

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00570/2016

Chandigarh, this the 19th day of March, 2018

...
**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Pawan Kumar Pathak son of Late Sh. Shankar Dass Pathak, age 57 years, working as Accounts Officer in the Accounts Division of Semi Conductor Laboratory (SCL), Department of Space, Government of India, Sector 72, Industrial Area, Mohali.

....Applicant

(Argued by: Mr. D.R. Sharma, Advocate)

VERSUS

1. Union of India through the Secretary, Government of India, Department of Space (DOS), ISRO Headquarters, Antariksh Bhawan, New BEL Road, Bangalore – 560094.
2. The Director, Semi Conductor Laboratory (SCL), Department of Space, Government of India, Sector 72, Industrial Area, S.A.S. Nagar (Mohali) Punjab 160071.
3. The Controller, Semi Conductor Laboratory, Department of Space, Government of India, Sector 72, Industrial Area, Mohali, Punjab.
4. Sh. Gopal Krishan Gupta working as Accounts Officer in the Accounts Division of Semi Conductor Laboratory (SCL), Department of Space, Government of India, Sector 72, Industrial Area, Mohali.
5. Sh. Ram Kishore working as Accounts Officer in the Accounts Division of Semi Conductor Laboratory (SCL), Department of space, Government of India, Sector 72, Industrial Area, Mohali.
6. Sh. Manoj Aggarwal working as Accounts Officer, Accounts Division, of Semi Conductor (SCL), Department of Space, Government of India, Sector 72, Industrial Area, Mohali.

....Respondents

(Argued by: Mr. Ram Lal Gupta, Advocate for Respondents No. 1 to 3
Mr. Barejsh Mittal, Advocate, for Respondents No. 4 to 6)

**ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)**

1. The matrix of the facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy,

involved in the instant Original Application (O.A.), and expository from the record, is that applicant Pawan Kumar Pathak was working as Accounts Officer (A.O.), in the Accounts Division of Semi Conductor Laboratory (for brevity, SCL), Department of Space (in short, DOS), Govt. of India. He has retired from his service, after attaining the age of superannuation, during the pendency of the O.A.

2. A meeting of Departmental Promotion Committee (in short, DPC) for promotion to the post of Senior Accounts Officer was held on 15.02.2016, wherein seven eligible candidates were called for interview. The applicant, who himself was working as Accounts Officer, claimed that Gopal Krishan Gupta (Respondent No. 4) and Manoj Aggarwal (Respondent No. 6) were not eligible for promotion to the post of Accounts Officer. He, along with three other persons, made representation dated 23.02.2016 (Annexure A-2), assailing their promotion as Accounts Officer and their consideration for the post of Sr. Accounts Officer, which was considered and rejected, vide impugned order dated 30.03.2016 (Annexure A-1), by the Competent Authority. Consequently, the private respondents No. 4 and 6 were promoted to the post of Sr. Accounts Officer, vide impugned orders dated 06.06.2016 (Annexures A-2/A and A-2/B respectively)

3. Aggrieved thereby, the applicant has preferred the instant O.A., challenging the impugned orders and the promotion of private Respondents No. 4 to 6, on the following grounds:-

"A) That the applicant is eligible for promotion to one number of post of Senior Accounts Officer. The ineligible private respondents are being considered much to the disadvantage of the applicant. In an arbitrary and illegal manner the private respondents have been considered for the post of Senior Accounts Officer just after having residency period of approx. four and half month as against the prescribed three years as an Officer (Accounts) (mentioned in memorandum) residency period for the eligibility for the post of Senior Accounts Officer.

As per memorandum dated 16.06.2006 the residency period for the eligibility for the post of Senior Accounts Officer is three years as an Officer (Accounts), whereas the private respondents have been considered eligible for the post of Senior Accounts Officer just after having residency period of approx. four and half month. Thus, on this account also they were ineligible.

B) That the private respondents were promoted to the post of Accounts Officer without vacancy. It has been wrongly recorded in para no. 1 of the impugned order that the private respondents (Assistant Officers) have been promoted within the overall sanctioned manpower strength.

The private respondents no. 4 and 5 have been wrongly considered for promotion to the post of Senior Accounts Officer since their promotion to the feeder post of Accounts Officer vide order dated 05.10.2015 itself is wrong and illegal. As per clause No. 2 of DOS GOI Order dated 06.12.2008 the manpower strength is proposed to be achieved over a period of 4 to 5 years on occurrence of vacancies, whereas, at the time of promotion of private respondents vide Order dated 05.10.2015, there was no post of Accounts Officer was vacant as the sanctioned strength of Accounts Officer approved by SCLMC was 5 and the same was already occupied by none other than Accounts Officers listed at serial no. 1 to 5 therein.

