

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00068/2018

DATED THIS THE 11th DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Smt. Jyothi Mani
Aged about 65 years
Wife of Sri.J.W.Albert
residing at No.416, "Vasantham"
4th Cross, Kuvempu Nagar
Rama Murthy Nagar
Bangalore-560 016.

....Applicant

(By Advocate M/s.Dua Assts.)

Vs.

1. The Director
Aeronautical Development Establishment
Defence Research & Development Organisation
C.V.Raman Nagar, Bangalore – 560 093.
2. Union of India
Represented by the Secretary
Ministry of Defence, South Block
New Delhi – 110 011.
3. Department of Defence Research and Development
and Director General – Defence Research & Development
Organisation (DRDO)
Ministry of Defence
New Delhi – 110 011, represented by
its Deputy Director.

...Respondents

(By Advocate Sri Vishnu Bhat)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

This is a third round of litigation. The applicant was employed as LDC in the

Aeronautical Development Establishment Organisation, Bangalore in the year 1981. Earlier the applicant has filed OA.No.717/2003 on the ground that when she tendered resignation on 22.2.1995 citing her ill health and thereafter withdrawn the same vide letter dtd.26.4.1995 to the 1st respondent, the respondents have erroneously accepted the resignation letter dtd.22.2.1995 and relieved her from service with retrospective effect from 31.12.1994 vide letter dtd.5.5.1995. Several representations made by the applicant and the medical opinion rendered by the Medical Board saying that the applicant was fit to resume service were ignored by the 1st respondent vide letters dtd.7.3.2000 and 28.3.2003. The Tribunal vide order dtd.21.7.2004(Annexure-A1) allowed the OA quashing the letters dtd.7.3.2000 & 28.3.2003 and holding that the applicant was entitled to be reinstated into the service and was entitled for continuity of service within 2 months. Subsequently when the respondents challenged the order dtd.21.7.2004 of the Tribunal before the Hon'ble High Court of Karnataka in WP.No.3222/2005, the same was dismissed by the High Court vide order dtd.7.7.2011(Annexure-A2). Thereafter the applicant made several communications and legal notice dtd.26.12.2011(Annexure-A7) to the respondents to implement the order dtd.21.7.2004. The 1st respondent finally replied on 31.1.2012(Annexure-A8) directing the applicant to report to duty immediately. She was informed that she would not be given continuity of service, consequential benefits, promotions etc. Aggrieved by the same, the applicant issued legal notice dtd.3.5.2012(Annexure-A10) to the respondents but there was no response on the same. Thereafter, she filed CP.No.85/2012 wherein the respondents filed reply stating that the order of the Tribunal has been fully complied with vide order dtd.2.5.2012(Annexure-A12). In view of the said statement, the CP was closed with liberty. Accordingly, the applicant had again filed OA.No.927/2014 aggrieved by the

order dtd.2.5.2012 which was also allowed by this Tribunal vide order dtd.15.9.2015(Annexure-A14) holding that the applicant is entitled to continue in the service from the date in question and consequences of reinstatement. After a lapse of 9 months the respondents have paid certain amount based on pay band of Admin. Assistant Grade-B without considering the continuity of service and consequential benefits. Thereafter the applicant issued legal notice dtd.16.8.2016(Annexure-A15) to the respondents to comply with the order dtd.15.9.2015 passed in OA.No.927/2014 but there was no response for the same. Aggrieved by the same, the applicant again filed CP.No.131/2016 wherein also the respondents have filed reply placing daily order dtd.25.4.2017(Annexure-A16) stating that the applicant was promoted to the grade of Admin Officer and placed the order of revision of pensionary benefits dtd.29.5.2017(Annexure-A17) consequent upon pay fixation as per order in OA.No.927/2014. In view of the same, the CP was disposed of on 5.7.2017(Annexure-A18) without prejudice to the right of the applicant to move the Court if aggrieved. Accordingly, the applicant has filed the present OA seeking the following relief:

- i. Quash the order dtd.25.4.2017 passed by the respondent No.3 vide Annexure-A16 alleged promotion promoting the applicant to Admin Officer (Group B Gazetted, Ministerial) with effect from 17.1.2011, instead of Senior Admin Officer with effect from 2009, and direct the respondent No.3 to promote the applicant to Senior Admin Officer(SAO) with effect from 2009 with consequential benefits.*
- ii. Quash the order dtd.29.5.2017 passed by the respondent No.1 vide Annexure-A17 erroneously fixing the pensionary benefits affecting the correct calculation of Gratuity, Commutation and monthly pension; and direct the respondents to calculate the same in accordance with the Admin Rules/Admin Procedure.*
- iii. Direct the respondents to pay the wage arrears on basis of the correct calculation to the applicant as and when the same falls due and to consider benefit of leave encashment.*
- iv. Direct the respondents to pay the costs of this application to the*

applicant.

