

**(2018) 12 CAT CK 0055**

**In the Central Administrative Tribunal**

**Case No :** Civil Misc. Review Application No. 330, 00018 Of 2018, Original Application No. 330, 00817 Of 2011

Nawal Kishor and others

APPELLANT

Vs

Union of India & Ors

RESPONDENT

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**Date of Decision :** 05-12-2018

**Acts Referred:**

Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 17  
Code of Civil Procedure, 1908 — Order 47 Rule 1

**Citation :** (2018) 12 CAT CK 0055

**Hon'ble Judges :** Gokul Chandra Pati, J

**Bench :** Single Bench

**Advocate :** Vinod Kumar, Vinod Swaroop, L.M. Singh

**Final Decision :** Dismissed

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**Judgement**

Gokul Chandra Pati, J

1. This Original Application (in short OA) has been filed under section 19 of the Administrative Tribunals Act, 1985 (in short Act) with the prayer for the following reliefs:-

"a. to set aside order dated 18.04.2011 and dated 02.02.2011 (respectively Annexure A-1 and A-2 to compilation No. 1) passed by Respondent No. 3.

b. to set aside order dated 29.06.2010 (Annexure A-3 to compilation No. 1) passed by Respondent No. 2 in so far it directs consideration of claim of the applicant for recruitment year 1993-94 for selection on Grade 'A' / ITRS and finding recorded therein wherein upgrading of entries at one stage has been denied.

c. issue order or direction commanding the respondents to consider claim of the applicant for his promotion on the post of Grade 'A' / IRTS for the date his juniors were granted the same with all consequential benefits and also release resultant arrears with interest at the rate of 24% per annum.

c(i). issue an order or direction in the nature of mandamus commanding the respondents to consider case of the applicant for his promotion on the post of Junior Administrative Grade from the date his juniors have been granted the same with all consequential benefits and release resultant arrears with interest @ 24% per annum.

d. issue any other order or direction as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

e. award cost of this application to the applicant."

2. The applicant was first appointed as Traffic Apprentice and after three years of qualifying training, was appointed on 23.4.1968 as Assistant Yard Master. He was promoted in the usual channel of promotion for Class III employees. At the time of his promotion to Group B post, there was some problem for which the applicant had to approach the Tribunal by filing an OA, after which he was allowed to participate in the qualifying examination. Eventually he was promoted to Group B on 7.10.1989 with notional benefits from 21.1.1987. Then on 12.6.1996, the applicant was allowed officiating promotion to the Group A senior scale post after being considered by the Departmental Promotion Committee (in short DPC) under para 214 (b) of the Indian Railway Establishment Code (in short IREC) Volume I. His promotion to Group A post was antedated to 1.12.1995 taking into account promotion of another employee, junior to the applicant, but he was not allowed regular promotion.

3. It is the case of the applicant that his juniors were promoted by the Railway Board to IRTS Group A vide order dated 13.10.1997 (Annexure A-6) ignoring the applicant whose name was included in the consideration zone. Subsequently junior employees were promoted vide order dated 19.1.1998 (Annexure A-7) and 12.8.1998 (Annexure A-8). The applicant's grievance is that in spite of the fact that he was eligible for promotion to IRTS, his case was ignored. He filed another OA No. 1315/2000 which was disposed of with a direction to file a comprehensive representation to the Railway Board for consideration. The applicant accordingly submitted a representation dated 18.2.2010 (Annexure A-10) which was decided by the Railway Board vide the speaking order dated 29.6.2010 (Annexure A- 3) ordering that the case of the applicant would be considered by the Review DPC. But the Review DPC did not recommend the case of the applicant as informed to the applicant vide order dated 18.4.2011 (Annexure A-1). It is stated in the OA that the applicant superannuated on 31.12.2002.

4. Main grounds relied upon by the applicant in the OA are that the applicant was entitled for the benefit of promotion from the date his juniors were given promotion in view of the order dated 29.6.2010 of the Railway Board. Since there is nothing adverse against the applicant, it was not open for the respondents to overlook his case for promotion to IRTS.

