

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO.060/01162/2016

Chandigarh, this the 22nd day of February, 2018

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**CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MS. P. GOPINATH, MEMBER (A)**

...

Smt. Manjit Kaur wife of Sh. Gurpreet Singh, working as Assistant in the office of Indian Council of Agricultural Research (ICAR), Agricultural Technology Application Research Institute (ATARI), Zone-I, Ludhiana (Punjab).

....APPLICANT

(Present: **Mr. D.R. Sharma, Advocate**)

VERSUS

1. Indian Council of Agricultural Research (ICAR) through its Secretary, Krishi Bhawan, New Delhi.
2. The Director, Indian Council of Agricultural Research (ICAR), Agricultural Technology Application Research Institute (ATARI), Zone-I, Ludhiana (Punjab).
3. Dr. A.M. Narula, Zonal Project Director (Retd.), ICAR, Zonal Project Directorate, Zone-I, ICAR PAU Campus, Ludhiana.

....RESPONDENTS

(Present: **Mr. R.K. Sharma, Advocate for Respondents No.1&2.**
None for respondent no.3).

ORDER (oral)

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J):-

The challenge in the instant Original Application (OA), instituted by applicant, Manjit Kaur, working as Assistant, in the office of Indian Council of Agricultural Research (for brevity "ICAR"),

is to the impugned order dated 12.9.2016 (Annexure A-1), whereby her claim for promotion to the post of Assistant Administrative Officer (for short "AAO"), was rejected by the competent authority.

2. The matrix of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant OA, and expository from the record, is that the applicant initially joined as Lower Division Clerk (LDC), in the month of August, 1997, with the respondents. Thereafter, she was promoted to the post of Upper Division Clerk (UDC), in the month of January, 2003 and further promoted to the post of Assistant, in the month of January, 2009, vide order dated 6.1.2009 (Annexure A-3), by the competent authority.

3. The case set up by the applicant, in brief, in so far as relevant, is that on completion of requisite 5 years of regular service as Assistant in 2014, she had become eligible for promotion to the higher post of AAO. Although the ICAR Ludhiana sought approval of the competent authority to fill up the post in question, by way of promotion, vide letter dated 22.4.2014 (Annexure A-7), but it was returned as the matter of promotion was required to be considered by the Director, ICAR (Respondent No.2), vide letter dated 4.6.2014 (Annexure A-8). The applicant made repeated representations dated 2.7.2014 (Annexure A-9), 14.8.2014 (Annexure A-11), 2.12.2014 (Annexure A-12) and followed by a legal notice dated 11.1.2016 (Annexure A-13), for redressal of her grievances, but in vain. On the contrary, in the wake of an order dated 7.7.2016 (Annexure A-2) passed in O.A.No.060/00559/2016 by a co-ordinate Bench of this Tribunal, her claim of promotion was stated wrongly rejected, vide

impugned order dated 12.9.2016 (Annexure A-1), by the competent authority.

4. Aggrieved thereby the applicant has preferred the instant OA challenging the impugned order and action of the respondents, inter-alia, on the following grounds:-

(a) That the right to consideration for promotion is a fundamental right and cannot be delayed and taken away arbitrarily at the instance of respondents. Applicant being eligible deserves to be considered for promotion to the post of AAO. The reliance is placed on the judgment of the Hon'ble Supreme Court in Delhi Jal Board v. Mahinder Singh, 2000(2) SCSLJ 323, to the effect that if an employee is otherwise eligible, it is his fundamental right under Article 16 (1) of the Constitution of India for consideration of his case for promotion. In view of consideration of the cases of eligible ones for promotion, no inconvenience is caused either to the employer or any injustice is caused to the other employees.

(b) That once the statutory rules provided that the post of AAO is to be filled up (a) 75% by promotion, the respondents cannot refuse to fill-up the post through promotion. Further, once it stands established and admitted by the respondents that pursuant to sanction of the post of AAO in the year 2010-2011 the ICAR had made efforts to fill up the post in the year 2010, 2011 and 2012 on deputation basis and in the year 2013 on direct recruitment basis and the post remained unfilled, therefore, the respondents cannot refuse to fill up the post through promotion as provided under the Rules.

