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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 998/2001

NEW DELHI THIS. 29<sup>th</sup> DAY OF MAY 2003

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)  
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

A.K. Chaturvedi,  
S/o. Late Sh. Jagdeo chaturvedi,  
R/o D-11, IARI, Pusa Campus,  
New Delhi - 110 012

.....Applicant

(By Shri VSR Krishna, Advocate)

VERSUS

1. Indian Council of Agricultural Research(ICAR)  
through Secretary,  
ICAR, Krishi Bhavan, New Delhi 110 001
2. Sh. Devi Chand, R/O AH-72, Shalimar Bagh, Delhi
3. Sh. Sukh Pal, Deputy Secretary,  
ICAR, Krishi Bhavan,  
New Delhi
4. Cpt. Mehar Singh,  
Dy. Secretary, ICAR, krishi Bhawan,  
New Delhi

.....Respondents

(By Shri E. X. Joseph Sr. Advocate along with Shri  
Badrinath, Advocates)

ORDER

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Applicant is aggrieved by the order No.  
F.33-12/2000-Estt.I dated 18.4.2001 issued by the  
respondents where under he has been reverted from the post  
of Dy. Secretary to the post of Chief Administrative  
Officer and transferred in that capacity to NDRI Karnal as  
well as another order of the same number and date under  
which certain other individuals have been promoted as Dy.  
Secretary.

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2. Shri V S R Krishna, learned counsel appeared for the applicant while Shri E.X. Joseph along with S/Shri Rajinder Khattar and Badrinath represented the respondents.

3. Applicant was working in the office of Indian Council of Agricultural Research (ICAR) as Dy. Secretary w.e.f. 22.12.1993, on the basis of order dated 8.3.1995, issued following the recommendations of the DPC which met on 29.12.1994. One Shri BNP Pathak had earlier been promoted as Deputy Secretary on 2.12.1991. Shri Pathak was reverted on 8.3.1995 and one Shri Gaya Prasad was promoted as Dy. Secretary. While disposing of OA No. 483/1995 filed by Shri BNP Pathak, challenging his reversion, this Tribunal held that Shri Pathak's reversion was valid as he was short by six (6) of regular service of five years *in the* <sup>2</sup> *feeder cadre* which was the essential requirement in terms of the *review* <sup>2</sup> Recruitment Rules. The Tribunal, also in the very same judgement quashed the promotion of Sh. Gaya Prasad holding that the service in the feeder cadre of Senior Administrative Officer could not be clubbed with service as Chief Administrative Officer for computing the eligible service. Directions were also given by the Tribunal to convene a review DPC for filling up the posts w.e.f. w.e.f. 2.12.1991. Both Pathak and Gaya Prasad filed CWP 67 62/2000 and 5768/2000 respectively before the Hon'ble Delhi High Court. They are still pending decision but no stay had been granted. Though the Tribunal had directed for holding the review meeting of the Review DPC held on 26.11.1991, wherein Sh. Pathak was recommended for promotion, as Deputy Secretary, the applicant apprehending some mischief, filed representations seeking protection of

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his status on 11.8.2000 <sup>-3-</sup> followed by reminders dated 5.2.2001 and 16.4.2001. He also made a specific representation for drawing up of combined inter se seniority list of the feeder cadres Under Secretaries/ Chief Administrative Officers / Legal Adviser. Mention was also made therein about some undue favours likely to be shown towards Under Secretaries. The same was of no avail and impugned order dated 18.4.2000 was issued. Hence this OA.

