

**Central Administrative Tribunal
Principal Bench**

OA No.1928/2014

New Delhi, this the 10th day of July, 2019

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

A.K. Chohdda (Aged 66 years)
(Retd.) Dy. Director General (S) DGS&D
Department of Commerce (Supply Division)
S/o Late Shri V.P. Chohdda
R/o 332, Pocket-C, SFS Triveni Apartments
Sheikh Sarai Phase-I
New Delhi-110017. ...Applicant

(By Advocate: Shri Santosh Kumar)

Vs.

1. Secretary
Department of Personnel and Training
North Block, New Delhi-110011.
2. Secretary (Commerce)
Ministry of Commerce
Govt. of Delhi
Udyog Bhawan, New Delhi-110011.
3. Secretary
Department of Industrial Policy and Promotion
Udyog Bhawan
New Delhi-110011.
4. Secretary
Department of Agriculture & Co-operation
Krishi Bhawan
New Delhi- 110001.
5. Director General (Supplies & Disposals)
Directorate General of Supplies & Disposals
Jeevan Tara Building, 5, Parliament Street
New Delhi-110001.

6. Director (E-1), (RR Division)
Department of Personnel and Training
North Block, New Delhi-110011.
 7. Pay and Accounts Officer (Supply Division)
Department of Commerce (Supply Division)
16, Akbar Road Hutments
New Delhi-110011.
 8. Central Pension Accounts Officer
Trikoort-2, Bhikaji Cama Place
New Delhi-110066.
- ...Respondents

(By Advocate: Shri Gyanendra Singh)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant was selected and appointed as Additional Director in the Department of Supplies, Ministry of Commerce on 04.04.1973 through UPSC. He was promoted to Senior Administrative Grade (SAG) on 19.05.2004. According to the Service Rules of the year 2004, an officer of SAG acquires eligibility to be promoted to HAG on completion of 3 years of service.

2. The 6th Central Pay Commission made several recommendations for restructuring of various departments. As regards the promotion from SAG to HAG, it was recommended that in addition to the

qualification of three years of service in the SAG, officers with 25 years of service, which includes one year in SAG, shall also to be treated as eligible. It is recommended the amendment of the relevant Recruitment Service Rules.

3. The Govt. issued Office Memorandum dated 24.04.2009 providing for extension of the benefit of Non Functional Upgradation(NFU) in the SAG. According to this, whenever an IAS officer of any State of Joint Cadre is posted at the Centre to a particular grade, carrying a specific grade pay in Pay Band 3 or 4, the officers belonging to batches of Organized Group 'A' Services, who are senior by two years or more to such IAS officer, and who have not been promoted to that particular grade, would be eligible to be extended the benefit of the same grade, on 'non functional basis'.

4. It is stated that the applicant is an officer of Organized Group 'A' Service of 1972 batch and one IAS Officer of 1974 batch was promoted to the post of Additional Secretary on 30.01.2006. The applicant retired from service on 31.10.2007. The Department

of Supplies submitted proposals for extension of the benefit of SAG on NFU basis to the applicant and several others. It is also stated that the service rules have been amended on 11.10.2012 and on the basis of that, several officers were extended the benefit even after they retired, whereas the applicant was denied the same.

5. In this background, the applicant has challenged the orders dated 06.05.2014, 26.06.2013 and 18.01.2013, passed by the respondents. He further challenged the one time relaxation granted by the DOP&T vide their order dated 15.12.2009. The applicant further sought a declaration to the effect that the OM dated 24.04.2009 shall be effective from 01.01.2006, and quashing the minutes of the Screening Committee held on 17.11.2011. Ultimately, he has prayed for relief of grant of HAG on non functional basis w.e.f. 01.04.2006 in the pay scale of Rs.67000-79000.

6. The respondents filed a counter affidavit opposing the OA. It is stated that the applicant was promoted to SAG only on 19.05.2004 and he became

eligible to be considered for NFU as on 01.01.2008, but he did not have the three years of service by that time. It is stated that the alternative qualification of 25 years with one year service in SAG was not available by the time the applicant retired from service since the rules were amended long thereafter. Various contentions urged by the applicant are strongly denied.

7. Shri Santosh Kumar, learned counsel for the applicant, reiterated the various grounds urged in the OA. He has also brought to our notice that the applicant filed OA No.3067/2010 when the DPC which considered the cases for promotion to SAG had downgraded his APAR and deferred his promotion to the year 2004, though he was entitled to be promoted in the year 2002. The learned counsel submits that the OA was allowed but the UPSC filed Writ Petition No.2877/2002 before the Hon'ble Delhi High Court and that the same is pending. He has also taken us to various official Memoranda that have a bearing upon the case.

8. Shri Gyanendra Singh, learned counsel for the respondents submits that the applicant did not possess the eligibility to be extended the benefit of SAG on NFU basis, since he did not put in three years of service as required under the service rules. He further submits that the other officers of the same cadre in the department were extended the benefit since they, either have the requisite service to their credit, or were in service by the time the Service Rules were amended.

9. The applicant has initiated a very long drawn legal battle in the context of availing the benefit of SAG on NFU basis. It has already been mentioned that the Govt. issued OM dated 24.04.2009 providing for the extension of the benefit of SAG on NFU basis. The officers of Organized Group 'A' are made eligible to get that benefit in case an IAS officer who is two years junior to them is appointed in Central Govt. to any post.

10. The applicant is an officer of 1972 batch and the IAS officer of 1974 batch was posted as Additional Secretary on 30.01.2006. The extension of the

benefit of SAG *albeit* on non functional basis, is subject to the officer holding eligibility to be promoted to next higher post.

11. It is not in dispute that the eligibility to be promoted to SAG in the Department of Supplies is on completion of three years of service in JAG. The applicant was promoted to JAG on 19.05.2004. He would have completed three years of service in that post by 18.05.2007. In the context of reckoning the eligibility, first of January of the next year, 01.01.2008, in this case becomes relevant. Unfortunately, the applicant retired from service on 31.10.2007.

12. The applicant placed strong reliance upon the OM dated 15.12.2009. As a result of that OM the eligibility for promotion to HAG cadre is dual in nature. In addition to the one of three years of service in the feeder category, another criterion, viz. 25 years of regular service in Group 'A' with one year of service in SAG is stipulated. Had this been in force, by the time the applicant remained in service, things would have been different altogether. The OM

has indicated that the relevant service rules must be amended to be in conformity with the same. Such amendment to the rules in the Department of Supplies took place in the year 11.10.2012. Therefore, the applicant cannot rely upon the OM dated 15.12.2009.

13. Serious effort is made by the applicant to draw comparison with some other officers of the Department. A list of 11 officers is placed on record. A perusal of the same discloses that either they have possessed the eligibility of three years of service under the un-amended rules or they retired subsequent to the amendment of rules. The applicant does not fit into either of these criteria. Therefore, he cannot draw comparison.

14. One aspect which, however, becomes relevant is that in case the relief granted to the applicant in OA No.3067/2010 is granted and it leads to preponement of his promotion to JAG, in such a way that the applicant has three years of service in that category before 01.01.2008, he can certainly make efforts in that direction. Much would depend upon the result

which may ensue in WP(C) No.2877/2012 which is now pending before the Hon'ble Delhi High Court.

15. We, therefore, dismiss this OA as devoid of merits. However, we leave it open to the applicant to pursue the remedies depending upon the outcome of the WP(C) No.2877/2010. There shall be no order as to costs.

16. All the Miscellaneous Applications filed in this OA shall stand disposed of.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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