

(2015) 03 KL CK 0302

In the High Court Of Kerala

Case No : O.P. (CAT). No. 2340 of 2013 (Z)

Union of India and Others

APPELLANT

Vs

K.N. Padmam and Others

RESPONDENT

Date of Decision : 06-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 03 KL CK 0302

Hon'ble Judges : Antony Dominic, J; Anil K. Narendran, J

Bench : Division Bench

Advocate : T.P.M. Ibrahim Khan, Senior Panel Counsel, for the Appellant; R.T. Pradeep and Nair Ajay Krishnan, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anil K. Narendran, J—The petitioners are the respondents in O.A. No. 241/2012 before the Central Administrative Tribunal, Ernakulam Bench. The said O.A. was filed by the respondents herein, who are Technical personnel working in the major centers of the Indian Space Research Organisation (ISRO), seeking a declaration that, they are entitled to be promoted to the post of Technical Officer-C with effect from the date on which they were actually promoted under the Category Change Merit Selection Scheme (hereinafter referred to as "CCMSS"), with all consequential benefits including fixation of pay, arrears of salary and seniority; an order to set aside Annexures A14 to A19 memorandums issued to them by the 4th petitioner; and a direction to petitioners 3 and 4 to promote respondents 1 to 3 with effect from 7/1/2006 and respondents 4 to 6 with effect from 1/7/2007 to the post of Technical Officer-C with all consequential benefits including fixation of pay, arrears of salary and seniority.

2. The Tribunal, taking note of Annexure R2 office memorandum dated 1/1/1998, allowed the O.A. in part by Ext.P1 order, holding that, it would be only fair and just if the period of service of the respondents herein in the post of Senior Technical Assistant-A is counted notionally, only for the purpose of reckoning

residency period for promotion to the post of Technical Officer-D, along with the residency period of Technical Officer-C. It is aggrieved by Ext.P1 order of the Tribunal, the petitioners are before us in this O.P.(CAT).

3. We heard the arguments of the learned Senior Counsel appearing for the petitioners/respondents and also the learned counsel appearing for the respondents/applicants.

4. The respondents are Technical personnel working in the major centers of ISRO. Respondents 1 and 2 are working in the Liquid Propulsion Systems Centre and respondents 3 to 6 are working in the Vikram Sarabhai Space Centre (VSSC) at Thiruvananthapuram. Respondents 1 and 6 entered service as Draughtsman-B and respondents 2 to 5 entered service as Tradesman-B. Respondents 1 and 6, while working as Sr. Draughtsman-B, got category change promotion as Sr. Technical Assistant-A under CCMSS. Later, with effect from 1/7/2010 they are holding the post of Technical Officer-C. Similarly, respondents 2 to 5, while working as Sr. Technician-A, got category change promotion as Sr. Technical Assistant-A under CCMSS. Later, with effect from 1/7/2010 they are also holding the post of Technical Officer-C. Going by the averments in the O.A., respondents 1 to 3 got selection/promotion as Sr. Technical Assistant, under CCMSS, on 1/7/2006 and respondents 4 to 6 got such selection/promotion on 1/7/2007.

5. In the year 1982, the Department of Space introduced CCMSS, a new scheme of promotion for Scientific and Technical personnel in different grades vide Annexure A1 OM dated 1/10/1982, to provide opportunities for career growth to meritorious persons, who are otherwise not entitled for advancement to higher categories. Going by Para 6.1 of Annexure A1 OM, Tradesman-G/Foreman/Draughtsman-E and Technical/Scientific Assistants-C, who are only ITI Certificate holders or who have a Diploma qualification without first class or those who having obtained a first class have not been found fit at the special review referred to in Para 1.3 of the OM will be considered for promotion to the post of Engineer-SB in the specified areas listed in the OM. According to the petitioners, the very idea behind CCMSS was based on the fact that, denial of promotion to a meritorious candidate just because he/she does not possess the prescribed educational qualification would be an injustice.

