

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 747 OF 1996

Present :

Hon'ble Mr. S. Biswas, Member(A)

Hon'ble Mr. A. Sathath Khan, Member(J)

Smt. Gitasree Som
W/o late B. Som,
Retd. Sr. Personnel Asst.
Botanical Survey of India,
P8, Brabourne Road,
Calcutta-1,
R/o 3/93, Sarat Ch. Road,
Botanic Garden, Howrah-3

Vs

1. Union of India through the
Secretary, Ministry of Environment,
and Forest, Paryavaran Bhawan,
CGO Complex, Lodi Road, New Delhi-3
2. The Director, Botanical Survey
of India, P-8, Brabourne Road,
Calcutta-1
3. Sr. Administrative Officer,
Botanical Survey of India,
P-8, Brabourne Road,
Calcutta-1

respondents

For the applicant : None

For the respondents : Mr. M.S. Banerjee, Counsel.

Heard on : 8.1.03 : Order on : 10.1.03

ORDER

S. Biswas, A.M.:

The applicant, who has retired from service, has prayed for giving her benefit of upgraded post of Sr. Personal Assistant in the scale of Rs. 2000-3200/- w.e.f. 15.5.87 instead of 26.4.90.

2. The applicant joined service under the respondents as Stenographer in 1961. She was promoted to the post of Personnel Assistant, Hqrs. (Group C non-gazetted) in the scale of Rs. 425-700/- and thereafter as PA to Director in the scale of Rs. 550-900/- (Group B Non-gazetted) w.e.f. 11.1.79 on ad hoc basis and was regularised w.e.f. 20.5.80. It is the contention of the applicant that the post of PA to Director in the scale of Rs. 550-900/- was upgraded in the scale of Rs. 2000-3200/- by a

Presidential order dt. 15.5.87. Her grivance is that even though she was functioning as PA to Director in the scale of Rs. 550-900/- on regular basis since 20.5.80, she has not been given this upgraded scale from the date of order i.e. from 15.5.87 and instead she was given such higher grade of Sr. Personal Assistant w.e.f. 26.4.90. She retired from service w.e.f. 30.11.95. Her grievance is that because of non granting of the higher scale from 15.5.87, she has suffered financial loss as also in the pensionary benefit. She has, therefore, prayed for giving her the upgraded scale of Rs. 2000-3200/- of PA since redesignated as Sr. PA w.e.f. 15.5.87 i.e. from the date of upgradation with consequential benefit.

3. When the matter is called, none appears for the applicant. Mr. M.S.Banerjee, ld. counsel is present for the respondents. After hearing him and on going through the records, we are of the view that this case can be decided on the basis of records and we proceed to do so.

4. The respondents have stated in their reply that this application is barred by limitation. It is further stated one post of Sr. Stenographer, attached to the Director, BSI was upgraded to the scale of Rs. 2000-3200/- in terms of recommendation contained in Ministry of Finance OM dt. 13.9.86. However, the said post was to be filled by promotion as per normal procedure. It is further stated that the post of Sr. Stenographer created by letter dt. 15.5.87 was redesignated as Sr. PA vide Govt. order dt. 5.3.90. Recruitment Rules for the post was published on 7.9.89 and the applicant was given promotion to the post of Sr. PA as per recommendation of DPC w.e.f. 26.4.90.

5. It is also stated that the applicant made a representation for promotion as Sr. PA with retrospective effect, which was considereed and rejected vide orders dt. 1.4.91, 7.12.92 as also memo dt. 5.8.91. It is contended that this application having been filed long thereafter, it is barred by limitation and hence the application should be rejected.

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6. Mr. M.S.Banerjee, ld. counsel for the respondents has mainly urged that the application should be dismissed only on the ground of limitation. He has drawn our attention to annexure-R3 to the reply by which the representations of the applicant was rejected long ago in 1991. Since the application has been filed in 1996 after retirement of the applicant, the same cannot be entertained.

7. On merit also, it is contended by the ld. counsel that the post was redesignated as Sr. PA by order dt. 5.3.90 (annexure-R1) and the recruitment rules were notified on 7.8.89. Thereafter, the case of applicant was considered by the DPC and accordingly she was given promotion from 26.4.90. She retired from service in 1995 and received all the benefits. It is contended that the applicant cannot be given promotion prior to the creation of post and this fact was brought to her notice on her representation by the Ministry's order dated 7.12.92.

