

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

No.O A.350/1401/2014

Date of order :13.06.2019

**Coram** : Hon'ble Mrs. Bidisha Banerjee, Judicial Member  
Hon'ble Mr. N. Neihsial, Administrative Member

MALABIKA GHOSH, wife of  
Sri Barun Ghosh, aged about 58 years,  
Residing at B-179/2, Basudevpur Road,  
Post Office-Sarsuna, Police Station-Behala,  
Kolkata-700061 and presently working in  
The post of Library & Information Officer  
(Science & Technology) under the Director  
General, National Library, Kolkata.

.....Applicant

Versus -

1. Union of India service through the Secretary, Ministry of Culture, Government of India, Shastri Bhawan, New Delhi-110115;
2. The Director General, National Library, Government of India, Belvedere Road, Kolkata – 700027;
3. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi -110069

.....Respondents

For the applicant : Mr. P.C. Das, counsel

For the respondents : Mr. M.K. Ghara, counsel  
Mr. L.K. Chatterjee, counsel

ORDERBidisha Banerjee, Judicial Member

In this O.A. the applicant has sought for the following reliefs:-

*"a) To pass an appropriate order directing upon the respondent authority to give effect of regular promotion of the present applicant to the post of Library & Information Officer(Science & Technology) with effect from 01.02.2012 in terms of the Recruitment Rules as well as seniority list published by the department along with all consequential benefits;*

*b) To pass an appropriate order directing upon the respondent authority to issue a fresh promotion order by giving effect to the regular promotion of the present applicant to the post of Library and Information Officer(Science & Technology) on regular basis with effect from 01.02.2012 along with all consequential benefits by modifying the order dated 16.09.2014."*

2. Her case in a nutshell is as under :-

The applicant was initially appointed to the post of Laboratory Assistant with effect from 1978 in the National Library, Kolkata. Subsequently she was promoted to the post of Assistant Chemist on ad hoc basis with effect from 23.09.1986 to 02.07.1987 and regularised against the said post, on 03.07.1987. Thereafter the applicant was promoted on officiating basis to the post of Assistant Library & Information Officer(Laboratory) with effect from 10.04.1997, and subsequently she was regularised against the post of Assistant Library & Information Officer(Laboratory) vide regular office order of promotion dated 24.01.2003. The post of Chemist was redesignated as Assistant Library & Information Officer(Laboratory) as per redesignation order dated 24.07.1990.

As per Recruitment Rules published on 8<sup>th</sup> November, 2002 , an employee after completion of 8(eight) years of regular service in the post of Assistant Library and Information Officer(Laboratory) is entitled

to get promotion to the post of Library & Information Officer(Science & Technology). Since the applicant got regular promotion to the post of Assistant Library & Information Officer(Laboratory) with effect from 17.01.2003, after completion of eight years of service, that is on 17.01.2011, she was eligible for regular promotion to the post of Library & Information Officer(Science & Technology).

The respondent authority vide office order dated 30<sup>th</sup> December, 2011, published a seniority list of the post of Assistant Library & Information Officer(Laboratory). The applicant figured therein as the sole eligible candidate who possessed the degree of Bachelor of Library Science and completed eight years of service in the post of Assistant Library & Information Officer(Laboratory). She was as such entitled to promotion as Library & Information Officer(Science & Technology). Immediately after publication of the seniority list, she preferred representation before the Director General, National Library, Kolkata on 27<sup>th</sup> June, 2013, for her promotion to the post of Library & Information Officer(Science & Technology) in terms of the seniority list published by the department dated 30.12.2011. The Director General, National Library, Kolkata, vide office order dated 12<sup>th</sup> July, 2013 requested the Joint Secretary of the Government of India, Ministry of Culture, Shastri Bhawan, New Delhi to conduct a DPC for considering her promotion to the post of Library & Information Officer(Science & Technology). Despite such request the respondent No.1 and the Union Public Service

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Commission sat tight over the matter and did not finalize the DPC proceeding before her superannuation with effect from 01.09.2015.

Under compelling circumstances, she preferred representations on 28.08.2013 and 20.11.2013 for considering her promotion on regular basis by holding a DPC to the post of Library & Information Officer(Science & Technology) in terms of the Recruitment Rules as well as her seniority position, as one, Annapurna Ganguly who got promotion on ad hoc basis, by the grace of the administration, vide office order dated 31<sup>st</sup> December, 2012 as Senior Administrative Officer, just after three months vide office order dated 1<sup>st</sup> March 2013 was reverted to the post of Administrative Officer and on the same date i.e. 1<sup>st</sup> March, 2013 vide office order No.1272/2012-13 was regularised to the post of Senior Administrative Officer in the pay scale of Rs.15600-39000 with Grade Pay of RS.6600.

