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**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 790 of 2014

Date of order: 17th September, 2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Jyotirmoy Nandi,
Son of Late Manindra Chandra Nandi,
Residing at 19/2, Bidhan Pally, Barrackpore,
P.O. - Nonachandanpukur,
District - North 24 Parganas, Pin - 700 122.

... Applicant.

Versus

1. Union of India,
Service through the Secretary,
Ministry of Defence,
Government of India,
South Block,
New Delhi - 110001
2. The Director General (Personnel),
Army Head Quarters,
Kashmir House, Rajaji Marg,
New Delhi - 110011
3. The Chief Engineer,
Head Quarters,
Eastern Command, Fort William,
Kolkata - 700 021.

... Respondents.

For the Applicant : Mr. T. Roy, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

An Original Application has been filed under Section 19 of the
Administrative Tribunals Act, 1985 seeking the following relief:-

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"(i) To set aside and cancel the purported decision communicated to the applicant vide No. 131841/6/1378/Engrs/EID dated 11th March, 2014 for giving promotion to the post of Supervisor B/S in favour of the applicant.

(ii) To direct the concerned respondents to give promotional benefit to the applicant for the post of Supervisor B/S with effect from 28th March, 2012 and to refix the pensionary and other retiral benefit accordingly and give the same to the applicant with arrear amount.

(iii) Any other order or orders, direction or directions as this Hon'ble Tribunal may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The applicant's submissions, as articulated by his Ld. Counsel, is that the applicant was appointed in the post of Chowkidar in 1976. Subsequently, he was promoted from Store Keeper Grade – II to Store Keeper Grade – I on 28.3.2009. The applicant was entitled to be promoted to the post of Supervisor B/S after completion of three years' service as Store Keeper Grade – I as he had completed three years' of such service on 27.3.2012. The applicant, however, was denied his promotion on the ground that he had not completed three years' service as on 1.1.2012, although the DPC for 2012-2013 was held after March, 2012 and the applicant had superannuated on 31.1.2013 prior to holding of DPC for 2013-14. As employees working in other units under the same department were promoted even after the date of holding of DPC by way of extended panel for promotion and as the same benefit was not extended to the applicant, hence the Original Application.

The applicant has advanced, inter alia, the following grounds in support of his claim:-

(a) That, he was eligible for the promotional post of Supervisor B/S immediately after completion of three years' service in the post of Store Keeper Grade – I, namely, 28.3.2012.

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(b) That, when the applicant retired on superannuation on 31.1.2013, he was eligible to be promoted on and from 1.1.2013 and he cannot be deprived on the alleged ground that DPC was not held in January, 2013.

(c) That, the grounds cited in the respondents' communication dated 30.9.2013 and 11.3.2014 are untenable and contrary to the provisions of law.

5. Per contra, the respondents, in their pleadings as well as their oral submissions, have argued that:-

MES-207686, Shri Jyotirmoy Nandi, SK-I was appointed as a Chowkidar on 16.8.1976, but was reappointed as Store Man after fresh recruitment on 12th December, 1983 as a departmental candidate. The applicant's case had been examined in detail keeping in view of all policies of DPC but the same was not tenable due to non-fulfilment of eligibility criteria. As per Recruitment Rule 71 dt. 4th August, 2008, Store Keepers-Gr. I with three years' regular service in the grade were eligible for promotion to Supervisor, Barrack Store (B/S) and the crucial date for determining eligibility for the DPC was the first day of the vacancy year as prescribed vide DOP & T.O.M. No. 22011/9/98-Est.(D) dated 08 September, 1998. In view of the above eligibility criteria, the applicant has not completed three years' regular service in the present grade as on 1st January, 2012 for the vacancy year 2012-13 and as the applicant superannuated on 31st January, 2013 before commencement of DPC for the vacancy year 2013-14, his name was not considered for promotion to Supervisor, Barrack Store (B/S) against the vacancy year 2013-14. The respondents have further contended that the applicant was eligible for promotion only on 23rd March, 2012 but crucial date for determining eligibility criteria for the DPC year 2012-13 being 1st January, 2012 he was not considered for promotion in the said DPC.

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The respondents have, accordingly, argued that as the applicant was not eligible for inclusion in the zone of consideration or in the extended panel, the Original Application, being misconceived, deserved to be dismissed.

ISSUE

6. The core point of determination before us in this O.A. is whether the applicant was eligible for promotion to Supervisor B/S against vacancy year 2013-14 with consequent benefits.

FINDINGS

7.(I) The respondents have not furnished before us the statutory service rules relating to the applicant's service despite orders of the Tribunal dated 30.9.2016. On the other hand, they have relied upon O.M. dated 20.4.1998 of DOP&T. The said O.M. is reproduced below:

"Crucial date for determining eligibility:

The eligibility dates for determining the eligibility of officers for promotion would be the first day of the crucial year, i.e., January, 1, irrespective whether ACRs are written financial yearwise or calendar yearwise.

