

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, KOLKATA  
(CIRCUIT BENCH AT PORT BLAIR)**



O.A. 111/AN/ 2011

M.A. 941/AN/2018

**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Mr. N. Neihial, Administrative Member**

Ram Nath Chowdhury  
S/o Late Gopal Choudhury,  
Resident of New Pahargaon,  
P.O.- Garacharama, Bhatubasti,  
Port Blair,  
District Andaman,  
Retired Controller, Andaman Labour Force,  
Port Blair.

Applicant.

Versus

1. Union of India  
(Service through) the Secretary,  
Ministry of Home Affairs,  
Department of Personal & Training,  
Govt. of India,  
Shastri Bhavan, New Delhi.

2. The Lt. Governor,  
A&N Islands,  
Raj Niwas, Port Blair.

3. The Chief Secretary,  
A&N Administration,  
Secretariat Building,  
Port Blair.

4. The Secretary (Personnel),  
Andaman & Nicobar Administration,  
Secretariat Building,  
Port Blair.

5. Shri Govind Ram,  
Director, Disaster Management,  
Andaman & Nicobar Administration,  
Port Blair.

6. Shri Viswandra,

Commissioner, South MCD,  
South Zone, Sector – 09, R.K. Puram,  
New Delhi – 110022.

7. Shri Sarwan Bagaria,  
General Admn. Department,  
Delhi Secretariat, I.P Estate,  
New Delhi.

8. Shri Anand Kumar Tiwari,  
Department of Trade & Taxes,  
I.P Estate,  
New Delhi.

..... Respondents.

For the applicant Mr. R. Singh, Counsel

For the respondents : Md. Tabraiz, Counsel

Reserved on : 06.06.2019

Date of Order : 25.7.19

**ORDER**

Per : Bidisha Banerjee, Judicial Member

The applicant, a retired employee of DANICS has preferred this O.A. to seek the following reliefs:

*"8.(A) An order be passed directing the respondent authorities to promote your applicant with effect from 01.07.2009 when he completed 8 years of approved service and to grant him all consequential benefits.*

*(B) An order be passed directing the respondent authorities to release his arrears of pension and other benefit arising out of such promotion.*

*(C) Any such order / orders be passed and or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.*

*(D) Cost and incidentals to this application."*

2. The case in a nutshell would be as under:

The Applicant an Entry Grade officer of DANICS, was considered for promotion to the selection grade of service, on adhoc basis, in the pay scale of Rs. 10000-15200, by the Screening Committee that met on 20<sup>th</sup> July 2010. He was found fit for the promotion but was not promoted as the promotion order which was issued 22.09.2010 (Page 74 of the O.A.) after his superannuation w.e.f 31.08.2010. Whereas, his Junior N.S. Meena got

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the benefit of adhoc promotion with immediate effect and consequential benefits as he superannuated from service w.e.f 30.09.2010. Aggrieved, the applicant preferred O.A. No. 111/AN/2013 which was dismissed by order dated 27.11.2011. Against the order the applicant preferred WPCT No. 618 of 2018 which was disposed by order dated 10.05.2013, by the Hon'ble High Court remanding the matter back to this Tribunal.

*The direction of the Hon'ble High Court, goes thus: (emphasis added for clarity)*

*"The Union Public Service Commission was also not made a party respondent before the learned Tribunal. According to the said learned advocate for the Administration, the Union Public Service Commission ought to have been made a party respondent to the proceedings before the learned Tribunal.*

*On perusal of the copies of the said documents appearing at page 13 and page 19 of the supplementary affidavit wherefrom it appears that juniors to the petitioner were purported to have been given promotion to the selection grade, we are of the view that such aspect of the matter need to be considered in details by the learned Tribunal. Unfortunately, copies of such documents were not placed before the learned Tribunal as submitted by the petitioner's learned advocate.*

*In view of the discussion made above, we dispose of the present writ petition by setting aside the order under challenge in the present writ petition being order dated 27<sup>th</sup> August, 2012 passed by the learned Tribunal concerned in OA No. 111/AN/2011 and remanding the matter back to the learned Tribunal concerned for consideration of the matter afresh after giving an opportunity to the petitioner and also the respondents to produce all relevant records and/or documents before the learned Tribunal for a fresh consideration of the matter. After the parties have been given sufficient opportunity to produce such documents and/or records before the learned Tribunal, the learned Tribunal concerned shall dispose of the matter in accordance with law.*

*The writ petition is disposed of."*

A DPC was held on 02.08.2012 at 02.30 PM and 23.08.2012 at 10.30 AM to consider eligible entry grade officers of DANICS for regular promotion to selection Grade of NCT of Delhi Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra Nagar Haveli (Civil Service) (Group-A) in the pay scale of Rs. 10000-15200. The applicant was considered against the assessment year 2010 and was found "fit", and his name for the assessment year 2010 would figure at serial No. 12, above Vishwendra, Govind Ram Lal Singh and Sarvan Bagaria who figure at serial No. 13, 14, 15 & 16. In the panel for the year 2010 the name of the applicant is at serial No. 6 while that of Vishwendra and Sarvan Bagaria are at serial No. 7 and 9 respectively.

