

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.968/2012

RESERVED ON 13.10.2015
PRONOUNCED ON 29.10.2015

HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)

Dr. Dhruw Sharma
S/o Shri Chandan Sharma
Assistant Director (Biology),
Forensic Science Laboratory,
Govt. of NCT of Delhi,
Madhuban Chowk,
Sector-14, Rohini,
Delhi-110085.

...Applicant

(By Advocate: Mr. O.P. Gehlaut)

VERSUS

1. Govt. of NCT of Delhi
Through its Chief Secretary,
Delhi Govt. Secretariat,
I.P. Estate, New Delhi-110002.

2. Dr. C.P. Singh,
Assistant Director (Physics)
Forensic Science Laboratory,
Govt. of NCT of Delhi,
Madhuban Chowk,
Sector-14, Rohini,
Delhi-110085.

3. Dr. N.P. Waghmare
Assistant Director (Ballistics)
Forensic Science Laboratory,
Govt. of NCT of Delhi,
Madhuban Chowk,
Sector-14, Rohini,
Delhi-110085.

...Respondents

(By Advocate: Ms. Alka Sharma and Mr. S.N. Sharma)

:ORDER:**HON'BLE MR. JUSTICE B.P. KATAKEY, MEMBER (J):**

The applicant, who has been promoted to the post of Assistant Director (Biology), Forensic Science Laboratory (FSL), has filed this OA praying for a direction to the respondent-authorities to promote him notionally w.e.f. 03.05.2007 to the post of Assistant Director (Biology) and counting of his notional seniority in the said post with effect from the said date, apart from challenging the final seniority list of Assistant Directors (Biology) in FSL dated 19.01.2012.

2. We have heard Mr. O.P. Gehlaut, learned counsel for applicant, Mrs. Alka Sharma, learned counsel for respondent no.1 and Mr. S.N. Sharma, learned counsel for respondent no.3. None appeared for respondent no.2.

3. The learned counsel appearing for the applicant has submitted that since the applicant was appointed as Senior Scientific Officer (Biology) on deputation basis vide order dated 05.01.1999 and has subsequently been permanently absorbed vide order dated 19.04.2010 w.e.f. 10.05.2002, pursuant to the direction issued by the Hon'ble High Court on 16.11.2009 passed in CM No.4139/2009 in W.P.(C) No.16613/2006 filed by the applicant, the authority cannot refuse to count the period of his service as Senior Scientific Officer (Biology) w.e.f. 10.05.2002 for

the purpose of promotion to the post of Assistant Director (Biology), as has been done in the instant case. According to the applicant, he having fulfilled the eligibility criteria for promotion to the post of Assistant Director (Biology), which is 5 (five) years regular service in the grade of Senior Scientific Officer (Biology), he ought to have been considered for promotion to the post of Assistant Director (Biology) w.e.f. 03.05.2007 i.e. the date when two posts of Assistant Director (Biology) were created and vacant on that date, but he was promoted to the post of Assistant Director (Biology) w.e.f. 18.11.2010 only.

4. The learned counsel further submits that four other Senior Scientific Officers of different streams, including Biology, had filed OA No.1611/2005 claiming consideration of their promotion to the post of Assistant Director (Biology) by taking into account their period of service as Senior Scientific Officer (Biology) in FSL, during the period of deputation, which OA though was dismissed vide order dated 28.07.2005, the same, however, was allowed by the Hon'ble High Court vide judgment and order dated 11.10.2006 passed in W.P.(C) No.14097-100/2005, which writ petition was filed by the aforesaid four Senior Scientific Officers (Biology). It has also been submitted that though the respondents therein filed Civil Appeal No.1753/2007 before the Hon'ble Supreme Court, the same was dismissed vide order dated 13.10.2011 with cost of Rs.25,000/-. It has also been submitted

that pursuant to the aforesaid order passed by the Hon'ble Supreme Court, the said four Senior Scientific Officers (Biology) were given notional promotion vide order dated 03.10.2011 with effect from the date when the vacancy in the post of Assistant Director (Biology) occurred, thereby antedating the promotion, though they were, during pendency of the aforesaid Civil Appeal No.1753/2007 before the Hon'ble Supreme Court, were promoted to the post of Assistant Director (Biology) with effect from 10.02.2009.

