

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

Original Application Nos. 21/681/13, 1385/15 & 498/17

Date of CAV: 06.02.2019

Date of Pronouncement: 27.02.2019

OA Nos.21/681/13

Between:

J.V.S.R. Krishna, S/o. J.V. Lingaiah,
Aged about 57 years, Occ: Scientific Assistant 'E'(Library),
O/o. Heavy Water Plant (Manuguru),
Department of Atomic Energy,
Aswapuram, Khammam District.

... Applicant

And

1. Union of India, rep. by the Secretary,
Department of Atomic Energy, CSM Marg,
Anushakthi Bhavan, Mumbai – 400 001.
2. The Chief Executive,
Heavy Water Board, V.S. Bhavan,
Anushakthi Nagar, Mumbai – 400 094.
3. The Assistant Personnel Officer (R),
Heavy Water Plant (Manuguru),
Department of Atomic Energy,
Gautaminagar Post, Aswapuram,
Khammam District.

... Respondents

OA Nos.21/1385/15

Between:

J.V.S.R. Krishna, S/o. J.V. Lingaiah,
Aged about 59 years, Occ: Technical Officer 'D' (Library),
O/o. Heavy Water Plant (Manuguru),
Department of Atomic Energy,
Aswapuram, Khammam District.

... Applicant

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1. Union of India, rep. by the Secretary,
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Anushakthi Bhavan, Mumbai – 400 001.

2. The Chief Executive,
Heavy Water Board, V.S. Bhavan,
Anushakthi Nagar, Mumbai – 400 094.
3. The Administrative Officer,
Heavy Water Plant (Manuguru),
Department of Atomic Energy,
Gautaminagar Post, Aswapuram, Khammam District.

... Respondents

OA Nos.21/498/17

Between:

J.V.S.R. Krishna, S/o. J.V. Lingaiah,
Aged about 61 years, Occ: Retired Technical Officer 'D' (Library),
Department of Atomic Energy,
Aswapuram, Bhadradi Kothagudem District,
R/o. Plot No. 14, SMH Villas,
Near Havisa Restaurant, Nagaram, Hyderabad – 500 083.

... Applicant

And

1. Union of India, rep. by the Secretary,
Department of Atomic Energy, CSM Marg,
Anushakthi Bhavan, Mumbai – 400 001.
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Heavy Water Plant (Manuguru),
Department of Atomic Energy,
Gautaminagar Post, Aswapuram,
Bhadradi Kothagudem District.
4. The Assistant Personnel Officer (E),
Heavy Water Plant (Manuguru),
Department of Atomic Energy,
Gautaminagar Post, Aswapuram,
Bhadradi Kothagudem District.

... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar (in all OAs)

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC
(in all OAs)

CORAM:***Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)******Hon'ble Mr. B.V. Sudhakar, Member (Admn.)*****COMMON ORDER*****{ per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

2. The applicant has filed 3 OAs seeking i) upgradation of pay scale from Rs.1400- Rs.2300 to Rs.1400 – Rs.2600 ii) promotion based on additional qualification acquired iii) fixation of pay on promotion as per FR 22(1) (a) (1). Applicant and respondents being the same a common order is passed dealing with each of the reliefs sought by the applicant.

3. In the chronological order, as OA 681/2013 was filed in 2013, it is taken up first to present a proper perspective of the case. Brief facts in this OA are that the applicant on acquiring Diploma in Library Sciences in 1983 and MA (History) in 1984, got selected as Librarian in Central Labour Institute, Min. of Labour. Thereafter, he completed Bachelor of Library Sciences in 1987 and got selected as Scientific Assistant (SA) –A in the Dept. of Atomic Energy on 23.3.1988 with past service counted. Applicant continued his academic pursuit by completing Master of Library Sciences (MLISc) in 1993 and PG Diploma in Library Automation & Networking in 1999, which were got duly entered as additional qualifications in the service records. Parallel to these developments, applicant was promoted as SA (B) (Library) in 1994, SA-C (Library) in 1998, SA (D) (Library) in 2003, and finally, as SA (E) (Library) in 2008. In the meanwhile, based on the suggestions of a committee set up pursuant to recommendations of the 4th CPC, Dept of Expenditure issued OM dt 24.7.1990 merging the hitherto multiple pay scales relating to Librarians into a common upgraded scale of Rs 1400-2600. Applicant claims that with degree in Library