By Notification dated 10<sup>th</sup> September 2012 the Entry grade officers namely Vishwendra, Sarvan Bagaria, were appointed by promotion to the Selection grade with effect from 01.07.2010.

By another Notification dated 09<sup>th</sup> March 2018 Shri Govind Ram was appointed to the selection Grade in the scale of Rs. 15600-39100, Grade Pay Rs. 6600/- (pre revised) on regular basis w.e.f 01.07.2010 i.e date from which his with all consequential benefits.

The Applicant, although senior to Shri Govind Ram and Saravan Bagaria, both of whom have been arrayed as party in the instant application, was arbitrarily deprived .

3. At hearing Ld. Counsel Shri Singh would, in a bid to torpedo and pulverise his arguments vociferously contend that the applicant deserves promotion with effect from the date his juniors were granted. He would place the following decisions in support of his claim:

Order passed in O.A. No. 417 of 2010 (M.P. Muraleedhran -vs- Union of India and ors) by the Central Administrative Tribunal, Ernakulum Bench, (Copy annexed) Paragraph 9 whereof reads as follows:

"9. In O.A. No. 1519/2008, the Principal Bench of this Tribunal held as under:

"16. It is noteworthy that the procedure prescribed vide DoP&T O.M. dated 12.10.1998, while making it clear that retired officers would have not right for actual promotion, does not prohibit grant of notional promotion to them. While promotion may not be claimed as a matter of right from the date of attaining eligibility for promotion, we are of the considered view that once an employee has been illegally and arbitrarily denied consideration for promotion while in service, he cannot continue to be denied the benefit of the same only because he has since retired on superannuation....."

10. In O.A. No. 911/10, this Tribunal held that when the promotion due to the applicant was denied for no fault of his, he was entitled to notional promotion though he had retired prior to convening of DPC. The order of the Hyderabad Bench of this Tribunal in O.A. No. 313/2008 is not applicable to the present case as the question of entitlement of a retired employee for notional promotion did not arise therein. Even if no junior is promoted depriving the applicant of promotion, it will not be fair and just in the facts and circumstances of the present case, if the applicant is denied the benefit of notional promotion only because he retired on superannuation, before the DPC could meet.

11. In the light of the above discussion, the O.A. is allowed as under.

12. The Annexure A-11 order dated 20.04.2010 is quashed. The respondents 1 and 2 are directed to grant the applicant notional promotion to the post of Deputy Director General (Geology) with effect from the date he became eligible for promotion, on the basis of the recommendation of the supplementary DPC held on 20<sup>th</sup> and 21<sup>st</sup> January, 2010 and to revise his pensionary benefits accordingly within a period of three months from the date of receipt of a copy of this order. No order as to costs."

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Since, the applicant has already retired, he claimed only notional promotion w.e.f 01.07.2010 and is not pressing prayer (a) i.e. actual promotion w.e.from 1.7.2009. In the fact and circumstances, it is evident that the case of the applicant is covered by said order and, hence, it is prayed that O.A. be allowed."

4. Per contra, the respondents while emphatically admitting that "as per procedure a panel of eligible officers is prepared on the basis of the recommendation of the Screening Committee and these officers are promoted on ad-hoc basis as and when the vacancies arise. However, regular promotions are done subsequently as per the recommendation of the Departmental Promotion Committee (DPC) which is convened by the Union Public Service Commission (UPSC)." x x x "The promotion on ad-hoc basis are granted only when there is anticipation of delay in giving promotion on regular basis." "On the basis of the panel recommended by the Screening Committee the applicant, along with others, was considered for ad-hoc promotion to the Selection Grade of DANICS. However, before the formal promotion orders could be affected, the applicant got retired on superannuation" and that "Inadvertently, the procedure could not be completed earlier due to administrative exigencies. The delay, as claimed by the applicant is only procedural and unintentional."

