

Central Administrative Tribunal  
Principal Bench

(a)

O.A. No. 2423 of 2001

New Delhi, dated this the 19<sup>th</sup> March, 2002.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE MR. KULDIP SINGH, MEMBER (J)

Dr. Yatindra Kumar Singh Rathore,  
S/o Sh. D.S. Rathore,  
R/o A-11/E, ODA MIG Flat,  
Maya Puri,  
New Delhi-110 064.

Chemical Examiner Gr-1,  
Central Revenues Control Laboratory,  
New Delhi. ....Applicant  
(By Advocate: Shri M.K. Gupta)

Versus

1. Union of India,  
through its Secretary,  
Department of Revenue,  
Ministry of Finance,  
North Block,  
New Delhi-1
2. Union Public Service Commission,  
through  
its Secretary,  
Dholpur House,  
Shahjahan Road,  
New Delhi-3
3. Shri S.C. Johri,  
Joint Director,  
Central Revenue Control Laboratory,  
P.W.O. I.A.R.I.,  
Pusa, Hillside Road,  
New Delhi. 12 ....Respondents.  
(By Advocate: Shri R.R. Bharti for R-1,  
Mrs. B. Rana for R-2  
Shri Harvir Singh for R-3)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns respondents' order dated 27.6.2001 (Annexure A-1) and seeks consideration for promotion as Joint Director, Central Revenue Chemical Services with effect from the date Respondent No.3 was so promoted with all consequential benefits.

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2. The facts of this case lie within a narrow compass.

3. Column 12 of the Schedule to the Central Revenues Control Laboratory (Group "A" and Group "B" posts) Recruitment Rules, 2000 notified on 27.8.2000 (Annexure A-3) under Article 309 of the Constitution provides that appointment to the post of Joint Director will be made by promotion by deputation (including short term contract). Column 12 of that schedule prescribes that promotion shall be made from amongst

"Chemical Examiner Grade I in the pay scale of Rs.10,000-15,200 with five years' regular service in the grade failing which Chemical Examiner Grade I with ten years' combined regular service in the grades of Chemical Examiner Grade II in the pay scale of Rs.8000-13,500.

Note:- Where Juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered, provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed their probation period, for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service."

4. Admittedly the DPC met on 25.5.2001 to consider promotion to one post of Joint Director which fell vacant in the year 1999-2000 and one post of Joint Director which fell vacant in the year 2000-2001. Both vacancies were unreserved. It is not denied that for the 1999-2000 vacancy the crucial

date to determine eligibility was 1.1.99 and for the 2000-2001 vacancy the crucial date to determine eligibility was 1.1.2000.

5. It is also not denied that applicant's date of regular appointment as Chemical Examiner Gr.I as a direct recruit was 29.9.95. Thus neither on 1.1.99 nor indeed on 1.1.2000 did he have the required eligibility of 5 years' regular service for consideration for promotion as Joint Director. Hence applicant was not considered for promotion as Joint Director and applying the "failing which" criteria, respondents considered for promotion those Chemical Examiner Gr.I who had been promoted from Chemical Examiner Grade II and who fulfilled the eligibility qualification of 10 years combined regular service in both grades, although they happened to be junior to applicant.

6. Applicant relies upon the Note contained in Column 12 of the Schedule to the Recruitment Rules extracted in para 3 above to contend that as 5 years' regular service was the qualifying service for consideration for promotion of Chemical Examiner Grade I to Joint Director and on the crucial date i.e. 1.1.99 and 1.1.2000 he was not short by more than 2 years, he could not have been legally excluded from consideration for promotion for either of those two years.

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(12)

7. On the other hand respondents contend that it is because applicant did not have the 5 years regular service as Chemical Examiner Grade I that recourse was had to the "failing which" clause, under which those with 10 years combined regular service as Chemical Examiner Grade I and Chemical Examiner Grade II were considered, and the benefit of the Note had therefore to be restricted to those who were not short by more than 2 years of those 10 years combined regular service i.e. those who had atleast 8 years combined regular service on the crucial date. It was therefore contended that applicant could not take advantage of the Note.

8. We have considered the matter carefully.

9. In our opinion respondents are correct when they state that it is because applicant did not have 5 year regular service as Chemical Examiner Grade I, that respondents took recourse to the failing which clause under which those with 10 years combined regular service as Chemical examiner Grade I and Chemical Examiner Grade II were considered. The benefit of the Note therefore had to be confined to those who were not short by more than 2 years of the aforementioned 10 years requisite (emphasis supplied) combined regular experience, and could not be extended to a case like that of applicant, because if it were extended, it would mean that the eligibility qualification of 5 year regular service as Chemical Examiner Grade I had been reduced to 3 year regular service, merely because a person junior to applicant

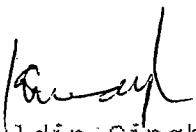
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but with 10 years combined regular service had been considered, which could not have been the intention of the rule making authority.

10. We had called for the relevant file containing the relevant notings on the basis of which the aforesaid Rules were drafted, but a perusal of the same does not throw any light of the intention of the Rule making authority in respect of this particular Note.

11. In the light of the above, the OA warrants no interference and the ruling in Badri Nath Vs. Govt of Tamil Nadu JT 2000 (Suppl) page 346 does not advance applicant's claim in particular facts and circumstances of this case.

12. The OA is therefore dismissed. No costs.

  
(Kuldeep Singh)

Member (J)

  
(S.R. Adige)  
Vice Chairman (A)

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