

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 1011 of 2012

Date of CAV: 06.08.2018

Date of Order: 20.08.2018

Between:

P. Prameela Devi, W/o. P. L.N. Raju,
Age 53 years, R/o. # 1-8-27/22/1,
North Kamala Nagar, Moulali, Hyderabad.

... Applicant

And

1. The Secretary,
Department of Atomic Energy,
BARC, CSM Marg, Mumbai.
2. The Joint Secretary,
Department of Atomic Energy,
BARC, CSM Marg, Mumbai.
3. The Chief Executive,
Nuclear Fuel Complex, Hyderabad.
4. The Deputy Chief Executive (Administration),
Nuclear Fuel Complex, Hyderabad.

... Respondents

Counsel for the Applicant ... Mrs. Vijaya Lakshmi, Advocate for
Mrs. N. Shoba, Advocate

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... *Member (Admn.)*
Hon'ble Mr. Swarup Kumar Mishra ... *Member (Judl.)*

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

1. This OA has been filed by the applicant with a prayer to declare the proceedings of the respondents in Proceedings No. NFC/PAR-II/Prom.4088/2011/ 1203, dated 09.08.2011 in not redesignating her as SA/B with effect from her appointment as SA/A with all consequential benefits as arbitrary, illegal, unjust and violative of Articles 14 & 16 of the Constitution of India and to consequently

direct the respondents to redesignate her as SA/B with effect from 01.02.1996 with all consequential benefits such as seniority, promotion and arrears of allowances.

2. The applicant rose up the ladder from Tradesman-A as on 02.02.1983. to Scientific Assistant / D by 17.4.08. All along the line it was smooth sailing, excepting when it came to her promotion as Scientific Assistant /B, which has been brought before this Tribunal for adjudication.

3. The issue in brief is that, having possessed the additional qualification of B.Sc. Degree in 1995, she is eligible for being treated as SA/B instead of SA/A, as per the promotional policy promulgated in 1992 by the respondents. The provisional degree certificate dated 14.08.1995, enclosed to the OA as A-10, declares that she passed B.Sc. in May 1995. She submits that in the year 1992, promotion policy norms were revised to be given effect from 01.02.1992. She also contends that the post of SA/A was abolished with effect from 01.02.1992 and that there is only one cadre of SA/B from 1992. Moreover, the said promotional policy does not prescribe the minimum 60 percentage in degree to don the mantle of SA/B, is one other argument of the applicant. Others who were placed in similar circumstances, particularly juniors were considered by the respondents in terms of the policy and also based on orders of this tribunal in different OAs. Her promotion to SA/B from SA/A on 24.5.2000 was in the normal course. Thus on the aforesaid grounds she makes a strident claim to be SA/B from 1.2.96.

4. The respondents' case is that the Department of Atomic Energy has introduced a Merit Promotion Scheme under which promotions are made from one grade to higher grade on the basis of the performance of the individual and not

based on vacancies. During the year 1992, norms for direct recruitment and promotion in respect of Scientific and Technical staff were revised and as per the revised norms, candidates being recruited directly against the open advertisement, possessing Diploma in Engineering/ B.Sc. with not less than 60% marks, are to be recruited as Scientific Assistant/B. As per the Merit Promotion Scheme applicable to Scientific and Technical staff of DAE and norms notified by Trombay Council during 1992, technical personnel who acquire additional qualification of B.Sc./ Diploma in Engineering while in service with not less than 60% marks are eligible for consideration for promotion to the grade of Scientific Assistant/B. The applicant had acquired the additional qualification of B.Sc. during 1995 with less than 60% marks as against the requisite minimum 60% marks and hence her claim lacks merit. However, from the material placed on record, it is seen that by an agreement between NFC union and the CEO of NFC a one time relaxation in respect of percentage was granted upto Aug 95.

5. Responding to the applicant quoting orders issued by this tribunal in different OAs to buttress her case, the respondents in unambiguous terms replied that the applicants in OA 847/1995, 229/05 & 149/2007 had acquired the additional qualification and were promoted as SA/A prior to 01.02.1992. Thereupon redesignated as SA/B w.e.f. 01.02.1992 as per norms applicable to this category. While as the applicants in OA 1662/03 & 11/2004 had acquired the additional qualification with more than 60% after 01.02.1992 and they were rightfully redesignated as SA/B from the date of their promotion as SA/A. The applicant drawing comparison with these cases and seeking relief fails in the face of facts cited. Another important assertion harped upon by the applicant and has an intrinsic bearing on this case is that the post of S/A has been abolished. The applicant has not filed any document confirming her assertion, leaving the ground

open. In the reply statement, respondents have asserted that the posts of SA/A were not abolished.

6. After hearing the arguments advanced by the learned counsels appearing for both sides, it is clear that the promotion policy enunciated by the Department of Atomic Energy in 1992 stipulates that, to be qualified to be promoted as SA/B on the ground of additional qualification, one should have a percentage of marks of not less than 60%.