5. It has further been submitted that after such antedating the promotion of the said four Senior Scientific Officers (Biology), a revised tentative seniority list of Assistant Directors (Biology) was issued on 10.10.2011, inviting objections, if any, pursuant to which though the applicant submitted his objection/representation on 20.10.2011 as well as on 12.12.2011 claiming notional promotion w.e.f. 03.05.2007, as has been given to the aforesaid four Senior Scientific Officers (Biology) and another, the said representations, however, have been rejected by publication of the final seniority list dated 19.01.2012, placing the applicant at Serial No.9 of the said seniority list, though he is entitled to be promoted notionally w.e.f. 03.05.2007, he having completed five years of qualifying service in the feeder post of Senior Scientific Officer (Biology), in which post the applicant was permanently absorbed vide order dated 19.04.2010 w.e.f.

10.05.2002. The learned counsel, therefore, submits that the applicant is entitled to notional promotion to the post of Assistant Director (Biology) w.e.f. 03.05.2007 and consequent fixation of seniority, as has been granted to other similarly placed persons, namely, the aforesaid four Senior Scientific Officers (Biology) by maintaining the parity.

6. The learned counsel further submits that though the respondent no.2 herein filed an OA being OA No.261/2012 before this Tribunal claiming seniority over the aforesaid four Senior Scientific Officers (Biology), after their notional promotion being given from the date prior to date of direct recruitment of the said respondents, the said OA was dismissed vide order dated 11.09.2013 and against which though the said respondents preferred W.P.(C) No.346/2014 before the Hon'ble High Court, the same has also been dismissed vide order dated 26.09.2014. The learned counsel, therefore, submits that the necessary direction may be issued to the respondent-authority, namely, the respondent no.1 for ante-dating his promotion to the post of Assistant Director (Biology) w.e.f. 03.05.2007 and to recast the seniority accordingly. The learned counsel in support of his contention has placed reliance on the judgment passed by the Hon'ble Supreme Court in **State of Karnataka and others Versus C. Lalitha** reported in JT 2006 (2) 322.

7. Per contra, the learned counsel appearing for respondent no.1, referring to the averments made in the counter reply filed, has submitted that the applicant being not qualified for permanent absorption as Senior Scientific Officer (Biology), Union Public Service Commission (UPSC) did not recommend his name for such permanent absorption w.e.f. 10.05.2002 and, hence, he was not permanently absorbed along with five other Senior Scientific Officers (Biology), who were also appointed on deputation basis along with applicant w.e.f. 05.01.1999. It has also been submitted that the applicant was subsequently permanently absorbed as Senior Scientific Officer (Biology) on the recommendation of the UPSC vide order dated 15.11.2007 and hence his period of service is to be counted for the purpose of promotion to the post of Assistant Director (Biology) from the said date. The learned counsel, referring to the Office Memorandum dated 03.07.1986, also submits that the relative seniority of the persons appointed by absorption to the Central Services from the Subordinate Offices of the Central Government or other departments of the Central or State Government is required to be determined in accordance with the order of their selection for such absorption. It has also been submitted that since in the said memorandum it has been stipulated that in case of a person who was initially taken on deputation and absorbed later, his seniority in the grade in which he was absorbed, will

normally be counted from the date of absorption, the applicant is not entitled to be considered for promotion to the post of Assistant Director (Biology) w.e.f. 03.05.2007, when two posts of Assistant Directors (Biology) were created and lying vacant, for the simple reason that the date of permanent absorption, based on the recommendation of the UPSC, is 15.11.2007.

8. The learned counsel appearing for respondent no.3 has submitted that the applicant being not a party to OA No.1611/2005 or in W.P.(C) No.14097-100/2005, which proceeding was initially filed by four Senior Scientific Officers (Biology), the benefit granted to those four Senior Scientific Officers (Biology) cannot be extended to the applicant and, as such, respondent no.1 has rightly did not accept the claim of the applicant. It has also been submitted that the applicant having not raised any objection and rather accepted the order of promotion to the post of Assistant Director (Biology) dated 18.11.2010, he cannot be allowed to raise any objection in this regard after about two years claiming notional promotion w.e.f. 03.05.2007, as has been claimed in the present OA. According to the learned counsel, the applicant even in his representation dated 20.10.2011 did not claim the notional promotion w.e.f. 03.05.2007 and also the seniority over the respondent nos.2 and 3. The learned counsel further submits that there being no dispute that the respondent nos. 2 and 3 were appointed as

Assistant Director (Biology) by Direct Recruitment on 14.05.2007 and 24.12.2009 respectively, the applicant cannot claim seniority over them he having been appointed on promotion as Assistant Director (Biology) w.e.f. 18.11.2010. The learned counsel also submits that the judgment passed by the Hon'ble High Court in W.P. (C) No.14097-100/2005 as well as by the Hon'ble Supreme Court in Civil Appeal No.1753/2007 being not the judgment in rem, the decisions on which the applicant has placed reliance, have no application in the case in hand. The learned counsel, therefore, submits that the OA filed by the applicant, deserves to be dismissed.

