

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

OA No. 169 of 2018 CP No. 60 of 2019	Bharat Chandra Nayak, aged about 54 years, S/o Late Maheswar Nayak, resident of Vill-Kemundia, PO-Uchabali, PS-Baria, Dist.- Keonjhar, Odisha, Pin-758044 & now residing at Quarter No. Type III/9, Census Staff Quarters, Baramunda, Bhubaneswar, Pin-751003, presently working as Statistical Investigator Grade I, O/O Directorate of Census Operations, Odisha, Janpath, Unit-IX, Bhoiagar, Bhubaneswar-751022.
OA No. 170 of 2018 CP No. 57 of 2019	Sarat Kumar Mishra, aged about 53 years, S/o Late Nityananda Mishra, resident of At/PO-Pankapala, Via-Rahama, PS-Kujang, Dist-Jagatsinghpur, Odisha, Pin-754140 & now residing at Quarter No. Type III/7, Census Staff Quarters, Baramunda, Bhubaneswar, Pin-751003, presently working as Statistical Investigator Grade II, O/O Directorate of Census Operations, Odisha, Janpath, Unit-IX, Bhoiagar, Bhubaneswar-751022.
OA No. 171 of 2018 CP No. 59 of 2019	Pramod Patnaik, aged about 57 years, S/o Late Dibakar Majumdar patnaik, resident of AT/PO-Seragada, PS-Seragada, Dist-Ganjam, Odisha, Pin-761106 & now residing at Plot No. D/773, Sector-8, CDA, Cuttack, PS-Markat Nagar, Dist-Cuttack, Pin-753014, presently working as Statistical Investigator Grade II, O/O Directorate of Census Operations, Odisha, Janpath, Unit-IX, Bhoiagar, Bhubaneswar-751022.
OA No. 172 of 2018 CP No. 58 of 2019	Hrushikesh Dehury, aged about 47 years, S/o Late Atul Chandra Dehury, resident of Vill/PO-Purumunda, PS-Pandapada, Dist-Keonjhar, Odisha, Pin-758014 & now residing at Quarter No. Type II/37, Census Staff Quarters, Baramunda, Bhubaneswar, Pin-751003, presently working as Statistical Investigator Grade I, O/O Directorate of Census Operations, Odisha, Janpath, Unit-IX, Bhoiagar, Bhubaneswar-751022.
OA No. 177 of 2018	Pranab Kumar Mishra, aged about 52 years, S/o Late Krushna Mohan Mishra, residing at Plot No. 3240, Sriram Nagar, Old Town, Near SBI, Bhubaneswar, presently working as Statistical Investigator Grade II, O/O Directorate of Census Operations, Odisha, Janpath, Unit-IX, Bhoiagar, Bhubaneswar-751022.

VERSUS

1. Union of India, represented through its Secretary to Government of India, Ministry of Home Affairs, North Block, New Delhi-110001.
2. The Registrar General of India, Ministry of Home Affairs, 2/A Mansingh Road, New Delhi-110011.

3. The Director of Census Operations, Odisha, Janpath, UInit-IX, Bhoiagar, Bhubaneswar-751022.
4. The Joint Director of Census Operations, Odisha, Janpath, Unit-IX, Bhoiagar, Bhubaneswar-751022.

.....Respondents.

For the applicant : Mr.C.P.Sahani, counsel (OA 169/18, 170/18, 171/18 and 172/18)
Mr.D.K.Mohanty, counsel (OA 177/18)

For the respondents: Mr.G.R.Verma, counsel (OA 170/18)
Mr.J.K.Nayak, counsel (OA 169/18)
Mr.S.Bhera, counsel (OA 177/18)
Mr.P.K.Mohanty, counsel (OA 171/18)
Mr.A.C.Deo, counsel (OA 172/18)

Heard & reserved on: 4.9.2019 Order on : 17.10.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The OAs in this batch have been filed by the applicants being aggrieved by the decision of the respondents to revert from their promotional post of Statistical Investigator Grade-II (in short SI Gr.II) to Senior Compiler w.e.f. 16.2.2011 on the ground that sufficient number of posts of SI Gr.II was not available to accommodate the applicants. Since all the applicants in this batch OAs are similarly placed and the nature of the relief sought by them is same, these OAs were taken up for consideration together and are being disposed of by this common order with the OA No. 170/18 being taken as the lead OA. Two other OAs i.e. OA Nos. 650 and 651 of 2017, with similar dispute, were also heard together with these OAs, although the order for these two OAs are passed separately in view of the some factual differences.

