

29

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1565/2002

This the 4th day of August, 2003

HON'BLE SH. V.K. MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

1. O.P. Verkya
S/o Late Sh. C.Lal,
Plant Protection Officer,
Directorate of Plant Protection
Quarantine and Storage,
NH IV, Faridabad,
Haryana.
2. G.A. Qadeer
S/o Late Sh. G.H. Ansari
Plant Protection Officer,
Directorate of Plant Protection
Quarantine and Storage,
NH IV, Faridabad,
Haryana.
3. K.S. Ghodeshwar
S/o Sh. S. Ghodeshwar,
Plant Protection Officer,
Directorate of Plant Protection
Quarantine and Storage,
Mumbai, Maharashtra.

(By Advocate: Sh. Ajit Pudusser)

Versus

1. Union of India
through the Secretary
Department of Agriculture and Cooperation
Ministry of Agriculture,
Krishi Bhavan,
Rafi Marg,
New Delhi.
2. Plant Protection Advisor
to the Government of India
Directorate of Plant Protection
Quarantine and Storage,
NH IV, Faridabad,
Haryana.

(By Advocate: Sh. D.S. Mahendru)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

This is a joint application filed by three applicants who have challenged the rules framed under Article 309 of the Constitution of India and published in the Gazette of India dated 23.2.2002 creating the post of Assistant Director (Plant

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Pathology) by merging erstwhile post of Assistant Director (Virology and Bacteriology) which were so called specialised posts and making it the feeder cadre for promotion to the post of Deputy Director (Plant Pathology) consequently removing the post held by the applicants from the feeder cadre.

2. According to the applicants, it is violation of fundamental rights granted to the applicant. However, while making prayers in para 8 the applicant besides asking for quashing of framing of recruitment rules, the applicant has also prayed for direction to the respondents that the existing rules can apply only with prosoective operation and applicant will be entitled for consideration for promotion on the basis of the original recruitment rules as the applicant had become eligible to be considered for the post of Deputy Director prior to the coming in force of the new rules.

3. Facts in brief are that the applicants were recruited to the post of Plant Protection Officer (Plant Pathology) (hereinafter referred to as PPO (PP) through UPSC. The next promotion available to these applicants was Deputy Director (Plant Pathology) which is Group A Gazetted post. The post of Deputy Director (Plant Pathology) could be filled up 75% by promotion of PPOs and 25% by transfer on deputation failing which by direct recruitment under the revised rules. All the applicants claim that they had become eligible for promotion to the post of Deputy Director from 1986 as they fulfil the essential qualifications for the post of Deputy Director. It is further alleges that the Directorate of Plant Protection,

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Quarantine and Storage was established as an attached office of Resp. No.1 to ensure crop protection by preventing crop losses etc.

4. However, on the recommendation of the M.V.Rao Committee, certain posts of Assistant Director (Virology), Assistant Director (Bacteriology) etc. were created by the respondents in the wake of the new policy on Seed Development but these posts were ex-cadre isolated posts and did not provide any promotional avenues for the officers so recruited and certain officers were also directly recruited in the year 1994. Though the PPOs (PP) had represented for the merger of these posts in their cadre but their representation was turned down. Subsequently the officers who were recruited as Assistant Director on ex-cadre post made a representation before 5th Central Pay Commission about the lack of promotional avenues and other service grievances but the Pay Commission also recommended the merger of these posts with PPOs. But this recommendation made by the 5th CPC was not accepted by the Govt. but the Govt. had come out with the new set of rules.

5. An OA was also filed for implementation of the 5th CPC wherein also declaration was sought to be made that PPOs should not be promoted directly to the post of Dy. Director. The OA was disposed of since the Govt. was in the midst of framing new recruitment rules and the court observed that while revising the recruitment rules in the interest of all concerned including the PPOs shall be kept in view. But it is submitted that the Govt. had not taken the interest of PPOs and interested in the hierarchy between the PPO and the next stage of Deputy Director. They have created another level of Deputy Director. Thus, now the PPOs in order to reach the

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stage of Deputy Director has to be promoted first to the post of Assistant Director and then to the post of Deputy Director. Thus, the new rules have taken up the right of the applicant to be promoted directly to the post of Deputy Director. Thus, this amendment is violative of Article 14 & 16 of the Constitution of India. Besides that the applicants have also prayed that since some posts of Deputy Director were lying vacant before the revised rules had come into force and the Govt. has proposed to fill up those vacancies under the revised recruitment rules that cannot be done, since the revised rules are prospective in nature and the vacancies belonging to previous years are to be filled up under previous rules.

6. During the pendency of the OA, applicant has also made an MA for seeking the stay of the proposed DPC for filling up the post of Deputy Director from the post of Assistant Directors, since the applicant claim that post belong to previous years and the applicant stated that it is only the PPOs who were entitled to be considered.

7. Respondents are contesting the OA as well as the MA. Respondents in their reply pleaded that after the revised rules, the post of PPO has been kept as a feeder grade for the post of AD(PP) for the purpose to safeguard promotional avenues of PPO at that particular time. As regards, the recommendations of 5th CPC is concerned, it is submitttd that by revising these rules the recommendations of the 5th CPC have been accepted as the CPC has also directed that various category of posts requiring same qualification and functions in the same stage should be merged together in each discipline in order to generate maximum promotional avenues and it is

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also stated that isolated posts should be brought together under the respective discipline. Thus after the judgment of the Tribunal in OA-564/99 and keeping in view the recommendations of the CPC, the nodal Ministry, i.e. DOPR after considering all the exercise framed the revised recruitment rules and they do not violate any fundamental right of the applicants as the department has a right to revise the rules.

8. We have heard the learned counsel for the parties and gone through the record.

9. Admittedly prior to the revised rules, the PPO (PP) was eligible for promotion to the post of Deputy Director after attaining essential qualifications required for promotion as per rules and the applicants who are working as PPOs has got the essential qualifications to be promoted as Deputy Directors under the pre-revised rules which fact is not denied. As far the challenge to the revised rules that it takes away the right of the applicant under Article 14 & 16 of the Constitution of India, we find that the applicant is unable to demonstrate as to what right of the applicants have been taken away. It is the prerogative of the Govt. to frame recruitment rules to govern a particular service. In this case, the 5th CPC did recommend that all these isolated posts should be brought under same stream so that they get further avenues of promotion.

10. Respondents have rightly refrained the rules and have created an intermediary state of Assistant Director. To our query whether the pay scale of Assistant Director are higher than pay scale of PPOs. Counsel for applicant fairly admitted

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that pay scale of Assistant Director is higher than the pay scale of PPOs and there is a little variation of qualifications also for direct recruitment as Assistant Directors as compared to direct recruit PPOs. So if an additional avenue of promotion has been granted to PPOs to become AD(PP) so that does not violate any right of the applicant under Article 14 & 16 of the Constitution of India. So on that score the revised rules cannot be said to be ultra vires and cannot be quashed.

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11. However, as far the plea of the applicant that two posts for which DPC has been held and recently an order has been issued on 8.5.2003 vide which two persons have been promoted as Deputy Directors, the same should not have been done under the revised rules as it is the direct recruit Assistant Directors who have been promoted to the post of Deputy Director because under the pre-revised rules the post of Assistant Director was an isolated post and they have no promotional avenue to the post of Deputy Director so they did not have any claim to the post of Deputy Director. It is only the PPOs who could be promoted to the post of Deputy Director.

12. On this aspect the counsel for the respondents submitted that since the promotion has already been granted, so applicant should file a separate OA and since it is going to affect those persons who have been promoted so they should also been made a party. However, it was no disputed that the posts which existed prior to the revised rules, could be filled up only under the pre-revised rules.

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13. As regards the objection of the respondents that the promotion has been made on 8.5.2003, we find that there is an endorsement in this promotion order that the promotions are subject to interim directions passed by the Allahabad Bench of the Tribunal in OA-430/2002 filed by Dr. C.N.Srivastava PPO(PP) but we further observed that though the respondents have mentioned that the promotion is subject to the interim directions given by the Allahabad Bench of the CAT but respondents have conveniently ignored the directions given in this OA where interim order was issued on 7.6.2002 in which it was stated that if any promotion is made that shall be subject to the outcome of the present OA. Since the promotion given to the officers who have been promoted vide order dated 8.5.2003 during the pendency of the present OA, so that cannot be said to be free from the interim order passed by this Tribunal on 7.6.2002 and this promotion has to be read as if it is subject to the outcome of the present OA.

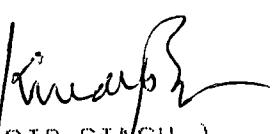
14. As we are of the considered view that the vacancies which were available prior to the revised rules coming into force, the department should have filled up those vacancies only under the pre-revised rules and not by the revised rules under which the category of Assistant Director has also been created as feeder cadre to the post of Deputy Director.

15. In view of these circumstances, we find that the OA deserves to be partly allowed. As regards the challenge to the revised rules is concerned, to that extent OA is dismissed. However, we declare that the existing rules have only a prospective operation and applicants are entitled to be considered for promotion on the basis of pre-revised recruitment rules. Respondents are accordingly directed to

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consider the applicants for promotion on the basis of the original recruitment rules and this exercise should be completed within a period of 3 months from the date of receipt of a copy of this order.



(KULDIP SINGH)
Member (J)



(V.K. MAJOTRA)
Member (A)

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