4. The grounds raised in this OA are as below:

- a) the impugned order dated 18.4.2000 reverting him was illegal and contrary to the principle, of natural justice and the relevant Recruitment Rules and the judgement of Tribunal dated 28.7.1995;
- b) applicant had been promoted on the basis of a regular DPC held on 29.12.94 for the vacancy of the year 1993;
- c) Pathak had in his OA No. 483/1995, challenged the applicant's promotion which was contested by the respondents earlier who argued that the said promotion was regular, on account of which Tribunal did not pass any order on that relief. The direction for holding the Review DPC was only confined to the vacancies involving Pathak and Gaya Prasad;
- d) having put in nearly 5 years of regular service as Dy. Secretary he had become eligible for promotion for the post of Director and therefore the present order for reversion was malafide;
- e) the plea that the judgement of the Tribunal in OA 483/1995 was binding on the respondents for holding the DPC for 1993 vacancies was not based on ~~and~~<sup>factually</sup> basis; *correct fact*;
- f) the applicant's reversion without any notice or without considering the representation was improper;
- g) the respondents have not paid any heed to the order of the Tribunal, on account of which ineligible persons case to be considered in the Review DPC;

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h) as the seniority of Assistants and Section Officers was still a matter of dispute before the Delhi High Court in CWP 3460/1999 [S.P. Sanwal & Ors. Vs Union of India & Ors.];

j) promotion to the grade of Under Secretaries have also been provisionally ordered. subsequent order dated 18.7.1990 ante-dating seniority of Under Secretaries was not correct;

k) the order promoting Shri Devi Chand was irregular as he had not completed the requisite period of service, and he could not have been so considered, and

l) reversion/transfer of the applicant was illegal and he should not have been transferred to NDRI Karnal as large number of posts of equal pay scale were available at Headquarters itself.

The whole issue smacks of malafide on the part of respondents, OA in the circumstances, should be allowed with full consequential benefits <sup>to him</sup> pleads the applicant.

5. Official respondents - ICAR - contest the OA. It is pointed out that the present applicant had himself been one of the respondents in OA 483/95 filed by BNP Pathak which had been disposed on 28.7.2000 by the Tribunal on the ground of the non-eligibility of the applicant for promotion to the post of Secretary ASRB (equivalent to the post of Dy. Secretary). He had not contested the above OA and he can not now take a plea that it was not applicable in his case as the Tribunal had not given any specific directions / orders on the specific challenge against his promotion as Deputy Secretary. In their judgement, the Tribunal had quashed the promotion order of Gaya Prasad holding that the service in the feeder cadre of S.A.O. had been wrongly clubbed with that of CAO. In fact the present applicant who was junior to Gaya Prasad had also been considered <sup>for promotion</sup> by giving him benefit of combined service as SAO <sup>which</sup> and CAO where upon the DPC recommended his case. In fact,

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on 29.12.94 when the DPC met the present applicant had not completed five years as CAO and therefore he was not eligible for promotion to the post of Dy. Secretary. The applicant's case was very much similar to that Gaya Prasad. In view of the above, the applicant's case was also examined by the respondents and after such review he was reverted by the impugned order as his promotion to the post of Dy. Secretary was not in consonance with the Tribunal's order dated 28.7.2000. The respondents had conducted Review DPC strictly in accordance with the law laid down by the Tribunal and applicant cannot raise the technical plea that his appointment was not quashed. The Tribunal had given its interpretation to the rules and directed that reckoning of combined service in the grade of SAO and CAO was wrong and held the promotion ordered accordingly to be illegal. The ad hoc basis promotion granted to the Under Secretaries had been converted to provisional in terms of Office order No. 6-3/92- Estt.I dated 27.10.1992. These promotions were made against regular vacancies. Further the promotion granted to Devi Chand as Under Secretary on notional basis was not illegal and in fact the promotion had been ordered in tune with the guidelines and directions issued by the Tribunal. No irregularity had been committed by the respondents in issuing the impugned orders. Respondents also disputed the other points raised by the applicant in his detailed pleadings and stated that the OA deserved to be dismissed as being without any merit.

