

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

BENCH, ALLAHABAD

(Circuit Bench at Nainital)

(This the 28th Day of November 2018)

**Hon'ble Mr. Rakesh Sagar Jain, Member (J)
Hon'ble Mr. Mohd. Jamshed. Member (A)**

Original Application No.331/00726/2017

Sudarshan Lal S/o Late Chuni Lal retired as Officer Surveyor from the office of respondent No.2, R/o 3/5 New Cantt. Road, Ravindrapuri, Dehra Dun, Uttarakhand.

..... Applicant

By Advocate: Shri Ashish Srivastava/Shri Ram Prasad

Versus

1. Union of India through Secretary, Ministry of Science and Technology, New Mehrauli Road, New Delhi.
2. The Surveyor General of India, Survey of India, Dehra Dun.

..... Respondents

By Advocate: Shri D.S. Shukla/Shri P.K. Rai

O R D E R

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

1. The applicant Sudershan Lal has filed the present Original Application u/s 19 of the Administrative Tribunals Act, 1985 with the prayer to quash the order dated 28.3.2017 passed by respondent No.2, by which, the representation of applicant seeking promotional benefits due to promotion orders dated 5.4.2016 and 17.5.2016 passed by respondent No. 2 based on the Review DPC have been rejected.

2. Applicant seeks the following reliefs:

- 1) Quash the order dated 28th March 2017 passed by Respondent No.2, whereby the claims of the applicant for promotional benefits accrued due to promotion orders dated 05.04.2016 and 17th May 2016 and modified order dated 27,28th May 2016 passed by the Respondent No.2 has been rejected.
- 2) Issue the directions commanding the respondents to revise his pay in the scale of Rs.10,000-325-15200 of the applicant treating him promoted to the grade of STS i.e. Superintending Surveyor against panel year 1997 in pursuance of order dated 05.04.2017 passed by respondent No.2.
- 3) Issue the directions commanding the respondents to revise his pay in higher pay scale of 12,000-375-16500 JAG i.e. Deputy Director from the grade of Senior Time Scale, i.e. Superintending Surveyor w.e.f. 01.01.2003 as per order dated 17th May 2016 and modified order dated 27/28th May 2016 passed by the respondent No.2.
- 4) Issue the directions commanding the respondents to pay arrears of pay and other consequential benefits accrued due to revision of pay of the applicant as sought in Para (a) & (b) above with 18% interest thereon.
- 5) Issue the directions commanding the respondents to revise the pension of the applicant based on revision of his pay due to promotion to higher grade as shown in order dated 05.04.2017 and 17th May 2016.
- 6) Issue the directions commanding the respondents to pay arrears of pension and other consequential benefits i.e. gratuity, leave encashment etc. based on the above revision of pension with 18% interest thereon.

7) Issue any Order which this Hon'ble Tribunal may deem fit and proper in the light of facts and circumstances of the present case.

8) Award costs".

3. Case of applicant Sudershan Lal is that he was promoted to post of Officer Surveyor (Group B) on 31.03.1978 and promoted to Superintendent Surveyor on ad hoc basis from 16.07.1993 to 16.01.1996 and 28.09.1999 to 31.12.2001. At the time of his superannuation on 31.01.2003 though he was Officer Surveyor but holding the current duty charge of a unit which is headed by Superintendent Surveyor meaning that applicant had been discharging the duties of Superintendent Surveyor from 16.07.1993 to 31.01.2003. Respondent No.2 passed promotion order dated 5.4.2016 promoting the applicant from the post of Officer Surveyor to the post of Superintendent Surveyor (STS) against the panel year of 1997. Respondent No.2 passed promotion order dated 17.5.2016 promoting the applicant from the post of Superintendent Surveyor to Dy. Director w.e.f. 2003 which was modified by order dated 27/28-5-2016 and the date of promotion had been mentioned as 1.1.2003. The name of applicant appears at Sl. No. 35 in the order dated 7.5.2016 and at Sl. No. 1 in the modified letter. The date of both the promotions have been shown prior to the superannuation of the applicant.

4. It has been further averred in the O.A. that the order contains the following conditions which are relevant and state that:-

Order dated 5.4.2016

"Para No. 2: The promotions will have only prospective effect even in case where vacancies related to earlier years as per DOPT OM No. 22011/5/86 -Estt. (D) dated 10.4.1989".

Para No. 3: The pay of officers shall be fixed on promotion on notional basis from the notional date of promotion but

actual benefits will be given from the date of actual assumption of charge of the post....."

