

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.4681/2014

This the 19th day of January, 2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)

1. Lt. Col. (Retd.) Rajvir Singh S/o Sudhan Singh,
Scientist E, R/o 1287, Sector-12,
R.K.Puram,
New Delhi-110022.
2. Lt. Col. (Retd.) Hardyal Chauhan S/o D. D. Chauhan,
Scientist E, R/o C-501, M.S. Apartments,
K.G. Marg,
New Delhi-110001. ... Applicants

(By Advocate : Mr. M. K. Bhardwaj)

Versus

1. Chairman,
National Technical Research Organization (NTRO),
Government of India,
Block-3, Old JNU Campus,
New Delhi-110067.
2. Controller of Administration (COA),
National Technical Research Organization (NTRO),
Block-3, Old JNU Campus,
New Delhi-110067.
3. OSD (CEI) and Acting Director (Establishment/Pers.),
National Technical Research Organization (NTRO),
Block-3, Old JNU Campus,
New Delhi-110067.
4. Deputy Director (Estt) and Head Office,
National Technical Research Organization (NTRO),
Block-3, Old JNU Campus,
New Delhi-110067.

5. Director in charge of NTRO,
Prime Minister's Office,
South Block, New Delhi-110011.

... Respondents

(By Advocates: Mr. Hanu Bhaskar)

O R D E R

Justice Permod Kohli, Chairman :

The applicants in this OA were serving in Indian Army in the rank of Lt. Colonel. Respondent No.1, National Technical Research Organization (NTRO) issued a circular for filling up posts of Scientists available in NTRO. Both the applicants applied for their consideration, and on being found suitable, were appointed as Scientists 'D' on deputation basis vide orders dated 27.10.2005 and 27.01.2006 respectively. The initial period of deputation of two years was extended by another year. It is stated that the applicants were considered for absorption, and they were asked to seek premature retirement from Army. On being prematurely retired at their request for joining NTRO, the applicants were re-employed in NTRO vide orders dated 03.10.2008 and 27.03.2009 respectively.

2. On their absorption in NTRO, the applicants claimed promotion to the post of Scientist 'E' under the Flexible Complementing Scheme (FCS) issued by the DOP&T vide memorandum dated 09.11.1998 for grant of promotions to the grades of Scientists 'C', 'D', 'E' and 'F' on completion of the minimum residency period. The aforesaid scheme further prescribes that the

benefit of *in situ* promotion is to be given to Scientists from due dates. Later, on the basis of recommendations of the Sixth Central Pay Commission, the respondents issued a modified FCS vide office memorandum dated 10.09.2010 (Annexure A-4). It is stated that under the FCS, for promotion from Scientist 'D' to Scientist 'E', four years' residency period was required. The applicants claim that since they were initially appointed on deputation in NTRO as Scientist 'D' on 27.10.2005 and 27.01.2006 respectively, they completed four years residency and were entitled to be promoted as Scientist 'E' w.e.f. 01.07.2009 and 01.07.2010 respectively. The respondents, however, denied the benefit of *in situ* promotion to the applicants. The applicants accordingly filed OA No.2655/2014 and OA No.2946/2014 in this Tribunal. OA No.2655/2014 filed by applicant No.1 came to be disposed of on 06.08.2014. This Tribunal referring to its earlier judgments in OA No.3718/2010 - *O. P. Gaba v Union of India* decided on 03.03.2011, and OA No.2142/2011 - *P. Kulshrestha & others v NTRO* with connected OA No.578/2012, and a judgment of the Hon'ble High Court of Delhi dated 23.01.2014 in WP(C) No.385/2014, passed the following order:

"6. In view of the above position, this OA is also disposed of at the admission stage itself by directing the respondents to examine the case of the applicant in the light of the aforesaid orders of this Tribunal upheld by the Hon'ble High Court of Delhi and if his case is covered by them, he shall also be extended the same benefits. Respondents shall comply with our

directions within a period of one month from the date of receipt of a certified copy of this order under intimation to the applicant.”

The aforesaid directions were not complied with by the respondents, which prompted the applicant No.1 to file a contempt petition, C.P. No.484/2014, seeking implementation of the judgment. During pendency of the contempt proceedings, the respondents issued two separate orders dated 30.10.2014 granting *in situ* promotion to the applicants under FCS, but not from the dates the applicants claim to have completed four years of required residency as Scientist ‘D’. In view of the order passed by the respondents, the contempt proceedings were disposed of with liberty to the applicants to challenge the orders passed by the respondents declining promotion to the applicants from the dates claimed by them, vide order dated 03.11.2014. The applicants have accordingly filed this OA seeking following reliefs:

- “(i) To declare the action of the respondents in not counting the period spent by both the applicants on deputation as Scientist ‘D’ as residency for their respective *in situ* promotion as Scientist ‘E’ as illegal and arbitrary.
- (ii) To direct the respondents to consider and grant *in situ* promotion to applicants as Scientist ‘E’ from the date of completion of 4 years’ service as Scientist ‘D’, including the period spent on deputation as Scientist ‘D’, with all consequential benefits including arrears of pay and interest thereon 12% p.a. and their respective *in situ* promotion to the post of Scientist ‘F’ under FCS

with effect from 01.07.2009 and 01.01.2010 respectively.

