

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.3963/2014

Order Reserved on:06.02.2017
Order pronounced on 17.02.2017

Hon'ble Shri V. Ajay Kumar, Member (J)

Smt. Tara Kartha

Age: 58 years

D/o Late Col. Mr. P.B. Menon

R/o 2767, Neta ji Nagar, New Delhi-110023.

Presently working as: Director

National Security Council Secretariat

Prime Minister's Office, Government of India,

Sardar Patel Bhawan,

Parliament Street,

New Delhi-110001.

-Applicant

(By Advocate: Shri Sewa Ram)

Versus

1. Union of India

Through: The Secretary,
National Security Council Secretariat,
(Prime Minister's Office), Government of India,
Sardar Patel Bhawan,
Parliament Street,
New Delhi-110001.

2. Mr. Murlidharan Pillai,

3, Moti Lal Nehru Marg,
New Delhi-110011.

3. Mrs. Shweta Bakshi,

presently working as
Deputy Secretary,
National Security Council Secretariat,
Sardar Patel Bhawan,
New Delhi-110001.

4. Mr. Rohit Khera, presently working as Additional Secretary, National Security Council Secretariat, Sardar Patel Bhawan, New Delhi-110001.

5. Mr. Akshay Joshi, presently working as Director, National Security Council Secretariat, Sardar Patel Bhawan, New Delhi-110001. -Respondents

(By Advocate: Shri D. S. Mahendru)

ORDER

This OA has been referred, as a Third Member reference, in view of the divergent views expressed, by Hon'ble Shri Sudhir Kumar, Administrative Member and Hon'ble Shri Raj Vir Sharma, Judicial Member, vide their separate orders in the OA.

2. The reference order reads, as under:

"161. As we differ through our proposed and dissented opinions, we refer this case to the Hon'ble Chairman of the Tribunal for hearing, either by himself, or by one/more of the other Members of the Tribunal to be nominated by him, on the point as to whether, on the facts and in the circumstances of the case, the view taken by the Administrative Member allowing the O.A., or the view taken by the Judicial Member dismissing the O.A., is correct.

161.1 The records of the O.A., along with our differing opinions, shall be placed by the Registry before Hon'ble the Chairman to pass appropriate orders under Section 26 of the Administrative Tribunals Act, 1985."

3. Since no specific issue was framed for reference, and that I was asked to express which Hon'ble Member's view is correct, I answer the reference as under:

4. Brief facts of the case are as follows:

(A) The applicant worked on contract basis in the Institute of Defence Studies and Analysis (hereinafter referred to as 'IDSA'), New Delhi,

first as Research Assistant on stipend basis from 6.4.1992 to 16.5.1994, and then as Research Officer in the scale of pay of Rs.2200-4000/- (4th CPC) with effect from 17.5.1994 to 16.5.1996. Her contract appointment as Research Officer was extended by two more years w.e.f. 17.5.1996.

(B) While continuing as Research Officer for the second term of two years on contract basis, the applicant was awarded 104 OA No.3963/2014 Fellowship in the scale of pay of Rs.12000-18000/- (5th CPC) in IDSA for two years w.e.f. 15.7.1997, and another Fellowship for two years w.e.f. 1.7.1999.

(C) During the term of her said second Fellowship, the NSCS appointed the applicant as Research Fellow against a post of Deputy Secretary in the NSCS, in the scale of pay of Rs.12000- 16500/- (5th CPC) from 16.8.2000 to 27.9.2002, on loan basis. She returned to IDSA on 27.9.2002. She resigned from IDSA and was relieved of her duties w.e.f. 10.8.2003. She was paid salary and terminal benefits by IDSA up to 10.8.2003.

(D) Thereafter, the applicant was appointed as Deputy Secretary in the scale of Rs.12000-16500/- (5th CPC) in NSCS on contract basis with effect from 3.10.2003 for a period of two years or until further orders whichever was earlier, vide notification dated 8.12.2003, and

office order dated 12.12.2003, issued by the NSCS. Thus, the applicant joined NSCS on a fresh contract w.e.f. 3.10.2003. Her said contract appointment as Deputy Secretary/Joint Director was extended for a further period of 2 years w.e.f. 3.10.2005 on the terms and conditions of services laid down in the agreement, vide order dated 5.6.2006.

(E) Thereafter, the applicant was appointed as Director in NSCS in the pay scale of Rs.14300-18300/- w.e.f. 29.9.2006 for a period of 5 years on fresh contract, vide order dated 6.10.2006. The 105 OA No.3963/2014 said contract appointment was extended for one more year, i.e., up to 28.9.2012, vide order dated 27.09.2011. Before her said contract appointment came to an end, the applicant was absorbed as Director in NSCS w.e.f. 12.4.2012, vide office order dated 12.4.2012 (Annexure A/1).