science and since he is working as a librarian, his pay scale of Rs 1400-2300 has to be revised as Rs 1400-2600 w.e.f 24.7.1990. Accordingly applicant made several representations to different authorities at different intervals of time raising issues which were answered by the respondents but not to the satisfaction of the applicant. Finally Dept of Atomic Energy which is the policy making body, vide I.D note dt 5.2.2013 put the issue at rest by rejecting the claim of the applicant.

4. The contentions of the applicant are that the respondents have disobeyed the orders of the Dept. of Expenditure OM dt 24.7.1990 in granting the appropriate scale. Processing of the claim of the applicant was done without application of mind. Impugned order does not contain valid reasons for rejection. Pay Commission recommendations are binding and once Govt. accepts the recommendations, departments under G.O.I have no power to refuse implementation. Internal correspondence of the respondents, as per applicant version, reveals that he was discriminated by denying the upgraded scale. Rationale given by the respondents that the cited orders are applicable only to major libraries is illogical. The decision of the respondents on one hand not to extend benefit of O.M dt 24.7.1990 based on 4th CPC to technical persons on grounds that they are governed by the merit promotion scheme and on the other hand extending benefits as per 6th CPC to the technical cadre of Nursing staff who are also covered by the Merit Promotion Scheme is unreasonable and arbitrary. Respondents, being a State, should have granted the revised scale of Rs.1400- 2600 which becomes the minimum scale. Further the applicant was eligible for Track Change as per Merit Promotion Scheme (MPS) on acquiring higher qualification but even this was denied. Thus the applicant was neither

allowed Track change nor granted revised scale, violating Art 14 & 16 of the constitution.

5. Respondents in their reply statement inform that they recruit personnel for 4 streams namely Scientific, Technical, Administrative and Auxiliary. Promotion of the Scientific and Technical personnel is governed by MPS (Merit Promotion Scheme). An employee on completion of Minimum Eligibility Period is considered for promotion to the higher grade based on grading of confidential reports plus other parameters. Uniqueness of the scheme is that the promotion is not linked to the availability of the vacancies. MPS norms were revised w.e.f 1.1.2009. According to these norms, if employees acquire additional qualifications in disciplines permitted by the respondents with certain percentage they would be considered for promotion, provided they pass the STPT (Scientific and Technical Proficiency Test). Employees will be given two opportunities to clear the STPT and one chance to appear for the interview. In case an employee does not succeed he will be considered for promotion in the normal course. Prior to revision of norms w.e.f 1.1.2009, employees were promoted without STPT, only based on acquiring higher qualifications with prescribed percentage after a screening committee found them fit for promotion with or without track change or defer the case. Representations made by the applicant from 1994 to 1997 for promotion on acquiring additional qualification of MLISc degree were rejected stating that MLISc is not equivalent to MSc. Consequent to the revised norms coming into effect, applicant's case for promotion with additional qualification was reconsidered and he was permitted to write the exam in 2012. Applicant cleared the exam vide lr dt 24.6.2013 and appeared for the interview on 12.12.2013. Result of the interview is yet to be announced. Repeated representations made by the applicant for granting higher pay scale, as per OM

