

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.3041/2015

Thursday, this the 11th day of July 2019

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

A K Arora,
Aged about 62 years
s/o late Shri Gian Chand
r/o G-7/32, Sector 11
Rohini, Delhi – 110 085

Retired as
Joint Director General of Foreign Trade (JDGFT)
ASR, Udyog Bhawan, New Delhi

..Applicant
(Ms. Priya Pande, Advocate for Mr. R K Kapoor, Advocate)

Versus

1. Union of India through
Ministry of Commerce & Industry
Through its Secretary,
Department of Commerce
Udyog Bhawan, New Delhi

2. The Director General of Foreign Trade
Udyog Bhawan, New Delhi

3. The Secretary
Dept. of Personnel & Training (DoPT)
Ministry of Personnel, Public Grievances
And Pension, Room No.112, North Block
New Delhi - 1

..Respondents
(Mr. A K Singh, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant joined the service of Department of Foreign Trade as Stenographer in the year 1975. Over the period, he

earned promotions and in January, 1994, he was promoted as Foreign Trade Development Officer (FTDO). Thereafter, he was promoted to the post of Assistant Director General of Foreign Trade (ADGFT) on 01.05.2003 and as Deputy Director General of Foreign Trade (DDGFT) on 01.05.2007. Further promotion is to the post of Joint Director General of Foreign Trade (JDGFT).

2. According to the Recruitment Rules for the post, such of Group 'A' officers, who have completed 13 years of service and entered the 14th year as on 1st January of concerned year, reckoned from the date on which the examination or selection leading to appointment to Group 'A' is completed, are eligible to be considered. The applicant retired from service on 31.10.2013. The Departmental Promotion Committee (DPC) for considering the case of promotion to the post of JDGFT met on 13.03.2014. Though the name of the applicant was taken into account, it was not considered on account of the fact that he retired from service on 31.10.2013 and he did not complete the stipulated service in Group 'A'.

This O.A. is filed with a prayer to direct the respondents to pre-pone the promotions of the applicant at various stages, with reference to the minimum residency period and in accordance with the judgment of Hon'ble Delhi High Court in **S. K. Murthi v. Union of India & others** (W.P. (C) No.14263/2014), and to grant Non-Functional Selection Grade

(NFSG) w.e.f. 01.01.2011 and to extend the various consequential benefits.

3. The applicant contends that the Government issued a calendar for convening the DPCs for filling the vacancies year after year, and despite that, the DPC for selection of candidates for the post of JDGFT was not convened within time. It is submitted that the Delhi High Court took the view that a candidate, who is found fit by the DPC, is entitled to be extended the benefit from the date on which the DPC was scheduled to convene and if the same was extended to his case, he will become entitled to be promoted to the post of JDGFT.

4. The respondents filed a detailed counter affidavit opposing the O.A. It is stated that the applicant was promoted from time to time as and when he became eligible and the DPC was convened, and at this length of time, his request for postponing the dates of promotion cannot be acceded to.

5. As regards the promotion to the post of JDGFT, it is stated that the applicant acquired eligibility according to the Recruitment Rules only on 01.01.2014, on completion of 13 years of service in Group 'A', but he retired two months before that, i.e., on 03.10.2013. Various contentions urged by the applicant are denied.

6. We heard Ms. Priya Pande, learned counsel for applicant and Mr. A K Singh, learned counsel for respondents, at length.

7. The service particulars of the applicant are not in serious dispute. He joined the Department of Foreign Trade as Stenographer in the year 1975 and earned various promotions. He entered the Group 'A' service in the Department on being appointed as ADGFT. The orders of promotion to that post were issued on 01.05.2003 against the vacancy of the year 2000-01.

8. The Rule relating to promotion to the post of JDGFT reads as under:-

“(B) Selection Grade (Non-functional):-

Officers of Grade I of Indian Trade Service (Group 'A') who have entered 14th year of regular service on 1st January of the year calculated from the year following the year of examination or selection on the basis of which the officer has been recruited. Appointment to the (Non functional) Selection Grade shall be made on the basis of seniority based on suitability taking account the overall performance, experience and any other related matters.”

9. From the perusal of this, it becomes clear that an officer in Group 'A' acquires eligibility to be considered for promotion on completion of 13 years and entering 14th year of regular service as on 1st January of the concerned year. The starting points for reckoning the time is the date on which the examination was held if the appointment is through direct recruitment, or the date of selection, if it is by way of promotion. That event took place in the case of the applicant in

the year 2003, when he was promoted to the post of ADGFT. Even if, for the benefit of the applicant, it is assumed that the selection dates back to the year 2000-01, he completed 13 years of service and entered the 14th year only on 01.01.2014. Admittedly, he retired from service on 31.10.2013, i.e., two months before that date.

10. It is true that the Government prescribed a calendar for convening the DPCs for promotion to the posts year after year. They are required to be convened on 1st January and 1st July of every year, so that the rights of the employee are not defeated.

11. In **S. K. Murthi's** case (supra), the Delhi High Court took the view that even where the DPC met a little late, the benefit is extendable from the date on which the DPC was scheduled to meet. However, there is nothing in the judgment to indicate that an employee shall be deemed to have been promoted from the date on which the DPC was scheduled to meet, even if his case was not considered by the DPC at all.

12. In the instant case, the applicant did not acquire the eligibility to be promoted to the post of JDGFT by the time he retired from service. Obviously, for that reason, the DPC, which met on 13.03.2014, did not consider his case. The occasion to apply the ratio in **S. K. Murthi's** case (supra) would arise, if only the DPC cleared the case of an employee, but promotion was effected from a later date. When the DPC did not consider

the case of the applicant at all, on the ground that he did have the eligibility, the question to treating him as having been promoted to that post does not arise.

13. We do not find any merit in this O.A. It is accordingly dismissed.

There shall be no order as to costs.

(Mohd. Jamshed) (Justice L. Narasimha Reddy)
Member (A) Chairman

July 11, 2019
/sunil/