7. However, the respondents have admitted that they did appoint the applicant in the cadre of SA/A based on the order passed by this Tribunal in OA 617/1996 dated 22.09.1998. While coming to the conclusion of directing the respondents to consider her case as SA/A or SA/B, this Tribunal in OA/617/1996 based its decision on the agreement arrived between NFCEA and CEO NFC on 16.01.1992 and 20.05.1995. This Tribunal in the cited OA has said in no uncertain terms that the said agreement is binding on the respondents.

8. It is felt useful to highlight Point No. 13 of the Minutes of the Meeting held between Chief Executive, NFC and the representatives of NFCEA on 16.01.1992, communicated vide NFC letter No.NFC/01/03/92-IR/022 dated 31.01.1992, which is as under:

“13. Deletion of 55% marks clause for recognition for higher qualification for B.Sc. Graduates:

DAE did not agree with the proposal as the stipulation of 55% marks for Science Graduates was made in accordance with the decision of Trombay Council. However, it was stated by the Management as discussed in the meeting held 1.1.92 and agreed to by NFCEA, persons with more than 55% marks with any two subjects out of three (Physics, Mathematics and Chemistry) can be considered for SA ‘B’ and those with less than 55% marks for SA ‘A’.”

Likewise, it is also useful to extract Point No.1 of the Record note of discussions held between NFC Management and NFC Employees' Association on 20.05.1995, which is as under:

“1. Relaxation of percentage of marks in higher qualifications:

General Secretary, NFCEA requested to consider the cases of employees with more than 55% marks in any two subjects out of three (Physics, Mathematics and Chemistry) for promotion to the Grade of SA 'B' and those with less than 55% marks for SA 'A' as decided in the meeting held on 16.01.1992. These persons have been screened out from the February '95 promotion interviews.

Chief Executive informed that as per the decision of Trombay Council, those who got 60% marks were only to be considered for promotion on the basis of higher technical qualifications. After detailed discussions, CE agreed to consider those who got less than 60% marks for promotion w.e.f. February 1995 as a one time measure in view of the plea made by NFCEA that requirement of 60% of marks were not made known to them. CE further informed that from August 1995 onwards no relaxation in % of marks will be made thus strictly adhering to the norms prescribed. NFCEA who has already taken up the matter with DC should get this issue sorted out by August 1995 in their own interest. NFCEA further requested CE, NFC to take up this matter with DAE on their behalf for quicker resolution.”

9. Subsequently, upon her representation dated 14.07.2011, the respondents have passed the impugned order dated 09.08.2011, reproduced as under, which is being challenged.

“Smt. Prameela is informed that her promotion to the post of Scientific Assistant/A w.e.f. 01.02.1996 was as per the extant norms at that time. The norms for direct recruitment/ promotion to the post of SA/B were revised by TC/TSC w.e.f. 01.02.1992 for promoting/ recruiting candidates having Diploma/B.Sc. with not less than 60% marks.

The promotion of Smt. Prameela to the grade of Scientific Assistant/A w.e.f. 01.02.1996 on acquiring additional qualification of B.Sc. was as per the then existing norms and recommendations of Selection Committee as she scored less than 60% marks. The applicant has also quoted that this Tribunal has allowed OA Nos. 847/95, 1662/03, 11/2004, 229/2005 and OA 149/2007 wherein the respondents were directed to redesignate the applicant as Scientific Assistant B from the date they were promoted as SA/A along with consequential benefits in B.Sc.”

10. As can be seen from above, the order does not specify about examining the applicant's case in the context of the revised percentage of 55 allowed as a one time relaxation for being promoted as SA/A or SA/B. It merely states that she secured less than 60% marks in B.Sc. and therefore ineligible. No marks memo was filed to reinforce their argument. The order raises a doubt as to whether the respondents applied the broad yardstick of greater than 55% in two subjects of the three in degree. Such a vague order germinates doubts. The lengthy elaborations made in the written statement have touched everything else except the crucial issue of revised yard stick.

11. Therefore, keeping the above in view, the Tribunal concludes that the respondents have not been lucid in explaining the grounds for rejecting the claim of applicant to be designated as SA/B. Having not done so, the impugned order has led to another round of avoidable litigation. Hence, keeping in view the infirmity afflicting the impugned order dated 09.08.2011, the only recourse open is to set it aside. Consequently, the respondents are directed to consider and re-examine the eligibility or otherwise of the applicant for redesignating her as SA/B based on the norm of getting more than 55% in any two subjects out of three subjects in Degree reckoning the cut off date as August 1995 as per the order in OA 617/ 1996. They shall pass a speaking order within 60 days from the date of receipt of this order by stating the clear details indicating grounds for rejection or for promoting her with consequential benefits, giving no room for any doubt to arise.

12. The OA is allowed with the above directions. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 20th day of August, 2018

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