

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 679 of 1994

New Delhi, this the 9th day of December, 1999

HON'BLE SH. S. P. BISWAS, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Shri Santanu Roy
S/o Shri Subodh Roy
R/o 33, Shridaya Apartments,
A-4 Paschim Vihar, New Delhi-110 063 ..Applicant

By Advocate Shri Jog Singh.

Versus

Union of India

through

1. Vice President,
Council of Scientific and Industrial Research,
Anusandhan Bhavan,
Rafi Marg,
New Delhi-110 001.
2. Director General,
Council of Scientific and Industrial Research,
Anusandhan Bhavan,
Rafi Marg,
New Delhi-110 001.
3. Director,
National Institute of Science, Technology
and Development Studies,
Dr. K.S. Krishnan Marg,
New Delhi-110 012. ..Respondents

By Advocate Shri V.K. Rao.

O R D E R

By Hon'ble Shri Kuldip Singh, Member (J)

The applicant in this case is aggrieved of the fact that respondent No.3 had given an employment to the applicant as Analyst and the applicant has all along been working in the category of Scientist in Group IV of the groups classified by the respondents. The applicant has been engaged in purely scientific activities related to Research and Development in the National Institute of Science Technology and Development Studies (hereinafter

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referred to as NISTADS). The respondents have themselves classified, placed and treated the applicant as a Scientist Group IV. However, without any reason and/or justification, the respondents have now after about a period of decade, placed the applicant in Group III causing prejudice to the applicant. The applicant is also stated to have made various representations against this illegal, arbitrary and highly discriminatory act but his representations had been declined vide order dated 21.10.1992 and 10.5.93, which have been impugned in this case.

2. The applicant has further stated that respondents have no right to do the same so he has prayed for quashing of the order dated 29.7.1992 read with 21.9.1992 and also orders dated 21.10.1992 and 10.5.1993. He has further prayed that the respondents be directed to place the applicant in Group IV with all the consequential benefits including seniority from the date of joining etc.

3. The facts in brief are that respondent No.2, i.e. the Council of Scientific and Industrial Research (hereinafter referred to as CSIR), had issued an advertisement No.23/82. The said advertisement is at Annexure -II for the post shown as Analyst. The applicant was selected for the post of Analyst in NISTADS, which is a constituent Laboratory under CSIR.

4. He further pleaded that after joining, he was

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placed as a Scientist Group IV in an institute and has been carrying out his tasks accordingly in the field of Research and Development since April, 1993 and his nature of duties etc. are fully described in Annexure IV.

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5. As regards the functioning and the recruitment and assessment of scientific and technical employees of CSIR are concerned, the respondents had various schemes. One scheme is known as New Recruitment and Assessment Scheme (NRAS) for employees of CSIR who joined on or after 1.2.1981. Earlier there was another scheme known as Integrated Recruitment and Assessment Scheme (IRAS). However, for assessing the work under different schemes, the respondents were facing certain difficulties and anomalies but after several reviews, a final scheme incorporating the latest decisions in the Governing Body meeting of CSIR was adopted which was known as "Merit and Normal Assessment Scheme", i.e., MANAS and this supersedes all previous schemes.

6. It is further stated that the entire scientific and technical staff including engineering and architectural staff was divided into 5 groups. Groups I and II are supporting staff, Group III was technical staff, Group IV was Research and Development - scientific staff and Group V were Engineering/Architecture. Each group has a number of grades.

7. It is further stated that concept of induction

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of employees into different grades is laid down at page 5 of CSIR guidelines, Annexure IV, which is as under:-

"1.2.1 Induction is normally made only at the lowest grade in each group. Normally, therefore, a vacancy arising due to any reason will occur at the lowest grade. However, in all grades of Groups III, IV and V(A), the position be filled up at any grade except Grades III(6), III(7), IV (7) and V(A) with the approval of Research Council (RC), Director-General for CSIR Headquarters provided there is an assessed need for the same. As already mentioned, all positions will revert to the lowest grade on vacation."