6. In the reply filed by Devi Chand, respondent No. 2, it is stated that the OA was not maintainable on account of non-joinder of necessary parties as one K K Bajpai who was also promoted along with him had not been impleaded. The applicant's reversion has been on the basis of the

Tribunal's directions that the services rendered separately in different feeder cadres cannot be clubbed for reckoning qualifying service for promotion. The service tendered from 23.9.83 to 20.9.90 as Sr. Administrative Officer and 21.9.90 to 8.3.95 as CAO do not fulfil the requirement of the Recruitment Rules. The applicant had also not completed five years service as Chief administrative Officer, hence he was not eligible for promotion as Dy. Secretary like Gaya Prasad. Further the applicant was himself a respondent in OA No. 483/95 filed by BNP Pathak Vs ICAR & Ors. and he had not contested and therefore it is too late in the day for him to make an issue of his reversion. As his reversion was strictly a fall out of the decision of the Tribunal, it cannot be faulted. When promotion to a higher post is made from more than one feeder cadre, of two different grades, no combined seniority list is to be drawn but the list of eligible persons in different grades with relative seniority is drawn up and placed before DPC for consideration. Only in the event of non-availability of candidates from the higher feeder cadre are not available those eligible from the lower feeder cadre could be taken, as pointed out in para 16 of the Tribunal's order. Having been appointed as CAO only on 21.9.90 he could not be considered eligible for promotion to the post of Dy. Secretary on 13.2.92 and therefore his selection was rightly cancelled. The applicant's complaint that Respondent No. 2 was appointed to the post of Under Secretary on ad hoc basis was incorrect and he cannot be permitted to take advantage of such incorrect averments. Respondents had also issued seniority lists in 1985-86, 1988-89 and in 1999, in all of which the seniority position of Respondent No. 2 had remained undisrupted and applicant cannot have a case

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against him. In between the official respondent had granted promotions to a few juniors which led to certain imbalances and same was rectified by ante-dating the promotion of the seniors. The applicant is also incorrect when he states that cases of certain retired officers who were within consideration zone of promotion had been wrongly considered. This action of the respondents was absolutely correct and nothing irregular can be read into it. National promotion has been given to the private respondent on the basis of review DPC which had met to rectify its earlier mistakes and also keeping in mind his eligibility. Review DPC having been held at the later date, the results are given effect to later but with retrospective effect. In such cases the promotions are ordered notionally from the date on which the junior had been promoted with other benefits flowing after the individual takes charge. The order issued by the respondents cannot in any way be questioned, according to respondent No. 2.

7. In the rejoinder filed by the applicant against counter affidavit by the respondent No. 1, it is pointed out that though he had indeed been impleaded as respondent in OA 483/95 and his promotion order had also been sought to be challenged the Tribunal had only directed that the promotion of Gaya Prasad be quashed and directed that Review DPC be held for the promotion of Secretary SARB retrospective from 2.1.91. As no order has been passed directing his reversion the said plea is deemed to have been rejected. Therefore the interpretation adopted by the respondent that Tribunal's decision called for the reversion of the instant applicant was improper. The respondents' plea that he had been given promotion by

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granting him the benefit of combined service as Sr. AO/CAO was also incorrect as the Recruitment Rules permitted promotion of Under Secretaries/CAOs and Legal Advisers with not less than five (5) years and SAOs with not less than seven (7) years service. Applicant's having worked as a SAO from 23.9.1983 to 15.3.91 and CAO 16.3.91 to 8.3.1995 he had acquired the requisite qualifying service of seven years as <sup>Sr.AO</sup> ~~SAO~~ when DPC took place. Even if it was assumed that the applicant did not have the minimum experience for holding the post of Dy. Secretary and his appointment as such was irregular the same should have been automatically regularised as soon as he completed the required experience of five years while holding the post of Dy. secretary in terms of law and also the decision of the Hon'ble Supreme Court in the case of Ram Swaroop Vs State of Haryana & Ors. [1997 (1) SCC 168]. The applicant also relied upon the counter affidavit by the respondents before the Hon'ble Delhi High Court in CWP No. 6762/2000 [BNP Pathak Vs President, ICAR] where in they have stated that the "term five years service in the grade only means five years regular service in the grade. there cannot be any other interpretation in the context in which the rule has been framed for implementation." Judged from the above, if the applicant was not eligible for promotion when the DPC met, so was Devi Chand, respondent No. 3 and he also could not have been promoted. This is all the more significant as Pathak's promotion itself was set aside as his service was short by six days. In the circumstances respondents' taking shelter of the judgement on Pathak's case was improper. It is further pointed out that reverting the applicant who had held the post of Dy. Secretary for nearly seven years was harsh and unjust.

