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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No. 489/95

New Delhi, this the 4th day of December, 1998

HON'BLE SHRI A.V.HARIDASAN, VICE-CHAIRMAN (J)
HON'BLE SHRI R.K.AHOOJA, MEMBER (A)

Miss. A. Saraswathi, D/O Shri
Anantharamaiah, R/O 305, Tagore Road
Hostel, Minto Road, New Delhi.

--APPLICANT.

(By Shri G.D. Gupta Advocate)

Vs.

1. Union of India, through the Secretary, (Deptt. of Agriculture & Cooperation) Ministry of Agriculture, Krishi Bhavan, New Delhi.
2. Director of Administration, Directorate of Extension, Deptt. of Agriculture & Cooperation, Ministry of Agriculture, Krishi Vistar Bhavan, Iasri Campus, Pusa New Delhi - 12.
3. Secretary to the Govt. of India, Deptt. of Personnel & Training, Ministry of Personnel Public Grievances & Pensions, North Block, New Delhi.

--RESPONDENTS.

(By None)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A):

The facts of this case are briefly stated:-

The applicant was initially appointed as Senior Research Assistant in the Directorate of Extension, Deptt. of Agriculture & Cooperation, Ministry of Agriculture on 12th February, 1975. She, alongwith four other Senior Research Assistants, was declared surplus in 1990. All were thereafter adjusted by the Central (Surplus staff) Cell of the Deptt. of Personnel & Training as Senior Research Assistants. Out of the five persons, who were declared surplus, including the

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applicant herein, Mrs. Tara Thomas was thereafter adjusted against the higher post of Regional Home Economist w.e.f. 18th January, 1991. The recruitment rules for the post of Regional Home Economist initially required the post to be filled up by the method of direct recruitment. Rules were amended in 1988 and it was provided that the post would be filled up 50% by promotion and 50% by direct recruitment. The feeder cadre for promotion was provided for amongst the Sr. Research Assistants (Women) and Youth Organiser (Female) with five years' regular service in the respective grade. The number of posts of Regional Home Economist were shown as four. Out of these four posts, one was filled up by the method of direct recruitment in 1990 by appointing one Mrs. N. Suneja. The next post was filled up by promotion of Mrs. Tara Thomas, as already stated. However, the post filled by Mrs. Thomas though in the promotion quota was reserved for Scheduled Caste. The third post was to be filled up by direct recruitment. On de-reservation of the promotion post against which Mrs. Thomas was adjusted direct recruitment post was allocated for S.C. but the same was filled up by promotion of Mrs. Laxmanan who was the next senior-most amongst Sr. Research Asstt declared surplus. She was appointed on 20.2.92. The 4th post was filled up by Mrs. Natrajan. This post though in the promotion quota was now reserved for S.C. as it was a carried over vacancy. In the meantime, Mrs. Thomas proceeded on long study leave w.e.f. 16.3.95 for a period of two years in the first instance which was later extend by another one year. The applicant who was next senior in the surplus list of Sr. Reserach Asstt, was promoted to the resultant vacancy of

Regional Home Economist on adhoc basis for one year in the first instance vide 14.5.92 which was subsequently extended from time to time, the last extension being upto 15.9.94. Apprehending that on the return of Mrs. Thomas, the applicant would be reverted to the post of Sr. Research Asstt. The applicant made representations to the respondents that she may be permanently absorbed as Regional Home Economist since, the post was likely to become available on the promotion of one of the incumbents to the still higher post of Sr. Home Economist which was lying vacant w.e.f. 24.5.94. Her representations, however, did not result in a favourable action. The applicant thereupon filed the present OA seeking the quashing of the appointment/ promotion of Mrs. Laxmanan and Mrs. Natrajan as being against the rules and to restrain respondents from reverting her till the post of Senior Home Economist was filled up on regular basis and the applicant was adjusted in the consequential vacancy. Initially when the matter came up before the Tribunal, an ex-parte stay on reversion was granted vide order dated 16.3.95 but the same was vacated vide order dated 5.4.95. The applicant was thereafter reverted to the post of Sr. Research Asstt. However, in the meantime, Mrs. Thomas extended her leave and the applicant was again given adhoc promotion from 15.3.95 to 1.10.95. Thereafter she was again reverted. Meanwhile, the efforts were made to redeploy the applicant in the N.B.O. as a Librarian. The applicant made representations against such an adjustment on the ground that she had higher qualification and experience. While this was under consideration, the post of Sr. Home Economist was filled up on adhoc basis with promotion of

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○ Mrs. Sunjena w.e.f. 29.3.96 thereby creating an adhoc vacancy of Regional Home Economist. However, the applicant states that she was ordered to be relieved with a direction to report to N.B.O. immediately. The applicant thereafter came before this Tribunal on 1.10.96 asking for a stay but the said MA was ordered to be heard with the main OA. The applicant, therefore, states that she was constrained to join the post of Librarian in N.B.O. In this background, the applicant has now come before the Tribunal with an amended petition that she may be continued on the post of Regional Home Economist and that order dated 27.9.95 directing her to join the post of Librarian be also set aside.