- (iii) To quash and set aside the impugned orders dated 30.10.2014 (A1) and issue directions to the respondents to count the service rendered by the applicants as Scientist 'D' on deputation basis from 27.10.2005 and 27.01.2006 for *in situ* promotion as Scientist 'E' and pass necessary orders for promotion as Scientist 'E' from 2009 and 2010 respectively with all consequential benefits including arrears of pay.
- (iv) To allow the O.A. with exemplary cost.
- (v) Pall any further orders as this Hon'ble Tribunal may deem fit and proper considering the peculiar facts and circumstances of the case.
- (vi) Grant such other and further relief as may be deemed fit in the interest of justice."

3. Applicant No.1 has been granted *in situ* promotion as Scientist 'E' w.e.f. 01.01.2013 vide order dated 30.10.2014, whereas applicant No.2 has been granted such promotion w.e.f. 01.07.2013 vide separate order dated 30.10.2014 (Annexure A-1 colly.).

4. We have carefully perused the orders impugned in this OA. The respondents have declined the benefit of *in situ* promotion to the applicants on the analogy of *O. P. Gaba* and *P. Kulshrestha* (supra) on the ground that O. P. Gaba, a civilian employee who was initially appointed on deputation with NTRO, subsequently came to be absorbed on the post held by him while on deputation, whereas applicant Rajbir Singh was initially appointed as Scientist 'D' on deputation w.e.f. 27.10.2005 and continued as such till his retirement

from the Indian Army on 30.09.2008 and was subsequently appointed as Scientist 'D' w.e.f. 01.10.2008 on re-employment basis and not on absorption basis. It is accordingly stated that the eligibility for *in situ* promotion under FCS to the next higher grade of Scientist 'E' can only be reckoned with effect from the date of appointment on re-employment basis w.e.f. 1.10.2008. It is accordingly stated that on consideration of his case, he has been granted *in situ* promotion w.e.f. 01.01.2013 on completion of the residency period. Referring to the judgment in the case of *P. Kulshrestha* (supra), it is mentioned in the order that the case of the applicant for promotion as Scientist 'E' had been considered from the due date of his eligibility for such promotion, taking into consideration the prescribed period of four years with effect from the date of his appointment as Scientist 'D' in NTRO on re-employment basis. Similarly, in respect to the applicant No.2, it is stated that for promotion to the next higher grade of Scientist 'E', the eligibility can be reckoned w.e.f. 01.05.2009 when he was appointed as Scientist 'D' on re-employment basis, and taking into consideration the said period he has been granted *in situ* promotion w.e.f. 01.07.2013.

5. In the counter-affidavit filed by the respondents, same stand has been taken, i.e., distinction has been drawn between the cases of O. P. Gaba and P. Kulshrestha and the applicants.

6. The applicants have filed rejoinder to the counter-affidavit. With the rejoinder, the applicants have placed on record copy of judgment dated 28.11.2014 of a co-ordinate Bench of this Tribunal passed in OA No.4273/2013 - *Lt. Col. (Retd.) Ashwani Kumar, VSM v Union of India*. Learned counsel for the applicants submits that the case of the applicants is squarely covered by the aforesaid judgment apart from the dictum of the judgments in *O. P. Gaba* and *P. Kulshrestha* (supra).

7. We have heard learned counsel for the parties. The facts in OA No.4273/2013 in *Ashwani Kumar* (supra) and the present case are similar in nature. The factual background as noticed by this Tribunal in the case of *Ashwani Kumar* is narrated in paras 2 to 4 of the judgment. The facts of the said case are briefly noticed. The applicant, namely, Lt. Col. (Retd.) Ashwani Kumar, was working in Indian Army and came on deputation under respondents as JDD (IA) w.e.f. 04.10.2004 initially for a period of two years, which was extended by one year up to 03.10.2007. His request for premature retirement from Indian Army was accepted and he was relieved from the Army on 30.04.2007. At the time of his relieving he was already working with NTRO in the pay scale of Rs.13500-400-17100 plus rank pay of Rs.1600/-, which pay was protected by the respondents when he joined on deputation as JDD (IA). The said officer was re-employed on the post of Assistant Director (IA) in the pay scale of

