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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
Paryavaran 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
Paryavaran 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.

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3. In the above facts and circumstances of the case, we are of the view that considering the fact that the applicant's grievance is under consideration by the respondents themselves, as evident from their letter dated 19.2.2001 and the other relevant facts mentioned above, the O.A. is premature. However, we hope that the respondents shall take an appropriate decision in the matter within a reasonable time and in any case within two months from the date of receipt of a copy of this order. In the circumstances, thereafter, if the applicant's grievance survives, liberty is granted to her to take such proceedings as may be advised in accordance with law."

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 following directions:-

"3. In the circumstances, we find it in order to direct the respondents to pass a supplementary order in continuation of the aforesaid order of 7.8.2001 giving reasons for rejecting the applicant's claim in the light of the issues raised by her in the aforesaid representation. Accordingly, we find that the interests of justice will be duly met by disposing of the present OA at this very stage even without issuing notices with a direction to the respondents to pass orders as above expeditiously and in any event within a period of three months from the date of receipt of a copy of this order. We direct accordingly. The OA is disposed of in the aforesaid terms.

4. It is made clear that if the order to be passed by the respondents as above is found by the applicant to be adverse to her, she will have the liberty to file a fresh OA or seek revival of the present OA in accordance with law."

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3. 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. Not satisfied with the decision of the respondents, Dr. Gunita V. Auluck has again agitated the matter vide the present OA.

4. Some of the relevant facts of the case are that the applicant was first appointed as Senior Environmental Officer (Sociology) in the Department of Environment on 5.8.1982. According to the procedure of recruitment relevant at that point of time, the selections were made through the Union Public Service Commission (UPSC). Vide Government Notification No. A.31012/4/84-Admn. I dated 26.2.1985, the applicant was appointed as Senior Environmental Officer (Group 'A') on a substantive basis w.e.f. 25.7.1984. Subsequent events indicate that on 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 inducted were to be re-designated under the new service and continue to carry the scales of pay to which they were eligible 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 qualifying service in the grade.

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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

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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 1946, 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, viz-a-viz, one Mrs. Rita Khanna and Mrs. O.P. Sehgal. According to him, both these scientists

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 DOP&T and even though the representation was without any substance, her case was sympathetically 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 DOP&T'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", as clarified and confirmed by both the DOP&T and DST automatically stood debarred from the purview of FCS. Counsel has, therefore, contended that de hors the rules, case of the applicant simply could not have been considered and, therefore, there is no merit in her application.

9. We have carefully considered the matter. Counsel for applicant after giving us a long list of duties and responsibilities entrusted by the respondents to the applicant to prove that she in fact has been discharging the duties as is being done by other Scientists, has come to rest his argument only on one aspect that applicant's four and half years' absence on extra-ordinary leave should have been counted by the respondents towards her promotion under the FCS keeping in view that period of absence with regard to Mrs. Rita Khanna and Mrs. C.P. Sehgal had also been counted in the past. He has tried to make out a case of discrimination. We are unable to agree with the contention of the counsel. Firstly, the cases of Mrs. Rita Khanna and Mrs. C.P. Sehgal are not similar on all fours with that of the applicant. The cases of Mrs. Rita Khanna and Mrs. C.P. Sehgal fell during pre-modified FCS of 1998. As explained by the counsel for respondents, the pre-modified 1998 FCS did not have any rigorous definition of Scientists which has been brought in under the modified FCS during November, 1998. One important aspect that was brought to our notice is that the modified FCS was challenged vide 04-1640/99 in which the present applicant - Dr. (Mrs.) Sunita V. Auluck - was also a party, in which the Tribunal has held that the coverage as well as the rigorous criteria laid down by the new scheme was fully within the powers of the Government. It was further held that introduction of modified FCS as a matter of policy out-weighed any individual consideration. If the modified scheme prescribed that the basic eligibility criteria for consideration for promotion is that the Scientists should have at least a Master's degree in

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Natural/Agricultural sciences or a Bachelor's degree in Engineering or Technology or Medicine, none of which the applicant possesses, she cannot be said to have become eligible on the strength of the various duties assigned to her by the Department. Mere averment for doing work similar to other Scientists would not, therefore, entitle her for promotion under the modified FGS.

10. Insofar as the point of discrimination, vis-a-vis, Mrs. Rita Khanna and Mrs. O.P. Sehgal is concerned, as has already been stated earlier, their cases pertained to a period prior to the introduction of the modified FGS and, therefore, are not relevant. However, from the conduct of the respondents, it is seen that they had intended to provide her some concession on grounds of compassion, inasmuch as they wanted to review her case during 1999. Unfortunately for her before the review under the earlier scheme could be undertaken, the modified FGS came into operation.

11. Under these circumstances, we find that the application has no merit and is accordingly dismissed without any order as to costs.

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(S. K. Naik)
Member (A)

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(V.S. Aggarwal)
Chairman

V.S. Aggarwal

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

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

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