2. The applicant submits that the impugned promotion order dtd.25.4.2017 and the order of revision of pensionary benefits passed by the respondents do not amount to full compliance with the order dtd.21.7.2004 passed in OA.No.717/2003 and order dtd.15.9.2015 passed in OA.No.927/2014. The applicant further submits that she is entitled to continuity of service with promotion including the period from 1995 to 2004. She was reinstated into the service on 14.2.2012 and was posted in the position of Admin Assistant Grade B(AAB) which position she held when she was relieved from the services of the respondents. However, in view of the orders dtd.15.9.2015 and 21.7.2004, she ought to have been reinstated in the position of Senior Admin Officer and she is entitled for notional promotion first in the year 1996 as Admin Assistant Grade C(AAC), Admin Officer in 2004 and further as Sr.Admin Officer in 2009. The respondents had refused to consider the promotion of Sr.Admin. Officer which plays a very important role in calculating the Pensionary benefits and better medical benefits/facilities. The action of the respondents in denying notional promotion to the applicant is illegal and arbitrary. As per the order dtd.21.7.2014 of this Tribunal, the continuity of service begins from 1.1.1995. However, the details of wage calculation and fixation of promotions is not shown in the work sheet. The respondents have failed to take into account the promotions for the purpose of calculating the salary payable to the applicant as she is entitled to be paid salary for the period from 21.7.2004 to 31.5.2012 taking into account the promotions which the applicant is entitled to as a consequence of continuity of service. The respondents have erroneously calculated the service benefits without indicating the details of promotions and service benefits to which she is entitled ignoring the promotion of Sr.Admin Officer(Annexure-A20). The applicant is also

entitled for leave encashment for the period commencing from 2004 onwards till the date of her retirement in 2012. The benefit of leave encashment has not been considered as per the service rules of the Establishment. She made several representations, the latest one being dtd.14.6.2017(Annexure-A21) to the respondents. But there was no response from the respondents. The applicant is 65 years old and for the last 23 years, she is denied the benefits to which she is legally entitled to.

3. The respondents, on the other hand, in their reply statement have submitted that the applicant was appointed as LDC on 15.4.1981 and she was promoted in the year 1989 as UDC. She was a habitual absentee and she submitted her resignation from service while working as UDC and was relieved from her post on 10.7.1990. However, on subsequent request from her for withdrawal of the resignation vide her representation dtd.27.8.1990 she was reinstated on 24.9.1990. She again submitted her resignation on 22.2.1995 stating that she was suffering from Schizoaffective Disorder and Gynaec problems and wanted to go abroad for treatment. Her resignation was made effective from 31.12.1994 as she was continuously absent from that date. Again she requested for withdrawal of resignation, however, based on opinion of DoPT, the said request was not accepted on the ground that the same was not within the guidelines for withdrawal of resignation. Aggrieved by the same, she filed OA.717/2003 which was allowed. Against which WP was filed by them but the same was dismissed. Consequently, the applicant was reinstated with continuity of service vide letter dtd.31.1.2012 in consultation with DoPT, N.Delhi and approval of the competent authority. The applicant had accepted the said order and reported for duty on 13.2.2012 and retired from service on attaining the age of superannuation on 31.5.2012. She was also paid all retiral benefits like EL