9. The submissions advanced by the learned counsel for the parties have received our due consideration. We have also perused the pleadings of the parties.

10. The applicant and others, were initially appointed as Senior Scientific Officers (Biology), FSL, Delhi, on deputation basis vide order dated 05.01.1999, in terms of the Recruitment Rules, wherein it has been stipulated that the deputation is one of the modes of appointment to the said post. Five Senior Scientific Officers (Biology), appointed on deputation basis along with the applicant were, thereafter, absorbed permanently in the said post, on the basis of the recommendation of the UPSC, vide order dated 10.05.2002. The applicant also filed W.P.(C)

No.16613/2006 claiming his permanent absorption as Senior Scientific Officer (Biology), which writ petition was disposed of on 12.03.2007 directing the respondents therein to consider the writ petitioner (applicant herein) for the said post not later than 15.05.2007. The applicant, thereafter, was absorbed permanently vide order dated 15.11.2007, on the recommendation of the UPSC. The applicant was not permanently absorbed along with the others w.e.f. 10.05.2002 as he was found to be not having the requisite educational qualification.

11. The applicant, then, filed CM No.4139/2009 in W.P.(C) No.16613/2006 before the Hon'ble High Court seeking clarification of the aforesaid judgment, which was disposed of vide order dated 16.11.2009 directing the respondents to give the applicant notional seniority w.e.f. 10.05.2002 in the post of Senior Scientific Officer (Biology), by holding that he has been wrongfully denied permanent absorption w.e.f. 10.05.2002 because of the misconception of the respondents that the applicant did not have the requisite qualification. The Hon'ble High Court, however, has directed that the applicant would not be entitled to claim any financial benefit w.e.f. 10.05.2002, i.e. the date of absorption of other similarly situated officers and he would also not be entitled to claim seniority over the officers who were absorbed vide order dated 10.05.2002, who have been

placed at Serial No.2 to 6 in the final seniority list of the Assistant Director (Biology) as on 03.10.2011, published on 19.01.2012. The applicant in this OA, therefore, has also not claimed antedating his promotion to the post of Assistant Director (Biology) prior to those officers or fixation of the seniority over them.

12. The respondent-authority has accepted the said order dated 16.11.2009 by the Hon'ble High Court and passed the order dated 19.04.2010 allowing notional seniority on regular basis to the applicant in the post of Senior Scientific Officer (Biology), w.e.f. 10.05.2002, though he was absorbed permanently vide order dated 15.11.2007. The respondents having accepted the said order dated 16.11.2009 and having implemented the directions issued, vide the said order dated 19.04.2010, cannot now contend that the applicant did not have the requisite educational qualification for permanent absorption as Senior Scientific Officer (Biology) w.e.f. 10.05.2002, more so, when the Hon'ble High Court has also recorded the finding that the same was a misconception on the part of the official respondents.

13. The effect of the order dated 16.11.2009 passed by the Hon'ble High Court in CM No.4139/2009 in W.P.(C) No.16613/2006 as well as the order dated 19.04.2010 passed by the Deputy Secretary giving notional seniority to the applicant in

the post of Senior Scientific Officer (Biology) w.e.f. 10.05.2002, is that his period of service in the post of Senior Scientific Officer (Biology), for the purpose of consideration for promotion to the next promotional post i.e. Assistant Director (Biology), has to be counted w.e.f. 10.05.2002 i.e. the date when other similarly placed persons were permanently absorbed in the post of Senior Scientific Officer (Biology).

14. The Recruitment Rules for the post of Assistant Director (Biology) provides for filling up the said post by promotion from Senior Scientific Officer (Biology) having five years regular service in the grade. Since, the applicant's service in the post of Senior Scientific Officer (Biology) is counted w.e.f. 10.05.2002, he is entitled to be considered for promotion to the post of Assistant Director (Biology) w.e.f. 10.05.2007, when he has completed the five years of regular service as Senior Scientific Officer (Biology), subject to availability of the vacancy of Assistant Director (Biology) and the recommendation of the Departmental Promotion Committee (DPC). The contention of respondent no.1 that the applicant having been permanently absorbed vide order dated 15.11.2007 cannot claim promotion w.e.f. 10.05.2007, in view of the aforesaid discussion is not acceptable.

