

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00566/2015

Orders reserved on :- 05.04.2019

Date of Order : April, 2019

C O R A M

HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Amar Chandra Sinha, son of Late Ram Chandra Prasad, Ex Senior Compiler, Office of the Director of Sensus Operations, Bihar, Patna-800004, resident of Lalitasmriti, New Area Rajendra Nagar, Behind LIC Office, Thana Road, Nawada-85110 (Bihar).

..... Applicant.

- By Advocate : Shri M.P.Dixit.

-Versus-

1. The Union of India through the Secretary, Ministry of Home Affairs, Government of India, New Delhi-110011.
2. The Registrar General of India and Census Commissioner, 2 A, Man Singh Road, New Delhi.
3. The Joint Director of Census Operations, Bihar, Patna.
4. The Assistant Director of Census Operations, Bihar, Patna.

..... Respondents.

By Advocate :- By Advocate :- Shri H.P. Singh.

ORDER

Per Mr. J.V. Bhairavia, J.M.:- In the instant OA, the applicant has prayed for quashing and setting aside the impugned orders dated 03.03.2015 [Annexure A/12] including the order dated 21.11.2014 [Annexure-A/10] whereby the promotion to the post of Senior Compiler has been granted w.e.f. 04.03.2009 instead of from 25.07.2008. Further, the applicant has prayed for a direction upon the respondents to grant promotion in his

favour to the post of SI Grade-II in pay band-2 in pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4200/- w.e.f. 22.01.2009 and Senior Complier in the pay band of Rs. 5200-20200 with GP of Rs. 2800/- w.e.f. 25.07.2008 instead of from 04.03.2009 as shown in Annexure A/10 with all consequential benefits including arrears of pay at par with his juniors. The applicant has also prayed for a direction upon the respondents to revise the entire pensionary benefits on the promoted post and pay scale with all consequential benefits including arrears and interest thereon.

2. The brief facts of this case is that the applicant has been superannuated from service on 30.06.2014 while serving as Senior Compiler under the Directorate of Census Operations, Bihar, Patna.

3. While working as Complier under the Director, Census Operation, Bihar, the applicant was transferred to Jharkhand Census Operations vide order dated 16.04.2007 and 15.06.2007 against which, he filed OAs bearing no. 324 with 364/2007 which was allowed on 18.02.2011. In compliance thereof, the respondents modified the OM of even number dated 16.04.2007 to the extent that the name of Shri Amar Chand Sinha, Compiler of 1983 batch shown at Sl. No.07 in the said order stands deleted and the services of Shri Sinha are placed at the disposal of DCO, Bihar with immediate effect and notionally from 15.06.2007. The respondents have also modified their order that the applicant's services in DCO Bihar will be regularized treating him as he had not been transferred to DCO Jharkhand as Compiler, vide Annexure-A/1].

4. Further case of the applicant is that during the pendency of the aforesaid OA, various persons junior to the applicant were promoted to the post of Senior Complier ignoring the case of the applicant for which he represented before the authorities time and again. On 24.10.2011 [Annexure-A/3], the respondents have issued seniority list in which the name of the applicant find place at serial no. 9 above his juniors. Later on, vide letter dated 26.07.2012 [Annexure-A/4], in compliance of the order passed in OA 364/2007, the Under Secretary, Office of the Registrar General, Govt. of India, Ministry of Home Affairs, New Delhi wrote a letter to the Joint Director of Census Operations, Directorate of Census Operations, Bihar requesting him to conduct review DPCs in respect of both the DPCs held on 21.07.2008 and 02.03.2009 so as to consider his case for promotion and in the event of him being recommended for promotion by either of the DPCs, he will get the benefit of notional promotion w.e.f. the date of which the officials were promoted on recommendations of that particular DPC. The applicant submitted that he submitted representations on 08.11.2012 and 04.02.2013 [Annexures-A/5 & A/6] but he has not been given any promotion at par with his juniors, rather he has been granted said pay scale w.e.f. 30.03.2013 under MACP.

5. After retirement, the applicant filed another OA bearing no. OA 714/2014 which was disposed of on 09.10.2014 with a direction to the respondents to consider his claim for promotions at par with his juniors. The said claim of the applicant was rejected by the respondents vide order dated 03.03.2015 [Annexure-A/12]. However, the applicant was granted promotion, vide order dated 21.11.2014 [Annexure-A/10] to the post of

Senior Complier in the pay band of Rs. 5200-20200 with Grade Pay of Rs. 2800/- w.e.f. 04.03.2009 instead of from 25.07.2008 at par with juniors and further claim of the applicant for grant of promotion to the post of SI Grade II in pay band-2 of Rs. 9300-34800, GP Rs. 4200/- at par with his juniors have not been considered hence, this OA.

