

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORIGINAL APPLICATION NO.200/724/2016

Jabalpur, this Wednesday, the 31st day of January, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Paul P George, Son of Shri Varkey P John, Age:50 years
Administrative Officer, SQAE(A)&LPR Khamaria,
Jabalpur-482005 MP R/o 106, Bhasin Residency
Near Hotel Jackson, South Civil Lines,
Jabalpur-482001 MP

- APPLICANT

(By Advocate – Shri P.Shankaran)

Versus

1. Union of India through the Secretary,
Department of Defence Production,
Ministry of Defence, South Block,
New Delhi-110 001.

2. The Director General of Quality Assurance,
Department of Defence Production, H-Block,
New Delhi-110011

3. Shri P.C.Pant, Admin Officer,, SQAE(A),
T-18, Kandhar Lines, Delhi Cantt-10010

4. Shri Satyandra Singh, Admin Officer, SQAE(General Stores)
Anand Parbat, New Delhi-110005.

5. Shri N.K.Sondhiya, Admin Officer, Quality Assurance Estt
(Military Explosives) OFK Premises, Jabalpur-482005 MP

6. Shri D.K.Adhari, Admin Officer, SQAE(Armaments) Khadki
Pune-411003 MS

7. Shri S.B.Kol, Admin Officer, SQAE (Armanents) Gun Carriage
Factory, PO Jabalpur-482011 MP

8. Shri A.M.Anaspure, Admin Officer, SQAЕ(Vehicles),
DGQA Complex, LBS Marg, Vikhroli, Mumbai-400083 MS

9. Shri S.N.Trikha, Admin Officer, SQAЕ (Metals)
Murad Nagar, Dist.Ghaziabad-201206 UP

10. Shri V.D.Sabale, Admin Officer, Defence Institute of Quality
Assurance, S.K.Garden, Benson Town, Bangalore-560046

11. Shri P.Loknath, Admin Officer, Controllerate of Quality Assurance
(Electronics) J.C.Nagar Post Bangalore-560006 - **RESPONDENTS**

(By Advocate – Shri S.K.Mishra)
(Date of reserving the order:29.11.2017)

ORDER

By Navin Tandon, AM-

The applicant's grievance in this Original Application is that he has not been assigned seniority by taking into consideration the date of his joining on absorption basis under the respondent-organization.

2. The brief admitted facts of the case are that the applicant was working as Technical Assistant in the Office of Regional Director (S&R) Save Grain Campaign Regional Office, Department of Food & Public Distribution at Bhopal. He applied for the post of Administrative Officer under the respondent-Organization in response to the advertisement published in the Employment News in December,2007 (Annexure A-3). On the recommendations of the UPSC, the applicant was selected for the post of Administrative Officer on deputation basis and posted to the Senior Quality Assurance Establishment (for brevity 'SQAЕ')

(Armaments), Khamaria, Jabalpur vide letter dated 15.05.2009 (Annexure A-4). He reported to SQA E on 01.07.2009. He submitted an application for absorption in DGQA organization on 09.03.2012. The respondent No.2 vide his letter dated 24.5.2013 (Annexure A-7) intimated that on the basis of the recommendations of the UPSC, approval of the appointing authority has been obtained for appointment of the applicant on absorption basis. In the said letter it has been mentioned that the appointment of the applicant on absorption basis in DGQA organization would be effective from the date following the date of acceptance of his technical resignation by his parent department. His technical resignation was accepted by his parent department on 05.07.2013. Accordingly he was absorbed in DGQA organization w.e.f. 05.07.2013.

3. In this Original Application the applicant has prayed for the following reliefs:

“8.1 to quash the seniority list of Administrative Officer, circulated by Respondent No.2 vide letter dtd. 31 July 2015 at Annexure A/1 and accordingly order dated 02 June 2016 at Annexure A/2 also be quashed.

8.2 to direct the Respondent No.2 to prepare the seniority list afresh taking into consideration of the date of joining of the applicant vis-à-vis others by assigning a position to applicant at Sl.No.1 as candidate at Sl No.1 to 4 were already promoted.

8.3 to promote the applicant to SAO Gde II based on the fresh seniority position assigned to applicant against available vacancy prior to Respondent No.3 to 11 as applicant completed the requisite service in the feeder grade and is eligible to be considered for promotion to higher post.

8.4 grant any other relief as deemed fit and proper on the facts and circumstances of the case”.

