

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 257/93
Transfer Application No.

Date of Decision : 29.7.95

Nirmalya Ghosh

Petitioner

Shri S.P.Saxena

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri Suresh Kumar for
Shri M.I.Sethna

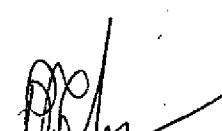
Advocate for the
respondents

C O R A M :

The Hon'ble Shri B.S.Hegde, Member(J):

The Hon'ble Shri P.P.SSrivastava, Member(A).

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(P.P.SRIVASTAVA)
MEMBER(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.

O.A.257/93.

Nirmalya Ghosh

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

CORAM: Hon'ble Shri B.S.Hegde, Member(J).

Hon'ble Shri P.P.Srivastava, Member(A).

APPEARANCE:

Shri S.P.Saxena, Counsel
for Applicant.

Shri Suresh Kumar for
Shri M.I.Sethna, Counsel
for Respondents.

JUDGMENT:

DATED: 27.7.95

¶ Per Shri P.P.Srivastava, Member(A). ¶

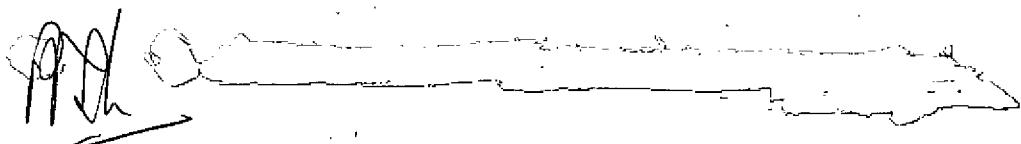
The Applicant is working as Chief Research Officer in the Central Water and Power Research Station, Pune. He joined the organisation as Research Officer in 1974. He was promoted after five years of qualifying service in the feeder grade to the post of Senior Research Officer on 16/7/84 but was given promotion with retrospective effect i.e. 1/1/83 in the flexible complementing cum-in-situ type of promotion system. The applicants assessment for the next promotion as Chief Research Officer was due on 1/1/88 after completion of five years service as Senior Research Officer but as the applicant was abroad on study leave for doing his Ph.D., he was not considered for promotion when sixteen officers junior to the applicant were called for assessment and promoted as Chief Research Officer on 4/11/88. This promotion was effected from 1/1/88 in the scheme of flexible complementing

...2/-

(3)

cum-in-situ type of promotion. The applicant resumed duty after expiry of leave on 16/10/90 and was assessed on 9/4/91 for promotion as Chief Research Officer. He was promoted as Chief Research Officer on 18/9/91. The applicant has mentioned that although he was assured that he would be promoted from 1/1/88 he was not given this promotion. The applicant has mentioned that during his study leave he had addressed letter dt. 3/5/88 to the Secretary, Ministry of Water Resources, New Delhi requesting clarifications on the mode of promotion for officers on deputation/study leave and had pleaded that the applicant should not be superseded by his juniors simply because he is on study leave, away from his headquarters. Para-2 of this letter reads as under:-

"I was promoted to Senior Research Officer, with effect from 1/1/83 vide Ministry of Water Resources Letter No.3/3/82-E.II dated 12/12/84, under the Flexible Complementing Scheme. On 1/1/88 I have completed five years of service and as such I am due for being assessed for Chief Research Officer. I would very much appreciate, if I am informed well in advance the interview dates for the assessment. I also seek your clarification on the mode of promotion for Officers on deputation or on study leave i.e. will their candidature be considered without their appearing for the interview who will bear the cost of travel return will their promotion be considered from retrospective date, if selected, I may also be informed well in advance, if I am required to appear for the interview. I certainly do not want to become a junior after putting in all that hard work towards my Ph.D. I therefore request you sir, to please consider my case favourably."



