

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01426/2018

DATED THIS THE 30th DAY OF AUGUST, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

K.S.Poorna Chandra
S/o Late K.G.Shankaranarayana
Aged about 63 yrs.
Residing at # 509, Kalasipalya
Dobballapur-561203.

The Chief Commissioner for
Persons with disabilities

....Applicant

(Party-in-Person)

Vs.

1. Union of India
Represented by the Secretary
Department of Post
New Delhi-110001.
2. General Manager (PA & F)
III Floor, G.P.O.Complex
Rajbhavan Road
Bangalore-560001.
3. The Chief Post Master General
Karnataka Circle
Bangalore-560001.Respondents

(By Advocates Sri Vishnu Bhat)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

The applicant has filed the present OA seeking the following relief:

- a. *Pass appropriate order quashing the order OM No.88/Admn./per.1/14 dtd.13.4.2018 (Ann.1) for non-considering promotions under physically challenged roster points.*
- b. *Consequently pass an appropriate order directing Respondent 1 with notional and retrospective benefits including pension.*

2. The case of the applicant is that he joined as Sorter under Physically challenged quota and got promotions as LDC on 3.11.1983, as Jr.Accountant on 26.04.1990, as Sr.Accountant on 30.7.2001 and as Asst.Accounts Officer on 12.1.2015 under General Category. He submitted a representation dtd.6.3.2015(Annexure-A2) to the Director of Accounts requesting to implement the promotion under physically challenged quota to which a memorandum dtd.19.3.2015(Annexure-A3) was issued stating that since one Sri.R.Gopalakrishna is senior to him, he was given promotion and the next roster point is 67 as such there was no occasion to review of applicant's promotion. For the representation dtd.6.7.2015 submitted by the applicant, an OM dtd.3.8.2015(Annexure-A4) was issued stating that since he was promoted to the cadre of Sr.Accountant on 30.7.2001 i.e. well before the occurrence of point No.67, as per his seniority in the cadre of Jr.Accountant, there was no occasion for review of his case. Again he submitted another representation on 4.11.2015(Annexure-A5) requesting to consider his case for promotion under physically challenged quota against vacant post of Smt.K.S.Saroja and Sri B.C.Prasannakumar as they are physically challenged officials got promotion from Jr.Accountant to Sr.Accountant. An OM dtd.16.12.2015(Annexure-A6) was issued stating that the applicant has been promoted from LDC to Jr.Accountant on 26.4.1990 against vacancy No.11 of the roster i.e. much earlier than occurrence of roster point No.33. Then again he submitted representation on 2.12.2017(Annexure-A7). The respondents have issued an OM dtd.27.11.2017(Annexure-A8) rejecting his request. He made another representation dtd.11.4.2018(Annexure-A9) by quoting Supreme Court order showing roster points as 1, 34 & 67 for promotions and requested to

provide justice on promotion. The respondents vide Office Memorandum dtd.13.4.2018(Annexure-A1) have rejected the applicant's request. The applicant provided copy of service book pertaining to the date of passing departmental examination for promotion from LDC to Jr.Accountant on 12.10.1987(Annexure-A10), copy of Office Order on promotion from LDC to Jr.Accountant dtd.26.4.1990(Annexure-A11), copy of office order on promotion from Jr.Accountant to Sr.Accountant dtd.3.8.2001(Annexure-A12), copy of office order dtd.8.1.2015 promoting him from Sr.Accountant to Asst.Accounts Officer(Annexure-A13), copy of OM dtd.20.11.1989(Annexure-A14), copy of Additional Memorandum dtd.18.2.1997(Annexure-A15), copy of corrigendum dtd.16.1.1998(Annexure-A16) on reservation for the physically handicapped in the post filled by promotion, copy of Gazette of India notification regarding 10% promotions for the selection cum seniority for Group 'B' departmental promotion committee(Annexure-A17), copy of post based roster of Asst.Accounts Officers appointed under 10% quota from among Sr.Accountants and list of beneficiaries(Annexure-A18), copy of gradation list for the year 1998 to fix the place to be accommodated for the promotion of Jr.Accountant and Sr.Accountant(Annexure-A19) and copy of OM dtd.8.7.2003 in respect of appointment of persons with disabilities against unreserved vacancies(Annexure-A20). He submits that he should be promoted from the date of eligibility with retrospective effect from Jr.Acct. to Sr.Acct., Sr.Acct. to Asst.Accounts Officer (under 10% promotion for Sr.Acct. as Asst.Accounts Officer) and accordingly, he could be given promotion to the post of Asst.Accounts Officer against unreserved vacancy.

