

**Central Administrative Tribunal
Principal Bench**

OA No.4188/2016



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

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

Bhartesh Kumar Mishra, Group 'A',
Aged about 61 years,
S/o Dr. R.K.Mishra,
R/o F-26/115, Sec-7,
Rohini, Delhi-110085.

...Applicant

(By Advocate : Shri M.K. Bhardwaj)

Versus

1. Union of India,
Through its Secretary,
Deptt. of Official Language,
Ministry of Home Affairs,
NDCC-II Building, Jai Singh Road,
New Delhi-110001.
2. The Jt. Secretary,
Deptt. of Official Language,
NDCC-II Building, Jai Singh Road,
New Delhi-110001.
3. Union Public Service Commission,
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi.

...Respondents

(By Advocate : Shri Satish Kumar)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

The applicant joined the service of the Department of Official Language, Ministry of Home Affairs as Assistant Director on 10.04.1991. He was promoted to the post of Deputy Director on 04.04.2002. Promotion to the post of Joint Director, is partly through promotion from the post of Deputy Director and partly through deputation. The applicant was promoted on ad hoc basis to the post of Joint Director on 26.11.2008, against the vacant post of Director. The grievance of the applicant is that though there existed vacancy and his vigilance clearance was given, the DPC was not convened in time, till he retired from service on 29.02.2016. In this background, he is claiming relief in the form of a direction to the respondents to treat his promotion to the post of Joint Director on regular basis w.e.f. 26.11.2008 and to treat him as having been promoted to the post of Director

w.e.f. 01.08.2014, on regular basis and to extend him the consequential benefits.



2. The applicant contends that had the DPC been convened for selection of candidates for promotion to the post of Joint Director within time, he would have been promoted to that post on regular basis and thereafter to the post of Director also. He made representations in this behalf and complaining that there was no positive response, he filed this OA.

3. On behalf of the respondents, a detailed counter affidavit is filed opposing the OA. It is stated that the ad hoc promotion of the applicant to the post of Joint Director itself was against a vacancy of the post of Director, which is otherwise, impermissible and the question of treating the applicant as having been promoted on regular basis does not arise. It is also stated that convening of DPC depends upon the existence of vacancies and other administrative factors

and the applicant cannot claim promotion to the post of Joint Director, much less to the post of Director, as a right.



4. We heard Shri M.K. Bhardwaj, learned counsel for applicant and Shri Satish Kumar, learned counsel for respondents.

5. The brief particulars of the applicant have been furnished in the preceding paragraphs. The promotion from the post of Deputy Director (OL) is to the post of Joint Director. The applicant was promoted on ad hoc basis to the post of Joint Director through order dated 26.11.2008. It is with reference to that date, that the applicant wants his promotion to be treated as on regular basis. It, therefore, becomes necessary to have a glance of the said order. It reads as under :-

“Office Order

Subject : Adhoc promotions in the grade of Joint Director (OL) of Central Secretariat (Official Language) Service.



The following regular Deputy Director (OL) of Central Secretariat (Official Language) Service are hereby promoted in the grade of Joint Director (OL) on adhoc basis for a period of one year or till the regular Joint Directors are available whichever occurs earlier :-

Sl. No.	Name	Present office	Office of posting
1.	Smt. Suniti Sharma	D/o Official Language	D/o Industrial Policy & Promotion
2.	Sh. Bhartesh Kumar Mishra	D/o Fertilizers	M/o Culture (against the vacant post of Director)
3.	Sh. Prem Singh	DOPT	D/o Science & Technology

2. These promotions are purely on adhoc basis and will not give any right for determining seniority and regular appointment.

3. The other conditions of aforesaid order will remain same.

4. It is requested that abovementioned officers may please be relieved with immediate effect and instruct them to report to the concerned ministries. Copies of their joining/posting orders

may please be endorsed to this Department also.”



6. It is clearly mentioned that the applicant was working in the Ministry of Fertilizers and was promoted on ad hoc basis in the Ministry of Culture against the vacancy of Director. This itself is in deviation from the relevant service Rules. Though an official can be promoted to the next higher post on ad hoc basis or on regular basis, the question of his being promoted even on ad hoc basis to a still higher post, does not arise.

7. That apart, the question of treating an employee as having been promoted with effect from a particular date, without subjecting him to the DPC, does not arise. Presumptions and imaginations hardly have any role to play in the matters of this nature. When the Recruitment Rules provide for the selection process, no employee can skip that and get promotion. If the applicant was of the view that the convening of DPC was being delayed, he could have approached the



Tribunal at the relevant point of time. Having waited till his retirement, he came forward with the plea of this nature. It is totally impermissible in law. Even when a promotion is made on the basis of recommendations of the DPC, it is required to be prospective in nature. The law laid down by the Hon'ble Supreme Court in this behalf is very clear in ***Union of India and Others vs. K. K. Vadera and Others*** 1989 Supp (2) SCC 625. Their lordships held as under:-

“5.....We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the

suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”



8. Though the learned counsel placed reliance upon two judgments of Hon'ble High Court of Delhi in ***Govt. of NCT of Delhi and Ors. Vs. Sh. Rakesh Beniwal and Ors.*** WP(C) No.7423/2013; and ***Dr. Sahadeva Singh Vs. UOI & Ors.*** WP(C) No.5549/2007, we do not find anything in them, which has an effect of taking a view, contrary to the one laid down by the Hon'ble Supreme Court. On the other hand, the judgment of the Hon'ble Supreme Court in ***Baij Nath Sharma vs. Hon'ble Rajasthan High Court at Jodhpur and Another*** (1998) 7 SCC 44, was quoted and the principle laid down therein is applied. The judgment in ***K.K. Vadera*** (supra) constituted the basis for the judgment in ***Baij Nath Sharma's*** case (supra).

9. In these circumstances, we do not find any basis to grant any relief to the applicant. The OA is, accordingly, dismissed.

There shall be no orders as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

‘rk’