8. Though the applicant is stated to have been working in Group IV but he was surprised to receive an Office Memorandum of 21.9.92 vide Annexure V which was in suppression of the earlier Office Memorandum dated 6.8.92, which is Annexure V-A vide which the applicant was placed in Group III(4) (which is a group for technical staff). The applicant is aggrieved of this order. It is stated that first of all it has been issued after a decade of continuous service of the applicant in the organisation from the date of joining till the issue of the same, no communication was ever issued that the applicant did not belong to Group IV and despite the fact that he had all along been treated as a Group IV scientific employee, this down grading of the applicant to Group III severely affects the service of the applicant in career prospects in the organisation and it is a clear case of discrimination against him and it amounts to the drastic change in the service condition of the applicant without any notice whatsoever. It is also violative of Article 21 of the Constitution. No reason has been assigned for

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taking such a decision on the life and career of the Scientists.

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9. It is further stated that the applicant has been reduced from the status of a Scientist to a Technical Staff and has been placed as a Group III employee instead of Group IV.

10. It is also pleaded that the applicant is a highly qualified Scientist and he was doing his Ph.D at the time of filing of the OA, his research papers have been published in the foreign reputed journals.

11. He further submitted that in Group III the applicant has been placed at Group III(4) and in Group III there are 5 grades which can be defined as III(1), III(2), III(3) and so on. Similarly in Group IV there are 5 grades, i.e., IV (1), IV(2) and so on.

12. He further stated that the lowest Group III(1) is in the scale of Rs.1400-2300 whereas the lowest grade in Group IV, i.e., IV(1) is in the scale of Rs.2200-4000 and the first grade in Group IV, i.e., IV(1) corresponds to the 4th grade in Group III i.e. III(4), so the applicant has now been placed at III(4) which has a very serious repercussion. First of all the applicant has to work with a Group of persons with lower qualifications and his career prospects will also be marred and his promotions would be severely restricted. Thus, in the

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In nutshell, the case of the applicant is that the action of the respondents placing him in Group III at the level of III(4) is illegal, arbitrary and particularly so when he is being shifted from Group IV to Group III as he has all along been treated as a Group IV employee.

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13. The respondents contested this O.A.. Their first objection is that the application is barred by time. It is also stated that the applicant has not challenged the order dated 29.7.92 but he has only challenged the communication vide order dated 21.7.92, so OA is not maintainable on this score alone.

14. On merits, the case of the respondents is that the functions and classification of a particular post in a particular category is purely managerial function and a decision has been taken by the Governing Body on the basis of the recommendations of the Standing Committee formed for this purpose. The highest body in the CSIR has taken a decision regarding classification of the post of Analyst after due deliberation and on the recommendation of the Standing Committee.

15. It is further stated that the matter regarding classification of post including that of the applicant was placed before the Governing Body in its meeting held on 8.2.1992. The Governing Body decided to constitute a Standing Committee to examine the case for redesignation of post keeping in view their qualifications, job

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description etc. so as to have a uniform approach and in the proceedings conducted by the Standing Committee on 21.7.92 vide Annexure R-5, the Standing Committee had recommended that in the case of the applicant he should be designated as Technical Officer-B with placement in Group III. The recommendations were placed before the Director General, CSIR, who approved the same. So it is stated that the courts would not interfere with the decision which fall within the domain of managerial function.

16. It is further pleaded that the placing of applicant in Group III is otherwise justified because as per the New Recruitment and Assessment Scheme which was effective at the time of appointment of the applicant, the minimum qualifications which were prescribed for entry into each group was as under:-

" For Group IV minimum qualifications for entry level are M.Sc. first class/Ist Class BE or M. Tech./MBBS/M.V.Sc./M. Pharma/Ph.D (Science)".

17. It is further stated that the applicant does not possess these qualifications and, therefore, he is not entitled for the post.