6. The respondents have filed their written statement and contested the case. According to them, a DPC meeting was held on 26.07.2006 to fill-up six vacant posts of Senior Complier. Out of total 21 posts of Senior Complier, three posts were reserved for SC and one for ST candidate as per post based reservation roster. Since there were only two unreserved posts available to be filled up by promotion of compliers, the name of the applicant could not be recommended by the DPC because his name was at serial no. 26 in the seniority list of Compliers.

7. The respondents have further contended that as per letter dated 05.03.2008, issued by Registrar General of India, sanctioned post of Senior Complier came to fourteen. On 21.07.2008, the DPC meeting was held to fill-up ten vacant posts of Senior Compliers. Since the applicant was now posted at Jharkhand, his name was not considered by DPC. Again on 02.03.2009, meeting of DPC was held to fill-up nine vacant posts of Senior Complier but again the name of the applicant was not recommended as he at that time also, posted at Jharkhand.

8. The respondents have further contended that in compliance of the order passed by Central Administrative Tribunal in OA 324 with OA 364/2007 dated 18.02.2011, the applicant was placed at the disposal of the

office of Directorate of Census Operations, Bihar, Patna and in terms of letter dated 17.06.2011, issued by the Office of Registrar General, New Delhi, the applicant's services was regularized treating him as if he had not been transferred to the Directorate of Census Operations, Jharkhand as Compiler and his seniority, promotion etc. due to him would be revised as per rules. Accordingly, a revised seniority list was issued vide office order dated 24.10.2011 in which applicant's name was placed at Sl. No.9.

9. The respondents contended that as per direction given by Registrar General, India, vide letter dated 26.07.2012 [Annexure-A/4], a review DPC was held on 14.01.2014 for the DPCs held on 21.07.2008 and 02.03.2009. The review DPC for 21.07.2008 to fill up 10 vacant posts of Senior Compiler was held on 14.11.2014 and out of 14 sanctioned posts, 2 posts were reserved for SC candidates and 1 for Scheduled Tribe as per post based reservation roster. Since the name of the applicant was at ninth position in the seniority list, his name was not recommended by the DPC for Senior Compiler. The respondents further contended that the review DPC for 02.03.2009 to fill up nine vacant posts of Senior Compiler was held on same date i.e. 14.11.2014. This time, the Review DPC recommended the name of the applicant due to availability of vacancy under unreserved quota for promotion to Senior Compiler and an order promoting the applicant w.e.f. 04.03.2009 was issued vide order dated 21.11.2014.

10. The applicant has filed his rejoinder reiterating the facts as narrated in the OA. However, the applicant contended that in spite of having posts under reserved category since 2001 to 2006, none of the

reserved category candidates have been granted promotion. The applicant brought to the notice of the Tribunal the memorandum dated 09.05.2003 issued by the Directorate of Census Operations Bihar and letter dated 16.08.2004 [Annexure-R/8], issued by the Registrar General of India, New Delhi, which relates to placement after restructuring of the Statistical cadre. The letter stipulates that in the proposal of restructuring the statistical cadre in terms of the recommendations of the 5th Central Pay Commission which was approved in consultation with DOPT and Ministry of Finance, there was no provision of making reservation for SCs/STs etc. in respect of placement of the incumbents of the erstwhile posts in the statistical cadre in the restructured post in the new statistical cadre. As such the respondents rejected the request of the employees who sought the reservation while making placement in restructured posts.

11. The respondents file reply to the rejoinder and contended that as no reserve category candidates were available in the consideration zone as per the reservation roster, no SC and ST candidate was promoted, vide order dated 28.02.2003 and 30.01.2004. The respondents have also enclosed copy of the memorandum dated 09.05.2003 issued by the Directorate of Census Operations Bihar and letter dated 16.08.2004 issued by the Registrar General of India.

