

22

Central Adminisrative Tribunal
Principal Bench

O.A.No.604/2001

Hon'ble Shri M.P.Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 30th day of October, 2002

Dr. Suresh Kumar Gupta
s/o Late Shri Deva Singh
r/o 11, Maharani Bagh, Phase-II
Ballupur, Dehradun-248006(UP). ... Applicant

(By Advocate: Sh. M.L.Chawla with Sh. Rajeshwar K. Gupta)

Vs.

1. Union of India through
its Secretary
Ministry of Environment & Forest
Department of Environment, Forest and Wildlife
Parivaran Bhawan
CGO Complex, Lodi Road
New Delhi - 110 003.
2. Zoological Survey of India
through its -Director
535, M-Block, New Alipore
Calcutta-700 053. ... Respondents

(By Advocate: Sh. R.N.Singh, proxy of Shri R.V.Sinha)

O R D E R

By Shri Shanker Raju, M(J):

Applicant, in this OA, has sought accord of benefit of higher pay scale by way of in-situ promotion w.e.f 1.4.1991 with all consequential benefits.

2. Applicant joined as Zoological Assistant in the pay scale of Rs.425-700 in Group 'C' post on 16.2.1973 and was promoted in the pre-revised pay scale of Rs.550-900 as Senior Zoological Assistant in 1983.

3. Applicant preferred OA 2027/90 before this Tribunal seeking pay scale of Rs.550-900 as recommended by Third Central Pay Commission. By an

order dated 10.1.1992 directions had been issued to fix the pay of the applicant as Level-I Scientific Assistants in the Zoological Survey of India (hereinafter called as 'ZSI') w.e.f. 1.1.1973 or from the date of appointment as such in the grade of Rs.425-700, whichever is later.

4. Accordingly, applicant was accorded pay scale of Rs.550-900 w.e.f. 16.2.1973 and Rs.1640-2900 w.e.f. 1.1.1986. Applicant was promoted as Assistant Zoologist in the pay scale of Rs.6500-10500 on 8.10.1997. According to the learned counsel, Shri R.K.Gupta though 13 persons, who have joined in ZSI in the years 1974 and 1975 as Zoological Assistants, were placed in the scale of Rs.550-900 from 1974-75 and were given the benefit of in-situ promotion in the scale of Rs.2000-3200 after 1.3.1992 on their stagnation, and accordingly two other persons filed OA 1153/1995, before Calcutta Bench of this Tribunal, which accorded them the benefit of in-situ promotion by an order dated 3.7.1997. One Dr. Vinod Khanna, who joined in ZSI in 1974 as Zoological Assistant was placed in the scale of Rs.550-900 from the date of joining and was promoted in the scale of Rs.2000-3200 w.e.f. 1.3.1992. As the applicant, who is stagnated from 1.2.1990 till October, 1997, the anomaly has not been removed by the respondents. As the applicant has reached to maximum of pay scale of pay prior to 31.1.1990 and started stagnation from 1.2.1990 his original claim for in-situ promotion was not accorded whereas the juniors have been accorded the same. Although the applicant fulfils all the eligibility criteria laid down in Office Memorandum dated

13.9.1991, yet no additional monetary benefits were given except the status, i.e., Senior Zoological Assistant that to from the year 1983.

5. The representation of the applicant has not been responded to. Applicant alleges hostile discrimination which is in violation of Articles of 14 and 16 of the Constitution of India.

6. Through his MA 373/2002, it is contended that by an order (Order No.52/90), one Dr. Vinod Khanna has been accorded the same benefits, and was placed in the scale of Rs.550-900 from the date of appointment as Zoological Assistant, which cannot be countenanced.

7. On the other hand, proxy counsel for respondents, Shri R.N.Singh strongly rebutted the contentions and stated that through Finance Ministry's OM dated 13.9.1991 introduced the Scheme of in-situ promotions to Group 'C' and Group 'D' was circulated, whereas the consideration would be from the date of direct recruit junior to the incumbent becoming eligible for in-situ promotion, and the employees who have not been promoted on regular basis and have stagnated even after one year of reaching the maximum of scale of the post. Shri Singh further states that by subsequent order dated 25.5.1992 it has been stipulated that Group 'C' employees stagnating at the maximum of scale of pay for more than a year cannot be allowed in-situ promotion to next higher grade of Group 'B' scale. As two employees were not accorded

the benefits, in view of the aforesaid OM, Calcutta Bench in OA 1153/1995 allowed in-situ promotion which has been implemented.