dt 24.7.1990 were examined and replied. Applicant was informed that OM cited is applicable to establishments where major libraries are functioning and that since he was appointed as (SA) (Library), he comes under the technical cadre which is governed by Merit Promotion scheme. In fact applicant was given an option vide Ir. dt 5.3.1992 wherein it was made clear, that to be brought under the ambit of OM dt 24.7.1990 he has to appear in an interview and on selection, he will be shifted to the administrative stream. Future promotions will depend on availability of vacancies. In case if he is disqualified in the interview he has to resign. Applicant did not respond to this letter. Further, as per Allocation of Business Rules 1961 of G.O.I, Dept of Atomic Energy (DAE) is exempted from the purview of UPSC/SSC in respect of recruitment and promotion of personnel. Exercising such power, respondents confirm that they have adopted the pay structure recommended by 6th CPC for Para Medical and Nursing Staff / Official Language staff and for other posts as per OM dt 10.11.2008. Applicant who was holding the post of Scientific Assistant/D, as on 1.1.2006, was placed in the relevant pay band and Grade pay notified for the post by the DAE. Further, when two more representations were received on 24.6.2010 and 11.4.2011 they were duly replied stating that the pay band granted to the applicant was for holding the post of SA/D and that his promotion based on additional qualification is to be finalised along with others. It was made clear to the applicant that his requests for higher scale and promotion on acquiring additional qualifications were replied based on relevant rules and that there is no violation of Articles 14 and 16 of the Constitution.

6. The second OA No.1385/2015 is about grant of promotion after acquiring additional qualification as per Merit Promotion Scheme (MPS) of the respondents. According to the version of the applicant, as per MPS circulated

vide lr dt 21.2.1990, since he did MLISc he was eligible for promotion. Respondents denied it, when applicant represented on 7.6.1995 on the ground that MLISc is not equal to M.Sc. However, on coming to know that another colleague Mr Somsundaram on acquiring Master Degree in Library and Information Science was promoted as Scientific officer/SB from SA/B in 1992, applicant made another representation on 16.6.1997 which too was not considered. Thereafter applicant obtained information through RTI in 2012 which revealed that some colleagues who did MLISc and even got less than 60% marks were granted promotion. Equipped with this information applicant again represented on several occasions but did not succeed. However, in 2013 applicant was promoted as Technical Officer ' C ' in terms of the revised norms of MPS w.e.f 1.1.2009 vide lr dt 27.6.2011.

7. The contentions of the applicant are that Sri Somsundaram, Smt Nabar, Sri K.Ganeshan who acquired similar qualifications were promoted but he was discriminated by denying promotion. Earlier to RTI, information about Policy, transfers, note sheets etc were kept as secret and therefore it took time for the applicant to secure the information to fight his case. Being an active member of the service association he was targeted to deny a legitimate benefit. The decision of Honourable Jodhpur Bench of this Tribunal ordering promotion of similarly placed employee in OA 16/2009 dt 18.9.2013, supports his case. Applicant is due for retirement on 31.12.2015 and he contends that had he been promoted as Scientific officer in 1994 on acquiring higher qualification, he would have retired as Scientific Officer 'F'.

8. Respondents confirm that the applicant had acquired MLISc in 1993 and P.G diploma in Library Automation and Networking in 1999. Applicant was granted promotions as per rules from time to time as under:

Designation	Date of initial appointment/ Promotion
SA/A	23.3.1988
SA/B	1.5.1994
SA/C	1.5.1998
SA/D	1.8.2003
SA/E	1.8.2008
T.O/C	1.7.2013
TO/D	1.7.2014

Prior to revised norms of 2009, deserving employees in the grades of Scientific Assistant (C,D,E,F) were considered for promotion to the grades of Scientific Officer (SB,C,D,E) on acquiring additional qualifications with the prescribed percentage. A Screening committee evaluates the work record, aptitude, capability of the candidates and then recommends for promotion with or without track change or reject them. From 1.1.2009, employees have to qualify in the STPT (Scientific and Technical Proficiency Test) with a certain percentile and then they will be interviewed for being promoted. Two chances are given to appear in STPT and only one to appear for the interview. Applicant representation given on 22.9.1994 was disposed on 4.10.1994 by stating that the screening committee did not recommend him for promotion. While disposing another representation dated 7.6.1995 it was intimated on 13.2.1996 that norms pertaining to MSc cannot be extended to MLISc and therefore rejected. Representation dated 13.2.1996 was similarly disposed on 16.8.1996 and those dt. 1.3.1997, 16.6.1997, 9.9.1997 on 22.11.1997 with a similar reply. Even after considering MLISc, since the applicant did not have the required grading in the CR (confidential reports) his case got rejected. Applicant comparing with

