

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./TOK. No. 786/1997

Decided on: 26-8-97

(A)

Mrs. C.P. SehgalApplicant(s)

(By Shri S/Shri M.N. Sehgal, Advocate)
Sudhir Kumar Mehtra & Vikas Chopra

Versus

U.O.I. & OthersRespondent(s)

(By Shri K.C.D. Gangwani Advocate)

CORAM:

THE HON'BLE ~~SHRI~~ DR. JOSE P. VERGHESE, VICE CHAIRMAN

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *yes* or not?
2. Whether to be circulated to the other *no* Benches of the Tribunal?

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 786 of 1997

NEW DELHI THIS THE 26th DAY OF AUGUST, 1997

HON'BLE DR. JOSE P. VERGHESE, VICE-CHAIRMAN(J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

(5)

Mrs. C.P. Sehgal
W/o Shri A.K. Sehgal
R/o 265, Sector-1,
Type-III,
Sadiq Nagar,
New Delhi-49.Applicant

S/Shri M.N. Sehgal, Sudhir Kumar Mehra and Vikas
Chopra, Counsel for the applicant.

Versus

1. Union of India
through Secretary to the
Government of India,
Ministry of Science and Technology,
Department of Science and Technology,
Technology Bhawan,
New Delhi-110 016.
2. Union of India
through Secretary to the
Government of India,
Ministry of Personnel, Public
Grievances and Pension,
Department of Personnel & Training,
North Block,
New Delhi-1.
3. Department of Science & Technology
through Secretary,
Department of Science and Technology,
Technology Bhawan,
New Mehrauli Road,
New Delhi-110 016.
4. Union Public Service Commission,
Through its Chairman,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi-110 001. ..Respondents

By Advocate Shri K.C.D. Gangwani

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ORDER

Hon~~ble~~ Mr. K. Muthukumar, Member (A)

(b)

Applicant is a Principal Scientific Officer under the respondent No.3. Her grievance is that the respondents have unjustly rejected her representation by the impugned order of 19.3.1997 vide Annexure A-3 for consideration for in-situ promotion to the post of Director under the Flexible Complementing Scheme (hereinafter referred to as FCS). Her prayer in the application is for declaring the orders of the respondents withdrawing the communication for granting a personal interview for the aforesaid promotion and the other impugned orders dated 26.6.95, Annexure A-2 and 19.3.1997 at Annexure A-3. The rejection of her representation is on the ground that she does not fulfil the educational qualification as per the notification under the Recruitment Rules for the said post vide Annexure A-2.

2. Applicant joined as Technical Assistant Group 'B' (non-gazetted) in the pay scale of Rs.550-900 since revised to Rs.1640-2900 under the respondent No.2 with effect from 1.2.1974. She was later on promoted to the post of Junior Analyst in the pay scale of Rs.2000-3200 with effect from 26.4.1977 and thereafter, was promoted as Senior Sceintific Officer Group 'A' on ad hoc basis on 6.8.1981. Thereafter, she was promoted to the post of Senior Scientific Officer on regular basis in the pay scale of Rs.3000-4500 in 26.4.1985 in

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consultation with the Union Public Service Commission. The Department amended the Recruitment Rules vide their 25.8.1987 as per which, in-situ promotion under FCS was followed in the matter of promotion of departmental officers to the posts of Senior Scientific Officers Grade-I and Grade-II, Principal Scientific Officer, Director and Joint Adviser after the completion of prescribed service of 5 years in the respective grade, on the basis of the merit and record of research. It is stated that at the time of introduction of FCS her case for promotion as Principal Scientific Officer w.e.f. from 1.7.1990, was considered and her educational qualifications were got relaxed by the appointing authority, namely, Minister of State for Science and Technology as provided under the Recruitment Rules. This was, however, done without the specific concurrence of the competent authority. When her case came up for promotion to the next higher grade of Director under the FCS, the respondents have turned down her case on the ground that she does not fulfil the educational qualifications prescribed in the Recruitment Rules for the post of Director.

