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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.305/95

New Delhi this the 2<sup>nd</sup> day of September, 1997.

Hon'ble Mr. S.R. Adige, Vice-Chairman (A)  
Hon'ble Dr. A. Vedavalli, Member (J)

1. Prosanta Kumar Dhar,  
S/o Shri G.C. Dhar,  
R/o A-58, Vikas Puri,  
New Delhi.

2. Mrs. Lata Mohan,  
W/o Shri Chandra Mohan,  
R/o C-72, Ground Floor,  
N.D.S.E-II, New Delhi.

...Applicants

(By Advocate Shri A.K. Sikri)

-Versus-

1. Union of India through  
its Secretary,  
Ministry of Industry,  
Deptt. of Industrial Development,  
Udyog Bhawan,  
New Delhi.

2. Bureau of Industrial Costs  
and Prices, 7th Floor,  
Lok Nayak Bhawan,  
Khan Market, New Delhi.

3. The Secretary,  
Deptt. of Personnel & Training,  
Shastri Bhawan,  
New Delhi.,

4. The Secretary,  
Union Public Service Commission,  
Dholpur House,  
Shahjahan Road,  
New Delhi.

...Respondents

(By Advocate Shri V.S.R. Krishna)

K.B. Thakur,  
S/o Shri B.M. Thakur,  
R/o 631/Sector-4,  
R.K. Puram,  
New Delhi.

...Intervenor

(In person)

JUDGMENTHON'BLE MR. S. R. ADIGE VICE CHAIRMAN (A)

Applicants seek quashing of the memorandum dated 31.1.95 (Annexure A-1 colly.) and declaration that as per qualifications stated in the rules (old as well as new) and **the** "Note" appended to the new Rules for promotion to the post of Director, the post is to be filled disciplinewise and if the post vacated belongs to Chemical Discipline, the qualifications attached to that discipline are indicated at the time of appointment, and filling up that post from amongst Dy. Directors, belonging to Engineering discipline is illegal, violative of Rules and violative of Articles 14 & 16 of the Constitution. For this purpose a direction is also sought to respondents to maintain the separate seniority in the cadre of Dy. Director for Chemical and Engineering Disciplines.

2. It is common ground that BICP in which applicants are working is a department under the control of Department of Industrial Development, Ministry of Industry which was set up to advise Govt. on various issues relating to cost reduction, improvement of industrial efficiency and pricing problems in relation to industrial cost. This O.A. concerns itself with two disciplines namely, Chemical Discipline and Engineering Discipline. It is not **disputed that when BICP was initially set up there was separate** allocation of posts for engineering and chemical discipline. Each discipline had its own qualifications as prescribed in the recruitment rules and after recruitment in a particular discipline,

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i.e., either engineering or chemical discipline, promotions were made disciplinewise on the basis of availability of vacancies in the higher grade in the respective disciplines. Applicants were recruited directly as Dy. Director (Chemical) through U.P.S.C. in the year 1992-93 as per Recruitment Rules in force at that time, and as per those rules (unamended) they could seek promotion as Director (Chemical) from the feeder cadre of Dy. Director (Chemical) provided they had to their credit five years' service in the grade.

3. Consequent to the BICP being declared as a Science and Technology Institution by Department of Sc. & Tech vide OM dated 6/11.11.1987 and it being included in the list of Sc. & Tech. Institutions vide Finance Ministry (Department of Expenditure) OM dated 29.1.88, respondents state that the necessity of amending the Recruitment Rules to <sup>bring it</sup> at par with Recruitment Rules of other S & T Institutions was felt, and the recruitment rules were modified, keeping in view the larger interest of the cadre as a whole and to club all the disciplines "as it was felt that the basic infrastructure of technical personnel has to have all the tech. disciplines like engineering, chemical, and Drug/Pharmaceutical etc. Accordingly the earlier set up whereby the sanctioned posts in the Tech Division of the Bureau were related to specific disciplines was done away with, and in the recruitment rules as amended by notification dated 26.10.94 (Annexure 1), the posts in the Tech. Division were no longer referred to disciplinewise but on a generic basis, because, according to respondents it was

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difficult to classify the studies conducted by the BICP into Water-Tight Compartments, and being a small Technical Cadre it was important to provide adequate promotional avenues, to attract and retain talent, avoid stagnation and boost morale.

4. With the Recruitment Rules as amended by the notification dated 26.10.94, respondents state that they have done away with the concept of different disciplines (barring direct recruitment) and a common cadre has been created for posts in the Tech. Division with a common seniority. The discipline is to be seen only at the entry (recruitment) point whenever applicable at each level, as per "Note" forming part of the recruitment rules (amended) which reads "The exact educational qualifications and experience required shall be indicated at the time of recruitment" against Column 8 for direct recruitment and not against col.12 for promotion. Consequent to the amendment to the recruitment rules the S&T posts in BICP has been categorised as under:-

Asstt. Director	- 4
Dy. Director	- 12
Director	- 5
Industrial Adviser	- 4
Chief Adviser	- 1

5. It is in respect of this "Note" that the controversy centers. We have heard Shri Sikri for the applicants and Shri V.S.R. Krishna for the

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respondents and also the private intervenor Shri K.B. Thakur. All these have also filed written arguments which are taken on record.