Order dated 17.5.2016

"2. The promotions will have only prospective effect even in case where vacancies relates to earlier years as per DOP&T's OM No. 22011/5/86-Estt. (D) dated 10.04.1989, in respect of officers who have already not been promoted to the post of DD/Director.

4. The pay of officers shall be fixed on promotion on notional basis from the new date of promotion but actual benefits will be given from the date of officers actually assumed the charge of the post as directed vide Joint Secretary, DST's email dated 16.05.2016".

5. The applicant further referred to paragraph 6.4.4 of O.M dated 10.4.1989 that: "While promotions will be made in the order of the consolidated select list. Such promotions will have only prospective effect even in cases where the vacancies related to earlier year(s)". And submitted that in the instant case, applicant was already in service and holding the post on ad-hoc basis, as such, aforesaid promotion of prospective effect as stipulated in OM dated 10.04.1989 is not applicable in case of applicant.
6. In this regard, applicant submitted a representation to respondent No.2 that he was deprived of the aforementioned promotions during his service period and now he has been promoted vide aforementioned orders, as such, the pay and pension of applicant be revised and payment of arrears with all consequential benefits be given to him which was rejected by order dated 4.1.2017 stating that "you were not holding the post of Superintending Surveyor and Deputy Director on the date of superannuation, hence your request for revision of pay and pension cannot be accepted".

7. Applicant's second representation stating that legitimate promotion of the applicant from the post of Officer Surveyor to Superintending Surveyor and then to post of Deputy Director has been deprived to the applicant during his service period. Now, the applicant has been promoted vide order dated 5.4.2016 and 17.05.2016, as such, pay and pension of the applicant be revised and make payment of arrear with all consequential benefits has been rejected by respondent No. 2.
8. Applicant assails the rejection of his representation in not extending the benefits of promotion order being without any legal force and extending the benefit to his juniors as being discriminatory. Applicant seeks quashing of the order dated 28.3.2017 rejecting his representation and for directions to the respondents to revise his pay scales and give him the necessary consequential monetary arrears in terms of the orders of promotion on the following ground that:-
 - A. Applicant was promoted from the post of officer Surveyor to Superintending Surveyor on adhoc basis till the date of his retirement.
 - B. Applicant on retirement was holding duty charge of Unit which is headed by Superintending Surveyor.
 - C. The date of both promotions were prior to his retirement and both the promotions have been effected from the dates while he was in service.
 - D. OM dated 10.04.1989 is regarding vacancies relating to earlier year, and applicant was already in service, as such, the provision of prospective effect in the OM is not applicable to the case of the applicant.
 - E. Non extension of the benefits of both the promotions are illegal and discriminatory and violates applicant's right under Article 14 and 16 of the Constitution of India.

9. In the instant O.A., the facts of appointment, superannuation and promotions after retirement as per orders passed in pursuance of the judgment and order dated 4.1.2006 passed by Hon'ble CAT, Bangalore Bench in OA. No. 737/2004 in the case of Rajshekhar Vs. UOI are not in dispute.
10. The applicant's case is that he was already in service, holding the post of Superintending Surveyor on adhoc basis and during the same period, he was discharging the duties and responsibilities of higher post i.e. Superintending Surveyor and hence, the aforesaid provision of prospective effect as stipulated in O.M. dated 10.4.1989 of DOP&T will not be applicable in his case.
11. In the rejoinder affidavit, applicant has reiterated the facts as stated in the O.A. and denied the contents of the counter reply. However, it is further stated that provision of prospective promotion contained in O.M. dated 10.4.1989 is not applicable in the case of the applicant as in the instant case, the applicant was wrongly denied promotion to post of Superintending Surveyor by the respondents against the panel year 1997.
12. In response to the representation dated 01.12.2016 of applicant, seeking re-fixing of his pay and pension as Superintending Surveyor pay scale w.e.f. 01.01.1997 and Deputy Director scale w.e.f. 01.01.2003. Respondents vide order dated 04.01.2016 (Annexure-A 8) rejected the representation stating that "You have been promoted in the post of Superintending Surveyor and DD notionally as per recommendations of review/regular DPC held in 2016 and you were not holding the post of Superintending Surveyor and Deputy Director on the date of superannuation, hence your request for revision of pay and pension cannot be accepted."
13. Applicant's second representation dated 22.02.2017 seeking the same prayer as per his first representation was rejected by

respondents vide order dated 28.03.2017 on the ground that the reply already furnished is in order and applicant's request for revision of pension is not permissible in terms of CCS (Pension) Rules, 1972 and has been challenged in the present O.A.

