

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/309/2016

Date of Reserve:29.07.2019

Date of Order:12.09.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)  
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Purna Chandra Pradhan, aged about 61 years, S/o. Maguni Pradhan of Vill/PO-Belarpur, PS-Derabis, Dist-Kendrapara, PIN-754 250, retired as Accounts Officer, Office of Director of Accounts (Postal), Mahanadi Vihar, At-Mahanadi Vihar, PO-Naya Bazar, PS-Chauliaganj, Dist-Cuttack.

...Applicant

By the Advocate(s)-M/s.T.K.Mishra  
Sujata Rout  
S.C.Sahoo

-VERSUS-

1. Ministry of Communication & I.T. Department of Post, represented through it's Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Govt. of India represented through Secretary, department of Telecommunications, Sanchar Bhawan, Sansad Marg, New Delhi-110 001.
3. Govt. of India represented through Secretary, Ministry of Personnel, Public Grievance and Pension (Department of Personnel & Training) North Block, New Delhi-110 001.
4. The Deputy Director General (PAF), Postal Accounts Wing, Dak Bhawan, Sansad Marg, New Delhi-110 001.
5. The Member (Finance), M/excommunication & Information Technology (Department of Telecommunications), Sanchar Bhawan, Sansad Marg, New Delhi-110 001.
6. The Director of Accounts (Postal), Postal Accounts Office, Odisha Circle, Mahanadi Vihar, Cuttack, PIN-753 004.

...Respondents

By the Advocate(s)-Mr.M.R.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the impugned order dated 24.08.2015 under Annexure-A/6.

- ii) To quash order dt. 28.05.2014 under Annexure-A/7.
- iii) To direct Respondent Nos. 4 & 5 to promote the applicant with effect from 01.01.2015 to the cadre of Sr.AO with pay fixation benefits.
- iv) To pass any other order/orders/direction/directions as would be deemed fit and proper.

2. It reveals from the record that earlier, the applicant had approached this Tribunal in O.A.No.260/00339/2015 for direction to be issued to respondents to promote him notionally with effect from 01.01.2015 and to fix his pay and increments at par with Senior Accounts Officer from that date. This Tribunal disposed of the said O.A. vide order dated 08.07.2015 with direction to Respondent No.5 to dispose of the representation dated 12.02.2015 of the applicant and to communicate the decision thereon through a reasoned and speaking order. Under the circumstances, the Respondents have passed a speaking order dated 24.08.2015 (A/6), the relevant part of which reads as follows:

- "1. Shri P.C.Pradhan retired Accounts Officer preferred a representation dated 12.02.2015 for considering his promotion to Sr.AO cadre in P&TAFS w.e.f. 01.01.2015.
- 2. Consequent upon re-structuring of Accounts Officers Cadre, 80% posts were placed in the high scale of Sr. Accounts Officer and 20% in Accounts Officer in terms of Ministry of Finance (Deptt. Of Expenditure) OM No.F-6(82)-IC/91 dated 22.09.1992. As per RRs of Sr. Accounts Officer Cadre, the officers who have completed two years of requisite service as on crucial date in Accounts Officer cadre are eligible for promotion to Sr.A.O. cadre.
- 3. The crucial date for determining eligibility for promotion was 1<sup>st</sup> day of each calendar year upto the year 2014. Now the same has been charged as

1<sup>st</sup> April of each year applicable from the year 2015 vide DOP&T OM No.2201/6/2013-Estt.(D) dated 28.05.2014. Accordingly, the promotions in Sr.Accounts Officer cadre are to be made by determining the eligibility as on 1<sup>st</sup> April from this year.

