

Central Administrative Tribunal
Principal Bench

O.A. No. 2468 of 1998

New Delhi, dated this the 1st JANUARY 2002

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

1. Shri Bijendra Pal,
S/o late Shri Chaman Lal
R/o 217, Kamla Nehru Nagar,
Ghaziabad, U.P.
2. Mrs. Vipin Gujral,
W/o Shri P.K. Gujral .. Applicants

(By Advocate: Shri B.B. Raval)

Versus

1. Union of India through
the Secretary,
Ministry of Health & F.W.,
Nirman Bhawan, New Delhi-110011.
2. The Director-General,
Directorate General of Health Services,
Ministry of Health & F.W.,
Nirman Bhawan, New Delhi-110011.
3. The Director,
Food Research & Standardization Laboratory,
Navyug Market, Ghaziabad.
4. Dr. S.R. Gupta,
Jt. Drug Controller, C.D.S.C.O.,
C.G.O. Building No.1,
Hapur-Chungi,
Ghaziabad, U.P.
5. Shri I. Chakraborty,
Sr. Chief Technical Officer,
Food Research and Standardization
Laboratory,
Navyug Market, Ghaziabad, U.P.
6. Shri S.C. Roy,
Junior Analyst (since retired),
Food Research and Standardization
Laboratory,
Navyug Market,
Ghaziabad, U.P. .. Respondents

(By Advocate: Shri A.K. Bhardwaj)

ORDERS.R. ADIGE, VC (A)

In this O.A. filed on 14.12.98 the two applicants herein were aggrieved by

- i) non-filling up of two posts of Jr. Analyst which were said to be lying vacated since 1995 and 1997 respectively, with malafide motive of denying their promotion.
- ii) Non-disposal of representation submitted by applicant No.2.

2. Applicant No.1 joined Government service as Assistant Chemist on 9.1.75, and was eventually selected as Sr. Scientific Assistant in Food Research and Sandarisation Laboratory, Ghaziabad on 1.4.86. Similarly applicant No.2 who joined service as Technical Assistant in October, 1979 was selected as SSA, FR&S Lab. on 13.1.86.

3. The next promotion in the hierarchy is that of Jr. Analyst.

4. Consequent on the existing incumbent being selected as Asst. Director, Central Forensic Science Laboratory, Bureau of Police Research & Development, a post of Jr. Analyst fell vacant in August, 1995. Applicant No.2 represented for appointment to that vacancy on 14.8.1995 (Ann. A-2) followed by two reminders on 14.9.95 and 14.12.95. She alleges that espondent No.3 was biased against her and despite DGHS having agreed to appoint her against that post on ad hoc basis, and having

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directed R-3 to send a self-contained proposal in this regard, no action was taken by R-3 thereon, and he did not even forward her subsequent representation dated 27.2.96 (Annexure A-3). Eventually by order dated 9.10.96 (Annexure A-4) she was promoted on ad hoc basis as Jr. Analyst for a period of only 40 days and was thereafter reverted for no ~~reference~~^{rhyme} or reason by order dated 21.11.96 (Annexure A-3). She further contends that as a copy of this order dated 21.11.96 was not marked to Shri A. Basak, that officer did not allow him to join his section, and with a view to harass her further, she was directed to explain her unauthorised absence from duty from 26.11.96 onwards. She states that she submitted her explanation on 12.12.96 with copies to the concerned higher authorities, upon which R-3 was pulled up.

5. Applicant No.2 further submits that such pinpricks continued to be administered to her by R-3 because of bias, but she was given ~~another~~^{a second} ad hoc promotion as Jr. Analyst for 40 days vide order dated 12.2.97 (Ann. A-8), but because R-3 was annoyed with her, she was not paid the salary of the higher post of Jr. Analyst for these 40 days, although she brought this to the notice R-3 on 17.4.97 (Ann. A-9). However, R-3 did not even acknowledge the representation, and besides not releasing the salary for the higher post of Jr. Analyst for the aforesaid 40 days period, gave her no work to do.

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6. It is further stated that apart from the vacancy of Jr. Analyst which had become available in August, 1995, a second vacancy of Jr. Analyst became available on 30.11.97 consequent to the retirement on superannuation of the existing incumbent. Applicant No.2 represented for appointment as Jr. Analyst on 5.12.97 (Annexure A-12) and a reminder was also sent on 6.8.98 with copies marked to higher authorities, but no action was taken thereon. In Para 4.20 of the O.A. it is stated that respondents took no action to fill up the two posts of Jr. Analyst that had thus fallen vacant, one to be filled by promotion and the other by direct recruitment.