encashment, gratuity, pension based on the qualifying service from the date of her appointment to the date of her retirement giving continuity of service as ordered by the Tribunal. The CP.85/2012 filed by the applicant alleging non-compliance was disposed of holding that the respondents have complied with the direction of the Tribunal. One more OA No.927/2014 preferred by the applicant was allowed by the Tribunal. In compliance of the same, after obtaining necessary sanction from DRDO Hqrs., N.Delhi, out of Rs.17,81,093/-, a sum of Rs.17,51,778(after deducting income tax) was paid to the applicant towards grant of consequential benefits namely pay fixation, annual increment and pay arrears from 21.7.2004 to 31.5.2012 vide cheque dtd.13.6.2016 and also an interest of Rs.70,172/- thereon vide cheque slip dtd.17.3.2017 was paid. Further, leave of EL& HPL 5 days each at her credit at the time of retirement was encashed and paid to her. Another CP.131/2016 filed alleging non-compliance of the order in OA.No.927/2014 dtd.15.9.2015 was closed since during the pendency of CP, a sum of Rs.5,76,405/- was paid to the applicant on account of grant of promotion by revising the seniority roll and placing her above her immediate junior upto the gazetted rank of Admin Officer deeming as if she was in service with consequential benefits. The pension of the applicant had also been revised from Rs.7,330 to Rs.10,210/- consequent upon revision of her pay on promotion as per the PPO at Annexure-R1. The applicant has been given continuity of service right from her date of appointment till the date of her retirement which comes to 30 years, 7 months & 12 days of qualifying service as per Daily Order dtd.18.3.2013(Annexure-R2) in terms of Tribunal's order dtd.21.7.2004. The applicant had been paid all the entitled amount as per rules by taking into consideration the continuity of service and consequential benefits like periodical increments, pension, gratuity and also promotion in the gazetted rank of Admin

Officer by revising the seniority roll and placing the applicant above her immediate junior Shri CN Vijayakumar, AO(Retired) of LRDE, Bangalore. Consequential benefits to the tune of Rs.23,28,183/- together with interest of Rs.70,172 has been paid to the applicant with the cheque slip/cheque dtd.13.6.2016, 17.3.2017 & 24.4.2017(Annexures R3, R4 & R5 respectively). At the time of reinstatement, the applicant was holding the post of UDC and retired from the Gazetted post of Admin Officer. During her service from 15.4.1981 to 31.5.2012, she had a leave balance of just 5 days of Earned Leave/Half Pay Leave each at her credit which show that either on domestic/health grounds the applicant had been exhausting all leaves at her credit. The applicant has not been able to point out any erroneous calculation of monetary benefits paid to her. The applicant is not entitled for promotion to the grade of Sr. Admin. Officer-II as claimed by her. The promotions in the cadre are vacancy based subject to completion of prescribed residency period. The applicant does not have any legal/vested rights for promotions de hors rules and also further when her immediate senior and junior have not got promotion till the date of her superannuation on 31.5.2012. Thus the applicant is attempting to enrich herself unjustly and in a dubious manner. The relief claimed by the applicant is speculative. Moreover there is no fresh cause of action and she is approaching the Tribunal with similar facts and circumstances as contained in OA.No.927/2014. Hence the same is hit by res-judicata/constructive res-judicata. As such the OA is liable to be dismissed.

4. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that she is entitled to notional promotion on reinstatement and therefore she ought to have been promoted to the post of Sr.Admin.Officer as per the relevant rules and consequently entitled to all monetary and retiral benefits

arising thereof. She submits that comparing her with Sri C.N.Vijaykumar is unwarranted and unsustainable as he was held back in the Grade of LDC and no reasons for the same are indicated in the reply. She made a request to the 1st respondent vide letter dtd.19.2.2019(Annexure-A22) to provide inter alia the details of the promotions given to the employees viz., Mrs. Yamuna Bai, Mr.Kamlesh Babu, Mrs.Loganayagi and Mrs. Sowbagya who were all contemporaries to her. But there is no reply to the same. She was admittedly paid Leave Encashment for only 3 1/2 months of service i.e. for the period 14.02.2012 to 31.5.2012. As per the orders in OAs.No.717/2003 & 927/2014, she is entitled to continuity of service and ought to be reimbursed for more than 240 days of leave. Refusal of the same amounts to violation of the orders passed in the above said OAs as the respondents have stated that she has the qualifying service of 30 years, 7 months and 12 days.

5. We have heard the Learned Counsel for both the parties and perused the materials and written arguments note filed by both the parties in detail. In the first order in OA.No.717/2003 dtd.21.7.2004, the respondents were directed to reinstate the applicant to the post of Admin. Assistant-B with continuity of service but without back wages. In fact in this OA, this Tribunal did not grant consequential benefits in favour of the applicant. However, in OA.No.927/2014 vide order dtd.15.9.2015, the Tribunal has ordered that the applicant is entitled to continue in service from the date in question i.e. 21.7.2004 with consequences of reinstatement thus enabling her to gain the consequential benefits namely periodical annual increments, pension, gratuity etc., and the respondents have stated that they have paid arrears amounting to Rs.23,98,355/- including interest. The two remaining requests of the applicant relate to her entitlement for promotion to the post of Sr.Adm.Officer and leave encashment. The respondents have contended that the promotions are

