

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.483/95

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New Delhi this the 28th day of July, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman  
Hon'ble Mrs. Shanta Shastray, Member (Admnv)

Shri B.N.P. Pathak . . . Applicant  
(By Advocate Shri M.M. Sudan)

## -Versus-

President, ICAR & Others ... Respondents

(By Shri E.X. Jospeph, Sr. Counsel with Sh. R.S. Aggarwal and Sh. S.S. Sobhar, Advocates)

1. To be referred to the Reporter or not? YES ✓

2. To be circulated to other Benches of  
the Tribunal? NO

Qas

(V. Rajagopala Reddy)  
Vice-Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.No.483/95

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)  
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 28<sup>th</sup> day of July, 2000

(23)

B.N.P.Pathak  
s/o Shri S.M.Pathak  
presently working as  
Deputy Secretary  
I.C.A.R.  
New Delhi. .... Applicant

(By Shri M.M.Sudan, Advocate)

Vs.

1. President, Indian Council of  
Agricultural Research (ICAR)  
Krishi Bhawan  
New Delhi.
2. Director General  
I.C.A.R., Krishi Bhawan  
New Delhi.
3. Secretary, ICAR  
Krishi Bhawan  
New Delhi.
4. Shri Gaya Prasad  
Deputy Secretary  
National Agricultural Research Project  
(NARP), Krishi Anusandhan Bhawan  
Pusa, New Delhi.
5. Shri A.K.Chaturvedi  
Deputy Secretary  
I.C.A.R., Krishi Bhawan  
New Delhi.
6. Shri K.K.Bajpayee,  
Deputy Secretary  
I.C.A.R., Krishi Bhawan  
New Delhi. .... Respondents

(By Shri E.X.Joseph, Sr. Counsel with Shri R.S.  
Aggarwal and Shri S.S.Sobhar, Advocates for R-1 to 3).

O R D E R (Oral)

By Reddy. J.

The applicant was appointed as Legal Adviser  
w.e.f. 6.10.1986 in the Indian Council of  
Agricultural Research (ICAR). Two vacancies arose  
w.e.f. 1.12.1991 in the grade of Deputy Secretary

OR

consequent on the retirement of Shri N.Soman, Deputy Secretary in the ICAR and Shri B.P.Shukla, Secretary in the Agricultural Scientists Recruitment Board (ASRB). The post of Deputy Secretary in the ICAR, Secretary, ASRB are equivalent to the post of Deputy Project Co-ordinator (Admn.), National Agricultural Research Project (NARP)/Joint Director (Admn.), IARI and other administrative posts.

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2. As per the Recruitment Rules the post of Deputy Secretary, ICAR and Secretary, ASRB are required to be filled up 50% by promotion and 50% by deputation. The mode of recruitment by promotion is as under:

"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."

3. The Selection Committee which met on 26.11.1991 recommended the name of the applicant to the post of Secretary, ASRB. He was accordingly appointed as Secretary ASRB on 2.12.1991. Strangely, after four years, he has been reverted to the lower post of Legal Adviser by order dated 8.3.1995 and on the same date an office order was issued appointing Respondent No.4, Shri Gaya Prasad as Deputy Secretary w.e.f. 1.12.1981. These orders are under challenge in this OA.

4. In the reply filed by Respondents No.1 to 3 it has been stated that the applicant's promotion was made on the basis of incorrect seniority list of eligible officers. It is stated that, by mistake, the

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correct list of the eligible officers was not put up to the Selection Committee resulting in promotion of the applicant which was a wrong decision. Secondly it is averred that the instructions contained in paragraphs 6.3.1(ii) of the instructions given in respect of the Departmental Promotion Committee vide Department of Personnel & Training OM dated 10.4.1989, provide that in respect of all posts which are in the level of Rs.3700-5000 and above, the bench mark grading should be 'Verygood'. Hence the person with the grading below bench mark 'Verygood' was not to be selected. However, this provides for exemption in the case of SC/ST officers who are senior enough and fall within the zone of consideration for promotion to the category of posts drawing the aforesaid salary. Respondent No.4 being a Scheduled Caste candidate should have been selected though his bench mark was less than 'Verygood'. It is further averred that the applicant was not even eligible to be considered for promotion. Hence after the above irregularities were brought to the notice of the department, a review DPC has been constituted and Respondent No.4 has been promoted, while reverting the applicant.

5. Respondents No.1 to 3 have also filed additional affidavit in which while reiterating the averments stated in the counter affidavit, <sup>it is</sup> submitted that the applicant having not completed the requisite length of service as on 1.10.1991, since he could complete 5 years service as a Legal Adviser only as on 6.10.1991, he should not have been considered for promotion.

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6. Heard the counsel for the applicant and the respondents. We have given careful consideration to the contentions raised and the pleadings in this case. We have also perused the records of the minutes of the DPCs.

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7. Though the learned counsel for the applicant has contended that the impugned order should be set-aside on the ground that it has been passed without notice to the applicant on the facts and circumstances of the case and after going through the pleadings and hearing the learned counsel on merits of the dispute, we do not wish to dispose of the case on the preliminary objection of want of notice. That would only result in multiplicity of proceedings and a repeat of the exercise that has been done by the parties. The multiplication of the legal proceedings, at all costs, is to be avoided. It should also be noticed that the impugned order has been passed in 1995 and after a lapse of five years, it would not be appropriate to set-aside the impugned orders on the preliminary objection.

8. In the decision cited by the learned counsel for the applicant (Ram Ujarey Vs. Union of India, 1999(2) AISLJ SC 43), the learned Judges of the Supreme Court after considering the facts and circumstances in that case, held that as the appellant therein earned two promotions he could not have been legally reverted two steps below, and that he should have been heard before the impugned order of reversion was passed. The Supreme Court also took this as one of the grounds in <sup>dis</sup>setting aside the impugned order of

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reversion. In our view, the facts obtaining in the instant case, do not compell us to allow the OA on this ground. This contention is therefore rejected.