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8. In his rejoinder to the counter filed by the respondent No. 2 the applicant pointed out that he is aggrieved by the promotion granted to Devi Chand, Sukhpal and Mehar Singh who were junior to him and not to the promotion granted to KK Bajpai, who was his senior. He states that earlier judgement of Tribunal dated 28.7.2000 had only directed reversion of Gaya Prasad and BNP Pathak and no direction what so ever for holding Review DPC with regard to the post held by the present applicant was ordered. In fact respondent No. 2 having retired on superannuation on 31.1.98, the question of his promotion did not arise. The applicant having possessed the requisite period of service at the time of promotion should not have been brought down as has been done by the impugned order. The same calls for immediate interference by the Tribunal, according to the applicant.

9. During the oral submissions both the learned counsel reiterated the points already raised by them. Shri V S R Krishna appearing on behalf of the applicant points out that the justification given by the respondent for issuing the impugned order that the same was necessitated by the order of Tribunal dated 28.7.2000, issued while disposing of OA 485/1995 filed by BNP Pathak was not correct. Shri Krishna states that the operative portion of the order only reads as below:

"The OA is allowed partly. The impugned order whereby the applicant was reverted is upheld. The order dated 8.3.1995 whereby Respondent No. 4 was promoted is quashed. We direct the respondents to convene a review DPC as soon as possible, for the purpose of promotion to the post of Secretary, ASRB with retrospective effect from 2.12.1991, in the light of the observations made by us in this judgement. In the circumstances, we order no costs."

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While it was true that the present applicant was respondent No. 5 in the OA filed by BNP Pathak, the order of the Tribunal had confined itself to the validity of Pathak's reversion Gaya Prasad's promotion. There was no direction what so ever that the promotion of Chaturvedi, the present applicant, be set aside. According to established law once the prayer is made and no order is passed on that prayer it is deemed to have been rejected. There was no justification for taking a view that the Tribunal had brought in the aspect of the present applicant's promotion while disposing of the OA. Review DPC should therefore have confined itself to filling up the post after reverting Gaya Prasad and nothing further was called for. He further points out that in terms of the Recruitment Rules, the eligibility period for promotion to the post of Dy. Secretary ICAR / Secretary ASRB was not less than five years service as Under Secretary / Chief Administrative Officer and Legal Adviser and seven years service as Sr. AO, failing which only by deputation. The applicant had worked for 23.9.83 to 20.9.90 as SAO whereafter as CAO he worked for 20.9.90 to 8.3.95. Evidently, therefore, he had fulfilled the condition of eligibility the Recruitment Rules. In fact in a few earlier cases, service rendered in different cadres had been permitted to be combined for promotions as Dy. secretary. Even otherwise if he had not strictly completed the requisite period of eligible service, the appointment could not be termed as totally invalid and the same could be automatically regularised on the candidate's acquiring the required experience while holding the post. In support of the above, Shri Krishna, had relied upon the decision of

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the Three Member Bench judgement of Hon'ble Supreme Court in the case of Ram Swaroop Vs State of Haryana [1997 (1) SCC 168]. In the circumstances it was doubtful whether his promotion could have been negatived and Review DPC held to provide promotion to others , argues Shri Krishna. According to the learned counsel grant of notional seniority to Devi Chand just to enable him to get the requisite period of service for promotion was clearly avoidable and he also invited our attention to the applicant's representation dated 5.2.2001 in this regard.