Mr.Somsundaram/ Sri Ganeshan who were promoted after acquiring MLISc does not help as the CR grading differ and both got greater than 60% in MLISc which is more than the cut of percentage of 60, whereas the applicant got only 59% in Masters Degree and low grading in confidential reports. Even the case of Smt. Nabar does not come to the rescue of the applicant since the eligibility norms were not fulfilled by the applicant. True to speak, in the annual confidential reports considered for the relevant period of 3 years applicant got two A2 and one A3- grading against the requirement of three A2 grading to be qualified for promotion with track change. In fact, applicant was promoted from SA/A to SA/B after fulfilling the norms w.e.f 1.5.1994 and he was not discriminated for being an active member of the staff association. The OA 16/2009 cited is not relevant. In 2009 the Departmental qualifying exam (DQE) which was renamed as STPT was introduced to promote those who acquire higher qualifications in prescribed disciplines with marks between 50% to 60 %. Employees who could not get selected in the past were given one more chance to reappear. Applicant appeared in 2011 but failed. He was given another opportunity to appear at DQE in 2012 which he did. On passing the exam he appeared at the interview and got selected as TO/C with track change in 2013. Thereafter one more promotion was given as TO/D w.e.f 1.7.2014.

9. In the third OA 498/2017, applicant while working as SA (E) (Library) represented on 25.2.2010 to be promoted as Technical Officer (TO) on the basis of additional qualification acquired. Applicant was promoted as TO (C) from SA (E) w.e.f 1.7.2013 vide orders dt 27.6.2014. After granting promotion respondents held that applicant would not be eligible for pay fixation on promotion under FR 22 (1) (a) (1) vide impugned order dt 31.5.2015. FR provision referred to provides for higher pay on discharging higher

responsibilities. Applicant claims that TO (C) post involves higher responsibility than SA (E) and hence he is eligible for higher pay. However, the posts of SA/E and TO/C carry the same pay band of Rs 15,600- 39,700 and GP of Rs 5400 though SA/E is a non Gazetted post and TO/C is a Gazetted post. Applicant represented on 4.2.2015, 8.7.15, 23.10.15 and 30.9.2016 but his claim was finally rejected on 28.9.2016.

10. The contentions of the applicant are that since he got a promotion from a non Gazetted cadre of SA/E to the Gazetted cadre of TO (C), FR provision cited is applicable. Besides, Rule No.13 of CCS (Revised Pay) 2008 and OM dt 7.1.2013 of Dept. of Expenditure endorsed by the respondents vide their lr dt 10.4.2013 does make it clear that the pay has to be hiked. Through RTI the applicant could lay his hands on the note sheets of the respondents where in it was admitted that SA/E is a non Gazetted cadre and TO/C is a Gazetted post involving higher responsibilities. Similar benefit, as extended to Mr.K.S.S. Rao, has to be given to the applicant. The applicant further clarifies that his case is one of promotion through departmental exam and that of K.S.S. Rao is directly recruited to the cadre of SO/C through open advertisement. Respondents did indeed grant higher scale as per DAE OM dt 6.5.2004, when an Assistant Accountant in the pay scale of Rs.6500-10200 was promoted as Asst Personnel Officer (APO) with similar scale on the ground that the APO post calls for higher responsibilities to be discharged.

11. The respondents take the stand that the movement from SA/E to TO (C) is only a track change from Scientific Assistant to Technical Officer involving a mere change of designation. The track change is definitely not a promotion. Further, DAE OM dt 10.4.2013 forwarding the Min. of Finance OM dt 7.1.2013

