

(2021) 05 CAT CK 0020
In the Central Administrative Tribunal
Case No : Original Application No. 508 Of 2020

Satishbhai Kapilray Vasavada

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 27-05-2021

Acts Referred:

Citation : (2021) 05 CAT CK 0020

Hon'ble Judges : Jayesh V. Bhairavia, Member (J); Dr. A.K. Dubey, Member (A)

Bench : Division Bench

Advocate : Rachna Pastore, Swapneshwar Goutam

Final Decision : Disposed Of

Judgement

Jayesh V Bhairavia, Member (J)

1 The instant OA has been filed by applicant who is a retired employee of Central GST Zone, Ahmedabad challenging the order No.F.No.A-

32012/08/2017-Ad.IIA dated 30th September 2019 promoting his juniors as Chief Accounts Officer and seeks the following prayer:-

8 A. This Hon'ble Tribunal be pleased to admit and allow the application. B. This Hon'ble Tribunal be pleased to declare that action of the respondent

in not considering the case of applicant for promotion and extending the benefits of promotion to the post of Chief Accounts Officer is bad in law.

C. This Hon'ble Tribunal be pleased to declare that the order 30.09.2020 is bad in law and direct to accord promotion from actual date, benefits for

promotion and revised pensionary benefits shall also be accorded with arrears and interest.

D. This Hon'ble Tribunal be pleased to direct to consider the representations dated 04.04.2019 and 15.10.2019 (Annexure A-04) and direct the

respondents to forthwith extend the benefits to the promotional post of chief account officer and revise the pension and grant consequential benefits with 9% interest.

E. This Hon'ble Tribunal be pleased to allow this petition to quantify the cost. Petition with costs and be pleased to award the cost incurred in litigation.

F. Be pleased to grant such other and further reliefs as may be deemed just and proper by the Hon'ble Tribunal in the facts and circumstances of the case.

2 The facts in brief as stated by the applicant are as under:-

2.1 The applicant was initially appointed as a Lower Division Clerk in the department on 11.11.1975. He was granted promotion to the post of

Administrative Officer on 30.10.2007. On 20.09.2011 on note-sheet the applicant was given the charge of Chief Account Officer (Grade A), he took

charge on post of Chief Account's Officer on 30.09.2011 and continued till the date of his superannuation i.e. 31.07.2016.

2.2 It is stated the applicant had attained eligibility to be considered for the promotion post of Chief Accounts Officer (Grade A), in the year 2010.

However, the respondent authority did not conduct or hold any regular DPC till 2017 for vacancies which arose for the period 2014-2017-18.

2.3 Since the respondents did not hold DPC in time and considering the same, the respondents subsequently vide letter dated 18.12.2017 (Ann. A/2),

the Department of Revenue, CBEC informed all cadre controlling authority with respect to holding of DPC for vacancy year 2014-15, 2015-16, 2016-

17 & 2017-18 for the promotion post to the grade of Chief Accounts Officer (Central GST & Central Excise and Directorates) and called for certain

documents such as complete ACRs/APARs dossiers etc of the officials whose names were mentioned in Ann.- I of the said letter for preparing the

DPC proposal. Further, the CBEC in para 3 of the said letter also mentioned therein that the requisite information of all eligible officers, whether

retired or in service, (except those promoted in earlier DPC), should invariably be submitted to the Ministry in one go and not in piecemeal latest by 5th

January, 2018 positively.

2.4 On 30.9.2019 (Ann. A/3) the CBEC had issued the order of Chief Accounts Officer from the panel of Administrative Officers wherein all juniors

to the applicant as well as similarly situated employees were given promotion. However, the applicant's name has not been placed in the said promotion order.

2.5 Though the applicant had submitted his representation dated 04.04.2019 before the Dy Commissioner (CCO), Department of Revenue, O/o the Principal Commissioner, Central GST Zone, Ahmedabad i.e. Respondent No.3 herein requesting for review DPC to consider his case for promotion

from the year his name was put in the panel i.e. 2014-2015 panel, the said representation remained unanswered. Subsequent to declaration of

promotion order dated 30.09.2019, wherein his name was not included, he had submitted another representation dated 15.10.2019 before the

respondent no.3 (Ann. A/3 colly) and reiterated his request to the effect that due to non holding of DPC in time, he could not get regular promotion of

Chief Accounts Officer and also informed that he had worked as in charge Chief Accounts Officer w.e.f. 30.11.2011 till his retirement i.e.