10. Appearing on behalf of the respondents Shri EX Joseph, Senior Advocate stated that the applicant in this case was challenging the interpretation of law adopted the Tribunal in its order dated 20.7.2000, issued passed while disposing of OA 483/95. The correct position in law is that in view of the Tribunal's order dated 20.7.2000 holding of a Review DPC had become absolutely necessary. The Tribunal had held that considering Gaya Prasad as eligible for consideration for promotion by combining service rendered him in two feeder two cadres was improper and accordingly quashed the order of promotion. In fact the Tribunal had held that in para 16 of Judgement that the mode adopted by the respondents was wrong. The same applied in the case of the present applicant who was also promoted, taking into consideration the total service rendered as both CAO and Sr. AO. ICAR cannot be faulted for ordering the Review keeping in mind the above directions as the Tribunal's order was judgement in rem as pointed out by the Calcutta Bench of the Tribunal in the case of Yanamandra Gnyananda Sharma (OA No. 10/1990 decided on 30.5.91. It is only in this context that the ICAR the respondents undertook the review DPC chose to

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revert the occupant who was selected and appointed to the post of Dy. Secretary, who did not have the requisite period, without combining the services. He cannot have any legitimate grievance in the circumstances, OA therefore should be dismissed as being without any merit pleads Shri Joseph.

11. We have carefully deliberated upon the rival contentions in this OA and perused the documents brought on record.

12. The facts in this case are undisputed and they fall within a small compass. The applicant who has been working as Dy. Secretary in the respondent's organisation (ICAR) w.e.f. 22.12.93, in terms of the order No. F.6(12) 94-Estt. I dated 8.3.95 issued on the basis of the recommendations of the DPC which met on 29.12.94, is aggrieved by the impugned order F No. 33-12/2000 Estt. I dated 18.4.2001, reverting him from the said post of Dy. Secretary <sup>and</sup> posting him as CAO in the same scale and transferring him to NDRI Karnal as well as another order of the same number and date by which four other persons have been promoted as Dy. Secretary. <sup>While</sup> the applicant argues that this order of reversion was totally malafide and improper, as he had put in requisite period of service in the feeder category at the time when the DPC met. Even <sup>that</sup> even if the period had fallen short by a few months <sup>in</sup> the same did not constitute any impediment to his promotion and the promotion order could have been regularised, once the requisite period have been completed by him while working as Dy. Secretary, according to him. However the respondents state that the reversion order has been issued following the directions of this Tribunal order 27.8.2000,

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pronounced while disposing of the OA No. 483/95 filed by BNP Pathak as the said judgement was an order in rem. As the decision of the Tribunal in the above case has become crucial for determining the issue in this OA it would be pertinent to refer to the said judgement.

13. OA No. 483/95 has been filed by Pathak who was working as Secretary ASRB (equivalent of Dy. Secretary ICAR) w.e.f. 2.12.91 on the basis of the recommendations by the selection committee who had met on 26.11.91. However, after four years, by order dated 8.3.95 he was reverted to the lower post of Legal Adviser and one Gaya Prasad was appointed as Dy. Secretary from the same date. In the OA Pathak had challenged the promotion of Gaya Prasad (Respondent No. 4) as well as of A K Chaturvedi (Respondent No. 5 and present applicant and Bajpai (Respondent No. 6). The Tribunal had while disposing of the OA on 28.7.2000, issued the following directions:

"The OA is allowed partly. The impugned order whereby the applicant was reverted is upheld. The order dated 8.3.1995 whereby Respondent No. 4 was promoted is quashed. We direct the respondents to convene a review DPC as soon as possible for the purpose of promotion to the post of Secretary, ASRB with retrospective effect from 2.12.1991, in the light of the observations made by us in this judgement. In the circumstances, we order no costs."

