

31/7



O.A. 350/505/2016

Central Administrative Tribunal

Calcutta Bench

Bulbul Gangopadhyay, W/o Juga Jatri Gangopadhyay, aged about 61 years, retired Assistant Controller of Accounts under Principal Controller of Accounts (Fys), at present residing at 171, Remkrishna Sarani, Vivekananda Pally, Kolkata - 700 060.

... Applicant

- Vs -

- 1) Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
- 2) Controller General of Defence Accounts, Ulan Bater Road, Palam, Delhi Cantonment - 110010.
- 3) Principal Controller of Accounts (Factories), 10A, Shaheed Khudiram Bose Road, Kolkata - 700 001.
- 4) Senior Assistant Controller General of Defence Accounts (Admin.) Office of the Controller General of Defence Accounts Ulan Bater Road, Palam, Delhi Cantt - 110010.

... Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

No.O A.505 of 2016

Date of order : 31.7.19.

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**BULBUL GANGOPADHYAY  
VS.  
UNION OF INDIA & OTHERS  
(M/O Defence)**

For the applicant : Mr. C. Sinha, counsel

For the respondents : Mr. B.P. Manna, counsel

**ORDER**

**Bidisha Banerjee, Judicial Member**

The applicant in this O.A. has sought for the following reliefs:-

"a) To set aside and quash the Impugned letter no.AN-1/3437/5/PF/1 dated 12.08.2015 issued by Sr. Assistant Controller General of Defence Accounts(Admn.).

b) To direct the respondent authorities to consider the case of the applicant for grant of promotion to the post of Deputy Controller of Defence Accounts in the senior Time Scale by holding a review DPC for the vacancy year 2014-2015 and 2015-2016 and if found fit in the same grant promotion to the post of Deputy Controller of Defence Accounts in the Senior Time scale with all consequential benefits.

c) Any other order or order(s) as the Hon'ble Tribunal deems fit and proper."

2. The applicant has assailed the speaking order issued on her representation dated 22.05.2015 which reads as under:-

OFFICE OF THE  
CONTROLLER GENERAL OF DEFENCE ACCOUNTS

ULAN BATAR ROAD, PALAM, DELHI CANTT-110010.

Telex : 011-25674781

No. AN-1/3437/5/PF/1

Dated the 12<sup>th</sup> August, 2015.

To

Smt. Bulbul Gangopdhyay,  
Retd. ACDA  
171, Ramakrishna Sarani,  
Vivekananda Palli, Kolkata-700060.

Subject: Promotion to the post of Deputy Controller (STS).

Madam,

Your grievance dated 22.05.2015 has been examined and it is intimated that in view of the following provisions your name was not included in the eligibility list for promotion to the Senior Time Scale for the vacancy year 2015-16 as you were retired from service on 28.02.2015 i.e. prior to the crucial date of 1<sup>st</sup> April, 2015 for determining eligibility as well as commencement of the vacancy year from 01.04.2015 to 31.03.2016 :-

- (i) As per IDAS Recruitment Rules, 2000 as amended, the officer in the Junior Time Scale with four years' regular service is eligible for promotion to the Senior Time Scale. Further, as per Note-1 below Schedule-II of IDAS Rules, 2000 as amended, the first January (now first April from the vacancy year 2015-16) of the year to which the vacancies pertain, shall be crucial date for determining the eligibility of the officers for promotion to various grades.
- (ii) As per Note-2 below Schedule-II where juniors who have completed their qualifying service/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of requisite/eligibility service by more than half such qualifying service/eligibility service or two years' whichever is less and have successfully completed their probation period for promotion to next higher grade alongwith their juniors who have already completed such qualifying/eligibility service.
- (iii) As clarified vide DOP&T OM No. 22011/3/98-Estt(D) dated 14.08.2003, eligibility as on the crucial date of 1<sup>st</sup> January (now 1<sup>st</sup> April) is to be checked only in respect of those officers in the feeder grade who are not due for retirement before the date of commencement of relevant financial year based vacancy year.

Yours faithfully,  
OK

OK Tharmatt  
Senior Assistant Controller General of Defence Accounts (Admin.)

Q48

3. The applicant has claimed that she fulfilled eligibility criteria for promotion to the post of Deputy Controller of Defence Accounts in the Senior time scale, as on 01.01.2014, and was very much within the zone of consideration when DPC met but despite availability of vacancies for the vacancy years 2014-2015 and 2015-2016, she was not considered by the DPC in its meetings held on 08.05.2014 and 07.04.2015. She has claimed that she was entitled in terms of SRO 66 and DOPT's O.M. dated 12.10.1998. She has further claimed that her juniors were

granted promotion to senior time scale vide order dated 15.04.2015 but her representation was arbitrarily turned down vide letter dated 12.08.2015. Hence this O.A. to challenge the speaking order dated 22.05.2015.

4. The respondents have filed their reply whereby they have strongly denied and controverted the statements made in the O.A. and submitted that when DPC met on 08.05.2014 to consider promotion against the vacancies of 2014-2015 to consider promotion of junior time scale officers to the senior time scale as on the crucial date i.e. 1<sup>st</sup> January, 2014, Smt. K.K. Velumayil was only eligible for having satisfied the eligibility conditions which are as under:-

"(a) four years' regular service in the Junior Time Scale and

(b) successful completion of the period of probation."

