

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

..... T.A. 1461/87 and 1
Original Application No. 519 of 1987

Km. Nazma Sultana Applicant.

Versus

President, Forest Research Institute and
Colleges, P.O. New Forest, Dehradun and others.
. Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. A.B. Gorthi, Member Administrative.

(By Hon'ble Mr. Justice U.C. Srivastava VC)

Claiming seniority and preferential right to promotional post from which she has been deprived the applicant has approached this Tribunal praying that she may be given seniority of Research Officer from October 1971 to 26.2.1985 and that she may be declared to be entitled to be promoted as Research Officer class-II w.e.f. 18.6.1969 and with effect from 27.2.1985 and as such order dated 8.12.1986 be quashed and that she may be promoted as senior Research officer Grade-I in place of Dr. M.S. Rajawat and be given seniority over him ^{and} the seniority list dated 13.2.87 ^{is} be quashed.

2. There is a cadre of Group 'C' technical posts in the Forest Research Institute Dehradun and a combined list of all such holders of group 'c' post holding different posts in the same pay scale is maintained. The qualification or eligibility for all such posts in this Group 'c' technical post appears to be the same. Though according to the respondents these posts are not unchangeable and all officials included in the same do not belong to the same category of Research Assistant Grade-I which according to the applicant in fact it is so and in fact the cadre is one and

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it contains difference branches and various posts have difference nomenclatures. According to the applicant who has placed seniority list on the record indicating the post held by incumbents the post of Research Assistant Grade-I and that of publicity Assistant are one and the same and all the Research Assistants are designated differently according to the nomenclature on the post on which they work as initially, she was sent to Library section it was mentioned in her appointment letter as Assistant publicity the post for which applications were invited. Similarly the person appointed in as Assistant Research Assistant in Botany Department are called curator of Herbarium. Similarly one Shri P.N. Sharma designated as Artist was appointed as Research Assistant Grade-I in the same seniority list. Similarly a B.B.S. Chauhan who was appointed as Research Assistant Grade-I was sent in publicity and Liaison Branch where he was designated as Assistant publicity but was promoted as Research officer which post in similar manner is claimed by applicant. In the seniority list dated 10.6.1967 placed on record the said Shri Chauhan is also shown as publicity Assistant and is also shown to have been promoted as Research Officer.

3. The applicant was appointed to the post of Assistant publicity vide order dated 17.5. 1962 in the pay scale of 210-425/- which was her first appointment in the Institute. In response to president of the Institution calling for list of Research Assistant Grade-I who had Bio Chemistry or Zoology with Entomology in their B.Sc./M.Sc. (emphasis supplied) the applicant who fulfilled the requisite qualifications also applied for the same but the matter remained pending. In the year 1966 a panel was formed to fill-up the posts of Research Officer by promotion and the applicant's name was also included

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in the same with the approval of Departmental Promotion Committee, Ad-hoc promotions were given to two research assistants as Research Officers even though they were junior to the applicant in the seniority list. The applicant represented against the same on 2.1.1967 and then on 24.5.69 and apparently as result of the same she was promoted as Research Officer vide order dated 7.8.1969 on ad-hoc basis for 3 months in Botany Branch in place of one Shri P.C. Gupta who was appointed as Research Officer in F.R. Laboratory Bangalore. As the said post was to be filled in by direct recruit and an arrival of one Shri S.R.S. Bennet a direct recruit the applicant was reverted to the post of Research Assistant Grade-I (Documentation) vide order dated 2.7.70 in the silviculture Branch and not as Assistant Publicity. vide said order one Adarsh Kumar was to continue as Research Officer on adhoc basis vice the applicant in Forest Genetics Branch. The applicant raised a grievance against said reversion stating that only one who was junior to her ^{her 2} could be reverted. A corrigendum was issued through on 2.7.1970 clarifying that the applicant was also to continue as Research Officer in said section and posted to work in silviculture Branch. But one month thereafter vide order dated 10.8.1970 the applicant was reverted along with the other Research Officers to the post of Research Assistant grade-I against which the applicant filed representations. The president of the Institute vide letter dated 31.8.1970 informed the applicant that her request for promotion as Research officer can not be acceded to. Vide order dated 23.8.1976 the president of the Institute approved the appointment of 25 Research Assistants Grade-I as Research officers on ad hoc basis but the applicant who was senior to 23rd of them as per combined seniority list was not promoted.