6. The respondents would contend that, under Annexure A1 OM, a Tradesman-G (now re-designated as Technician-G) with 5 years residency period is entitled to come over to Scientist/Engineer level through CCMSS and that, all of them became eligible to be considered for promotion to the post of Scientist/Engineer-SB before 2006/2007 as they have completed 5 years residency period in the category of Tradesman-G. But, when respondents 2 and 5 applied for CCMSS, they were informed that the promotion under CCMSS for the Technician path has been changed to Senior Technical Assistant-A, instead of Engineer SB, based on Annexure A2 OM dated 3/2/2006. By Para 7.2 of Annexure A2 OM, Para 6.1 of Annexure A1 OM was modified to the extent that, the CCMSS route for Tradesman-G and above shall from 3/2/2006 be to the post of Technical

Assistant-C. Later, Annexure A2 OM was modified by Annexure A3 OM dated 8/9/2006. Going by Para 6.5 of Annexure A3 OM, the grade of Scientist/Engineer-SB will be treated as a wasting category. All existing Scientist/Engineer-SB, on completion of one year in the grade, will be eligible for next promotion as Scientists/Engineer-SC. But, employees like the respondents, who were awaiting placement in Engineering-SB cadre are given promotion only to Senior Technical Assistant-A, which is a non-gazetted post, under category change promotion. At the same time, those who are in the cadre of Technical Assistant (entry cadre) are given an option to continue in the Engineering cadre. Accordingly, the respondents were promoted to the post of Senior Technical Assistant-A in the pay scale of Rs. 6500-10500 (pre-revised), which is a non-gazetted post. Consequent to the 6th Central Pay Commission report, the post of Senior Technical Assistant-A in the pre-revised scale of Rs. 6500-10500 was placed in PB2 in the pay band of Rs. 9300-34800 with grade pay of Rs. 4800/-. According to the respondents, had they been given promotion to the post of Scientist/Engineer-SB as on 1/7/2006, i.e., the date of promotion as Senior Technical Assistant-A, they would have become eligible for the post of Scientist/Engineer-SC as on 1/7/2007, i.e., on completion of one year in the post of Scientist/Engineer-SB, and they would have been placed in PB3 in the pay band of Rs. 15600-39100 with grade pay of Rs. 5,400/-.

7. On noticing that, consequent to the changes made in CCMSS by Annexures A2 and A3 OM, many personnel in Senior Technician/Draughtsman grades are not participating in the selection under CCMSS, a Committee was constituted by Annexure A4 office order dated 27/10/2008, to rework the syllabi for written test and practical test; to redefine the qualification levels in the written test, practical test and interview for promotion; to review and recommend the eligibility criteria; and any other related matters to improve the system. Based on the recommendation made by the said committee certain modifications were made to CCMSS for the Scientific/Technical staff by Annexure A5 OM dated 3/11/2009. Going by Para 1 of the revised guidelines, their selection under CCMSS will after Annexure A5 be to the post of Scientific/Technical Officer-C in the pay band of Rs. 15600-39100 with grade pay of Rs. 5400/- (PB-3). As per Para 2, the eligibility for consideration for selection under CCMSS is revised as a minimum residency of four years in the grade for Senior Technician-A/Senior Draughtsman-A and no minimum residency will be there for Senior Technician-B/Senior Draughtsman-B. As per Para 7 of Annexure A5 OM, the above revision of eligibility, syllabi, etc., for promotion to the post of Scientific/Technical Officer-C under CCMSS will be effective from the rationalised date of review as on 1/7/2010.