15. The respondent-authority without considering the said aspect of the matter has promoted the applicant to the post of Assistant Director (Biology) vide order dated 18.11.2010, though other similarly placed person were granted the benefit of notional promotion in terms of the order dated 11.10.2006 passed by the Hon'ble High Court in W.P.(C) No.14097-100/2005 as well as the order dated 13.10.2011 passed by the Hon'ble Supreme Court in Civil Appeal No.1753/2007, filed by the official respondents dismissing the said appeal preferred against the aforesaid judgment passed by the Hon'ble High Court with costs. The applicant being similarly placed with that of the officers who filed the said proceeding in the Hon'ble High Court, he is entitled to the benefit of the said judgment, though he was not party to the said proceeding. That apart, as discussed above, the applicant was entitled to be considered for promotion to the post of Assistant Director (Biology) w.e.f. 10.05.2007 i.e. the date when he had completed five years service as Senior Scientific Officer (Biology), subject to availability of the vacancy and the recommendation of the DPC.

16. The submission of the learned counsel for respondent no.1 that in view of the Office Memorandum dated 03.07.1986 issued by the DOP&T, the applicant is not entitled for consideration of his service as Senior Scientific Officer (Biology) w.e.f. 10.05.2002 and is entitled to be considered w.e.f. 15.11.2007 i.e. the date

when he was permanently absorbed, cannot also be accepted in view of the aforesaid order dated 16.11.2009 passed by Hon'ble High Court in CM No.4139/2009 arising out of W.P.(C) No.16613/2006, whereunder direction was issued to give the notional seniority to the applicant in the post of Senior Scientific Officer (Biology) w.e.f. 10.05.2002 i.e. the date when other similarly placed persons were permanently absorbed. The said submission of the learned counsel for respondent no.1 cannot also be accepted in view of the consequential order passed by the Deputy Secretary on 19.04.2010, pursuant to the aforesaid order passed by the Hon'ble High Court. The aforesaid OM dated 03.07.1986 is, therefore, of no help to the respondent no.1.

17. The contention of respondent no.3 that the applicant having not claimed the notional promotion and having accepted the order of promotion dated 18.11.2010 without any objection, is not entitled to raise such claim by filing the OA after about two years, cannot be accepted, in view of the fact that the applicant immediately on publication of the revised tentative seniority list of Assistant Director on 10.10.2001 filed his objection/representation on 20.10.2011 claiming notional seniority w.e.f. 03.05.2007 i.e. the date when two posts of Additional Directors (Biology) were created, followed by another representation dated 12.12.2011 claiming notional promotion as well as the seniority with effect from the said date. That apart, in

view of the aforesaid judgment dated 11.10.2006 passed by the Hon'ble High Court in W.P.(C) No.14097-100/2005, challenge to which was dismissed by Hon'ble Supreme Court vide order dated 13.10.2011, the applicant's case also ought to have been considered for promotion as Assistant Director (Biology) when the respondent-authority on 03.10.2011 had given notional promotion to four Senior Scientific Officers (Biology), who were similarly placed with that of the applicant. It is not in dispute that two posts of Assistant Directors (Biology) were created vide order dated 03.05.2007, which were lying vacant on the date when the applicant was promoted vide order dated 18.11.2010.

18. The Apex Court in **C. Lalitha'** case has held that the service jurisprudence evolved by the Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court would not mean that persons similarly situated should be treated differently.

19. In view of the aforesaid discussion, we allow the OA with the following directions:-

- i) The respondent no.1 shall convene a DPC to consider the case of the applicant for promotion w.e.f. 10.05.2007 i.e. the date of which the applicant has completed five years of service as Senior Scientific Officer (Biology);

- ii) The respondent no.1 based on the recommendation of the DPC shall pass necessary consequential order relating to notional promotion. It is, however, made clear that if the applicant is given notional promotion, he would not be entitled to claim any financial benefit w.e.f. the date of such notional promotion.
- iii) The respondent no.1 shall also, consequent upon the aforesaid order that may be passed, fix the seniority of the applicant in the post of Assistant Director (Biology).

19. No costs.

(V.N. Gaur)
Member (A)

(B.P. Katakey)
Member (J)

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