2. The CP No. 57/19 have been filed by the applicants alleging violation of the interim order passed by the Tribunal on 3.4.2018 when the OA No. 170/2018 was admitted and the respondents were directed to maintain status quo. The applicants have alleged that in spite of the interim order, the respondents have reverted the applicants. Contempt Petitions have been filed in OA No. 169/18, 171/18 and 172/18 on similar grounds. The stand of the respondents is that by the time the order dated 3.4.2018 was passed, the applicants were already reverted vide order dated 26.3.2018 (Annexure-A/10). Hence, the CPs filed under the OAs are also being considered and disposed of along with the OAs by this common order.

OA No. 170/18 and CP No. 57/2019

3. The applicant in OA No. 170/18 was first appointed as Assistant Compiler under the respondents on 24.3.1993. He was promoted to the post of Compiler on 5.1.2001 and as Senior Compiler on 7.5.2010. Then he was

allowed ad-hoc promotion SI Gr. III (which was merged with the post of SI Gr. II w.e.f. 1.1.2006) w.e.f. 13.10.2010. Thereafter, he was regularly promoted as SI Gr. III w.e.f. 16.2.2011 on the basis of the recommendation of the DPC held on 5.9.2014 (Annexure- A/2). The applicant is aggrieved because of his reversion from the post of SI Gr.II to Senior Compiler vide the impugned order dated 16.10.2017 (Annexure A/7) and order dated 26.3.2018 (Annexure A/10). The applicant claims that as on the date of holding the DPC on 5.9.2014, there were 34 posts out of which 50% of the vacancy i.e. 17 posts were to be filled up by promotional quota. As on 5.9.2014, 7 officials were available for promotion to the post of SI Gr.II against 17 vacancies. After promotion of the applicant, 8 other Senior Compilers were given the seniority retrospectively as per the order of Hon'ble High Court and they became senior to the applicant. Hence, a review DPC was held on 26.6.2015 to consider the case of these 8 officials for promotion to the post of SI Gr.II w.e.f. 16.2.2011, without affecting the applicant. But subsequently the respondents found that enough vacancies were available in the cadre of SI Gr.III as on 16.2.2011 so as to allow promotion benefit to the applicant. It is further stated in the OA that there were enough vacant posts from the promotional quota to accommodate the applicants as well as the eight officials who were given retrospective seniority. But the respondents have decided to revert the applicant from the post of SI Gr. II to the post of Senior Compiler w.e.f. 16.2.2011 by passing the impugned orders.

4. The grounds advanced in the OA are as under:-

- (i) The contention of the respondents that on 16.2.2011, only 5 vacant posts were available for promotion to the post of SI Gr. III, is incorrect since the DPC was held on 5.9.2014 and hence, total vacancy as on 5.9.2014 should be taken into consideration. As per the seniority list at Annexure-A/5, there were 10 vacancies still available even after giving promotion to 15 officials. The respondents' plea of non-availability of posts is, therefore, not tenable.
- (ii) As per the DOPT OM dated 10.4.1989, the vacancies available on account of the previous years to the year of holding the DPC are to be taken into account.
- (iii) The letter dated 25/26.8.2014 (Annexure-A/3) of the respondent no.2 to the respondent no. 3 allowed the promotion of the eligible officials notionally w.e.f. 16.2.2011, but it does not disallow promotion to the merged grade of SI Gr.II as on the date of holding the DPC or the review DPC.
- (iv) After the Review DPC held on 26.6.2015, no other Review DPC to review the decision of the Review DPC held on 26.6.2015 was permissible.
- (v) The respondents have not applied their mind in passing the impugned orders. The points mentioned in the representation of the applicant were not considered in the impugned orders.
- (vi) By not considering the case of the applicants for promotion to the post of SI Gr. II only on the ground of non-availability of posts as on 16.2.2011 and

not considering the vacancy as on 5.9.2014 is discrimination of the applicant and it violated Article 14 and 16 of the Constitution of India.

