

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.767 OF 1995

ALLAHABAD THIS THE 10<sup>th</sup> DAY OF August 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

HON'BLE MR. S. C. CHAUBE, MEMBER-A

Vijia Singh,

W/o Shri S.P. Singh, Grade-III,

Female Attendant Indian Veterinary Research Institute  
Hospital, Izzatnagar.

.....Applicant

( By Advocate Sri M.K. Upadhyaya )

Versus

1. Union of India, through the Secretary,  
Indian Council of Agriculture Research,  
Krishi Bhawan, New Delhi.
2. Director, Indian Veterinary Research Institute,  
Izzatnagar.
3. Chief Administrative Officer, Indian Veterinary  
Research Institute, Izzatnagar, U.P.
4. Assistant Administrative Officer, M.R.D.P.C.  
Indian Veterinary Research Institute, Izzatnagar.
5. Rajeshwari Devi Grade IV, Female Attendant Indian  
Veterinary Research Institute, Hospital Izzatnagar.

.....Respondents

( By Advocate Sri B.B. Sirohi )



O R D E R

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

By this O.A. applicant has sought the following relief(s):-

- "1. That respondents may be directed to declare, the applicant is senior to the respondent no.5.
2. And to quash the promotion order dated 23.1.1980 vide order No.10-5/79 whereby respondent no.5 has been promoted to Grade III from a back date 4.10.79, and treating her to be senior from respondent no.5 she be given promotion on its all consequential benefits.
3. And further to quash the order dated 9.12.1985 and 14.7.1995.
4. That the order dated 21.10.1995 and order dated 24.2.1996 also may be quashed and applicant be given promotion w.e.f. when his junior respondent no.5 was promoted.
5. issue any order or direction which this Tribunal may deem just and proper in the circumstances of the case."

2. The brief fact as submitted by applicant are that she was appointed as Female Attendant <sup>S.S.</sup> as/Grade III in the scale of Rs.210-290 on 07.11.1979 in Indian Veterinary Research, Izzatnagar. Smt. Rajeshwari Devi, respondent no.5 also appeared for the post of S.S. Grade III on 7.11.1979 but she was not found suitable, therefore, was not selected. Smt Rajeshwari Devi was appointed as S.S. Grade I female Attendant on 4.10.1971 and she continued on this said Grade upto 23.1.1980.

That it is submitted that in this Institute S.S. Grade I, S.S. Grade II are inferior to S.S. Grade III as the scale of pay of Grade I as given in I.C.A.R. Manual Administrative Institution is Rs.196-3-2-20-E.B.-3-232, the scale of pay Grade II is Rs.200-3-206-4-234-E.B.-4-250 and that of Grade III is





Rs.210-4-226-E.B.-4-250-E.B.-5-290.

3. It is submitted by the applicant that promotion to Grade III is done from the post of Grade II and promotion to the post of Grade II is done from the post of Grade I. It is stated that respondent no.5 Smt. Rajeshwari Devi kept on working on S.S. Grade I upto 23.1.1980 and she was promoted to S.S. Grade III with retrospective effect from 4.10.1979 arbitrarily. It is submitted that her promotion of respondent no.5 to S.S. Grade III with retrospective date that is 4.10.1979 is illegal but has been done deliberately to supersede the applicant and to cause harm as she joined S.S. Grade III on 07.11.1979. That such type of promotion is illegal, arbitrary and cannot be supported by any canon of law. It is surprising that respondent no.5 was given a further promotion vide order dated 9.12.1985.

4. It was at this stage that applicant came to know about the promotion of respondent no.5 to Grade III. She came to know about it in middle to 1986 and she immediately gave representation to the Chief Administrative Officer. No reply was given so she gave further representation dated 28.3.1988 and 8.12.1989, ultimately she was sent a letter dated 06.08.1990 whereby she was advised to be patient as she would be promoted as per her seniority. Smt. Rajeshwari Devi was given S.S. Grade III w.e.f. 04.10.1979 whereas applicant joined the institute w.e.f. 7.11.1979, therefore, her request can't be acceded to (Page 29). Being aggrieved she again represented, when she was sent copy of the letter dated 14.07.1995 whereby Administrative Officer was directed to reconsider the case of applicant in accordance with rules and inform her about it (Page 14).




5. It is at this stage that applicant filed the present O.A. After the filing of O.A. respondent no.5 was given further promotion vide order dated 24.2.1996, therefore, applicant challenged that order as well by amending the O.A.

6. Counsel for the applicant invited our attention to the recruitment rule of S.S. Grade IV which is shown to be a selection post. It is to be filled 100% by way of promotion from amongst the (1) supporting staff grade III with minimum five years of service in the grade in appropriate trade/vocation/office but failing (i) supporting staff Grade III and II with a total service of eight years or more in both grades together in appropriate trade/vocation/office (page 23).

Counsel for the applicant submitted that since respondent no.5 didn't have 8 years service in both grades together, therefore she was not eligible to be considered for promotion to Grade IV therefore promotion of respondent no.5 is wrong, illegal and arbitrary.