© That no decision was taken by the ICAR that the post of AAO stands abolished. Reliance placed by the respondent no.2 on O.M. No. 7(1)E.Cord/2012 of the Ministry of Expenditure and dated 07.01.2014 that the post of AAO was deemed abolished is wholly misconceived and contrary to position emerging on the record to the effect that vide letter dated 22.04.2014, ICAR Ludhiana had sought the approval of the competent authority to fill up the post of AAO by promoting the applicant since she had become eligible on completing the requisite 5 years of regular service as an Assistant in 2014 and in response the ICAR Headquarter vide letter dated 4.6.2014 had directed the respondent No.2 to take action (A-3, A-4), then the action of respondent No.2 in not convening the DPC for promotion is wholly arbitrary and illegal. Admittedly the applicant is eligible since 7.1.2014 for promotion to the post of AAO. Further, the applicant has also been repeatedly requesting the respondents vide letters dated 02.07.2014, 14.08.2014, 02.12.2014, 16.07.2015 and legal notice dated 11.01.2016 to promote her to the post of AAO, the action of respondents in not promoting her is wholly arbitrary and illegal and unsustainable in the eyes of law.

(d) That the very action of respondents in referring the matter to the Ministry of Finance is contrary to O.M. No. 7(3)/E.Cord-1/2015 dated 11.09.2015 issued by the Ministry of Finance (Annexure A-14). The post of AAO in question is below the Joint Secretary Level (JS) and the ICAR Headquarter has already

directed the respondent no.2 to take action, vide letter dated 04.06.2014, then the action of respondent No.2 in not convening the DPC for promotion is wholly arbitrary and illegal. Applicant is placing reliance upon the O.M. No. 7(3)/E.Coord-1/2015 dated 11.09.2015 issued by the Ministry of Finance providing that the proposal is only for continuation of Joint Secretary Level (JS) and above level posts are required to be referred to Ministry of Finance, Department of Expenditure and the continuation of the posts below Joint Secretary Level (JS) are to be decided by the department at its own, in consultation with Integrated Financial Division. Further, the Ministry of Finance itself has approved the post in EFC, therefore also, there was no justification to send the post for approval.

(e) That the post in question was sanctioned in the year 2010 consequent upon the restructuring of administrative and allied cadres in the ICAR including its Institutes as approved by the Ministry of Finance in other 103 Institutes of ICAR the 365 posts of AAO still exist. Therefore, the action of respondents in terming the post of AAO under Zonal Project Directorate, Ludhiana, as deemed to be abolished and putting the burden upon the Ministry of Finance is arbitrary and illegal. As per ICAR website, the XII EFC Plan has been approved in the National Conference which was held on 25-26 July, 2015 at Patna (Bihar) and the post of AAO already exists in the XII Plan EFC. As the EFC has been approved, it is clear that the post of AAO is existing in the Directorate.

(f) That the delay on the part of the respondents in convening the DPC for making promotion was not bona fide and not for reasons beyond control and was the result of administrative laxity / lethargy and could have been avoided. The Hon'ble Court would consider and appreciate that when clear vacancies of AAO were / are available and eligible ones including applicant were available, there was no justification for not convening DPC and / or delaying DPC.

(h) That the delay in conducting DPC has caused material prejudice to the applicant which would be of a permanent and continuing nature as it would affect him at every stage of his career through loss of seniority, delay in further promotions and also monetary loss throughout service and perhaps even after retirement (as a result of the drawal of lower pensionary benefits). As this delay has occurred for absolutely no fault on applicant's part, there is considerable justification for considering positively the request of the applicant for promotion and that too from antedate when she became eligible in the year 2014 as admitted by the ICAR.