5. The respondents have filed counter reply opposing the OA. There is no dispute regarding facts of the case. It is stated that for the promotion claimed by the

applicant, the criteria for selection is 'merit' as per the instructions of the Department of Personnel and Training (in short DOPT) and that the DPC to consider the case of the applicant was held by the Union Public Service Commission (in short UPSC). It is further stated that the applicant's case was considered but he was superseded by his juniors by virtue of better grading given to the juniors by the respective DPCs. The DPC is not to be guided by the overall grading recorded in the confidential roll of the employees, but it should make its own assessment on the basis of the entries in the CRs (vide para 19 of the counter reply). It is also the case of the respondents that in compliance of the order dated 18.1.2010 of this Tribunal in OA No. 1315/2000, the Chairman passed the order dated 29.6.2010 (Annexure A-3) directing that the case of the applicant be considered for promotion against the vacancy for the year 1993-94. Accordingly, the Review DPC was held to review the case of the applicant, but his name was not recommended in view of his grading of 'Good' by the DPC (vide para 27 and 33 of the counter reply). Since the applicant was earlier considered for promotion for the year 1994-95 onwards and was not initially considered for the year 1993-94, the Review DPC for consideration of applicant's case was required to be held only for the year 1993-94 and not for any subsequent year (vide para 26 of the counter reply).

6. The applicant has filed Rejoinder broadly denying averments in the counter reply. In reply to the role of the DPC as stated in para 19 of the counter reply, there is nothing in the Rejoinder to contradict such averments. The applicant has stated that one of his junior i.e. Sri JP Singh had a major proceedings pending against him. Similarly, Sri BK Singh was imposed major punishment. Although their promotion has been commented upon by the applicant, he did not challenge the promotion of his juniors. His claim is to be promoted from the date when his juniors were promoted. It is stated in para 42 of the Rejoinder that as per the decision of the Tribunal, the grading of the applicant be treated one grade higher i.e. from 'Good' to 'Very Good' since he was officiating in higher post in IRTS.

7. The respondents have filed the Supplementary Counter Reply denying the averments in the Rejoinder. It was stated that as per the letter dated 31.1.2002, the applicant was counselled for violation of Conduct rules for bringing political pressure for his posting. Regarding officiating promotion of the applicant, it was stated that it is given by the General Manager as per para 214 of the IREC. But for his regular promotion, his case is to be considered by the DPC held by the UPSC as per para 209 of the IREC. It is stated that upto the vacancy year 2001-2002, the selection was to be done as per the criteria of merit as per the DOPT instructions. In the short counter reply filed by the UPSC, it is stated by the respondents that the provision of supersession on the basis of Grading was done away with by the DOPT vide the OM dated 8.2.2002 which provided that the DPC shall consider the candidates and grade them as either 'fit' or 'unfit' and those who are graded to be fit, are to be kept in the panel in order of their seniority.

8. The applicant filed Supplementary Rejoinder stating that the letter dated 31.1.2002 counselling the applicant was brought on record for the first time and the said letter is not relevant for this case. He further submitted that the applicant's case was considered by the DPC six times as stated in para 6.2 of the short counter reply filed by the UPSC and the applicant was empanelled for promotion in the DPC meeting held on 28th-29th May, 2004 for the vacancies of the year 2002-03, since by that time the criteria for selection was changed by the DOPT vide letter dated 8.2.2002. But the applicant could not be promoted as he had retired on 31.12.2002.

9. We heard the applicant who appeared in person as his counsel was otherwise busy on the date fixed for hearing. The applicant submitted that the Review DPC held to consider the case of the applicant did not recommend his case, but recommended his junior for promotion. The Review DPC should not have considered any fresh candidates. He argued that the rules applicable for holding the review DPC were not followed. It was also submitted that no adverse entry in the ACR was communicated to the applicant. He further submitted that his counsel has submitted 'Written Argument' enclosing the following judgments in support of his case:-

- i. (1992) 19 ATC 571 (FB) - S.S. Sambhus vs. Union of India and others.
- ii. 1999 (2) (CAT) AISLJ 306 - T.R. Krishnamurthy vs. The Secretary, Union of India, Ministry of Defence and Ors.
- iii. (2008) 8 SCC 725 - Dev Dutt vs. Union of India and others
- iv. (2013) 9 SCC 566 - Sukhdev Singh vs. Union of India and others

10. Sri LM Singh, learned counsel for the respondents submitted that the applicant was promoted on adhoc basis, but he has no right for regular promotion unless the DPC considers and recommends his case. He also argued that for regular promotion, the DPC is held by the UPSC and that the Review DPC was held as per the speaking order dated 29.6.2010 passed by the respondent no. 2.