vacancy based and not merely based on the criteria of residency period. Further based on the orders of this Tribunal in OA.No.927/2014, the respondents have promoted her as Administrative Officer w.e.f. 17.1.2011 the date on which her immediate junior was promoted. They have also produced a statement relating to these promotions vide their reply in para-29 which shows that there has been no discrimination against the applicant. It is apparent that no junior of the applicant has been promoted to the grade of Sr.Adm.Officer as stated by the respondents and there can be no grievance for the applicant in this regard. However, in her rejoinder, the applicant has cited the names of several other persons who were her contemporaries and who had been given promotions without any delay. The applicant had also written a letter dtd.19.2.2019 requesting the details of the promotions given to the four individuals based on which she may apparently have a claim for promotion to any further higher post based on the promotions given to her juniors. Therefore, we direct the respondent No.1 to provide the aforesaid details to the applicant within a period of one(1) month from the date of this order. The applicant is at liberty to move this Tribunal if any injustice is done to her with respect to the promotions to the higher post. The other surviving request relates to encashment of earned leave. The applicant would claim that if her continuity of service is to be considered, she would be entitled for encashment of earned leave also for 240 days. However as noted by the respondents, the applicant had taken considerable leave even while she was in service and therefore it is not possible at this juncture to say that the entire leave if any at her credit would not have been exhausted by her. As we had already seen, the applicant infact has got back wages for the period for which she was not working in the organisation based on the orders of this Tribunal in OA.No.927/2014 whereas this Tribunal had not ordered for any

back wages in its original order in OA.No.717/2003. Therefore, we are not inclined to agree with this request and order accordingly.

6. The OA is disposed of with the above orders. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00068/2018

- Annexure-A1: Copy of the order dtd.21.7.2004 passed by this Hon'ble Tribunal in OA No.717/2003
- Annexure-A2: Copy of the order dtd.07.07.2011 passed by the Hon'ble High Court of Karnataka in WP.No.3222/2005
- Annexure-A3: Copy of the applicant's letter dtd.27.7.2011 addressed to the 1st respondent
- Annexure-A4: Copy of the reply dtd.10.8.2011 by the 1st respondent
- Annexure-A5: Copy of the applicant's letter dtd.1.12.2011
- Annexure-A6: Copy of the 1st respondent's reply dtd.21.12.2011
- Annexure-A7: Copy of the legal notice dtd.26.12.2011 with postal acknowledgment
- Annexure-A8: Copy of the 1st respondent's letter dtd.31.01.2012
- Annexure-A9: Copy of the respondent's letter dtd.16.02.2012
- Annexure-A10: Copy of the legal notice dtd.3.5.2012
- Annexure-A11: Copy of the postal acknowledgment
- Annexure-A12: Copy of the order dtd.2.5.2012 of the 1st respondent
- Annexure-A13: Copy of the order dtd.30.5.2013 passed by this Hon'ble Tribunal in Contempt Petition No.85/2012
- Annexure-A14: Copy of the order dtd.15.9.2015 passed in OA.No.927/2014
- Annexure-A15: Copy of the legal notice dtd.16.8.2016 and postal receipt
- Annexure-A16: Copy of the daily order dtd.25.4.2017 along with covering letter dtd.16.5.2017
- Annexure-A17: Copy of the order of revision of pensionary dtd.29.5.2017
- Annexure-A18: Copy of the order dtd.5.7.2017 passed by this Hon'ble Tribunal in Contempt Petition No.170/00131/2016
- Annexure-A19: Chart indicating the promotions to which the applicant is entitled on reinstatement
- Annexure-A20: Copy of the erroneous calculation issued byt the respondents
- Annexure-A21: Copy of the representation of the applicant dtd.14.6.2017

Annexures with reply statement:

- Annexure-R1: Copy of PPO
- Annexure-R2: Copy of Daily Order dtd.18.3.2013
- Annexure-R3: Copy of the cheque slip dtd.13.6.2016
- Annexure-R4: Copy of the cheque slip dtd.17.3.2017
- Annexure-R5: Copy of the cheque slip dtd.24.4.2017
- Annexure-R6: Copy of the Daily Order Part-II dtd.4.4.2017
- Annexure-R7: Copy of the cheque slip dtd.15.1.2013

Annexures with rejoinder:

- Annexure-A20: A copy of the letter dtd.19.2.2019 by the applicant to the respondent No.1