5. The respondents have filed short reply and also their Counter. It is averred by the respondents that as per the order dated 22.4.2014 of Hon'ble High Court in W.P.(C) No. 3268/2011, services of 8 senior Compilers were regularized from a date prior to the applicants for which they became senior to the applicants. Hence, their promotion w.e.f. 16.2.2011 had to be considered. Accordingly, the review DPC was held on 26.6.2015 for promotion to SI Gr. III. It is stated that inadvertently, the respondents did not take into account the correct number of vacancies in the cadre of SI Gr.III as on 16.2.2011 while considering the promotion of officials in the DPC on 5.9.2014 and 26.6.2015 and claimed that more officers were promoted as SI Gr. III as on 16.2.2011 than the available vacancies, for which the juniors were required to be reverted. It is stated that as per the rules, as on 16.2.2011, 50% of posts are to be filled up by promotion. Out of 34 vacancies, 17 posts are to be filled up by promotion. It is stated that as on 16.2.2011, 12 posts were already filled up by promotion, thus leaving only 5 posts to be filled up by promotion out of which 3 posts are unreserved and 2 posts are reserved category. Hence, it was averred that the applicants were not entitled for promotion to SI Gr.III w.e.f. 16.2.2011.

6. It is further stated in the counter that as per the DOPT OM dated 13.4.1998, if there is a mistake in any promotion, then it will be rectified by holding a review DPC (Annexure-R/15 to the Counter). Hence, in the situation where 14 officials were promoted to SI Gr.III w.e.f. 16.2.2011 against available 5 vacancies, the promotion of the applicants was found to be erroneous. The reply submitted by the applicant in reply to the show cause notice cannot be accepted. It is also stated in the Counter that the letter dated 26. 08.2014 of the respondent no.2 (Annexure-R/3) had instructed for holding of the DPCs for consideration of the eligible staffs for promotion prospectively but with notional benefit of promotion w.e.f. 16.2.2011 as SI Gr.III just before merger of the Grade-III and Grade-II w.e.f. 1.1.2006 vide order dated 17.2.2011. This was allowed to give the appropriate seniority and other benefits to the staffs who were eligible for promotion, but they could not be promoted as the DPC could not be convened earlier.

7. Rejoinder has been filed by the applicant in OA No. 170/18 stating that there was no direction in the order of Hon'ble High Court in the judgment dated 22.4.2014 in W.P. (C) No. 3268/2011 to revert the applicant. It is stated that adequate number of vacant posts were available at the time of holding the DPC. It was also submitted that after four years of regular promotion, reversion is unlawful and that the SI Gr. III and Gr. II cadres were merged w.e.f. 1.1.2006 vide order dated 17.2.2011 (Annexure-A/13). Hence, for both the cadres, total

number of posts available was 42 including 34 for Gr.III and 8 for Gr.II. It is further stated that the promotion quota for the combined cadre will be 21 at the rate of 50% as per the rules. Out of 21, 12 posts were filled up by promotion, leaving 9 vacancies. It is stated that the case of the applicants can be accommodated within the available posts as revealed for the list of incumbents at Annexure-A/14. It is stated that the respondents have wrongly calculated the number of vacant posts. It is stated that the Recruitment Rules, 2013 specified the promotion quota to be 25%, but it cannot apply to the vacancies available prior to 2013. It is stated that in Bihar, the promotion was considered after taking into account the combined strength of SI Gr. III and Gr. II, vide the notes of the DPC at Annexure-A/15. It is averred that the vacancies arising in the years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 should have been considered by the DPC while making their recommendations. It is also stated that although the appointing authority for the SI Gr.II was the respondent no.2, the reversion order was issued by the subordinate authority i.e. respondent no.4 and hence, the reversion order was illegal.

8. The applicant had filed an MA No. 372/19 on 29.4.2019 stating that the respondents are trying to fill up all the posts of SI Gr. II and he prayed to direct the respondents to keep one post vacant till disposal of the OA. This was considered on 2.5.2019 when the respondents' counsel submitted that no junior of the applicant is being promoted. This Tribunal vide order dated 2.5.2019 directed that if the case of the applicant is not being considered for promotion in the proposed DPC, then one post of SI Gr. II is to be kept vacant till next date.