3. The respondents, on the other hand, have submitted in their reply statement that

the applicant was appointed as sorter on 9.3.1981. On passing departmental examination, he was promoted as LDC on 3.11.1983. The reservation for physically handicapped in posts filled by promotion was introduced vide GOI, Min. of Personnel, Public Grievances & Pensions, DoP&T letter dtd.20.11.1989. Accordingly, a separate 100 point roster was maintained. As per the roster, 33rd vacancy was earmarked for blind, 67th was deaf and 100th for OPH. Meanwhile, the applicant was promoted to the cadre of Jr.Accountant from the cadre of LDC w.e.f. 26.4.1990. The applicant has submitted a representation dtd.16.11.1992 to consider his promotion from LDC to JA and JA to SA under reservation for physically handicapped even though he had already been promoted to the cadre of JA from the cadre of LDC w.e.f. 26.4.1990. While considering his request, it is noticed that the applicant had been promoted to JA w.e.f. 26.4.1990 at point 11 much before his turn for promotion under PH quota since point 100 was reserved for Orthopedically Handicapped Persons. The CPMG, Karnataka Circle vide letter dtd.24.2.1994 has also intimated that the date of promotion of the applicant to the cadre of regular service in JA cadre was on 26.4.1993. When the applicant again submitted representation requesting to consider his promotion to the cadre of SA under PH quota, he was informed vide letter dtd.6.11.1995 that he would be considered for the said promotion against PH quota or general seniority quota whichever occurs earlier according to his turn depending on the occurrence of vacancies. The 33rd promotion which was earmarked for blind was carried forward to the next recruitment year since no blind candidate was available and the same was filled up in the recruitment year 1995 by inter-se exchange by Shri R.Gopalakrishnan, the then JA who was belonging to OPH category. Meanwhile an OM dtd.18.2.1997 came into force and as per which point numbers 1, 34 and

67 in cycle of 100 vacancies in the 100 point register had to be earmarked for reservation i.e., point 34 for blind, 67 for deaf and point 100 for OPH. The next point under consideration was point number 67. Only 19 Junior Accounts Officers senior to the applicant were promoted to the cadre of Sr.Accountant for the period from 26.9.1995 to 29.7.2001. The applicant was promoted to the cadre of Sr.Accountant on 30.7.2001 i.e. well before the occurrence of point number 67. The applicant was given promotion from the cadre of LDC to Jr.Account w.e.f. 26.4.1990 against the vacancy No.11 of the roster which is much earlier than the occurrence of point No.33 reserved for the physically challenged persons. The applicant was promoted to the cadre of Sr.Accountant on 30.7.2001 i.e. well before the occurrence of point No.67 reserved for physically challenged persons. Therefore, the arguments put forth by the applicant have no locus standi and there is no merit in the claim of the applicant. Hence, the OA may be dismissed.

4. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that he has been deprived of promotions under physically challenged quota in spite of OM dtd.20.11.1989 and additional OM dtd.18.2.1997. If it were effected, he could have been promoted and placed next to Smt.S.Vijaya as Sr.Accountant from Jr.Accountant from the date of eligibility i.e. on 26.4.1993 well before the promotion given to applicant. Smt.Theinmozi Chelvi has been fixed at roster point 1 and Sri R.Gopalakrishnan at roster 33. Prior to Smt.Theinmozi Chelvi, there were other 7 officials who also got promotion on the same date i.e. 9.7.1990. It means that, as per gradation list of 1.7.1995, earlier to Smt.Theinmozi Chelvi, there were 100 roster points and from 15.2.1990 to 25.9.1995 only 52 officials were promoted. The respondents have not considered point on promotion from Sr.Accountant to Asst.Accounts Officer.