18. It is further stated that on implementation of the NRAS w.e.f. 1.2.1981, as a one time measure, it was also decided that the S&T Staff as on 2.11.1981 who hold M.Sc. or B.E. or equivalent degree will move to Grade IV on promotion to the grade of Rs.700-1300 irrespective of

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the fact whether they are holding scientific or technical posts. The staff appointed to various entry level posts now introduced in Grade III on or after 24.11.1982, will remain in Group III even if they hold M.Sc./B.E. degree and shall be eligible for assessment promotion grade by grade in Group III.

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19. It is further stated that the case of the applicant was duly considered by the Standing Committee. The minimum qualifications prescribed for recruitment to the post of Scientist (R&D) in Group IV are Ist class M.Sc./Ist Class B.E. or M.Tech./ME/MBBS/M.V.Sc./M.Pharm./Ph.D (Science). Since the applicant was appointed after the cut-off date of 2.11.1991 and possessed post-graduate degree in Science in 2nd Division at the time of his initial appointment and as such was not fulfilling the minimum prescribed qualifications for Group IV, so the Committee did not recommend his placement in Group IV. Thus he has rightly been redesignated as Technical Officer-B and placed in Group III and as such, he does not have any grievance and his OA is liable to be dismissed.

20. Rejoinder to this was also filed. The applicant stressed that the rule regarding the qualifications at the entry level of possessing a Ist class degree had not been adhered to by the respondents themselves. The respondents over the years have themselves shown scant respect for these rules. He

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1 further stated that he had studied in a most prestigious and one of the very best institutions of the country and has always been a highly meritorious student and have received awards and had very narrowly missed the high qualifying marks of first class, which this institution has specifically set for its students and that is why he had been denied entry into this Group IV on this ground, whereas many other persons have been given placement in Group IV in NISTADS who had not studied science in their graduation or post graduation, but had obtained marks much lower than what the applicant had obtained in his post-graduate examination. Such cases have been many and have been the routine except the singular case of the applicant. The respondents had favoured many persons over the years and have discriminated against the applicant.

21. He further stated that excluding the applicant there were 47 persons at various levels in Group IV in the year 1990 and out of these, 18 persons did not possess science and out of these 18 persons as many as 12 persons joined NISTADS after the date from which enforcement of these entry level regulations became effective and one such person is Shri Satpal Sangwan, who joined NISTADS and got his Ph.D. degree much later and, therefore did not escape the provisions of the entry level regulations. Similarly many persons with M. Phil degree have not been moved from Group IV to Group III despite the fact that M. Phil has not been recognised by the CSIR.

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22. We have heard the learned counsel for the parties and have gone through the records.

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23. The main question to be examined in this case is whether the applicant who had joined as Analyst with the respondents had been treated as a Group IV employee till he was allegedly moved from Group IV to Group III or, in fact, he had been recruited as Group III employee that is to be seen.

24. So far as the admitted facts are concerned, that are enumerated as below.

25. The applicant had joined the service in response to an advertisement No.23/82 and for designated post as Analyst in the scale of pay of Ps.700-40-99-EB-40-1100-50-1300. The minimum qualification for this post was 1st class M.Sc./M.S. in Statistics/Mathematics/Physics with at least one year's experience in handling data analysis and interpretation. Desirable qualification was experience in the area of Information System in the Management of R&D Projects and has published papers to his credit. Experience of teaching at college level will be considered additional qualifications.

26. Job requirement was that the incumbent was required to undertake collection analysis and interpretation of statistical and other information,

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✓ prepare case studies and present lectures in the area of Planning and Management of R&D Projects as a support to the Faculty Members in the Centre.

27. With this data, as prescribed in the advertisement regarding qualifications, desirable qualification and job requirements and the pay scale, we have to find out whether this job of Analyst falls in the Group III posts or in Group IV.

28. The learned counsel appearing for the applicant submitted that as far as the qualifications are concerned, for all Group III posts the basic required qualification was B.Sc. and for all Group IV posts the basic qualification was M.Sc. and since in the case of the applicant also the minimum qualification which was prescribed was 1st class M.Sc. or MS, so on the basis of qualification it should be treated that the post of the Analyst, as advertised by the respondents, was one of the Group IV posts.