9. Heard learned counsel for the applicant in all the OAs in this batch and he also submitted a written note of arguments mainly reiterating the contentions in the OA. It is stated that the applicants were given notional promotion w.e.f. 16.2.2011 for which no vacancy was required, as the notional promotion was given due to the fact that the DCO Odisha did not convene the DPC for promotion to the SI Gr. III earlier. It is stated that as per the DOPT OM dated 12.10.1998 (Annexure-A/16 of the Rejoinder), when no DPC was held for years together and when it is held for a year, the DPC should consider the vacancies for the earlier years. It is stated that the respondents at the time of holding the DPC on 5.9.2014 and the review DPC on 26.6.2015, the number of vacancies was not placed before the DPC. It is also submitted that the rejection orders are not speaking orders.

10. Learned counsels for the respondents in all the OAs in this batch were heard and they also submitted a written note of submissions in pursuance to the order dated 6.8.2019 seeking clarifications on some points from the respondents. For the query as to the reasons for not holding the review DPC before reversion of the applicant, it is stated by the respondents that vide letter

dated 28.9.2017 (Annexure-R/14 of the Counter), it was instructed that the review DPC be held after issuing show cause notice to the concerned employees who were wrongly promoted in the DPC held on 5.9.2014 and 26.6.2015 and that the impugned reversion order dated 26.3.2018 (A/10) was issued after holding the review DPC held on 16.11.2017. It was stated that as per the letter dated 26.8.2014 of the respondent no.2, availability of vacancy on 16.2.2011 was made a condition for allowing notional promotion w.e.f. 16.2.2011 and that the applicant was drawing the salary of the post of SI Gr.III w.e.f. 13.10.2010 vide order at Annexure-R/4 granting ad-hoc promotion to the applicant as SI Gr.III w.e.f. 13.10.2010. It is further stated that for promotion from Senior Compiler to SI Gr.II was not there in the rules till the notification dated 27.11.2013 (Annexure-R/9) for which there was no provision for promotion of senior compiler to SI Gr.II till 26.11.2013.

11. We have considered the pleadings on record and the submissions by learned counsels for both the parties in this OA. The applicant's contention in his pleadings is that there were more vacant post in the merged cadre of SI Gr.III/II as on the date of holding the DPC i.e. 5.9.2014 and the date of holding the review DPC on 26.6.2015 and he is aggrieved by the fact that these vacancies were not considered by the respondents to accommodate the applicants as SI Gr.III. The respondents have countered this contention by stating that as per the letter of the respondent no.2 dated 26.8.2014 (Annexure-A/3 and R/3), for notional promotion of the applicant w.e.f. 16.2.2011, there should be vacant post available to accommodate the applicant and that there was no provision for promotion of Senior Compiler to the post of SI Gr.II till 27.11.2013 when the new Recruitment Rules came into force. The respondents, therefore, contend that the applicant could not have been considered for promotion to the post of SI Gr.II/III taking into account the vacancy position on any date after 16.2.2011, when both Grade II and Grade III merged vide order dated 17.2.2011 (Annexure-R/2). However, the averment of the applicant that more number of posts are available after in 2014 and 2015 have not been contradicted by the respondents.

12. It is clear from the pleadings on record that the respondents are treating the merged cadre of SI Gr.II/III to be separate till 16.2.2011 and they have also averred that from 17.2.2011, when merger of cadres of SI Gr.III and SI Gr.II was effected, there were no provisions in the recruitment rules till 27.11.2013 for promoting Senior Compilers directly to the merged cadre post of the SI Gr. II. The order dated 17.2.2011 (Annexure-R/2) of the respondent no.2 merging the cadres of SI Gr.III and SI Gr.II stated as under:-

"The following posts in the Office of the Registrar General of India and Directorate of Census Operations stand merged with effect from 01-Jan-2006..."

