

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING:GWALIOR

Original Application No. 202/00067/2016

Jabalpur, this Tuesday, the 24th day of April, 2018

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

Vinit Narway, S/o Shri Durgesh Narway,
Aged 32 years, Occupation-Govt. Service,
(Working as Stenographer Grade-II in the office of
Regional Director, CBWE, Gwalior),
Resident of Infront of Gupta Hospital,
Nagar Nigam Colony, Garam Sadak,
Morar, Gwalior (M.P.)-474006

-Applicant

(By Advocate –**Shri A.K.Nirankari**)

V e r s u s

1. Union of India, through the Secretary,
Ministry of Labour and Employment,
Govt. of India, Shram Shakti Bhavan,
Rafi Marg, New Delhi-110001

2. The Director, Central Board for Workers' Education,
National Head Quarter, North Ambazari Road,
Near VNIT Gate, Nagpur (Maharashtra)-440033

- Respondent

(By Advocate –**Shri Akshay Jain**)

(Date of reserving the order:- 12.10.2017)

O R D E R

By Ramesh Singh Thakur, JM:-

This Original Application has been filed aggrieved by the highly arbitrary and discriminatory action of the authority whereby the authorities have not considered and decided the claim of the

applicant for promotion on the post of Stenographer Grade -I from the post of Stenographer Grade-II, even the higher and controlling authority of the applicant vide its letter dated 30.03.2015, 22.05.2015 and 05.06.2015 strongly recommended the case of the applicant for promotion by holding review Departmental Promotion Committee (DPC) despite the fact that the applicant is entitled to get the promotion in the year 2012 because in the year 2012 two posts of Stenographer Grade-I were lying vacant.

2. The applicant has sought for the following reliefs in this Original Application:-

“8(8.1) That, the non-applicants may kindly be directed to convene review D.P.C. of year 2012 and 2013 alongwith monetary and consequential service benefits alongwith seniority.

(8.2) That, the non-applicants may kindly be directed to grant the retrospective promotion to the applicant on the post of Stenographer Grade-I w.e.f. 31.07.2012 (the date from which the vacancy arose in the year 2012) or from 01.01.2013.

(8.3) That, the non-applicants may kindly be directed to pay the arrears of salary to the applicant w.e.f. 31.07.2012 or 01.01.2013 alongwith 12% annual interest from the date of its becoming due till the date of its actual realization and also grant all consequential benefits thereon.

(8.4) That, the non-applicants may kindly be directed to pay Rs. 2 Lacs as compensation for intentionally withholding the due promotion of applicant and for putting applicant in mental agony and stress, even though the said mistake which took place in year 2012 to 2015 was came in their knowledge.

(8.5) That, any other suitable writ, order or directions may kindly be passed in the facts and circumstances of the case in favour of the applicant for doing justice in the matter. Cost of the application may kindly be awarded.”

3. Briefly the facts of the case are that the applicant was initially appointed on the post of Stenographer Grade-III on 22.03.2004 and since then the applicant was discharging his duties with sincerity and devotion. After the implementation of Sixth Pay Commission, the post of Stenographer Grade-III has been converted to the post of Stenographer Grade-II without any monetary benefits and the post of Stenographer Grade-I and Stenographer Grade-II have been merged to the post of Stenographer Grade-I. In compliance of the said order, the applicant's post was converted from Stenographer Grade-III to Stenographer Grade-II without any monetary benefits. A copy of letter dated 15.04.2011 is annexed as Annexure A-3. Vide O.M. No. AB.14017/61/2008-Estt. (RR), of Government of India, Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training, New Delhi dated 24.03.2009 (Annexure A-4), the directions were given by the DoPT to the effect that ***“Where two or more scales have been merged, the existing DPC for the higher/highest grade will be the DPC for the merged grade”***. So as per the aforesaid O.M. for promotion on the promotional grade i.e. from 2400 to 4200, the minimum qualifying

service was fixed i.e. 10 years. It is further provided in the service rendered in the corresponding grade pay shall be calculated on extended basis which rendered prior to 01.01.2006.