Ld. Counsel for the respondents further would vehemently oppose the applicant's claim for notional promotion on the ground that "the delay as claimed by the applicant is only procedural and the respondent had no intention to deprive the applicant from promotion" and that "The respondent Ministry is not prejudiced against the applicant and it has nothing personal against him. As submitted earlier, the Ministry has no intention to deprive any officer from promotion. However, if any officer gets retire before affecting the promotion order for one reason or the other, the Ministry cannot be held responsible because the process

*of promotion is not centered on individual interest but it is done keeping in view the betterment of cadre/ service."*

5. We heard the Ld. Counsels and perused the materials on record.

6. We discern as under:

(1) The DPC met on 23.8.12 to consider eligible Entry Grade Officers of DANICS for promotion to Selection Grade of NCT of Delhi Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra Nagar Haveli (Civil Service) (Group-A) in the pay scale of Rs. 10,000-15,200 (pre-revised) against the vacancies pertaining to the year 2008 to 2011.

(2) The vacancy position was as under:

Year	Genl	SC	ST	Total
2008	13	04	01	18
2009	40	02	01	43
2010	08	02	01	11
2011	33	00	01	34

(3) The DPC would note that the instructions contained in DOP&T O.M. No. 35034/7/97-Estt (D) dated 08.02.2002, which inter-alia provides that "the DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench mark and accordingly grade the officers as "fit" or unfit" only. Only those who are graded "fit" (i.e. who meet the prescribed bench mark) by the DPC shall be included and arranged in the select panel in order of their inter-se seniority in the feeder grade. Those officers who are graded "unfit" (in terms of the prescribed bench mark) by the DPC shall not be included in the select panel. Thus, there shall be no supersession in promotion among those who are graded "fit" (in terms of the prescribed bench mark) by the DPC"

(4) The DPC's assessment was as under:

"ASSESSMENT FOR THE YEARS 2008 [No of vacancies ~ 18 {UR-13, SC-4, ST-1}]

S.No	Name (S/Shri)	ASSESSMENT
1.	Prakash Chandra (SC)	As in sealed cover
2.	Kalyan Sahai Meena (ST)	As in sealed cover
3.	M.R. Trivedi	As in sealed cover
4.	Jitendra Kumar Jain	As in sealed cover
5.	Kamal Malhotra	As in sealed cover
6.	A.V. PRem Nath	As in sealed cover
7.	Balwant Singh (SC)	As in sealed cover

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"ASSESSMENT FOR THE YEAR 2009 [No of vacancies – 61 (UR-53=40+13c.f., SC-2+4c.c., ST-1+1c.f.)]

S. No.	Name (S/Shri)	ASSESSMENT
1.	Prakash Chandra (SC)	As in sealed cover
2.	Kalyan Sahai Meena (ST)	As in sealed cover
3.	M.R. Trivedi	As in sealed cover
4.	Jitendra Kumar Jain	As in sealed cover
5.	Kamal Malhotra	As in sealed cover
6.	A.V. Prem Nath	As in sealed cover

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"ASSESSMENT FOR THE YEAR 2010 [No of vacancies – 72(UR – 61=08+53c.f., SC-2+6c.f., ST-1+2c.f.)]

S.No	Name (S/Shri)	ASSESSMENT
1.	Prakash Chandra (SC)	As in sealed cover
2.	Kalyan Sahai Meena (ST)	As in sealed cover
3.	M.R. Trivedi	As in sealed cover
4.	Jitendra Kumar Jain	As in sealed cover
5.	Kamal Malhotra	As in sealed cover
6.	A.V. Prem Nath	As in sealed cover
7.	Rajesh Goyal	FIT
8.	Mohammed	FIT
9.	Vivek Kumar Tripathi	FIT
10.	Som Naidu	FIT
11.	Shailendra Singh	FIT
12.	R.N. Choudhary	FIT
13.	Vishwendra	FIT
14.	Govind Ram	As in sealed cover
15.	Lal Singh	FIT
16.	Saravan Bagaria	FIT
17.	S.C. Tyagi	FIT
18.	K.C. Surender (ST)	FIT
19.	V.P. Wadhwa	FIT
20.	S.K. Sachdeva	FIT
21.	R.S. Shokeen	FIT
22.	Nand Lal Singh (SC)	FIT
23.	Sita Ram (SC)	FIT
24.	Bishan Chander (SC)	FIT
25.	Bajrang Lal (SC)	Not assessed for want of sufficient ACRs
26.	Har Prasad (SC)	FIT
27.	V.P. Singh (SC)	FIT
28.	Hari K. Meena (ST)	FIT
29.	Peter Bara (ST)	UNFIT*
30.	N.S. Meena (ST)	FIT
31.	Radhey Shyam (ST)	FIT
32.	R.K. Meena (ST)	FIT
33.	G.L. Meena (ST)	FIT

34.	S.K. Malhotra	FIT
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A bare perusal of the extract of DPC proceedings supra would indubitably and irrefutably establish that the applicant R.N. Choudhury was assessed 'Fit' to be granted promotion against vacancy for the year 2010.

