

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. O.A. 350/01434/2014
M.A. 350/00364/2014

Date of order: 9.9.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

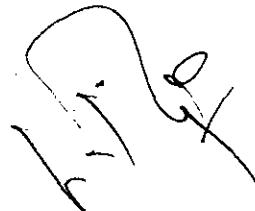
Sudip Kumar Ray,
Son of Late Satyendra Mohan Roy,
Aged about 56 years,
Working as Deputy Director General,
Office of the Coal Controller, 1,
Council House Street, Kolkata-700 001,
Residing at Flat No. 10(A), CD-17,
Action Area-I, New Town, Kolkata-700 156.

.. Applicant

- V E R S U S -

1. Union of India,
Through the Secretary to the
Govt. of India,
Ministry of Statistics & Programme
Implementation, Sardar Patel Bhavan,
Sansad Marg,
New Delhi - 110 001.
2. The Secretary to the
Government of India,
Ministry of Statistics & Programme
Implementation, Sardar Patel Bhavan,
Sansad Marg,
New Delhi - 110 001.
3. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan House,
New Delhi - 110 069.

.. Respondents



For the Applicant : Mr. S.K. Dutta, Counsel
For the Respondents : Mr. L.K. Chatterjee, Counsel
Mr. M.K. Ghara, Counsel

(for official respondents)

Mr. A.K. Chattopadhyay, Counsel
(for UPSC)

O R D E R (Oral)

Per Mr. G. Rajasuria, Judicial Member:

Heard Ld. Counsel for both sides.

2. This O.A. has been filed seeking the following reliefs:-

"(a) An order directing the respondents to consider the case of the applicant for his retrospective promotion at par with his erstwhile immediate junior who got promotion to SAG grade by order dated 11.12.2009 by antedating his date of regular promotion to SAG grade with all consequential benefits including seniority.

(b) An order directing the respondents to produce/cause production of all relevant records.

(c) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

3. Indebutably and indisputedly the germane facts absolutely necessary for disposal of this O.A. would run thus:-

The applicant, namely, Shri Sudip Kumar Ray while he was in JAG grade, he was denied non-functional upgradation of 'Sr. Administrative Grade (SAG) and thereafter he was also denied the regular promotion to the said post, both on the sole ground that for the year 2005-2006 in his ACR, he was assessed only as "good"



and "very good" was considered as the Benchmark for granting such upgradation and promotion. Subsequently, the applicant took up the matter and got the said remark upgraded as "very good" whereupon the respondent authorities granted, the non-functional upgradation w.e.f. 1.1.2008. However, the regular promotion was not given with retrospective effect; hence this O.A.

4. The Ld. Counsel for the applicant placing reliance on the averments in the O.A. as well as in the annexures would put forth the point to the effect that earlier this Tribunal in the matter of Md. Salim Khan v. U.O.I. & ors. i.e. O.A. 1261 of 2014 dated 15.6.2015 rendered an order giving direction for constitution of a review DPC, relying on the decision of the Hon'ble Apex Court in **Dev Dutt vs. Union of India and Others [(2008)2 Supreme Court Cases(L&S) 771]** cited by the learned counsel of the applicant. Certain extracts from the Hon'ble Apex Court's judgment would run thus:-

"42. In view of the above, we are of the opinion that both the learned Single Judge as well as the learned Division Bench erred in law. Hence, we set aside the judgment of the learned Single Judge as well as the impugned judgement of the learned Division Bench.

43. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the "good" entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the "good" entry of 1993-1994 be communicated to the appellant forthwith and he should be permitted to make a representation against the



same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

44. We, therefore, direct that the "good" entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment."

Accordingly, he would pray for allowing the O.A.

5. Per contra, the Ld. Counsel for the respondents by placing before us the copy of the communication dated 8.9.2015 issued by the Under Secretary to the Govt. of India, Ministry of Statistics and Programme Implementation would submit that the question of giving retrospective promotion to the individual is under consideration of the Ministry of DOPT as well as the Ministry of Statistics & Programme Implementation and, as such, would pray for time to report the decision which might emerge from the Government side.

6. However, the Ld. Counsel for the applicant would submit that the respondents cannot take much time to take a decision on that issue because it is already covered by the Hon'ble Supreme Court's decision and this CAT also decided similar cases as set out supra.

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7. The point for consideration is as to whether the applicant is entitled to get regular promotion with retrospective effect from the date of his junior having been promoted so to say w.e.f. 11.12.2009. A bare perusal of the judgment of the Hon'ble Apex Court in **Dev Dutt vs. Union of India and Others (supra)** would show that Hon'ble Apex Court directed that on upgrading the remarks in the ACR, if the person is found fit for promotion then DPC has to consider his promotion with retrospective effect.

8. As such, adhering to the aforesaid mandate of the Hon'ble Apex Court we would like to issue the following direction:-

The respondent authorities shall order for review DPC to consider the prospects of giving retrospective promotion to the applicant from the date his junior having been promoted and the said process shall be completed within a period of three months.

9. In view of the ratio cination adhered to by us in disposing of the O.A., the M.A. for condonation of delay stands allowed.

10. Ordered accordingly.

(Jaya Das Gupta)
MEMBER(A)

(G. Rajasuria)
MEMBER(J)

SP