The said order dated 17.2.2011 stated that 169 posts of SI Gr.II and 707 posts of SI Gr.III merge together to form the cadre of SI Gr. II (876 posts) and the Grade Pay of Rs. 4200/- for the combined cadre was specified. Hence, the order dated 17.2.2011 meant that from 1.1.2006, both the posts stand merged. By the time the DPC was held on 5.9.2014, the merger of the cadres had taken effect w.e.f. 1.1.2006, for which, it will not be correct to say that on 16.2.2011, a separate SI Gr.III cadre was in existence with vacancies of 34 posts as contended in the Counter. Had the DPC been held prior to 17.2.2011, then such contention would have been acceptable. On 16.2.2011, the vacancy in the cadre should have been found out based on the total cadre strength of SI Gr.III and SI Gr.II, which was 42 (out of which 21 would be promotion posts) as averred by the applicant in his Rejoinder.

13. Consideration of the applicants for promotion to posts in the merged cadre of SI Gr.II and SI Gr.III was not acceptable to the respondents since there was no provision in the Recruitment Rules for promotion of Senior Compiler to SI Gr.II till the new Rules were notified on 27.11.2013 (Annexure-R/9). Such a stand of the respondents will also mean that there will not be any promotion from the post of Senior Compiler to the post of SI Gr. II from 17.2.2011 till 27.11.2013, which will adversely affect the employees who are eligible for promotion, but they cannot be considered since the DPC could not be convened prior to 16.2.2011 for reasons not explained by the respondents. That was also not the intention of the authorities as no policy guidelines/instructions of the respondent No.2 has been produced by the respondents to show that the authorities did not intend to take up any promotion of eligible Senior Compilers to the post of SI Gr. II till the amendments in the Recruitment Rules. On the other hand, the respondent no.2 has instructed vide letter dated 26.8.2014 (A/3) issued after merger of the cadres of SI Gr.II and SI Gr.III had already taken place, to consider all the eligible candidates for promotion to SI Gr.III as on 16.2.2011 subject to availability of vacancy as on 16.2.2011. In pursuance to the letter dated 26.8.2014 of the respondent No.2, the applicant's case was considered and he was found fit for promotion notionally from 16.2.2011 on regular basis prior to 16.2.2011, the applicant had been promoted as SI Gr.III on ad hoc basis. It is noted that the applicant was already getting the pay scale of the SI Gr. III w.e.f. 13.10.2010 because of his ad hoc promotion.

14. After about 3 (three) years of promotion of the applicant notionally w.e.f. 16.2.2011 on regular basis, it was discovered by the respondents that the number of vacancies as on 16.2.2011 in the cadre of SI Gr.III was not correctly assessed at the time of holding of the DPC on 5.9.2014 and of the review DPC on 26.6.2015 and after correct calculation of the vacancies as on 16.2.2011, it was found that the applicant's promotion to SI Gr.III was incorrect as the vacancies were not sufficient to accommodate his case. The reason for incorrect

assessment of vacancies at the time of holding the DPC as per the letter at Annexure-A/3 has not been mentioned by the respondents in their pleadings. Clearly, the present situation has arisen due to the wrong assessment of vacancies as on 16.2.2011 and for not convening the DPC for promotion regularly every year for promotion to the Grade of SI Gr.III and SI Gr.II and there is no fault on the part of the applicant. This fact has to be kept in mind while deciding this case.

15. The applicant has stated in his pleadings that there were enough vacancies as on the date of holding the DPC on 5.9.2014 to accommodate his case. Such contention has not been contradicted by the respondents, who have submitted that after 16.2.2011, both the cadres merged to SI Gr.II and there was no provision in the rules for promotion of senior compilers to the post of SI Gr. II. Moreover, the DPC was held on 5.9.2014 in pursuance of the letter dated 26.8.2014 of the respondent no. 2 to consider promotion to SI Gr.III w.e.f. 16.2.2011 on the basis of the vacancies as on 16.2.2011. Since the letter dated 26.8.2014 is not challenged in this OA, such stipulation is to be acted upon, for which, the action of the respondents for not considering the vacancies arising after 16.2.2011 in the DPC cannot be faulted.

