

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2041/2003

This the 20th day of July, 2004

HON'BLE SHRI V.K.MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

S.N. Dixit
S/o Late Shri G.S. Dixit,
R/o 38 AA, Indirapuram, Loni Road,
Ghaziabad-201102. Applicant

(By Shri R.N.Singh for Shri A.S. Singh, Advocate)

-versus-

1. Union of India through the Secretary
Ministry of Water Resources,
Shram-Shakti Bhawan,
New Delhi-110001.

2. Central Soil and Materials Research
Station (CSMRS),
Olof Palme Marg, Hauz Khas,
New Delhi-110016. Respondents

(By Shri Rajinder Nischal, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, V.C.(A) :

Through this OA applicant has challenged Annexure A-1 dated 16.10.2002 whereby his representation dated 22.7.2002 for promotion to the grade of Senior Research Officer (Sc.) from the date of vacancy caused on 9.2.1999 has been rejected on the ground that in accordance with the relevant instructions on promotions, promotions will have only prospective effect even in cases where the vacancies relate to earlier years.

2. Applicant had been promoted to the post of Assistant Research Officer in June 1987 and was admittedly the seniormost official in that grade as per

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seniority list dated 6/7.4.1999 of Assistant Research Officers (Sc.) in CSMRS as on 1.4.1999. A vacancy occurred in the grade of Research Officer due to the demise of one Mrs. A.L.Gupta. It is alleged that respondents did not hold the meeting for filling up the aforesaid vacancy by April/May 1999 in terms of DOPT OM dated 8.9.1998, and as such, a respondent could be promoted as Research Officer only w.e.f. 21.9.2000 (Annexure A-5). According to the applicant this delay is not attributable to him and as such, he should be declared entitled for promotion w.e.f. 9.2.1999 and/or any other reasonable date in the year 1999, with consequential benefits.

3. The learned counsel for applicant relied upon DOPT instructions dated 8.9.1998 (Annexure A-3) and DOPT OM dated 14.12.2000. The learned counsel maintained that as per instructions dated 8.9.1998, respondents are mandated to ensure regular meetings of DPC every year for each category of posts. As per the latter instructions, non-adherence to prescribed time frame in convening DPC has been treated as a serious concern and instructions have been issued to fix responsibility for the lapse in this regard. Referring to Annexure A-5 dated 21.9.2000, the learned counsel maintained that applicant has been promoted as Research Officer (Sc.) in the pay scale of Rs.8000-13500 with effect from the date of assuming charge of the post of Research Officer against the panel year 1998-99. The learned counsel stated applicant should have accorded promotion w.e.f. 9.2.1999 or any other reasonable date in the year 1999, with consequential benefits.

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4. On the other hand, the learned counsel of the respondents stated that the OA is time barred as the applicant had represented on 22.7.2002 against his promotion w.e.f. 21.9.2000. This representation had been made after a lapse of one year and ten months of the promotion and as such is time barred. He further stated that applicant had not submitted any application for condonation of delay in filing the OA. The learned counsel of the applicant stated that applicant's representation had been rejected by the respondents on 16.10.2002 and such the cause of action for the applicant had arisen w.e.f. 16.10.2002. We are in agreement with the learned counsel of the applicant that the cause of action for the applicant had arisen on 16.10.2002 when applicant's representation was rejected. As such, respondents' objection in respect of limitation is rejected.

5. The learned counsel of respondents thereafter stated that the related vacancy fell vacant on 9.2.1999 due to demise of an employee and as such although this vacancy became available during the year 1998-99, it could not be anticipated and was clubbed with 15 vacancies which arose during the next vacancy year 1999-2000. Admittedly, the applicant was the seniormost officer in the grade of Assistant Research Officer (Sc.). He further stated that as it was not possible to take advance action for preparing select panels as per the model calendar for DPCs. as laid down vide DOPT instructions, a combined proposal for making promotions



against the vacancies of 1998-99 and 1999-2000 was formulated and applicant could be promoted on the post of Research Officer (Sc.) on 21.9.2000. The learned counsel stated that in terms of Annexure R-1 dated 10.3.1989, promotions can have prospective effect only even in cases where vacancies relate to earlier years.

6. DOPT instructions dated 10.3.1989 relate to procedure to be observed by DPCs. In regard to preparation of year-wise panels for DPC where they had not met for a number of years, instructions contained in paragraph 2.4.4 state that while promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s). Respondents have admitted that one vacancy of Research Officer (Sc.) occurred on 9.2.1999 due to death of an employee. It was not possible for the respondents to anticipate this vacancy during the year 1998-99 and as such they could have taken preparatory action for filling up this vacancy during the year 1998-99. However, respondents should have taken action for filling up this post as soon as possible in terms of the instructions contained in OM dated 8.9.1998 and OM dated 14.12.2000 (Annexure A-3 colly.). In terms of these memoranda, respondents have to take steps to hold DPCs without undue delay and as a matter of fact they are supposed to fix responsibility for lapse in this regard as DOPT has prescribed a model calendar for holding DPCs. As in the present case when the vacancy occurred suddenly on 9.2.1999 due to death of employee, respondents could have

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held the DPC on 15.7.1999 and on applicant's selection being the seniormost against the vacancy occurred on 9.2.1999, appointed him as Research Officer within a reasonable period of 15.7.1999. Respondents have clubbed the vacancies for the years 1998-99 and 1999-2000 and empanelled the applicant against the vacancy for the year 1998-99. However, he has been promoted on the post of Research Officer w.e.f. 21.9.2000.

7. While the applicant was the seniormost Assistant Research Officer eligible for promotion against the vacancy occurred on 9.2.1999 and he was ultimately selected against that post on 21.9.2000, respondents had caused delay in organising the DPC meeting against the DOPT instructions. In such circumstances, when the delay in holding the DPC meeting is not attributable to the applicant, he has to be accorded benefits on his selection after a reasonable period of occurrence of the vacancy. In similar facts and circumstances in the case of **Union of India & Ors. v. Vipinchandra Hiralal Shah**, (1996) 6 SCC 721, it was held :

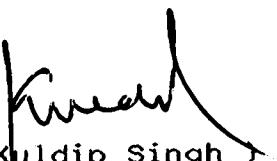
"(5) If the name of the respondent is included in the national Select List/Lists prepared for any particular year/years during the period 1980 to 1986 and if he is so placed in the order of merit so as to have been entitled to be appointed against a vacancy of that particular year, he be appointed to the Service against that vacancy of that year with all consequential benefits."

8. Taking into consideration the totality of facts and circumstances of the case as discussed above, we are of the considered view that applicant cannot be denied

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benefits of his selection to the post of Research Officer as if the same had been organised at the appropriate time in accordance with the DOPT instructions referred to above.

9. In result, the OA is allowed quashing and setting aside Annexure A-1 dated 16.10.2002 declaring that applicant would be entitled for grant of promotion on the post of Research Officer notionally w.e.f. 15.8.1999 considering that respondents ought to have held the DPC on 15.7.1999 and within a reasonable period thereafter, i.e., by 15.8.1999 accorded the promotion on the basis of recommendations of the DPC. While applicant would be entitled to pay and allowances of the promotional post w.e.f. 21.9.2000 in terms of Annexure A-5 dated 21.9.2000, he shall be accorded all other benefits such as seniority and eligibility for further promotions w.e.f. 15.8.1999, treating his promotion on the post of Research Officer w.e.f. 15.8.1999 on notional basis. No costs.


(Kuldip Singh)

Member (J)

/as/


(V. K. Majotra)
Vice-Chairman (A)

20.7.04