31.07.2016, requesting for considering his case by conducting review DPC for promotion to post of Chief Accounts Officer. He had also submitted

the said representations to Respondent Nos. 1 & 2 in advance. However, till date the applicant has not received any response on the same. Hence this

OA.

3 Learned counsel Mr Swapneshwar Gautam along with Advocate Ms Rachna Pastore appeared through video conference and submitted that

applicant was holding additional charge as Chief Accounts Officer w.e.f 30.11.2011 to till the date of his retirement i.e. 31.07.2016. In fact his right to

be considered for the promotion post of Chief Accounts Officer accrued in the year 2011, his name was forwarded in the year 2014 for promotion and

since then his name was in panel. However, DPC for the said vacancy year was not held due to fault on the part of respondents and the applicant's

case was not considered till his superannuation. Thereafter, since the respondents had conducted the DPC for vacancy year 2014-15 to 2017-18 and

considered all the eligible employees including the retired employees, the respondent could not have missed the name of applicant. Though the detailed

representation was submitted, same remained unanswered. The applicant suffered a loss of promotion and benefit for no fault of his. Therefore, the

case of the applicant requires to be considered by the respondents. Further, the

counsel for the applicant placed reliance on following judgments:-

- (i) Order in OA 2480/2009 dated 02.12.2010 of CAT, Principal Bench,
- (ii) Order in OA 1409/2009 dated 22.04.2010 of CAT, Principal Bench,
- (iii) Order in the case of Baijnath Sharma Vs. Hon'ble Rajasthan High Court reported in 1998 (7) SCC 44 relevant paragraphs 8-10.
- (iv) H M Singh vs. Union of India reported in 2014(3) SCC 670 relevant paragraph no.22
- (v) Union of India v/s Hemraj Singh Chauhan reported in 2010 (4) SCC 290 relevant paragraphs no. 37-49.
- (vi) Dr Ramakant Singh vs. U.O.I. reported in W.P. 5802/2015 dated 11/08/2016 - relevant paragraphs - 5, 13, 14, 15.
- (vii) P N Premachandarn v/s State of Kerala 2004 (1) SCC 245 relevant paragraphs 7-8.
- (viii) Mukeshkumar Mansukhbhai Solanki vs. Union of India Special Civil Application/4720/2017 decided on 28/07/2017 relevant paragraphs 7-11.

By relying upon aforesaid judgments it is submitted that it is settled law that no one should be penalised for no fault of his. Since the respondents had considered the case of retired employees who were eligible/within the zone of consideration for the particular vacancy year, the case of the applicant requires to be considered by the respondents.

4 After going through the material on record and the submission of applicant, it is revealed that vide letter dated 18.12.2017 the Ministry of Finance,

Department of Revenue, CBEC (Ann. A/2) directed the Cadre Controlling Authorities of Central GST and Central Excise under CBEC to provide the

complete ACRs/APAR dossiers and other documents of the officials whose names are mentioned in Ann. I annexed to said letter, for preparing the

DPC proposal with respect to vacancy year 2014-15 to 2017-18 for the promotion to the grade of Chief Accounts Officer (Central GST and Central

Excise and Directorates). It is noticed that in the said letter the CBEC had also called the ACR/APAR dossiers of eligible officers whether retired or

in service. The name of the applicant herein stated to be eligible for promotion to the post in question since 2011, was forwarded in the year 2014 for

consideration to the promotion post and he retired on superannuation on 31.07.2016. However, applicant's name was not included by the respondents

in the process undertaken for grant of promotion for the vacancy year 2014

onwards to the post of Chief Accounts Officer though in the said process as per the CBEC letter dated 18.12.2017 the eligible retired officers were also considered for the promotion. His representation stated to be pending and in light of law laid down by Hon'ble Apex Court in catena of judgments that if similarly placed officials as also the juniors to the retired employee are given benefit of promotion, it is incumbent upon the respondents to treat the claim of left out employees.

6 In the above circumstances, we dispose of this OA at Admission stage directing the respondents to consider the pending representation dated

4.4.2019 and 15.10.2019 (Ann A/4) and if not decided till date, the same should be decided expeditiously within a period not later than three months

from the date of receipt of copy of this order in accordance with extant rules and the applicant may be informed the decision thereon. No costs.