has made it clear that the OM dt 10.4.2013 is not applicable to the Technical posts in view of the revised norms issued by the Trombay council vide note dt 27.6.2011. Competent authority has approved pay protection of the applicant on track change from SA/E to TO/C. Based on OM dt 10.4.2013 fixation of pay under FR 22(1)(a) (1) in respect of 10 administrative and auxiliary posts on promotion from feeder posts to promotional posts was permitted. In regard to K.S.S. Rao respondents clarify that he was appointed as SO (C) against open advertisement vide memo dt 18.5.2007 with a clear instruction to fix pay as per FR 22 (1)(a)(1). In case of applicant it was mere change of Track and not a promotion. Applicant's designation was changed from SA/E to TO/C. Therefore not allowed. The comparison with regard to Asst Account (AA) and Asst Personnel Officer (APO) scales is not relevant, since the scales of AA & APO were identical prior to 6th CPC but after the 6th CPC the grade pay fixed for Asst Accountant was Rs 4600 and for APO it was Rs 4,800. Had the applicant not opted for track change as TO /C he would have been promoted as SA/F in the normal course. However, having acquired additional qualification he was allowed the track change which is not a promotion. The pay has to be protected as per FR 22 and FR 27 and not under FR 1 (a) (1) as per ID note dt 26.7.2016. The clarificatory OM dt 7.1.2013 issued under CCS (RP) Rules, 2008 is not applicable to the applicant.

12. Heard both the counsel. Arguments made were as per the written submissions. We have gone through reply statements, rejoinders and all other material papers submitted by both the parties.

13. Following the Management Principle of FIFO, (First In First Out) we would first deal with the OA 681 of 2013. The claim of the applicant is that the

4th CPC upgraded scale of Rs 1400-2600 should be granted to him on grounds that DAE (Dept. of Atomic Energy) is one of the departments of Govt. of India. Applicant asserts that DAE cannot afford to refuse implementation of scales for Librarians recommended by a committee constituted as per 4th CPC. Respondents defence is that the recommendations apply to major libraries and not to DAE. We have gone through the averments made by both parties in detail and those relevant to the prayer are being touched upon to decide the dispute.

14. The fundamental aspect which needs to be appreciated is that as per the Govt. of India, Allocation of Business Rules, 1961, Dept. of Atomic Energy is exempted from the purview of UPSC/SSC in respect of recruitment and promotion of their personnel. The adoption of pay scales for the Scientific and Technical personnel is within the powers delegated to the department. Therefore, DAE has the prerogative to decide as to the pay scales to be adopted for its employees. Hence the contention of the applicant that the respondents are bound to implement 4th CPC recommendations does not hold water. Further, the applicant was appointed as SA/A (Scientific Assistant) and is governed by the rules framed for Scientific and Technical (S&T) cadre. He was not appointed as a Librarian. The learned respondent counsel did submit that there are other Scientific Assistants in the organisation along with the SA (Library) who deal with Horticulture, Electrical etc belonging to technical cadre and are covered by the same set of rules applicable to S&T cadre. The S&T staff are given promotion under merit promotion scheme with certain conditions irrespective of the availability of vacancies. Applicant, being a technical staff member, rules applicable to S &T cadre apply to him mutatis mutandis. Based on the said rules applicant was promoted from SA (A) Library to SA (E) (Library) over the years. However, respondents vide letter dt 5.3.1992 directing the applicant to exercise

option for the scale as per OM dt 24.7.1990 with certain harsh conditions was uncalled for. When the rules were clear there was no need to make an impractical offer wherein the present job of the applicant had to be risked to accept the offer made. Further respondents have stated that the work of a Librarian varies based on size and the type of Institutions. This does not appear to be logical since the nature of work of a Librarian remains the same irrespective of the size or institution. May be the quantum of work will differ but not the nature. Nevertheless, in regard to the issue in question the applicant was appointed as Scientific Assistant (SA) to perform the functions of a librarian. Therefore rules meant for SA will apply to the applicant. There is no librarian cadre operated by the respondents with different rules governing their service conditions. This was time and again made clear to the applicant by the respondents but he persisted with representations sporadically. This is the crux of the issue and we agree with the respondents in this regard. The other aspect raised is that when the 6th CPC recommendations were accepted to benefit the Nursing staff then why not accept the 4th CPC recommendations. This is a policy matter and the respondents have full discretion to accept or not. Exercising discretionary powers vested in them respondents did accept 6th CPC recommendations. Based on the 6th CPC recommendations applicant has benefited, along with the Nursing staff, with increase in his grade pay from Rs.4600 to Rs.4800. Respondents have also granted promotions to the applicant based on rules relevant to S&T cadre. One another important fact which deserves a mention is that under Merit promotion scheme availability of vacancies is not required to get promoted. Merit will see you through. However, in Govt. departments for a librarian to get promoted the prerequisite is the availability of a vacancy. The applicant is trying to have the best of both, an upgraded scale as per 4th CPC and promotions under MPS,