The applicant who was promoted to junior time scale only on 01.12.2011, completed only 2 years of service on the crucial date i.e. 1<sup>st</sup> January, 2014 and hence was not eligible to be considered as the mandatory provision of possessing qualifying service of 4 years in the junior time scale was not met.

The respondents have referred to DOPT's O.M. dated 14.08.2003, in terms of which eligibility as on crucial date of 1<sup>st</sup> January was to be reckoned and that the eligibility is not to be reckoned in respect of those officers who may be in position as on the crucial date but who are due to retire before commencement of the relevant vacancy year. Such

officers were entitled for consideration for promotion, subject to eligibility, only against vacancies arising, if any, in the vacancy year in which they are due to retire on superannuation and that since the applicant was due for retirement on 28.02.2015 while the crucial date was 1<sup>st</sup> April, 2015 for the vacancy year 2015-2016 for which DPC met on 07.04.2015, as the crucial date fell after his retirement, her name was not considered by the subsequent DPC. They would further refer to DOPT O.M. dated 14.11.2014 cited by the applicant and submit that it was not relevant as it only advised to ensure strict compliance of DOPT's O.M. dated 12.10.1998 regarding consideration of the retired employees who were within the zone of consideration in the relevant year(s) but were not actually in service when the DPC was being held.

The said O.M. dated 12.10.1998 provides as follows:-

*".....There is no specific bar in the aforesaid Office Memorandum dated April 10, 1989 or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing year-wise panel(s) who were within the zone of consideration in the relevant year(s). According to legal opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are not considered while preparing year-wise zone of consideration/panel and, consequently, their juniors are considered (in their places), who would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year(s). Names of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The DPC(s) may if need be, prepare extended panel(s) following the principles prescribed in the Department of Personnel and Training Office Memorandum No.2211/8/87-Estt.(D) dated April 9, 1996."*

The DOPT's O.M. dated 14.11. 2014 says that :-

*"2. Appointment Committee of Cabinet has observed that DPCs often do not consider such eligible officers who are retiring before the occurrence of the vacancy in the panel year. These undesirable trends negate the very purpose of the above said Office Memorandum No.22011/4/98-Estt(D) dated October 12, 1998 and it is also against the principle of natural justice."*

5. Ld. counsel for the applicant, while drawing our attention to the DPC proceedings of 8<sup>th</sup> May, 2014 and a reply received by the applicant through RTI as contained in Annexure A/8, would submit that there were at least 136 vacancies for the vacancy year 2014-2015. He would vociferously submit that in terms of Note 2 the applicant was eminently eligible to be considered for such promotion and that his non-consideration was grossly illegal.

The respondents have drawn our attention to Note No.2 below Schedule II of IDAS Rules, 2000 which provides that *"juniors who have completed their qualifying service, eligibility of service are being considered for promotion, their seniors would also be considered provided they are not short of requisite/eligibility service by more than half such qualifying service/eligibility service or two years/whichever is less and have successfully completed their probation period for promotion to next higher grade along with their juniors who have already completed such qualifying/eligibility service as no junior of the applicant was being considered."*

The aforesaid clause is explicit that a senior, despite non-completion of 4 years' service is entitled to be considered provided his junior is found eligible to be called and is considered by the DPC.

Respondents' counsel would submit that the applicant, who completed only 2 years of service had a right to be considered provided his junior was also being considered by the DPC. But as none of his juniors were found eligible of being considered or were considered, the present applicant was not eligible to figure within the zone or be considered by the said DPC invoking the aforesaid provision. Further

the respondents would strongly deny the allegation that before her retirement juniors to the applicant were promoted to the post of DCDA ahead of her.

6. We heard ld. counsel for the parties and perused the materials on record.

7. We find from Annexure A/8 to the O.A. that the applicant was informed as follows:-

"(i) There were 136 & 154 vacancies in the STS for the vacancy year 2014-15 and 2015-16 respectively.

(ii) No JTS officer was fit/eligible for promotion to STS against the vacancy year 2014-15 and 59 JTS officers have been found fit/eligible for promotion to STS against the vacancy year 2015-16.

(iii) The DPCs for the vacancy year 2014-15 and 2015-16 were held on 08.05.2014 and 07.04.2015 respectively.

(iv) Copies of noting for the year 2014-15 and 2015-16 with reference to DPCs mentioned above are enclosed.

(v) Copies of Minutes for promotion to the STS for the vacancy year 2014-15 and 2015-16 are enclosed."

We have already perused and considered the implication of the Note, enumerated supra.

From the materials on record we infer that for the vacancy year 2014-2015 the applicant completed only 2 years as on the crucial date for the DPC that met on 08.05.2014 and as such he was not eligible since none of her juniors were considered by the said DPC. Only 2 persons namely Smt. K.K. Velumayil and G.K. Baranwal were found eligible to be considered in the said DPC but both were senior to her.

A

For the vacancy year 2015-16 the applicant was not eligible since, as on the crucial date i.e. 1<sup>st</sup> April, 2015, she had already retired from service.

8. In the aforesaid backdrop, the claim of the applicant fails and the O.A. is dismissed. No costs.

**Nandita Chatterjee)**  
**Administrative Member**  
sb

**(Bidisha Banerjee)**  
**Judicial Member**