7. Towards the end of the O.A. it is, however, stated that ~~respondents~~^{applicants} were given to understand that DPC had been held, but it is alleged that R-3 had left no stone unturned to ensure that both applicants were superceded, and they apprehended that he had manipulated their ACRs to ensure that they were not promoted as Jr. Analysts.

8. A copy of the Food Research and Standardisation Laboratory, Ghaziabad (Jr. Analyst) Recruitment Rules, 1987 is at Annexure R-2. It provides that 50% of vacancies are to be filled by promotion failing which by direct recruitment and 50% by direct recruitment. For promotion it is through selection from amongst Sr. Scientific Assistants with three years regular service in the grade.

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9. Respondents in their reply state that consequent to one post of Jr. Analyst falling vacant on 30.8.95, a proposal to fill the post on ad hoc basis was sent by R-3 to R-2 who decided to hold DPC on 30.8.96 for filling up that post on ad hoc basis. It is stated that as the vacancy was a lien vacancy, its substantive incumbent having requested for retention of his lien, any ad hoc appointment for more than 45 days would have attracted the reservation roster for SC/ST and as no SC/ST candidate was available, applicant No.2 was appointed against that vacancy on ad hoc basis for 40 days only. Meanwhile by letter dated 24.10.96 (Annexure R-3) it was decided to circulate the post.

10. Respondents deny that there was any deliberate attempt to harm applicant No.2 upon her reversion on the completion of the aforesaid 40 days period, or that out of malafide motive they did not pay her the salary of the higher post of Jr. Analyst on her second appointment as Jr. Analyst on ad hoc basis for 40 days w.e.f. 20.2.97 vide order dated 12.2.97. They state that this non-payment was due to oversight, and now all the payments have been made.

11. In respondents' reply, it is reiterated that the vacancy for the post of Jr. Analyst which became available in August, 1995 was a lien vacancy while the vacancy which became available on December, 1998 was a regular vacancy. From respondents' reply to Para 5 (J) ^{of the OA,} it would appear that the vacancy which became available in August, 1995 was ^a reserved vacancy

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for SC candidate, and the DPC decided to fill up the same by transfer on deputation. However, in their reply in Para 1 on the merits of the O.A. respondents state that the DPC met on 30.11.98 as per notified recruitment rules, and its recommendations were considered and approved by the appointing authority. No order of promotion has so far been made, but both posts of Jr. Analyst have lapsed on account of the same having remained vacant for more than one year. As such they require to be revived in consultation with Finance Ministry. It is further stated that since both posts of Jr. Analyst were taken into account erroneously by the DPC against only one post in the promotion quota, the DPC proceedings also required to be reviewed.

12. A perusal of the pleadings on record indicate that a considerable portion of the same are taken up with the question as to who were the reporting and reviewing officers in respect of ACRs of applicants and their colleagues for the relevant period, and indeed applicants apprehend that their ACRs and other relevant records may be tampered with. In our considered opinion any adjudication on these issues as to who were the reporting/reviewing officers in respect of applicants' ACRs for the relevant period, and indeed on applicants' apprehension regarding tampering/manipulation of their ACRs and other relevant records would ^{be} premature at this stage.

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13. As no materials have been shown to us to establish that the aforesaid two posts of Jr. Analyst have since been revived, and the earlier erroneous decision of the DPC has been reviewed; we dispose of this O.A. by directing respondents, in terms of their own averments, to take an appropriate decision regarding revival of these two posts of Jr. Analyst in accordance with rules and instructions, and upon their revival, review the DPC's earlier recommendations where both posts of Jr. Analyst were taken into account erroneously against only one post available in promotion quota. Respondents should ensure that the vacancies of Jr. Analyst are filled up strictly in accordance with relevant rules and instructions, and where ACRs are to be relied upon, respondents should take care to ensure that only such ACRs for the relevant period, of the candidates coming in the zone of consideration are considered, where the reporting/reviewing authorities were competent under rules and instructions to report upon/review the ACRs of the concerned candidates. While doing so respondents shall also determine whether there was any deliberate attempt made to deny applicants' non-promotion as Jr. Analyst on ad hoc basis or on regular basis during the period commencing from August, 1995. These directions should be implemented as expeditiously as possible and preferably within a period of four months from the date of receipt of a copy of this order.

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14. The O.A. is disposed of in terms of
Para 12 and 13 above. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

karthik

S.R. Adige

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