(5) The Panel for the year was drawn up as under:

"PANEL FOR THE YEAR 2010

S. No	Name (S/Shri)	REMARKS
1.	Rajesh Goyal	
2.	Mohammed	
3.	Vivek Kumar Tripathi	
4.	Som Naidu	
5.	Shailendra Singh	
6.	R.N. Choudhary	Retired on 31.08.2010
7.	Vishwendra	
8.	Lal Singh	
9.	Saravan Bagaria	
10.	S.C. Tyagi	
11.	K.C. Surender (ST)	RAUV*
12.	V.P. Wadhwa	
13.	S.K. Sachdeva	Retired on 31.03.2010
14.	R.S. Shokeen	
15.	Nand Lal Singh (SC)	RAUV*
16.	Sita Ram (SC)	RAUV*
17.	Bishan Chander (SC)	RAUV*
18.	Har Prasad (SC)	RAUV*
19.	V.P. Singh (SC)	RAUV*
20.	Hari K. Meena (ST)	RAUV*
21.	N.S. Meena (ST)	RAUV* Retired on 30.09.2010
22.	Radhey Shyam (ST)	RAUV*
23.	R.K. Meena (ST)	RAUV*
24.	G.L. Meena (ST)	RAUV*
25.	S.K. Malhotra	

(6) A notification of 10.9.12 containing promotion orders was issued, as set out hereunder:

Sl.No	Name of the officer (S/Shri/Smt)	Date of Birth	Date of appointment to Selection Grade
1.	Rajesh Goyal	09.04.1976	01.07.2010
2.	Vivek Kumar Tripathi	25.09.1971	01.07.2010
3.	Som Naidu	25.04.1958	01.07.2010
4.	Shailendra Singh	10.05.1977	01.07.2010
5.	Vishwendra	27.05.1977	01.07.2010
6.	Saravan Bagaria	30.08.1976	01.07.2010



7.	K.C. Surender (ST)	10.02.1974	01.07.2010
8.	Bishan Chander (SC)	30.04.1954	01.07.2010
9.	Radhey Shyam (ST)	02.03.1954	01.07.2010
10.	G.L. Meena (ST)	30.10.1952	01.07.2010
11.	Peter Bara (ST)	09.09.1953	01.07.2011
12.	Anand Kumar Tiwari	31.12.1974	01.07.2011
13.	Sushil Singh	19.09.1976	01.07.2011
14.	Ravinder Dhall	18.06.1954	01.07.2011
15.	M.T. Kom	01.01.1975	01.07.2011
16.	Sadey Ram Sharma	15.10.1952	01.07.2011
17.	Satnam Dhamija	12.05.1953	01.07.2011

(7) Applicant duly figured in the panel of 2010 as 'Fit', against Pvt. No. 6 Vishwendra who figures at Sr. No. 7 in the panel for 2010 and immediately below the applicant was placed in the promotion order dated 10.9.2012 (supra at para 6) was granted promotion w.e.f. 1.7.2010, whereas applicant was excluded from the promotion order dated 10.9.12.

(8) The applicant inarguably retired on 31.8.2010 i.e. after the effective date of promotion of his junior. Therefore, he was well in service as on the date junior was effected notional promotion, yet he was deprived.

The promotion order dated 10.9.12 vividly demonstrate and establishes the fact that the applicant was in fact seriously prejudiced and arbitrarily deprived due to the delayed holding of DPC. It was due to such delay that his juniors were be allowed to steal a march upon him and reap benefits of promotion from a date he was still in service, while he was deprived although found fit for such promotion. While the applicant cited a decision that comes to his aid the respondents have miserably failed to justify such arbitrary deprivation, as enumerated supra.

7. In view of the inferences drawn as above, we allow the O.A. and direct the authorities to grant notional promotion to the applicant at least from the date of promotion of his immediate junior, arrive at the last pay drawn correctly, revise his pension notionally and release the arrears of revised pension.

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8. The entire exercise be completed by 3 months. No costs.

(N. Neihzial)

Administrative Member

(Bidisha Banerjee)

Judicial Member

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