(i) That the Hon'ble Apex Court in the case of P.N. Premachandran Vs. The State of Kerala and Others, (Civil Appeal No.4100/1998, decided on 6.11.2003) held that employees cannot be made to suffer on the basis of the administrative lapses as a result of which DPC was not conducted in due time. It has further been laid down that the promotion in the case of late holding of DPC shall relate back to the date on which the vacancy actually arose in such cases.

(j) That the Hon'ble Apex Court's decision in K. Madhavan Vs. Union of India (1987) 4 SCC Para 15), where it was held that if scheduled DPCs meeting got cancelled or postponed arbitrarily, retrospective promotions were justified.

(k) That the Hon'ble Principal Bench in case titled K.C. Chauhan Vs. Surjeet S. Priyadarshi decided on 7th March,2012 has held in favour the employees, while considering the question (whether the delay in convening meeting of the DPCs by the respondents (Railway Board), in the case of the applicants was due to reasons beyond control or because of administrative delay/ inefficiency and what would be the consequence if the delay on the part of the respondents is not found to be explained / justified.

(l) That the DoPT has been stressing / impressing upon the all Ministries / Departments from time to time to adhere to the prescribed time-limit so as to ensure that the panel is ready in time and is utilized as and when the vacancies arise during the course of the vacancy year. The instructions prescribed taking of advance action for filling up vacancies of a year and for convening of DPCs for promotion well in time so as to be effective from the next calendar year, but the respondents had failed to follow these instructions.

(m) That the applicant has not been promoted due to the malafide and vindictiveness of Dr. A.M. Narula on account of making of sexual harassment complaints and making him respondent in the earlier round of litigation by the applicant.

5. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the applicant claims that after completion of regular service of 5 years as Assistant, she has become eligible for promotion to the next post of AAO in the year 2014 itself, but it has been wrongly denied to her. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned order and action of the respondents, in the manner indicated hereinabove.

6. On the contrary, the respondents have refuted the claim of the applicant and filed the written statement, wherein, it was pleaded that in pursuance of the directions contained in order dated 7.7.2016 in O.A.No.060/00559/2016, the claim of the applicant was duly considered but it was not found feasible, in view of the fact that there was no post of AAO available, as on date, as such, she could not be considered for promotion. It was alleged that the matter for revival of the post was taken up by the ICAR with the Ministry of Finance, which declined the request of ICAR,

as conveyed vide letter dated 11.5.2016 (Annexure R-1). However, the respondents have acknowledged the previous promotions of the applicant on the post of UDC and Assistant. According to the respondents, that the competent authority has power to fill up the post and no employee can compel to promote him/her in the absence of any vacancy. Indeed, it was admitted that the post of AAO was created in Zonal Project Directorate (ZPD), 2010, vide letter dated 24.8.2010 but no employee of the institute (erstwhile ZPD), was eligible for the post of AAO on 24.8.2010. So, sincere and repeated efforts were made to fill up the post on deputation basis from other institutes but no application was received. In the meantime, the post having remained vacant for a period of exceeding one year, is deemed to have been lapsed, as per the orders issued by the Ministry of Finance, Govt. of India, dated 11.9.2015 (Annexure R-2 Colly). Consequently, the matter was taken up with the ICAR Headquarters, vide letter dated 22.4.2014 for revival of the post but the request was declined by the relevant authority. In all, it was claimed by the respondents that since the post was not available, so the applicant could not be promoted. Instead of reproducing the entire contents of the written statement, and in order to avoid repetition of facts, suffice it to say, that while reiterating the validity of impugned order, the respondents have stoutly denied all other allegations and grounds, contained in the OA, and prayed for its dismissal.

7. Having heard learned counsel for the parties, having gone through the record with their valuable assistance, and after considering the entire matter, we are of the firm view that the

instant O.A. deserves to be dismissed, for the reasons mentioned herein-below.