11. We have considered the submissions of the applicant and the learned counsels for both the parties and also gone through the pleadings as well as the relevant documents placed on record. The dispute is whether the applicant, who was admittedly given adhoc/officiating promotion to IRTS, is entitled for regular promotion to IRTS as per the provisions of the rules.

12. The applicant's case is that he was allowed adhoc promotion by the competent authority, but was denied regular promotion, while many of his juniors were given regular promotion to IRTS in spite of their not so clean service record. He also states that the Tribunal in order dated 18.1.2010 (Annexure A-10), observed that his grade should have been considered to be 'very good'. A perusal of the order dated 18.1.2010 would reveal that no such observation was made in the order which held that the orders impugned in OA No. 1315/2000 did

not give any reason while rejecting the representation submitted by the applicant. The operative part of the order dated 18.1.2010 states as under:-

"7. In view of the submission made by the parties counsel and in view of the facts and circumstances of the case and perusal of the impugned order we find that it suffers from lack of logic, reason and specifics; it tantamount to a cryptic and non speaking order. We, therefore, set aside the impugned orders dated 04.05.2000 and 16.11.1999 / 8.10.1999 and grant liberty to the applicant to make a fresh comprehensive representation within a period of two weeks from today before the competent authority and thereafter the competent authority is directed to pass reasoned and speaking order, meeting all grievances raised by the applicant, and after meeting with all the legal pronouncement which may be sighted by him in his support, as per law within a period of two months from the date of receipt of said representation alongwith copy of this order taking into account the ground taken in the OA.

8. Having regard to the facts that this is an old case of 2000 and the grievance of the applicant is pending since then for adjudication the competent authority shall pass the orders on representation of the applicant positively within two months from the date of receipt of copy of this order."

13. In compliance of the order dated 18.1.2010, the applicant submitted the representation dated 8.2.2010 (Annexure A-11) and has stated the following grounds in para 3.9 and 3.17 of the said representation:-

"3.9. In para 37 of O.A. 1315 / 2000 protraction of judgment in case T.R. Krishmurti - vs - Secretary of Defence and others (As reported in All India Service Law Journal Vol (7) 1999 (2) page 306, was sought for by me but UOI in the counter reply termed it as not applicable against which Hon. CAT by its order dated 18.01.10 has remarked adversely on the submission of UOI. The above judgment is based on full bench decision in S.S. Sambhus vs UOI and Shiva Kumar Sharma vs. UOI cases. In above judgments it has been clearly laid down that ACR of incumbent on adhoc promotion should be treated as one grade higher i.e. GOOD to VERY GOOD and so on in DPC for induction to Jr Scale group 'A'. I seek the protection of this judgment delivered on the basis of Hon. Supreme Court in S.S. Sambhus case.

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3.17. Railway Board vide their letter No. 2002/SCC/3/1 dated 3.6.02 changed the policy to 'Good' fit bench mark has been prescribed upto S.G. with provision of no supersession. This letter was issued when I was in service. The OM of DOP&T in this regard was issued earlier."

14. The above representation was considered by the respondent no. 2 who has passed the speaking order dated 29.6.2010 directing that the case of the applicant should be considered by the Review DPC. The order dated 29.6.2010

observed the following in reply to para 3.9 of the representation:-

"5. The applicant has also contended that since he was already working in Sr. Scale on adhoc basis at the time of consideration for promotion to Group 'A', his 'good' ACRs should have been treated as 'very good' in terms of the judgment delivered in the case of T.R. Krishnamurti vs. Secretary of Defence and Ors. In this regard, it may be mentioned that in a case of similar type , the DOP&T, in consultation with the Ministry of Law, advised that various judgments of CAT and Supreme Court dealt with specific cases and neither the CAT nor the Supreme Court has struck down the provisions contained in DOP&T's OM's dated 10.3.1989 and 10.4.1989 and also that while no extra weightage can be allowed mechanically merely on the ground of a person working on adhoc basis in a higher post, DPCs can accord due weightage to the performance of the Government servant holding the higher post on adhoc basis. The DOP&T further advised that as per policy, adho promotion does not bestow any right for regular promotion. Adhoc promotion to Senior Scale on the Railway is ordered by the General Managers in the exigencies of work; whereas, regular promotion to Group 'A'/Jr. Scale is made by the President, in consultation with the UPSC, where the DPC is convened by the UPSC. These two modes of promotion are, therefore, not comparable. Hence, this judgment is also not applicable in this case."

