

**Central Administrative Tribunal
Principal Bench**

OA No. 3764/2015

Order reserved on : 09.05.2019
Order pronounced on: 24.05.2019

Hon'ble Mr. Pradeep Kumar, Member (A)
Hon'ble Mr. Ashish Kalia, Member (J)

C.D.Toura,
S/o late Shri Kehru Ram,
(Aged about 70 years)
(Retired as Section Officer from DOPT)
R/o A-403, Swami Dayanand Apartments,
Sector-6, Plot No.5, Dwarka,
New Delhi-110075.

... Applicant
(By Advocate: Sh. L.R.Khatana)

VERSUS

Union of India
Through Secretary to the Govt. of India,
Department of Personnel & Training,
Ministry of Personnel, P.G. & Pensions
North Block, New Delhi-110001.

... Respondent

(By Advocate: Sh. V.S.R.Krishna and
Ms. Taranunum Abrar with
Ch. Shamsuddin Khan)

ORDER

By Hon'ble Mr. Ashish Kalia, Member (J)

Applicant is seeking the following reliefs:

“A) Declare that the impugned action/decision of the respondents as illegal, arbitrary, discriminatory, unreasonable and unjust and quash and set aside the

impugned orders/O.M. dated 22.9.2015 and 12.10.1998 to the extent the same is unreasonable, iniquitous, discriminatory, illegal and arbitrary and direct the respondents to give the consequential benefit of promotion as a result of the applicant's inclusion in the Select List of Grade-I (Under Secretary) of CSS for the year 2003 when he was very much in service and grant the resultant benefits of arrears of fixation of pay and allowances, consequent revision of retiral benefits such as pension, gratuity, commutation of pension, leave encashment etc. and arrears thereof with interest at the rate of 12% per annum and direct the respondent to pay the same within a specified time frame in view of the advanced age of the applicant.

B) Award costs of the present OA.

C) to pass any such other or further order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case."

2. Brief facts of the case are that the applicant was appointed as LDC in the year 1965, promoted as UDC in the year 1971, in the year 1980 he was further promoted as Assistant and lastly he was promoted as Section Officer. He retired on 30.11.2005 having very good record of service. On 25.08.2009 respondents issued a Select List for the year 2003 of the officers of Central Secretariat Service (CSS) for appointment to Grade-I (Under Secretary) where the name of the applicant, who belongs to SC category, was shown at S1. No.828.

3. As per the OM dated 25.08.2009 issued by the respondent that ".... the appointment of the officers included in the aforesaid Select List might be deemed to have been made effective w.e.f. 01.07.2003 for the purpose of approved

service and for fixing their pay as Under Secretary on notional basis. The actual benefits, however, would be available only from the date officers are so appointed to the grade of Under Secretary of CSS".

4. It is further stated that the applicant got retired before issuance of the above said Select List dated 25.08.2009 and was put to disadvantageous position as a result of the above said selection published after his retirement whereas his junior Sh. M.L.Bakolia, whose name figured after him at S1. No.835 in the said Select List dated 25.08.2009, has been given the said benefit of promotion w.e.f. 01.07.2003, the date on which the applicant was also very much in service.

5. Applicant has made a representation which was rejected vide impugned order dated 22.09.2015. It is further submitted that Sh. Bakolia has approached this Tribunal by filing OA No.2846/2011, which was allowed by this Tribunal on 29.03.2011. The applicant's case is identical to the case of Sh. Bakolia. Hence, the applicant has approached this Tribunal for redressal of his grievance.

6. Notice was issued to the respondent, who has filed the counter reply. It is submitted that the Select List of Grade-I (Under Secretary) for various years got delayed on account of long run litigation on seniority issues between the promotee

and direct recruits. The first cadre restructuring of CSS was approved in October 2003 which resulted in huge increase in the number of posts in all the grades of CSS inter alia including Under Secretary (Grade-I), which increased from around 400 to 1400. This increased number of posts coupled with delay in issuance of earlier Under Secretaries Select List (USSL) led to delay in finalisation of DPC proposal for USSL 2003.

