

**Central Administrative Tribunal
Principal Bench**

**OA No.1188/2013
MA No.2737/2017**

New Delhi, this the 29th day of August, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri K. A. Kanekar
S/o Late Akobaji Kanekar
R/o 172-D, Pocket-B,
Mayur Vihar, Phase-II,
Delhi 110 091.

... Applicant.

(By Advocate : Shri Gaurav Bhardwaj)

Vs.

India Tourism Development Corporation Ltd.
Scope Complex, Lodhi Road,
New Delhi 110 033.
Through its CMD.

.. Respondent.

(By Advocate : Shri Ujjwal K. Jha)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman :

The applicant joined the service of respondent-organisation as Assistant Manager on 23.04.1982. Thereafter, he was promoted on 03.03.1992 as Manager (Accounts). He was promoted as Senior Manager w.e.f. 10.05.2002 on officiating basis, and he was regularised in that post on 01.09.2006. The next promotion is to the post of DGM (Accounts). For the post of DGM, there is also a channel of direct recruitment. The ratio between promotion and direct recruitment is said to be 80:20.

2. In August, 2007, the respondents initiated the process for direct recruitment against four vacancies of DGM. However, no steps were taken for promotion to that post from the category of Senior Manager. The applicant filed OA No.2553/2012 before this Tribunal in this regard, which, however, did not yield any tangible relief.

3. The applicant was ultimately promoted to the post of DGM w.e.f. 27.09.2012. Three days thereafter, he was retired from service on attaining the age of superannuation.

4. This OA is filed with a prayer to direct the respondents to treat his promotion to the post of DGM w.e.f. 10.05.2005, on which date, he completed the requisite length of service. By filing MA No.2737/2017, the applicant has also prayed for the relief of financial upgradation on completion of eight years of service in terms of the Scheme framed by the respondents in the year 2008.

5. The applicant contends that he was entitled to be promoted on completion of three years of service as Senior Manager and that the officiating service rendered by him in that post was required to be counted for this purpose. Alternatively, it is pleaded that the financial upgradation ought to have been extended on completion of eight years of service, particularly, when the scale of pay for the posts of

Manager and Senior Manager is one and the same, both before and after the revision of pay scales.

6. The respondents filed the counter affidavit opposing the OA. It is stated that the officiating service of the applicant in the post of Senior Manager cannot be counted, and it is only the regular service w.e.f. 01.09.2006 that can be counted, and by the time the process of direct recruitment was taken up, the applicant was not qualified. It is also stated that the DPC met only in the year 2012 and on recommendations of the DPC, the applicant was promoted to the post of DGM on 27.09.2012.

7. Heard Shri Gaurav Bhardwaj, learned counsel for the applicant and Shri Ujjwal K. Jha, learned counsel for the respondents.

8. The relief claimed by the applicant is twofold. The first is, as regards antedating the promotion to the post of DGM. As observed earlier, there are two channels for that post, viz., promotion and direct recruitment. For promotion, Senior Managers with three years' service are eligible. The applicant was promoted on officiating basis in the year 10.05.2002, and if his service is counted from that date, he becomes eligible to be promoted on 09.05.2005.

9. This would be the picture, in case the officiating service is to be reckoned. However, if regular service alone is to be counted, he becomes eligible to be promoted w.e.f. 01.09.2009. But either way, the applicant cannot be extended any benefit at this stage. The reason is that no DPC was conducted at that point of time, nor any senior Manager, who is junior to him was promoted to the post of DGM. Similarly, though he may have acquired the eligibility in the year 2009, the DPC was held in the year 2012 and he was promoted as DGM, three days before his retirement. The possibility of pushing the date of promotion to an earlier date does not exist on account of the fact that no junior to him was promoted to the post of DGM with effect from any earlier date. Hence, there is no way that the promotion can be treated as having taken place on date, earlier to the one on which it has actually taken place.

10. The next question is about the entitlement of the applicant for financial upgradation. The respondents framed a Scheme in the year 2008. This provides for upgradation of the scale of pay for an employee who continued for a period of eight years in the same scale of pay. It is stated that earlier to that, there was a Scheme which provided for grant of financial upgradation on

completion of thirteen years of service. That, however, was discontinued. It is not in dispute that the posts of Manager and Senior Manager carry same scale of pay. Therefore, the mere fact that the applicant was shifted from the post of Manager to Senior Manager does not come in the way of extending the financial upgradation. The result is that the applicant would be entitled for the financial upgradation on completion of eight years of service in the same scale of pay which occurs immediately before the commencement of the Scheme. So far as the eligibility is concerned, the record does not disclose anything adverse to the applicant, and this is fortified from the fact that he has been promoted to the post of DGM in the year 2012.

11. Therefore, the OA is partly allowed directing the respondents to extend the benefit of financial upgradation under the 2008 Scheme, and pay the resultant amount to the applicant within a period of three months from the date of receipt of copy of this order. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/