

OA.No.170/00471/2019/CAT/BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00471/2019

DATED THIS THE 30TH DAY OF OCTOBER, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

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

Sri A.G. Sudheendra, 58 years,
S/o Late Sri A.R. Gopal Krishna Rao,
Assistant Personnel Officer,
Rare Materials Project (RMP),
Mysuru: 571 130
Presently working at
BARC Facility Centre
Kalpakkam: 603 102,
Kanchipuram District, Tamil Nadu
With permanent residence at
No. 501, Shubham Deewan's Apartments,
Deewan's Road, Laxmipuram,
Mysuru: 570 004
(By Advocate Shri P.A. Kulkarni)

..... Applicant

Vs.

1. Union of India

To be represented by its Secretary,
Department of Atomic Energy,
Anushakti Bhawan,
C.S.M. Marg, Mumbai: 400 001

2. Joint Secretary,

Administration and Accounts,
(Cadre Control Authority)
Department of Atomic Energy,
Anushakti Bhawan,
C.S.M. Marg, Mumbai: 400 001
....Respondents

(By Shri M.V. Rao, Counsel for the Respondents)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. Apparently applicant was appointed as LDC in 1982 then he became UDC in 1991. He then became Assistant in 1995. Thereafter he was promoted as Section Officer in 2008 and he became, by change of cadre, Assistant Personnel Officer in 2012. Thereafter he was eligible for promotion as Administrative Officer and in 2017 he was promoted but then for his own reasons he declined it.

2. When a government employee refuses to be promoted, he is not eligible to be considered for promotion for the next one year but, on completion of that one year period, he is eligible to be promoted. The grievance of the applicant is that even though he was in the select panel in 2018 and 2019 also he was not given a promotion. At this point of time Shri M.V. Rao, learned counsel for the respondents, raises an objection that since the headquarters of the respondents is in Mumbai the cause of action should be taken as arisen there. But then Section 20 of the CPC is very clear. It is the place where the cause of action has arisen which has the prime value in determining the territorial jurisdiction. Therefore, we hold that, since the applicant was working at Mysore all along, the cause of action has arisen only at Mysore which is within the State of Karnataka. Shri M.V. Rao, learned counsel for the respondents, raises another objection that at the time of filing the OA the applicant was posted to Kalpakkam which is in Tamil Nadu. Shri P.A. Kulkarni, learned counsel for the applicant, counters it by saying that the cause of action is the non-promotion in the list following the 2017 declaration that is in 2018 and at that point of time applicant was in Mysore only which is within the State of Karnataka and therefore we hold that the territorial jurisdiction question is settled.

3. It is trite law that a government employee has a right to decline a promotion but then it causes inconvenience to the department concerned and, therefore, rules stipulate that for the next one year he will not be considered for promotion. But then, this is the end of it. No more punishment

can visit an employee for declining a promotion, therefore, he should have been given a promotion at the first and earliest opportunity as both counsels submit that he has been in the list of 2018 also. Therefore, there will be a specific mandate to the respondents to promote him. But then, since the order was issued in 2018, applicant will be eligible to be promoted from January, 2019 with reference to the year of 2018.

4. The OA is allowed. Benefits to be made available within the next two months. No order as to costs.

(C.V. SANKAR)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00471/2019

Annexure A1: Copy of the Recruitment Rules, 1988 as amended by Amendment Rules 1996

Annexure A2: Copy of the OM dated 31.03.2008

Annexure A3: Copy of the select list notified on 12.06.2017

Annexure A4: Copy of the promotion and posting order dated 30.01.2018

Annexure A5: Copy of the applicant's representation dated 27.02.2018

Annexure A6: Copy of the further representation dated 01.03.2018

Annexure A7: Copy of the order dated 26.03.2018

Annexure A8: Copy of the next select list notified on 29.05.2018

Annexure A9: Copy of the representation dated 24.12.2018 with forwarding letter dated 27.12.2018

Annexure A10: Copy of the next select list notified on 07.03.2019

Annexure A11: Copy of the Hon'ble Apex Court judgment in the case of Prakash Versus UOI and others reported in 1984 (Supp) SCC 687

Annexures referred in reply statement

Annexure R1: Copy of the extract of Government of India (Allocation of Business Rules, 1961.

Annexure R2: Copy of the notification dated 01.09.1958

Annexure R3: Copy of the Recruitment Rules for the post of Administrative Officer-III notification dated 04.08.1988

Annexure R4: Copy of the DAE OM dated 24.11.2009

Annexure R5: Copy of the DOPT OM dated 11.11.2010

Annexure R6: Copy of the representation dated 07.02.2018

Annexure R7: Copy of the transfer policy issued by the department dated 24.05.2018

Annexure R8: Copy of the DOPT OM dated 08.05.2017

Annexure R9: Copy of the select panel for AO-III dated 29.05.2018

Annexure R10: Copy of the select panel for AO-III dated 07.03.2019

Annexure R11: Copy of the Amendment to AO-III Recruitment Rules dated 14.08.1996

Annexure R12: Copy of the Amendment to AO-III Recruitment Rules dated 17.01.2011

Annexure R13: Copy of the department's reply dated 13.02.2018

Annexure R14: Copy of the Hon'ble Supreme Court judgment in State of Bihar Vs. Secretariat Assistant S.E. Union dated 08.11.1993

Annexure R15: Copy of the DOPT OM dated 08.02.2002

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