

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.183 of 2012

Date of CAV:23.11.2017.

Date of Order : 12.12.2017.

Between :

S.Surya Rao, s/o late Bangarayya, aged 59 yrs,
Assistant Naval Stores Officer-I, r/o H.No.48-5-38,
Srinagar Co-operative Colony,
Visakhapatnam-16.

... Applicant

AND

1. The Union of India, rep., by its
Secretary, M/o Defence,
Integrated Naval Headquarters,
South Block, New Delhi-110 001.

2. The Chief of Naval Staff, Naval Head Quarters,
South Block, New Delhi-110 001.

3. The Chief of Personnel, Integrated HQ of
Ministry of Defence (Navy), 'C' Wing,
Sena Bhavan, New Delhi-110 011.

4. The Flag Officer Commanding-in-Chief,
Head Quarters, Eastern Naval Command,
Visakhapatnam.

5. The Material Superintendent,
Material Organization, Visakhapatnam.

... Respondents

Counsel for the Applicant ... Dr.P.B.Vijaya Kumar, rep., by

... Mr.Sai Baba

Counsel for the Respondents ... Mrs.K.Rajitha, Sr..CGSC

CORAM:

THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)

THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

This OA assails Annexure.A-I letter of the 3rd respondent dated 30.08.2011 rejecting the representation of the applicant for promotion to the post of Naval Stores Officer (NSO).

2. The applicant submits that he was promoted to the post of Assistant Naval Stores Officer (ANSO) Grade-II with effect from 11.09.2003. He completed 3 years of service in the said grade as on 10.9.2006 and became eligible for promotion to the next higher grade of ANSO Grade-I with effect from 10.9.2006. However, his promotion was deferred until 19.6.2009. He points out that as per Recruitment Rules, 5 years regular service in the grade of ANSO-I is required for promotion to the next higher post of NSO. As per Annexure.A-4 seniority list, he is the next candidate to be considered for the post of NSO in view of the fact that the officers at Serial Nos.3 and 6 retired in 2011.

3. It is the contention of the applicant that consequent on the implementation of the VI CPC recommendations, the Department of Personnel & Training vide Annexure.A-III OM dated 24.03.2009 directed all the Ministries to amend the service rules/recruitment rules in pursuance of OM dated 9.3.2009, which stated as follows:

“For the purpose of computing minimum qualifying service for the promotion, the service rendered on regular basis by an officer prior to January 2006 i.e., the date from which the revised pay structure, based on the Sixth CPC recommendations has been extended, shall be deemed to be

service rendered in the corresponding Grade Pay/Pay Scale extended, based on the recommendations of the 6th CPC.”

All the Ministries were directed to furnish necessary amendment proposals to the DOPT and to the UPSC in the case of Group-A and B Officers within six months from the date of issue of the aforesaid memorandum. Further, the minimum qualifying service required for promotion from the Grade Pay of Rs.4600/- to Rs.6600/- is 7 years as stipulated at Serial No.14 of the table annexed to the Annexure.A-III memorandum. As such, he fulfills the requirement for promotion because he has put in more than 8 years of service in the pay scale of ANSO Grade-II (Grade Pay Rs.4600) and ANSO Grade-I (Grade Pay Rs.5400/-) so as to be considered for promotion to the post of NSO. His representation dated 26.07.2011 to the 2nd respondent, however, was rejected vide the impugned Annexure.I orders dated 30.08.2011 on the ground that his claim for applying the revised norms of minimum qualifying service can be considered only after the revised Recruitment Rules are notified. This reason according to the applicant is not in conformity with the DOPT Memorandum.

4. The applicant further contends that the respondents have promoted two officers viz., (1) Sri Sanjay Dinakar, and (2) K.S.Jadhav, as NSO, even though they did not complete the minimum qualifying service of 5 years in the post of ANSO Grade-I. However, the same consideration was denied to him and the action of the respondents is discriminatory and violative of Article 14 of the Constitution of India.

