they had been notionally appointed to Grade-II from the same date as their other batchmates had been appointed. Clearly, the facts of this case were different from the case at hand as no junior to the applicant herein has been promoted before him.

14. The applicant has also relied on the judgment of the Hon'ble Supreme Court in the case of ***Tukaram Kana Joshi and Others Vs. Maharashtra Industrial Development Corporation and Others*** 2013 (1) SCC 353. However, on going through the facts of the case, we find that this case deals with acquisition of land and payment for compensation of the same. In this context, Hon'ble Supreme Court has laid down that if delays and laches are causing injustice then the courts may intervene by exercising their jurisdiction in favour of the party concerned. In our opinion, this case has no applicability in the present matter and does not help the applicant in any manner. The courts can intervene in favour of the applicant only in accordance with rules or law. That does not appear to be case herein.

15. Lastly, the applicant has relied on the judgment of the Hon'ble High Court of Delhi in the case of ***Dr. Sahadeva Singh Vs. U.O.I. and Others – W.P. (C) No.5549/2007***. However, on going through this case, we find that Hon'ble

High Court has only laid down that if the DPC is being delayed for no justifiable reason, the aggrieved parties can approach the court and seek a direction to the respondents to convene DPC. It has not been laid down that as and when such DPC is convened, retrospective promotion is to be granted. In the instant case, the respondents have already convened the DPC and given promotion to the applicant. Hence this case also does not help him in any manner.

16. We also notice that the applicant has been sleeping over his rights. According to him, he had become due for promotion to the next grade in year 2003 itself but the respondents did not hold the DPC for his promotion. He did not approach this Tribunal within time. On the other hand, he continued to make repeated representations till at last the DPC was convened by the respondents and promotion granted to him in the year 2010. Thus, for almost 7 years the applicant did not approach this Tribunal. Later on, also when he made request for ante-dating his promotion, he continued to make repeated representations and approached this Tribunal only on 23.08.2013, i.e., almost 3 years after retrospective promotion had been denied to him. It is trite law that repeated representations do not extend the period of limitation. While the applicant has moved an application

for condonation of delay, no cogent reasons have been given in the same for inordinate delay in approaching this Tribunal.

17. The applicant had stated that one Shri Kapil Gupta had been granted retrospective promotion by the respondents themselves. He prayed for similar treatment. The respondents have, however, explained that Shri Gupta had inadvertently got omitted from consideration by the original DPC in which his juniors were promoted. Hence he was given promotion from the date of his juniors. In our opinion, there is no averment that any junior of the applicant had got promotion before him. As such, this case is entirely different from the case of Kapil Gupta.

18. Thus, in our opinion, neither the instructions of the DOP&T nor the law laid down by Hon'ble Supreme Court through various judgments cited above support the contention of the applicant. While DOP&T's instructions provide only for year-wise preparation of panel in case of delayed DPCs, case law laid down by various citations mentioned above provides that retrospective promotion is not recognized in service jurisprudence until and unless there exists a rule or residuary power by which the same can be granted. In the instant case no such rule or residuary power has been cited by the applicant. Moreover, none of the judgments relied upon by the applicant helps his cause.

19. Thus both on merits as well as on account of delay, we find this OA to be unsustainable. Accordingly, the same is dismissed. No costs.

(BRAHM AVTAR AGRAWAL)
MEMBER (J)

(SHEKHAR AGARWAL)
MEMBER (A)

Rakesh