Under compelling circumstances she filed an original application being O.A.No.350/00028 of 2014 before this Tribunal for redressal of her grievances for promotion to the post of Library & Information Officer(Science & Technology). The said matter was heard by this Hon'ble Tribunal on 07.02.2014 and disposed of with the following order:-

"2. That Learned Counsel for the applicant submits that the applicant made several representations to concerned authority to hold DPC for promotion to the post of Library Information Officer(Science & Technology), National Library, Kolkata which is yet to be disposed of. He also pointed out recommendations made by Director General in his letter dated 12.07.2013 with regard to holding of DPC for such promotion.

3. Since the prayer of the applicant is pending before the authorities, we dispose of the O.A. with a direction upon the Director General to dispose of the representation dated 28.8.2013(Annexure A-6) of the applicant in consultation with the competent authority with regard to holding of DPC and to pass appropriate orders in accordance with law within a period of 3 months."

After receipt of the same, the respondent authority without giving regular promotion in favour of the applicant, vide office order No.1257 dated 21<sup>st</sup> February, 2014 issued an order of ad hoc promotion for the period of six months in her favour without holding any regular DPC. The applicant accepted the said ad hoc promotion vide her letter dated 21.02.2014. Thereafter, the Director General, National Library, Kolkata vide office letter dated 6<sup>th</sup> May, 2014 requested the Ministry to hold the DPC and to take necessary steps to send it to the Union Public Service Commission for convening a meeting of the DPC to the post of Library & Information Officer(Science & Technology) by promotion in the National Library, Kolkata.

The applicant laments that she was the only one eligible candidate as per the seniority list and a vacancy arose in the department with effect from November, 2011 and the applicant became eligible for the same with effect from 01.02.2012, but despite her eligibility, the department did not hold DPC in time and for that the applicant has been made to suffer.

She has further pleaded that instead of granting regular promotion to the post of Library & Information Officer(Science & Technology) she was kept on ad hoc basis against such high and

responsible post of National Library, Kolkata vide office order dated 31<sup>st</sup> July, 2014 that too without any extra remuneration.

The Director General, National Library, Kolkata on 25<sup>th</sup> August, 2014 attended the DPC meeting in the office of the Union Public Service Commission for considering the promotion to the post of Library & Information Officer(Science & Technology) and from office letter dated 22<sup>nd</sup> August, 2014 it will be evident that the Director General, National Library, Kolkata attended the DPC meeting on 25<sup>th</sup> August, 2014. On 22<sup>nd</sup> August, 2014, she made representation before the concerned authority for considering her promotion to the post of Library & Information Officer(Science & Technology) on regular basis with effect from 01.02.2012 ~~but to no avail~~. Thereafter, vide office order dated 16<sup>th</sup> September, 2014, the Under Secretary, Government of India, Ministry of Culture issued an office order of regular promotion in favour of the applicant to the post of Library & Information Officer(Science & Technology) on regular basis in Pay Band-III of Rs.15600-39100 with Grade Pay of Rs.6600/- but that order was issued in favour of the applicant for her promotion with immediate effect and not with effect from 01.02.2012. Vide office order dated 24<sup>th</sup> September, 2014 the ad hoc promotion order was withdrawn and on the same date i.e. on 24<sup>th</sup> September, 2014 the Director General, National Library, Kolkata issued an office order No.671 in respect of her regular promotion to the post of Library & Information Officer(Science & Technology) with immediate effect.

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The applicant has claimed that it is a settled proposition of law that due to delay in holding a DPC by the Administration, the concerned employee may not suffer. It is also a fundamental right guaranteed under Article 21 of the Constitution of India that promotion is not a matter of right but right to consideration of promotion is a fundamental right. Whereas in her case when the applicant was only eligible candidate for promotion to the post of Library & Information Officer(Science & Technology) and a suitable vacancy arose in the department long before November, 2011, but the DPC was held after a huge delay, her regular promotion to the post of Library & Information Officer(Science & Technology) should be given with effect from 01.02.2012 along with all consequential benefits.