7. Respondent on the other hand, have taken preliminary objection to the maintainability of O.A. on the ground that since applicant is challenging the order dated 9.12.1985, therefore, O.A. is barred by limitation. On merits they have submitted that applicant was appointed as S.S. Grade I female Attendant on 07.11.1979 whereas respondent no.5 was appointed as Grade I (Female Attendant) on 4.10.1971. They have annexed <sup>Seniority</sup> / list of 10.3.1983 to show that respondent no.5 was senior to applicant in grade III (Annexure CA). Respondent no.5, ~~therefore~~, given promotion to grade III w.e.f. 4.10.1979 after completion of 8 years of service in accordance with R.R. (Annexure CA II) page 15.





8. They have further explained that in order to provide relief to the supporting staff in lower grade, the I.C.A.R. adopted measure for improving the promotional prospects of the supporting staff and removing stagnation in various grades. True copies of the instruction dated 13th July 1978 and 31st July 1979, bringing out the policy decision of the Government in this regard is being filed herewith and marked as Annexure CA-3 and 4. It is stated that the respondent no.5 has ~~not~~ been promoted with retrospective effect from 4.10.1979 is legal and not deliberately to supersede the applicant as alleged. The promotion given to respondent no.5 is legal and justified and is in accordance with law. A perusal of the averments made by the applicant in the O.A., ~~against~~ admittedly bring out the fact that Smt. Rajeshwari Devi respondent no.5 was senior to her. As regards the promotion of Smt Rajeshwari Devi with effect from 4.10.1979 on the post of S.S. Grade III (Female Attendant). Smt. Rajeshwari Devi, S.S. Grade I (Female Attendant) was promoted to Grade III in the scale of Rs.210-290 vide office order No.F.10.5/79-E. III dated 23.1.1980 w.e.f. 04.10.1979 in pursuance of ICAR's instructions contained in their letter no.27(7)/77-E.II/per dated 13.07.1978 as she had completed 8 years service in Grade-I (appointed S.S. Grade I Female Attendant) w.e.f. 04.10.1971. Since she was senior to applicant in Grade III, she was considered for promotion to Grade IV by the DPC. They have further stated that applicant and respondent no.5 were working together in human hospital of the Institute for 16 years, therefore, it is inconceivable that she was ignorant about the promotions granted to respondent no.5.

9. They have submitted that respondent no.5 was given promotion on 9th December 1985, where as representation was





made on 29.7.1987, admittedly after a period of about 2 years. The promotion of Smt. Rajeshwari Devi was done after she was considered by the departmental promotion Committee in accordance with the recruitment rules. The reply of the representation made by the applicant was given to her. It is further stated that respondent no.5 was promoted to the post of S.S. Grade IV (Female Attendant) on completion of 8 years of the requisite service for the post. Smt. Rajeshwari Devi has also been promoted to the post of T-1 (Lab Tech. Human Path) being the senior most feeder grade under rule 7.1 of the I.C.A.R. Technical Service Rules, on the basis of the recommendation of the departmental promotion committee. They have reiterated that/ the representation of the applicants were decided by the institute and she was informed about the same. It is settled law that limitation cannot be calculated from the date of decision of successive representation. Limitation is to be taken from the order passed on the representation. Since this O.A. is barred by limitation, the O.A. may be dismissed on this ground alone.

10. We have heard both the counsel and perused the pleadings as well. Counsel for the applicant relied on following judgments.

2001 SCC (L&S) 742 Anand Kumar Vs. Prem Singh and Ors.

1992 SCC (L&S) 665 A Sagayanathan & Ors. Vs Divisional Personnel Officer.

2000 SCC (L&S) 845 State of Bihar and Ors. Vs

Kameshwar Prasad Singh and Another.

to state that liberal approach should be adopted in conducting the delay.

11. Counsel for the respondents on the other hand, relied



on AIR 1999 S.C. 1510 B.S. Bajwa & Another Vs. State of Punjab and Ors. 1976 (1) SCC 599 Malcom Lawrence Cecil D' Souza Vs. U.O.I. & Ors. to state that seniority cannot be challenged after a lapse of 14 or 15 years.

12. In the instant case, respondents have stated that applicant and respondent no.5 were working in the same hospital for the last 16 years and after respondent no.5 was given promotion as S.S. Grade III they had <sup>even R.</sup> ~~been~~ issued seniority list in the year 1983 wherein respondent no.5 was shown above applicant. Applicant has not stated in rejoinder that this seniority list was not circulated meaning thereby that applicant would have known the fact about respondent no.5's above applicant if not earlier, than in 1983 at least. Admittedly applicant gave her representation in 1987 and she was given the reply in 1990, therefore, she ought to have approached the court within a reasonable period either after 1983 or at least in 1990. She kept giving representations and filed the present O.A. only in 1995 challenging the promotion of respondent no.5 given in 1980 i.e. after 15 years.