14. Perusal of the above makes it clear that the Tribunal had upheld Pathak's reversion and quashed Gaya Prasad's promotion and directed the respondents to convene a Review DPC for the purpose of filling up the posts of Secretary ASRB from 2.12.91. The present applicant states that the above order nowhere interfered with <sup>his</sup> ~~the~~ promotion and had only directed the holding of Review DPC following

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the reversion of Pathak and ~~excluding~~ the Gaya Prasad promotion. Therefore he has pleaded his reversion from the post of Dy. Secretary was not at all called for. On the other hand the respondents point out that as Gaya Prasad and the present applicant were similarly circumstanced in that, in the case of both of them the services rendered in two different feeder cadres were combined to provide them eligibility, Gaya Prasad's reversion was to be necessarily followed by Chaturvedi's reversion. It is in this context that a reference to the necessary conditions of eligibility becomes relevant. In terms of the Recruitment Rules for the post of Secretary ASRB/Dy. Secretary ICAR, 50% is by way of promotion for which eligibility is as below:

" 10. In case of recruitment by promotion/ deputation/ transfer/ grades from which promotion/ deputation/ transfer to be made.

a) 50% promotion on selection basis of Under Secretaries/ Chief Administrative Officers/Legal Adviser, having not less than five years' service in the grade, and the senior Administrative Officers, having not less than seven years' service in that grade, failing which by deputation. (emphasis added).

15. It follows therefore, Under Secretaries/Chief Administrative Officers/ Legal Adviser who have five years of service and Senior Administrative Officers who have seven years of service are entitled or eligible to be considered for the above post. It means that for the purpose of selection Under Secretaries/Chief Administrative Officers/Legal Adviser with five years of service and Sr.A.O. with seven <sup>years of</sup> service of service are placed on equal footing. There are four feeder grades where from the promotion is permitted, out of which the eligible experience is fixed at five years in the case of first three and seven years in the case of fourth. Tribunal's decision

dated 28.7.2000, in OA 485/95 had dealt with in some detail on this aspect in paras 13 to 16 of the order, which read as under:

"13. The next question is as to the validity of the promotion of Respondent No. 4. He was admittedly appointed as Chief Administrative Officer on 5.2.1987. By 1.10.91 he would not be completing five years of service in the said grade. An ingenuous argument is sought to be advanced by the learned counsel for Respondent No. 4, that R-4's service in the lower grade, i.e. Sr. Administrative Officer on 29.4.1982. In that case, he would become not only eligible for promotion but becomes senior most eligible candidate. This argument is wholly misconceived. Respondent No. 4 was no longer working in the lower grade of Sen. Admn. Officer. As his candidature for promotion was considered in the grade of Chief Administrative Officer, he should have five years of service as CAO. If any senior Administrative Officer was available and he has seven years of service, then such officer might have been eligible for consideration for promotion.

14. If the framers of the Rule intended to take into consideration the service rendered in the lower feeder cadre for the purpose of eligibility of an Officer who is in the higher feeder cadre, the Rules would have been so framed. The learned counsel for the applicant has brought to our attention the Recruitment Rules for the post of Senior Personal Assistant at Research Centres under ICAR. Where the combined regular service of 7 years as Sr. Stenographers and Stenographers is mentioned as the eligible service. In the amended recruitment rules for the post of Sr. Administrative Officer, the continued service as Administrative Officer and Asstt. Administrative Officer for a period of 8 years were shown in the Rule, in the ICAR. Again the Recruitment Rules for the post of Special Assistant to Chairman, a total of six years of regular service as Private Secretary and Sr. Personal Assistant is shown in the Rule being eligible for promotion. Thus, even in the ICAR, whenever the rules contemplated to take the combined services as a criteria for eligibility the rules were so framed. In the rules in question, no such indication can be gathered. The Rules are very clear and they only contemplated the service in the particular grade and not the combined service in both the grades.

15. In Union of India Vs B. Jayaraman and others, 1994(26) ATC Page 746, the eligibility criteria was five years of service in the post of Superintendent Grade II. In the note it was provided that for computing five years service, the service rendered in the post of Superintendent and the service rendered during a particular period in the post of Assistant be taken into account. The Supreme Court

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held that the note was for purposes of giving eligibility to the erstwhile Assistants working as Superintendents Grade II for purposes of being considered for promotion but not for the purposes of seniority at all. Thus, from the note, it is clear that the combined service was made eligible in this case, which is absent in the rules in the case on hand.

