

O.A. NO. 707/2000

NEW DELHI THIS THEDAY OF JULY 2001

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN(J)
HON'BLE SHRI GOVINDIAN S. TAMPI, MEMBER(A)

Sushila Negi,
Receptionist - cum - telephone Operator,
Department of Biotechnology, CGO Complex,
Lodhi Road, New Delhi - 11000 3

.....Applicant.

(By Shri M.K. Bhardwaj, Advocate)

Versus

1. Union of India through
the Secretary, Govt. of India
Min. of Science & Technology,
Department of Science & Technology,
New Delhi.
2. The Joint Secretary,
Govt. of India,
Department of Science & Technology,
Technology Bhavan, New Mehrauli Road,
New Delhi.
3. The Deputy Secretary,
Govt. of India,
Min. of Science & Technology,
Department of Bio Technology,
New Delhi.

.....Respondents.

(By Shri Rajinder Nischal, Advocate)

O R D E R

BY SHRI GOVINDAN S. TAMPI, MEMBER (A)

Reliefs sought by Ms Sushila Negi, the applicant in
this case are as below:

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- a) mandate the respondents to induct the applicant in the grade of Lower Division Clerk of CSCS & to fix her seniority as LDC in accordance with the rules.
- b) direct the respondents to give the applicant, such promotions as UDC as are given to those, who are appointed as LDC in the department after her appointment as LDC.
- c) command the respondents to open promotional avenue for the applicant & to give her such promotions as are given to her juniors in the grade of LDC or such promotion as are given to other LDC of MDB, who are posted in other departments.
- d) to quash the O. M. No. A.23014/1/90 Admn I(B) dated 3.2.1998 (Annexure - I) & order/OM dt. 24.1.1998 (Annexure -II) .
- e) to direct the respondents to give the applicant, time bound promotion under ACP Scheme.
- f) to allow the O.A. with cost of the litigation and
- g) to pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit & proper in the existing facts & circumstances of the case.

2. Heard Shri M K Bhardwaj, learned counsel for the applicant and Shri Rajinder Nischal learned Counsel for the respondents.

3. Stated in brief, the facts are that the applicant who joined Mineral Development Board, under Ministry of Steel, as LDC on 25.5.1980, was selected as LDC on deputation by the Ministry of Science and Technology w.e.f. 19.11.1987, and was later posted as Receptionist with Special Pay of Rs. 40/- p.m. w.e.f. 1.1.88, ^{and regularised so on 1.1.90} Seniority list of LDCs issued by the respondents on 30.5.1994, did not include her name. , Following the ad hoc promotion of her juniors, she made a representation on 16.3.1995, for

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18

inclusion of her name in the seniority list and for ad hoc promotion as UDC. This was rejected on 24.1.1996 she represented further that she was indeed ^{an}LDC with Special Pay working as Receptionist and that she could not be denied seniority as LDC. After obtaining advice from DoPT, the respondents turned down her representation on 3.2.1998, which according to her was improper, as she was originally appointed as LDC and having completed three years, service, in terms of DoPT's OM No. 12/4/83-CS II dated 7.11.1985, she alongwith Telephone Operators should have been inducted in the CSCS Cadre. Thus, representation of 3.2.98 has not been disposed of. Thus after 20 years of service she has been languishing without any promotion and any pay protection. She argues that she cannot be denied her due, merely on the ground that the post of Receptionist was an isolated post, as in the Deptt., Receptionists and Telephone Operators are included among LDCs. Rejection of her request was harsh and incorrect and needed to be set aright. Hence this application. During the oral submission, Sh. M K Bhardwaj, learned Counsel for the applicant fervently reiterates the above pleas and states ^{that} justice can be rendered to her only by encadring her in CSCS with grant of full consequential benefits and/ or by grant of financial upgradation under ACP Scheme.

4. In the reply filed on behalf of the respondents, duly reiterated by Shri Rajinder Nischal, learned Counsel for respondents, during oral submissions, it is averred that the Department of Biotechnology under Ministry of Science and Technology had taken on deputation persons including the

applicant from the Mineral Development Board which was about to be wound up. She was selected on purely^a temporary basis as LDC w.e.f. 19.11.1987 and it was not a direct recruitment made by the DoPT. She was appointed with effect from 1.1.1988 in the same scale of pay of Rs. 950-1500/- as Receptionist and given substantive rank in the same scale with effect from 1.1.90. It was on 16.3.95 i.e. more than 7 years of her appointment as Receptionist that she made a representation for inclusion her name in the seniority list of LDCs. The respondents consulted DoPT and it was found that in terms of Rule 12 CSCS Rules her case could not be taken up for inclusion for CSCS cadre. Hence it was rejected by the impugned order dated 3.2.98. Her application filed on 24.4.2000 was clearly time barred. Respondents however state she is being considered for financial upgradation under the ACP Scheme. According to Shri Nischal^{holding} further can be done and the request can not^{be} acceded either on the ground of limitation or on merits^{and} deserved to be dismissed.

5. We have carefully considered the matter. We find that the applicant who was originally taken as a LDC purely on temporary capacity in the Department of Bio-technology when the Mineral Department Board in which she was working, was about to be wound up, was subsequently made a Receptionist in the same scale of pay with special pay of Rs.40/- w.e.f. 1.1.88. She has regularised in that post from 1.1. 1990. Her request is that her having originally joined as a LDC in the parent organisation as well as with the Deptt. she should have been encadred in CSCS and given

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all consequential benefits. She also refers to the fact that Telephone Operators and Receptionist like herself were covered by DoPT OM No. 12/4/83 CS(ii) dated 7.11.85, in terms of which those telephone operators appointed in 1972 or thereafter should be inducted into the CSCS in the LDC grade once they complete three years service. It is seen that the applicant's case is hit by limitation. Though she joined as L.D.C. with respondents in November 1987, she was made receptionist w.e.f. 1.1.88, in which post she was regularised on 1.1.90. She had ceased to be an LDC by then. In May 1995, she makes a representation challenging her non-inclusion in the seniority list of LDCs, which is rejected on 24/1.1996. Her further representation for encadrement in CSCS is turned down on 3.2.98. The present is OA is filed on 24.4.2000 challenging both the communications of 24.1.1996 and 3.2.1998. O.A. having been filed four years after the first letter and two years after the second letter is clearly hit by limitation under section 21 of the Administrative Tribunal Act, 1985. On merits also the applicant has no case. Her having been taken into the organisation of the respondents, on deputation and not through the recruitment through DoPT, she could not be considered for being encadred in CSCS, and the request has been correctly rejected by the respondent's by the letter dated 3.2.1998. Similarly her claim for benefit under DoPT's OM dated 7.11.1985, also does not merit acceptance as the same refers only to Telephone Operators and not at all to Receptionists. Merely because Telephone Operators and Receptionists have the common scale of pay, they are not of the same category and the instructions

relating to Telephone Operators do not apply to Receptionists. Thus both on limitation and merits the applicant's claim fails. The fact however, remains that she has been working for more than 20 years in the same capacity without any promotion which appears to be harsh and unreasonable., It is responsibility of the Government as a model employer to ^{take} care of the situation. It also appears from the counter filed by the respondents that they are considering the case of grant of benefit of ACP scheme to her. Nothing more can be done in this case.

7. In the above view of the matter while dismissing the application as being hit by limitation and not having any merit we would suggest to the respondents to consider her case for grant of financial upgradation under the ACP Scheme as fairly conceded by their counter and confirmed made by their learned Counsel during the oral submissions.

No costs.

(Govindan S. Tampi)
Member (A)

Patwal/

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)