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Court : Central Administrative Tribunal CAT Mumbai

Decided On : Jun-08-2001

Judge : S Jain, S T Govindan

Appellant : B.N. Singh and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Mr. Ranganathan

Advocate for Pet/Ap. : Mr. J.P.Deodhar, Shri. Natarajan

Judgement :

1. This combined order disposes of three applications, which are similar in nature, cover identical issues and have been heard together.

2. Heard Mr. S. Natarajan and Mr. Ranganathan, Proxy for Mr. J.P.Deodhar, learned Counsel for the applicant and respondents respectively.

3. Shri B.N. Singh, applicant in OA No. 1241/96, who joined B ARC as Tradesman 'B' on 3.12.1983, was promoted as Tradesman 'C' w.e.f.

1.11.1988. Though his promotion as Tradesman 'D' was due on 1.11.1993, it was granted to him only on 1.11.1995. This delay was on account of imposition of penalty on 14.12.92 of reduction in pay scale by two stages for two years w.e.f. 1.1.1993, which was confirmed on 22.2.1993.

In terms of the Merit Scheme for promotion from Tradesman 'C' to Tradesman 'D' a trade test followed by an interview is conducted, following which the persons found fit would be promoted from the previous 1st May or 1st November, as the case may be. The applicant having passed the trade test, was called for interview on 8.2.95 and had understandably been declared fit. Relevant promotion orders were issued on July 1995, but with effect from 1.11.1994. The promotion list, however, did not include him on the ground that he was undergoing penalty period. According to him on a wrong interpretation of rules promotion has been denied to him on time. In terms of Govt. of India's instructions dated 30.12.1997, imposition of penalty would not per se come in the way of Govt's servants' promotion--unless promotion has been specifically stopped--and if the Selection Committee finds him fit for promotion inspite of the punishment and records the findings accordingly, he should be promoted once the penalty period is over, but with effect from the due date. Therefore, in his case the promotion should have been ordered at the end of penalty but effective from 1.1.1995. The applicant's representation dated 12.9.1995, in this regard has been rejected on 22.12.1995. Hence this application.

4. In O.A. No. 1242/96, the applicant Shri Gautam is similarly placed and Shri B.N. Singh, except that the promotion under issue is from Tradesman 'D' to 'E' which became due on 1.11.1994, but was granted only on 1.11.1995 on the same grounds.

5. Shri G.S. Gaonkar, applicant in O.A. No. 1244/96 was similarly denied promotion as Tradesman 'G'/Foreman 'A' due on 1.5.1993, but was granted the same only on 1.5.1995 on the same grounds. In this case applicant was orally informed that recommendation of the interview committee was not given effect to in his case on account of DOPT's OM dated 14.9.1992, though the same in fact related to cases where disciplinary proceedings were pending, which was not the position in his case.

6. Advancing common arguments on behalf of the applicants in the three OAs. Shri Natarajan, learned Counsel for the applicants points out that the respondents have acted in an arbitrary and irregular manner by delaying their promotion as well

as rejecting their representations.

According to him law was clear that the mere fact that the penalty was on, did not automatically deny the consideration of the applicants' case for promotion and if he is found fit by DPC in that consideration, he should be granted promotion once the penalty period is over, but the promotion would be effective from the due date. Respondents have wrongly applied and interpreted the rules on the subject which led to this injustice being meted out to the applicant. This called for immediate interference by the Tribunal to render the applicants justice and undo the wrong done to them, pleads Shri Natarajan.

7. Forcefully rebutting the pleas raised on behalf of the applicants, Mr. Ranganathan. learned Proxy Counsel for the respondents argued that the applications were misconceived and further hit by limitation. All the three applicants have been promoted but they are seeking promotion from a period two years earlier, though they know fully well that in terms of DPT's OM No. 22011/5/86-Estt (D) 10.4.1989, they could not have been promoted before November 1995 on account of which they did not make even representations. At this late stage the claims made by them are not acceptable, urges Shri Ranganathan. It is further pointed out that 'Merit Promotion Scheme' followed by Deptt. of Atomic Energy (DAE) for promotion from one grade to another is not made on the basis of vacancies but on the basis of the work and development of individual scientific/technical personnel. These promotions to take place on 1st of May and 1st November of every year. Promotions and increments cannot be made on any other date. The applicants were undergoing penalty period when their promotions became due and, therefore, they were given promotions after the period was over in May or November, 1995, as was permitted. This alone was the correct procedure to be followed in terms of DOPT's guidelines on DPC dated 10.4.1989 and para 3.1 of DOPT's OM dated 14.9.1992. According to the above, if in the proceedings decision is finally against the official concerned findings in Sealed Cover would not be given effect (i.e. even if it in favour of the individual) and the case has to wait for the next DPC. As the applicants have been promoted, as soon they could be so promoted under instructions, no grievance remained. And their requests for antedating their promotions were misconceived. While the