which apparently is not reasonable. Other averments made by the applicant are that he was not given SA(B) on re-designation of the post of SA(A) whereas in sister institutions it was granted to some colleagues. Also, he was not given monetary benefit under Qualification Incentive scheme and not granted promotion after acquiring additional qualification. Promotion is the subject matter of the next OA 1385/2015 filed by the applicant and hence would be dealt in that OA. As the prayer is only for upgraded pay, we confined our examination to this aspect.

15. Reverting to the issue in question the respondents have exercised the power vested in fixing the pay scales and also granted different benefits to the applicant as per extent rules. There has been no discrimination since what has been extended to others was also extended to the applicant, be it 6th CPC, MPS etc. They have examined the representations of the applicant based on the rules in vogue and responded. It is not correct on part of the applicant to state that they were disposed mechanically. Any response not in consonance with the relief sought cannot be branded as mechanical. The respondents did give sufficient reasons in different replies as they deemed fit though they were epigrammatic in some in view of the repetitive representations made. On the contrary, it was the applicant who made frequent representations on the same issue which is against the DOPT memo dt 19.4.2010 wherein Govt. servants were advised to desist from making repeated representations on disposed issues. Therefore based on the aforesaid we do not find merit in the OA 681/2013 and hence requires a dismissal.

16. Now switching to the second OA i.e. OA No.1385 of 2015, the issue to be resolved is promotion to the next higher grade on acquiring additional

qualification. Applicant claims that though he post graduated in Library Science (MLISc) in 1993, he was not favoured with a promotion as per MPS (Merit Promotion Scheme). The norms of MPS prior to 2009, are that a screening committee recommends an employee for promotion based on work records, aptitude and capability. Work records include Confidential reports (CR) for the past three years. The applicant could not be considered as he did not have the requisite CR grading in the period under scrutiny. Besides, additional qualifications prescribed by the respondents were BSc, Diploma in Engineering, MSc, AMIE/AMIA/BE/BTech. The B.Lib.Sc/MLSc did not figure in the list of additional qualifications. Hence the respondents while responding to earlier representations were not willing to concede the request of the applicant by equating MSc with MLSc. They were going by the rule book. To this extent we do not agree with the respondents since the applicant was a librarian and the discipline in which he has to acquire higher qualification is Master in Library Science. It would be futile to pursue higher education in a domain which is irrelevant to his work and not in the interests of the respondents organisation as well. This is corroborated by the fact that Bachelor of Library Science was included as an additional qualification in the revised policy of 2009. Besides, respondents considering the case of another employee Mr Somsundaram for promotion in 1992 itself with MLISc before the revised norms of 1.1.2009 were implemented contravenes the stand taken by them. Nevertheless, even if MLISc was agreed to, CRs and other parameters are to be evaluated. Respondents inform that against three CRs with A2- grading required for past 3 yrs applicant had CRs with two A2 and one A3 grading. Along with the work record employee's aptitude and ability are also adjudged by the screening committee to recommend selection. Unless the applicant comes up to the expectation of the