It is seen that nothing has been mentioned in the speaking order dated 29.06.2010 about the contention in para 3.17 of the representation of the applicant submitted in compliance to the order dated 18.1.2010 of the Tribunal.

15. We will first consider if the claim of upgradation of the grading in pursuance of the order of this Tribunal in the case of T.R. Krishnamurthy (supra) in OA No. 524/88. In that case, the concerned employee was found suitable for Group A senior scale post on deputation, for which the employee concerned was entitled for upgradation of his grading by one level applying the order of the Tribunal in the case of S.S. Sambhus (supra). In the instant OA, it is not the case that the applicant was on deputation against a Group A post since the order of applicant's promotion dated 12.6.1996 annexed at Annexure A-4 did not state anything about placing the applicant on deputation. It is the contention of the respondents in Supplementary Counter Reply that the said promotion was granted on adhoc basis as per para 214 of Indian Railways Establishment Code (in short IREC) Volume I, which has not been contradicted by the applicant. The para 214 of IREC provides that such adhoc promotion would not exceed 90 days. Hence, we are of the view that the order in the case of T.R. Krishnamurthy (supra) will not be applicable to the instant OA as the applicant was not selected or promoted on deputation, he was promoted for a temporary period in accordance with para 214 of IREC. Hence, we are not unable to accept the submissions of the applicant that his grading should be upgraded following the order in the case of T.R. Krishnamurthy (supra).

16. Learned counsel for the applicant has also argued that the Review DPC has

not been properly held in the light of the DOPT guidelines. This point has also been explained in written arguments filed by the applicant's counsel. The DOPT guidelines specified the circumstances under which the Review DPC can be convened. In this case, from the factual details mentioned in the impugned speaking order dated 29.06.2010, it is clear that enough justification is there to convene the Review DPC for the year 1993-94. There is no rules or guidelines furnished by the applicant to show that the Review DPC shall consider only the case of the candidate whose case has been referred to the Review DPC. The selection panel which was earlier approved by the DPC for that year, can be reviewed by the Review DPC. Hence, there is no difficulty for the Review DPC to consider other eligible candidates as per the rules / guidelines of the Government. Hence, this argument of the applicant will not be helpful for his case.

17. The applicant in the written arguments has cited the judgment of Hon'ble Supreme Court in the case of Dev Dutt (supra) and Sukh Dev Singh (supra). In both the cases the Hon'ble Supreme Court had directed that the every entry in the ACR of the Government servant shall be communicated within reasonable period. However, there is no authority or guidelines which have been produced before us to show that the ratio of these judgments will be applicable for the DPC which considered the case of the applicant's promotion for which the DPCs were convened prior to 2004, as stated in the short counter reply filed by the UPSC. There is nothing on record to show that these judgments will have retrospective application. Even if the Review DPC was held after 2010, since the consideration year was 1993 - 94, the DPC will have to follow the guideline that was in force for the year 1993 - 94. As per these guidelines, the Review DPC awarded overall grading 'Good' to the applicant for the relevant year, since as per the rules prevalent during the year in question, DPC can award such grading, although the review DPC was convened after 2010. It is also noted that the ACR entries of the applicant were not below the bench-mark. The applicant was considered for promotion by the DPCs on merit and he was not found suitable in accordance with the guidelines prevalent for the relevant years in which DPCs considered the applicant's case. However, when the guidelines were modified, the applicant with the same ACR entries was found to be suitable for the year 2002-03 in the DPC held in May 2004 (para 6.4 of the short counter reply filed by the UPSC). Hence, we are unable to accept this argument of the applicant as per the ratio of the judgment in the case of Dev Dutt (supra) and Sukh Dev Singh (supra), his ACRs were required to be communicated to the applicant before considering of his case by the DPCs which were convened prior to the date of the cited judgments.