4. Shri Purna Chandra Pradhan, Accounts Officer was also in zone of consideration, but retired on attaining the age of superannuation on 31.01.2015 AN i.e., prior to the revised crucial date of eligibility.
5. The matter was also taken up with other Accounts organization to confirm the mode of implementation of revised crucial date in terms of DOP&T ibid O.M. In reply the Defence Accounts Department initiated that Annual Performance Appraisal Reports (APRs) are written financial year wise in that Department. Therefore, as per DOP&T OM No.22011/6/2013-Estt.(D) dated 28.05.2014 the crucial date of eligibility is 1<sup>st</sup> April of the vacancy year i.e., the officers who fulfil the eligibility service condition on the crucial date viz. 1<sup>st</sup> April would be eligible for consideration of the DPC for promotion to the grade of Senior Accounts Officer.
6. Accordingly, the promotion in Sr. Accounts Officer cadre was made by taking the crucial date of eligibility as 01.04.2015 in terms of DOP&T order contained in OM No.22011/6/2013-Estt.(D) dated 28.05.2014.
7. In view of the facts mentioned above, the request of Shri Purna Chandra Pradhan retired Accounts Officer for grant of promotion in Sr.AO cadre w.e.f. 01.01.2015 made vide his representation dated 12.02.2015 was not found in order and accordingly the same could not be acceded to".

3. Hence, this Application with the aforesaid reliefs.

4. The grounds on which the applicant has sought for reliefs are that although the crucial date for considering eligibility for promotion, i.e., 1<sup>st</sup> January was changed to 1<sup>st</sup> April from the year 2015 vide DOP&T OM dated 28.05.2014, there was no stipulation as to what would be the fate of employees fulfilling the eligibility criteria as on 01.01.2015, but, retire during January, February &

March, 2015. Due to shifting of crucial date from 1<sup>st</sup> January to 1<sup>st</sup> April, many officials who were not fulfilling the eligibility conditions for promotion as Sr.Accounts Officer as on 01.01.2015 became eligible for promotion in 01.04.2015. Therefore, the applicant has contended that the aforesaid DOP&T O.M. is discriminatory and violative of service conditions.

5. Even if it was considered expedient to change the crucial date from 1<sup>st</sup> January to 1<sup>st</sup> April which was in vogue since 1999, the DOP&T should have taken care of those officials who were eligible for promotion as on 01.01.2015 and retiring on 31.01.2015. According to applicant, since he had attained eligibility, mere change in crucial date should not debar him from promotion. The applicant has further pointed out that since the duties and responsibilities of AO and Sr.AO are one and the same, it would be against the principles of natural justice and the departmental provisions, if the applicant is not given promotion as Sr.AO with effect from 01.01.2015.

6. On the other hand, the respondents by filing a detailed counter have opposed the prayer of the applicant. Since the main thrust of rejection of promotion of the applicant as outlined in the speaking order dated 24.08.2015 (A/6) has already been quoted above, to avoid reiteration, it is only necessary to mention those averments in the counter-reply which are germane to the issue. However, to the averments made by the applicant that promotion orders issued by the Director of Accounts (Postal), Assam, Bihar as on 01.01.2015 whereas in his case there has been a departure, it

has been submitted by the respondents that those promotion orders having been issued inadvertently, steps are being taken for rectification of the same. They have brought out on record that in such a scenario promotion order issued by the Director of Accounts (Postal), Cuttack as on 01.01.2015 was subsequently, revised vide order dated 21.4.2015. According to respondents, since the claim of the applicant for promotion as Senior Accounts Officer is not coming within the ambit of OM dated 28.05.2014 issued by the DOP&T, the applicant is not entitled to any relief.

7. Applicant has filed a rejoinder to the counter.

8. We have heard the learned counsels for both the sides and perused the records. Indisputably, the crucial date for determining the eligibility for promotion as 1<sup>st</sup> January was in vogue since 1999. By the Office Memorandum dated 28.05.2014 (A/7) issued by the DOP&T, the crucial date was changed to 1<sup>st</sup> April in the year 2015 and in effect, even if the applicant had attained eligibility, he could not be considered for promotion as Sr. Accounts Officer with effect from 01.01.2015 due to shifting of crucial date to 1<sup>st</sup> April and by that time, he had retired from service on 31.01.2015. For the sake of clarity, the OM dated 28.05.2014 reads as follows:

“Subject: Eligibility of officers to be considered for promotion by DPC – fixing of Crucial Date – Regarding:

The under signed is directed to invite reference to the Department of Personnel and Training's Office Memorandum No.22011/3/98-Estt.(D) dated September, 17, 1998 regarding subject mentioned above, which provides that the crucial date for determining eligibility for promotion case of financial year-based vacancy year would fall on January, 1, immediately

preceding such vacancy year and in case of calendar year-based vacancy year also, the first day of the vacancy year i.e., 1<sup>st</sup> January itself would be the crucial date.

