

**Central Administrative Tribunal
Principal Bench**

OA No.4357/2014

New Delhi, this the 25th day of February, 2016

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

Shri Manish M. Gade, Age 34 years,
S/o Shri Marotrao N. Gade,
Working as Economic Investigator,
Programme Evaluation Organisation,
Planning Commission,
Under the Joint Secretary (Admn.),
Planning Commission, Parliament Street,
New Delhi-110011.

(Presently posted at Regional Evaluation Office,
Planning Commission, B-401, 4th Floor, Kendriya Sadan,
Sector-10, CBD Belapur,
Navi Mumbai-4000614]

...applicant

(By Advocate : Shri Ramesh Datta)

Versus

Union of India & Others: through

1. The Secretary,
Planning Commission,
Yojana Bhawan,
Parliament Street,
New Delhi-110001.
2. The Adviser (Admn.),
Planning Commission,
Yojana Bhavan,
Parliament Street,
New Delhi-110001.
3. The Director (Adm.),
Planning Commission,
Yojana Bhawan,
Parliament Street,
New Delhi-110001.

...respondents.

(By Advocate : Shri D. S. Mahendru)

ORDER (ORAL)

Mr. A.K. Bhardwaj, Member (J) :-

The prayer made in the present OA filed under Section 19 of the Administrative Tribunals Act, 1985 is for issuance of direction to the respondents to promote the applicant to the post of Economic Officer immediately after his becoming eligible for such promotion i.e. w.e.f. 06.09.2010. The prayer reads thus :-

- “8.1 That this Hon’ble Tribunal may graciously be pleased to allow this O.A. and direct the Respondents to promote the Applicant to the post of Economic Officer after his becoming eligible for promotion i.e. 06/09/2010 against the vacancy at PEO, Patna, caused by repatriation of Shri Shashi Ranjan Verma since 31/03/2008 or against the later vacancy at PEO, Shimla caused by repatriation of Shri Omesh Paul since 28/03/2011 being the senior-most to be promoted in the Seniority List, with retrospective effect and all financial benefits.
- 8.2 That any other or further relief which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case, may also be granted in favour of the applicant.
- 8.3 That the cost of the proceedings may also be awarded in favour of the applicant.”

2. In the counter reply filed on behalf of respondents, it is explained that the applicant could not be considered for his promotion by the DPC which met in 2010 because as on 01.01.2010 he had not completed the required length of service i.e.

six years. Confronted with plea learned counsel for applicant fairly submitted that might be the applicant was not eligible as on 01.01.2010, but the respondents should have considered him for his promotion against the vacancies occurred during the subsequent years i.e. 2011 and 2012. According to him, once the respondents did not consider the applicant for his promotion to PEO on due dates, he is entitled to retrospective promotion.

3. We have heard the learned counsels for the parties and perused the record. The applicant Shri Manish M. Gade was appointed as Economic Investigator Grade-II in Regional Evaluation Office of the Programme Evaluation Organization (PEO), NITI Aayog (erstwhile Planning Commission) at Mumbai w.e.f. 06th September, 2004. Apparently on 01.01.2010, he had not completed six years' service as Economic Investigator, which was one of the condition to become eligible for next promotion. Thus, there could be no infirmity in non-consideration of the applicant for his promotion as PEO in the DPC met in the year 2010.

4. As far as the plea of the applicant for promotion from the date of availability of the vacancies during the subsequent years is concerned, it is *stare decisis* that the promotion become effective either from the date of DPC or assuming the charge of the post, whichever is later. Paragraphs 17.10 and 17.11 of O.M.

No.22011/5/91-Estt.(D) dated 27.3.1997 issued by the Department of Personnel & Training in this regard, read thus:-

“17.10 The general principle is that promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion whichever is later.

17.11 In cases where the recommendations for promotion are made by DPC presided over by a Member of the UPSC and such recommendations do not require to be approved by the Commission, the date of Commission's letter forwarding fair copies of the minutes duly signed by the Chairman of the DPC or the date of the actual promotion of the officers, whichever is later, should be reckoned as the date of regular promotion of the officer. In cases where the Commission's approval is also required the date of UPSC's letter communicating its approval is also required the date of UPSC's letter communicating its approval or the date of actual promotion of the officer whichever is later will be relevant date. In all other cases the date on which promotion will be effective will be the date on which the officer was actually promoted or the date of the meeting of the DPC whichever is later. Where the meeting of the DPC extends over more than one day the last date on which the DPC met shall be recorded as the date of meeting of the DPC.”

5. Besides in ***Baij Nath Sharma Vs. Hon'ble Rajasthan High Court at Jodhpur*** (1998) 7 SCC 44 Hon'ble Supreme Court ruled that there is no such law which provides for promotion from the date of vacancy or retrospective promotion and only exception to the principle is promotion of junior from retrospective date. Relevant para 7 of the judgment reads thus :-

“7. In *Union of India v. K.K. Vadera* this court with reference to the 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:

"5. There is no statutory provision that the promotion to the post of Scientist 'B' should take effect from July I 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 July I, 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 Scientist '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."

6. Similar view is taken by the Hon'ble Supreme Court in the decision reported as (2007) 1 SCC 683 ***State of Uttarakhand & Anr. vs. Dinesh Kumar Sharma***, wherein it was observed as under:-

"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."

7. In view of the aforementioned legal position declared by Hon'ble Supreme Court, we are unable to issue any direction to the respondents to promote the applicant from the date when promotional post became vacant.

8. The O.A. is found devoid of merits and is accordingly dismissed. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

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