3. Applicant agitates on the following grounds:-

(i) She maintains that her educational qualification and that provided under the Recruitment Rules for the post of Senior Scientific Officer, Principal Scientific Officer is one and the same, namely, Masters Degree in

Science/Mathematics/Statistics or in any other required subject or Bachelors degree in Engineering Technology from a recognised University or equivalent. The applicant's academic qualification is B.Sc. with Masters Degree in Economics and according to (her the post with the subject Economics and according to her,) the post with the subject Economics is a required subject for the functional need of the Department and, therefore, her qualifications are fully covered by the rules.

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(ii) The Selection Committee had from time to time considered her fully eligible for the aforesaid post of Senior Scientific Officer and Principal Scientific Officer on the basis of the same qualifications and no objections were raised earlier and the Assessment Board had accepted her qualifications.

(iii) The respondents have with the mala fide intention indicated in the impugned order at Annexure A-2 that Masters Degree in any other required subject for Scientific Post of Director as provided in the Recruitment Rules means only in any other discipline of science. She contends that no such condition or qualification is provided in the Recruitment Rules.

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(iv) Her other contention is that respondent No.4 is the only competent authority for determining her eligibility qualification and the same authority had found her fully qualified by the 1985 Rules for her promotion as Senior Scientific Officer.

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(v) The applicant also contends that in Department of Ocean Development which is also a Scientific Department, the subject 'Law' is one of the disciplines prescribed for educational qualification for the post of Director under the FCS and, therefore, the rules applied equally to all Scientific and Technical Posts of Director etc. and, therefore, action of respondent Nos. 1 to 3 in treating her case for promotion either to the post of Principal Scientific Officer or to the post of Director as one of the relaxation of educational qualification is erroneous.

(vi) The applicant was at no stage informed that the qualifications possessed by her are not covered by the rules of promotion for FCS scheme and that she has been functioning as Senior Sceintific Officer ever since induction of Scientific Post in the aforesaid department under the respondent No.3.

(vii) The requirement under the rules is that she should have a Masters Degree in a required subject and according to her, on the basis of the duties and responsibilities assigned to her, the said Masters Degree in Economics was definitely a required subject and, therefore, she would automatically

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qualify for in-situ promotion under the FCS scheme to the post of Director in the required subject of Economics. She contends that one of the qualification for the post of Director is experience of handling Science and Technology programmes and that she has been dealing with this subject for for Societal Programmes relating to State Councils for Science and Technology and thus has acquired necessary experience for the said post.

4. Strongly contesting the pleas of the applicant, the respondents assert that the applicant does not possess the required minimum educational qualification. They contend that the duties attached to the Scientific Posts under the FCs should be primarily of Scientific nature and the requirement of degree in required subject in the essential qualification has to be read in the context of the instructions in respect of persons who are covered by the FCS and according to the accepted definition Scientists or persons who possess educational qualifications of at least a Master's Degree in Natural/Agricultural Sciences or Bachelor's Degree in Engineering Technology, Medicine are engaged in professional work of Science and Technology activity. They assert that the Government cannot afford to appoint on such a senior position, the person who does not possess the minimum educational qualification. Under the FCS if a person is appointed to the post of Director, he should also to be considered again for the next post of Adviser to the Government and this would create an unhealthy

precedent, whereby other officials in the department and other scientific agencies having merely a B.Sc. degree, does not having the requisite qualification at the Post Graduation level would make similar demands for occupying scientific/technical positions thereby making the FCS a false. They contend that just because she was promoted earlier by relaxing the qualification which was mainly given to boost her career, it does not mean that this can be extended further for even higher positions.

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5. We have heard the learned counsel for the parties, who argued on the basis of the pleadings. We have also carefully perused the record.

6. In this case, the facts in regard to her appointment and career progression upto the level of Principal Scientific Officer are not in doubt. The main controversy seems to centre around the application of Recruitment Rules with reference to the minimum educational qualification prescribed for the post of Director. Before discussing this question, it is necessary to dwell at some length on the back ground leading to the issue of Recruitment Rules by the publication of the Notification dated 3.7.1984 of the respondent No.3 as amended by Notification of September 7.9.1985 and 25.9.1987, Annexure A-6. At the time of this notification, the applicant was serving as a Junior Analyst under the respondent No.2 on a regular basis. The aforesaid rules seek to provide for Recruitment Rules

