

9

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PRINCIPAL BENCH**

O.A.NO.3333/2002

New Delhi, this the 10 day of September, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shri S.K. Naik, Member (A)

Dr. Sunita V. Auluck  
w/o Shri Vinay Auluck  
Addl. Director/Scientist 'SE'  
Ministry of Environment & Forests  
Govt. of India  
Parivaran Bhavan, Lodhi Road  
New Delhi-3

. . . Applicant  
(By Advocate: Shri A.D.N.Rao)

Versus

1. Union of India  
through the Secretary  
Ministry of Environment & Forests  
Govt. of India  
Parivaran Bhavan, Lodhi Road  
New Delhi-3

2. The Secretary  
Ministry of Personnel, Public Grievance  
and Pensions  
North Block, Central Secretariat  
New Delhi-1

. . . Respondents  
(By Advocates: Shri N.S.Mehta & Smt. Avinash Kaur)

O R D E R

Shri S.K. Naik:

The applicant (Dr. Sunita V. Auluck) is working as Scientist 'SE' under the Ministry of Environment & Forests in the pay scale of Rs.14300-18300/- . Apprehending that her case for promotion under the Flexible Complementing Scheme (FCS) may not be favourably considered, she first filed OA-1377/2001 which was disposed of by this Tribunal vide its order dated 4.6.2001 with the following observations:-

"2. This case has been filed in May, 2001 and as mentioned above, it came for hearing on 30.5.2001.

*Decide*

4. It is made clear that if the order to be passed by the respondents as above is found by the appellate court to be adverse to her, she will have the liberty to file a fresh OA or seek revival of the appeal under Article 14 of the Constitution.

### Following directions:-

2. Subsequently when her claim was formally rejected by respondent No. 1 in consultation with the Department of Science & Technology and the Department of Personnel Training, she filed another OA-1692/2002 which was disposed of by this Tribunal on 3.7.2002 with the

(2)

e

docx

4. Some of the relevant facts of the case are that the applicant was first appointed as Senior Environmental Officer (Society) in the Department of Environment on 5.8.1982, according to the procedure of recruitment on 26.2.1985, the applicant was appointed as Senior Environmental Officer (Group 'A') on a substantive basis 23.9.1987 vide Notification No. GSR 816 (E), the Ministry of Environment & Forest introduced new service rules under which the procedure of recruitment and promotion was taken out of the purview of the UPSC. At the initial constitution of the revised service, the interest of the Scientists earlier appointed were protected by holding that the Scientists earlier induced were to be redesignated under the new service and continue to carry the scales of pay to which they were entitled on the date of commencement of the rules. It was further prescribed that they shall be eligible for review for the next higher grade after completing five years of satisfactory quality service in the grade.

5. Pursuant to these directions of the Tribunal, the respondents passed a detailed supplementary order dated 9.10.2002 vide Annexure-27 indicating therein the reasons behind their inability to consider her case under the rules relating to the FCS presently in force. Notwithstanding the fact that Dr. Sunita V. Autuck has again agitated the matter vide the satisfaction with the decision of the respondents, Dr. Sunita V. Autuck has again agitated the matter vide the present OA.

(4)

The basic educational qualification and age limits as applicable to direct recruits were to be relaxed in case of officers already working in the Department on a regular basis on the date of initial constitution for the purpose of induction to the re-designated posts and for promotion. Thus after coming into force of the new service rules during 1987, the promotion to the higher grades/posts of those who were already in service were to be effected not through the UPSC but through the mechanism of the Flexible Complementing Scheme.

5. The main grievance of the applicant is that after coming into operation of the Department of Environment, Forests and Wildlife Scientific Group 'A' posts Rules, 1987, she should have been considered for promotion through the FCS along with her colleagues S/Shri Shiv Kumar, P.K. Banerjee, R. Mehta and Subodh Kr. Sharma during the year 1991. The above-named persons were all juniors to her as reflected in the seniority list dated 30.1.1997 and were called for interview and promoted to the higher grade of Scientists 'SF' while, even though she was senior, she was not called for interview, nor given the promotion, as she was away on extra-ordinary leave. Counsel for the applicant has contended that in the order sanctioning extra-ordinary leave for the period from 1989-93, it has been clearly mentioned that the leave would not count as qualifying service for the purpose of pension but no mention was made that the same would not be counted for the purpose of promotion. He has, therefore, tried to draw an inference that even



7. Faced with this situation, counsel for the applicant thereafter has very forcefully agitated the point relating to the applicant having been discriminated, vis-a-vis, one Mrs. Rita Khan and Mrs. C.P. Sehgal. According to him, both these scientists

6. Counsel for respondents has, therefore, argued that this contention of the learned counsel for the applicant is far fetched. In keeping with this provision of the Rules, the applicant was indeed considered for promotion when she became eligible vide order dated 29.8.1995 soon after she acquired the eligibility condition on return from her extra-ordinary leave. Counsel for respondents has stated that since the applicant was away on extra-ordinary leave for more than four and half years, her case obviously could not be considered in her absence as per the Rules. On her return from extra-ordinary leave and after stationing the eligible criteria of completing five years of regular service in the grade, she was duly considered and promoted.

