

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

O.A. No. 1655/2015

With

O.A. No. 1658/2015

The 29<sup>th</sup> day of April, 2019

**HON'BLE MR. PRADEEP KUMAR, MEMBER (A)  
HON'BLE MR. ASHISH KALIA, MEMBER (J)**

**O.A. No. 1655/2015**

M.T. George, (Age 62 years)  
S/o Late Shri Thomas M.K.  
Mappur House,  
Mannamparambu, Vadakkencherry P.O.,  
Palakkad (Dt.), Kerala.  
PIN-678683  
at present residing at:  
62-C/LP, Pocket L, Maurya Enclave,  
Poorvi Pitampura,  
Delhi-110 088

..Applicant

(By advocate: Mr. R. Satish)

**VERSUS**

1. Union of India,  
Through Secretary to the Government of India,  
Department of Personnel & Training  
Ministry of Personnel, P.G. & Pensions,  
North Block, New Delhi-110 001
2. Secretary,  
Ministry of Environment, Forests & climate Change,  
Indira Paryavaran Bhawan,  
Jor Bagh, Lodhi Road,  
New Delhi-110 003

...Respondents

(By advocate: Mr. D.S. Mahendru)

**O.A. No. 1658/2015**

Raj Kumar Khera (Age 62 years)  
 S/o Late Shri Kesar Dass Khera,  
 528/15A, Faridabad (Haryana)  
 at present residing at:  
 259, New Layal Pur Colony,  
 Delhi 110051 ..Applicant

(By advocate: Mr. R. Satish)

**VERSUS**

1. Union of India,  
 Through Secretary to the Government of India,  
 Department of Personnel & Training  
 Ministry of Personnel, P.G. & Pensions,  
 North Block, New Delhi-110 001
2. Plant Protection Advisor,  
 Dte. of Plant Protection, Quarantine & Storage,  
 Deptt. of Agriculture & Cooperation,  
 Ministry of Agriculture,  
 NH IV, NIT, Faridabad,  
 Haryana, ...Respondents

(By advocate: Mr. Rajnish Prasad)

**ORDER (ORAL)****By Mr. Pradeep Kumar, Member (A)**

The applicant has filed the present O.A. No. 1655/2015 seeking the following relief(s):-

“A) Declare that the impugned action/decision of the respondents as illegal, arbitrary, discriminatory, unreasonable and unjust and quash and set aside para 11 of the impugned order/O.M. dated 04.07.2014 and O.M. dated 04.12.2014 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 2012 when he was very much in service and as similarly situated persons have been granted benefits in view of Court Order which have been final; 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.

B) Award costs of the present O.A.

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."

1.1 A similar issue has been raised in O.A. No. 1658/2015.

Hence a common order is being passed.

2. The applicant herein O.A. No. 1655/2015 retired as Section Officer on 31.08.2012. Initially, the applicant has joined as LDC w.e.f. 01.09.1975. Thereafter, he has been promoted as UDC in 1982, as Assistant in 1989 and lastly as Section Officer in the year 2003, counting approved service w.e.f. 01.07.2003. In 2011, having eight years approved service as Section Officer, the applicant was eligible for promotion to the next level, i.e. grade-I Under Secretary of CSS. The applicant has since been retired on 31.08.2012 on attaining the age of superannuation and he is seeking notional promotion to this next level post of Under Secretary Grade-I at par with his junior, which has not been found acceptable by the respondents. Feeling aggrieved by this, he has approached this Tribunal for redressal of his grievances.

3. Notices were issued and the reply has also been filed by Respondents No. 1 and 2 through Shri D.S. Mahendru, the Senior Standing counsel for respondents.

In the reply, learned counsel has brought out that due to various reasons, there have been delays in issuance of select lists in almost all years and in support thereof he has given a table of the Select List of vacancies of Under Secretary Grade and the dates of issue of publication of the said list in various years. This reads as follows:-

“That issue of Select Lists of US grade for various years got delayed on account of long drawn litigation on seniority issues between promotee and direct recruit SOs which was beyond the control of the replying respondent. The following table indicates the dates on which select lists in respect of US grade was issued:

Select List	Date of issue
1984 to 1988	9 <sup>th</sup> May 2000
1989 & 1990	27 <sup>th</sup> July 2001
1991 to 1994	12 <sup>th</sup> August 2002
1995 & 1996	21 <sup>st</sup> April 2004
1997 to 2000	14 <sup>th</sup> Nov 2005
2001 & 2002	20 <sup>th</sup> August 2007
2003	25 <sup>th</sup> August 2009
2004 to 2008	7 <sup>th</sup> Jan 2010
2009 & 2010	26 <sup>th</sup> Nov 2012
2011	23 <sup>rd</sup> Sept 2013
2012	4 <sup>th</sup> July 2014

4. It is further stated that as per DoPT O.M. dated 12.10.1998 Annexure A-6 annexed with O.A., retired employees who were within the zone of consideration in the relevant year, would be considered while preparing year-wise panel(s). This is considered necessary to identify the correct zone of

consideration for the relevant year. Names of the retired officials would, however, be considered but they have no right for actual promotion.