14. It is stated in the counter reply, it has been clarified that there is no specific bar in the O.M. dated 10.4.1989 or any other related instructions of the DOP&T for consideration of retired employees but such retired officials would have no right for actual promotion. It is also submitted that orders dated 5.4.2016 and 17.05.2016 clearly stipulate that promotions will have only prospective effect even in cases where vacancies relates to earlier years as per DOP&T O.M. dated 10.4.1989. Thus, it is clear that applicant is neither entitled to get his pay fixed and arrears of pay and allowances nor revision of pension etc. It is also submitted that as per Rule 33 & 34 of the CCS (Pension) Rules, 1972, on the basis of which the pension and pensionary benefits of an employee are calculated is "average emoluments drawn during the last 10 months of service by the employee." The pay which is not actually drawn cannot be taken into account for revision of pension/family pension in terms of CCS (Pension) Rules, 1972.
15. It is further stated in the counter reply that the applicant was promoted on adhoc basis from officers Surveyor to Superintending Surveyor from time to time on temporary capacity only to cater the administrative as well as technical requirement of the Department and the adhoc promotion is purely provisional and would not bestow any benefit of seniority and can be terminated at any time.
16. We have heard and considered the arguments of the learned counsels for the parties and gone through the written arguments. LC for applicant placed reliance upon O.A. No.

579/2017 titled Chaman Singh Chauhan Vs. Union of India, O.A. No. 1409 of 2009 titled P.G.George v/s Union of India, O.A. No. 1519/2008 titled R.S.Gupta v/s Union of India, Chaman Lal Lakhanpal v/s UPSC, 1998 (3) SLR 436 (P&H), P.N. Premchandran v/s State of Kerala, 2004 (1) SCC 245 and Union of India v/s Sangram Keshari Nayak, 2007 (6) SCC 704.

17. Learned counsel for the applicant submitted that his case is squarely covered by O.A. No. 579/2017. It be noted that the applicant in O.A. No. 579/2017 was regularly promoted to the post of Deputy Director w.e.f. 7.6.2002 when he was in service. Subsequently, his promotion as Deputy Director w.e.f. 01.08.2001 was considered by the Review DPC and his promotion as Deputy Director was preponed to 1.8.2001 while he was in service. Further, the order dated 17.5.2016 of the applicant in O.A. No. 579/2017 promoting him to Deputy Director contained the following stipulations in paragraph 2 of the said order dated 17.5.2016 i.e. "The promotions will have only prospective effect even in case where vacancies relates to earlier years as per DOP&T's O.M. No. 22011/5/86-Estt (D) dated 10.4.1989, in respect of officers who have already not promoted to the post of DD/Director." Hence, the order dated 17.5.2016 is to have prospective effect as per DOP&T O.M. dated 10.4.1989 for officers who have not been promoted already as DD/Director and as such, the said condition will not apply for the case of the applicant in O.A. No. 579/2017, who was already promoted as Deputy Director by the time the order dated 17.5.2016 was passed. In this background, the order dated 22.5.2018 in the O.A. directed to give the notional benefit of promotion to the applicant as Deputy Director w.e.f. 1.8.2001 since he was already working as Deputy Director on regular basis when the promotion order dated 17.5.2016 was issued in pursuance to the recommendations of the Review DPC. As regards his promotion as Director, it was noted that no DPC was held when the applicant in O.A. No. 579/2017 was in service.

Further, it be noted that the promotion order dated 16.6.2016 did not have any reference to the DOP&T O.M. dated 10.4.1989 stipulating that the promotion as per that order will have prospective effect. In other words, the order dated 16.6.2016 promoting the applicant in O.A. No. 579/2017 as Director did not have prospective effect in terms of DOP&T O.M. dated 10.4.1989. The Tribunal vide order dated 22.5.2018, allowed the benefit of notional pay as Director to the applicant in O.A. No. 579/2017 retrospectively, but without benefit of any arrear pay as stated in the said order. In effect, the promotion order dated 17.5.2016 as Deputy Director for the applicant in O.A. No. 579/2017 did not attract the para relating to prospective effect as he was already promoted as Deputy Director earlier and his promotion order dated 16.6.2016 as Director did not have the stipulation of prospective effect. Therefore, the facts and circumstances of the applicant in the instant O.A. are different from the facts in the O.A. No. 579/2017 as coming out in the said judgment.

