

# **Central Administrative Tribunal Principal Bench**

**OA No.2465/2013**

New Delhi, this the 25<sup>th</sup>day of October, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Pradeep Kumar, Member (A)**

Dharam Pal, B-3/9, Padam Nagar  
KishanGanj, Delhi-7 ...Applicant

(By Advocate: Shri A.K. Roy for Shri Manish Garg)

## Versus

1. Union of India through Secretary  
M/o Mines, Shastri Bhavan  
New Delhi-110001.
2. The Director General  
Geological Survey of India  
27, JLN Road, Kolkata-700 016  
  
Also at  
Geological Survey of India  
New Delhi, Liaison Office  
Pushpa Bhawan, New Delhi. ..Respondents

(By Advocate: Shri Ashok Kumar)

## **ORDER (ORAL)**

## **Justice L. Narasimha Reddy:-**

The applicant joined the Geological Survey of India as a Junior Foreman on 16.02.1988. Thereafter, he earned promotion to the post of Senior Foreman and then Assistant Mechanical Engineer (AME) Grade-II in the year 2007.

2. There existed six posts of AME Grade-II. The 5<sup>th</sup> Pay Commission recommended that these posts be de-categorised into AMA Grade-I. The next promotion from AME Grade-II is to the post of AME Grade-I. The applicant was appointed to that post in the year 2013. He filed this OA with a prayer to direct the respondents to promote him to the post of AME Grade-I with retrospective effect from the year 2009-2010, and to extent the consequential benefits. According to him, he acquired eligibility to be promoted to the post of AME Grade-I in the year 2009 itself, and that though there existed a clear vacancy, the respondents did not effect the promotion.

3. On behalf of respondents, a detailed counter affidavit is filed. It is stated that when the requisition was submitted to the UPSC for convening DPC for promotion to the post of AME Grade-I in the year 2007, the UPSC returned the same by observing that the exercise can not be undertaken unless the recruitment rules for that post are framed. It is also stated that an administrative decision was taken at that very point of time, to merge the post of Driller with AME Grade I,

and the issue assumed finality only in the year 2013, and soon thereafter, the applicant was promoted.

4. We heard Shri A.K. Roy for Shri Manish Garg, learned counsel for the applicant, and Shri Ashok Kumar, learned counsel for the respondents.

5. The applicant is concerned about denial of promotion to him to the post of AME Grade-I from 2009. According to him, he became eligible in the year 2009-2010 itself, and though vacancy was available, he was not promoted.

6. The promotion is not automatic in nature. It is only when the DPC is convened and it recommends the cases of eligible candidates, that promotion can take place. On their part, the respondents did make an effort in this behalf, but on account of the recruitment rules for that post, not being in place, it did not materialize. Then came the administrative exercise to merge posts of two different streams in the same organization. Ultimately, the applicant was promoted in the year 2013 to the post of AME Grade-I.

7. The question as to whether an employee holding a post is entitled to be promoted soon after he acquires eligibility, vacancy being available, is not that clear as can be stated in one way or the other.

8. In ***Union of India v Hemraj Singh Chauhan and Others*** (2010) 4 SCC 290, the Hon'ble Supreme Court observed that an employee who acquires eligibility to be promoted cannot be made to suffer on account of administrative delays. The relevant portion reads as under:-

"The Court is satisfied that in this case for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event this Court reiterates those very directions in exercise of its power under Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively."

There are also judgments to the effect that there cannot be any retrospective promotion, and the only exception is when a junior is promoted from an earlier date.

9. In its judgment in ***Union of India and Another v K.L. Taneja and Anr.*** in WP(C) No.8102/2012, the Delhi High Court took the view that there cannot be any retrospective promotion.

10. In view of this scenario, we do not intend to express any final opinion. However, if there exists any possibility to hold a review DPC on verification of the facts such as whether there are any seniors to the applicant in the category at the relevant point of time and whether a vacancy was available, the respondents can take a decision in this behalf, if the applicant makes a representation.

11. We, therefore, dispose of this OA leaving it open to the applicant to make a representation narrating the relevant facts and on receipt of the same the respondents shall pass a speaking order within a period of three months. There shall be no order as to costs.

**(Pradeep Kumar)**      **(Justice L. Narasimha Reddy)**  
**Member(A)**              **Chairman**

/vb/