6. As per their written arguments, applicants contend that the "Note" at the bottom of Col. No.8 of the amended Recruitment Rules is applicable while making promotions also, as it has been indicated in Col. No.9 that the qualifications prescribed for direct recruitment are applicable to promotion also. It is argued that in Col. No.8, which is for direct recruits, the qualifications, experience and age are stated, and in Col. No.9, which relates to promotion, in respect of qualifications it is stated that whatever is mentioned in Col.8 would be applicable. Thus, it is contended that every thing which is mentioned with respect to educational qualifications in Col.8 becomes applicable for promotees also, including the "Note". It is further argued that whenever a particular rule is to be interpreted, the Courts have to interpret it so as to validate the rules, and the interpretation suggested by the applicants advances the purpose of amendment to save the amended rules. Reliance has been placed on AIR 1975 SC 1487 in support of the proposition that the 'Note' is a part of the rules. It is further argued that as different qualifications have not been fixed for promotees and direct recruits, there cannot be any segregation between the direct recruits and promotees to the posts, and as promotion is the first method of recruitment, if the existing qualifications as per 'Note' are to be stated at the

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time of recruitment, in all fairness and equity they have to be stated when the first mode of recruitment is followed, i.e., by promotion. It is also ~~argued~~ <sup>argued</sup> that when the DPC is to consider the candidature of a person and when no such qualifications are required to be stated, unless some guidance is given to the DPC by extending the "Note" to the promotees, the selection would be arbitrary and left to the whims of the DPC. It is ~~also~~ <sup>also</sup> argued that the respondents have stated that while resorting to the mode of filling up posts by way of deputation, the existing qualifications would be stated as per "Note" although there is nothing in the rules which shows that at the time of deputation, the "Note" was applicable. If the 'Note' is made applicable in the case of deputation, ~~Note~~ <sup>Note</sup> making it applicable when the post is to be filled up by promotion would be arbitrary and against the rules of law. It is further argued that S&T posts in BICP are purely Technical and promotion cannot be made without indicating the exact educational qualifications, as laid down in the "Note" under Col.8 while making it applicable to Col.9 also. It is further <sup>averred</sup> ~~argued~~ that as there are five posts of Director, out of which two are already occupied by officers of Engineering Discipline, balance three posts, therefore, should go to the Chemical Discipline Officers. In case the posts are filled up as per interpretation given by respondents, it is argued that the remaining three posts would also go to the officers of the Engineering Discipline, ~~and~~ who will get promotion by virtue of their inter-se-seniority, which would be anomalous and deny proper

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representation to all Disciplines at the Director level. It is contended that the Chemical and Engineering Divisions still exist in BICP and function as separate Divisions even after the notification dated 26.10.94 and the two Divisions cannot be amalgamated into each other. If the recruitments are made as per the interpretation given by respondents, Chemical Discipline officers will have no post left for promotion, and the Chemical discipline itself would be wiped out.

7. These arguments have been sought to be rebutted by the official respondents as well as intervenor in the written arguments filed by them.

8. We have considered the arguments advanced by both sides carefully. It cannot be disputed that the "Note" forms part of the rules, and without doubt the rules as amended have to be interpreted as far as possible in a manner to advance the objectives for which the rules were amended. These rules, and the amendments made to the same have the protection of Article 309 of the Constitution. A comparison of column 1 of the rules before amendment and after amendment relating to the filling up of the post of Director reveal that the different classification (disciplinewise) of the post, namely, Director, Electrical, Mechanical, Metallurgy, Chemical etc. which obtained earlier have been done away with by the amendment, and the aforementioned posts of Director with different disciplinewise classification have now been grouped together and called by the generic term of Director. As of 1994, the number of

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such posts of Director as given in the amended Recruitment Rules is stated to be five (subject to variation depending on workload).

11. Column 8 of the amended rules is headed "Educational and other qualification required for direct recruits". It is thus clear that this column relates to direct recruits alone. Under this column the essential qualifications, both on the Engineering side as well as on the Chemical side are given, along with the experience qualification, followed by two notes bearing No.1 & 2. Below that is a description of the desirable qualifications, viz., Doctorate degree in relevant science subject or Master's degree in Engineering or Technology of a recognised University or equivalent. Below that is the "Note" in dispute which reads thus:-

"The exact educational qualification and experience required shall be indicated at the stage of recruitment."