The crucial dates indicated above would be applicable to only such service and posts for which statutory Service Rules do not prescribe a crucial date.

In reiteration of the aforesaid provision (Para 4.1) of the DPC guidelines dated 10.4.1989, it is hereby clarified that such vacancies arising in a particular vacancy year, as noted in the aforesaid Para 4.1, would be considered to get by the DPC. These vacancies should also include newly-created posts in same vacancy year. Hence, the DPC for a particular vacancy year held subsequently to the creation of such new posts in the same vacancy year would be required to take into consideration such newly-created posts also along with other already existing/anticipated vacancies arising in the same vacancy year. As a sequence it, the zone of consideration would also get enlarged in a corresponding manner in terms of Dept. of Per. & Trg., O.M. No. 22011/1/90-Estt.(D), dated 12.10.1990 and 22.4.1992.

[G.I., Dept. of Per. & Trg. O.M. No. 22011/1/98-Estt.(D) dated the 20th April, 1998]"

The applicant, on the other hand, has relied on O.M. dated 14.11.2014 of the DOP&T read with that dated October 12, 1998 which refers to inclusion of

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eligible officers who are due to retire before likely date of vacancies in the panel for promotion. The O.M. dated 14.11.2014 is reproduced below:-

"NO. 22011/1/2014-Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

North Block, New Delhi 110001
Dated - 14th November, 2014

OFFICE MEMORANDUM

Subject: - Inclusion of eligible officers who are due to retire before the likely date of vacancies, in the panel for promotion-Regarding.

The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum No. 22011/4/98-Estt(D) dated October 12, 1998 regarding consideration of retired employees who were within the zone of consideration in the relevant year(s) but are not actually in service when the DPC is being held. The said OM provides as follows:

".....There is no specific bar in the aforesaid Office Memorandum dated April 10, 1989, or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing year-wise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are not considered while preparing year-wise zone of consideration/panel and, consequently, their juniors are considered (in their places), who would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant Year(s). Names of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The DPC(s) may, if need be, prepare extended panel(s) following the principles prescribed in the Department of Personnel and Training Office Memorandum No.22011/8/87-Estt.(D) dated April 9, 1996."

2. Appointment Committee of Cabinet has observed that DPCs often do not consider such eligible officers who are retiring before the occurrence of the vacancy in the panel year. These undesirable trends negate the very purpose of the above said Office Memorandum No. 22011/4/98-Estt(D) dated October 12, 1998 and it is also against the principle of natural justice.

3. All the Ministries/Departments are therefore advised to ensure strict compliance of the instructions of the Department of Personnel & Training issued vide this Department's OM No. 22011/4/98-Estt(D) dated October 12, 1998.

4. These instructions may please be brought out to the notice of all concerned including attached and subordinate offices.

(S.K. Prasad)
Under Secretary to the Govt. of India"

(emphasis supplied)

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In his support, the applicant has furnished an extended panel for preparation of MR (HS) to MCM dated 8.9.2006 (Annexed as Annexure A-6 to the O.A.) citing individual instances of Shri Indra Deo Jha, Shri P.C. John, Shri A.K. Banerjee & Shri Sushil Paul, all of whom were enlisted in the said extended panel.

The respondents have admitted in their reply that, for any individual to be in the zone of consideration, he should meet the QR as on crucial date of DPC i.e. 1st January of the year and DOP&T's O.M. dated 20.4.1998 also states that the eligibility dates for determining eligibility of officers for promotion would be the first date of crucial year and that such crucial dates would be applicable to only such services and posts for which statutory service rules do not prescribe crucial date. In this case, the respondents have not furnished any service rules but rather have relied on the O.M. of DOP&T implying therefore that the crucial date would be first date of the relevant year for the applicant's purpose.

Hence, prima facie, the applicant's contention that he did meet the eligibility conditions on the crucial date for determining eligibility for vacancy year 2013-14 has merit as the applicant was in service on 1st January, 2013. It has been held in **C.O. Arrumugam v. State of Tamil Nadu, 1991 Supp.(2) SCC 199** that the general principle is that every employee has a right to have his case considered for promotion according to his turn. It has also been held in **Nirmal Chandra Bhattacharjee v. Union of India 1991 Supp (2) SCC 363** that delay on the part of the department in releasing promotions, cannot recoil on the candidates for such promotion. In **Shriram Singh Chauhan v. Haryana State Electricity Board, 1992(2) SLR 336 (P&H)** the Hon'ble Apex Court had held that if there is any delay in considering or releasing promotion, the liability for such delay would be on the employer and the employee is entitled to claim that his promotion should count from the date when he ought to have been promoted but for the delay. We also refer to the Hon'ble Apex Court's observations in **Baij**

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Nath Sharma v. Hon'ble Rajasthan High Court at Jodhpur and another
(1998) 7 SCC 44 wherein it was held that:

".....after having put in long years of service, it is the seniority and promotion which an officer looks forward to. He expects he is given due promotion in time. Non-promotion may be an incidence of any service. But here the appellant has been deprived of his promotion without any fault of his. The High Court said that it might be a sad state of affairs that the name of the appellant was not considered for promotion till he retired."

