

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/1129/2013

Reserved on: 23.10.2019

Pronounced on: 14.11.2019

Between:

Bhanudas Tukaram More,
S/o. Thukaram Laxma More,
Aged about 47, Occ: Scientific Officer-C
O/o. Heavy Water Plant, Manuguru,
Khammam District,
R/o. D. No. D2-3/3, D. No. 15, HWP.

... Applicant

And

1. The General Manager,
O/o. Heavy Water Plant,
Manuguru, Khammam District.
2. The Union of India,
Rep. by its Secretary,
Department of Atomic Energy,
Anushakthi Bhavan,
CSM Marg, Mumbai – 400 001.

... Respondents

Counsel for the Applicant ... Mr.K. Sudhakar Reddy

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Ms. Manjula Das, Judicial Member

Hon'ble Mr. B.V. Sudhakar, Administrative Member

ORDER

{As per B.V. Sudhakar, Administrative Member}

2. The OA is filed challenging the impugned order dated 23.7.2012 in regard to promotion.

3. Brief facts are that the applicant who belongs to the Scheduled Caste ("SC") joined Tarapur Atomic Power Station (TAPS) as a Junior Trainee of the respondents organisation on 7.10.1985 and after completing 1 ½ years service, joined as Scientific Asst.-B at Kakrapur Atomic Power Station (KAAP) on 9.4.1987. Later, applicant was further promoted as Scientific Asst. C on 1.8.1990 and Scientific Officer- SB on 1.8.1994. Applicant passed A.M.I.E. in 1997. Applicant is presently working as Scientific Officer-C at Heavy Water Plant, Manuguru and his claim is that he should be promoted as Scientific Officer-F as per seniority and merit. More so, since he belongs to the SC community with the rule of reservation being in his favour. Applicant represented on 16.12.2010 and the same has not been disposed. Consequently, applicant filed OA 402/2012 wherein the respondents were directed to consider the request for promotion as Scientific Officer - F, which they did and rejected the claim vide impugned order dated 23.7.2012. Aggrieved, the present OA has been filed.

4. The contentions of the applicant are that there are no adverse remarks against the applicant and hence, he is eligible to be promoted as Scientific Officer - F based on the criteria of Merit cum Seniority on par with his juniors. Not granting due promotion is against the rules and regulations of the respondents organisation. Applicant was called for

promotion in 2006 but was not given with no valid reason and the same is in violation of Article 16 (4-A) of the Constitution. Orders of the Tribunal in OA 402/2012 were not acted upon as per rules. Many representations made were not considered.

5. Respondents confirm that the applicant was promoted as Scientific Officer – C on 16.5.2005 retrospectively from 1.8.2001 after he was found fit for promotion for the said grade as per the rules and regulations of the respondents organisation. After joining as Scientific Officer/C (SO/C) applicant represented on 16/12/2010 for consideration of promotion to the post of SO/C from 1.8.1997 and to the subsequent positions of SO/D, SO/E and SO/F from 1/8/2000, 1/8/2004 and 1/8/2008 respectively. Promotions in the respondents organisation are not vacancy based but decided by an interview committee as per Merit Promotion Scheme after considering the number of years of service, APAR gradings etc. Applicant after being found eligible to be considered for the promotion to the post of SO/D w.e.f 1.8.2006 was interviewed and was found unfit. Later, applicant was called for interview to consider him for the promotion to the grade of SO/D in 2008, 2009, 2010, 2011 and 2012, but he did not appear for the interview and therefore, the allegation that he was not considered for promotions after being promoted as SO/C is not true. Without appearing in the interview promotions cannot be granted. Relaxation under reservation policy is applicable only up to the post of SO/C and the same was extended to the applicant. Orders of the Tribunal in OA 402/2012 were acted upon as per rules.

Applicant filed a rejoinder wherein he claimed that he has joined the post of SO/C subject to legal and constitutional rights as per his certificate of assumption dt. 21.2.2005. Even the promotion to SO/C was granted after 7 years in 2001 instead of 1.8.1996 infringing the reservation norms. Subsequent promotions to SO/D, SO/E & SO/F in 2000, 2004 & 2008 respectively were not granted from the dates due. Though applicant performed well in the interview in 2006 he was not promoted and when audio/video recording of the interview was sought it was denied. Claim of the respondents that seniority has no role in promotion is incorrect. The percentage representation of SC employees in SO/F grade in Heavy Water Plant where the applicant is working is negligible/nil. Applicant claims that SO/D is the lowest post in Group A and he should have been considered for SO/D in 1997 from the feeder cadre of SO/SB based on reservation policy. Representations were not disposed with proper and cogent reasons. Department has not given an opportunity to appear before the DPC. By delaying and not granting promotion, applicant has been put to financial loss and flagrantly denied what is legitimately due.