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4. The applicant's grievance is that she was entitled to be promoted as her work and conduct was ~~for~~ excellent and of a very high merit through out and far better than the persons who were appointed as Research Officer by order dated.22.10.79. The applicant holds the degree of bachelors of science with Chemistry, Botany and Zoology and also the degree of bachelor of library science and has more than 3 years working experience as Research Assistant grade-I and as such she was fully qualified for being promoted as research officer. It has further been stated that again the president of the Institute by order dated 27.5.1977, the applicant was informed that her request for promotion to the post of research officer can not be acceded to. In the result of recommendation of the Departmental Promotion committee, the president of the institute appointed 23 research Assistants as Research Officers on un-reserved post by order dated 22.10.1979. According to the seniority list dated 31.12.1978, the applicant was senior to 17 persons who were juniors to the applicant, were appointed as Research Officer but she was not appointed at this posts and it has been stated that Departmental Promotion Committee should meet every year to make appointment to the higher grades. The committee did not meet for over 6 years(for Biology Group) and 10 years for others. The Ministry of Agriculture and irrigation issued a Gazette notification dated. 20.10.1966 in exercise of the powers conferred by the proviso to Article 309 of the Constitution framing rules regulating the method of recruitment to the posts of the Forest Research Institute. The rules 9 of the said rules provides that the provisions contained in these rules in respect of the post mentioned at serial No. 18,20 and 21 of the schedule shall remain in force upto 31.3.1979 or till the publications of the revised recruitment rules which ever is earlier. The post of reeseach Officer is mentioned at serial No. 18. The applicant was entitled to be promoted in

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5. The applicant has earlier filed a writ petition No. 1748 of 1980 before the Allahabad High Court and it was decided on 15.10.1985. The respondents despite being served did not file^{ed} any counter affidavit and accordingly ex parte judgement was given which according to the respondents was given effect to. Though in this case ~~we~~^{they} have raised the plea that the said direction was given because of the absence of pleading. In the said case the applicant claim^{ed} herself to be senior to number of Research Assistant Grade-1 because of her placement in the combined seniority list, and made a complaint against non giving of grade and discrimination by not including her name in the proposal sent to the Departmental Promotion Committee for promotion as research officer and her supersession. The Court issued the following directions:- The directions is issued to opposite parties to send the name of the petitioner to departmental promotion committee within one year from the date a copy of the order is produced before them or in case the departmental selection committee meets earlier than before that." It has been stated that as directed by the High Court the name of the applicant was sent to Departmental Promotion Committee for group 'B' post for consideration and on the recommendations of the Departmental Promotion Committee, the applicant was promoted as Research Officer w.e.f. 27.2.1982 i.e. the date from which she became eligible for promotion as Research Assistant Grade-I (Selection grade) and not that of Assistant Publicity and at any for the time she was not appointed as Research Assistant grade-I earlier she had no legal right for the same until she became Research Assistant Grade-I (Selection Grade) on 27.2.1982.

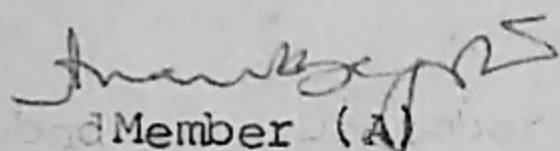
6. The respondents have not explained as to how the applicant was not ineligible under the rules when the president of the Instituted^{ed} required the applicant to apply for promotion to the post of Research Officer and the

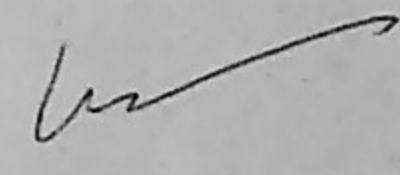
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applicant fulfils all the qualifications mentioned in the said letter. The High Court in the above case also made the observation in promoting the said name of the petitioner who admittedly was senior and whose records was good, the opposite parties committed an error of law and their conduct was discriminatory. The findings of the High Court became final and they obviously challenge they operate as res-judicata and in any case, the principles of constructive res-judicata and it is no longer open to the respondents to questions the same in any round about manner. It has got to be accepted that the applicant initial appointment was as Research Assistant Grade-I but she was posted in Library and was designated as Assistant Publicity and there was inter-changibility in the various department the instances of which have already mentioned above. So long as the cadre was one and the same it can not be said that she belong to a particular different cadre and was not entitled to get any other post in the other cadre i.e. of the Research Assistant grade-I or any other post on which admittedly she was later on promoted like others. This is also evident from the fact that in the year 1969 she was given also a chance to work as such and her post, the library Assistant publicity post was also never declared as ex-cadre post. Under the direction of the High Court the respondents were bound to consider the claim of the applicant for promotion and they did consider it the legal position of the applicant thus stood establish by the High Court and is no longer open to deny the same. The applicant thus is fully eligible and qualified and her case for promotion to this higher post on the basis of the seniority list and higher grade was to be considered in that light but the same was not done. The respondents are bound to consider the claim of the applicant for the said promotional post against the vacancies from the date they were existing and the applicant became entitled to

the same.

7. The respondents are accordingly directed to promote the applicant as Research Officer class-II w.e.f. date she became eligible by virtue of her seniority though not from 27.2.1982 notionally and her notional promotion w.e.f. date her juniors were promoted will also be counted ^{for} her seniority, ^{but monetary} ~~so~~ ^{benefits} ~~mandatory~~ benefits for the same ~~was~~ should accrue to the applicant only from the date she was actually promoted. The respondents are also accordingly directed to recast the seniority list within a period of three months and consider the claim of the applicant and promote her to the higher post made as a result in changing the seniority position or promotion of any officer, ^{and} that will also be done within the another period of two months. The application stands disposed finally in these terms. No order as to the cost.


Member (A)


Vice-Chairman

Allahabad 14 December, 1991.
(RKA)