18. As discussed earlier, the contentions of the applicant in para 3.17 of the representation have not been examined by the respondents in the order dated 29.6.2010. It is noticed that in the short counter reply filed by the UPSC, it is stated that the applicant was empanelled for promotion in the DPC for the vacancies of year 2002-03 in view of the DOPT letter dated 8.2.2002, by which the principle of supersession based on higher grading was done away with. This

was adopted by the Railways vide the Railway Board letter dated 3.6.2002 as stated in para 3.17 of the representation dated 8.2.2010 (Annexure A-11). Para 6.4 of the short counter reply filed by the UPSC states as under:-

"6.4. At the time when DPC mentioned at S. No. (vi) in para 6.2 was held, the supersession principle was done away with vide DoP&T OM No. 35034/7/97-Estt.D dated 8.2.2002. The relevant provision doing away with supersession read as under:

3.2 'Bench-mark' for promotion The DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench-mark and accordingly grade the officer as 'fit' or 'unfit' only. Only those who are graded 'fit' (i.e. who meet the prescribed bench-mark) by the DPC shall be included and arranged in the select panel in order to their inter-se seniority in the feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed bench-mark) by the DPC shall not be included in the Select Panel. Thus, there shall be no supersession in promotion among those who are graded 'fit' (in terms of the prescribed bench-mark) by the DPC."

19. From above averments in the short counter reply filed by the UPSC, it is clear that the applicant was found fit for promotion for the vacancy year 2002-03 in view of the letter dated 8.2.2002 of DOPT, which is reiterated in the letter dated 3.6.2002 of the Railway Board. But the applicant could not be promoted since the DPC meeting for the vacancy year 2002-03 was held in May, 2004. It is noticed that the applicant had been considered for promotion by the DPC held in May, 2004 when he had already retired on 31.12.2002.

20. We take note of the following provisions in the DOPT guidelines, copy of which has been enclosed by the respondents at Annexure No. 5 to the Supplementary Counter Reply:-

"3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of integrity certificates, seniority list etc. for placing before the DPC. DPCs could be convened every year if necessary on a fixed date 1st April or May. The Ministries / Departments should lay down a time schedule for holding DPCs under their control and after laying down such a schedule the same and after laying down a time schedule for holding such a schedule the same should be monitored by making one of their offices responsible for keeping a watch over the various cadres authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that recruitment rules for a post are being reviewed / amended. A vacancy shall be filled in accordance with the recruitment rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since Amendments to recruitment rules



normally have only prospective have been expressly given retrospective effect. Since Amendments to recruitment rules normally have only prospective application, the existing vacancies should be filled as per the recruitment rules in force.

3.2 The requirement of convening annual meeting of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question."

21. From above it is seen that the respondents were required to convene the DPC during April or May of the year relating to which the vacancy occurs. It is also provided that the number of vacancies is to be found out well in advance. But in this case, the DPC for the year 2002-03 has been held in 2004 after end of the year 2002-03 which is not in accordance with the DOPT guidelines. The applicant is not responsible for delay in holding the DPC for the year 2002-03 due to which he could not avail of the promotion in spite of being found eligible for the same. No reason has been furnished by the respondents for not holding the DPC meeting for the vacancy year 2002 - 03 in time as stipulated in the DOPT guidelines as quoted in para 20 above.

22. In view of above, we are of the considered opinion that the applicant should not be made to suffer due to delay in holding the DPC meeting for the year 2002-03 taking into account the fact that the applicant was found suitable and allowed adhoc promotion as per the rules as stated in the order dated 12.6.1996 (Annexure A-4) and the applicant would have been promoted if the DPC had been held in time as per the DOPT guidelines, since he was found suitable for regular promotion by the DPC held for the vacancy year 2002-03. Further, the applicant was superseded by his juniors while the applicant was still in service.

23. For the reasons as discussed above, we direct the respondents to promote the applicant on the Grade A / IRTS on proforma basis with effect from the date prior to his date of retirement from service i.e. prior to 31. 12.2002, on the basis of the recommendation of the DPC held by the UPSC in May, 2004 for vacancies for the year 2002-03 and to fix his pay on notional basis, with consequential pensionary benefits including arrear pension payable as per the rules. We are unable to interfere with the findings of the DPCs relating to the applicant's promotion, which were held by the UPSC since there is nothing on record to show that the findings of the DPCs with regard to the applicant's eligibility for promotion to IRTS were incorrect or vitiated. Respondents are directed to comply with this order within six months from the date of receipt of a certified copy of this order. Accordingly the OA is allowed in part. No order as to costs.