

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

**Original Application No.20/485/2019**

**Date of Order: 22.08.2019**

Between:

Musthaq Ahmad Baig  
Assistant, TOMD/SDSC SHAR  
Sriharikota, SPSR Nellore District, AP ... Applicant

AND

1. Union of India Represented by Secretary  
Department of Space  
Antrix Bhavan, Bangalore – 560 094.
2. Director, SDSC SHAR  
Sriharikota, SPSP Nellore district, AP.
3. Controller, SDSC SHAR  
Sriharikota, SPSP, Nellore district, AP
4. Sisir Gandhi Ch, Assistant, SDSC-SHAR  
Sriharikota, SPSP, Nellore District, AP
5. Rohini Seku, Assistant,  
SDSC-SHAR,  
Sriharikota, SPSP, Nellore District, AP. ... Respondents

Counsel for the Applicant ... Mr.K.V.Manikya Rao  
Counsel for the Respondents ... Mr.V. Vinod Kumar, Sr. CGSC

**CORAM:**

**Hon'ble Mr. B.V. Sudhakar, Member (Admn.)**

**ORAL ORDER**

2. OA has been filed in regard to promotion of the applicant to the post of Senior Assistant.

3. Brief facts of the case are that the applicant was discharged from Indian Air Force on 31.05.2014. Respondents have advertised to fill up the vacancies of Assistants on 17.7.2014, which includes vacancies for the Ex-servicemen as well. Applicant applied for the post of Assistant and he was called for interview on 13.05.2015 under Ex-servicemen quota. Applicant was appointed as Trainee in the respondents organization on 05.10.2015 and the training was completed/terminated on 20.01.2016. Applicant received the offer of appointment on 25.01.2016 and he was appointed on 12/16.02.2016. Applicant's name was shown in the provisional seniority list of Assistants, as on 1.01.2017, at Sl. No.84, as per the provisional seniority list released on 20.4.2017 (Annexure 6). The claim of the applicant was that his juniors who were placed at Sl. No.89 & 90 were called for the written test to be conducted for promotion to the post of Senior Assistant. Applicant represented on 05.04.2019 to allow him to appear in the written examination for getting selected to the said post. As there was no response, OA is filed.

4. The contentions of the applicant are that the rules for recruitment for Ex-servicemen, as laid down by the Central Government are equally applicable to the respondent organization. As per DoPT Memo dated 23.07.1987, there is no need to verify the antecedents of Ex-servicemen, if they were reemployed in a civil post within a period of one year of discharge from the defence forces. The applicant was reemployed within a period of one year from the discharge of the defence force, and hence, there was no need for the respondents to write to revenue authorities to verify the antecedents. This process of verification has led to some delay consequently, and hence, his service was short by 35 days against the requirement of 3 ½ years, to appear in the examination for the post of Sr. Assistant.

5. Respondents in their reply statement have stated that the Blank Attestation Forms and Special Security Questionnaire (SSQ) Forms were sent to the candidate on 22.05.2015. The respondents received the same on 28.6.2015, after duly filled up. As a result, the applicant fell short of 35 days in fulfilling the residency period as on 11.01.2018 to appear in the examination for the post of Sr. Assistant. Consequently, his candidature for the post of Sr. Assistant was not considered.

6. Heard both the counsel on 21/22.08.2019 and perused the pleadings on record.

7. (I) The contention of the applicant is that he has fulfilled the criteria of 3 ½ years of residency period in the cadre of Assistant to be eligible for appearing in the examination for Sr. Assistant taking into reckoning the pending delay in getting his antecedents verified through revenue authorities. Applicant got discharged from Air Force on 31.5.2014. Respondents have sent SSQ Forms and attestation form on 22.5.2015. Therefore, the recruitment process commenced within one year of discharge from the Air Force. Consequently, DoPT OM dated 23.7.1987, applies to the case of the applicant, is the claim of the applicant. After due verification, he was offered appointment on 25.01.2016. Further, in regard to promotion, respondents have considered the case of the juniors who have figured at Sl. No.89 and 90 in the provisional seniority list and were allowed to participate in the examination.

(II) Taking the above facts in view, an interim order was issued by this Tribunal on 29.05.2019 by directing the respondents to allow the applicant to appear in the examination for the post of Senior Assistant, subject to outcome of the OA. The applicant appeared in the examination and got qualified for the said post.

(III) As can be seen from the details, the respondents have allowed the juniors to write in the examination since they have completed the residency period as they were appointed on compassionate grounds. Applicant though he is senior to them since he was falling short of 35 days of required residency period in the post of Assistant, was not permitted to write the exam.

(IV) Respondents have explained and given the details as to how the applicant was falling short of the 35 days, required to appear in the said examination.

(V) Learned counsel for the applicant has submitted that juniors to the applicant were selected and promoted. He also contended that promoting a junior, by ignoring a qualified senior, is against law.

(VI) In support of his contention, learned counsel for the applicant has produced a copy of the Judgement of Hon'ble Supreme Court in **Union of India v. Smt. Sadhana Khanna**, delivered on 14.12.2007 [in Appeal (Civil) No.8208 of 2001, and claimed that his case is covered by the aforesaid Judgement, the relevant paras of which are extracted hereunder:

“9. The Tribunal allowed the O.A. by its order dated 24.9.1999. In the said O.A. it was hold that the Department of Personnel and Training had issued an Office Memorandum dated 19.7.1989 soon after the decision of this Court in R. Prabha Devi and others vs. Government of IndiaThrough Secretary, Ministry of Personnel and Training,

Administrative Reforms and others 1988(2) SCC 233 stating that where the junior had completed the eligibility requirement of promotion then their seniors will also be considered even if they have not completed the eligibility period.

10. xxxxxxxxxxxxxxxxxxxx

11. It may be noted that the respondent was offered appointment vide letter dated 5.7.1983 which is after 1.7.1983 from which the eligibility was to be counted. Hence, it is the Department which is to blame for sending the letter offering appointment after 1.7.1983. In fact, some of the candidates who were junior to the respondent were issued letters offering appointment prior to 1.7.1983. Hence it was the Department which is to blame for this. Moreover, in view of the Office Memorandum of the Department of Personnel and Training dated 18.3.1988 and 19.7.1989 the respondent was also to be considered, otherwise a very incongruous situation would arise namely that the junior will be considered for promotion but the senior will not."

(VII) Normally, the matter of promotion is to be adjudicated by the Division Bench of this Tribunal. However, with the consent of both the counsel, heard the matter. Based on the aforesaid facts, respondents are directed to examine the request of the applicant, keeping in view the Hon'ble Supreme Court Judgement as well as the extant rules and regulations and decide the issue by issuing a speaking and reasoned order within a period of two months from the date of receipt of a copy of this order.

With the above observations, the OA is disposed of with no order as to costs.

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

Dated, the 22<sup>nd</sup> day of August, 2019

nsn