(F) After her absorption in the post of Director w.e.f. 12.4.2012, the applicant made representation dated 6.3.2013 regarding maintenance of her Service Book, and met the Dy.N.S.A. on 20.11.2013 regarding her promotion as Joint Secretary. The respondent-NSCS, vide communication dated 26.11.2013 (Annexure A/2), informed the applicant that her service in IDSA, and subsequent service in NSCS, with the two being separated by a month and 22 days, cannot be reckoned to be one

continuum, and therefore, an assessment of her claim for promotion will have to be made with reference to her date of joining in NSCS on October 3, 2003, and in accordance with Recruitment Rules and set procedures.

(G) Being dissatisfied, the applicant made further representation dated 11.12.2013 claiming consideration of her case for promotion to the grade of Joint Secretary. The respondent NSCS, vide its communication dated 29.4.2014 (Annexure A/3), informed the applicant that she did not fulfill the eligibility criteria 106 OA No.3963/2014 laid down in the Recruitment Rules for promotion to the post of Joint Secretary.

5. The applicant filed the OA seeking the following relief(s):

"8.a) To quash and set aside the respondent's orders dated 12-4-2012, 26-11-2013 and 29- 4-2014 (Annexure: A-1, A-2 and A-3) and order the respondent for applicant's absorption on the post of Deputy Secretary to the Govt. of India w.e.f. 3-10-2003 and to further order the respondent to treat the applicant's appointment dated 29-9-2006 on the post of Director as promotion w.e.f. from 29-9-2006 as already stated by the respondent vide order dated 6-10-2006 and to further order the respondent to consider the applicant for promotion to the post of Joint Secretary in pay scale of Rs.37400-67000 + Grade Pay of Rs.10,000/- as on 1-10-2009 as per the NSCS Recruitment Rules, 2007 and to reckon her service in IDSA in continuum for the purpose of retirement and pension benefits under CCS Pension Rules, 1972.

8.b) Pass such other order(s) as may be deemed fit in the interest of justice."

6. The Hon'ble Administrative Member while allowing the OA, observed as under:

"149. Therefore, in the conspectus of the law as laid down above, as cited by us from various Supreme Court's judgments, and from the order dated 28.10.2016 in OA No.1699/2012 (supra), and as is seen from the discussion of the facts of this case, we hold that the applicant was in substantive employment with IDSA earlier, though it was called as a contract, and that she was re-employed as Deputy Secretary in substantive capacity with R-1 w.e.f. 03.10.2003, and that she was,

therefore, fully eligible to count her past analogous employment, with a similar/parallel organization (IDSA) prior to that date, till 30.09.2003. This also flows from the Full Bench order of this Tribunal dated 22.04.2009 in OA 1436/07 with OA 1437/2007 and OA 1438/2007- Dr. Snehal Bhave Vs. UOI & Ors and the connected two cases, which had been followed by the Coordinate Bench in OA No.622/2012 Dr. Pankaj Agnihotri v. Union of India.

150. In the result, for the foregoing reasons, the OA is allowed, but there shall be no order as to costs. "

7. The Hon'ble Judicial Member, while differing with the view expressed by the Hon'ble Administrative Member, observed as under:

"154. When the applicant had accepted her appointments as Deputy Secretary/Joint Director on contract basis w.e.f. 3.10.2003, and as Director in NSCS w.e.f 29.9.2006 on contract basis, for specified periods, and had entered into agreements/contracts with the NSCS, and when the NSCS, vide its order dated 12.4.2012 (Annexure A/1), had absorbed her in the post of Director w.e.f. 12.4.2012, I do not find any substance in the claim of the applicant for being absorbed in NSCS w.e.f. 3.10.2003.

xxx x x x x xx x

157. The applicant's appointment as Director with effect from 29.9.2006 was on a fresh contract. She herself had signed a fresh contract while accepting the said offer of appointment. There was also no provision in the Recruitment Rules of 2001 for promotion from the post of Deputy Secretary to the post of Director. Therefore, the claim of the applicant that she was promoted from the post of Deputy Secretary/Joint Director to the post of Director in 2006 is untenable. The provision regarding promotion from the post of Deputy Secretary/Joint Director to the post of Director was made only in the National Security Council Secretariat (Group 'A' Service) Recruitment Rules, 2007. The respondent-NSCS, vide order dated 20.10.2014 (Annexure R/13), rectified the office order dated 6.10.2006, ibid, where the word 'promotion' was inadvertently mentioned. In this view of the matter, I do not find any substance in the contention of the applicant that her appointment as Deputy Secretary/Joint Director was deemed to be regularized with effect from 3.10.2003 on the issuance of the office order dated 6.10.2006 by the respondent-NSCS promoting her from the post of Deputy Secretary/Joint Director to the post of Director with effect from 29.9.2006 on contract basis."

8. After the OA is referred, the same is listed before the Court and both the counsel were heard on the respective views expressed by the Hon'ble Members.

9. I have carefully perused the entire pleadings on record and also the voluminous order passed in the OA. In view of accepting the

contract appointment in different capacities from time to time by the applicant without any objection, in the facts of the case, in view of the Rule position and the settled principles of law and for the reasons given by the Hon'ble Judicial Member while arriving his conclusions, I agree with the view expressed by the Hon'ble Judicial Member, and accordingly, the OA is dismissed. No costs.

(V. Ajay Kumar)
Member (J)

/nsnrvak/