3. The respondents have refuted the claim by submitting that the applicant on completion of eight years of service on 17.01.2011 got the eligibility for consideration of promotion to the higher post i.e. Library and Information Officer(Science & Technology) as per the recruitment rules laid down for promotion. The seniority list for consideration of promotion to the post of Library and Information Officer(Science & Technology) was published on 30.11.2011 and the applicant applied for consideration of promotion after expiry of about 1 years and 7 months period. The authorities began the process of filling up post prior to occurrence of the vacancy vide its letter No.ADM/CON/S-I(17)/828 dated 9<sup>th</sup> January 2012 to the Under Secretary, Ministry of Culture for convening the DPC. They have vehemently denied that the UPSC was

sitting tight over the matter. Instead they would aver that in reply to office letter No.ADM/CON/S-I(27)828 dated 9<sup>th</sup> January 2012, the Under Secretary, Ministry of Culture intimated vide its letter No.F.12-6/2012-Lib. Dated 23<sup>rd</sup> May 2012 that the matter was examined with the consultation of UPSC and that as per Recruitment Rules of the post, the name of applicant may not be considered for promotion as she has not rendered a minimum service i.e. 8(eight ) years as on 01.01.2011 for the vacancy year 2011-12. It was also mentioned in the said letter that the vacancy should be carried forward for the next vacancy year 2012-13 with a request to submit revised proposal according to the vacancy year 2012-13 with all supporting papers/certificates. A revised proposal was sent by the National Library, Kolkata vide its letter No.ADM/CON/S-I(27)224 dated 11<sup>th</sup> June 2012 to the Under Secretary, Ministry of Culture for taking necessary steps for convening a meeting of the DPC by the UPSC for filling up the post of Library and Information Officer(Science and Technology) as early as possible. Accordingly, Ministry of Culture forwarded the same to UPSC and in reply by the UPSC vide its letter bearing NO.1/54(8)2012-AP-4 dated 8<sup>th</sup> October 2012 requesting to furnish a certificate on action taken as per DOP&T O.M. dated 14.05.2009. The said letter was replied to by the National Library vide this letter No.ADM/CON/S-I(27)/25 dated 16<sup>th</sup> October, 2012. A series of reminders were given vide letters dated 23<sup>rd</sup> January 2013, 29<sup>th</sup> April 2013, 3<sup>rd</sup> June 2013, 12<sup>th</sup> July 2013 and 18<sup>th</sup> July 2013. Besides perusing for considering regular promotion to the post of

Library and Information Officer (Science & Technology), the Library authorities were also endeavouring to give ad hoc promotion to the applicant vide a proposal bearing No.ADM/CON/S-I(27)/677 dated 20<sup>th</sup> November, 2012 sent to the Under Secretary, Ministry of Culture requesting to consider promotion to the applicant on ad hoc basis to the post of Library and Information Officer(Science & Technology). After due persuasion, the Ministry of Culture vide its letter No.F10-4/2014-lib dated 30.01.2014 approved to fill up the posts through ad hoc and the applicant was given ad hoc promotion to the post of Library & Information Officer(Science and Technology) with effect from 21.02.2014. The Library authorities all the while were persuading Ministry of Culture for granting her regular promotion to the post of Library and Information Officer(Science and Technology). The Library authorities were making every effort to give regular promotion to the post of Library and Information Officer (Science and Technology) as per rules lay-down for filling up of the post through promotion.

The respondents further averred that on the basis of the direction of this Tribunal issued on 07.02.2014 in the application filed by the applicant on 28<sup>th</sup> August, 2013, she was considered for promotion by the concerned authorities i.e. Ministry of Culture and UPSC. Accordingly she was offered promotion to the said post on regular basis in strict compliance with the DOP&T O.M. No.22011/5/86-Estt.(D) dated 10<sup>th</sup> April 1989.

The respondents would contend that as per the DOP&T O.M. No.22011/5/86-Estt.(D) dated 10<sup>th</sup> April 1989, promotion will have only prospective effect even in cases where the vacancies relate to earlier year(s). Her representation to consider her promotion with retrospective effect is not permissible under paragraph 17.11 of DOP&T O.M. No.22011/5/86-Estt.(D) dated 10<sup>th</sup> April 1989. Hence promotion to a higher post, for which he/she has not performed cannot be claimed and at the same time promotion from retrospective effect cannot be given.

The respondents further stated that the order of the Ministry of Culture dated 16<sup>th</sup> September 2014 in respect of the promotion of Smt. Malabika Ghosh clearly mentions as follows:-

*"The promotion will become effective from the date Smt. Malabika Ghosh assumes the charge of the new post. Attention of the library is invited to the instructions contained in 6.4.4 of the DoP&T O.M. No.22011/5/86-Estt.(D) dated 10<sup>th</sup> April, 1989 which provide that promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s). Para 17.11 of the said O.M. further provides the date from which the promotion should take effect. These instructions should be kept in view by the library while implementing the recommendations of the DPC."*

Since Smt. Ghosh has not performed in the said higher capacity from the date of her eligibility i.e. 01.02.2012 and since she has been recommended by the UPSC and promotion was made with a condition that "while promotions will be made in the order of the consolidated select list, such promotion will have only prospective effect even in case where the vacancies relate to earlier year(s)" in compliance with the DoP&T O.M. No.22011/5/86-Estt.(D) dated 10<sup>th</sup> April, 1989. Mere occurrence of

vacancy and the eligibility does not confer an officer right to be promoted.