8. Consequent on abolition of Scientist/Engineer-SB cadre based on Annexure A2 OM, selection under CCMSS was changed from the then existing Scientist/Engineer-SB to Senior Technical Assistant-A, from 1/7/2006 batch onwards. In order to make the revised scheme operational and also to bring parity between the existing promotees and future promotees under the scheme, it was provided

in Annexure A5 OM, as a one-time measure, that those who have been placed as Senior Technical Assistant-A under CCMSS during the period between 1/7/2006 and 1/7/2009 will be provided an opportunity to appear for a review for promotion to the post of Technical Officer-C in the pay band of Rs. 15600-39100 with grade pay of Rs. 5400/- (PB-3) on completion of the prescribed period of service in the grades mentioned in Para 8 of Annexure A5 OM. The special review, as provided in Para 8, will be conducted as on the rationalised date of review of 1/7/2010 and the eligible Senior Technical Assistants-A shall have to appear for interview before the same Selection Committee of CCMSS along with 1/7/2010 batch.

9. Based on the revised guidelines in Annexure A5 OM, the respondents, who have been placed as Senior Technical Assistant-A under CCMSS, during the period from 1/7/2006 and 1/7/2009, were called for interview for promotion to the post of Technical Officer-C scheduled to be held on 27/6/2010 and 28/6/2010 at ISRO Headquarters at Bangalore. Annexure A6 is a communication issued in this regard to respondents 3 to 6, dated 1/6/2010 and it is averred in the Original Application that, respondents 1 and 2 were also issued with similar communications. Pursuant to the said interview, the respondents were promoted to the post of Technical Officer-C in the pay scale of Rs. 15600-39100 with grade pay of Rs. 5400/-, vide Annexures A7 to A11 office orders dated 13/7/2010 and 20/7/2010. The grievance of the respondents is that, though they become eligible to be promoted by category change in the year 2006 and 2007, they were treated equally and promoted as Technical Officer-C with effect from 1/7/2010. In the result they had to further undergo 6 years of residency period from 2010 for the next review to the post of Technical Officer-D. Since they are persons who do not have 6 years remaining service to become qualified to come over to Technical Officer-D, the revised guidelines in Annexure A5 OM are prejudicial to their promotion prospects to the post of Technical Officer-D.

10. The respondents moved detailed individual representations before the 3rd respondent/4th respondent, pointing out the way in which they were denied their right to be considered for promotion/selection in time as per the conditions of CCMSS stipulated in Annexure A1 OM. Aggrieved by the non-consideration of those representations, the respondents moved the Tribunal in O.A. No. 768/2011, which was disposed of by Annexure A13 order dated 2/9/2011 with a direction to the petitioners herein to consider the representations filed by the respondents herein, within 2 months from the date of receipt of a copy of the order. The claims made by the petitioners for retrospective promotion to the post of Technical Officer-C were rejected by Annexures A14 to A19 orders issued by the 3rd respondent/4th respondent and these orders were under challenge in O.A. No. 241/2012 filed before the Tribunal.

11. The specific stand taken by the petitioners in Annexures A14 to A19, for rejecting the request made by the respondents for retrospective promotion to the post of Technical Officer-C, is that CCMSS being an additional promotional

avenue, when changes are made in the scheme, it is not necessary to identify a post with Gazetted status for lateral movement. In fact, the Technicians who have moved to the post of Technical Assistant-C (re-designated as Senior Technical Assistant-A) under CCMSS between 1/7/2006 and 1/7/2009 have been considered in the review as on 1/7/2010 for promotion to the post of Technical Officer-C, which is a Group-A Gazetted post by relaxing the residency period actually required for promotion to the said grade. Further, the changes made in CCMSS during 2006 have been published in the Centre through notice board and standard circulation for the information of the employees and the same was also intimated to the screened-in candidates individually vide communication dated 6/3/2006. Thus, on the date of promotion, the employees were fully aware of the scheme including the career progression available. According to the petitioners, the employees who have moved to the post of Technical Assistant-C (re-designated as Senior Technical Assistant-A) under CCMSS between 1/7/2006 and 1/7/2009 have been considered in the review as on 1/7/2010 for promotion to the post of Technical Officer-C without screening and written test based on the revised syllabus by relaxing the residency period required for promotion from Senior Technical Assistant-A to Technical Officer-C. In the normal course such employees would have been eligible to be considered for promotion to the post of Technical Officer-C only on completion of 5 years service in the grade, i.e., on 1/7/2011. However, as a special case such employees were considered for promotion with effect from 1/7/2010, without insisting for selection process like screening, written test based on the revised syllabus, etc., and promoted with effect from 1/7/2010 itself. The respondents having participated in the selection process and got promoted under CCMSS knowing well all these provisions, cannot now turn around and demand promotion to Scientist/Engineer cadre retrospectively. The petitioners have specifically contended that, as per the norms promotions in the Department of Space/ISRO can be given only from prospective dates.