16. It is noticed that since the merger of the cadres of SI Gr.III and SI Gr. II has been effected from 1.1.2006, on the date the DPC held on 5.9.2014 or on 26.6.2015, both the cadres had merged from 1.1.2006 and hence, there was no existence of the cadre of SI Gr. III separately on 16.2.2011 even to allow notional promotion. Hence, the applicant's averment that the number of posts in the merged cadre was 42 (out of which 34 posts were from the cadre of SI Gr.III and 8 from the cadre of SI Gr. II), cannot be brushed aside. The promotion quota for the combined cadre was 50% of 42 posts i.e. 21 posts, out of which 12 persons were in position as on 16.2.2011 leaving 9 vacancies. Hence, the DPC held on 5.9.2014 should have selected the candidates for promotion to the combined post of SI Gr.II/III for 9 posts vacant in the combined cadre. The contention of the respondents that there was no provision in the Recruitment Rules for promotion to the combined post of SI Gr.II/III is not tenable, since the rules as on 16.2.2011 provided for promotion to SI Gr.III, which has to be taken as the provision for SI Gr.II after merger of SI Gr.III and SI Gr.II till the notification for new rules w.e.f. 27.11.2013 vide Annexure-R/9 of the Counter. In absence of any policy guidelines that till notification of the revised Recruitment Rules after merger of the cadres of SI Gr.II and SI Gr.III, there will not be any promotion of the employees to the post of SI Gr.II/III under the extant rules, we are of the considered view that for promotion to SI Gr.III/Gr.II notionally w.e.f. 16.2.2011, the vacancies of 9 posts in the combined cadre is to be considered and DPC is to be convened as per the Recruitment Rules which were in force. The only way to consider promotion of

the eligible employees to the post of SI Gr.II after 16.2.2011 is to adopt the provision of the rules for promotion to the post of SI Gr.III, which has to be accepted to be same as SI Gr.II after merger of both the cadres on 17.2.2011 w.e.f. 1.1.2006. Hence, we are unable to accept the contention of the respondents that as on 16.2.2011, there were only 5 vacant posts, since the posts in the cadre of SI Gr.II were not taken into consideration.

17. From the pleadings of the respondents, it is clear that such a situation has arisen entirely due to fault of the authorities. Firstly, the DPC and review DPC were held on 5.9.2014 and 26.6.2015 respectively, without first ascertaining the vacancies available in the cadre. Secondly, the mistake in the assessment of vacancy could not be identified by the respondents within a reasonable time after the applicant was allowed ad hoc promotion w.e.f. 13.10.2010 and regular promotion w.e.f. 5.9.2014 with notional seniority from 16.2.2011 and the mistake was identified after a lapse of about three years till 16.10.2017 (A/7) when the show cause notice was issued to the applicant. There is no whisper in the pleadings of the respondents about the reasons for such mistake on the part of the authorities and for delay in identifying the said mistake. Thirdly, the reasons mentioned in the respondents' pleadings for not considering the vacancies in the cadre of SI Gr. II before deciding the case of reversion of the applicant, are not acceptable as discussed in para 16 of this order.

18. It is seen from the letter dated 28.9.2017 of the respondent no. 2 (Annexure-A/6), based on which the impugned orders have been passed by the respondents, that the said letter at Annexure-A/6 stated the following:-

“2. In view of above, DCO is required to convene a review DPC after issuance of show cause notice to the affected employees and rectify the error committed in DPC held on 09.05.14 and 26.06.15.”

The above instructions implied convening the review DPC before taking any decision in this matter. Although the impugned order dated 26.3.2018 (A/10) has referred to the review DPC held on 16.11.2017, but copy of the proceedings of the review DPC meeting held on 16.11.2017 has not been furnished by the respondents in their pleadings in OA No. 170/18. However, it is seen that a copy of the said proceedings of the DPC held on 16.11.2017 has been furnished with the written notes submitted by the respondents at Annexure-R/11 of the OA No. 650/17, which was heard alongwith OA No. 170/18 and other OAs in this batch. It is seen from the said proceedings that name of 4 candidates were recommended for promotion to the post of SI Gr. III against 5 vacancies in the cadre of SI Gr.III as assessed on 16.2.2011. Thus it is clear that the review DPC held on 16.11.2017 did not take into consideration the total vacancies in the merged cadre of SI Gr.II and SI Gr.III as discussed earlier and no reason for

not recommending any candidate for promotion against 5th vacancy has not been mentioned in the proceedings of the DPC held on 16.11.2017.