12. Heard the learned counsel for the parties and perused the materials on records.

13. It is noticed that this is third round of litigation. It emerges from the record that the applicant while working as Compiler under the

Director, Census Operation, Bihar was transferred to Jharkhand Census Operation vide order dated 16.04.2007/15.06.2007 against which he filed one OA before this Tribunal vide OA No. 364/2007 which has been allowed vide order dated 18.02.2011 and thereafter the respondents have implemented the said order through their communication dated 17.06.2011 and 30.06.2011 under which the applicant has been posted back to Bihar. It is noticed that during the pendency of the said OA, various persons who were junior to the applicant, got promotion to the post of Sr. Compiler in the pay band of Rs. 5200-20200/- GP 2800 w.e.f. 25.07.2008 and SI Grade-II in the pay scale of Rs. 9300-34800/- GP Rs. 4200/- w.e.f. 22.01.2009 but the applicant has not been given the said promotion at par with his juniors rather he has been granted the said pay scale w.e.f. 20.03.2013 under MACP. Therefore, he has submitted representation for grant of promotion benefits.

14. It is further noticed that the respondents have issued seniority list on 24.10.2011 in which the applicant has been placed at Sr. No.9, i.e. above his juniors. Thereafter, vide letter dated 26.07.2012 office of respondent no.2, directed the respondent no.3, i.e. The Joint Director of Census Operation, Bihar to conduct review DPC in respect of both the DPCs held on 21.07.2008 and 02.03.2009, so as to consider the case of applicant for promotion. It is further stated in the said letter that in the event of him being recommended for promotion by either of the DPCs, he will get the benefit the notional promotion with effect from which the officers were promoted on recommendations of that particular DPC, his seniority in the grade of Sr. Compiler should be regulated accordingly. (Annexure-A/4).The

applicant has submitted various representations for implementation of direction issued by respondent no.2 to respondent no.3 to conduct the review DPC for consideration of his claim for promotion. However, no review DPC was held till he superannuated on 30.04.2014. Thereafter, the applicant had filed another OA 714/2014 which has been disposed of on 09.10.2014 with the direction to the respondents to consider the pending representation of applicant and pass an order in light of their own rectification orders passed by the department with respect to holding the review DPC. (Annexure-A/9).

15. It is further noticed that vide order dated 21.11.2014, issued by the respondent no.3, the applicant was promoted to the post of Sr. compiler w.e.f. 4.03.2009 in the Pay Scale of Rs. 5200-20200/- GP 2800/- (Annexure-A/10). Against the said promotion order, the applicant had submitted another representation dated 10.12.2014 and requested the respondents that as per the direction issued by this Tribunal in OA 714/2014 decided on 09.10.2014 the case of the applicant required to be considered for promotion for at par with his juniors and he is entitled to receive promotion with effect from 25.07.2008 instead of 04.03.2009. Thereafter vide impugned order 03.03.2015 the respondents have considered the representation of the applicant as also direction issued by this Tribunal in OA 714/2014 and intimated the applicant that the promotion granted w.e.f. 04.03.2009 is proper and accordingly his representation dated 10.12.2014 rejected. Aggrieved by the said decision dated 03.03.2015 as well as the order of promotion dated 21.11.2014 the applicant has preferred the present OA.

16. It is noticed that the respondents in their decision dated 03.03.2015 has observed that the applicant could not be promoted to the post of Sr. Compiler w.e.f. 21.07.2008 since the DPC held on 21.07.2008 found that due to non-availability of sufficient vacancy under general category candidate. The persons junior to him who belonged to reserved category candidates, were given promotion against the reserved post for SC/ST. Thereafter, review DPC for 02.03.2009 was held on 14.11.2014 and since vacancies were available under general category, the applicant was considered as per his seniority and was appointed to the post of Sr. Compiler w.e.f. 04.03.2009. The decision of the DPC was communicated vide order dated 21.11.2014 to the applicant.

17. It is the grievance of the applicant that the respondents had granted promotion to the reserved category candidate w.e.f. 21.07.2008 who were junior to him, placed at Sr. No. 10, 11, 13 in the Seniority List whereas the applicant was placed at Sl. No. 9. He was not granted the promotion. It is further contended by the applicant that he had received the information that in the year 2003 to 2006, the respondents have denied promotion to the reserved category candidate and did not fill up the post reserved for reserved category candidates. It was also submitted that as per the memorandum dated 09.05.2003 issued by Director of Census Operation, Bihar and letter dated 16.08.2004, issued by the Registrar General of India which relates to placement after restructuring of statistical cadre in terms of the recommendation of 5th CPC and as such there was no provision for making reservation for SCs/STs etc. Therefore, in the year 2008 the respondents ought not to have granted the promotion to

