

**Central Administrative Tribunal
Principal Bench**

OA No.854/2016

New Delhi, this the 7th day of May, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

1. Shri Charanjit Sharda
Aged about 62 years,
S/o Late Sohan Lal Sharda
Presently superannuated w.e.f. 30.6.2013
R/o 115 Arya Nagar, Sardhana Road,
Meerut 250001 (U.P.)
2. Shri M. L. Gupta
Aged about 62 years,
S/o Shri Bishambhar Dayal
Presently superannuated w.e.f. 31.7.2013
R/o Alaknanda Enclave Lane-B, Nathanpur

(Both are presently retiree from the Gp 'A'
Cadre & Post of ACDA from the Defence Accounts
Department under the
Controller General of Defence Accounts,
Ministry of Defence having identical grievance and
seeking similar relief. ... Applicants.

(By Advocate : Shri V. P. S. Tyagi)

Vs.

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| 1. The Union of India
(through Secretary)
Ministry of Defence,
South Block,
New Delhi 110 001. | 3. The Controller General of
Defence Accounts (CGDA)
Ulan Batar Marg, Palam,
Delhi Cantt 110 010. |
| 2. The Financial Advisor (Ministry of Defence)
Cum Secretary, Ministry of Defence,
South Block,
New Delhi 110 001. | ... Respondent. |

(By Advocate : Shri Rajeev Kumar)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicants retired as Assistant Controller of
Defence Accounts on 30.06.2013 and 31.07.2013. At the
time of their retirement, they were in the Grade Pay of

Rs.5400/- in Junior Time Scale of Pay (JTS). It is stated that that they acquired the eligibility to be promoted to the Senior Time Scale of pay (STS) w.e.f. 01.04.2013, and on account of delay in convening the DPC, they were denied that benefit.

2. On the representations made by the applicants in this behalf, the respondents addressed the letters dated 07.01.2014 and 14.07.2014. It was mentioned that the DPC, to consider the cases of direct recruits of 2009 batch, for promotion to STS was held on 25.11.2013, after obtaining relaxation of the short fall of the qualifying service and the promotees of 2010 batch were also considered by invoking Note-2 below Schedule-II of the IDAS Rules, 2000. The respondents informed that the cases of the applicants were also considered but since they retired on 30.06.2013 and 31.07.2013, they were not issued order for promotion to STS.

3. The applicants contend that had the DPC been convened before their retirement, they would have been promoted, and even otherwise once the DPC held them as fit to be promoted, the mere fact that they retired from service does not make much of difference. The action of the respondents is challenged in this OA.

4. The respondents filed a counter affidavit opposing the OA. It is stated that the applicants did not have the requisite service and eligibility, by the time they retired from service, and that their case was considered by the DPC when it met on 25.11.2013 by extending the benefit of relaxation to them. It is stated that once the applicants have retired from service, the question of their being promoted does not arise, notwithstanding the fact that the DPC declared them fit.

5. We heard Shri V. P. S. Tyagi, learned counsel for the applicant and Shri Rajeev Kumar, learned counsel for the respondents.

6. The applicants contend that the respondents were under obligation to convene a DPC before their retirement. Even if, it is true there exists a calendar for the meeting of the DPC, the mere fact that it was not convened as per the same, does not make much of difference. Law protects the interests of the officers, if any of them suffer disadvantage on account of delay in convening the DPC.

7. For example, if the DPC is convened at a later point of time and the employee who stood retired before the DPC was convened is found fit, he shall be entitled to be extended the benefit of notional promotion, provided any of

his junior was promoted with effect from the date, anterior to the date of retirement of such employee. If we apply the same to the facts of the present case, had any employee who is junior to the applicant, been considered by the DPC in its meeting held on 25.11.2013, and was promoted to STS with effect from any date earlier to 30.06.2013, the applicants would have been entitled to be extended the benefit of notional promotion with effect from such date. If, on the other hand, no junior to the applicants was promoted with effect from any date earlier to 30.06.2013, such an issue does not exist.

8. Reference in this context is made to the judgment of Hon'ble Supreme Court in ***Union of India vs. J. K. Vadera and Ors.*** 1989 Supp.2 SCC 625, wherein their Lordships have observed 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. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. 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....”

9. The orders of promotion, on the basis of the recommendations of the DPC which met on 25.11.2013, were issued on 27.11.2013. In the said orders, it was mentioned that the promotion shall be effective from the date of assumption of charge. In other words, no retrospective promotion was extended. Notwithstanding the same, if the applicants are able to demonstrate that any of their junior who was considered by the DPC on 25.11.2013 was promoted w.e.f. any date earlier to 30.06.2013, they can make a representation in this behalf.

10. We, therefore, dispose of the OA, leaving it open to the applicants to make a representation citing the instance, if any, of their junior considered by the DPC in its meeting held on 25.11.2013 and having been promoted with effect from any date earlier to 30.06.2013. If such an instance exists, the applicants shall be entitled to the benefit of notional promotion with effect from such date.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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