12. The respondents, who are the beneficiaries of an additional promotional avenue available under CCMSS for lateral entry into a higher post/grade, were promoted to the eligible post/grade as and when they became qualified for selection under CCMSS, as per the norms prevailing as on the date of their promotion. It is not in dispute that, the norms for promotion under CCMSS are being periodically modified by the Department, in order to meet the organisational requirements. Creation of posts and prescription of qualifications and other eligibility criteria for the same depend on the administrative necessity and the functional needs of an Organisation or Department, which are generally made on the basis of a rational classification, with an endeavor to place competent and suitable persons at right places for effective functioning of such Organisation or Department. The eligibility and qualifications to hold a particular post is being fixed by taking into account the duties and responsibilities attached to that post. In the case on hand, Annexure A2 OM, while segregating the paths for career progression in respect of Scientific and Technical personnel based on

their qualifications, also gives ample scope for lateral entry to each path based on acquisition of relevant additional qualifications prescribed for the cadre, thus adding sufficient flexibility to the promotion policy. Since the grade of Scientist/Engineering-SB will be treated as a wasting category, in Annexure A3 OM it was made clear among other things that, all existing Scientist/Engineering-SB, on completion of one year in the grade, will be eligible for next promotion as Scientist/Engineer-SC. Later, in Annexure A5 OM, it was ordered among other things that, the selection under CCMSS will thereafter be to the post of Scientific/Technical Officer-C. In order to make the revised scheme operational and also to bring parity between the existing promotees and future promotees under the scheme, the employees like the respondents were given a chance for interview to the post of Technical Officer-C purely as an one time measure. After availing that chance, the respondents cannot now turn around and contend that they are entitled for such promotion with retrospective effect.

13. Admittedly, the respondents were not holding the post of Scientist/Engineer-SB as on the date of issuance of Annexure A3 and A5 OMs. In order to encourage the meritorious Scientific and Technical personnel who aspire to progress in the Scientific/Technical officer cadre and also to make the scheme more attractive, certain modifications to the existing scheme of CCMSS were made vide Annexure A5 OM. It was clearly mentioned in Para. 7 of the OM that, the revision of eligibility, syllabi, etc., for promotion to the post of Scientific/Technical Officer-C under CCMSS would be effective only from the rationalised date of review as on 1/7/2010. In such circumstances, the request made by the respondents for retrospective promotion from a date prior to 1/7/2010 was rightly rejected by the Department.

14. In *Union of India (UOI) and Another Vs. Hemraj Singh Chauhan and Others*, AIR 2010 SC 1682 : (2010) 125 FLR 282 : (2010) 3 JT 240 : (2010) 2 SCALE 272 : (2010) 4 SCC 290 : (2010) 1 SCC(L&S) 1002 : (2010) 4 SCR 755 : (2010) 3 SLJ 138 : (2010) AIRSCW 2913 , the Apex Court held that, "it is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution." Reiterating the above principle, the Apex Court has in *Jagdish Prasad Vs. State of Rajasthan and Others*, AIR 2011 SC 3189 : (2011) 130 FLR 784 : (2011) 7 JT 384 : (2011) 7 SCALE 552 : (2011) 7 SCC 789 : (2011) 2 SCC(L&S) 302 : (2011) 12 SCR 1 : (2011) AIRSCW 4449 held that, "a Government servant gets a right, though not indefeasible right, to be considered for promotion to the appropriate post to which he is eligible and entitled, in accordance with law.