committee in regard to the parameters laid down he would not stand a chance to be promoted. Applicant claimed that in the later years he had the requisite number of appropriately graded CRs would not cut much ice as the other two parameters viz aptitude and work ability are also reckoned by the screening committee. Others with whom the applicant compared like Mr Somsundaram, Mr Ganeshan, Mrs Nabar, they not only acquired the higher qualification of MILSc but were found fit against all parameters to be recommended for promotion by the screening committee. Therefore the said comparison is of no great help to the applicant. Besides, OA 16/2009 adjudicated by the Honourable Jodhpur Bench cited by the applicant, is not relevant, since it relates to an applicant who did AMIE and whereas the applicant did MILSc. In fact, after revised promotion policy came into vogue in 2009 the applicant was given two chances to appear at the written exam which he did and got selected as TO/C in 2013. Thereafter catapulted as TO/D in 2014. Thus as can be seen the applicant could not be promoted in the past on acquiring additional qualification by the screening committee on parameters of work record, aptitude, capability laid down by the respondents organisation. Respondents actions were correct but replies ought to have been comprehensive addressing the grievance in a holistic manner taking into cognizance the developments in the respondents environment. This however cannot be a ground to select a disqualified employee to a post applied for. Further, records do not indicate any discrimination against the applicant. Representations were duly replied. He was promoted as per the policy of the respondents from SA (A) to TO /D over the years. If there was hostile discrimination, rising up the career ladder would not have been possible. The applicant has a right to be considered for promotion but he cannot entertain

a right to be promoted. Honourable Supreme Court has observed in *Badrinath vs Govt. of T.N.* (2000) 5 SCC 395 - that

“Every officer has a right to be considered for promotion under Article 16 to a higher post subject to eligibility provided he is within the zone of consideration.”

“Similar observations are seen in Ajit Singh II vs State of Punjab (1999) 7 SCC 209 at 228, UP Jal Nigam vs Narinder Kumar Agarwal (1996) 8 SCC 43 at page 46, Sarabjit Singh vs Ex-Major B.D. Gupta (2000) 7 SCC 67 at page 70, Delhi Jal Board vs Mahinder Singh (2000) 7 SCC 210 at page 212, S.B. Mathur vs Chief Justice of Delhi High Court, 1989 Supp (1) SCC 34 at 51)”

17. The key words are ‘eligibility’ and only the ‘right to be considered’ for promotion. The respondents did consider the case of the applicant and whenever found eligible he was promoted to higher levels in different years as per norms.

18. Therefore based on the merits and the legal principle laid down by the Honourable Supreme Court, we do not find any valid grounds to intervene on behalf of the applicant and hence OA 1385/2015 deserves to be dismissed.

19. Coming to the last OA No.498 of 2017, fixation of pay on promotion is the dispute. Applicant claims that movement from SA/E to TO/C is a promotion since it involves higher responsibilities, whereas respondents claim that it is only a track change with change of designation and it is not a promotion. To resolve this issue let us look at the representation made by the applicant on 4.2.2015. In that representation, the applicant requested fixation of pay on promotion be done as per DAE office memorandum dt 10.4.2013 issued on the basis of OM dt 7.1.2013 of Dept. of Expenditure. The OM dt 10.4.2013 lays down the following conditions for fixation of pay on promotion.

- i) Feeder and promotion post carry same grade pay after 1.1.2006 though such posts were in separate and distinct pay scales prior to 1.1.2006.

- ii) No restructuring of the affected cadres has been done or could be done on functional, operational and administrative considerations.
- iii) The competent authority has decided that the promotion to the posts in question actually involves the assumption of higher responsibilities.
- iv) All cases of pay fixation benefit should be done with the concurrence of Finance.
- v) It is clarified that the above OM is not applicable to the technical post in the Dept., in view of the revised norms issued by the Trombay Council vide Note no TC/1 (52)/89/2011/56035 dt 27.6.2011.

20. Applying the provisions of the OM referred to by the applicant to his case, the following emerges:

As per the OM, the feeder and the promotion post should carry the same grade pay after 01.01.2006. The post of SA/E is not the feeder post for the Post of TO/C though it carries the same grade pay as that of TO/C. In fact SA/E is the feeder post for the post of SA/F. The SA/E and TO/C did not have distinct and separate pay scales prior to 1.1.2006. As per records pay scale/pay band of the two posts were the same before and after 1.1.2006. Competent authority has to decide as to whether the promotion to the post in question actually involves the assumption of higher responsibilities to invoke FR 22 (1) (a) (1). There is no such order of the competent authority. OM dt 10.4.2013 is not applicable to the Technical posts in view of the Trombay council note dt 27.6.2011. This was reiterated in the minutes of the meeting vide lr. no 1.2.2014/IR&W/384 dt 28.8.2014 as item 2.2 of the DAE Department Council. TO/C (Technical Officer) is a technical post as the designation indicates. Therefore the OM dt 10.4.2013 negates the request of the applicant on 3 specific grounds explained.

