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**SooperKanoon Citation :** [sooperkanoon.com/432628](http://sooperkanoon.com/432628)

**Court :** Andhra Pradesh

**Decided On :** Apr-19-2008

**Reported in :** 2008(4)ALD521; 2008(4)ALT12

**Judge :** L. Narasimha Reddy, J.

**Appeal No. :** Writ Petition No. 8642 of 2008

**Appellant :** B. Ashok Kumar

**Respondent :** Board of Intermediate Education Rep. by Its Vice Chairman and Prl. Secretary to Higher Education, Go

**Advocate for Def. :** Kumari C. Sindhu Kumari, SC

**Advocate for Pet/Ap. :** C. Srinivasa Baba, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**L. Narasimha Reddy, J.**

1. The petitioner was initially employed as L.D.C., in the Board of Intermediate Education, the 1st respondent, in the year 1972. Thereafter, he earned promotions as U.D.C., Office Superintendent, Administrative Officer, and ultimately as Deputy Secretary. The petitioner retired in the category of Deputy Secretary, on 31-10-2007, on attaining the age of superannuation. The grievance of the petitioner is that, he ought to have been promoted to the post of Regional Inspection Officer-cum-Joint Secretary, and complains that he was wrongfully denied the same. The petitioner seeks the relief of a direction to the respondents to give notional promotion to him, to the post of Joint Secretary.

2. Sri C. Srinivasa Baba, learned Counsel for the petitioner, submits that though the probation of all the four Deputy Secretaries, appointed in the year 2004, was declared on 28-06-2007, the respondents promoted only the first two candidates, namely, C. Nanda Kumar and D. Jagannadham, on 08-08-2007 to the posts of Joint Secretaries, in category-I. He contends that denial of promotion to the petitioner, particularly when there were vacancies; is illegal, arbitrary and unconstitutional.

3. Smt. C. Sindu Kumari, learned Standing Counsel for the respondents, on the other hand, submits that even assuming that there existed vacancies, the petitioner cannot claim promotion, as of right. She contends that the question, as to whether an incumbent must be promoted to a higher post, would depend upon the exigency of service, apart from the incumbent holding the requisite qualifications. Her further contention is that the petitioner can claim notional promotion only when it is established that any Deputy Secretary junior to the petitioner was promoted, and that such is not the case here.

4. It is no doubt true that the petitioner and three others were promoted as Deputy Secretaries vide proceedings dated 31-07-2004, and the probation of all the four officers was declared on 28-06-2007. The petitioner figured at Sl. No. 3 in the list of four Deputy Secretaries. All of them submitted a representation on 13-07-2007 to the 1st respondent, with a request to promote them as Joint Secretaries. However, only two candidates, by name, C. Nanda Kumar and D. Jagannadham, who are seniors to the petitioner, were promoted. Hardly within two months

thereafter, the petitioner retired from service.

5. It is urged that the other vacancies of Joint Secretaries were held by officials from other departments, on deputation. It is not alleged that such deputations came to be made against the vacancies, that have arisen after the petitioner acquired the eligibility for promotion. The very fact that two Deputy Secretaries, who are seniors to the petitioner, were promoted on 08-08-2007, discloses that the 1st respondent did take into account the exigency of service, as well as number of available vacancies for effecting promotions to the posts of Joint Secretaries. By the time, another vacancy became available, the petitioner attained the age of superannuation and retired from service.

6. An employee can seek the relief of notional promotion only when it is established that he was wrongfully denied promotion, and in his place a junior was promoted. It is from such date, that the employee is entitled to be promoted on notional basis. Such a comparison becomes necessary because of the reason that no employee, howsoever senior he may be, cannot claim promotion as of right, even assuming that there existed clear vacancies. Promotion has to be accepted by an employee, as and when it is accorded to him. Notional dates become relevant only when a person junior to him was wrongfully promoted, ahead of him. The second eventuality is where the promotions are provided for, on completion of a particular length of service, by the incumbent, in the feeder category. None of the circumstances existed in the instant case.

This Court does not find any merits in the writ petition. The writ petition is accordingly dismissed. There shall be no order as to costs.