13. It is settled law by now that old matters of seniority and promotions should not be opened after a long delay and after 3-4 years things should be allowed to settle down. In 1996(9) SCC 531 K.R. Mudgal & Ors. Vs. R.P. Singh and Ors. it was held by Hon'ble Supreme Court that promotions should not be disturbed after a long lapse of time. Courts should not entertain petitions challenging seniority after inordinate delay. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government

B



servants created by the writ petition filed after several years. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of sense of insecurity in the minds of government servants, there would also be administrative complications and difficulties. A government servant who is appointed to any post ordinarily should <sup>at</sup> least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity.

14. Similarly in J.T. 1998 (5) S.C. 98 8.V. Seviaha and Ors. Vs. K. Adhanta Babu and Ors. it was held by Hon'ble Supreme Court as under:-

"Promotion in 1988 was challenged in 1993. It was held belated challenge to promotions cannot be entertained."

15. Even in the case of Ramesh Chandra Sharma Vs. Udham Singh Kamal & Ors. promotion was given on 22.4.1991 against which representation was given on 1.5.1991. The representation was rejected on 2.7.1991 but O.A. was filed on 2.6.1994. It was held by Hon'ble Supreme Court that O.A. was barred by limitation and applicant had not even filed any application for condonation of delay, therefore, it couldn't have been entertained.

16. In the instant case, applicant was advised to wait for her turn as per seniority in 1990 itself. She again filed representation but on this point also Hon'ble





Supreme Court has held that repeated representations do not extend the period of limitation. In the A.T. ACT 1985 period of limitation is laid down as one year from the date of cause of action and in case representation is filed which is not decided then within 18 months from the date of cause of action.

17. If the instant case is seen in the light of judgments as referred to above, it is liable to be dismissed.

18. We would be failing in our duty if we don't deal with the judgments referred to by the counsel for applicant. Counsel for the applicant had relied on 1992 SCC (L&S) 665 A Sagayanathan and Ors. Vs. Divisional Personnel Officer but perusal of the order shows that it was in the given facts of that case the Hon'ble Supreme Court held as under:-

"Having heard counsel on both sides and perused the records, we are of the view that despite the delay, this is a matter which requires investigation."

19. No principle was laid down in this case that in every case of delay, matter should be adjudicated on merits. He next relied on 2001 SCC (L&S) 742 but in this case also, finding had been recorded in favour of respondent no.1 yet he was not given the promotion. It was in those circumstances that Hon'ble Supreme Court held that once it was found that the respondent was treated with uneven hands in the matter of fixation of seniority the promotion of appellant on the basis of wrong seniority can't be upheld, therefore, this is also different facts. Counsel for the applicant next relied on 2000 SCC (L&S) page 845. This is one case where Hon'ble Supreme Court held that liberal approach in condoning the delay is preferable but if this judgment is seen

8



in entirety  
Two things come out distinctly.

1. That Hon'ble Supreme Court was talking about condoning the delay in Hon'ble Supreme Court which is evident from para 11 wherein it is stated, " The Supreme Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits.
2. Hon'ble Supreme Court was dealing with the matter where State of Bihar had filed the case after delay but it involved the hundred and hundred of persons. It was in this background that Hon'ble Supreme Court <sup>held</sup> as under:-

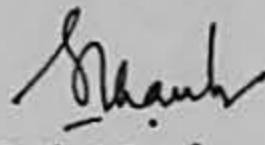
"Having regard to the fact and circumstances of the present case and with the object of doing substantial justice to all parties concerned, it must be held that sufficient cause has been made out by the petitioners which has persuaded the Supreme Court to condone the delay in filing the petitions, Dismissing the appeals on technical grounds of limitation would not, in any way, advance the interests of justice but admittedly, result in failure of justice as the impugned judgments are likely to affect not only the parties before the Supreme Court, but hundreds of other persons who are stated to be senior than the respondents. The technicalities of law cannot prevent the Supreme Court from doing substantial justice and undoing the illegalities perpetuated on the basis of the impugned judgments. However, while deciding the petitions, the reliefs in the case can appropriately be moulded which may not amount to unsettle the settled rights of the parties on the basis of judicial pronouncements made by the courts regarding which the State is shown to have been careless and negligent."

Perusal of above paragraph again shows that it was having regard to the facts and circumstances of that case that Hon'ble Supreme Court had condoned the delay. This judgment, therefore, can't be taken as a precedent to condone delay in every case where seniority or promotions are challenged after a long delay specially when the dispute is of two individuals only.

B



20. In view of the above discussions we are satisfied that the relief as prayed by applicant cannot be given to her at this belated stage specially so because thereafter respondent no.5 has got further promotion also. Such old matters can't be reopened as it would amount to unsettling a settled position which was in full knowledge of applicant. We are, therefore, not inclined to interfere in this case. The O.A. is accordingly dismissed with no order as to costs.

  
Member-A

  
Member-J

/neelam/