C) That the memorandum dated 16.06.2006 pursuant to restructuring contains the norms laid for promotion to the post of Assistant Office, Officer, Senior Officer etc, therefore, it is wrongly contended in Para no. 1 of impugned order that residency criteria given in Memorandum dated 16.06.2006 is not applicable as on the date of promotion on 05.10.2015 and this was relevant only for the mapping of the grades.

D) That it is settled law that the games of rules cannot be changed once the game has started. In an arbitrary and illegal manner by revising/restructuring the Administrative manpower vide letter dated 03.06.2016 after the holding of DPC meeting on 15.02.2016 the ineligible private respondent No. 4 and 6 have been promoted to the post of Senior Accounts Officer pursuant to improperly constituted DPC meeting held on 15.02.2016 for promotion to one (1) post of Accounts Officer.”

4. Levelling a variety of allegations and narrating the sequence of events, in detail, in all, the applicant claims that although the private Respondents No. 4 to 6 were not eligible for promotion, but they were wrongly promoted on the post of Accounts Officer, by the respondents. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned orders and promotion of the private respondents, in the manner, indicated hereinabove.

5. On the contrary, the respondents have refuted the claim of the applicant, and filed written statement, wherein it was pleaded as under:-

“2. That all the Centre/Units of Indian Space Research Organization (ISRO) under DOS, including the other autonomous Bodies (Societies) under the administrative control are having the scales of Pay as under Central Dearness Allowance (CDA) pattern. In order to have uniformity in the pay scales of all the employees of DOS and to have a synergy between the SCL society and the DOS/ISRO and consequential mobility of personnel between the SCL Society and ISRO on programmatic considerations, the scales under CDA pattern were offered to the employees of SCL Co., on its restructuring into SCL Society. While migrating the employees of SCL Co. to SCL Society, the scales of pay held by them under Industrial Dearness Allowance (IDA) pattern on 31.8.2006 were taken into account for fixation of their pay under CDA pattern. The service rendered without any break on a regular basis by the employees in the erstwhile SCL Co. prior to 1.9.2006 was taken into account and accordingly the benefits under DOS norms were extended to SCL Society employees. A package in the form of Memorandum No. SCL/HRD/2006/06/30-1 dated 16.6.2006 was issued individually to each and every employee of SCL company and the employees were given an opportunity to elect either IDA pattern or CDA pattern. After going through the benefits and concessions, pay fixation formula given in Annexure -1 and mapping of pay scales given in Annexure 1-A of the Memorandum, the employees (including the applicant) consciously and voluntarily opted for CDA pattern of pay scales.

3. That there was no distinction between Technical and Administrative posts in the erstwhile SCL Co. However, after restructuring, the SCL Society has adopted all the service conditions including promotional norms applicable to ISRO/DOS personnel. The various posts in SCL society have been accordingly classified as Scientific/Technical and Administrative, keeping in view their area of work/deployment immediately before the entry into the SCL Society. The category-wise break-up of the approved 598 posts in SCL Society was as follows:-

Category	Available	Approved
Administrative	156	116
Scientific & Technical		
Sci/Engrs.	110	278
Tech. Assts & Technicians	275	204 . ”

6. The case of the respondents, further proceeds that the Management Council in its 8th meeting held on 06.11.2015, took a review of SCL Administrative manpower and recommended a total of 132 Administrative posts to meet the functional requirements. It was alleged that parallelly, SCL initiated action to fill the vacant posts in the administrative areas by way of promotion/upgradation/re-designation of the existing manpower within the overall sanctioned strength. As per the promotion norms in DOS/ISRO, adopted by SCL, the posts which are vacant and which are likely to fall vacant over a year, a selection panel of administrative posts is drawn once in a year as on the rationalised

date of 1st July every year and the same is utilized to effect promotions as and when some post falls vacant during 1st July to 30th June of the following year. The panel so prepared is valid for one year. Accordingly, in order to fill the post of Sr. Accounts Officer, which was likely to fall vacant during September, 2016, promotion process of the eligible seven Accounts Officers, including the private respondents, was conducted on 15.02.2016, and based on their merits in DPC, a panel of two officers namely Gopal Krishan Gupta and Manoj Agarwal (Respondents No. 4 and 6) was drawn for promotion. It was reiterated that the applicant did not figure in the merit of first two slots in the panel.