15. The Registrar General High Court of Judicature at Madras Vs. R. Perachi and Others, AIR 2012 SC 232 : (2011) 10 JT 505 : (2011) 10 SCALE 606 : (2011) 12 SCC 137 : (2011) 12 SCR 661 : (2011) 6 UJ 3849 , the Apex Court held that,

there is no right of promotion available to an employee and he has a right to be considered for promotion which has been held to be a fundamental right. The Apex Court held further that, though a right to be considered for promotion is a condition of service, mere chance of promotion is not. Paragraph 28 of the judgment reads thus;

"28. Besides, there is no right of promotion available to an employee. He has a right to be considered for promotion which has been held to be a fundamental right [see para 13 of S.B. Bhattacharjee Vs. S.D. Majumdar and Others, (2007) 7 JT 381 : (2007) 7 SCALE 190 : (2007) 10 SCC 513 : (2008) 1 SCC(L&S) 21 : (2007) 6 SCR 743 : (2008) 1 SLJ 139 . However, though a right to be considered for promotion is a condition of service, mere chance of promotion is not [see para 15 of the Constitution Bench judgment in Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, AIR 1974 SC 1631 : (1974) LabIC 1103 : (1976) 2 LLJ 115 : (1975) 3 SCC 76 : (1975) 1 SCR 449 ."

16. In the case on hand, the only legal right of the respondents is the right to be considered for promotion to the appropriate post to which they are eligible to be promoted in accordance with CCMSS. When modifications are made to the Scheme contained in Annexure A1 OM by Annexures A3 and A5 OM, as per which the employees like the respondents are entitled to be considered for promotion only with effect from 1/7/2010, they have absolutely no legal right to insist for any retrospective promotion prior to the effective date prescribed in Annexure-A5 OM. Further, the respondents having been participated in the selection process pursuant to Annexure A5 OM and got promoted under CCMSS, as modified by the aforesaid OM, cannot now turn around and demand promotion with retrospective effect, contrary to the scheme under Annexure A5 OM.

17. Though the Tribunal found that the prescription of qualification and eligibility criteria for promotion are based on the administrative necessity and functional needs of the organisation, taking note of the fact that the respondents who were promoted as Senior Technical Assistant-A and thereafter as Technical Officer-C are at a comparatively disadvantageous position in the matter of counting residency period for promotion to the post of Technical Officer-D, the Tribunal ordered that it would be only fair and just that, the period of service of the respondents in the post of Senior Technical Officer-A be counted notionally for the purpose of reckoning residency period for promotion to the post of Technical Officer-D along with residency period of Technical Officer-C. In order to arrive at such a conclusion the Tribunal has relied on Annexure-R2, Office Memorandum dated 1/1/1998 in which the Department has taken into account the residency period undergone in the cadre of Scientist/Engineer-SB by personnel with Graduation in Engineering or Post Graduation in Science for their review to the post of Scientist/Engineer-SD.

We find considerable force in the submission made by the learned Senior Counsel for the petitioners that, through Annexure A2 OM the petitioners had extended the benefit of reckoning combined service rendered in Scientist/Engineer-SB &

SC Grade for review for promotion to the next higher grade of Scientist/Engineer-SD, consequent on change in induction level and career progression of Scientist/Engineer recruited with Graduation in Engineering or Post Graduation in Science as minimum qualification as a special dispensation since the said modification have been effected in their normal line of promotion. On the other hand the respondents who are recruited in service with SSLC plus ITI as qualifications are staking claim for promotion to the post of Technical Officer-D with the benefit of combined service rendered in Senior Technical Assistant-A/Technical Officer-C under CCMSS, which is only an optional lateral entry Scheme and not their regular line of promotion. In such circumstances, the Tribunal went wrong in allowing the Original Application in part, relying on Annexure A2 OM.

In the result, this O.P.(CAT) is allowed setting aside order dated 14/11/2012 of the Central Administrative Tribunal in O.A. No. 241 of 2012.