"8.3 Where an eligible scientist is not physically available for review due to deputation or foreign service in India or abroad, his case shall be considered in the same manner as if he were available for review." 8.4 The committee may, if it so desires, return,"

however, has drawn our attention to Rule 8, 8 of the Rules which states as under:-

though the applicant was on extra-ordinary leave, she should not have been deprived of the opportunity of being considered for promotion. Counsel for respondents,

(7)

of extra-ordinary leave could at least be counted now for her next promotion under FCS. This was in fact examined by the Ministry in consultation with the DOPST and even though the representation was without any substance, her case was sympathetic considered and merely on the ground of compassion, the respondents had decided to consider her case for promotion as on 1.1.1999 instead of 1.1.2000 when she would have otherwise become eligible in the normal course. The applicant in fact was requested to furnish her self-appraisal in this regard vide Letter dated 8.10.1999. It is a different story that despite the best of intentions, the Department could not consider her case as with the introduction of the modified FCS scheme during 1998 vide DOPST's Notification No. GSR 660 (E) dated 9.11.1998, the situation had undergone a radical change. The modified FCS was notified on 9.11.1998, under the modified scheme, no person other than a person possessing the educational qualification of at least "Master's" Degree in Natural/Agricultural Sciences or a Bachelor's Degree in Engineering or Technology or Medicine" was eligible for promotion under the FCS. The applicant having possessed a Master's degree in Sociology, which was not a "natural science", consequently stood debarred from the purview of FCS, as clarified and confirmed by both the DOPST and DST, consequently, therefore, contained that debars the rules, case of the applicant simply could not have been considered and, therefore, there is no merit in her application.



Chariman  
(V.S. Aggarwala)

Member (A)  
(S. K. Naik)

Chairman

Without any order as to costs.

appellation has no merit and is accordingly dismissed

44. Under these circumstances, we find that the

modified FCS came into operation.

review under the earlier scheme could be undertaken, the

her case during 1999, unfortunately for her before the

rounds of compensation, inasmuch as they wanted to review

that they had intended to provide her some concession on

However, from the conduct of the respondents, it is seen

the modified FCS and, therefore, are not relevant.

cases pertained to a period prior to the introduction of

concerned, as has already been stated earlier, their

VIS-A-VIS, Mrs. Rita Khanna and Mrs. Q.P. Sahgal is

10. Insofar as the point of discrimination,

her for promotion under the modified FCS,

similar to other scientists would not, therefore, entitle

to her by the Department. More arrangement for doing work

eligible on the strength of the various duties assigned

appellant possesses, she cannot be said to have become

Engineering or Technology or Medicine, none of which the

Natural/Agricultural Sciences or a Bachelor's degree in

though the applicant was on extra-ordinary leave, she should not have been deprived of the opportunity of being considered for promotion. Counsel for respondents,

however, has drawn our attention to Rule 8.3 of the Rules ibid, which states as under:-

"8.3 Where an eligible scientist is not physically available for review due to deputation or foreign service in India or abroad, his case shall be considered in the immediate review falling due on his return."

6. Counsel for respondents has, therefore, argued that this contention of the learned counsel for the applicant is far fetched. In keeping with this provision of the Rules, the applicant was indeed considered for promotion when she became eligible vide order dated 29.8.1995 soon after she acquired the eligibility condition on return from her extra-ordinary leave. Counsel for respondents has stated that since the applicant was away on extra-ordinary leave for more than four and half years, her case obviously could not be considered in her absence as per the Rules. On her return from extra-ordinary leave and after attaining the eligibility criteria of completing five years of regular service in the grade, she was duly considered and promoted.

7. Faced with this situation, counsel for the applicant thereafter has very forcefully agitated the point relating to the applicant having been discriminated, vis-a-vis, one Mrs. Rita Khanna and Mrs. G.P. Sehgal. According to him, both these Scientists

Deoak

doc#1

retrospective promotion was not possible, then the period  
wide letter dated 18.2.1998 saying that even if  
rules, the applicant submitted another representation  
retrospectively as there were no such provisions in the  
that the period of absence could not be considered  
explained that when the applicant was informed earlier  
Mrs. Rita Khanna and Mrs. C.P. Sehgal. He has  
argument with regard to any discrimination, vis-a-vis,  
8. Counsel for respondents has contended the

directive to the respondents in this regard.  
considered for the next promotion and wants us to issue a  
to be eligible even under the modified scheme and  
by the Department and pleaded that she should be treated  
and kind of duties which the applicant has been entrusted  
definition of a Scientist. Counsel has cited the type  
modified, according to which she does not fall within the  
eligible for being considered as the FOS has since been  
has been turned down on the ground that she is now not  
her erstwhile colleagues during 1998. This request also  
as to consider her case for the next promotion along with  
request in this regard was also made to the Department so  
considered prospectively. He has contended that a  
the same should at least be taken into account for being  
retrospectively, as was told to her by the Department,  
extra-ordinarily, leave could not be counted  
for counting the period of absence for the period of  
has further argued that if the request of the applicant  
has been outrightly rejected by the respondents. Counsel  
while in her case, her representation to count the same  
period of absence was counted for the purpose of FOS  
had also proceeded on extra-ordinarily leave but their