8. What cannot possibly be disputed here is that having completed the requisite period of service of 5 years as Assistant, the applicant has become eligible for promotion to the next promotional post of AAO, in the year 2014 itself. She could not be promoted, as no post of AAO was and even now in existence. It is not a matter of dispute, that the earlier post lapsed and the respondents have taken numerous steps for its revival but the competent authority / Finance Department of the Union of India did not sanction the post. Therefore, once the post of AAO was not sanctioned by the relevant authority, and is not even now in existence, the question of promotion of the applicant, did not arise, at all. It cannot be possibly disputed that the right of promotion is a valuable right and legitimate expectation of the applicant, but she cannot be promoted, in the absence of any vacancy, in this regard.

Mere fact that the responsibility and duties of the post of AAO have been temporarily assigned to Dr. Ashish Santosh Murai, Scientist, ***ipso facto***, is not ground, much less, cogent to promote the applicant on the post of AAO. Thus, the contrary argument of the learned counsel for the applicant, ***stricto sensu***, deserves to be and is hereby repelled, in this regard.

9. There is yet another aspect of the matter, which can be viewed entirely from a different angle. Admittedly, in compliance of the order dated 7.7.2016 (Annexure A-2) in O.A.No. 060/00559/2016, of this Tribunal, the representation of the applicant for promotion to the post of AAO was duly considered and was declined vide

detailed impugned order dated 12.9.2016 (Annexure A-1), by the competent authority, the operative part of which reads as under :-

“Whereas in the light of the direction of Hon’ble CAT, the case has been examined and representation of applicant has been considered with following terms as mentioned in the succeeding paragraph:

Whereas the Post of Assistant Administrative Officer (AAO) was created in ATARI (Zonal Project Directorate) during vide ICAR letter No.: 33-12/2010-Estt.I dated 24.08.2010. No employee of this Institute was eligible for the post of AAO on 24.08.2010 at that time and hence efforts were made to fill the post on deputation basis from other institute vide advertisement No.: 2(1)Rectt/2010/ZPD/2507-2612 dated 14.10.2010, 2(2)/Rectt/2010/ZPD dated 23.06.2011, 2(2) Rectt/2010/ZPD/607-709 dated 08.06.2012. However, no application was received and hence could not be filled up.

Whereas Smt. Manjit Kaur became eligible for promotion on 07.01.2014. However, by that time the post was deemed abolished as it was lying vacant for more than one year, in light of O.M. 7(1)/E-Coord./2012 dated 01.11.2012 issued by Ministry of Finance. Hence Mrs. Manjit Kaur could not be promoted as at that point of time there was no post of AAO in the Institute.

Whereas subsequently the matter was taken up with the Ministry of Finance for revival of the post as ICAR HQ requested the Ministry of Finance to revive the post of AAO along with two SSS (which was deemed abolished) vide ID No., DARE’s U.O. Note No. 6-3/2012 AE-II dated 07.03.2016. However, Ministry of Finance, D/o Expenditure ID No. 121425/E. Coord. I/2016 dated 26.04.2016 did not agree to the ICAR’s request. The same was communicated to ATARI, Zone-I, Ludhiana, by ICAR vide letter dated 11th May, 2016 (p.56/c).

Whereas the ATARI has taken all efforts to revive the post. However, the proposal did not materialize due to the fact that the same was not accepted by the Competent Authority, i.e. Ministry of Finance.

Therefore, since there is no post of AAO as on today in ATARI, Zone-I, Ludhiana, the applicant has no claims or right to be promoted to the non-existing post”.

10. Meaning thereby, the competent authority has examined the matter in right perspective and passed a reasoned order. Such order, containing valid reasons, cannot possibly be interfered with by this Tribunal, unless and until, the same is illegal and perverse. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for the applicant, so, the impugned

order (Annexure A-1), deserves to be and is hereby maintained, in the obtaining circumstances of this case.

11. No other point worth consideration has either been urged or pressed for by learned counsel for the parties.

12. In the light of the aforesaid prismatic reasons, as there is no merit, so the instant OA is hereby dismissed, as such. However, the parties are left to bear their own costs.

13. Needless to mention, that right of promotion is a valuable right and legitimate expectation of the applicant, so the respondents are directed to take effective steps for revival of the indicated post of AAO, expeditiously.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 22.02.2018

HC*