Given the above dicta, we are hence of the view that the applicant's case deserves to be considered in terms of O.M. of DOP&T dated 14th November, 2014 (supra) and cannot be denied notional promotional with effect from the date that his immediate junior was promoted.

II. On the issue of consequent benefits, the Hon'ble High Court at Andhra Pradesh in **The Director General CPWD, Nirman Bhavan v. K.S. Rao, Rtd. Executive Engineer (WP. 12128 of 2006)** in their order dated 5.7.2017 had considered the issue as to whether the respondent (applicant in the O.A. 1118 of 2004) was entitled to get his pay fixed w.e.f. the date of notional promotion.

The Hon'ble High Court of Andhra Pradesh was considering an appeal arising from an order dated 16.3.2006 of the Central Administrative Tribunal, Hyderabad Bench in O.A. No. 1118 of 2004, wherein the respondents were directed to fix the pay of the applicant notionally w.e.f. 31.3.1996 in the promotional post and to revise the pension in accordance with the notional pay fixation. The Hon'ble High Court of Andhra Pradesh had also referred to **O.A. No. 656 of 2002 of the Central Administrative Tribunal, Ernakulam Bench** which had attained finality upon having travelled through the **Hon'ble High Court of Kerala** and the **Hon'ble Apex Court in WP No. 9576 of 2005 and SLP (C) CC No. 4396 of 2006** respectively wherein the orders of the Central Administrative Tribunal, Ernakulam Bench had been upheld by which the applicant had been granted similar relief on similar cause of action as that of the applicant in O.A. No. 1118 of 2004 of the Central Administrative Tribunal, Hyderabad Bench.

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The Hon'ble High Court of Andhra Pradesh having taken into cognizance that the decision in O.A. 656 of 2002 of the Central Administrative Tribunal, Ernakulam Bench had attained finality, had upheld the orders of the Central Administrative Tribunal, Hyderabad Bench.

The Central Administrative Tribunal, Ernakulam Bench in O.A. No. 656 of 2002, was deciding on the issue as to whether notional promotion would entitle the applicant to draw actual benefit of higher pay and allowances of the promotional post and relied on the dictum of the Hon'ble High Court of Patna in **CWJC. No. 2809/2002 [2002 (2) ATJ 428]** that in its judgment dated 18.4.2002, had concluded as follows:-

"4. Thus, on consideration it appears that petitioner was not granted promotion while he was in service because of laches and fault of the respondents. However, he was promoted after retirement in the year 1996 with effect from 10.6.1988 but denied monetary benefit. For such laches petitioner cannot be made to suffer in any manner. Therefore, writ petition is disposed of. The portion of order, Annexure - 7, whereby monetary benefit was denied is hereby quashed. The petitioner shall be entitled to monetary benefit of promotional post with effect from 10.6.1998 till the date of retirement. Respondents are accordingly directed to pay entire monetary benefit of promotional post as indicated above within a period of three months from the date of receipt of production of copy of this order."

The Ernakulam Bench allowed the applicant the benefit of arrears of pay and allowances accordingly.

Referring to the decision of Central Administrative Tribunal, Ernakulam Bench, as upheld by the Hon'ble Apex Court we are therefore of the view that the applicant, who was eligible for promotion as on the crucial date for 2013-14, cannot be deprived due to delay on part of Respondents to conduct the DPC and, as reportedly, his juniors were empanelled and promoted, the applicant has a right to be considered for notional promotion as per DOP&T's O.M. dated 14th November, 2014 (supra).

Accordingly, the respondents' communication dated 30.9.2013 (Annexure A-4 to the O.A.) and that dated 11.3.2014 (Annexure A-5 to the O.A.) are set aside.

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We direct the respondents to take cognizance of the fact that the applicant was eligible for promotion as on the crucial date of eligibility but for delayed convening of DPC and, if the applicant is similarly circumstanced as in O.A. No. 656 of 2002 (supra), to arrive at a decision on benefits as admissible to the applicant. The entire exercise may be completed within a period of 8 weeks from the date of receipt of this order.

With this direction, the O.A. is disposed of. There will be no orders as to costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Baherjee)
Judicial Member

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