contention of the applicants that they were suitably trade tested and were also called for interview as a part of the 'Merit Promotion Scheme,' they could not have been promoted while the penalty was on and even if they were found fit for promotion it could be granted only after the penalty period was over and that too with reference to the period prescribed by the Scheme i.e. only on 1st May or 1st November as the case may be, as otherwise it would create aberrations in the Scheme. According to the learned Counsel, the eligibility of the individual is washed or wiped away during the penalty period and naturally, therefore, he would have to wait till the next promotion became due in May or November as the case may be. There was nothing illegal or irregular about this arrangement. The 'Merit Promotion Scheme' was in vogue for a fairly long time and it has not been challenged and, therefore, the promotions ordered though on a much later date was correct and cannot be interfered with. Shri Ranganathan finally urged that the procedure adopted by the respondents was proper, correct and legal and in accordance with the rules and existing instructions, they deserved to be upheld and the applications deserved to be rejected. He also placed before us the minutes of the Departmental Promotion Committee, in which the applicants' cases were considered and assessments were ordered.

8. We have carefully considered the facts and circumstances of the case and perused the records including the minutes of the standing Selection Committee placed before us. The preliminary objection raised by the respondents is that the applications are hit by limitation and that they were seeking reliefs relating to periods two years earlier. Facts, however, are different. The applicants in all the three OAs have representated on 12.9.95, 23.11.95 and 11.9.95 against their delayed promotion and were answered on 12.9.95, 9.2.96 and 22.11.95 respectively. OAs have been filed on 15.11.96. The same cannot be held as hit by limitation as claimed by respondents. The objection is rejected.

9. On the merits, we observe that the undisputed facts in all the three applications are that the concerned applicants became due for promotion in 1993 i.e. from Tradesman 'C' to 'D' in the case of B.N. Singh (OA 1241/96). Tradesman 'D' to 'E' in the case of M.M. Gautam (OA 1242/96) and Tradesman 'F' to Foreman 'A' in the case of G.S. Gaonkar(OA 1244/96) were accordingly trade tested and interviewed

for promotion, but were not so promoted as they were undergoing punishment period.

They were promoted after the punishment period was over in 1995 w.e.f.

1.11.95 in the case of Singh and Gautam and w.e.f. 1.5.95 in the case of Gautam. The applicants' plea is that they should have been promoted on 1.1.95 itself but w.e.f. the dates they were due for promotion and were so found fit. Contention of the respondents is that the promotions have been correctly held back during the period when they were undergoing punishment and the same was ordered after the period was over but in terms of the 'Merit Acceptance Scheme' i.e. w.e.f. 1st November or 1st May as the case may be.

10. Perusal of the records tells us that all the three applicants have been imposed penalties in identically worded orders. The same reads as under in the case of Shri B.N. Singh : "Now, therefore, the undersigned in exercise of the powers conferred under Clause (b) of Sub-rule (2) of Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 read with Department of Atomic Energy's Order No. 22 (1)/68-Adm.II dated July 7, 1979 hereby orders that the present pay of the said Shri Singh be reduced by two stages in time-scale of pay of Rs. 1200-30- 1440-EB-30-1800 for a period of two years with effect from 1.1.1993.

It is further ordered that Shri Singh will not earn increments of pay during the period or reduction and that on the expiry of the period the reduction will not have the effect of postponing his future increments of pay." It means, therefore, that the period of penalty in the case of all the three applicants runs for two years i.e. from 1.1.1993 to 31.12.1994 and that promotions and increments if become due in the period would not be given effect to and that they would become effective only on the completion of the period i.e. w.e.f. 1.1.1995. And logically they have to be effective as on 1.1.1995, but the respondents in this case have not given effect to the same for the applicants from that date, but on 1.11.1995 and 1.5.1995 on the ground that 'Merit Promotion Scheme' only permitted such a dispensation and that no modification therefrom is possible. In this connection reference has to be had to be relevant position governing 'Merit Promotion Scheme', relied upon by the

respondents. The same reads as under in BARC's Ref. 2(2)/68.OCM/429 dated 12.7.1971: "In pursuance of paragraph 7 of the Director's Standing Order No. D-13-67 dated May 20, 1967, it has now been decided in consultation with the Department of Atomic Energy, to adopt the following procedure in respect of appointments and promotions of staff to Technical posts in BARC: (a) Appointments: An officer holding a technical post in a time scale of pay will draw his normal annual increment on 1st May or 1st November of each year as the case may be, provided he has completed service in that post at that stage for a period of not less than 9 months, subject to the conditions stipulated in the DAE OM No. 7/7/58-Adm.II dated November 16, 1962, copy enclosed for ready reference.