2. In case of financial year-based vacancy year, there is a clear gap of 3 months between the crucial date of eligibility and the date of commencement of vacancy year i.e., between January 1 and April 1. Due to this gap, for any such vacancy year, even if the Departmental Promotion Committee (DPC) meeting is held in time as per the Model Calendar, there is always possibility of few officers not fulfilling the eligibility criteria as on the crucial date of eligibility, though they are fulfilling the same as on the date of commencement of the vacancy year.
3. The matter has been examined in consultation with the Union Public Service Commission. It has been decided that the crucial date of eligibility shall be 1<sup>st</sup> April of the vacancy year in case of financial year based vacancy year i.e., where the Annual Performance Appraisal Reports (APARs) are written financial year-wise. In case of calendar year based vacancy year, i.e., where APARs are written calendar year-wise, the crucial date of eligibility shall remain 1<sup>st</sup> January of the vacancy year. These instructions shall come into force in respect of vacancy year 2015-16 (financial year) commencing from April, 1, 2015 and vacancy year 2015 (calendar year) commencing from January 1, 2015 and shall, accordingly, be applicable to all such subsequent vacancy years".

9. Perusal of the aforesaid OM as a whole, makes it very clear that the ***crucial date of eligibility shall be 1<sup>st</sup> April of the vacancy year in case of financial based vacancy year, i.e., where the Annual Performance Appraisal Reports (APARs) are written financial year-wise.*** On the other hand, the said OM

dated 28.05.2014 says that ***in case of calendar year based vacancy year, i.e., where APARs are written calendar year-wise, the crucial date of eligibility shall remain as 1<sup>st</sup> January of the vacancy year.*** Apart from the above, it has been clearly stated that the instructions relating to vacancy year 2015-16 (financial year) commencing from April, 1, 2015 and vacancy year 2015 (calendar year) commencing from January, 1, 2015, shall accordingly, be applicable to all such subsequent vacancy years.

10. From the speaking order passed by the Respondents vide A/6 dated 24.08.2015, there is no indication as to whether the vacancy against which the applicant would have been considered relates to financial based vacancy year, being his APARs written financial year-wise. If it be not, the speaking order as passed is to be held without application of mind. In this connection, it is significant to note that Office Memorandum dated 28.05.2014 also secures and protects the interest of persons like that of the applicant in case the vacancy, if any, that had existed, was based on vacancy year 2015 (calendar year) commencing from January, 1, 2015.

11. For the reasons aforesaid, we quash and set aside the speaking order dated 24.08.2015 (A/6) and consequently, remit the matter to the Deputy Director General (Respondent No.4) for reconsideration of entire matter in keeping with the following directives.

- i) Respondent No.5, shall, in the first instance, examine whether there existed calendar year vacancy and the APARs in so far as applicant is concerned, are written calendar year-wise.

- ii) If it is found that APARs in respect of the applicant are written calendar year wise, then the Respondents shall examine whether the applicant as on 01.01.2015 had fulfilled all the eligibility criteria for promotion as Sr.A.O.
- iii) If the above mentioned conditions are turned to be in the affirmative, then the Respondents shall convene a review DPC for considering promotion of the applicant as Sr.A.O. keeping the crucial date 01.01.2015 and in case the applicant is promoted as such, he shall be entitled to notional fixation of pay on the promoted post and consequential enhanced retiral dues only.

12. The above exercise shall be completed within a period of 120 (one hundred twenty days) from the date of receipt of this order.

13. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

(GOKUL CHANDRA PATI)  
MEMBER(A)

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