12. Column 9 of the amended recruitment rules is headed "Whether age and education qualification prescribed for direct recruits will apply in the case of promotees". In this column it is stated: Age : No; Education qualifications : Yes. No mention has been made in column 9 of the "Note" extracted above.

13. Column 11 prescribes the method of recruitment, which is by promotion failing which by transfer on deputation (including short-term contract)

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and failing both by direct recruitment, while Column 12 lays down the grades from which promotions/ deputation/ transfer may be made, and in the case of promotion which the first method of recruitment, Deputy Directors working in BCIP with five years' regular service in the grade are eligible for promotion.

14. We notice that the applicants have not challenged the amended recruitment rules as such, and their grievance centers around the "Note" featuring at the bottom of column 8 of the amended recruitment rules, which they want to be made applicable to the promotees also. If respondents had intended that the "Note" should be made applicable to promotees also, surely they would have incorporated that "Note" in column 9 as well as column 12 of the amended recruitment rules, but in both these columns the "Note" is conspicuous by its absence. We cannot read something in a particular column of the recruitment rules which is not in existence there, and if no mention was made of the "Note" in columns 9 or 12 relating to filling up the post of Director by promotion, it must be understood to mean that respondents wished to restrict the applicability of the "Note" to Direct Recruits only and did not intend that it be made applicable to promotees also. The argument that everything which is mentioned with respect to educational qualifications in column 8 becomes applicable in column 9 also including the 'Note', is without merit because the 'Note' talks not only of the educational qualifications but the experience

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required also, whereas the heading to column 9, refers only to age and educational qualifications.

15. By the amendment to the recruitment rules different eligibility qualifications have been fixed for promotees and direct recruits. For promotions the eligibility qualification is that one has to be a Dy. Director with five years' regular service in the grade, while for a direct recruit both the educational qualifications as well as the experience qualification as stated in column 8 are to be indicated at the time of recruitment. Hence it is not correct for respondents to state that different eligibility qualifications have not been fixed for direct recruits and for promotees. It is always open to respondents to fix different eligibility qualifications for direct recruits and for promotees to a given post, and merely because the eligibility qualifications in the particular case before us are different, does not mean that it is illegal or infirm. Furthermore merely because promotion is the first method of recruitment, it does not necessarily follow that the 'Note' which clearly applies to direct recruitment alone, should apply to promotions also. In this connection it is significant that applicants are not pressing that the 'Note' be made applicable in the case of deputationists also. When the MPC meets, it has before it a combined seniority list of Dy. Directors, because respondents, having regard to the fact that the cost-price-efficiency studies undertaken by BICP which are essentially multi disciplinary in character, have by the amendment to

the Recruitment Rules clubbed the various disciplines, and by a conscious policy decision have prepared a common cadre. Promotions to the post of Director are to be made by a high level DPC to be chaired by the Chairman/ Member UPSC on the basis of selection, and all those who come within the zone of consideration, and are otherwise eligible, are bound to be considered. This cannot be said to be arbitrary or requiring any further guidelines.

16. In so far as the applicability of the 'Note' to deputationists is concerned, if at all it were applicable to them, the Rules would have stated so, but no mention has been made in the Rules that the 'Note' would cover deputationists also.

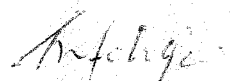
17. It is true that S& T posts in BICP are technical posts, but it cannot be said that the clubbing of different technical disciplines into a common cadre by amending the recruitment rules and making promotion from the combined seniority list to the generic post of Director violates any legal principle or is illegal or arbitrary. The decision taken by respondents is essentially one of policy and unless applicants can establish that it is manifestly illegal, arbitrary or violative of Articles 14 and 16 of the Constitution, which they have not succeeded in doing, no interference is warranted, particularly when no infirmity has been detected in the procedure followed in amending the recruitment rules which have the protection of Article 309 of the Constitution

Indeed in our view extending the 'Note' to cover the case of promotees also, would defeat the very purpose of amending the recruitment rules which was to do away with disciplinewise classifications while making promotions to the post of director.

18. In so far as the apprehension that the chemical discipline will be wiped out if the 'Note' does not cover the case of promotees also is concerned, it depends upon the position of those coming from the Chemical discipline in the combined seniority list. Such a position is not likely to be immutable and unchangeable for all time. If at a particular period of time those coming from the Chemical discipline are junior on the basis of length of service from those coming from other disciplines, it may be that at some later point of time, they may find themselves senior to those coming from other disciplines. This is a changeable situation and by itself is no ground to warrant judicial interference in the recruitment rules as amended, particularly when the promotions are to be made by a high powered DPC on the basis of selection, in which all those otherwise eligible and coming within the zone of consideration would be required to be considered.

19. For the aforesaid reasons the DA warrants no interference. It is dismissed. No costs.

  
( DR. A. VEDAVALLI )  
MEMBER (J)

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

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