The applicant, who was in service during preparation of the Select List 2012, and was in the zone of consideration and was accordingly considered for inclusion in the Under Secretary Select List for the year 2012 and on being found fit, his name was included in the Select List. However, since at the time of issue of the Select List i.e. on 04.07.2014, he had already retired from Government service, he was not actually promoted as Under Secretary and hence he was not entitled to any financial benefits of the post of Under Secretary, keeping in view the provisions of the O.M. dated 12.10.1998.

5. Learned counsel for respondents has also drawn our attention to para 10 of the reply wherein it has been submitted by the respondents that applicant's two immediate juniors viz. S/Shri O.P. Bachhety and R.K. Johari (Sl. Nos. 168 & 169 of the Select List) were also not given promotion to US grade as both of them had retired on superannuation before the issue of the Select List. The third immediate junior of the applicant viz. Shri Rajendra Prasad (Sl. No. 170 of the Select List) was included in USSL-2012 and was regularly promoted to the grade w.e.f. 4.7.2014 only.

6. Learned counsel for respondents has also filed judgments passed by Hon'ble Bench of this Tribunal (R.N. Malhotra Vs. UOI, O.A. No. 1466 & 1468 of 2007, decided on 07.02.2007) wherein following was ordered:

"Heard the learned counsel for the parties.

Since both the identical and based on same facts involving common issue, these are disposed of by this common order.

Applicants, who are retirees, could not be considered as the DPC was not convened timely. As the DPC had convened after the applicants have retired, as per the DOPT OM of 12.10.1998, they had been considered for promotion but they have no right for actual promotion and arrears of salary, etc. would not be made entitled to such persons but their consideration on notional basis for the purposes of pay fixation and retiral benefits cannot be an impediment.

In this view of this matter, after hearing both the parties, we dispose of both these OAs with a direction to the respondents to consider grant of notional promotion for the purposes of pay fixation and retiral benefits to the applicants. In such an event, they would be entitled to the consequential retiral benefits, which shall be done within a period of two months from the date of receipt of a copy of this order. No costs.

Let a copy of this order be placed in O.A. No. 1468/2006."

These orders were challenged by respondents in Hon'ble High Court of Delhi in the matter of UOI Vs. R.N. Malhotra in W.P.(C) No. 4908/2007. The Hon'ble High Court vide orders dated 06.07.2012, gave following directions:

"10. Insofar as the plea of notional promotion is concerned, that is also settled, inasmuch as a retired officer would not be entitled to notional promotion unless and until an officer junior to such retired officer had been promoted prior to his superannuation. This is not the case here. Mr Sinha has made a categorical statement at the Bar that no officer junior to Shri R. N. Malhotra had been promoted prior to Mr Malhotra's

superannuation. This view is supported by the decision in Baij Nath Sharma (supra) wherein the Supreme Court observed as under:-

"The appellant could certainly have a grievance, if any, if his juniors had been given promotion from a date prior to his superannuation."

11. Baij Nath Sharma (supra) followed the earlier decision of the Supreme Court in the case of Union of India v. K. K. Vadera : 1989 Supp (2) SCC 625 which categorically stated as under:-

"We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant."

12. It was further observed in K.K. Vadera (supra) as under:-

"If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion."

13. The clear view taken by the Supreme Court is that a promotion cannot be granted prior to the convening of the Departmental Promotion Committee which considered the question of promotion. The only rider is where a junior has been promoted prior to the superannuation of the retired employee.

14. In view of the foregoing, we are in agreement with the submission made by Mr Sinha that the order passed by the Tribunal on 07.02.2007 cannot be sustained in law. We also note that even if it is considered that the order passed by the Tribunal was a consent order, there cannot be a concession against the law. Consequently, this writ petition is allowed and the impugned order is set aside. There shall be no order as to costs.

7. Heard counsel for parties at length.

8. The question raised by the applicant herein is whether he is entitled for notional promotion from the date of inclusion of his name in the Select List of a particular year. The answer is in negative because none of juniors of the applicant, had been promoted during the interregnum between the applicable date of the said select list and his date of retirement. The applicant has not been able to show anything to support that he is entitled for the benefit of notional promotion after his superannuation as his name was put in the Select List of a particular year. This very question was the subject matter adjudication as brought out in para 6 above. Those ration are fully attracted in instant case.

We are not convinced by the averments raised by the applicant, hence this OA is dismissed being devoid of merits. No costs.

9. Same order applies to O.A. No. 1658/2015 also.

**(ASHISH KALIA)**  
**Member (J)**

**(PRADEEP KUMAR)**  
**Member (A)**

/Daya /