8. We have considered the matter carefully. Admittedly, the applicant was appointed as PA (Sr. Stenographer) to the Director in 1980 on regular basis and she was functioning in this post all along. From annexure-A2 we find that the post of Sr. Stenographer attached to the Director, BSI was upgraded to the scale of Rs. 2000-3200/- by the Presidential order dt. 15.5.87. But she was not given the benefit of this upgraded scale and rather she was given such benefit from a latter date i.e. from 26.4.90. It is the case of the respondents that the post of redesignated as Sr. PA by order dt. 5.3.90 and thereafter the applicant was given promotion after following the prescribed procedure as per rules.

9. The main grievance of the applicant is that when she was discharging the duties and responsibilities of the post of PA (Sr. Stenographer) to the Director in the scale of Rs. 550-900/- since 1980 on regular basis and when the post was upgraded by order dt. 15.5.87, she ought to have been given the benefit of such upgraded scale. But the respondents illegally denied her such benefit and actually given this benefit in 1990 after the post was redesignated as

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Sr. PA in March 1990.

10. It will be useful to reproduce the relevant part of the order dated 15.5.87 below:-

"Sub : Upgradation of scale of pay of the post of Senior Stenographer attached to the Director, Botanical Survey of India - proposal regarding :

I am directed to convey the approval of the President to the upgradation of one post of Sr. Stenographer attached to the Director, Botanical Survey of India, to the scale of pay of Rs. 2000-60-2300-EB-75-3200/- in terms of the recommendations contained in Ministry of Finance (Deptt. of Expenditure) Notification No. F.15(1)-IC/86 dated the 13th September, 1986. The upgradation of this post is subject to the condition that the same will be filled by promotion as per normal procedure.

11. Admittedly, at the relevant time the applicant was functioning as PA (Sr. Stenographer) to the Director in the scale of Rs. 550-900/- and this post was upgraded to the scale of Rs. 2000-3200/-. However, a condition was imposed that the upgradation of the post will be subject to the condition that the same will be filled by promotion as per normal procedure. Normally, the applicant should have been given this upgraded scale as she was already holding the post, but for the aforesaid condition. According to the respondents, this post was subsequently redesignated as Sr. Personal Assistant vide order dt. 5.3.90 (Annexure-R1). The said order reads as follows :-

" I am directed to convey the sanction of the President to the redesignation of the post of "Senior Stenographer" created vide this Ministry's letter No... dt. 15.5.87 as "Senior Personal Assistant".

12. The relevant recruitment rules for the post of Senior Personal Assistant was notified on 7.9.89 (annexure-R2). Thus, it is quite evident that even prior to the redesignation of the post on 5.3.90, the recruitment rules were already existing. According to these rules, the post is a non-selection post and Stenographers, Gr.I with scale of Rs. 1640-2900/- (Rs. 550-900/) with 2 years regular service in the grade were eligible. Admittedly, as per these recruitment rules, the applicant was eligible in 1987 itself as she had been

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functioning as PA to Director in the scale of Rs. 550-900/- (revised to Rs. 1640-2900/-) since 1980 on regular basis. It is not explained by the respondents as to why no step was taken after upgradation of this post in May 1987 for filling up the same as per the condition of upgradation. There is nothing on record to show that there was any embargo on filling up the post. The only condition imposed that the post was to be filled up on promotion basis as per normal procedure. The applicant was promoted as PA to the Director as per normal procedure in 1980. If there was any other procedure for filling up this post, nothing has been disclosed in the reply nor is it the case of the respondents that the applicant at the relevant time was not eligible to get this post. Even as per recruitment rules for Sr. PA which were notified in 1989 i.e. after creation of the post as Sr. Stenographer in 1987, the applicant was eligible at that time. Thus, the applicant's point of grievance that there was no reason to deny the benefit of this upgraded scale/post to the applicant from May 1987 i.e. the date of creation/upgradation of the post needs consideration.

13. The contention of the respondents that after the redesignation, the post was filled up by promotion as held in the Notification No. F/15(1)1C/86 dt. 13.9.86 *ibid.* This does not repugnant order dt. 15/5/87 in any substantial manner.

14. We have carefully considered the opposite view points. The President's approval is clearly with regard to upgradation of one post subject to promotional formalities. To complete these the Department had to get the R.R. amended and it took them time upto April, 1990 when the incumbent was ultimately found fit for promotion by the D.P.C. and formally promoted. We further observe that this was not a mere upgradation of scale, but a substantive post was created by the Notification in the category of Group B cadre which required a different constitution of D.P.C. comprising of a member from the U.P.S.C. We are therefore not able to agree with the view that it was a self contained upgradation of scale or mere change of designation that the degree of change could be overlooked as perfunctory.

In the situation, we find the O.A. as devoid of merit and therefore, the same is dismissed without any cost.

(A. Sathath Khan)
Member (J)

(S. Biswas)
Member (Admn.)