18. In the instant O.A., it is noted that the relevant conditions of the promotion orders dated 5.4.2016 and 17.5.2016 (Annexure A-3 and A-4 to the O.A.), by which the applicant has claimed the monetary benefit of retrospective promotion, are as under:-

Order dated 05.04.2016

1. The promotions will have only prospective effect even in case where vacancies relates to earlier years as per DoP &T's OM No. 22011/5/86Estt. (D) dated 10.04.1989.
2. The pay of officers shall be fixed on promotion on notional basis from the new date of promotion but actual benefits will be given from the date of officer actually assume the charge of the post. In case of post-dated promotion, the period between the actual date of charge assumption and new date of promotion shall be treated as adhoc appointment and

therefore, there shall be no recoveries from such officers as directed vide DST's letter No. SM/01/03/2013 dated 29.3.2016.

3. The direction in respect of officers already promoted to the post of Superintending Surveyor in the earlier DPC and excluded in review DPC will be issued separately.
4. The date of promotion in respect of the above mentioned officers may be the date of immediate senior/junior officer already promoted against that vacancy year.
5. The above officers may assume their charge on promotion and charge assumption certificate on Form 0.115 (ACC) in triplicate may please be forwarded to this office at an early date for further necessary action.
6. On promotion, the individuals would be required to exercise an option under FR 27 for fixation their pay in the new scale.
7. In case of any vigilance case/disciplinary proceedings or pendency of punishment against any of the above mentioned officers is noticed at your end, the orders of promotions may not be implemented.

Order dated 17.05.2016

2. The promotions will have only prospective effect even in case where vacancies relates to earlier years as per DoP&T's OM No.22011/5/86-Estt. (D) dated 10.04.1989, in respect of officers who have already not been promoted to the post of DD/Director.
3. Promotion in case of officers promoted to the post of Director from SS directly will be based on DPC to the post of Director being held subsequently and separate orders will be issued as necessary.
4. The pay of officers shall be fixed on promotion on notional basis from the new date of promotion but

actually benefits will be given from the date of officer actually assumed the charge of the post as directed vide Joint Secretary, DST's email dated 16.05.2016.

5. The above officers may assume their charge on promotion and charge assumption certificate on Form 0.115 (ACC) in triplicate may please be forwarded to this office at an early date for further necessary action.
6. On promotion, the individual officers are required to exercise an option under FR 22(1)(a)(i) for fixation of his pay in the new scale within one month of reporting.
7. In case of any vigilance case/disciplinary proceedings or pendency of punishment against any of the above mentioned officers is noticed at your end, the orders of promotions may not be implemented.

19. As per condition in the order dated 05.04.2016 and 17.5.2016, it is clear that the promotions, as per, the orders will have prospective effect for all employees named in the said orders, as per, the DOP&T O.M. dated 10.4.1989, where as the above similar stipulation of prospective effect to promotion in paragraph 2 of the order in case of the O.A. No. 579/2017 was not applicable to the applicant in O.A. No. 579/2017. These stipulations of prospective effect to promotion in the order dated 05.04.2016 and 17.5.2016 were not applicable for the applicant in O.A. No. 579/2017, who was allowed the benefit of notional promotion retrospectively but the same logic will not be applicable for the applicant in view of the stipulations in the orders of promotions in the instant case which are applicable for all employees mentioned in the order dated 05.04.2016 and 15.5.2016, as discussed above. Although the applicant was found fit in the Review DPC for promotion as Superintending Surveyor and Deputy Director, as per, the orders of promotions but the applicant is not entitled for benefit of such promotion retrospectively in view of the stipulations of prospective effect in the orders of promotions in the present O.A. Therefore, the

benefit of the order dated 22.5.2018 in O.A. No. 579/2017 in another case, will not apply to the instant O.A. in view of the difference in facts in both the cases.

20. A similar issue of giving promotional benefits to the retired officers was decided by the Principal Bench of this Tribunal in the case of Shri P.G. George vs Union Of India in OA No. 1409/2009 involving similar issue and vide order dated 22.4.2010 held as under:-

“8. It is thus very clear that: there is no rule that promotion should be given from the date of creation of the promotional post; if promotions are effected prospectively from the date of issue of the order of promotion, retired employees would not be eligible for promotion retrospectively; and if promotion is granted retrospectively and a person junior to the retired employee has been promoted from the date when the retired person was in service and if the retired person has been found fit by the DPC, such retired person would be entitled to promotion retrospectively on notional basis from the date his immediate junior has been promoted.