○ 2. The stand of the respondents is that Mrs. Thomas being seniormost was promoted as Regional Home Economist against an available vacancy. Subsequently two more vacancies became available which were reserved for SC community candidate, one in the promotion quota and other in the direct recruitment quota. Since there was no SC community candidate available in the feeder grade, the point was diverted to the next vacancy which was to be filled by direct recruitment. A requisition was sent to the UPSC. However, considering that they were officers in the feeder cadre rendered surplus after 15 years regular service, it was decided that these vacancies may be filled up through feeder grade employees by de-reservation. The duly constituted DPC considered the candidature of the applicant but selected Mrs. Laxamanan and Mrs. Natrajan giving them first and second places in the panel. They were accordingly promoted to the two

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available vacancies. The applicant who was in the third place in the panel could not be promoted as there was no vacancy available.

3. The applicant was, therefore, offered the post of Inspector in the Income Tax Department with posting at Delhi but she refused this offer and did not join. In November, 1995, the surplus cell offered the applicant the post of Librarian in N.B.O. She was relieved on 18th September, 1996 and she joined the post of Librarian on 25th March, 1997. Consequently, the post of Sr. Research Astd. (Surplus) was abolished on her joining the post of Librarian. As she has ceased to be an employee of Director of Extension her claim, according to the respondents, is totally without justification.

4. When the matter came up for expedited hearing on 24.11.98, Sh. G.D.Gupta, learned counsel for the applicant appeared but none appeared on behalf of respondents. We heard Sh. G.D.Gupta, learned counsel and adjourned the matter till 26th in the expectation that some one will appear for the respondents but on that day also there was no representation on behalf of respondents. We have, therefore, closed the matter for orders after hearing Sh. G.D.Gupta, learned counsel had concluded his arguments.

5. We find that it is an admitted position that the applicant has no right as per the recruitment rules for promotion to the post of Regional Home Economist as the vacancy which has become available on the promotion of Mrs. Suneja to the post of Sr. Regional Home Economist

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falls in the direct recruitment quota. It also appears that the reserved point for SC is being carried over to this vacancy since the de-reservation was done in respect of the appointment of Mrs. Laxmanan and Mrs. Natrajan. Therefore, the appointment of the applicant cannot be considered unless the respondents were to make a relaxation in recruitment rules in favour of the applicant. We have also noted the contention of the respondents that the applicant having been appointed as Librarian in N.B.O. can no longer be considered in line for promotion to the post of Regional Home Economist. As regards the second point, we have also noticed that the applicant had filed an MA against the decision of the respondents to relieve her from the supernumerary post of Senior Research Assistant and to send her to N.B.O. It was then decided by the Tribunal that this MA would be heard alongwith the main OA. Therefore, the claim of the applicant for absorption as Regional Home Economist is still to be considered and the fact that she has, in the meantime, been obliged to join the N.B.O., does not in one view debar her from consideration for the post of Regional Home Economist.

6. Sh. G.D.Gupta, learned counsel for the applicant has contended before us that the applicant has a valid case for appointment as Regional Home Economist since the respondents have taken a policy decision to adjust the surplus Sr. Research Asstts. to the post of Regional Home Economists and it was in pursuance to that policy that Mrs. Laxmanan and Mrs. Natrajan were adjusted by affording them relaxation in the method of recruitment as well as on the point of reservation. Since, the