29. The applicant then referred to appointment letter and stated that as per the appointment letter though in the subject it was mentioned as Analyst but in the first paragraph itself it was stated that the Director, NISTADS has been pleased to approve your (applicant's) appointment as Scientist 'C' in NISTADS in the pay scale of Rs.700-1300. He further submitted that the respondents had tampered with their records when this

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controversy has arisen and after scoring the word 'Scientist-C' they had mentioned the word "Analyst" and to this effect he has also filed an MA No. 1797/99 and had stated that at the time of filing of the OA he had misplaced the original appointment letter but later on when he could trace it out, he moved the MA 1797/99 and wanted to show that at the time when the original appointment letter was issued the word "Scientist-C" had not been scored. Original appointment letter was brought by the applicant's counsel at the time of hearing which was seen by us as well as the counsel for the opposite side and we have found that the word "Scientist-C" has not been scored-off.

30. The counsel for the applicant then referred about the nature of job and he stated that as per the job requirement given in the advertisement, Annexure-II which itself shows that the applicant was required to undertake collections, analysis and interpretation of statistical and other information, prepare case studies and present lectures in the area of Planning and Management of R&D projects as a support to the Faculty Members in the Centre. He has stated that the nature of job required by him to prepare case studies and lectures in the area of Planning and Management was not the job of an Analyst, rather it is the job of a Scientist. So right from the day of his appointment till the impugned order was issued moving him to Group III, the applicant had been treated as a Scientist and has been performing the jobs which a Scientist was required to perform.

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31. He further stated that vide Annexure XI the respondents themselves had treated the applicant as a Scientist Group IV as he has been shown at S.No.35 of an Office Memorandum of the respondents dated 24.2.1992 wherein it was decided that who will be writing the ACR in respect of the Scientist Group IV and the name of the reporting officer was mentioned against the name of the employee and against the applicant's name Dr. S. Mohan's name has been shown as reporting officer.

32. Thereafter, he further referred to Annexure XII which is at page 103 of the paper book which is also an office memorandum dated 4.6.92 issued by the NISTADS whereby the promotions have been given to Scientists and it mentions that consequent on assessment to the next higher grade to the Merit/Normal Assessment under MANAS during the assessment year 1988-89, the pay of the following Scientists have been fixed as per the details given below and in this document the name of the applicant appears at S.No.3 and his pay has been fixed in the grade of Rs.2200-4000.

33. The counsel for the applicant then again referred to a document at page 118 which is Annexure XVI wherein he has been confirmed in the scale of Rs.2200-4000. *kr*

34. The learned counsel for the applicant further submitted that the scale at the point of entry into service which has been granted to the applicant for the post of Analyst corresponds to the scale of Group IV level (1) officer and by co-incidence it also corresponds to Group III level (4) Officer.

35. The counsel for the applicant then submitted that it is an admitted policy of the respondents that to whichever grade the employee may be appointed but he has to be appointed at point one level, may be at point III(1) or IV(1). Since the scale allowed to the applicant corresponds to the level of IV(1), so he should be deemed to have been appointed at the level of IV(1).

36. It is also submitted by the counsel for the applicant that the assessment procedure for assessing the applicant to the next higher grade, i.e., the scale of Rs.3000-4500 after completing of 5 years of service in the joined grade has also been carried out strictly in accordance with the guidelines laid down for Group I scientific personnel, whereas the assessment for Group III employees is done by a different procedure.

37. It was also argued that the applicant had joined looking for a brighter prospects and career as he was thinking that he was joining Group IV service. Had he known that it was to be changed to Group III, he would not have joined the service at all. His entire career is in

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ruined on moving from Group IV to Group III. This action on the part of the respondents on moving from Group IV to Group III is arbitrary, illegal and discriminatory. (52)

38. In reply to this, the learned counsel appearing for the respondents submitted that the grouping of the employees was done by the Standing Committee, who after due consideration and deliberations had approved the moving of the applicant from Group IV to Group III. The counsel for the respondents submitted that the applicant was never appointed as Scientist and have only been appointed as a Analyst whose job is to collect data and provide material for the scientists and while assessing the employees for re-classification and redesignation, the Standing Committee had duly considered the functions of the incumbents whether the same are scientific or technical in nature and in this case, the Standing Committee after due consideration had proposed that the applicant be designated as Technical Officer 'B' for placement in Group III.

