

Central Administrative Tribunal, Principal Bench

Original Application No.2761 of 2001

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New Delhi, this the 5th day of November, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.A.T. Rizvi, Member(A)

Mrs. Asha Sinha  
W/o Dr. R.C. Sinha  
R/o A-729, Sarojini Nagar,  
New Delhi

....Applicant

(By Advocate: Ms. Meenakshi Singh)

Versus

1. Government of National Capital  
Territory, Delhi  
Through its Secretary,  
Medical & Public Health,  
New Secretariat, Indra Prasth Estate,  
New Delhi.

2. Additional Secretary  
Medical & Public Health,  
Government of National Capital  
Territory, Delhi  
New Secretariat, 9th Floor  
Indra Prasth Estate,  
New Delhi

....Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

By virtue of the present application, applicant (Mrs. Asha Sinha) seeks a direction to the respondents to treat her to be promoted to the post of Senior Librarian/Senior Library and Information Assistant from 1.12.90 and further to direct all consequential and monetary benefits to her to the post of Senior Librarian/Senior Library and Information Assistant from 1.12.90 onwards under the 4th Central Pay Commission.

2. Some of the relevant facts are that applicant had earlier filed O.A. 2957/97 which was decided on 4.12.98. This Tribunal while disposing of the said application,

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recorded that the post of Senior Librarian is in existence. The recruitment rules were in force. The same had not been ~~repelled~~ <sup>repealed</sup>. The Tribunal had not approved the stand of the respondents that since new recruitment rules had been framed, the old recruitment rules will loose their force and thereupon held -

"It is not disputed that under the old recruitment rules the applicant was eligible to seek promotion to the post of Senior Librarian. Therefore, the respondents ought to have taken the necessary action to consider the applicant for promotion under the recruitment rules already in existence when the vacancy arose and not wait for the enforcement of the new recruitment rules. We are told that even under the new draft recruitment rules the applicant would be eligible for promotion.

12. In view of what has been held and discussed above we allow this OA and direct the respondents to take immediate steps to consider the applicant for promotion to the post of Senior Librarian even if the new recruitment rules have not come into force so far. This shall be done within three months from the date of receipt of a copy of this order. No costs."

3. The applicant subsequently filed a Contempt Petition No.217/99 which was disposed of by this Tribunal on 15.12.99. During the course of submissions in that contempt petition, it was stated on behalf of respondents that the applicant has since been promoted. The applicant's counsel insisted that other relief has not been given. This Tribunal dismissed the contempt petition. The rule was discharged but it was directed that if the applicant still has any grievance, she could file a fresh application.

4. At this stage it may well be mentioned that before disposal of the contempt petition, the applicant, on

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recommendation of the departmental promotion committee, had been promoted vide order dated 29.11.99 which reads :

"On the recommendation of the Departmental Promotion Committee, Smt. Asha Sinha, Librarian/Library Information Asstt. in N.H.M.C., New Delhi, in the pay scale of Rs.5500-9000/- is hereby recommended for promotion to the post of Senior Librarian/Sr. Librarian and Information Asstt. in the pay scale of Rs.6500-10500/- on regular basis w.e.f. the day she joins in Maulana Azad Medical College. She is hereby transferred to Maulana Azad Medical College, New Delhi against a vacant post with immediate effect."

5. The contention of the learned counsel for the applicant for purposes of the present application is that the post to which she had been promoted in the year 1999 was vacant in the year 1990. There was an inordinate delay in promoting the applicant and therefore, she should be given promotion as per the recruitment rules then applicable from that year with all consequential benefits.

6. The respondents' reply points out that recruitment rules were being amended and, therefore, the delay had occurred.

7. On careful consideration of the totality of facts and circumstances of the present case, it is obvious that the applicant is not entitled to the relief claimed. Much stress has been laid on the earlier order passed by this Tribunal, operative part of which has been reproduced above. This Tribunal had only directed that the matter of the applicant should be considered and steps be taken to consider her for promotion to the post of Senior Librarian even if recruitment rules have not come into force. No


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direction had been given that the applicant should be promoted from the back date and the arrears paid to her. Perusal of the order passed by this Tribunal reveals that even at that time, the applicant was contending that the post is vacant since the year 1990 and has not been filled up. The said relief had not been granted to the applicant. It is too late in the day for the applicant, by virtue of the present application, to contend and claim that she should be promoted from the year 1990.

8. Having come to this Tribunal with a relief which was not granted, indeed prompts us to conclude that it is deemed to have refused.

9. Be that as it may, even if we go in the said controversy, still the applicant is not entitled to be promoted from the year 1990. There are no malafides imputed against any person. In the absence of any other extraneous reason, if there is the departmental delay, the applicant would get the relief from the date she is promoted. There would not be an automatic deemed promotion in the absence of exceptions referred to above.

10. Resultantly the present application must be held to be without merit. It must fail and is accordingly dismissed.

  
( S.A.T. Rizvi )  
Member(A)

  
( V.S. Aggarwal )  
Chairman