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regulating the method of recruitment to various group 'A' posts in the Department of Science and Technology and the rules cover Group 'A' posts (Non-Ministerial, Scientific and Technical Posts) and the rules are also called DST (Non-Ministerial, Scientific and Technical Posts) Rules, 1981. It is provided in para 3 (2) of the aforesaid Rules that in the initial constitution, the suitability of Junior Analysts in the DST working on regular basis on the date of commencement of the rules shall be determined by a Selection Committee to be constituted by the UPSC for their appointment to the grade of Senior Scientific Officer Grade-I and the Selection Committee shall prepare a list of officers considered suitable for such appointment and submit the same to the UPSC. On receipt of the recommendation of the UPSC, the appointment of the officers found suitable to the grade of Senior Scientific officers Grade-I was to be made. It is in line with this provision that the applicant's appointment as Senior Scientific Officer on a regular basis was notified by the Notification dated 20.11.1995, Annexure A-7 w.e.f. 25.4.1985. It is thus clear that the Selection Committee has found the applicant suitable for such appointment in terms of the Recruitment Rules notified under the aforesaid rules. The applicant's qualification with a Bachelor of Science Degree and a Masters Degree in Economics, did not come in the way of her being considered suitable for the post. There were 32 posts of Senior Scientific Officer Grade-I which are Group 'A' Gazetted (Non-ministerial, scientific and technical posts) and the essential qualification was a Masters

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Degree in Science/Mathematics/Statistics or in any required subject or Bachelors Degree in Engineering/Technology from a recognised university or equivalent. It is also provided in the aforesaid rules that the post has to be filled by promotion/transfer on deputation/transfer/direct recruitment and the particular method of recruitment for this vacancy has to be decided by the Government in the light of the qualifications required for the particular post keeping in view the job requirements of the same. It is in accordance with the above that the applicant was considered by the Selection Committee and on being found suitable in all respects, was recommended for a regular appointment as Senior Scientific Officer. The same rules also provide for the system of FCS and in-situ promotion. It is stated therein that this system of FCS shall be followed in the matter of promotion of the departmental officers in the grade of Senior Scientific Officer Grade-II, Senior Scientific Officer Grade-I, Principal Scientific Officer, Director, Joint Adviser and Adviser. The essential ingredient of the FCS is that if the Assessment Board finds the officer fit for promotion to the post of Scientific Officer Grade-I and Principal Scientific Officer, Director, Joint Adviser and Adviser and such posts are not available within the sanctioned strength at that time, the promotion may be given by upgrading the post of Senior Scientific Officer Grade-II to Grade-I and Senior Scientific Officer Grade-I to Principal Scientific Officer and so on. It is also provided that the promotions under the

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Scheme will be personal to the officer concerned and ✓ would not result in specific vacancy in the lower grade on that account. Having been promoted as Senior Scientific Officer Grade-I, it is under this Scheme the applicant was further promoted as Principal Scientific Officer for in-situ promotion under the FCS with effect from 1.7.90. The respondents aver that the applicant did not possess the requisite educational qualification prescribed for the post of Principal Scientific Officer and the educational qualification was got relaxed by the Minister of State for Science and Technology as provided in the Rules and this was adversely commented upon by the competent authority and, therefore, her claim for similar benefits cannot be taken as a matter of right.

(A)

7. We have perused the relevant departmental record produced by the respondents. At the time of promotion to the post of Principal Scientific Officer under the FCS, it was specifically pointed out that the essential qualification for the post of Principal Scientific Officer was a Post Graduate in Science/Mathematics/Statistics or in any other required subject or Bachelor's degree in Engineering Technology and it was pointed out that the applicant had only a Bachelor's degree in Science. However, as the applicant was promoted as Senior Scientific Officer under the initial constitution under Clause (2) of the Recruitment Rules of 3.7.1984, this relaxation in educational qualification was considered and was granted by the