the junior who belongs to reserved category and ought not to have fill up the vacancies by the reserved category candidates. In this regard, the L/c for the applicant placed reliance on judgment passed by Hon'ble Apex Court in the case of R.K. Sabaharwal and Others Vs. State of Punjab and Others, 1995 Supreme Court Cases (L&S) 548 and submitted that after 3 years the sanction post for reserved category cannot be allowed to carry forward and same was required to be de-reserved and promotion has to be given to UR candidates. The 4 post of Sr. Compiler were remain vacant since 2001 to 2006 due to no availability of ST/SC candidates and subsequently in the year 2008 no promotion was required to offer to the reserved category candidates as there was no reserved post available. It is also contended that the reservation cannot be granted beyond 15 per cent and 7.5 per cent. Therefore, the respondents had not followed the said principles and erroneously granted promotion to the candidates belong to the reserved category who were placed at Sl. No. 10 onwards that too ignoring the right of the applicant who were posted at Sl. No.9. Therefore, the applicant is entitled to be promoted as Sr. Compiler w.f. 25.07.2008 on the date the said juniors were granted promotion. The claim of the applicant for grant of promotion in the year 2008 ought to have been considered and the respondents had committed error in granting promotion to the reserved category candidates.

18. In this regard, we take notice of the submission and clarifications made by the respondents, according to the respondents no reserved category candidate was available in the consideration zone as per reservation roster, no SC/ST candidate was promoted at the relevant time.

It is also contended by the respondents that the applicant belongs to general category working under Census Operation Department. The respondents have followed the rules and regulations in filling up the vacant post of Sr. Compiler as per the seniority and roster. In this regard, we have carefully examined the materials on record and the submissions.

19. It is further noticed that review DPC was held for DPC dated 25.07.2008, at the relevant time out of total 10 posts of Sr. Compiler, 7 were to be filled up by General Category candidates, 2 posts were to be filled up by SC and 1 post was to be filled up by ST category candidate. undisputedly the applicant was placed at Sl. No.9 in the seniority list whereas the persons placed up to Sl. No. 7 in the seniority list who belonged to General Category, were given promotion on 21.07.2008. Therefore, the applicant could not be promoted w.e.f. 21.07.2008. However, in the next review DPC for 02.03.2009 to fill up 9 vacant post of Sr. Compiler, since the first candidate from the General Category was available i.e. the applicant and the DPC had recommended his name for promotion against the UR post w.e.f. 04.03.2009 accordingly, the applicant was promoted, vide order dated 21.11.2014. w.e.f. 04.03.2009 to the post of Sr. Compiler. There is no material placed on record which can be said that the respondents had erroneously filled up the post of Senior Compiler in the year 2008. There is no material placed on record which can also be said that respondents have not followed the roster. In fact it is noticed that the respondents have considered the claim of the applicant as per his seniority, the said seniority he has never disputed, the grievance of the applicant that in 2008 respondents have erroneously fill up the vacancy

by granting promotion the reserved category candidates is without substance. After considering the seniority total 7 candidates who were senior to the applicants who were belongs to unreserved category were granted promotion and accordingly the 7 posts which were vacant and to be filled up in the year 2008 by the unreserved candidates and the same were filled up by the respondents and in next DPC i.e. of 02.03.2009 for consideration of 9 vacant post of Sr. Compiler, the name of applicant was recommended by the review DPC and accordingly he was granted promotion w.e.f. 04.03.2009.

20. Under the circumstances, we do not find any infirmities in the promotion order dated 21.11.2014 as well as in the order dated 03.03.2015. The respondents have considered the claim of the applicant for grant of promotion as per his seniority and available vacancy of sanctioned post of Sr. Compiler. Therefore, the judgement relied upon by the counsel for the applicant will not be helpful to the applicant in the facts and circumstances of the present case. It is noticed that the applicant was retired from service on 30.06.2014, however, the respondents had considered the entire service record of the applicant and as also as per the direction of this Tribunal, applicant was granted promotion to the post of Sr. Compiler w.e.f. 04.03.2009, vide order dated 21.11.2014 with all consequential benefits. We do not find any infirmity in the impugned decision. Hence, the OA is dismissed. No costs.

[Dinesh Sharma]
Administrative Member
Pkl/mps

[Jayesh V. Bhairavia]
Judicial Member