(b) Promotions : Promotions of technical staff take effect on 1st May or 1st November of every year and the next increment shall be drawn on 1st May or 1st November of every year, as the case may be, provided members appointed to such posts, on promotion, have completed services in those posts at that stage for period of not less than nine months.

It follows therefrom that appointments, promotions and increments would date from 1st Mayor 1st November of every year, as the case may be. And this pattern would have to be followed in all normal circumstances.

However, the instructions do not provide for exceptions as in the case of the application under consideration and, therefore, they would have to be determined as is permitted under general provisions. The punishments had been imposed under CCS (CCA) Rules, 1965 and evidently the effect of the punishments cannot be altered by the parameters of the Scheme which does not provide for exceptional circumstances. The disciplinary authority in these cases have directed the punishments to run from 1.1.1993 for two years. It could have directed that punishments run with reference to periods from which promotions and increments are normally due i.e. from 1st May or 1st November of the year in terms of the Scheme but had not chosen to do it. Obviously it felt that the computation of punishment period need not be fettered with the requisites of the 'Merit Promotion Scheme'-Logically, therefore, once the punishment period ran out, promotions and increment which were due in between can be given effect to, if the persons

concerned had become eligible and fit to get the same during the period. Any inference or any proceeding to the contrary would be illogical and improper. That precisely is what the respondents have sought to do in these cases by placing reliance on paragraph 3.1 of the DOPT' s OM No. 22011/4/91 -Estt. (A) dated 14.9.1992. The same is mis-placed as the said OM deals with cases where disciplinary proceedings were pending against the candidates whose cases were under consideration by the DPC and as such the findings had to be kept in "Sealed Cover". The applicants in these three OAs, as the disciplinary proceedings have been finalised and they were under going the periods of penalty. Sealed cover proceedings was, therefore, not at all relevant in their cases. Minutes of the standing Selection Committee held on 8.2.1995 had considered the case of B.N. Singh and others and held them fit for promotion w.e.f. 1.11.1994. Committee which met on 23.1.1995 had considered the case of M.M. Gautam and others and held them fit for promotion w.e.f. 1.11.1994. The case of C.S. Gaonkar and others were considered by the Committee which met on 28.7.94 and directed the promotions from 1.5.1994. It is clear from the minutes that Singh, Gautam and Gaonkar were not found 'not fit' for promotion but were only held back in view of the period of penalty--referred in the minutes in pencil as "Disp-Case." This is also confirmed by the fact that they had been promoted from 1.11.1995 and 1.5.1995, without any subsequent test or interview. Obviously they had become fit to be promoted from 1.11.1994 and 1.5.1994 respectively, but could not be so promoted as they were undergoing the punishment period. It follows therefrom that once the said period is over the promotions have to be given effect i.e. w.e.f. 1.1.1995 in all the three cases and not from 1.11.1995 or 1.5.1995 as has been directed by the respondents. This is the only logical inference and conclusion which can emerge any other conclusion would be incorrect, improper and arbitrary. The respondents have not acted legally or correctly. Their action would have to be set aside with all consequential benefits in the interests of justice. At the same it would not be correct to accept the pleadings of the applicant that all of them should get promotions from the date on which they were declared fit for the purpose i.e. w.e.f. 1.11.1994 in the case of S/Shri B.N. Singh and M.M. Gautam and 1.5.1994 in the case of Gaonkar. Accepting the said proposition would be nullifying the effect of the penalty to some extent which the Tribunal has no sanction to do.

The promotions would, therefore, have to take place only from the date on which the period of penalty has expired and not earlier.

11. In view of our observations and findings as above all the three applications succeed substantially and they are disposed of as below: (i) OA No. 1241/96 is allowed and the impugned communication dated 22.12.1995 is quashed and set aside. Promotion of the applicant (Shri B.N. Singh) as Tradesman 'D' is advanced to 1.1.1995 from 1.11.1995 with all consequential benefits including arrears of pay and allowances from 1.1.1995.

(ii) OA No. 1242/96 is allowed and the impugned communication dated 9.2.1996 is quashed and set aside. Promotion of the applicant (Shri M.M. Gautam) as Tradesman 'E' is advanced to 1.1.1995 from 1.11.1995 with all consequential benefits including arrears of pay and allowances from 1.1.1995.

(iii) OA No. 1244/96 is allowed and Sh. Gaonkar promotion as Foreman 'A' is advanced to 1.1.1995 from, 1.5.1995 with all consequential benefits, including arrears of pay and allowances from 1.1.1995.

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