39. The counsel for the respondents also submitted that even on his own showing that he was never a holder of 1st class post-graduate degree, whereas the requirement for a Scientist to be employed in Group IV is a 1st class M.Sc. and since the applicant was not a 1st class M.Sc., so he could never have been appointed as a Group IV Scientist. *kr*

40. The respondents also submitted that since the applicant possessed the post-graduate degree in Science only in second division so he did not fulfil the minimum essential qualification, as such he has rightly been placed as a Technical Officer-B.

41. It was denied that the respondents have spoiled the applicant's promotional avenues. Promotional avenues to Group III are also available which the applicant can avail.

42. The counsel for the respondents also submitted that the entry level comparison cannot be made and the function which the applicant had been performing all through was of a technical nature and the most important thing is the educational qualifications being possessed by the applicant and according to the same, the applicant can be appointed only in Group III post.

43. As regards the assessment of the applicant for a promotion along with other Group IV post employees concerned, it is submitted that pending re-classification, the applicant was assessed along with other Group IV employees but that does not give him a right to be considered as a Group IV employee because his designation was of an isolated designation. However, he was assessed as per the procedure prescribed for Group IV employees but still the applicant was to be given the benefit of the same and the mere assessment is not enough to claim that

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applicant belonged to Group IV only and the benefit of that decision will be given to the applicant. As the benefit had not been given, the applicant cannot claim that he was a Group IV employee.

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44. After hearing the submissions made by the parties, we find that the question whether the appointment of applicant as a Analyst is equivalent to a Group IV employee or a Group III employee is based on various factors and conclusion has to be arrived after evaluating those factors.

45. As regards the qualifications are concerned, admittedly the respondents had given in their advertisement the minimum qualification for the post was 1st class M.Sc./M.S. in Statistics/Mathematics/Physics with at least one year's experience in handling data analysis and interpretation and according to the respondents own scheme, the minimum qualification for all Group III posts right from III(1) to III(5) is the B.Sc. and for Group IV posts it is only the M.Sc. The entry level is also stated to be at point III(1) or IV(1) and according to III(1), the qualification is again B.Sc. whereas the qualification for Group IV(1) is as under:-

"1st Class M.Sc./1st Class B.E. or M.Tech./ME/MBBS/M.V.Sc./M.Pharm./Ph.D (Science)".

46. Now if we compare the above qualifications with the minimum qualification prescribed for the post as per

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the advertisement, the same is comparable only with Group IV(1) level and not for the post of Group III. Merely because the applicant was not having 1st division in M.Sc. does not mean that the qualification for the post was reduced nor it can mean that the respondents may have selected a candidate with a M.Sc. IIInd Division but the status of the post for which the minimum qualification prescribed was M.Sc., does not get reduced. Had there been a minimum qualification as 1st Class B.Sc. and desirable M.Sc., then probably the respondents could have asked that the minimum qualification prescribed for the job was comparable to Group III post and not with Group IV post. So as per the qualifications prescribed in the advertisement, the only idea which this advertisement conveys regarding the level of the post shows that it is comparable to Class IV post.

47. Now as per the job requirement is concerned, it required interpretation of statistical and other information, prepare case studies and present lectures in the area of Planning and Management of R&D projects as a support to the Faculty Members in the Centre. This job cannot be said to be merely of a technician, who is to collect data and present his reports because the job requires interpretation of statistical and other information which is the job of a R&D management and not of a technician.