4. The case of the applicant is that he was initially appointed on 22.03.2004, therefore his prior service before 01.01.2006, shall be calculated on extended basis. Therefore, in the year 2012, the applicant has completed basic qualifying service as per the said O.M. i.e. 10 years. Due to which, the applicant became entitled to be considered for promotion to the post of Stenographer Grade-I in DPC, which was held for the year 2012. But the non-applicants have not taken the said O.M. dated 24.03.2009 into consideration while convening the DPC meeting for the years 2012 & 2013. A copy of O.M. dated 24.03.2009 is annexed as Annexure A-4

5. The applicant has submitted that as per the seniority list of 2011 of Stenographer Grade -I out of total 27 sanctioned posts, one post was lying vacant and another one post going to be vacant in the month of July 2012. As per Seniority of the year 2011 of stenographer Grade -II, the applicant finds place at Serial No. 2 and Smt. Aruna Kumari finds place at Serial No. 1. As per the departmental proceedings, against one vacant post Smt. Aruna Kumari has to be promoted in the DPC commenced in the year 2012 and the case of applicant has to be placed for promotion for

another post of Stenographer Grade-I, which is going to be vacant in the month of July 2012 by said DPC, by preparing promotion panel. The department held the DPC in the year 2012 for other cadre falls in Group 'C' but the cadre of Stenographer which also fall in Group 'C' have not been considered for promotion in the said DPC of 2012. A copy of seniority list of Stenographer Grade-I and Grade -II of year 2011 are annexed as Annexure A-5 and Annexure A-6 respectively.

6. The applicant has further submitted that one post lying vacant in the year 2011 and one another post which is going to be lying vacant in the month of July, 2012 has been carry forward to the next year in 2013 and the applicant finds place at serial No.1 in the seniority list of the year 2013. In the year 2013 the case of the applicant has to be taken into consideration for promotion for stenographer Grade I by DPC in the year 2013 and the same position was also created in the next year i.e. 2014 & 2015 but the respondent department has not convened any DPC in the aforesaid respective years, and due to the mistake/fault on the part of the respondent department, the applicant is deprived of to get promotion since 2012, being his legitimate and indefeasible right.

7. The applicant on 28.10.2013 (Annexure A-7) made an application to the respondents and it was informed that *“the*

cadre/post of Stenographers had not been considered for promotion for last two DPCs” and vide letter dated 20.11.2013 the applicant was informed that *“his application will be placed before the DPC as and when conducted”*. The application dated 28.10.2013 and dated 20.11.2013 are annexed as Annexure A-7 & A-8 respectively. It has been submitted by the applicant that when the department even after giving assurance that the case of the applicant has to be considered in the next DPC which is to be convened in the year 2014 and again in the year 2015, but the DPC was not convened in the aforesaid year then the applicant again submitted a representation dated 27.03.2015 (Annexure A-9) to the respondent No.2 through proper channel and in response to said representation the Regional Director, Gwalior forwarded the case of the applicant before the respondent No.2 vide letter dated 30.03.2015 (Annexure A-10) and the Regional Director again forwarded the case of the applicant to the Zonal Director (CZ), CBWE, Bhopal on 22.05.2015 (Annexure A-11). Ultimately the Zonal Director (CZ), CBWE, Bhopal vide letter dated 05.06.2015 (Annexure A-12) forwarded the case of the applicant to respondent No.2. A copy of representation and forwarding letters dated 27.03.2015, 30.03.2015, 22.05.2015 & 05.06.2015 are annexed as Annexure A-9, A-10, A-11 & A-12 respectively.

8. Thereafter on 24.07.2015 (Annexure A-13) the applicant had again made a detailed representation, but the respondent department have not taken into consideration the case of the applicant for promotion by review DPC, then the applicant filed Original Application bearing O.A. No. 202/00723/2015 before the Hon'ble Tribunal and this Hon'ble Tribunal vide order dated 19.08.2015 (Annexure A-2) disposed of the said O.A. and direction was issued to the respondents to decide the representation of the applicant dated 24.07.2015. In compliance of the order of Hon'ble Tribunal the applicant sent a detailed representation/legal notice to the respondent department on 10.09.2015 but the respondent departments have not taken any action then the applicant has issued the contempt notice dated 11.12.2015, a copy of which is annexed as Annexures A/14 & A/15.