16. In State of Rajasthan and Others Vs. Rajendra Kumar Godika & Others, 1993(25) ATC 218, it was held that even when the rule provided for promotion from two feeder posts, one of which itself is feeder post for the other, in practice only when the first higher feeder post could not provide all the candidates. then the candidates of lower feeder post should be considered. In this case, the Supreme Court rejected the contention that the candidates in the two feeder posts are unequal, and thus the rule is bad. From this judgement it follows for the purpose of promotion to the post of Secretary, the candidates in the higher feeder post, i.e. Under Secretary, Chief Admn. Officer/ Legal Admn. Officer should be considered first on the basis of their service in those posts and if still the vacancies are available and no candidate in the higher cadre category are found fit for promotion, then the candidates in the lower feeder category, i.e. Sr. Administrative Officer should be considered on the basis of their service in that grade. In this view of the matter the contention of the learned counsel for the respondents that the combined service of Respondent No. 4 in the post of Chief Administrative Officer as well as Senior Administrative Officer cannot be taken into consideration. (eydah, Syyed)

16. The essence of the said order is that the combined service rendered in grade of CAO/ Sr. AO should not have been taken together for granting the eligibility for consideration for promotion. As in the case of Gaya Prasad the same was done, the Tribunal interfered with the same and set it aside. Respondents state that as a similar practice was followed in the case of promotion of the present applicant while implementing the Tribunal's order in Pathak's OA the present applicant's case also have to be reviewed in which review he had to loose out.

17. As seen above, the order of the Tribunal in Pathak's OA No. 483/95 had specifically upheld his reversion and set aside Gaya Prasad promotion and directed convening of Review DPC for filling up the said post which

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Pathak was reverted from and Gaya Prasad was promoted to. The said order has no where opined that the promotion of Chaturvedi, the present applicant was tainted. This is in spite of the fact the present applicant had in fact been impleaded as Respondent ( No. 5) by Pathak and his promotion had been challenged. The Tribunal had not passed any order in respect of that relief and therefore, the present applicant be faulted when he raises the plea that the order of the Tribunal did not interfere with his promotion. In that scenario the legality of the respondents action in reverting the present applicant from the post of Dy. Secretary in the review exercise, is highly suspect. As to our mind the order of the Tribunal had only confirmed Pathak's reversion and directed quashing of Gaya Prasad promotion and had not passed any order directing or desiring the reversion of the present applicant, the plea raised by the learned counsel for respondents that the said judgement being in rem had to be followed would not come to their assistance. The judgement was in fact no judgement in rem but only <sup>judgement</sup> in personam and <sup>therefore</sup> the reliance placed by the learned Sr. Counsel in the case of Y G Sharma (supra) is too wide off the mark to be acceptable.

18. Coming to the relative merits of the applicant's claim, we find that according to the respondents his case has also been considered only by combining the services in two feeder cadres i.e. Sr.AO and CAO. The applicant has averred that in the case of two other persons i.e. Kishori Lal and R K Marwah, services rendered in two feeder grades were combined for the purpose of determining the eligibility for <sup>promotion and list</sup> that the same benefit should have been extended in his case also. In view of the specific

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wordings of the Recruitment Rules and the Tribunal's order dated 20.7.2000 in Pathak's case it is clear that combining of the period of service in two feeder cadres would not be permissible. Services rendered in the feeder cadres would have to be reckoned separately, as both the services are equally placed vis-a-vis the promotion posts. However, this would not, to our mind come in the way of the applicant. We note that the applicant had functioned as Sr. Administrative Officer from 29.3.83 to 15.3.93 whereafter he became the Chief Administrative Officer. This averment of the applicant in his representation dated 16.4.2001 addressed to the Secretary ICAR (Annexure A 3 of the OA) has not been disputed by the respondents. Evidently therefore, he had completed the requisite period of seven years as Sr. Administrative Officer and had thus become eligible for consideration for promotion as Dy. Secretary and there was no need to have combined the services rendered by him as Sr. Administrative Officer and Chief Administrative Officer, a practice frowned upon by the Tribunal, in dealing with the case of Pathak and Gaya Prasad in OA 483/95. The applicant's case is also supported by the decision of a Three Member Bench Hon'ble Apex Court in the case of Ram Swaroop Vs. State of Haryana (supra) which the applicant had relied upon. In the said case the Hon'ble Apex Court had examined the validity of the appointment of Statistics Officer in the Department of a Labour of the Haryana Government. Hon'ble Supreme Court held that if minimum qualifications laid down for a particular post are not fulfilled, appointments made would be illegal and that when the requirement of minimum experience for a particular has not satisfied the appointment would be irregular but would be automatically regularised on the candidate acquiring that experience