19. The impugned order dated 26.3.2018 (A/10) stated as under:-

"OFFICE OF THE DIRECTOR OF CENSUS OPERATIONS, ODISHA
Government of India, Ministry of Home Affairs
No. 20/5/2017-Estt.

Dt., 26.03.2018

In pursuance of Office of the Registrar General, India, New Delhi letter No. 23021/01/16-Ad.IV/Ad.V dated 11.3.2018 and as per recommendations of this Office Review DPC held on 16.11.2017, the following officials of this Directorate hereby stand reverted to the post of Senior Compiler w.e.f. 16.2.2011 as there were no core posts available for their regular promotion :-

Sl. No.	Name of the Officials
1	Shri Tapan Kumar Bose
2	Shri Pranab Kumar Mishra
3	Shri Sharat Kumar Mishra
4	Shri Hrushikesh Dehury
5	Shri bharat Chandra Nayak
6	Shri Pramod Patnaik

(Sd/-)
JOINT DIRECTOR"

It is seen from above that the order dated 26.3.2018 (Annexure-A/10) has not mentioned any reason, if assigned by the review DPC dated 16.11.2017 or by the respondents for reversion of the applicant. The said order is clearly a non-speaking order. It is also not mentioned in the said order as well as in the pleadings of the respondents if the reply furnished by the applicant in response to the show cause notice was duly considered by the review DPC held on 16.11.2017. Hence, we are of the considered view that the impugned order dated 26.3.2018, being a non-speaking order, violates the principles of natural justice and the case of the applicant deserves to be reconsidered in accordance with the law.

20. It is mentioned by the respondents in the reply to the MA No. 372/19 in OA No. 170/18, that the applicant's case was considered by the respondents in the DPC for promotion to the grade of SI Gr. II and he has been promoted as such w.e.f. 11.6.2019 vide the order at Annexure-R/22 enclosed with the reply.

21. In view of the above discussions, the impugned orders dated 15.11.2017 (Annexure-A/9) and dated 26.3.2018 (Annexure-A/10) are set aside and the matter is remitted to the respondent no. 2 to reconsider the case of the applicant for notional promotion as SI Gr. II/Gr.III w.e.f. 16.2.2011 by convening a review DPC after taking into account total vacancies available in the merged cadres for the posts of the SI Gr.II and SI Gr.III as discussed in paragraph 16 of this order and if the applicant is recommended by the DPC for notional promotion w.e.f. 16.2.2011, then the respondents will allow all consequential benefits as per the letter dated 26.8.2014 (Annexure-A/3) of the

respondent No.2. In case the applicant cannot be promoted w.e.f. 16.2.2011 in view of the available vacancies in the combined cadre as on 16.2.2011, then his case for notional promotion will be considered on or after 17.2.2011 as and when vacancies of SI Gr.II/Gr.III are available as per the rules prevalent during the aforesaid period. If the applicant will be found eligible for notional promotion to the combined cadre of SI Gr. II and Gr.III from an earlier date, then he will be assigned the seniority from the date/year he would be found suitable for such promotion as per the available vacancy and he would be allowed all consequential service benefits for such notional promotion as per the rules. The respondent No.2 will communicate the decision taken in this regard to the applicant through a speaking order within four months from the date of receipt of a copy of this order based on the recommendation of the review DPC to be convened as per this order. The OA No. 170/18 is accordingly allowed in part as above.

22. The CP No. 57/2019, which was filed in the OA No.170/18 for violation of the interim order of this Tribunal dated 3.4.2018, is dropped as there is no proof that the respondents have wilfully violated the order dated 3.4.2018 of the Tribunal taking into consideration the fact that the impugned order dated 26.3.2018 was passed prior to 3.4.2018. The notices, if any, issued to the respondents in CP No. 57/19 are accordingly discharged.

23. Since the facts and circumstances of other OAs in this batch are similar to the facts and circumstances of the OA No. 170/18, these OAs are also allowed in part in terms of the paragraph 21 of this order. The CP Nos. 58, 59 and 60 of 2019 filed in the OA Nos. 172/18, 171/18 and 169/18 respectively, are also dropped and notices, if any, issued to the respondents in these CPs are also discharged as in the CP No. 57 of 2019 in terms of paragraph 22 of this order. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath