
(2018) 10 CAT CK 0060

In the Central Administrative Tribunal

Case No : Original Application No. 1229 Of 2016

Naresh C. Dhawan

APPELLANT

Vs

Union Of India Through Secretary And Anr

RESPONDENT

Date of Decision : 30-10-2018

Acts Referred:

Citation : (2018) 10 CAT CK 0060

Hon'ble Judges : L. Narasimha Reddy, J;Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : M.K. Bhardwaj, Y.P. Singh

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicants are officers in the Ministry of Health and Family Welfare, holding various posts. According to them, they are entitled to be extended the benefit of in situ promotion in the scale of Rs.37400-67000 with Grade Pay Rs.10000/-, from the date of completion of three years of regular service at S-4 level of Scientists, with consequential benefits. They contend that the respondents have wrongfully denied them the in situ promotion from S-4 to S-5 level. They place reliance upon the judgment of the Delhi High Court in Ashwini Kumar v Union of India [WP(C) No.18684/2005, decided on 13.03.2007].

2. The respondents filed a counter-affidavit opposing the OA. It is stated that the cases of the applicants for promotion to S-5 level were considered by the Ministry in the year 2010 itself, by the Departmental Assessment Board (DAB) constituted by the UPSC at its meeting held on 27.09.2011. It is stated that recommendation was made on the basis of the assessment, and since the applicants retired from service by that date, they were not extended the benefit of promotion. As regards Ashwini Kumar's case, it is stated that it was not a case of a Scientist being conferred the benefit of promotion with retrospective effect, and the relief granted therein was the one of pushing the date of promotion to an

earlier one.

3. We heard Shri M. K. Bhardwaj, learned counsel for the applicant, and Shri Y. P. Singh, learned counsel for the respondents.

4. The applicants were holding the positions of S-4 in the non-medical Scientist category. The method of promotion and other aspects concerning this category of Scientists are dealt with under the Department of Health (Group 'A' Gazetted, Non-Medical Scientific and Technical Posts) In Situ Promotion Rules, 1990. Those Rules were framed in compliance of the directions of the Hon'ble Supreme Court in its judgment in *O. Z. Hussain (Dr.) v Union of India* [1990 Supp SCC 688]. Five levels of Scientists are created therein, and promotion from one category to another, is subject to completion of regular service of certain years in the lower category and clearance by the DAB. In addition to that, eight floating posts of Scientists, level-5 are maintained, which can be held by different categories of Scientists on being cleared by the DAB.

5. The cases of the applicants were in fact considered by the DAB at its meeting held on 27.09.2011. All of them were found to be fit for promotion. However, orders of promotion could not be issued on account of the fact that they retired from service much before the date on which the DAB met.

6. The applicants claim the relief in terms of the judgment of the Delhi High Court in Ashwini Kumar's case. That was a case in which the petitioner was promoted as Scientist-5 in the year 2002, based upon the recommendation of the DAB, against a vacancy of the year 1995-96. The High Court took note of the fact that in case there was undue delay and arbitrary postponing of the DPC/DAB, the rights of an officer to be promoted with effect from a particular date cannot be defeated. It was also mentioned that if the delay was not intentional and was on account of factors beyond control, promotions can be only prospective in nature. By recording a finding that the meeting of the DAB was unduly delayed in that case, the benefit of promotion from an earlier date was given.

7. In the instant case, the applicants were not appointed at all, since they retired by the time the DAB made its recommendations. Therefore, the principle laid down or the relief granted in Ashwini Kumar's case cannot be applied to the facts of this case. They neither pleaded nor established that the meeting of the DAB was unduly delayed. Further, it is only in ordinary civil services that an occasion would arise for extending the benefits of retrospective promotion to the employees. Under the special procedure prescribed in the 1990 Rules for the scientific community, retrospective promotion after retirement cannot be granted. The evaluation process, the method of promotion etc., are substantially different. Further, it is not pleaded that any Scientists-4 who were junior to the applicants, have been promoted as Scientist-5.

8. The OA is accordingly dismissed. There shall not be any order as to costs.