

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA No. 136/92

New Delhi, this the 1st day of September, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Shri P.N. Saxena,
S/O Late Sh. Prem Narain Saxena,
aged about 56 years,
R/O 106/170, Laxman Park,
Gandhi Nagar, Kanpur
working as Scientific Assistant,
at National Sugar Institute,
Ministry of Food,
Government of India
(By Advocate: Sh. Gyan Prakash)

.... Applicant

Vs.

1. Union of India, through,
Secretary, Ministry of Food,
Govt. of India, Krishi Bhawan,
New Delhi.

2. Secretary,
Ministry of Finance,
(Department of Expenditure),
North Block,
New Delhi.

3. Director,
National Sugar Institute,
Government of India,
Kanpur-17.

.... Respondents

(By Advocate: Sh. K.R. Sachdeva)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

The applicant who was, at the time of filing of this OA in the year 1992, working as Scientific Assistant in the National Sugar Institute, Kanpur is aggrieved by the letters dated 1.8.91 and 11.4.91, as at Annexures A-1 and A-4, respectively, by which his representations for upgradation of his post to a selection post in the pay scale of Rs.1640-2900 from the present pay scale of Rs.1400-2300 have been rejected. Shorn of unnecessary details, the applicant's case is that he has been

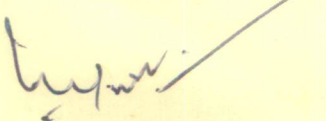
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stagnating in the present post for the last nearly 18 years and has no avenue of promotion open to him. Relying upon some awards given by the Board of Arbitrators in respect of Scientific Assistants working in other department the applicant also claims the benefit of upgradation of his post to the selection grade of Rs.1640-2900 (unrevised). He further relies upon the recommendations of the Third Pay Commission as also the letter at Annexure A-10 which, according to the applicant, had been sent by the Sr. Administrative Officer of National Sugar Institute to the Central Pay Commission recommending upgradation of all posts of Scientific Assistants from the pay scale of Rs.425-700 or Rs.380-560 to Rs.550-900.

2. The respondents have resisted applicant's claim on the ground that the applicant had already secured two promotions and that his case was not one of stagnation for a long period or of non-availability of avenues of promotion. It is further averred by the respondents that the applicant is not eligible for promotion or consideration for the post of Technical Officer in the Instrumentation Wing, where he is presently working, and that, therefore, he cannot be promoted to the next higher grade. In this regard it is further contended that the applicant lacks the requisite educational qualifications/requisite experience for the higher post of Technical Officer (Instrument Engg.).

3. The applicant has also filed his rejoinder in which the contentions raised in the OA have been reiterated. We have heard the learned counsel for the



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parties and have perused the material on record. After giving our careful consideration to the rival contentions made at the Bar we find no merit in this OA. The reasons are not far to seek:

4. During the pendency of the OA the applicant retired from service. It is, therefore, not clear as to what relief he wants to get now. On this question the learned counsel for the applicant contended that if this OA is allowed and the respondents are directed to grant relief to the applicant retrospectively from the date the Fourth Pay Commission made its recommendations then the pension of the applicant would get enhanced and he would also get the arrears of pay. We are afraid, this contention cannot be accepted, for the simple reason that the pay scales which the applicant seeks to get modified and upgraded have been in existence right from the year 1973. It is, therefore, too late in the day for the applicant to claim upgradation of his pay scale on the mere ground that he had stagnated in the present pay scale for a long period.

5. The arbitration award relied upon by the applicant was given in the case of Scientific Assistants working in the Botanical Survey of India while the applicant is working in the National Sugar Institute. There is hardly any connection between the two. The applicant cannot claim parity with Scientific Assistants working in the Botanical Survey of India, especially so when according to the respondents the requisite qualifications are entirely different for the two posts. According to the respondents for the post of Scientific

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Assistant in the Botanical Survey of India the requisite qualifications are M.Sc. or first class B.Sc.(Hons.) or second class B.Sc. with 3 years experience. The educational qualification of the applicant, on the other hand, is Diploma in Electrical Engineering. The learned counsel for the respondents further argues that the mode of recruitment and the duties performed by the Scientific Assistant in the Botanical Survey of India is also entirely different from the mode of recruitment and the nature of duties performed by Scientific Assistant in the National Sugar Institute.

6. As regards the letter, as at annexure A-10 already referred to above, it is vehemently denied by the respondents that any such letter had ever been written by the Sr. Administrative Officer of the National Sugar Institute to the 4th Pay Commission as claimed by the applicant. In this regard the learned counsel for the applicant has drawn our attention towards the fact that annexure A-10 does not contain any letter No. nor does it bear the signatures of the person who is said to have sent the letter. We find ourselves in agreement with the learned counsel for the respondents. The document does not appear to be a genuine document. Suffice it to say that according to the respondents no such document exists in their records.

7. The applicant's reliance upon the judgment of the apex court in Dr. Ms. O.Z. Hussain vs. Union of India, reported in ATR 1990 (1) SC 431, is misplaced. In that case it was found by the apex court that there was a disparity of pay between medical and non-medical

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categories of Group 'A' Scientists working under the Director General of health services. The Supreme Court in those circumstances directed the concerned Ministry to make such alterations as may be necessary in the recruitment rules relating to the Non-Medical Wing of the said Directorate. But in the instant case we do not find any such circumstances.

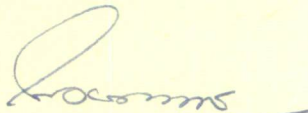
8. Lastly, the learned counsel for the applicant relies upon some Consolidated Instructions issued by the Department of Personnel relating to drafting of recruitment rules according to which it was found desirable to make appointments to isolated posts by transfer on deputation/short term contract, as otherwise the incumbents of the lower posts will not have any avenue of promotion. The learned counsel argues that the post of Scientific Assistant in the National Sugar Institute is an isolated post and this should have been merged with some other cadre so as to make available avenues of further promotion. We are not sure as to whether the Consolidated Instructions relied upon by the applicant have any statutory force or not. Even assuming it to be so this would not by itself entitle the applicant to the relief claimed for when he had admittedly secured two promotions already. He was recruited initially as a Mechanic from which post he got promotion to the post of Electrical Mechanic in a higher pay scale. Subsequently, the post of Scientific Assistant was created by the Director of the Institute and the applicant was appointed to that post. This was done on ad hoc basis. As the sanction for the post later elapsed the applicant was reverted. But he was again promoted as Scientific Assistant in the year 1974

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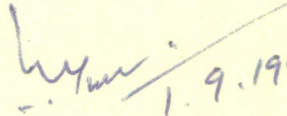
and was appointed to that post on regular basis only in the month of Septemebr 1981. It was only w.e.f. 9.3.84 that he was confirmed in that post. Thus, it would be wrong to say that he had stagnated for 18 or 19 years. After securing promotion twice the applicant can be said to have stagnated on the post of Scientific Assistant for 10 or 12 years and eventually retired in the year 1993.

9. In the aforementioned circumstances, we find no grounds to direct the respondents to upgrade the post of Scientific Assistant for the purpose of providing further promotional avenues to the applicant and that too after he has retired from his service.

10. In the result, this OA is dismissed, as being devoid of merit. There shall be no order as to cost.


(S.P. BISWAS)
Member (A)

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 9.1998.
(T.N. BHAT)
Member (J)