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Minister In-charge. It is apparent from this that her Post Graduation in Economics was not considered but her basic Bachelor's Degree qualification in Science was only taken into account and relaxation was granted. The present controversy, however, is in regard to her eligibility for promotion to the post of Director. The essential academic qualification for the above post is same as for Principal Scientific Officer, namely, Master's Degree in Science or Bachelor's Degree in Engineering but the consideration has been shifted by the impugned letter of the respondents by holding that she does not possess Master's Degree in Science and her representation that she had a Master's Degree in the required subject was not considered and it was pointed out that the Master's Degree in any other 'required subject' for a Scientific Post of Director means, the subject in any other discipline of Science. Thus, the emphasis seems to have been shifted from the question of relaxation for her qualification in the Degree in Science to the Post Graduate Degree in the required subject. The Recruitment Rules do not specifically provide as to what these 'required subjects' are. It is, however, provided in the Rules that the promotion or direct recruitment, as the case may be for this post, will be decided by the Government in the light of the qualifications required for the particular post keeping in view the job requirements of the same. Since the emphasis by the respondents has been shifted to the question of Master's Degree in the 'required subject' and since the respondents have

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taken the stand that the required subject should be in the field of Science, we had to analyse this aspect in the light of what is actually provided in the Recruitment Rules.

(b)

8. As stated above, the eligibility of the applicant has to be considered in the light of her qualification required for the particular post keeping in view the job requirements (emphasis added). To understand the requirements of the job and the particular post, admittedly, in the STP Division under the respondent No.2 where the applicant is working as a Principal Scientific Officer, there are two posts of Director. It is stated that the applicant had been working in the Science and Society, Perspective Planning, Technology Transfer Divisions of the Department. The respondents' contention is that relaxation in educational qualification for a high level post of Director, will be repeatedly required for her promotion to the next post of Adviser and Joint Adviser under the FCS and the respondents have averred that it will be an 'ironical day in the field of Science and Technology when persons having educational qualifications in subjects other than Science would be required to manage, direct and guide research in scientific, technical fields in the country'. It is also stated that the applicant has been granted 3 promotions in her career already.

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9. We are unable to appreciate these contentions. It is nowhere stated in the Recruitment Rules that the required subject should be a pure Science subject and excludes all the Social Sciences. The respondents seem to have been overweighed by the fact that the applicant had already secured 3 promotions in the Department and, therefore, seem to have been to inclined to apply the well known 'Peter's principle' treating her as having reached the limits of competence having secured three promotions, and by holding her qualification as unsuitable and inadequate. This in our view is prejudicially determined. If the particular field of work in the Department for the Post of Director was not considered part of the duties of "Scientific Posts", then there was no good reason to have continued this in this Department as job qualifying for FCS scheme, ab initio. As per the qualification prescribed, it is the Master's Degree in a required subject and it is also provided that the recruitment will be in the light of the Recruitment Rules, keeping in view the job requirement of the same. There is a post of Director in the STP Division where the job requirements seem to cover implementing State S&T Council Programmes and monitoring of development of Science and Technology, Planning activities in various States and Union Territories. Apparently, the applicant has been engaged in this task as Principal Scientific Officer. It is not the case of

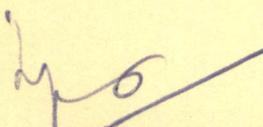
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the respondents that the job requirements at the level of Director do not include the activities relating to the field of work in which the applicant is presently engaged as Principal Scientific Officer. Apparently, for the said job requirements in this particular area of work, in which the applicant has been working in this Division, it cannot be said that her Post Graduation Degree in Economics will not be of any help. In fact, looking to the duties attached to this particular area of monitoring of S&T Council Programmes, which will naturally include the financial aspects, funding arrangements, utilisation of funds etc., it appears to us that 'Economics' can be considered as not only a required subject but also advantageous one. Considered in this angle, it will be too narrow a view to dismiss her Post Graduate qualification in Economics, as a qualification in a discipline outside the scope of job requirements of the post.

10. Thus, taking into consideration the entire background of the applicant's case for promotion to the post from time to time and the requirements of the job in question and of the qualification as prescribed in the Recruitment Rules, we are of the considered view that the impugned order rejecting the representation of the applicant cannot be sustained.

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11. We, therefore, allow this application and direct the respondents to consider the candidature of the applicant for the post of Director in accordance with the procedure for selection for the said post. In the circumstances, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(DR. JOSE P. VERGHESE)
VICE CHAIRMAN

Rakesh