7. It is further submitted that in terms of DOP&T OM dated 12.10.1998 retired employees, who were within the zone of consideration in the relevant year would be considered while preparing yearwise panels. The names of the retired officials, who were in zone of consideration, had been included in the panel. However, it is clarified that they have no right for actual promotion. The applicant was considered for inclusion in USSL for the year 2003 on the recommendation of the UPSC and thereafter his name was included in the Select List. Since the time of issuance of the Select List on 25.08.2009, applicant had already been retired from the Government service.

8. He was not promoted as Under Secretary. The applicant relied on the case of this Tribunal titled **P.G.George vs. Union of India**, OA No.1409/2009. The respondents after

notice appeared and filed their reply submitting therein that the order passed in OA No.1409/2009 in **P.G.George** (supra) has no general applicability and is restricted to applicant of that OA only. Therefore, this case was not made applicable to the applicant and respondents also cannot go beyond its policy issued vide OM No.22011/4/98-Estt(D) dated 12.10.1998. Lastly, it is submitted that present OA is barred by limitation, delay and laches.

9. Heard the learned counsel for the parties at length and perused the records.

10. The issue raised in the present OA by the applicant is that “whether he is entitled for promotion to the post of Grade-I Under Secretary after retirement, being eligible to be promoted in the year 2003 or not?” The respondents have raised the objection of limitation in the present OA in their counter reply. It is observed that when there is a question of payment of pensionary benefits, which is a recurring cause of action, as held by the Hon’ble Apex Court in numerous judgments, thus the point of limitation is brushed aside.

11. In order to resolve this issue, let us see office memorandum dated 12.10.1998. Para 3 of the OM is reproduced below:

“3. The matter has been examined in consultation with the Ministry of Law (Department of Legal Affairs). It may be

pointed out in this regard that 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 yearwise 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."

12. The above OM depicts that the officials, who have been retired from service but were in the zone of consideration for the relevant years, the name of retired officials may also be included in the panel for the promotion. Such retired officials would have no right for actual promotion. But OM nowhere state that retired officials could not be given the notional promotion in case person junior to him has been promoted as held by this Court. This issue has been considered by this Tribunal in two OAs. Firstly, in the case of **P.G. George** (supra), OA No.1409/2009 wherein this Tribunal has held as under:

“8. xxx xxx xxx

(i) there is no rule that promotion should be given from the date of creation of the promotional post;

(ii) the promotions are effected prospectively from the date of issue of the order of promotion, retired employees would not be eligible for promotion retrospectively; and

(iii) if promotion is granted retrospectively and a person junior to the retired employees 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 judgment 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.

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In fact, actual promotion from the retrospective date would not be given even to serving employees. However, it cannot be denied if a person junior to a retired employee is promoted with retrospective date, from a date when the retired employee was also in service, such benefit cannot be denied to the retired employee. It would be logically inconsistent to give the benefit of retrospective promotion to a serving employee and deny the same to a retired employee. It would be unfair and it would mean that the retired employee has been made to pay for the delay in the preparation of the Select List/Panel, cause solely due to the mistake of the Government. In Union of India etc. Vs. K.V.Jankiraman etc., JT 1991 (3) SC 527, though in a different context, the Honourable Supreme Court held that the employee would be eligible for all actual benefits of promotion retrospectively because he was prevented by the Government from working in the higher post.”

13. Similarly, in the second OA filed by Sh. Bakolia – OA No.2846/2011, this Tribunal has observed that since it is admitted position that this case is squarely covered by the case of **P.G.George (*supra*)**, therefore, this OA is also allowed.

14. After considering the above two judgments, we have no hesitation to hold that applicant is entitled for retrospective promotion on notional basis from the date his immediate junior Sh. M.L.Bakolia was promoted. This OA succeeds. We

hereby direct the respondents to grant promotion to the applicant herein on notional basis. Consequently, applicant's pay may be refixed alongwith all consequential benefits including arrears of pay, revision of gratuity, leave encashment and revision of pensionary benefits and arrears of pension on this account.

15. These benefits shall be granted within a period of 90 days from the date of receipt of certified copy of this order.
No order as to costs.

(Ashish Kalia)
Member (J)

'sd'

(Pradeep Kumar)
Member (A)