

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00311/2015

Date of CAV : 23-10-2018

Date of Order : 29-10-2018

Between :

M. Pushpalata
W/o M.S.L.Prasad,
Aged about 58 years,
Occ : Assistant Chief Technical Officer,
Horticulture Section, Division of Crop Science,
Central Research Institute for Dry Land Agriculture,
Santoshnagar, Hyderabad,
R/o H.No.D-64, Steel and Mines Complex,
Srinagar Colony, Hyderabad.Applicant

AND

1. The Secretary/D.G., ICAR,
Department of Agriculture Research and Education,
Krishi Bhavan, New Delhi – 110001.
2. The Secretary,
Indian Council for Agriculture Research,
Krishi Bhavan, New Delhi – 110001.
3. The Director (Administration),
Indian Council for Agriculture Research,
Krishi Bhavan, New Delhi – 110001.
4. The Deputy Secretary,
Natural Resource Management Division,
Indian Council for Agriculture Research,
Krishi Anusandhan Bhavan-II,
Pusa Campus, New Delhi - 110012.
5. The Director,
Indian Institute of Sugarcane Research,
Dilkusha, Lucknow, Uttar Pradesh – 226002.
6. The Director,
Central Research Institute for Dry Land Agriculture,
Santoshnagar, Saidabad Post, Hyderabad-59. ...Respondents

Counsel for the Applicant: Dr.A.Raghu Kumar

Counsel for the Respondents : Mrs.C.Vani Reddy, SC for CRIDA

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the A.T. Act, 1985, to call for the records pertaining to the 6th respondent Lr.F.No.1-2(121/2014-E.1, dated 26.02.2015 rejecting the claim of the applicant in counting her Earn Leave and HPL for 237 days and work done period of 82 days before proceeding on leave with a total of 319 days and consequent retrospective promotion from T-6 to T-7/8 w.e.f., 30.08.2009 and quash and set aside the same as illegal, arbitrary, violative of rules on the subject matter and violative of Article 14 and 16 of the Constitution of India an CCS (Leave) Rules and consequently direct the respondents to count the period of 82 days attended and subsequent her EL and HPL for 237 days availed by her from 21.09.1996 to 15.07.2000, totalling 319 days for the purpose of her promotion from T-6 to T-7/8 with all consequential benefits in the interest of justice and be pleased to pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that, the applicant joined National Bureau of Plant Genetic Resources, New Delhi, which is a wing of the Indian Council for Agricultural Research under the Ministry of Agriculture on

28.11.1985 as T-II-3 (Technical Assistant Grade-II-3 in the pay scale of Rs.425-700 at the Head Quarters of the Bureau at New Delhi vide Order No.10-387/85-Admn-27392/6, dt. 06.12.1985 and completed her probation on 27.11.1987 vide Office Order dated 28.09.1992. Subsequently she was granted promotion from T-II-3 to T-4 at the same Institute on 01.07.1991 vide Office Order dated 27.02.1992. Initially the 2nd respondent has taken a stand that promotions which were due between 01st July of the next year and because of that the applicant lost her promotions by seven months. This particular rule was modified by the Council vide letter dated 01.02.1995 which further stated that the promotions should be given after completion of 5 years by the due date. In fact had this order been available at the Time of her first promotion the applicant would have got her promotion from ST-II-3 with effect from 01.01.1991. She was further promoted to T-4 to T-5 with effect from 01.07.1997 when she was working in the Indian Institute of Sugarcane Research, Lucknow, vide Office Order dated 21.12.2000.

3. It is further submitted that the applicant attended duties from 01.07.1996 to 20.09.1996 for 82 days which was also deducted from her regular service for further promotion for the reasons better known to the respondents. Apart from that she proceeded on leave while she was working under the Indian Institute of Sugarcane Research, Lucknow. As a result of her availing different leaves for 237 days under Earn Leave or Half Pay Leave and due to non consideration of her attendance also from 01.07.1996 to 20.09.1996 ie for 82 days, the respondents have deducted 319 days from her service and consequently the applicant's promotion from

T-5 to T-6 which was due to her on 30.08.2004 was postponed to 17.07.2005 vide office order dated 09.04.2008. of the Central Research Institute for Dry Land Agriculture, Santoshnagar, Hyderabad. This postponement of her promotion to 17.07.2010 instead of 30.08.2009 is the result of the earlier act of the respondents in deducting her total 319 days which includes 237 days of different kinds of leave on medical grounds from her regular service and 82 days of her attending the office before proceeding on leave which is incorrect. The applicant is actually eligible for her next promotion of T-9 Grade with effect from 2006 ie 7 years after T-7/T8 which would now go beyond her date of superannuation ie 28.02.2017.