7. Meanwhile, approval to the revised administrative manpower was received in SCL on 03.06.2016 as per which two posts of Sr. Accounts Officer were sanctioned. On receipt of this approval, Respondents No. 4 and 6 were issued promotion orders on 06.06.2016 for the post of Sr. Accounts Officer. Aggrieved thereby, the applicant, through this O.A, raised objections (i) on the eligibility of Asstt. Officers (including private Respondents No. 4 and 5) for their promotion/upgradation to the post of Officers and then (ii) on considering them (private respondents 4 and 5) for promotion to the post of Sr. Accounts Officer along with other Accounts Officer (including the applicant) alleging that they (private respondents) were not eligible to be considered for the post of Sr. Accounts Officer as they did not have the required minimum residency of 3 years as Officer as provided in the Memorandum dated 16.06.2006 and pleaded that the DPC should be conducted afresh to the posts of Senior Accounts Officers from amongst the eligible Accounts Officer (except private respondents 4 and 5). It is

alleged that the O.A. is not based on the facts and circumstances. The SCL Society, vide letter dated 16.12.2015 had sought approval of respondent No. 1 for conducting the DPC interview, and a DPC for promotion to the post of Sr. Accounts Officer in the grade pay of Rs.6600/-, was constituted, with the approval of the Chairman, SCL, Governing Council.

8. According to the respondents, that all the promoted officers, fulfilled the eligibility criteria of recruitment and promotion system in ISRO/DOS, approved by SCL, from time to time. It is on the basis of that criterion that the officers (including private Respondents No. 4 and 5) who had combined service (as Assistant Officer as well as Officer) of 6 years had been called for DPC interview on 15.02.2016, for promotion to the post of Sr. Accounts Officer. There is no ambiguity in the promotion process, as claimed by the applicant. Applicant is trying to mislead this Court and concealed the facts of restructuring of the posts. The Competent Authority has rightly issued the promotion order dated 06.06.2016 of private respondents No. 4 and 6, who were duly empanelled by the DPC based on the basis of their performance in the interview for promotion to the post of Senior Accounts Officer, which was likely to fall vacant during September, 2016.

9. Sequelly, adopting the same line of defence, as pleaded by the official Respondents No. 1 to 3, the private Respondents No. 4 and 6 have also filed written statement. Instead of reproducing the entire contents of the written statement and, in order to avoid the repetition of facts, suffice it to say that while virtually acknowledging the factual matrix and reiterating the validity of the impugned order, the respondents have stoutly denied all other

allegations and grounds, contained in the O.A., and prayed for its dismissal.

10. Controverting the allegations, of the pleadings of the respondents, and reiterating the grounds, contained in the O.A., the applicant filed the rejoinder. That is how we are seized of the matter.

11. Having heard learned counsel for the parties, having gone through the record, with their valuable assistance, and after considering the entire matter, we are of the firm view that there is no merit, and the instant O.A. deserves to be dismissed, for the reasons mentioned herein below.

12. Ex facie the celebrated arguments of learned counsel for the applicant that since the private respondents were neither eligible nor the posts were available, so their promotions to the posts of Accounts Officer and Sr. Accounts Officer are arbitrary and illegal, are not only devoid of merit, but misplaced as well.

13. At the first instance, it is not a matter of dispute that the applicant has already retired from service, after attaining the age of superannuation, so now he cannot be said to be aggrieved by the promotions of the private respondents, in any manner. Moreover, as depicted herein above, the respondents have duly explained that in SCL Society, all the Assistant Officers, who had completed four years of service in erstwhile SCL Co., were granted non-functional grade pay of Rs.5400/-. Thus, vide order dated 05.10.2015, they were only granted the designation of upgraded post of Accounts Officer, as they were already drawing the same grade pay of Rs.5400, as such the same does not amount to their promotion.

14. Thus, the specific case of the respondents is that, pursuant to the restructuring of erstwhile SCL Company to SCL Society, under the administrative control of Department of Space, Govt. of India, all the employees of erstwhile SCL Co. were given an option to opt to join the new Society or to be declared surplus. As per the option dated 01.09.2006, exercised by the applicant, he was appointed in the SCL Society as Accounts Officer, under the CDA pattern, with pay scale of Rs.8000-13500. As per memorandum dated 17.09.2004 of Department of Space (Annexure R-3), for promotion to the post of Senior Accounts Officer (P & GA, Accounts and Purchase & Stores)(Rs.10,000-15200/-), the condition of six years combined service as Officer in the grade of Rs.8000-13500 and Assistant Officer in the grade of Rs.8500-10500/-, is required. The further promotion process from the post of Accounts Officer to the Sr. Accounts Officer involves consideration of annual confidential reports, followed by interview and apportionment of marks viz-a-viz, interview and ACR is 70:30, as per instructions (Annexure A-7). Seven eligible persons were considered by the DPC, for promotion to the post of Sr. Accounts Officer, after considering the requisite experience and service record/ACR. Gopal Kumar Gupta (Respondent No. 4) got 75.53 and Manoj Aggarwal (Respondent No. 6) got 72.57 marks, whereas applicant got only 60.60 marks in the DPC consideration. Since the private respondents No. 4 and 6 got more marks and were more meritorious than the applicant, so they were rightly promoted to the post of Sr. Accounts Officer. Therefore, the private respondents were duly promoted to the post of Sr. Accounts Officer, as per their

eligibility criteria, service record and in pursuance of the relevant instructions.