DAE did identify 10 administrative and auxiliary category posts satisfying the conditions laid down in the cited OM vide Ir dt 20.8.2014 for grant of pay fixation benefit under FR 22 (1) (a)(1). Obvious conclusion is if rules permit benefits will be extended.

21. The applicant, to further his case, did point out that the pay fixation done for K.S.S.Rao, when he was promoted from SA/E to TO/C. This is found to be irregular by Joint Controller (F&A) who is the competent authority, vide his office note dt 27.2.2017 which was indeed submitted by the applicant. In the said note it was mentioned that the scale of SA/E and TO/C were the same as per CCS (RP) rules 1997 and the corresponding PB in 6th CPC is Rs 15,600-39,100 with GP of Rs 5400 as per CCS (RP) rules 2008. It was also mentioned in the said note that as per proviso (iii) below rule FR 22, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post. The office noting referred to by the applicant was made by a lower functionary, at the level of a section officer, who is not the competent authority to decide the issue and hence is not relevant. Therefore, drawing comparison with pay fixation of K.S.S.Rao, which was admitted to be incorrect by the respondents, would not support the case of the applicant. Respondents as per rule did protect the pay of the applicant on promotion. However, the respondents submitted in the reply statement that for K.S.S.Rao pay fixation was allowed under FR 22(1) (a) (1) without adducing about the orders of the Joint Controller (F&A). We hope respondents have acted on Jt. Controller observations of rejecting pay fixation of K.S.S. Rao and consequent recovery. If not they need to, in the interest of justice. Further, Gazette notification dt 7.1.2015 published subsequent to Ir dt 27.6.2014 issued to the applicant, does indicate that the applicant was appointed

as TO/C with grade pay of Rs 5400 which is the same for Scientific Asst/E. The letter dt.27.6.2014 wherein the promotion issue was refereed to, did not indicate the grade pay leading to confusion and the resultant litigation. Therefore it is evident from the facts of the case that the movement of the applicant was not to a higher grade pay or a higher pay in the pay band. Hence it is not a promotion to apply FR 22(1)(a)(1) or apply Rule 13(i) of CCS (RP) Rules 2008. The applicant has been repeatedly alleging that the respondents have been discriminating him. It is not borne by facts of the case. Representations were answered based on norms as construed by them. The very fact that the applicant rose from SA/A to TO/D does reflect the sense of fairness displayed by the respondents. Respondents do make a mistake as they did by wrongly fixing the pay of Sri K.S.S. Rao on promotion from SA/E to TO/C, which was admitted in the office note of the Joint Controller. Bonafide mistake can be corrected. Honourable Supreme Court has observed in ***VSNL v. Ajit Kumar Kar, (2008) 11 SCC 591***, that :

46. *It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected.*

22. Therefore, the applicant cannot claim that his pay has to be fixed based on the mistake made by the respondents in Sri K.S.S. Rao case, which they fairly admitted. Besides, a wrong cannot be perpetuated. Even in this regard Apex Court has made the following observation, in *State of Karnataka v. Gadilingappa, (2010) 2 SCC 728*, at page 730, as under, which is relevant to the case.

“It is a well-settled principle of law that even if a wrong is committed in an earlier case, the same cannot be allowed to be perpetuated.”

23. Thus the aforesaid facts of the case do not merit any modification of the orders issued by the respondents in regard to pay fixation sought by the applicant, and hence the OA has to be disallowed.

24. To conclude all the 3 OAs are dismissed for reasons stated in paras supra, with no order to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

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

Dated, the 27th day of February, 2019

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