4. To controvert the stand of the respondents Id. counsel for the applicant would cite the decision rendered by Hon'ble The High Court of Delhi in W.P(C)5549/2007 (Dr. Sahadeva Singh Vs. UOI & Ors.).

5. We heard the Id. counsel and perused the materials on record.

6. In the cited decision, where the applicant was deprived of timely promotion due to delayed holding of DPC, the Hon'ble High Court of Delhi observed as follows:-

"15. We are unable to accept the contention that failure of the respondents to adhere to the Model Calendar suggested in the OMs dated 08.09.1998 and 13.10.1998, would not entitle an employee to seek directions for considering him for promotion as per the time schedule stipulated in the Model Calendar, even if there is no justification for not convening the DPC in terms of the Model Calendar. In our view, if the Department is able to justify the delay in convening the DPC as per the schedule laid down in the Model Calendar, an employee would not be entitled to seek a direction to consider him for promotion in terms of the time schedule stipulated in the Model Calendar. But, if there is no explanation given by the Department for not convening the DPC within the time stipulated in the Model Calendar or the explanation given by the Department is not found acceptable, there would be no justification for making the employees suffer merely on account of inaction or delay on the part of the Department for not convening the DPC and postpone his promotion till the DPC actually met. In our view, in such a case, an employee is entitled to approach the Tribunal or the Court, as the case may be, for a direction to the Department to convene DPC for the relevant vacancy year and in case he is eligible and falls in the zone of consideration, to consider him for promotion, in the year in which the vacancy against which he was eligible, arose. It is true that no employee has no vested right for promotion, but, the respondents cannot act arbitrarily and without any reasonable excuse defer the meeting of DPC and thereby deprive the employee of his legitimate expectations for being considered for promotion to a post to which he is eligible for being promoted. In such a case, the Tribunal or the Court, as the case may be, ought to step in and direct the respondents to convene DPC for the vacancy year and consider the petitioner if otherwise eligible and falling in the zone of consideration for promotion against the vacancies arise in the vacancy year. Any other view would negate the policy of the Government to prepare the Select List well in advance demoralize the employees and also result in the vacancies remaining unfilled without any reasonable excuse.

17. The case before this Court does not involve any dispute with respect to seniority in the cadre of Deputy Commissioner (Crops). No one has been either promoted or directly appointed as Deputy Commissioner (Crops) between 1.1.2005, when the petitioner became eligible to be considered for promotion, and 26.6.2006, when he was actually promoted. Thus, promotion of the petitioner w.e.f. 1.1.2005 will not adversely affect any other person nor will it disturb the existing seniority. Had someone been appointed or promoted as Deputy Commissioner (Crops) between 1.1.2005 and 26.6.2006, we might have been inclined to protect his seniority, but, that is not the position in this case. We, therefore, see no good reason for not giving benefit of promotion to the petitioner w.e.f. 1.1.2005.

*Conclusion*

For the reasons stated hereinabove, the writ petition is allowed by directing the respondents to treat the petitioner promoted as Deputy Commissioner (Crops) W.P(C) 5549/2007 Page 40 of 40 w.e.f. 01.01.2005, against one of the two vacancies which had arise in the year 2004 and which were carried forward to the vacancy year 2005.

*In the facts and circumstances of the case, there shall be no order as to costs."*

7. We note that in the present case, applicant acquired eligibility on 17.01.2011 and vacancy arose in 2011-12. Even if it be assumed that she was ineligible as on 01.01.2011 as per model DPC roster, she ought to have been considered as per the next schedule. The reason why she was kept waiting until September, 2014 could neither be comprehended nor countenanced. Inarguably and indubitably she was arbitrarily deprived of timely promotion only due to non-holding of DPC in terms of the roster.

8. Having noticed that she was given ad hoc promotion to the post of Library & Information Officer, the respondents are directed to treat her as regularly appointed at least from the date she was granted ad hoc promotion, with all consequential benefits. ✓

9. However, in the event the vacancy arose after 17.01.2011, they shall duly consider antedating her seniority on notional basis from the

date such vacancy in the post of Library and Information Officer(Science & Technology) arose, if nothing else stands in the way. Order be issued within two months.

10. Accordingly this application stands disposed of. No costs.

N (N. Neihsial)  
Administrative Member

Bidisha Banerjee  
Judicial Member

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