

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 332 of 2008

Monday, this the 25th day of *may*, 2009

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member

P.K. Malathy, Statistical Investigator,
Directorate of Arecanut and Spices Development,
Calicut - 673005.

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Applicant

(By Advocate – None)

V e r s u s

1. The Secretary, Ministry of Agriculture,
(Department of Agriculture and Co-operation),
Krishi Bhavan, New Delhi - 110 001.
2. The Horticulture Commissioner, Government of India,
Ministry of Agriculture (Department of Agriculture and
Co-operation), Krishi Bhavan, New Delhi - 110001.
3. The Director, directorate of Arecanut & Spices
Development, Calicut - 673 005.
4. Smt. P. Premaja, Research Officer, Directorate of
Arecanut and Spices Development,
Calicut-673005.

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Respondents

[By Advocate – Mr. TPM Ibrahim Khan, SCGSC (R1-3)]

The application having been heard on 15.4.2009, the Tribunal on
25.05.09 delivered the following:

ORDER

By Hon'ble Dr. K.B.S. Rajan, Judicial Member -

The applicant is at present functioning as Statistical Investigator under the 3rd respondent and she has at her credit a Degree in Economics. In the post of Statistical Investigator she has put in more than 10 years of service. According to the Recruitment Rules the applicant is eligible to be

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considered for promotion as Research Officer. Her date of superannuation is 31.5.2010. Earlier when a vacancy arose in the post of Research Officer the same was, in accordance with rules, filled up on deputation basis and the 4th respondent had been appointed on deputation vide Annexure A-2. The initial period of deputation was stipulated as 3 years from 15th July, 2004. The said deputation period of three years was to come to an end in July, 2007 when the 4th respondent seems to have applied for extension of her deputation. At the same time vide Annexure A-4 the applicant had penned a representation requesting the respondents that she may be considered for promotion under promotion quota, as deputation is to be resorted to only after exhausting the avenue under the promotion quota. This representation, however, was not responded to, though the local office had forwarded the same to the Headquarters (respondent No. 2). Meanwhile vide Annexure A-6 order dated 16th May, 2007 the 4th respondent was given extension of deputation for a period of six months with effect from 16.7.2007.

2. By communication dated 22.5.2007 (Annexure A-7) notification was issued inviting applications on deputation basis for the post of Research Officer. While this was pending order dated 7th January, 2008 was passed extending the deputation of 4th respondent from 16.1.2008 to 15.7.2008. Challenging the above action of the respondents, the applicant, vide her application filed on 24th June, 2008 before this Tribunal has sought for the following relief:

"a. Call for the records leading up to Annexure A-8 and direct the respondents to appoint the applicant in the post of Research Officer in the directorate, where she is working now.

b. Declare that the applicant is an eligible departmental candidate for the post of Research Officer in the directorate.

c. Direct the respondents not to appoint any one else by deputation or otherwise without considering the claim of the applicant.

d. To grant such other relief deem fit to this Hon'ble Tribunal."



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3. The respondents have contested the OA. According to them no rules have been violated in extending the deputation of the 4th respondent. The claim of the applicant for promotion will be justified only when she is considered and selected by the selection committee namely UPSC. At the time of filing of the counter the UPSC was contemplating to call the applicant for personal talk (paragraph 8 of counter affidavit). The personal talk was held on 31.10.2008 and the applicant was thus interviewed. However, she was not recommended by UPSC. By order dated 4th November, 2008 the UPSC has informed respondent No. 1 stating that after holding personal talk with Mrs. P.K. Malathy on 31.10.2008, the UPSC did not find her suitable for appointment on promotion/deputation basis for the post of Research Officer (Rs. 8000-13500/-) in Directorate of Arecanut and Spices Development, Calicut (this order was made available at the time of final hearing by the counsel for the respondents).

4. When the case was listed for hearing on 15.4.2009 while counsel for the applicant was not available, the OA was reserved with liberty to the applicant to file written arguments, if so desired invoking provisions of Rule 15 of CAT (Procedure) Rules, 1987. No written submission however, has been made available to the Court within the stipulated time or thereafter. Accordingly, the case has been considered on merit on the basis of pleadings and relevant decisions regarding right of a party for promotion.

5. It is clear from order dated 4th November, 2008 that the applicant was interviewed on 31.10.2008 but she could not be selected by the selection committee. Thus, there cannot be a grievance that the applicant was not considered for promotion. It is settled law that the vested right available with any employee with regard to promotion is only consideration for promotion and not right to promotion itself. In this regard the following decisions of the Apex Court are appropriate to be relied upon:



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(a) *Dev Dutt v. Union of India*, (2008) 8 SCC 725, at page 735 :

One may not have the right to promotion, but one has the right to be considered for promotion

(b) *Food Corporation of India v. Purushotam Das Bansal*, (2008) 5 SCC 100

9. The appellant is "State" within the meaning of Article 12 of the Constitution of India. An employee of a State although has no fundamental right of promotion, it has a right to be considered therefor.

(c) *M. Mohammed Abdulla v. State of Kerala*, (2007) 10 SCC 654

We may furthermore observe that a declaration of probation in a grade would not automatically confer on an employee a right of promotion. All eligible permanent employees are required to be considered for promotion *inter alia* upon taking into consideration their seniority in the service.

(d) *Tejshree Ghag v. Prakash Parashuram Patil*, (2007) 6 SCC 220,

Though there is no right to promotion, there is right to be considered.


(e) *S.B. Bhattacharjee v. S.D. Majumdar*, (2007) 10 SCC 513

13. Although a person has no fundamental right of promotion in terms of Article 16 of the Constitution of India, he has a fundamental right to be considered therefor.

(f) *S.S. Bola v. B.D. Sardana*, (1997) 8 SCC 522,

Right to promotion though is not a vested right, a right to be considered for promotion is the rule. As and when vacancy arises, every officer, be it promotee or direct recruit, is entitled to consideration for promotion in accordance with the rules then existing.

6. The applicant no doubt fulfills the eligibility condition but she had not been found suitable for the post of Research Officer. The said post is a General Central Service Group-A Gazetted Non-Ministerial post and as such mere eligibility will not suffice and the selection committee has found the applicant as not suitable to the post. That the applicant is a lone candidate would not mean that even if unsuitable the applicant should be selected. In any event by virtue of the decision of the Apex Court in the




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afore cited cases, the vested right available is only right to be considered which has been met by the respondents. As such the applicant's grievance cannot be redressed within the provisions of the rules and regulations or judgments on the subject.

7. Accordingly, the OA is dismissed. In the above circumstances, there shall be no order as to costs.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(K.B.S. RAJAN)
JUDICIAL MEMBER

"SA"