

**Central Administrative Tribunal
Principal Bench**

OA No.4044/2014

New Delhi, this the 13th day of August, 2019

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

A.K. Tewari, Aged 57 years,
S/o Late Sh. V.P. Tewari,
Working as Deputy Director (Aircraft Engineering
Directorate)
Directorate General of Civil Aviation, Opp. Safardjung
Airport,
New Delhi.
R/o D-21, Shyam Vihar-I, Nazafgarh,
New Delhi.

...Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Union of India through
The Secretary,
Ministry of Civil Aviation,
Govt. of India, Rajiv Gandhi Bhawan,
New Delhi.
2. The Director General of Civil Aviation,
Technical Centre, Govt. of India,
Rajiv Gandhi Bhawan,
New Delhi.

...Respondent

(By Advocate : Shri Aamir Shaikh for Shri Hanu Bhaskar)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicant was working as Deputy Director
(Aircraft Engineering) on adhoc basis in the office of

Director General of Civil Aviation, the 2nd respondent herein. In the same position one Dr. Ramakant Singh, was also working. Both of them were promoted to the post of Deputy Director (Aircraft Engineering) on regular basis in the pay scale of Rs.15600-39100/-, through order dated 20.12.2013. It was mentioned that the promotion is against the vacancies for the years 2009-2010 and 2011-2012 respectively, but with effect from the date of assumption of charge.

2. The applicant made a representation stating that once his promotion was against the vacancy of the year 2011-2012, it must be with effect from the date on which the vacancy has arisen and that there is no basis to treat the promotion as effective from the date on which he took the charge, as Deputy Director. He made a representation dated 09.06.2014 in this behalf. On consideration of the same, the office of the 2nd respondent issued a reply dated 07.07.2014. Three reasons were mentioned therein as to how and why the request of the applicant cannot be acceded to. This OA is filed challenging the letter dated 07.07.2014.

3. The applicant contends that there was no basis for the respondents in refusing to accede to his request, particularly, when the order of promotion has categorically stated that it is against the vacancy for the year 2011-2012.

4. The respondents filed counter affidavit opposing the OA. It is stated that the promotion would always be prospective in nature and the occasion to treat it effective from any date, earlier to the one of promotion is when a junior officer is promoted with effect from an earlier date, and that such an event did not take place in the instant case.

5. We heard Mr.Yogesh Sharma, learned counsel for applicant and Shri Aamir Shaikh for Shri Hanu Bhaskar, learned counsel for respondents.

6. The order dated 20.12.2013, no doubt, mentions that the promotion of the applicant to the post of Deputy Director (Aircraft Engineering) is against the vacancy of the year 2011-2012. At the same time, it is stated that it would be effective from the date of assumption of the charge.

7. Nothing extraordinary appears in this. It is fairly well settled that a promotion, particularly the one made on selection shall be prospective in nature. Exception is only when a junior was promoted w.e.f. an earlier date, even while the senior was found otherwise fit to be promoted. In such cases, notional benefit is given. This aspect of the matter was made clear by the Hon'ble Supreme Court in ***Union of India & Ors. Vs. K.K.Vadera and Ors.*** 1989 Supp (2) SCC 625.

8. One aspect which, however, makes us to dismiss the OA in terms of the judgment of the Hon'ble Supreme Court, referred to above, is that through the order dated 20.12.2013, not only the applicant but also another officer by name Dr. Ramakant Singh was promoted to the same post i.e. Deputy Director (Aircraft Engineering). The only difference is that while the promotion of the applicant was against the vacancy year 2011-2012, the promotion of that officer was against the vacancy of the year 2009-2010.

9. Dr. Ramakant Singh, filed OA No.2506/2011 before the Tribunal, claiming the relief that the promotion be treated as effective from the date on which the vacancy arose. The OA was dismissed by the Tribunal on

05.09.2014. A Review Application was also dismissed. Thereupon, he filed a WP(C) No.5802/2015. Through its judgment dated 11.08.2016, the Hon'ble Delhi High Court took the view that the DPC ought to have been conducted in the year, in which the vacancy arose and that the employee cannot be penalised for delay in conducting the DPC. On that premise, the Writ Petition was allowed and it was directed that the promotion of Dr. Ramakant Singh shall be from the date on which the vacancy arose in the year 2009-2010. However, the judgment of the Hon'ble Supreme Court in K.K. Vadera's case does not appear to have been brought to the notice of the Hon'ble High Court.

10. Be that as it may, since the Hon'ble High Court decided the Writ Petition on 11.08.2016, at a time, when the present OA was pending, the applicant can make a representation in terms thereof.

11. We, therefore, dispose of the OA, leaving it open to the applicant to make a representation, claiming the relief of ante-dating of his promotion, and as and when a representation is received, the respondents shall decide the same and pass appropriate orders thereon in

accordance with law, within a period of two months
therefrom. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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