Respondents have filed additional reply statement and written arguments stating that there are no provisions to accept promotions on a conditionally basis. Representations made were appropriately disposed vide letters dated 2.2.2007 and 9.4.2008. However, further representations dated 27.2.2007 & 2.5.2008 were not replied as there were no points raised therein. A detailed reply was indeed given to the representation dated 16.12.2010 vide letter dated 23.7.2012. Applicant by

not appearing for the interviews since 2007 though called has adversely impacted his future promotions for which the respondents are not responsible.

Applicant filed an additional rejoinder which was also gone through in depth.

6. Heard both the counsel and perused the pleadings on record.

7. i) The issue hovers around the promotion of the applicant to different positions in the respondents organisation from SO/C to SO/F. Respondents promoted the applicant to SO/C grade vide letter dated 16.5.2005 w.e.f 1.8.2001. Applicant who joined SO/SB on 1.8.1994 claims that he is eligible to be promoted to the post of SO/C in 1996 from the feeder cadre of SO/SB after completing the residency period of 2 years in 1996, by applying the relaxed standards of promotions to SC employees and in 1997 in the normal course. Respondents state that as per his eligibility he was considered and promoted in 2001. Applicant claims that the delay in considering the applicant for nearly 7 years to the grade of SO/C has marred his future promotion opportunities.

ii) Being on the question of promotion, it must be mentioned that the respondents have evolved a Merit Promotion Scheme wherein employees are promoted based on completing the required residency period in the feeder cadre, grading in APARs, performance in the interview etc. Promotion is not related to the availability of a vacancy. In this context the following details will give a fairly clear picture as to how the issue of promotion of the applicant unfurls.

To begin with the APAR gradings of the applicant from 1993-94 are presented hereunder:

Sl. No.	Period	ACR/APAR Grading
1	1993-1994	A2
2	1994-1995	A2
3	1995-1996	A2
4	1996-1997	A3
5	1997-1998	B+
6	1998-1999	B+
7	1999-2000	B+
8	2000-2001	B+
9	01.08.01 – 25.11.01	B
10	26.11.01 – 31.07.02	A2
11	01.08.02 – 17.02.03	A2
12	18.02.03 – 31.07.03	A3
13	2003 - 2004	A2
14	2004 – 2005	A2
15	2005 – 2006	A2

Allied promotion norms w.e.f. 1991 of the respondents organisation in regard to APAR gradings are extracted hereunder:

Promotion to the Grade	Residency period (Minimum Eligibility Period)	ACR/APAR Gradings required
SO/SB to SO/C	4	A1
	5	A2
	6	A3
	7	A3B+
Promotion to the Grade	Residency period (Minimum Eligibility Period)	ACR/APAR Gradings required
SO/C to SO/D	5	A1
	6	A2
	7	A3
	8	A3B+

Applicant being a SC employee the relaxation applicable in nexus with promotion w.e.f 1991 are reproduced below

Gradings for General Candidates	Gradings for SC/ST candidates with equal no of years service as general candidates having the same number of years of service
A1 for 3 years or A1 for 2 years + A2 for 1 year	A1 for 1 year + A2 for 2 years
A2 for 3 years	A2 for 2 years + A3 for 1 year
A2 for 2 years + A3 for 1 years	A2 for 1 years + A3 for 2 year
A2 for 1 years + A3 for 2 years	A3 for 3 years
A3 for 3 years	A3 for 2 years + (B+) for 1 year
A3 for 2 years + (B+) for 1 year	A3 for 1 years + (B+) for 2 years
A3 for 1 years + (B+) for 2 year	(B+) for 3 years

Based on the above, applicant promotions are to be regulated to the extent of APAR gradings, residency period, interview performance, etc. Accordingly, applicant based on his eligibility and performance was promoted as SO/ C in 2005 w.e.f. 01.08. 2001. It needs to be adduced at this juncture that promotion is not granted just based on the length of service, but is granted by reckoning many other factors like performance, APAR grading, ability to perform, aptitude and attitude to work, disposition to take responsibility etc. One can make a request to be considered for promotion but one cannot claim it as a matter of right as has been observed by the Hon'ble Supreme Court in ***Dev Dutt v. Union of India, (2008) 8 SCC 725***, as under:

“One may not have the right to promotion, but one has the right to be considered for promotion”

Respondents considered the applicant for promotion to various cadres and granted promotion whenever he was found eligible. That is how, applicant has risen to the cadre of SO/C on joining the respondents organisation as Junior Trainee way back in 1985.

iii) Respondents promoted the applicant as SO/C in 2001 based on eligibility as was worked out by taking into consideration the APAR grading during the residency period and performance in the relevant interview. Learned counsel for the applicant has objected that guidelines for promotion were not let known to the applicant. Respondents being a scientific organisation has been meticulously following a well established method of Merit Promotion Scheme over the years. Applicant is a senior official and claiming that he is not in the know of things pertaining to Promotion Scheme is too naive to be accepted. The objection raised is technical and it in no way helps in denying the aspect that the applicant was not eligible to be promoted on dates due as per prevalent norms. *De facto*, the system adopted by the respondents is transparent and objective as expounded in the paras supra. Applicant accepting the promotion to SO/C vide his certificate of assumption on 21.2.2005 with a condition is not a reasonable administrative practice. Either one should accept the promotion or decline. Rules do not provide for any conditional acceptance of promotion as was rightly pointed out by the respondents.