8. It is further stated that Dr. Vinod Khanna was allowed in-situ promotion from 1.3.1992, as his seniors have been accorded the benefit from 1.3.1992. According to the respondents, as the applicant was holding the post of Senior Zoological Assistant since 1983, he cannot be accorded the same, as in-situ promotion can be limited to the grade of Zoological Assistant in view of the Ministry's directions contained in letters dated 10.3.1998 and 5.2.1999. It is also stated that the applicant has failed to fulfil the instructions contained for in-situ promotion as in-situ promotion can be considered from the date a direct recruit junior eligible in the cadre for such promotion. Dr. Vinod Khanna, a direct recruit to the post of Zoological Assistant on fulfilling the conditions laid down in OM dated 13.9.1991, was accorded the promotion as his juniors were remained as Zoological Assistants on 1.3.1992. As the next higher post of Assistant Zoologist, which is a Group 'B' post, and as per the OM dated 25.5.1992 stipulates that a Group 'C' employ cannot be allowed in-situ promotion to the next higher grade which incidentally happens to be in the Group 'B' grade. The cut off date for in-situ promotion is 1.3.1992 and as the applicant has been promoted earlier to it and was not having the status of Zoological Assistant on the cut off date, he was promoted as Senior Zoological Assistant before he started stagnating the pay scale.

9. We have carefully considered the rival contentions of both the parties and perused the material on record. Through OM dated 13.9.1991, Ministry of Finance introduced the Scheme of in-situ promotion to provide at least one promotion in service career of any Group 'C' and 'D' employees who fulfils the following conditions

- (i) employees who are directly recruited to a Group 'C' or Group 'D' post;
- (ii) employees whose pay on appointment to such a post, is fixed at the minimum of the pay scale; and
- (iii) employees who have not been promoted on regular basis even after one year of reaching the maximum of the scale of such post.

10. ~~By~~ Subsequent OM dated 25.5.1992 it has been laid down, as a clarification, that in the event a Group 'C' employee stagnates at the maximum of the pay for more than one year, he cannot be allowed in-situ promotion to next higher grade, which happens to be a Group 'B' scale.

11. The benefit of in-situ promotion could not be extended to applicant as the Ministry of Environment, Forests and Wildlife vide their letters dated 10.3.1998 and 5.2.1999 accorded approval to in-situ promotion and under the Career Advance Scheme for only Zoological Assistant, subject to fulfilment of conditions, the post of Senior Zoological Assistant which the applicant was holding on 1.3.1992, which is

a Group 'C' post and the next higher post is in Group 'B', as such in-situ promotion to the next higher grade would be in Group 'B' grade.

12. Applicant was holding the post of Senior Zoological Assistant in 1983, the cut off date for in-situ promotion was effective from 1.3.1992 and as the applicant was promoted to the higher post before the cut off date and was not having the status of Zoological Assistant and had not stagnated in the maximum of pay scale ~~for~~ one year, despite senior he has not been accorded the benefit as he does not fulfil the conditions laid down for grant of in-situ under OM dated 13.9.1991.

13. In so far as his claim vis-a-vis his junior Dr. Vinod Khanna is concerned, who was direct recruit as Zoological Assistant was allowed in-situ promotion w.e.f. 1.3.1992 having fulfilled the conditions laid down in OM dated 13.9.1991. As his seniors have been allowed to in-situ promotion on 1.3.1992 Dr. Khanna was accorded the same, and as the applicant ~~was~~ not at par, we do not find any hostile treatment meted out in violation of Articles 14 and 16 of the Constitution of India.

14. In the result having regard to the reasons recorded above, we do not find any merit in the present OA. which is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)

Member(J.)

M.P.Singh
(M.P.Singh)

Member(A)

/rao/