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while holding that post and that reversion after that period would therefore be invalid. The relevant portion of the said judgement merits reproduction:

"3. The question then arises as to what was the effect of breach of clause (1) of Rule 4 of the Rules. Did it have the effect of rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularised as and when the appellant acquired the necessary qualifications to hold the post of Labour-cum-Conciliation Officer. We are of the view that the appointment of the appellant was irregular since he did not possess one of the three requisite qualification but as soon as he acquired the necessary qualification of five years experience of the working of Labour Laws in any one of the three capacities mentioned in clause (1) of Rule 4 or in any higher capacity, his appointment must be regarded as having been regularised. The appellant worked as Labour-cum-Conciliation Officer from January 1, 1968 and that being a post higher than that of Labour Inspector, or Deputy Chief Inspector of Shops or Wage Inspector, the experience gained by him in the working of labour Laws in the post of Labour-cum-Conciliation Officer must be regarded as sufficient to constitute fulfilment of the requirement of five years' experience provided in clause (1) of Rule 4. The appointment of the appellant to the post of Labour-cum-Conciliation officer, therefore, became regular from the date when he completed five years after taking into account the period of about ten months during which he worked as Chief Inspector of Shops. Once his appointment became regular on the expiry of this period five years on his fulfilling the requirements for appointment as labour-cum-Conciliation Officer and becoming eligible for that purpose, he could not thereafter be reverted to the post of Statistical Officer. The order of reversion passed against the appellant, was, therefore, clearly illegal and it must be set aside."

19. The applicant's case would get squarely covered by this judgement. Facts of this case are much better than the situation which obtained in above case. under reference. Here the applicant had the requisite period of eligible service in one of the four feeder cadres independently but has been brought down by stating that he had been given the benefit of combining the service in two feeder cadres so as to make him eligible, the respondents

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felt the Tribunal had disapproved of. upon. Still he has been reverted on 18.4.2001 after having worked for nearly seven years as Dy., Secretary and having acquired the experience, which in the opinion of the the Hon'ble Supreme Court in Ram Swaroop case (supra) has held protected him against reversion. The applicant in the circumstances could not have been reverted and the order reverting him would have to be quashed and set aside.

20. By arriving at this decision we do not differ from the decision taken by the Tribunal dated 28.7.2000 in Pathak's case. In fact while we endorse the view in the said OM that the services in two different feeder cadres cannot be combined for arriving at the eligibility but distinguish the present case on facts and formulate our findings on the , decision of the Hon'ble Apex Court in Ram Swaroop's case (supra) which would hold the field in all the matters. The applicant's case would be protected by in the above scenario. In that backdrop we, *for we are not called you to* <sup>for we are not called you to</sup> ~~do not have to~~ <sup>for we are not called you to</sup> ~~do not have to~~ pass any order on the validity or otherwise of promotion granted to others.

21. In the above view of the matter OA succeeds and is accordingly allowed. The impugned order dated 18.4.2000 reverting the applicant from the post of Dy. Secretary in ICAR and transferring him as Chief Administrative Officer

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is quashed and set aside and he is directed to be restored to the same position with consequential financial benefits, with regularisation as Dy. Secretary, from the date on which he has completed five years in the feeder cadre i.e. from 16.3.96. No costs.

S. Raju  
(Shanker Raju)  
Member (J)

Patwal/

Govindan S. Tamai  
Member (A)