As per the Jr.Accounts Officer Group B recruitment rules 2002, 10% promotion is for the selection cum seniority which is not effected for promotion from Sr.Accountant to Jr.Accounts Officer for the physically challenged, though the applicant was eligible and could have been promoted against roster point-1. To get promotion to Jr.Accounts Officer, minimum of 8 years had to be completed as Sr.Accountant whereas the applicant has been given officiating promotion as Asst. Accounts Officer on 12.1.2015 just before his retirement i.e. March 2015. He could be promoted from Sr.Accountant to Jr.Accounts Officer from the date of his eligibility with retrospective effect as per the additional OM dtd.18.2.1997 showing roster points 1, 34 & 67 which had to be implemented for the promotion from Sr.Accountant to Asst.Accounts Officer and the applicant could be placed next to Sri. R.Jagannathan.

5. The applicant submits that as per OM dtd.20.11.1989 by which the roster point earmarked for physically handicapped 33, 67 & 100, applicant has been given promotion from LDC to Jr.Accountant against vacancy No.11 i.e. earlier than roster point 33 and similarly Sri.R.Gopalakrishnan should also be given promotion from Jr.Accountant to Sr.Accountant but he has been given promotion only as per gradation list seniority. The reply to applicant's RTI reveals that the respondent worked out the roster points fixed for Sri.R.Gopalakrishna from going backward to arrive 33rd roster point and therefore he has been promoted on 9.7.1990 which clearly shows that the date of implementation was from 9.7.1990 and not from 20.11.1989 the date on which the OM was issued. The procedure followed for promotion from LDC to Jr.Accountant was not followed while giving promotion from Jr.Acct. to Sr.Acct and from Sr.Acct to regular Junior/Asst.Accounts Officer by the respondents. The applicant has filed

additional rejoinder also.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record. The main contention of the applicant relates to the policy of making reservations for physically challenged in the respondent organisation. Vide Annexure-A5 he had claimed that he should have been promoted as Junior Accountant from his level of LDC in the year 1987 itself since there were two vacancies which arose on 1.4.1987 being occupied by physically challenged candidates. He claims that because he had passed the relevant departmental exam for promotion as Junior Accountant in October 1987, he should have been given promotion earlier i.e. in 1987 itself enabling him to be eligible for promotion as Senior Accountant in October 1990 and Assistant Accounts Officer(AAO) 10 years thereafter instead of in the year 2015 when he was finally given promotion as AAO. The respondents would state that the reservation for physically challenged in promotion was introduced only in the year 1989 and therefore, his claim for such reservation in the year 1987 cannot be accepted. They also claim that he was promoted as Junior Accountant w.e.f. 26.4.1990 against the vacancy No.11 of the roster much earlier than the occurrence of point No.33 reserved for physically challenged, and therefore, he should have no grievance in this regard.
7. The next issue taken up by the applicant is that he was eligible for promotion as Sr.Accountant w.e.f. 26.4.1993 and the department has denied him the same citing the case of one Sri R.Gopalakrishnan who had got promotion as Senior Accountant under PH quota at point No.33 on 25.9.1995. The applicant would claim that the first point in the roster was filled up with one Smt.Theinmozi Chelvi w.e.f. 9.7.1990 whereas she should have been promoted w.e.f. 20.11.1989 itself

when the provision for the reservation in promotion for physically challenged candidates was introduced. The respondents would state that Sri Gopalakrishnan had joined the department as a direct Jr.Accountant in Chennai on 8.2.1988 and he had joined Bangalore at the same level on 5.4.1990. He was at Sl.No.12 in the gradation list and the applicant was at Sl.No.42 and therefore, the applicant cannot claim that he was senior to Sri R.Gopalakrishnan. The applicant, however, would claim that Sri Gopalakrishnan got his promotion as Sr.Accountant in 1995 as per his seniority and not as per the roster for physically challenged persons and that after his promotion as per his seniority in a general way, the respondents had gone backwards and claimed that he had been given promotion under the reserved category of physically challenged only. Based on his eligibility for promotion as Sr.Accountant from 26.4.1993 he would claim that he should have been promoted with effect from that date and that he should have been placed below one Smt.S.Vijaya and above one Sri K.L.Ramachandra who was promoted as Sr.Accountant on 27.4.1993. However, the fact remains that the departmental promotions will not strictly follow the dates of the various orders permitting reservation in promotion etc. and therefore, we cannot say at this point of time whether any injustice has been done to the applicant other than his claims. We, therefore, direct the applicant to submit a comprehensive representation to the respondents within a period one month from the date of issue of this order and the respondents shall consider the same especially with regard to the point that Sri R.Gopalakrishnan who was promoted as Sr.Accountant in the year 1995 had actually been promoted in his turn in a general manner and that after his promotion, it has been converted as what was due for the reserved category of physically challenged. If that is the case, then