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respondents have afforded such consideration to these two persons who were Nos. 1 and 2 on the panel then under Articles 14 & 16 of the Constitution, the applicant was entitled to similar treatment. Learned counsel for the applicant pointed out that the applicant was duly approved by the selection committee, that she had even worked on adhoc basis as Regional Home Economist for a number of years, that a post had now become available on a regular basis and that she had been forced to go to N.B.O. against her wishes and in total disregard of the higher qualifications possessed by her. In support he relied on the judgements in the cases of Municipal Council, Sri Ganganagar Vs. Ram Narain and Others 1994 (3) SLR 280 decided on 15.9.1993 by Rajasthan High Court and State of Mysore and Another Vs. H. Srinivasmurthy, AIR 1976 SC 1104 decided on 29.1.1976. In Municipal Council, Sri Ganganagar (Supra), the petitioner was appointed as Helper II and in the seniority the name of the petitioner appeared at Sr.No.15. The Administrator of Municipal Council considering certain persons, including the petitioner as suitable to be absorbed on the post of Helper-I asked for relaxation in education qualification which was granted by the Govt. Despite this, the petitioner was not appointed alongwith others, though one of his juniors was given absorption to the post of Helper-I. On ~~a~~^{the} matter coming before the Hon'ble High Court, it was held that there was no justification for refusing the promotion to the applicant, since he was similarly situated if similar relaxation was granted. In the case of State of Mysore and Another Vs. H. Srinivasmurthy (Supra), the petitioner came in service on deputation in Polytechnics alongwith others who were

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similarly situated. While the others were absorbed, the petitioner was reverted though later brought back again on deputation and absorbed. In the result, the petitioner came to be junior to those who came later on deputation in his initial tenure with Polytechnics. The Hon'ble Supreme Court held that the petitioner had been invidiously discriminated and there was no justification whatever for the Government to deprive him of the benefit of principle or policy evolved by it regarding absorption of deputationists. Counsel for applicant submitted that it was the policy of the respondents to absorb the surplus Sr. Research Asstt. and it was invidious discrimination to absorb some and not the others.

7. We have given careful consideration to the above contentions and arguments of the learned counsel for the applicant. It is true that doctrine of discrimination is based upon existence of enforceable rights. As the vacancy of Regional Home Economist presently available is to be filled as per recruitment rules through direct recruitment and through reservation it cannot be said that the applicant has enforceable right for appointment to this post. However, article 14 of the constitution does apply when invidious discrimination is metted out to equals without rational basis (The State of Haryana & Ors. Vs. Ram Kumar Mann, JT 1997 (3) S.C. 450). The respondents have contended in the reply that the Tribunal is not competent to give any direction on a policy matter. However, what is contended here is that the policy framed by the applicant should be enforced equally

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in respect of all the affected parties. We are also conscious of the fact that it is the prerogative of the respondents to decide whether in a particular case relaxation should be given or not. At the same time, however, the action of the respondents in granting such relaxation in one case and refusing it in the other case, must meet the test of non-arbitrariness and objectivity. The action of the respondents cannot be based on a policy of ~~the~~ 'pick-and-choose'; it must follow some rational criteria.

8. We, therefore, find considerable force in the case of the applicant. The applicant's case was not different to that of Mrs. Tara Thomas, Mrs. Laxmanan and Mrs. Natrajan. Applicant even came to work on the post of Regional Home Economist on adhoc basis for a number of years. She came to be reverted only when the regular incumbent return from leave. Later the adhoc vacancy occurred when Mrs. Suneja was promoted. Yet the consideration earlier extended to the applicant was now denied for no reason except that she had been, in the meantime, offered the post of Librarian in National Building Organisation. This ad hoc post has since become a regular vacancy since Mrs. Suneja has been regularised against the post of Senior Home Economist. However, the applicant is still being denied consideration on the ground that she has been absorbed as Librarian in N.B.O and is, therefore, no longer in the zone of contention. We find that the respondents had a policy to absorb the Sr. Research Asstt. as Regional Home Economist and that this policy was enforced by them consistently in the

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cases of Mrs. Tara, Mrs. Laxmanan and Mrs. Natrajan despite the fact that the last two of the aforementioned were not eligible to be considered as per the recruitment rules but were adjusted only by relaxation of the rules in pursuance of the policy. Yet the benefit of that policy is being denied to the applicant for no valid reason.

9. In the result, we allow the OA with a direction to the respondents to consider the case of the applicant for appointment as Regional Home Economist against the regular vacancy of ~~Sr. Research Assistant~~^{or} in accordance with her seniority and on the same basis as they have done in the case of Mrs. Laxmanan and Mrs. Natrajan who were at Sr. Nos. 1 and 2 of the panel for promotion. This consideration will be completed within a period of three months from the date of a receipt of a copy of this order. No order as to costs.


(R.K. AHOOJA)
MEMBER (A)


(A.V. HARIDASAN)
VICE CHAIRMAN (J)

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