5. The applicant points out that he cannot be placed in a disadvantageous position merely on the ground that the new Recruitment Rules have not been promulgated by the respondents. Such delay due to the laxity and lethargy of the respondent department should not cause loss to him. He also states that in a similar case in O.A.No.898/2000 in *I.K.Jha, ANSO & Others v. Union of India & Others*, the Principal Bench of the Central Administrative Tribunal held as follows:

“Under the circumstances, the OA succeeds and is allowed to the extent that the respondents are directed to hold a review DPC to consider the cases of the applicants for promotion as Naval Stores Officers against such vacancies in general category (applicants being the members of general category) which are available on the date their junior Sh.V.R.Sukumaran was promoted as Naval Stores Officer. These directions should be implemented within three months from the date of receipt of a copy of this order. If consequent to such consideration, the applicants are recommended for promotion, they shall be entitled to all consequential benefits as admissible in accordance with rules/instructions/judicial pronouncements on the subject.”

He also states that the Principal Bench of this Tribunal had held that the failure of the respondents to amend SRO No.54/89 cannot be advanced as an argument to deny the applicant's prayer for consideration for promotion. The applicant therefore prays for a direction to the respondents to promote him to the post of NSO with effect from 1.1.2011 with all consequential benefits.

6. The respondents have filed a reply statement resisting the plea of the applicant in the OA. They submit that the applicant has claimed that he is eligible for promotion to the next higher grade of National Stores Officer (NSO) as he completed 7 years of service in the grades of ANSO-I and ANSO-II. However, it was clarified to him that only ANSO-I with 5 years service is eligible for promotion to the grade of NSO and that he had not completed the requisite qualifying service as per the existing Recruitment Rules. It is also submitted that the completion of minimum qualifying service specified in Recruitment Rules is not the only criteria for promotion and that promotions are effected when clear vacancies are available from among the persons in the feeder grade, who meet the eligibility conditions including the minimum qualifying service. They reiterate that as per the existing Recruitment Rules, there is no provision to count the combined service in the grade of ANSO-I and ANSO-II for promotion to the grade of NSO. It is also stated that the revision of the Recruitment Rules is in progress and that the draft has already been approved by the DOP&T and UPSC and submitted to Ministry of Law for vetting. However, the draft does not contain any clause for counting of combined service in the grades of ANSO-II and ANSO-I. They aver that the applicant by wrongly interpreting the contents of the DOP&T OM is contending that the counting of combined service is mandatory for every cadre.

7. With regard to the contention that the two officers Sri K.S.Jadav and Sri Sanjay Dinakar were promoted even though they did not have the minimum qualifying service of 5 years as ANSO Grade-I, the respondents submit that there

was a special provision in SRO 47 of 2002 for the existing 94 incumbents of ANSO-I and II on the date of notification of the revised rules, and that 8 years combined service as ANSO-I and II would be applicable to such incumbents as a one time measure. Sri Jadhav was considered for promotion under the aforesaid clause as he was holding the post before the notification of the Recruitment Rules. Sri Sanjay Dinakar, who was a Direct Recruit Officer and had not completed 5 years of service in the grade was also considered for promotion as he was senior to Sri Jadhav under junior/senior clause in the SRO, which states “*where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service*”. They have also annexed a copy of SRO No.47 of 2002 along with reply statement. Thus, the applicant is not eligible to count his combined service in ANSO-II and ANSO-I for promotion to NSO. It is also stated that the delay in revision of Recruitment Rules is not the reason for rejecting the applicant's claim for promotion and that there is no comparison between his case and the judgment relied upon by him.

8. Heard the learned counsel on both sides and perused the record.

9. The main contention of the applicant herein is that he is eligible for promotion to the post of NSO as he is having combined service of more than 8 years in the cadre of ANSO Grade-I and ANSO Grade-II and thus satisfies the eligibility criteria for promotion as NSO. To fortify his submission, he has placed reliance on the Annexure.A-II DOP&T OM dated 9.3.2009 and has argued that the residency period required for promotion to the post is only 7 years and that if an officer is in the Grade Pay of Rs.4600 or Rs.5400/- and completes 7 years, he is eligible to be considered for the next higher post. The Annexure.A-II OM states as follows:

“(i) Where all posts in one or more pre-revised scales are merged with a higher pre-revised scale and given a common replacement scale/grade pay/pay scale, the suitability of the incumbents need not be assessed for granting them the higher replacement scale/grade pay/pay scale; there is also no need for the incumbents to complete any minimum eligibility service in the earlier scale of pay. There will be no change in the inter se seniority of the incumbents in the merged grade which shall be decided based on the general instructions on the subject; and