4. Further, the applicant herein has filed OA No.278/2015 before this Tribunal challenging the non-consideration of the claim of the applicant in counting her EL and HPL for 237 days and work done period of 82 days before proceeding on leave with a total of 319 days and consequent retrospective promotion from T-6 to T-7/8 with effect from 30.08.2009. The above case was posted for fresh admission on 26.02.2015 before this Tribunal. On the same day the respondents have issued the present impugned letter dated 26.02.2015 rejecting the claim of the applicant for counting of her EL and HPS for 237 days and work done period of 82 days before proceeding on leave with a total of 319 days and consequent retrospective promotion from T-6 to T-7/8. This Tribunal was pleased to dismiss the OA as withdrawn and permitted the applicant to challenge the present impugned order dated 26.02.2015. Hence this application.

5. The Respondents have filed reply statement stating that the applicant joined CRIDA, Hyderabad on transfer from IISR, Lucknow on 17.7.2000. The claim of the applicant that 82 days from 1.7.1996 to 20.09.1996 was deducted from her service is incorrect and therefore denied. However this period (1.7.1996 to 20.9.1996) was not considered for assessment promotion due to the following reasons :

(i) Her Annual Confidential Reports for the period was not sent by IISR, Lucknow. IISR forwarded ACR dossiers for the period from 1986 to 31.3.1996, stating that for the rest of the period the applicant was on various kinds of leaves until her relieving from that Institute on 10.7.2000.

(ii) Five yearly Assessment form for the period 1.7.1996 to 20.9.1996 was not furnished by the applicant.

6. The Respondents further state that, the claim of the applicant that 139 days from 1.7.1996 to 15.7.2000 were deducted from her service is incorrect and therefore denied. However this period was not considered for assessment promotion due to the following reasons :

(i) Her ACRs for the period was not sent by IISR, Lucknow.

(ii) Five yearly Assessment form for the period was not furnished by the applicant.

7. The Respondents further state that, the applicant joined CRIDA, Hyderabad on 17.7.2000 on request transfer from IISR, Lucknow. She submitted her Five Yearly assessment form for the period 17.7.2000 to 16.7.2005. Based on the assessment form and gradings of ACRs for the period, she was promoted to the next higher grade of T-6 with effect from 17.7.2005 on the recommendation of the Assessment Committee.

Subsequently the applicant submitted her Five Yearly assessment form for the period 17.7.2005 to 16.7.2010. Based on the assessment form and gradings of ACRs for the period, she was promoted to the next higher grade of T-7/8 with effect from 17.7.2010 on the recommendation of the Assessment Committee.

8. It is submitted that Assessment promotion of the applicant could not be considered in respect of the period for which ACRs and Five-Yearly Assessment Forms were not available, as per provisions under ICAR Technical Service Rules. ACRs for the period from 1.4.1996 to 16.7.2000 are not available as the applicant did not submit her ACRs and she was on leave continuously from 21.9.1996 to 10.7.2000. Further, five yearly Assessment forms for the period from 1.7.1996 to 16.7.2000 was not furnished by the applicant. Due to this reason, her case for assessment promotion could not be considered as per provisions under ICAR Technical Service Rules. It is not clear why she has raised this issue in the year of 2015 having accepted promotions without challenging the said promotions. Now at this stage, she cannot ask for retrospective promotions and other benefits by challenging the Note. Hence the OA is liable to be dismissed not only on the ground of limitation but also applicant has not made out any grounds to entertain the OA.

9. We have heard Dr.A.Raghu Kumar, learned counsel for the applicant and Mrs.C.Vani Reddy, learned Standing Counsel for Respondents, perused the records and documents placed on record.

