

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00705/2014

Dated the 15th day of November Two Thousand Eighteen

PRESENT

**HON'BLE MR. P. MADHAVAN, Member (J)
&
HON'BLE MR. T. JACOB, Member (A)**

P. Murugaiyan
3, 6th Cross, Bharathi Nagar
Puducherry.Applicant

By Advocate M/s Karthik, Mukundan & Neelakantan

Vs

1. Union of India, rep. through the
Government of Puducherry represented by its
Secretary to Government, Labour Department
Government of Puducherry.
2. The Joint Secretary to Government cum
Labour Commissioner, Labour Dept.,
Government of Puducherry, Puducherry.Respondents

By Advocate Mr. R. Syed Mustafa

ORDER**(Pronounced by Hon'ble Mr. T. Jacob, Member(A))**

Heard. The applicant has filed this OA seeking the following relief:

“To direct the respondents to consider and promote the applicant as Group Instructor with retrospective effect from 01.01.2008 with all consequential benefits flowing there from and pass such further or other orders”

2. The facts of the case as stated by the applicant are as follows:-

The applicant joined the Labour Department, Government of Puducherry in 1984 as a Craft Instructor. Subsequently, the post was redesignated as Vocational Instructor. The next higher post is that of Group Instructor. The applicant satisfied the eligibility requirements for consideration for promotion to the post on 30.07.1991 itself. However, his case for promotion could not come up due to large number of seniors over and above him and the limited number of vacancies in the promotional post. His turn for promotion came up only in the year 2011 and he was the senior most person available at that point of time. It is submitted that however no action was taken to fill up the vacancy which arose then. Action was taken only belatedly in February 2013 for filling up the accumulated vacancies. As a consequence the applicant was promoted only on 02.07.2013 as Group Instructor on regular basis. The applicant made detailed representation seeking retrospective promotion from the date of the vacancy i.e. 01.01.2008 in which he had been accommodated. Further the applicant by an order dt. 25.08.2010 had been directed to look after the duties and responsibilities of Group Instructor which he attended to till his recent

promotion to the said post. However, no action has been taken to retrospectively promote the applicant from the date the vacancy actually arose. Now action has been initiated to fill up the higher post of Principal for which three years of service is required in the post of Group Inspector. Had the applicant been promoted on time i.e. the date on which the vacancy arose on 01.01.2008, he would also be eligible to be considered for promotion to the post of Principal.

Hence the OA.

3. The respondents would submit that the DPC could not be convened well in time due to procedural reasons. The department with a view to comply with the norms fixed by the DGE&T, New Delhi, initiated action for deputing the Vocational Instructors those who have not possessed National Craft Instructors Certificates. The applicant is one among those who were deputed for Instructor training in the Central Training Institute in Chennai. Further, the service associations had put forth the demand to review the recruitment rules of all categories of posts in the respondent department and the proposal for revision of the recruitment rules has been submitted to the competent authority for approval. The respondent would submit that the post of Group Instructor is a selection post and in the selection process extended zone of consideration was adopted owing to one SC vacancy to be filled up. Further a dispute arose in the matter of SC (origin) and SC (migrant) and after settling the said issue, proposal was submitted to the Departmental Promotion Committee and the applicant along with 5 others have been promoted as Group Instructor as per the existing

Recruitment Rules based on the recommendations of the Departmental Promotion Committee meeting held on 21.3.2013. The applicant had not brought to the notice any unintentional mistakes to the respondent department after he was promoted to the post of Group Instructor and has not requested for a review DPC. The respondents also cited the decision reported as (1998) 7 SCC 44 Baij Nath Sharma Vs. Hon'ble Rajasthan High Court at Jodhpur & Anr, relying upon the law declared in K.K.Vadera's case (supra), since no rule was shown which could justify a retrospective promotion, and no malafides pleaded or proved in delaying promotions, the Hon'ble Supreme Court held that the appellant, a Member of the Rajasthan Judicial Service, could not be promoted from the date a vacancy accrued in the Rajasthan Higher Judicial Service against which vacancy he was ultimately promoted. The respondents have also relied on the decision of the Hon'ble Delhi High Court dt. 12.4.2013 in WP(C) 8102/2012 and batch in the case of UOI & Anr. Vs. K.L.Taneja and anr. Therefore, the applicant is not entitled for any relief and the respondents have prayed for dismissal of the OA.

4. The applicant filed rejoinder and submitted that the respondent cannot cite a mere proposal to amend the Recruitment Rules as a reason for not holding the Departmental Promotional Committee on time as and when the vacancies arose. Further, the applicant was found fit for grant of ACP benefit in the pay scale attached to the post of Group Instructor w.e.f 9.8.99 vide order dt. 4.9.2000 and thus satisfying the requirement of the Recruitment Rules for grant of regular

promotion. The respondents did not prepare a year-wise panel to fill vacancies year wise in accordance with the Recruitment Rules and the justification given for not doing the same is unsustainable. It is submitted that the applicant was discharging the post of Group Instructor by an order dt. 25.8.2010 and the actual promotion was granted to the applicant only on 27.3.2013 whereas the applicant was eligible to be promoted as early as 1.1.2008.