This is clear from the judgement in Baijnath Sharma, as it has been paraphrased in Rajendra Roy (supra) in paragraph 16, quoted above. Moreover, it has further been clarified by the Honourable High Court in Rajendra Roy (supra) itself in paragraph 25 of the judgement, which has been quoted above.

12. In the result, the OAs are allowed. The Respondents are directed to grant notional promotion to the Applicants from the date their immediate juniors were promoted in various Select Lists of the years 2003, 2004, 2005 and 2006. The promotion would be notional but it would count towards increments and consequently in recalculation of

post-retirement dues. The Respondents would recalculate the dues and make these over to the Applicants as expeditiously as possible but not later than 15.06.2010. There will be no order as to costs."

21. In one case, the applicant who was a party in P.G. George (supra), claimed interest by filing another OA before Tribunal and the later OA was allowed partly, against which a Writ petition was filed and Hon'ble Delhi High Court in the case of K.R. Sachdeva vs Union Of India in W.P.(C) 6710/2015 observed vide order dated 27.01.2017 as under:-

"4. The aforesaid OA was filed as a sequel and follow up to an earlier adjudication by the Tribunal vide order dated 22nd April, 2010, whereby OA No.1409/2009, P.G. George Vs. Union of India & Anr. and other OAs were disposed of directing that the applicants therein would be granted notional promotion from the date their immediate juniors were promoted by virtue of various Select List of the years 2003, 2004, 2005 and 2006. The term "notional" was clarified to mean that back wages would not be paid, but increments would be taken into account while calculating the post retirement dues. Pertinently, interest was not directed to be paid.

5. Grant of retrospective promotion, that too after an employee is retired, would be unusual, but in the facts of the present case, the Tribunal had issued the said direction. The Union of India had challenged the aforesaid decision of the Tribunal dated 22nd April, 2010 in W.P. (C) No. 4864/2010, Union of India & Anr. Vs. P.G. George, which was dismissed vide order dated 23rd July, 2010."

22. From above, it is clear that the order dated 22.4.2010 of this Tribunal in the case of P.G. George (supra) has been upheld by Hon'ble Delhi High Court. However, DOP&T O.M. dated

10.4.1989 was never in issue in this case and on this ground, the case is distinguishable from the facts of the present case.

23. Learned counsel for the applicant has placed reliance upon order passed by co-ordinate Bench of this Tribunal in OA No.1519/2008 Shri R.S. Gupta Vs. Government of NCT of Delhi and others. However, in the said judgment which has been referred by applicant in his written submission, it seems that O.M. dated 10.04.1989 issued by DOP&T has not been discussed in the judgment. Even so, as per the portion of judgment quoted in the written submission, the emphasis has been on illegal and arbitrary denial of consideration for promotion while in service which is not the case in the instant OA where the promotions have been given post retirement. Therefore, the facts of the case are distinguishable from the facts of the instant OA.
24. Learned counsel for the applicant also placed reliance upon Chaman Lal Lakanpal v/s UPSC, 1998 (3) SLR 436 (P&H), P.N. Premchandran v/s State of Kerala, 2004 (1) SCC 245 and Union of India v/s Sangram Keshari Nayak, 2007 (6) SCC 704. We have perused the judgments. In none of these judgments, the question of OM dated 10.4.1989 or the conditions regarding the prospective effect of the promotions has arisen, as such, the same would not be applicable to the facts of the present case.
25. In view of the discussions above, the applicant in the instant O.A. is not entitled to the benefits sought by the applicant taking into account the stipulations in the orders dated 5.4.2016 and 17.05.2016, stating that the said promotion order will have prospective effect as per the DOP&T O.M. dated 10.4.1989. Further, the applicant was not regularly promoted as Superintending Surveyor and Deputy Director while he was in service, unlike the applicant in O.A. No. 579/2017 in whose case the conditions of prospective effect of promotion as Deputy Director and Director were not applicable as discussed earlier.

Similarly, reliance placed on P.N.Premchandran (supra) for the reason that DOP&T O.M. dated 10.4.1989 was not in issue in the said case, makes the facts of the said case distinguishable from the facts and circumstances of the present case as the same depends upon the DOP&T O.M. dated 10.4.1989.

26. In view of the facts and circumstances of the case, we do not find any good ground to interfere in the decision taken by the respondents in the matter. The O.A. being devoid of merit is dismissed. No costs.

(Mohd. Jamshed)

Member (A)

(Rakesh Sagar Jain)

Member (J)

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