10. In support of his contentions, learned counsel for the applicant relied on the following decisions and circular :

(i) Union of India & Anr Vs. Tarsem Singh [CA No.5151-5152/2008 (SLP Nos.3820-3821/2008)] [CDJ 2008 SC 1444] ;

(ii) DoP&T om No.22011/5/86-Estt.(D), dt. 10-4-1989;

(iii) OA No.2894/2011 with MA No.2093/2011 of CAT,Principal Bench, New Delhi, dt. 21.10.2011.

11. The applicant was promoted from T-5 to T-6 on 17.7.2005. It has been pleaded in the reply by the Respondents that

(i) Her ACRs for the period was not sent by IISR, Lucknow. IISR forwarded ACR dossiers for the period from 1986 to 31.3.1996, stating that for the rest of the period the applicant was on various kinds of leaves until her relieving from that Institute on 10.7.2000.

(ii) Five yearly Assessment form for the period was not furnished by the applicant.

12. It has also been further pleaded in the reply that the period from 1.7.1996 to 15.7.2000 was not considered for the following reasons :

(i) Her ACRs for the period was not sent by IISR, Lucknow.

(ii) Five yearly Assessment form for the period was not furnished by the applicant.

13. The learned counsel for the Respondents strenuously submitted that since the relevant provisions, for submission of ACR, in time was not complied with by the applicant, her case for promotion was not taken up earlier and only after submission of ACRs, she has been given promotion subsequently with effect from 17.7.2005.

14. In the judgment dated 21.10.2011 passed by the Principal Bench of CAT in OA No.2894/11, in similar circumstances it has been held that the available ACRs should have been considered for promotion since in the said case the ACRs for some relevant period were not available. In the said judgment the relevant guidelines of the DoP&T have also been referred. The learned counsel for the applicant had also drawn attention of this Tribunal to the guidelines for consideration of CRs and had submitted that :

“50. Consideration of CRs for –

(a).....

(b).....

(c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.”

15. In case the applicant had not submitted the ACR for any particular period, then the Reporting Authority should have submitted his own Assessment Report to the Accepting Authority. Further, in the absence of any ACR for any particular period, the guidelines of the Department and the principles in this regard, as settled by the order of the CAT, Principal Bench in the above mentioned judgment, have not at all been followed by the Respondents and thereby serious prejudice has been caused to the applicant as her case could not be considered for promotion in due course.

16. The learned counsel for the Respondents submitted that there has been a delay of more than 10 years in filing this case and the said delay has

not been explained. The learned counsel for the applicant, on the other hand submitted that she has been promoted on 17.7.2005 and had submitted representation on 21.1.2014 in this regard. Learned counsel for the applicant relied on the decision of the Hon'ble Supreme Court in *UOI & Ors Vs. Tarsem Singh* (cited supra), have set out the guidelines as follows :-

“5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied.”

17. In the present case no right of any third party is going to be affected since this is a time bound promotion and the concerned employee is considered for promotion in every five years of service. Therefore, in the circumstances, this Tribunal finds that there has been no delay and the relief as sought for by the applicant cannot be denied to her on the mere technical plea of delay or laches.

18. If the authorities, on the basis of the self assessment records after

some months or after a year in the background and circumstances found the applicant suitable and fit for promotion then there was no legal impediment on the part of the Respondents to promote the applicant when her case for promotion was earlier taken up for consideration along with her batchmates. The Respondents having not done so, the said action is arbitrary, against the provision of law and against the guidelines and instructions given in Appendix of ICAR Handbook of Technical Services.

19. In view of the forgoing discussions, we are of the view that the applicant is entitled for notional promotion from T-6 to T-7/8 with effect from 30.08.2009 with all consequential financial and service benefits. Hence the impugned order No.1-2(121/2014-E.I, dated 26.02.2015 is set aside. The Respondents to give notional promotion to the applicant from T-6 to T-7/8 with effect from 30-08-2009 with all consequential financial and service benefits within a period of three months from the date of receipt of a copy of this order.

20. Accordingly Original Application is allowed to the extent indicated above. No order as to costs.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)

JUDICIAL MEMBER

ADMINISTRATIVE MEMBER

Dated : 29th October, 2018.