15. There is yet another aspect of the matter, which can be viewed entirely from a different angle. Although the applicant has no locus standi, but still he, along with three other employees, moved representation dated 23.02.2016 (Annexure A-2), assailing the promotions of private respondents. The matter was duly considered and rejected, vide impugned order dated 30.03.2016 (Annexure A-1), by the Competent Authority, which, in substance, is as under:-

“ This has reference to your joint representation dated February 23, 2016 addressed to Controller seeking corrective action with regard to the recommendations of the DPC, which considered all the eligible Accounts Officers for promotion to the post of Sr. Accounts Officer in SCL. The representation has been examined and I am directed to inform as under:-

1. The contention that Shri Gopal Krishan Gupta and Shri Ram Kishore Accounts Officers were not eligible even for the post of Accounts Officer as there was no post of Accounts Officer vacant in Accounts Division at the time of their promotion/upgradation of the Asst. Officers (including the Asst. Accounts Officer) in SCL has been done in terms of clause 6.3 of the approved organization structure where it has been mentioned that all the posts of Asstt. Officers (Rs.6500-10500) are proposed to be upgraded as Officers (Rs.8000-13500) as has been done in ISRO. It may be added here that since on completion of four years in SCL Society, the SCL Asst. Officers had already been granted non-functional grade pay of Rs.5400/- w.e.f. 1.9.2010/1.1.2011 (on option), there has been no financial implication by promoting/upgrading them to the post of Officers (GP Rs.5400) through DPC, it may be seen that by this promotion/upgradation there is no increase in the existing manpower as this promotion/upgradation of Asst. Officers has been done within the overall sanctioned manpower strength. Further, the residence criteria given in the Memorandum dt. 16.6.2006 is not applicable as on the date of promotion/upgradation. This was relevant only for mapping of the grades and subsequent to 1.9.2006 Orders/OMs issued by DOSs/ISRO from time to time governing recruitment, career progression etc. apply.
2. The applicable eligibility criteria for consideration of promotion is as under:
“* 6 years combined service as officer & Asst. Officer in the concerned area.
*6 years combined service as Section Officer in the grade of Rs.8000-13500 & Rs.6500-10500, for Sr. Admn. Officer only)
*Officers + 4 years.”
As both the Accounts Officers (Shri Gopal Krishan Gupta and Shri Ram Kishore) were meeting the eligibility criteria of 6 years combined service, they were rightly called and considered for promotion to the post of Sr. Accounts Officer by the DPC.
3. No person was made eligible. As already pointed out in the foregoing para 1 and 2, these persons were eligible since they fulfilled the prescribed criteria. The submission is, however, not acceptable in view of the position explained under 1 & 2 above.
4. There were, in fact, two Domain Experts- one Director, PP & PM, nominated as Domain Expert by DOS and the other Controller, SCL, who is the overall Incharge of Accounts, P & S and Admn Divisions, available in the DPC which considered the cases of eligible Accounts Officers for promotion to the post of Sr. Accounts Officer. Thus, the apprehensions of injustice or miscarriage of justice is not tenable.

2. You are very well aware of the fact vide e-mail dt. 3.2.2016 that 7 eligible Accounts Officers were called for interview. No shortcoming

was pointed out prior to the date of interview. The alleged injustice or miscarriage of justice, if any, could have been pointed out by you before appearing for the interview before the DPC.

3. In view of the above factual position, there is no ambiguity in the DPC exercise conducted by SCL for considering the cases of Accounts Officers to the post of Sr. Accounts Officer which calls for review."

16. Meaning thereby, the matter was duly considered in the right perspective, by the Competent Authority, which proves that the private respondents were duly eligible and were rightly promoted against the vacant posts of Sr. Accounts Officer. We do not find any ambiguity or illegality in the impugned orders, which to our mind, deserves to be and are hereby maintained, in the obtaining circumstances of the case.

17. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

18. In the light of the aforesaid prismatic reasons, as there is no merit, so the instant O.A. is hereby dismissed as such. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
Dated:19.03.2018

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