Rs.10000-15200 vide memorandum dated 20.04.2007, though he had applied for re-employment on the post of JDD (IA) held by him on deputation. Ashwani Kumar, however, joined on the post of Assistant Director (IA). He was confirmed on completion of probation. He was later promoted against the post of JDD (IA) w.e.f. 01.04.2012. He claimed his promotion to the post of DD (IA) by taking into consideration his past service of two years and seven months spent by him on deputation with the respondents w.e.f. 04.10.2004 to 30.04.2007. His representation for such promotion was rejected on the ground that for promotion to the post of DD (IA) the period when he was appointed on re-employment alone was to be reckoned. The respondents had drawn a distinction between absorption followed by deputation and re-employment. The contention of the respondents was noticed by the Tribunal in para 8. In para 10 the Tribunal noticed as under:

“10. The issue for consideration is whether or not continuous and uninterrupted service as JDD (IA) is necessary for being counted for computing qualifying service for promotion to the post of DD (IA) as prescribed under the Recruitment Rules....”

The Tribunal thereafter noticed the decision of the Hon'ble Supreme Court in *K. Madhavan v Union of India* [(1987) 4 SCC 566], wherein the Hon'ble Supreme Court held that the expression 'on a regular basis' would mean the appointment to the post on a regular basis in

contradistinction to appointment on *ad hoc* or purely temporary basis.

The Tribunal also noticed the following observations of the Apex Court in *Renu Mullick v Union of India* [(1994) 1 SCC 373]:

“10. We are of the view that the Tribunal fell into patent error in dismissing the application of the appellant. A bare reading of para 2(ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count the service rendered by him/her in the former collectorate for the purpose of seniority in the new charge. The later part of that para cannot be read differently. The transferee is to be treated as a new entrant in the collectorate to which he is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she has put in 2 years' service in the category of UDC. But when she is so considered, her past service in the previous collectorate cannot be ignored for the purposes of determining her eligibility as per Rule 4 aforesaid. Her seniority in the previous collectorate is taken away for the purpose of counting her seniority in the new charge but that has no relevance for judging her eligibility for promotion under Rule 4 which is a statutory rule. The eligibility for promotion has to be determined with reference to Rule 4 alone, which prescribes the criteria for eligibility. There is no other way of reading the instructions aforementioned. If the instructions are read the way the Tribunal has done, it may be open to challenge on the ground of arbitrariness.”

The Tribunal accordingly made the following observations:

“By holding that the previous service of the petitioner in that matter rendered in a different Collectorate could not be ignored for the purposes of determining her eligibility, the Hon'ble Apex Court has thus laid down the principle that services rendered on the same post but in a different unit are to be counted for the purpose of determining eligibility. In the case of

applicant in the present OA, the claim for counting the services of the applicant when he had come on deputation against that post, along with his service later on when he came on re-employment, both relate to the same organization and the same office. The applicant's claim is to be seen in the light of what has been held by the Hon'ble Supreme Court in the matter of *Renu Mullick* (supra)."

"18. Having noted the above, it is apparent that the requirement of five years' service does not imply 'continuous' and/or 'uninterrupted service'. The applicant has rendered service against the same post in the same organization and at the same place on deputation on 'regular' basis and on re-employment basis later on. On both the occasions, the service rendered by the applicant falls within the category of 'regular service'. The experience gained by the applicant over time on a post, whether in one or more than one tenures, cannot be ignored and cannot be written off."

The Tribunal accordingly allowed the OA. Para 20 is reproduced hereunder:

"20. Based on the aforesaid reasons and in the light of the judgments, referred to above, we are of the view that the OA is fit to be allowed. The services rendered by the applicant on deputation basis as JDD (IA) from 04.10.2004 to 30.04.2007 shall be counted for the purpose of qualifying service for the next promotional post of Deputy Director (IA) as per the reliefs sought by the applicant in this OA. The impugned order dated 13.11.2013, therefore not being fit to be sustained is accordingly quashed and set aside."

8. The ratio of the aforesaid judgment squarely covers the present case. This OA is accordingly allowed in the following manner:

- (1) The period spent by the applicants on deputation as Scientist 'D' w.e.f. 27.10.2005 and 27.01.2006 respectively shall be reckoned as the qualifying period for promotion to the post of Scientist 'E'.
- (2) The applicants shall be deemed to be eligible and due for promotion to the grade of Scientist 'E' under the Flexible Complementing Scheme (FCS) on completion of the residency period of four years to be reckoned from the dates of their initial joining on deputation as Scientist 'D', and entitled to such promotion from the completion of four years as Scientist 'D'.
- (3) The impugned orders dated 30.10.2014 are accordingly set aside to the extent the applicants' promotion as Scientist 'E' has been granted ignoring the period spent by them on deputation. The respondents are directed to grant promotion to the applicants from the date they became due by counting their period of deputation as Scientist 'D', and to pass fresh order within a period of three months from the date of receipt of copy of this order.

(Nita Chowdhury)
Member (A)

(Justice Permod Kohli)
Chairman

/as/