2. In reply to above letter of the applicant the respondents sent a letter dt. 31/5/88 which was signed by Under Secretary, Ministry of Water Resources. The whole letter reads as under:-

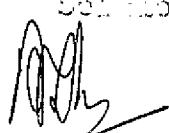
"Please refer to your letter dated 3rd May, 1988 addressed to the Secretary, Ministry of Water Resources regarding promotion under the Flexible Complementing Scheme. In this connection, it may be mentioned that a Senior Research Officer having five years of service in the grade, is eligible for consideration for promotion to the next higher grade/post i.e. Chief Research Officer. In the past there have been cases similar to your case where Officers on study leave/UN fellowship training were considered for promotion, in absentia, by the Board of Assessment along with other eligible candidates and were given proforma promotion. In such cases, the Department have to seek relaxation of recruitment rules first from the Department of Personnel & Training and then from the Union Public Service Commission in order to consider the candidature of an individual, in absentia, along with other eligible candidates for promotion to the next higher grade. Such cases have to be forwarded by the concerned Head of the Department to the Ministry for taking necessary action. Therefore, your case should have also been routed through the Director, Central Water and Power Research Station, Pune for taking necessary action. In connection with the instant case, it may be mentioned that requisition for considering eligible officers for promotion has already been sent to the Union Public Service Commission in December, 1987 and a meeting of the Board of Assessment is likely to be held in the near future."

3. The case of the applicant was forwarded by the Director, Central Water and Power Research Station to the Ministry of Water Resources vide letter dt. 22/6/88 for considering the case of the applicant for the promotion to the grade of Chief Research Officer in Flexible Complementing Scheme. Thereafter, the applicant was given further clarification vide Ministry of Water Resources letter dt. 9/11/89. Para-B of this letter reads as under:-

"b) As regards to promotion status, I am to inform you that the case has been referred to Union Public Service Commission and keeping in view the trend of the Board of Assessment, it is likely that your promotion matter will be considered by the Board only on your arrival in India after completion of studies, Department of Personnel and Training is not allowing any official to be considered for promotion in absentia. However, when considered it would be effective with effect from 1/1/88, provided you are otherwise found fit by the Board of Assessment."

4. The applicant was finally assessed for promotion to the post of Chief Research Officer and promoted on 18/9/91. Although he represented and also his case was recommended by the Director, Central Water and Power Research Station, the Ministry turned down his request for promotion with retrospective effect from 1/1/88 vide their letter dt. 5/11/93 finally. This letter has been issued after the filing of the OA. The Applicant has prayed that he should be given promotion as Chief Research Officer from 1/1/88, as has been given to all his juniors in the cadre of

See also



...5/-

Senior Research Officer when he was abroad.

5. The Counsel for the respondents argued that the policy to give promotions with retrospective date has been revised by the Government in the year 1989 and now all promotions are being made effective from prospective date. Since the applicant was assessed for promotion in the year 1991, which was after the change in the policy of the Govt. Government, he has been given promotion as per the policy from prospective date. He has further argued that although it has been mentioned in letter dt. 9/11/89 that when considered promotion would be effective with effect from 1.1.88 provided he is otherwise found fit by the Board of Assessment, however, after change in the policy his case could not be dealt with according to the previous procedure. Counsel for the respondents has also argued that since nobody has been promoted from retrospective date after 1989 and subsequently promotions have been given effective from prospective date, as such there is no denial of equal opportunity and natural justice.

6. We are of the opinion that the case of the applicant should be governed by the old policy and the rules which were applicable before 1989 specially in view of the assurance given to him by the department that as and when he is considered for promotion it would be from backdate i.e. 1/1/88. The applicant had taken care of the question of promotion from backdate while seeking information from the Ministry well in time and on the assurance of the Ministry that his promotion would be considered from backdate i.e. 1.1.88 when his juniors were promoted, he felt assured and completed his studies abroad.

7. Considering all the facts and circumstances of this case, we therefore are of the opinion that there is considerable force in the submissions of the applicant

We therefore allow the OA and direct that the applicant should be promoted as Chief Research Officer from 1/1/88 and his seniority should be fixed as if he was assessed with his other colleagues in the same batch ^{on 4/11/88} and his seniority as Chief Research Officer should be retained as it existed before 1/1/88 in the cadre of Senior Research Officer. The benefit of pay shall be given to the applicant from 1/1/88 by fixing his pay on proforma basis upto the date of his actual promotion. He will not be entitled to arrears of pay from 1.1.88 ^{to} and the date of promotion. OA is disposed of with the above direction. There would be no order as to costs.

(P.P.SRIVASTAVA)
MEMBER (A)

(B.S.HEGDE)
MEMBER (J).

abp.