5. The learned counsel for the applicant would submit that as per the extant guidelines on the subject, the year wise vacancies had to be assessed and the Departmental Promotion Committee should meet and assess the eligibility of the employees at the earliest. The applicant fulfilled eligibility criteria as per the Recruitment Rules and could have been promoted much earlier had the respondents prepared a year wise vacancy list and conducted the “DPC” as and when the vacancy arose. He further submitted that the retrospective promotion can always be granted to an employee who fulfilled the eligibility criteria as per the Recruitment Rules but could not be promoted due to inaction on the part of the Government. He relied on the decision of the Hon'ble Supreme Court in the cases of P.N.Premachandran V. State of Kerala and ors. in CA No. 4100 of 1998 decided on 6.11.2003 [(2004) 1 SCC 245], Major General H.M.Singh V. Union of India & anr in CA No. 192 of 2014 decided on 9.1.2014 [(2014) 3 SCC 670], Union of India and anr V. Hemraj Singh Chauhan and ors in CAs No. 2651-52 of 2010 decided on 23.3.2010 [(2010) 4 SCC 290] in support of his case. He also relied upon the order of the CAT-Principal Bench in the case of Gurmit

Singh v. M/o Personnel, Public Grievances and Pensions in OA 1849/2016 which was allowed vide order dt. 28.4.2017.

6. Learned counsel for the respondents would submit that service jurisprudence does not recognize the jurisprudence concept of deemed retrospective promotion. Unless there exists a rule or there exists a residual power and in exercise of the implementation of the rule or in exercise of power conferred by the residual rule a decision is taken or can be taken to grant retrospective promotion, no person can claim a right to be promoted from the date when the vacancy accrued. He contended that the DPC could not be convened in time due to procedural reasons. Therefore, applicant must take the promotion with its benefits from the date of actual promotion.

7. Arguments were heard and documents/records perused.

8. The grievance of the petitioner is that in absence of a regular promotion from the date when the vacancy became due to which he was ultimately promoted, his right to further promotion to the post of Principal, Government Industrial Training Institute would be adversely affected because of the requirement of qualifying service in the feeder cadre ie, Group Instructor. The next higher post to that of Group Instructor is the post of Principal, Government Industrial Training Institute which requires three years of service in the post of Group Instructor for the purpose of promotion. Since the applicant was promoted belatedly, not due to the fault on the part of the applicant, but purely due to the delayed administrative action on the part of the respondents, his

eligibility service is being counted only from the date of promotion ie, 27.3.2013. Therefore, the applicant prayed for retrospective promotion with all consequential benefits. The normal rule of law is that nobody can be promoted with a retrospective effect except the exception is that when there exist facts which necessitates so or there is a rule which permits so. Thus, the facts which necessitated the exception to be applied have to be specifically pleaded. In the decision report as 1987 (4) SCC 566 K.Madhavan & Anr Vs. UOI & Ors., the Hon'ble Supreme Court held that nobody can claim a right for appointment to a post as a matter of right. It was held that as a rule, retrospective appointment or promotion to a post should not be resorted to unless on a sound reasoning and foundation it becomes necessary to sparingly do so. With respect to scheduled DPCs, only if they were cancelled malafide, arbitrarily or without any reasonable justification to the prejudice of an employee, could the Government in such a case, to undo the injustice cause, grant promotion from a retrospective date. In the decision reported as 1989 Supp (2) SCC 625 Union of India & Ors. Vs. K.K.Vadera & Ors., the Hon'ble Supreme Court observed in para 5 as under:-

“5.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 fall 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.”

9. Further the Hon'ble High Court of Delhi in WP (C) 8102/2012 in the case

of UOI and anr V. K.L.Taneja pronounced on 12.4.2013 observed that :

“The cornucopia of case law above noted brings out the position:-

I. Service Jurisprudence does not recognize retrospective promotion ie, a promotion from a back date.

II. If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing.

III. Since malafides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the malafide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a malafide act ie, deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.

IV. If due to administrative reasons, DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.”

It is not in dispute that DPC could not be convened in time due to procedural delays. No malafides is alleged much less proved. There is no statutory provision available to compel that vacancy to a post should be filled within the same year. Further none of his juniors have been promoted before his actual promotion on 27.3.2013. Grant of retrospective promotion could be granted only under special circumstances such as initial supercession and Court orders to grant promotion or the individual has not been considered at all when other including when the juniors have been considered or initial adverse remarks in the confidential report which later on got expunged etc. Again, the introduction of financial upgradation under ACP or MACP scheme had been only to meet such contingency of delay in grant of promotion. There is no financial implication of the impugned decision as the applicant has been granted ACP w.e.f 1999 and is officiating in the post of Group Instructor from 2010 onwards.

There is no vested right of promotion and only right of consideration for promotion. On the concept of further right to be promoted with reference to service in the grade, it all depends upon the language of the service rule. As per the service rule for the post of Principal, Government Industrial Training Institute, the eligibility service for promotion to the post of Principal is three years of service in the post of Group Instructor. Since the applicant being the senior most, he becomes eligible for consideration for promotion to the post. The decisions relied upon by the learned counsel for the applicant are not applicable to the facts of the case.

10. In view of the above, the applicant is not entitled to be granted relief as sought. The OA being devoid of merits, the same is accordingly dismissed. No costs.

(T.Jacob)
Member(A)

(P. Madhavan)
Member(J)

15.11.2018

SKSI