the applicant would have a case for being considered for the reserved post under the roster No.33. This they may reconsider within a period of two(2) months from the date of receipt of representation from the applicant and pass a detailed and speaking order.

8. The OA is disposed of as above. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/01426/2018

Annexure-A1: Copy of office memorandum dtd.13.4.2018

Annexure-A2: Copy of the rep. To the DAP dtd.6.3.2015 requesting for promotion

Annexure-A3: True copy of memorandum dtd.19.3.2015

Annexure-A4: True copy of OM dtd.3.8.2015 request for promotion denied

Annexure-A5: Copy of rep. To the Pension Adalat dtd.4.11.2015 appeal to provide justice

Annexure-A6: True copy of OM dtd.16.12.2015 request for promotion denied

Annexure-A7: Copy of the rep. To the ADG (PA Admn.) 2.12.2017. Request for providing justice

Annexure-A8: True copy of OM dtd.27.11.2017 request for promotion denied

Annexure-A9: Copy of the rep to the ADG (PA Admn.) 11.4.2018 request for providing justice

Annexure-A10: Extract copy of service book showing date of passing departmental exam

Annexure-A11: Office order copy of promotion from LDC to Jr.Acct. 26.4.1990

Annexure-A12: True copy of promotion office orderr from Jr.Acct. to Sr.Act.3.8.01

Annexure-A13: True copy of promotion office order from Sr.Act. to Asst. Accounts Officer 8.1.2015

Annexure-A14: Copy of Office Memorandum Ministry of Personnel, Public Grievances & Pension, Dept. Of Personnel & Training dtd.20.11.1989

Annexure-A15: Additional Office Memorandum 36035/16/91 Estt.(SCT) 18.2.1997

Annexure-A16: Corrigendum Sub: Reservation for the physically handicapped in the psots filled by promotion dtd.16.1.1998

Annexure-A17: A true copy of the Gazette of India regarding 10% promotion Sr.Acct as Asst.Accounts Officer

Annexure-A18: A true copy of officials has been benefited under 10% promotion Sr.Acct. as Asst. Accounts Officer

Annexure-A19: Extract copy of Gradation list for the eyar 1998

Annexure-A20: Promotion against unreserved posts for physically challenged 8.7.2003

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

Annexure-1: Gradation list for the year 1.7.1995 extract xerox copy

Annexure-2: Copy of No.1288/Admn./per-1/14/KSP. Name of the officials (Sr.Accountants) 1-33 and office order on promotion

Annexure-3: Copy of office order on promotion of Smt.Theinmozi chelve shown as roster point-1

Annexure-4: Copy of office memorandum Ministry of Personnel, Public Grievances & Pension, Dept. Of Personnel & Training dtd.20.11.1989

Annexure-5: Extract of Computation of roster points for phy.Challenged and Procedure of inter-se exchange of category extract (xerox copy)

Annexure-6: A copy of the Gazette of India regarding 10% promotion for Sr.Accountant as Asst.Accounts Officer

Annexure-7: Additional Office Memorandum 36035/16/91 Estt.(SCT) dtd.18.2.1997 showing roster points as 1,34 & 67

Annexure-8: Copy of post based roster of Assistant Accounts Officers appointed under 10% quota from among Senior Accountant

Annexures with additional reply:

-NIL-

Annexures with additional rejoinder:

Annexure-1: Copy of gradation list for July-1995

Annexure-2: Copy of 1288/Admn/per-1/14/KSP Roster point shown list of Senior Accountant 1 to 33

Annexure-3: Copy of office order No.1599/Admn/per-1/65/RTI