(ii) Where all posts in a particular grade have been granted a higher replacement pay scale/grade pay, as per upgradation recommended by the 6th CPC, suitability of the incumbents need not be assessed for granting them the higher replacement scale/grade pay. Here also, there is no need for the incumbents to complete any minimum eligibility service in the earlier scale of pay; and

(iii) Where there is a change in the Group (that is classification of post) consequent upon the merger or upgradation and where there is no higher responsibility or higher qualification involved assessment of the suitability will not be necessary before the revised grade is allowed. There will also be no need for the incumbents to complete any minimum eligibility service in the earlier scale of pay. However, suitability of the officer who has been placed in a upgraded/replacement pay scale which fall in Group 'A' by recommendation/award of the Pay Commission will continue to be assessed."

10. The aforesaid OM lays down the criteria for assessing suitability of officers where there is a revision/upgradation/merger of pay scales. The applicant has failed to show any merger/upgradation of scales in the post of ANSO/NSO so as to claim the benefit of changes in the minimum eligibility service.

11. We also do not find any merit in the applicant's reliance on the Annexure.A-III memorandum as the same relates to the need for amendment of Service Rules/Recruitment Rules where pre-revised scales have been merged or upgraded. As already stated, the applicant has not produced any material to show which are the pre-revised scales which have been merged consequent on implementation of 6th CPC. His only contention in all his representations is that due to the delay in amendment of the Recruitment Rules, his promotion is getting delayed even though he had the required 7 years of combined service as ANSO-II and ANSO-I for promotion to the grade of NSO with effect from 01.01.2011. However, without any material evidence regarding merger/upgradation of pay scales that has

taken place, the grounds raised by the applicant are untenable and do not stand the test of legal scrutiny. We are, therefore, in agreement with the respondents that there is no illegality in the orders passed by them and that the impugned orders are in accordance with the existing Recruitment Rules.

12. We have also perused the orders of the Principal Bench of this Tribunal in OA.o.898/2000 in which a direction had been issued to the respondents to hold a Review DPC to consider the cases of applicants therein for promotion against the vacancies in the general category, which were available on the date their juniors were promoted as NSO. The Tribunal had also held that the failure of the respondents to amend SRO 54/89 by insertion of a clause that such seniors who have completed the probation period would also be considered where the juniors who have completed the requisite service were considered for promotion, cannot be advanced as a argument to deny the applicant's prayer for consideration for promotion.

13. The facts of this case are different inasmuch as the applicant has no case that his juniors were promoted and that he should be given the benefit of the rule provision that seniors are also to be considered where juniors were being considered for promotion. Further, the cases of Sri Sanjay Dinakar and K.S.Jadhav, cited by him, are on an entirely different footing. They are admittedly seniors to the applicant and have been promoted keeping in view the special provision in SRO 47 of 2002, which gives protection to the existing 94 incumbents who were in ANSO Grade-I and Grade-II on the date of the notification of the revised Rules by

considering their 8 years combined service as a one time measure. The said SRO was issued on 5.2.2002. By his own admission the applicant was promoted to ANSO Grade-II only on 11.9.2003. When he was not in the grade of ANSO as on 5.2.2002, he would not be entitled to the benefit of SRO 47/2002, which has been given to his seniors. Further, it is seen that Sri Sanjay Dinakar who has not completed 5 years of service was also considered for promotion as he was senior to Sri Jadhav under the Junior/Senior clause in the SRO, which is cited supra. Thus, this contention is unacceptable.

14. The respondents have rejected the representation of the applicant for promotion on the ground that as per the existing Recruitment Rules, ANSO-I with 05 years of regular service in the grade can only be considered for promotion to the grade of NSO and that his claim for considering his promotion based on revised norms can be considered only after the notification of the Recruitment Rules. Both are valid grounds which cannot be faulted.

15. Having regard to the aforesaid discussions and also the fact that the applicant has failed to show that the respondents have violated any of the provisions of the existing Recruitment Rules, there is no merit in the contentions of the applicant in this OA. The OA fails and is accordingly dismissed. No order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 12th day of December, 2017

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