48. Then further the applicant has been successful

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to show that right from the date of his joining the post, he is treated as Group IV employee which is evident from Annexure XI which at page 100 of the paper book and then Annexure XII which is at page 103 of the paper book. Those documents show that the applicant had all along been treated as a Scientist holding a Group IV post. The respondents could not offer any satisfactory explanation as to why the applicant had been treated as Scientist holding a Group IV post.

49. It is also admitted that for considering next higher grade, the applicant was considered as per the procedure for grant of next higher grade to Group IV employees. Had this re-classification not come, the applicant might have been given a higher grade in Group IV. So merely because in between this reclassification had appeared and the respondents have started denying that the applicant was a Group IV employee on the basis of the said Standing Committee's report, does not mean that the applicant was treated as a Group III employee.

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50. The fact that the applicant had been treated as a Group IV employee all along for a period of one decade, goes to show that both the parties had accepted this situation that applicant was a Group IV employee and not a Group III employee. So now overnight the applicant cannot be moved to Group III.

51. As regards the pay scales in the advertisement

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are concerned it is also pertinent to note that the scale in which the applicant had joined was corresponding to the entry level of Group IV post, i.e., IV(1) and was not corresponding to entry level of Group III, i.e. III(1) So on that basis also it cannot be said that the applicant was inducted as Group III(1) employee. Rather it could be conveniently said that the scale given to the applicant at the time of entry itself corresponded to the level of IV(1).

52. The only major objection raised by the respondents is regarding academic qualification of the applicant and the applicant had quoted various examples where the academic qualification had been relaxed for his fellow workers in Group IV itself, for which also the respondents have no answer.

53. The issuing of appointment letter further makes it clear that the applicant was offered a job in a scale comparable to Group IV employee and the nature of job prescribed in the appointment letter was also carrying out R&D scientific investigative work as a Group IV Scientist and even in the original appointment letter the word "Scientist" was mentioned which was shown at the time of arguments and had been seen by the counsel for the opposite side also. About the scoring of the word "Scientist" and at what stage the same had been scored, there is no satisfactory explanation coming from the respondents. So on that basis also the balance still is in favour of the applicant.

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54. The applicant has also stated in his rejoinder that S/ Shri S.S. Solanki and Ramesh Kundra were placed in Group -IV and Shri Satpal Sangwan and Ms. Anuradha Singh who had joined the NISTADS neither had a first division in post-graduate degree in science or even a basic degree in science but these persons were given placement in Group IV. So the arguments raised by the respondents that the applicant did not possess a Ist class post-graduate degree, has no merits.

55. So considering all the circumstances and comparison of the qualifications prescribed for the Group IV post and Group III post and as given in the advertisement as well, we find that the applicant was appointed as a Group IV employee and has been rightly treated so even upto the stage when he was considered for grant of next higher grade by following the same procedure as is prescribed for grant of next higher grade to Group IV employees.

56. The counsel for the respondents has also raised an objection regarding the limitation and has stated that the application is barred by time. But from a perusal of the file we find that the representation of the applicant was rejected lastly on 10.5.93 and the O.A. was filed on 22.3.94. So there is delay of only 4 months which we think should not stand in the way of the applicant and we

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condone the same and even the learned counsel for the respondents has not seriously challenged the point of limitation during the arguments, as no arguments were addressed on that aspect.

57. Hence, we find that the applicant has been discriminated and has been illegally moved from Group-IV to Group III post and the order moving the applicant from Group IV to Group III cannot be sustained and the same is liable to be quashed.

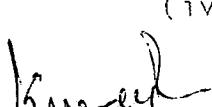
58. Accordingly, we allow the O.A. with the following directions:-

(i) That the orders dated 29.07.1992 read with order dated 21.9.1992, 21.10.1992 and 10.5.93 are quashed.

(ii) The applicant shall also be entitled to all consequential benefits as per rules and instructions on the subject.

(iii) The above directions may be complied with within a period of 3 months from the date of receipt of a copy of this order.

(iv) No order as to costs.


(KULDIP SINGH)

MEMBER (J)


(S.P. BISWAS)
MEMBER (A)

Rakesh