4. The learned counsel for the applicant contended that when the applicant joined under the respondent No.2 on transfer/deputation in 2007 respondents Nos.3 to 11 were not at all borne in the cadre of Administrative Officer. Based on his permanent absorption under the respondent-department, the applicant is entitled to get his seniority position fixed from the date of his absorption i.e. from 05.07.2013. He further submits that the panel for promotion of private respondents were issued subsequently on 18.10.2013 (Annexures R-7 & R-8). The official respondents circulated the impugned seniority list of Administrative Officer vide circular dated 31.07.2015 (Annexure A-1) wherein seniority of the applicant has been fixed at Sl.No.19 much below to those who had been promoted and joined on the post of Administrative Officer after the date of his permanent absorption. The learned counsel vehemently argued that assigning seniority to persons not in the cadre above the applicant is against the canon of justice. In this context he has relied on the following decisions:

(i) Sunaina Sharma and others Vs. State of Jammu and Kahmir & others, 2017(2) SCALE 826 wherein it has been held that the promotees could not be given the benefit of retrospective promotion

and seniority from a date when they were not even borne in the cadre and not working against the post.

(ii) Mercy Thomas and others Vs. Union of India and others, 2017(3) SLJ(CAT) 225 wherein it has been held that no retrospective promotion can be granted nor any seniority can be given on retrospective basis from a date when an employee has not even born in the cadre.

(iii) Union of India and others Vs. K.K.Vadera and others, AIR 1990 SC 442 wherein it has been held that promotion would be effective from the date of order of promotion and not from the date when promotional posts were created.

(iv) R.K.Mobisana Singh Vs. Kh.Temba Singh and others, (2008) 1 SCC 747 wherein it has been held that seniority although is not a fundamental right but a civil right. Such a right of the direct recruits could not have been taken away without affording an opportunity of hearing to them.

(v) Amarjeet Singh and others Vs. Devi Ratan and others, (2010) 1 SCC 417 wherein it has been held that an employee cannot be granted seniority prior to his birth in a cadre, adversely affecting seniority of other employees appointed prior to him.

5. On the other hand, the respondents have submitted that due to unforeseen reason the Departmental Promotion Committee for promotion

of Office Superintendent of DGQA to the post of Administrative Officer for the years 2012-13 and 2013-14 could not be held in the scheduled time. The meeting of the DPC was held on 09.10.2013 and the respective promotion panels were issued. Accordingly, taking into account the date of absorption of the applicant i.e. 05.07.2013, his inter se seniority was fixed along with the promotees of the panel year 2013-14. The Ministry of Personnel, Public Grievances and Pensions Department of Personnel & Training OMs dated 29.05.1986 and 27.03.2001 stipulate that in the case of a person who is initially taken on deputation and absorbed later, his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. The officers recommended in the panel years 2012-13 and 2013-14 were eligible in all respect for the promotion to the grade of Administrative Officer as on 01.04.2012 and 01.04.2013 respectively and they can not be denied their seniority over the applicant on the ground that the DPC could not be held in the scheduled time due to unforeseen reasons.

6. The learned counsel for the respondents further submits that the instructions issued by the Department of Personnel & Training on preparation of year-wise panels (Annexure R-1) clearly stipulates that where for reasons beyond the control the DPC could not be held in a year

(s) even though the vacancies arose during the year (or years) the first DPC that meets thereafter should follow the following procedures:-

“(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

“(ii) consider in respect of each of the year those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

“(iii) prepare a select list by placing the select list of the earlier year above the one for the next years and so on”.

Thus, the respondent-department by adhering to above instructions computed vacancies year-wise. Since the departmental candidates were already available awaiting their promotion, the respondents have granted them promotions against the available vacancies meant for promotion. Thus, there was no irregularity in the respondents giving priority to the departmental candidates awaiting their promotion.

7. Heard the learned counsel of parties and carefully perused the pleadings of the respective parties and the documents annexed therewith. We have also carefully gone through the decisions relied upon by the learned counsel for the applicant.

8. In the matters of **K.K.Vadera** (supra) the Hon’ble Supreme Court has specifically held that 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.

9. The Hon'ble Supreme Court in the matters of **Union of India and others Vs. N.C.Murali and others**, (2017) 13 SCC 575 has held that "unless there is specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy, the right of promotion does not crystallise on the date of occurrence of vacancy and the promotion is to be extended on the date when it is actually effected".

10. Further, the Hon'ble Supreme Court in the matters of **Pawan Pratap Singh Vs. Reevan Singh**, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481 has clearly held that "the seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime".

11. From the foregoing it is very clear that seniority of a person has to be reckoned from the date when he has been promoted and not from the

date when vacancy arose. In the instant case, the applicant was admittedly absorbed on 05.07.2013 before the promotion of respondents Nos.3 to 11. Hence, he can not be placed below the above private-respondents in seniority.

12. In this view of the matter, the Original Application is allowed. The impugned seniority list Annexure A-1 and impugned order dated 02.06.2016 are quashed and set aside. The respondents are directed to prepare the seniority list of the post of Administrative Officer afresh taking into consideration the date of joining of the applicant vis-à-vis others and grant him all consequential benefits including consideration for promotion to higher post. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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