iv) Later, in the year 2006, applicant was called for interview to be promoted as SO/D wherein he was found to be unfit. Tribunal should not exercise appellate jurisdiction to intervene on behalf of the applicant, in regard to the outcome of the interview which is a part of the selection process, unless it is malafide and discriminatory. In fact, Hon'ble Apex Court in *Satya Narain Shukla v. Union of India*, (2006) 9 SCC 69, highlighted the permissible extent of judicial intervention in selection process. The Court has held as under in that case:-

“It is for the Government to consider how to streamline the procedure for selection. We can only examine if the procedure for selection as adopted by the Government is unconstitutional or otherwise illegal or vitiated by arbitrariness and mala fides.”

We find that the procedure adopted by the respondents is fair, transparent and objective as brought out in the paras supra. Tribunal has very little role in going into the selection procedure, which is the domain of the respondents. Further, we do not find any malafide intention or arbitrariness in not promoting the applicant to SO/D as the respondents followed rules and regulations governing promotion. Besides, there being no provision in the rules, applicant seeking audio/ video recording of the interview is farfetched. Therefore applicant finding fault with the decision of the respondents in not promoting to SO/D is unfair, to say the least. One another submission made by the applicant that he should have been promoted to SO/D grade instead of SO/C claiming that it is the lowest grade in the Group A cadre to apply reservation norms is not maintainable since the said assertion is not backed by submission of any valid document by the applicant rebutting the submission of the respondents that the lowest cadre in Group A is SO/C for applying reservation norms.

v) Further, when the applicant was called for interview to be considered in the subsequent years in 2008, 2009, 2010, 2011 and 2012, he chose not to appear. When the applicant does not appear for interview he cannot expect promotions all the way from SO/ D to SO/ F. Applicant has to follow the selection procedure as opined by the Hon’ble Supreme in the case cited at para iv. It is not in the realm of reason as to how the

applicant can expect promotions without going through the process of selection. We take support of the Hon'ble Apex court direction in making the above assertion, as under:

Union of India v. B. Annathurai, (2009) 11 SCC 318 : (2009) 2 SCC (L&S) 628 at page 326

28 [Ed.: Para 28 corrected vide Official Corrigenda No. F.3/Ed.B.J./48/2009 dated 12-5-2009 and No. F.3/Ed.B.J./64/2009 dated 11-6-2009.] . If the respondents despite being given opportunity to appear in the selection chose not to appear in the selection and stayed away from it they cannot seek for direction from the court for their promotion without appearing in the interview from a retrospective date. The reason for such non-appearance in the interview when called for selection and also for not answering questions in the selection when they appeared has not been given by the respondents. In any case such action on their part was at the peril of their own service career and also definitely detrimental to their interest. Having taken such a vital unilateral decision they now cannot seek to take advantage of their own wrong.

Applicant has taken a unilateral decision of not appearing in the interviews called for in the years commencing from 2008 onwards and after doing so, expecting promotion is not in consonance with the cited observation of the Hon'ble Apex Court. Therefore, applicant seeking promotion in the cadres from SO/D to SO/F without being tested in the interview does not stand to reason.

vi) Lastly, it must be reiterated that Promotions have to be effected by following the rules. Hon'ble Supreme Court has held that any action in respect of matters covered by Rules has to be taken as per rules in a cornucopia of judgments as under:

The Hon'ble Supreme Court observation in T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544 held that "Action in respect of matters covered by rules should be regulated by rules". Again in Seigal's case (1992) (1) supp 1 SCC 304 the Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed." In another

*judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held
“ the court cannot de hors rules ”*

Applicant expects that he should be promoted from SO/D to SO/F without appearing in the interview which is a part of the selection process. In other words, promotion to be granted against rules. In addition, applicant stating that he has to be selected to the SO/C much earlier to the date of granting promotion, is not reasonable since it is not just length of service but being eligible in tune with the selection process is an essential criteria which has to be fulfilled. Therefore, the applicant seeking promotions against norms cannot be conceded to, in view of the Hon'ble Apex Court judgment that deviation from rules has to be curbed and snubbed.

vi) Thus, as can be seen from the above, the relief sought by the applicant to be promoted as SO/F has no merit, since the respondents have taken decisions in regard to the aspect of promotion as per extent rules and regulations of the respondents organisation and as per legal principles referred to above. Thus, in sum, we find no merit in the OA and hence dismissed, with no order as to costs.

(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

Dated, the 14th day of November, 2019

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