9. The respondents have filed the reply to the Original Application. It has been submitted by the replying respondents that in the year 2012 DPC could not be convened due to non-revival of the post of Stenographer Grade-I vide letter dated 07.03.2013 of the Ministry, the said letter was sent to the Ministry for revival of the post of Stenographer Grade -I which fall vacant on 01.09.2010. Thereafter, the Ministry vide letter dated 16.12.2013 had conveyed the approval for revival of the post of Stenographer Grade-I. The

meeting of the DPC for promotion to the post of stenographer Grade-I could not be held from 20.03.2012 to 2015 due to non availability of quorum of DPC members. The post of Stenographer Grade-I which fall vacant on 01.09.2010 was sent to Ministry for revival of the post of Stenographer Grade-I and the Ministry vide letter dated 16.12.2013 has conveyed the approval for revival of the post of Stenographer Grade-I. A copy of which is annexed as Annexure R/1.

10. The applicant has filed the rejoinder to the reply, in which it is submitted by the applicant, that the replying respondents has not convened the DPC for the post of Stenographer Grade-I between 20.03.2012, 2015, due to non-availability of the quorum of DPC and as per Annexure R-1 annexed with the reply filed by the respondents department dated 07.03.2013, it is clear from the "Statement of vacant post" the post of Stenographer Grade-I falls in the category of Group 'C' posts. The applicant has specifically submitted that as per Annexure A-16 dated 27.08.2015 the quorum of DPC is usually same for all the post of a particular group. So the applicant has reiterated its stand that if the DPC was convened in the month of March 2011 then senior to the applicant Ms. Aruna Kumari get promotion to the post of stenographer Grade-I and if the DPC taking into account the next post of Stenographer Grade-I

which is going to be vacant on 31.07.2012 in the proceeding DPC of 2012 then the applicant being the senior most would get promotion on 01.08.2012 as per DPC panel but the department remain silent. It is further submitted that another post was going to be vacant on 30.09.2013. It has been specifically submitted in the rejoinder that the DPC were convened in 2011, 2012 & 2013 and the post of Stenographer Grade-I and Grade- II which falls under Group 'C' was not taken into consideration. So the applicant submitted that he is entitled to get promotion with effect from 31.07.2012 with back wages and all consequential benefits.

11. The replying respondents have also filed the additional reply to the rejoinder filed by the applicant but the replying respondents have reiterated its earlier stand filed in the reply.

12. Heard the counsel for both the parties and carefully perused the documents annexed with the pleadings.

13. The main question in this Original Application is relating to convening of DPC for a particular year. As per averments/submissions made by the applicant that one post has fallen vacant in the category of Group 'C' and the post of Stenographer Grade-I falls in the category of Group 'C', on 01.05.2011 and one another post was going to be vacant on 31.07.2012 and the applicant finds its place in the list at serial No.

2, which is clear as per Annexure A-6. The seniority list of Group 'C' employees was issued on 01.05.2011 for the Stenographer Grade-II which clearly depicts that the applicant is at serial No. 2.

14. As per reply filed by the relying respondents the vacancy position has been annexed as per Annexure R-1 dated 07.03.2013. In the category of Stenographer Grade -I, one post is lying vacant and the post has become vacant on 01.09.2010. So we are in agreement with the submissions made by the applicant that one post was vacant in the year 2010. So in the DPC for the year 2011 this post should have been considered to be filled up in DPC which was held in the year 2012. In the reply the replying respondents has submitted that during the year 2012 the DPC could not be conducted for the cadre of Stenographer due to non-revival of post of stenographer Grade -I vide letter dated 07.03.2013 of the Ministry. The said letter was sent to the Ministry for revival of the post of Stenographer Grade-I which fall vacant on 01.09.2010 and thereafter the Ministry vide its letter dated 16.12.2013 had conveyed approval for revival of the post as the DPC could not be held in 20.03.2012 to 2015 due to non availability of the quorum of the DPC but as per Annexure A-16 dated 27.08.2015 annexed with the rejoinder we find a letter from the Deputy Director Head Quarter to Under Secretary to the Government of India regarding

the representation submitted by the applicant and it has been informed that ***“DPC was held on 22.03.2012 and 23.03.2013 only for Senior Clerks, UDCs, Confirmation/Probation of Group “C” & “D” officials and not for Promotion to the post of Stenographer Grade-I & II due to administrative reasons.”***

15. So from this Annexure A-16 it is clearly stated that due to administrative reasons the meeting could not be convened and next DPC meeting is likely to be held shortly.

16. So it is clear from the pleadings made by the parties that though one post of Stenographer Grade-I falls vacant on 01.09.2010 which is clear as per Annexure R-1 and only reason for not conducting the DPC is on administrative grounds. Moreover the respondent department has not controverted the averments made in para 4.4 of O.A., regarding Annexure A-4.

17. The applicant has relied upon the judgment passed by the Hon’ble Apex Court in the matters of **Union of India & Ors. vs. N.R. Banerjee and Ors.**, 1997 SCC (L&S) 1194 dated 16.12.1996 and the Hon’ble Apex Court has discussed the object of conducting the DPC which is as under:

“3.Though, prima facie, we are impressed with the arguments of Shri Altaf Ahmed, on deeper probe and on going through the procedure laid by the Ministry of Personnel and Training, we find no force in the contention. Preparation of the action Plan for consideration by the D.P.C. of the respective claims

of the officers within the Zone and thereafter for setting in motion the preparation of panel on year wise basis, is elaborately mentioned. In case of their failure to do so, what further procedure is required to be followed is also indicated in the rules. It thereby manifests the intention of the rule-maker that the appellant-Government should estimate the anticipated vacancies, regular vacancies and also vacancies arising thereafter due to various contingencies and it should also get the A.C.Rs. prepared and approved. It is also made clear that the D.P.C. should sit on regular basis to consider the cases of the eligible candidates within the zone of consideration. The object is clear that the Government should keep the panel ready in advance so that the vacancies arising soon thereafter may be filled up from amongst the approved candidates whose names appear in the panel. In that behalf, it is seen that in the guidelines issued by the Government in Part I of clause (49) dealing with Functions and Composition of Departmental promotion Committee etc. necessary guidelines have been enumerated. It envisages that a post is filled upon by promotion where the Recruitment Rules so provide. In making promotions, it should be ensured that suitability of the candidates for promotion is considered in an objective and impartial manner. In other words, the consideration of the candidate is not clouded by any other extraneous considerations like caste, creed, colour, sect, religion or region. In consideration of claims, merit alone should enter into objective and impartial assessments. The object appears to be that the A.C.Rs. be written by competent officer and approved by superior officer objectively and impartially without being influenced by any extraneous and irrelevant consideration, to augment efficiency in public service and to improve competence. For the purpose of selection, Department Promotion Committee should be formed in each Ministry/Department/Office, whenever an occasion arises, for promotions/confirmations etc. The D.P.Cs. so constituted shall judge the suitability of officers for:

- (a) promotions to selection as well as non-selection posts;
- (b) confirmation in their respective grades/posts;
- (c) assessment of the work and conduct of probationers for the purpose of determining their suitability for retention in service or their discharge from it or extending their probation; and
- (d) consideration of cases of Government servants for crossing the Efficiency Bar.

Rule 2.1 relates to composition of the D.P.C. for Group A and Group B Officers. Members included in DPCs should be officers who are at least one step above the posts in which promotion/confirmation is to be made as indicated there under. This is consistent with the law laid by this Court in [State Bank of India & Ors. vs. Kashinath Kher & Ors.](#) [(1996) 8 Sec 762] wherein it was held that the object of writing the confidential report is two-fold, i.e., to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. The officer should show objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to his efficacy and efficiency of public service, the confidential reports should be written by a superior officer of high rank. There should be another higher officer in rank above the officer who has written confidential report to review such report.

Part II of the guidelines relating to the frequency of meeting of the D.P.C. Para 3.1 indicates that the D.P.Cs should be convened at regular annual intervals to draw panels which could be utilised for making promotions against the vacancies occurring during the course of a year. In other words, the life of the panel is one year. For this purpose, it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel, by collecting relevant documents like A.C.Rs., integrity certificates, seniority list etc. for placing before the D.P.C.