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9. Two questions arises for consideration in this case (1) whether the applicant was eligible for promotion to the post of Secretary, ASRB and (2) whether the promotion of R-4 was in accordance with the Rules.

10. Under the Recruitment Rules for the post of Deputy Secretary, Secretary, ASRB, in the pay scale of Rs.1500-2000 under the ICAR system, the method of recruitment is 50% by promotion and 50% by deputation. As seen supra in the narration of facts, Under Secretaries, Chief Administrative Officers/Legal Advisers who have not less than five years of service in that grade are eligible for promotion, so also the Senior Administrative Officers who are lower grade officers, having not less than seven years of service in that grade are eligible. As the applicant was working as Legal Adviser, he was eligible for consideration for promotion. In the proceedings dated 22.11.1991, the Director, ICAR while requesting the Selection Committee to recommend the name of the suitable officers for appointment to the post of Secretary, ASRB, he has shown the name of the applicant as one of the eligible officers for promotion along with four other officers in the grade of Chief Administrative Officer. The applicant's date of appointment as Legal Adviser was shown as 9.7.1985 (Ad hoc) and 6.10.1986 (on regular basis). Out of five eligible officers, Shri Gaya Prasad, Chief

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Administrative Officer was appointed on 5.2.1987. Similarly, if the applicant's ad hoc appointment was taken into consideration, he would be the senior most. The Selection Committee, having considered all the five candidates, recommended the name of the applicant as he was the only person who has having 'Verygood' grading.

11. The contention of the learned counsel for the applicant is that the applicant was the seniormost eligible officer to promote and he was rightly promoted. The applicant was regularly appointed on 6.10.1986 as Legal Adviser. It is not in dispute that the eligibility was to be considered as on 1.10.1991 as the DPC met on 26.11.1991. Thus the applicant would be short of five days to fulfil his eligibility of five years as on 1.10.1991. But it is the contention of the learned counsel for the applicant that as he was appointed on 9.7.1985 on ad hoc basis, the said date has to be taken into consideration for computing the minimum service of five years, and in that case, he would be eligible. It was also contended that the rules do not stipulate five years regular service, hence it is not necessary to have completed the regular service of five years. He also relies upon the revised recruitment rules in respect of the administrative posts under ICAR which have been notified on 15.01.1999. The expression used was 'five years regular service in the grade' which would go to show under the earlier unamended rules, even appointment on ad hoc basis could be counted for eligibility. On the other hand, learned counsel for the respondents submits that expression 'Service'

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under the rules should always be taken as regular service unless it was specifically mentioned 'ad hoc service'. We have no hesitation to reject the contention of the learned counsel for the applicant. In service jurisprudence, if any period of service is specified for eligibility, for appointment, it should always be taken as regular service after a person has been appointed on regular basis. In our view, the revised rules only clarified the nature of service without leaving to any scope for argument.

12. The guide-lines issued by the DoPT, vide Office Memorandum dated 18.3.1988, also clear that only regular service and not ad hoc period of service should be taken into account for counting the minimum period of service for eligibility. The review DPC, therefore, rightly found that the applicant was not eligible for promotion. The applicant cannot have any grievance as regards his reversion.

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 1.10.1991 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., Senior Administrative Officer, which happens to be a feeder cadre for promotion, should also be taken into consideration for the purposes of eligibility service <sup>as</sup> he was appointed as Senior Administrative Officer on 29.4.1982. In that case, he would become not only eligible for promotion

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but becomes seniormost eligible candidate. This argument is wholly misconceived. Respondent No.4 was no longer working in the lower grade of Senior Administrative 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 Institutes under ICAR. Where the combined regular service of 7 years as Senior Stenographers and Stenographers is mentioned as the eligible service. In the amended recruitment rules for the post of Senior Administrative Officer, the continued service as Administrative Officer and Assistant Administrative Officer for a period of 8 years were shown in the Rule, in the ICAR. Again in the Recruitment Rules for the post of Special Assistant to Chairman, a total of six years of regular service as Private Secretary and Senior 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

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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 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 judgment it follows for the purpose of



promotion to the post of Secretary, the candidates in the higher feeder post, i.e., Deputy Secretary, Chief Administrative Officer/Legal Administrative 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., Senior 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.

17. It is lastly contended that Respondent No.4, being a Scheduled Caste candidate, even if he did not obtain 'Verygood' Bench Mark, was entitled to be considered in preference to others who got 'Verygood' gradation. This contention is not acceptable either. The DoPT's Office Memorandum dated 10.4.1989 exempts SC/ST officers, provided they are senior and fall within the zone of consideration for promotion. Since Respondent No.4 was adopted on 5.2.1987, is neither eligible nor the senior most person, among the eligible candidates, he will not get any benefit out of the above OM. We have therefore to hold that the promotion of Respondent No.4 is unlawful and is also liable to be quashed.

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18. It is argued by the learned senior counsel for the respondents, Shri E.X.Joseph that as Mr. K.K.Bajapayee who was the senior most amongst all the eligible candidates and the sealed cover in which recommendations of the DPC was kept is now opened and he was subsequently promoted, he was entitled to be promoted with retrospective effect from the date when Respondent No.4 was promoted. We do not, however, consider it appropriate to enter into this aspect of the matter as we leave this exercise to the review DPC to be constituted.

19. 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 Judgment. In the circumstances, we order no costs.

*Shanta J*  
(SMT. SHANTA SHAstry)  
MEMBER(A)

*Reddy*  
(V.RAJAGOPALA REDDY)  
VICE CHAIRMAN(J)

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