

**Central Administrative Tribunal
Principal Bench**

OA No.1493/2015

New Delhi, this the 06th day of October, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. V.N. Gaur, Member (A)**

Harihar Prasad Das
Ex Senior Law Officer, Age 62
S/o Late J.P. Das
Central Pollution Control Board
Resident of E-186 Bathla Apartment
43 IP Extension Patparganj
Delhi-110092.Applicant

(By Applicant in person)

Versus

1. Chairman, Central Pollution Control Board
Parivesh Bhawan, East Arjun Nagar
Delhi-110032.
2. Secretary
Ministry of Environment, Forest & Climate Change
Indira Paryavaran Bhawan Jor Bagh Road
Ali Ganj, New Delhi
Union of India.Respondents

(By Advocates: Ms. Charu Ambwani for Res. No.1 and Shri Satish Kumar for respondent No.2)

ORDER (ORAL)

Justice Permod Kohli, Chairman :-

The applicant joined the Central Pollution Control Board as Assistant Law Officer on 02.12.1987 and then promoted to the post of Law Officer in the scale of Rs.3000-100-3500-

125-4500/- old scale (New scale, 15600-39100, G.P. 6600) on 20.12.1995. One Shri Ishwar Singh serving as Law Officer was promoted as Senior Law Officer and while he was serving as Senior Law Officer, the said post was upgraded as Additional Director (Law) vide notification dated 13.02.2008. On upgradation of the post of Senior Law Officer, Shri Ishwar Singh was appointed as Additional Director (Law) vide order dated 25.02.2008. The said Shri Ishwar Singh retired from service on 31.10.2011. The grievance of the applicant is that though he was junior to Shri Ishwar Singh, he had rendered more than 16 years of service and was fully eligible for appointment to the post of Senior Law Officer but he was not promoted. It is alleged that his ACRs for the relevant period i.e. 2003-2004, 2004-2005 and 2005-2006 were not made available. In order to support his contention he has referred to a communication dated 04.10.2013 from the Administrative Officer(R), Central Pollution Control to the Under Secretary(CP), Ministry of Environment and Forests, wherein it is mentioned that the applicant who was working as Senior Law Officer at the relevant time had completed required service for consideration of second financial upgradation under Modified Assured Career Progression Scheme w.e.f. 01.09.2008 but on account of non availability of his ACRs for the period

2003-2004, 2004-2005 and 2005-2006, he was not found eligible for grant of financial upgradation.

2. The grievance of the applicant in this Original Application is that he should be promoted to the post of Additional Director Law w.e.f. 31.10.2011 i.e. the date on which Shri Ishwar Singh had retired. The hierarchy of service as is evident from the Recruitment Rules of 1995 is that there are posts of Assistant Law Officer at Sl. No. 6 and Law Officer at Sl. No.17 of the Schedule. The Recruitment Rules 1995 were notified on 24.01.1995. Under these Recruitment Rules there was no post of Senior Law Officer. Admittedly, according to these rules, the applicant had been promoted as a Law Officer. The Recruitment Rules were, however, amended vide notification dated 25.07.2003 and one post of Senior Law Officer was brought in vide GSR 673(E).

3. It is not in dispute that Shri Ishwar Singh was senior to the applicant and he was promoted as Senior Law Officer on the basis of his seniority. However, the post of Senior Law Officer which was only one in number was upgraded as Additional Law Officer on 13.02.2008 without there being any provision for the said post under the Recruitment Rules. From the order dated 13.02.2008, we find that the

upgradation of the post of Senior Law Officer to the post of Additional Director (Law) was personal to the incumbent. This clearly indicates that this upgradation was only to confer undue benefit to Shri Ishwar Singh who was the ultimate beneficiary of this upgradation and immediately on his retirement, the post of Additional Director (Law) had been abolished and again the post of Senior Law Officer has been created.

4. Learned counsel for the respondent No.1 submits that under the Water (Prevention and Control Board) Rules 1975, the Pollution Control Board is competent to create or abolish a post. Insofar as the question of powers of the Pollution Control Board is concerned, the same cannot be disputed. However, the fact remains that the post of Additional Director (Law) was created by upgrading the only post of Senior Law Officer for the benefit of only one person and immediately after his retirement, the said post of Senior Law Officer had been revived. No valid reason has been indicated in the reply as to the necessity of upgradation and then reversion of post of Senior Law Officer. As a matter of fact, we find that it is a total fraud played by some officers to confer undue benefit to one person only. We also notice that when the report of Pollution Control Board was placed before

the Parliament in the year 2008 one post of Additional Director Law Officer was shown even though there was no such post under the recruitment rules. The creation and abolition of the post of Additional Director (Law) was totally contrary to rules and thus impermissible under law.

5. Be that as it may, the fact remains that when the applicant was promoted as Senior Law Officer on 26.11.2012, the post of Senior Law Officer had been revived and according to Rules he was promoted against the said post. The claim of the applicant that he may be promoted to the post of Additional Director (Law) cannot be allowed for the simple reason that no such post exists under the Recruitment Rules, although we are convinced that the respondents have played complete fraud on the Constitution by granting undue benefit to one person by upgrading the post and then abolishing the same after his retirement. In any case, this court is not competent to grant the benefit to the applicant in absence of there being such a post in the hierarchy of service.

6. For the above reasons, we dismiss this OA. No costs.

(V N Gaur)
Member(A)

(Justice Permod Kohli)
Chairman

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