D.P.Cs. should be convened every year, if necessary, on fixed date, i.e. 1st of April or May. In the middle of the para, by way of amendment brought on May 13, 1995, it postulates that very often action for holding D.P.C meeting is initiated after the vacancy has arisen. This results in undue delay in filling up of vacancies and causes dissatisfaction among those who are eligible for promotion. It may be indicated that regular meeting of D.P.C. should be held every year for each category of posts so that approved select panel is available in advance for making promotions against vacancies arising every year. Under para 3.2, the requirement of convening annual meetings of the D.P.C. should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for

confirmation during the year in question. It would, thus, be seen that D.P.Cs. are required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the year for being filled up. The required material should be collected in advance and merit list finalised by the appointing authorities and placed before the D.P.Cs for consideration. This requirement can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question.

Part III deals with preparatory action plan for consideration for promotion. Para 4.1 reads as under;

"It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose, the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion and deputation or from creation of additional posts on a long term. As regards vacancies arising out of deputation, only those cases of deputation for periods exceeding one year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for. Purely short term vacancies created as a result of officers proceeding on leave, or on deputation for a shorter period, training etc., should not be taken into account for the purpose of preparation of a panel. In cases where there has been delay in holding DPCs for a year or more, vacancies should be indicated year- wise separately."

Crucial date for determining eligibility has been dealt with there under. By an amendment brought w.e.f. July 19, 1989, it is stated that relevant dates for determining eligibility of the officers for promotion would be, where A.C.Rs. are written calendar yearwise, 1st July of the year and where the A.C.Rs. are written financial yearwise, 1st October of that year. The other details prescribed in Chapter IV are not material for the purpose of this case. Part 6.4.1 deals with preparation of yearwise panels by D.P.C. which reads as under;

"Where for reasons beyond control, the DPC could not be held in year(s), even though the vacancies arose during that 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 years 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 year and so on;

It would, thus, be seen that the authorities are required to anticipate in advance the vacancies for promotion on regular basis including long term deputation posts and additional posts created and then to take the action plan in finalising the A.C.Rs. preparation of the select list and place necessary material before the D.P.C. for consideration of the candidates within the zone of consideration, as are found eligible for the relevant year/years.

18. In the present case the first post was available on 01.09.2010 on that the DPC was convened by the respondent department which is clear as per Annexure A-16 dated 27.08.2015 but it was only for Senior Clerk, UDC, Confirmation/Probation of Group "C" and "D" official and not for Promotion to the post of Stenographer Grade-I and Grade -II due to the administrative reasons.

19. So it is clear from this Annexure A-16 which is coupled with Annexure R/1 that one post of Stenographer Grade- I was available on 01.09.2010 but due to administrative reasons the same could not be filled up due to the lack of quorum of the DPC. Wherein the replying respondents has submitted that the DPC could not be convened due to non availability of the quorum of the DPC

whereas as per Annexure A-16 it has been clearly spelt out by the Deputy Director Head Quarter that the DPC was held on 20.03.2012 and 03.03.2013. So the reply filed by the replying respondents that there was no quorum for DPC is available is contrary to their own reply filed in response to the Original Application. The only reason that due to administrative reasons the DPC could not be held is not sustainable in the eyes of law. Moreover, it is the internal arrangement of the respondent department.

20. The learned counsel for the applicant has also relied upon the judgment passed by the Hon'ble High Court of Delhi at New Delhi in WP (C) No.7968 of 2012, titled as **P.P. Verma vs. Chief Secretary and Others**, of 11th November, 2013 the Hon'ble Court has observed as under:-

“(13). Mr. Raj Kumar Sherawal has drawn our attention to para 13 of the order in G.d.Goel's case (supra) to submit that this Court has deduced the principle on the basis the judgment of the Supreme Court which make it clear that if a promotion is denied to an employee because of the mistake of the administration and due to no fault of the employee then the authorities are bound to pay the arrears of salary upon giving him the benefit of retrospective promotion after realizing their mistake.”

21. In view of the above discussions we are of the affirmed view that one post was lying vacant in the cadre of Stenographer Grade-I but as per our observation (**Supra**) the respondent department

failed to convene the DPC due to administrative reasons. Furthermore, the respondent department has taken a divergent view which is clear as per Annexure A-16 and the stand taken in the reply. In view of this, inaction on the part of the respondents is illegal and unlawful.

22. Resultantly, the Original Application is disposed of with a direction to respondents to consider the applicant for promotion to the post of Stenographer Grade- I for the year 2012-2013, if the applicant is otherwise eligible, within a period of 60 days from receiving of the order. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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