

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 4085/2015

New Delhi, this the 14th day of November, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**



Smt. Manju Seth, IFS
(Aged about 61 years)
Retired as Joint Secretary,
D/o Shri Suraj Prakash,
C-633, New Friends Colony,
New Delhi-110 065.

.. Applicant

(By Advocate : Shri Padma Kumar S.)

Versus

1. Union of India,
Through Secretary,
Ministry of External Affairs,
South Block, New Delhi.
2. Secretary,
Department of Personnel and Training,
North Block, New Delhi.
3. Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.

.. Respondents

(By Advocate : Shri H.K. Gangwani)

O R D E R (ORAL)**Justice L. Narasimha Reddy, Chairman**

The applicant was in the Indian Foreign Service. She reached Grade IV of that service in the year 2009 and became eligible for promotion to Grade III on 01.01.2013. The steps in this behalf were initiated and the case of the applicant was also considered. However, the Competent Authority accepted the recommendations only on 22.08.2014. By that time, the applicant retired from service on 31.03.2014. This O.A. is filed with a prayer to extend the benefit of promotion to Grade III on notional basis, at least for the purpose of pensionary and other ancillary benefits.

2. The applicant contends that once she was in the zone of consideration and the DPC recommended her case, the mere fact that she retired from service on the date of acceptance of the recommendations of the DPC, should not make any difference.

3. The respondents filed a detailed counter affidavit opposing the O.A. According to them, the law

does not permit the promotion of any retired employee, and once the applicant retired from service on 31.03.2014, she cannot claim the benefit of promotion on the basis of the recommendations, which were accepted on 22.08.2014. Both the parties relied upon several Official Memoranda and orders passed by this Tribunal.



4. We heard Shri Padma Kumar S., learned counsel for the applicant and Shri H.K. Gangwani, learned counsel for the respondents.

5. It is no doubt true that the applicant became eligible to be considered for promotion to Grade III on 01.01.2013. For vacancies referable to the year 2012-13, the DPC, however, met a bit late. The recommendations were accepted only on 22.08.2014. By that time, the applicant retired from service on 31.03.2014.

6. The question as to whether a retired employee can be promoted with effect from an earlier date, is no longer *res integra*. In **Union of India and Others** vs.



K.K. Vadera and Others, 1989 Supp (2) SCC 625, the Hon'ble Supreme Court categorically held that promotions can only be prospective in operation. The only exception carved out is where the employee was superseded by his junior on account of pendency of disciplinary or other similar proceedings and, at a later stage, he was exonerated of the same. In such a case, the employee, even if retired, is entitled to be extended the benefit of promotion, on par with his junior. This again is subject to the condition that the junior should have been promoted with effect from a date, that is earlier to the date of retirement of such employee. In the instant case, the applicant did not state that any junior to her was promoted, before her retirement.

7. The inclusion of a retired employee in the zone of consideration is only to ensure that (a) the exclusion shall not result as a wind fall for those who are otherwise outside it, and (b) shall not expose the officers, who were otherwise in the zone of consideration, to face the competition from those, who

were not eligible for consideration, but for the retirement of the employee. This has been explained, time and again, in the official memoranda as well as judgments.



8. We do not find any merit in the O.A. and the same is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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