

**Central Administrative Tribunal
Principal Bench**

OA No.1467/2014

New Delhi, this the 9th day of April, 2019

**Hon'ble Sh. Justice L. Narasimha Reddy, Chairman
Hon'ble Sh. Mohd. Jamshed, Member (A)**

N.C. Jhingta,
Area Organiser,
Sashastra Seema Bal,
Presently on deputation in Delhi
R/o House No.1242, Type IV Spl
Sector 12, R.K. Puram, New Delhi.

...Applicant

(By Advocate : Shri Padma Kumar S.)

Versus

1. Union of India, through,
Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Director General SSB,
East Block V, R.K. Puram,
New Delhi-66.
3. Shri KI.C. Dobhal, DIG,
SSB Frontier Hqrs, Ranidanga,
P.O. Susruta Nagar Distt Darjeeling
W.B.
Pin-734012.
4. Shri P.S. Mehra, DIG,
Sector HQ, SSB Almora, NTd Almora,
PO Almora (Uttrakhand),
District Almora (Uttrakhand),
PIN 263601.
5. Shri Chance Keishing, DIG,
Sector HQ, SSB Rangia, PO Rangia,
Distt Kamrup Assam,
PIN-781354.

...Respondents

(By Advocate : Shri Ranjan Tyagi)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

The applicant joined the Sashastra Seema Bal (for short, SSB) in the year 1989 as Circle Organiser, a Group 'B' post. Thereafter he earned promotions to the posts of Sub Area Organiser, Joint Organizer and then, as Area Organiser (for short, AO), which is a Group 'A' post. The promotion from that post is to that of Deputy Inspector General (for short, DIG). According to the Recruitment Rules, four vacancies in the post of DIG were earmarked to be filled by promotion from the category of AOs. The qualification stipulated for the same is completion of 20 years of service in Group 'A'.

2. The seniority list for the post of AO was published on 04.06.2013. The applicant was placed at Sl. No.3. The DPC held in December, 2013 considered the case of his juniors at Sl. Nos.4,5&6; for promotion to the post of DIG. The case of the applicant was not considered since he did not have the required length of 20 years of service as Group 'A'. Subsequently, the Recruitment Rules were amended in the year 2005, to the effect that the required

length of service shall be 25 years in Group 'A' and 'B', put together.

3. The Government of India issued a Memorandum dated 25.03.1996, providing for relaxation of the length of service in favour of an officer to the extent of 2 years, in case his juniors were promoted and he was denied promotion for want of the required length of service. Since the short fall in the case of the applicant in the year 2011-12, was more than two years (3 years and 1 month), he did not make any effort to claim the benefit of relaxation. So is the case, when the DPC met in respect of vacancies of the year 2012-13

4. When the case for promotion to the post of DIG against the vacancies earmarked for AOs was taken up in the year 2013-14, the applicant made a representation dated 22.04.2014, for extension of the benefit of relaxation under the OM, since the short fall at that time was one year and one month. The respondents have taken a view that the relaxation under the OM cannot be granted inasmuch as the Recruitment Rules provided for relaxation in different manner i.e. combining service in Group 'A' and 'B' posts. It was also mentioned that

unless the RRs are amended providing for extension of benefit of relaxation to the extent of two years, the same cannot be granted. The applicant contends that the RRs were amended w.e.f. 17.06.2013, providing for relaxation of the required length of service upto the limit of two years and despite that he was denied the benefit. This OA is filed for issuance of necessary directions in this behalf.

5. The respondents filed a detailed reply opposing the OA. They submit that relaxation cannot be claimed as a matter of right and in respect of service in SSB, a type of relaxation was already extended in the year 2005, by providing for counting of service in Group 'B' also. It is stated that unless the rules provided for, relaxation on the basis of the OM cannot be claimed.

6. It is also stated that the applicant has since been promoted as DIG and the claim of relaxation has virtually become otiose.

7. We heard Shri Padma Kumar S. Learned counsel for applicant and Shri Ranjan Tyagi, learned counsel for respondents.

8. The basic facts are not much in dispute. The applicant was initially appointed in Group 'B' post in the year 1989 and in the year 2006, he was promoted to the post of AO. In the seniority list published on 04.06.2013, he was shown at Sl. No.3. The RRs for the post of DIG in SSB not only provide for the allocation between the direct recruitment and promotion but also the further allocation between different categories in the context of promotion. While seven posts are earmarked for promotion from feeder category of Commandant, four are earmarked for the category of AOs. The required length of service in both the cases is stipulated as 20 years in Group 'A'. This was modified in 2005, as 25 years in Group 'A' and 'B' together.

9. When the promotions were effected in the year 2013, the applicant did not have the required length of service in Group 'A' and 'B' together. Being well advised, he did not make any claim for promotion though his juniors at Sl. Nos.4,5&6 were promoted. Similar situation prevailed in the subsequent year.

10. The DOP&T issued OM dated 25.03.1996, providing for relaxation of the stipulated length of service under the

RRs by two years in favour of a senior, if the juniors were promoted and he was denied the promotion for want of required length of service. The applicant claimed such benefit in the year 2013-14, when his short fall was only one year and one month in the feeder category. The stand taken by the respondents is that the relaxation in one form, i.e. by inclusion of the Group 'B' service, was provided under the rules, through amendment effected in the year 2005, and further relaxations were banned. It was also mentioned that unless the rules are amended, the benefit provided under the OM cannot be derived straightforwardly. Rules were amended on 17.06.2013, directing for relaxation to the extent of two years.

11. It appears that the applicant was promoted to the post of DIG in the usual course weighed with the respondents for not considering the relaxation with reference to the promotion which took place in the year 2013-2014.

12. It is true that the relaxation, wherever provided, cannot be claimed as a matter of right by a citizen or an employee. In the instant case, the respondents did address the question pertaining to the extension of the

benefit of relaxation to the applicant. The only impediment which they felt in this behalf was that the rules were not amended. In ***Garima Singh Vs. UOI & Ors.*** (OA No.3278/2010), the Full Bench of this Tribunal, through judgment dated 09.05.2011, has taken the view that the facility contained in the OM dated 25.03.1996, can be extended, whether or not, the corresponding Service Rules were amended.

13. Though that aspect would have become relevant, had the applicant not been promoted, a totally different situation emerges, once he was promoted in the usual course. The benefit of relaxation, if extended to the applicant, would move his promotion by one year backward and that in turn, would bring change in the seniority. Whether or not such a benefit can be conferred upon the applicant, would depend upon the stand, which the respondents may take, in case the applicant makes a representation. As of now, the situation of that nature did not appear to have been considered at any level. The right of a citizen, conferred by the rules on the one hand and the interest of the administration, on the other, need to be taken into account. The applicant did not challenge the promotion of any of his juniors. His effort is only to

gain the seniority in the promotional post to a certain extent.

14. We therefore, dispose of the OA, leaving it open to the applicant to make a representation, claiming the benefit of relaxation under the relevant provisions in the limited context of refixation of his seniority, by pushing his promotion to the vacancy year 2013-14. If a representation in this behalf is made, the respondents shall pass appropriate orders within a period of eight weeks from the date of receipt of a certified copy of this order.

There shall be no orders as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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