

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 496/86

199

~~TA No.~~

M.P.NO. 944/89

DATE OF DECISION: 12.03.1992

SH.R.D. SAGAR &amp; ORS

~~Petitioner~~ APPLICANTS

SH. J.S. BALI WITH SH.S.S.TIWARI

Advocate for the ~~Petitioner(s)~~ XXXXXXXX

Versus

APPLICANTS

U.O.I. &amp; ORS

Respondent

SH. K.C. MITTAL

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. D.K. CHAKRAVORTY, MEMBER(A)

The Hon'ble Mr. T.S. OBEROI, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *NO*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *NO*

*T.S. Oberoi 12.3.92*  
(T.S. OBEROI)  
MEMBER(J)

*D.K. Chakravorty 12/3/92*  
(D.K. CHAKRAVORTY)  
MEMBER(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

O.A.NO. 496/86  
MP-944/89

DATE OF DECISION: 12 March 1992

SH. R.D. SAGAR & ORS.

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APPLICANTS

VERSUS

UNION OF INDIA & ORS.

....

RESPONDENTS

CORAM:-

THE HON'BLE MR. D.K. CHAKRAVORTY, MEMBER(A)

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

COUNSEL FOR THE APPLICANTS

:

SH. J.S. BALI WITH  
SH. S.S. TIWARI

COUNSEL FOR THE RESPONDENTS

:

SH. K.C. MITTAL

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. D.K. Chakravorty, Member(A)).

The applicants, in this case, are science graduates employed as Technical Assistants (Quality and Processing), grade 'C' non-gazetted, under the administrative control of Respondent No.2. Their grievance is that inspite of having put in a number of years of service in the said capacity, they are not being promoted to the next post of Senior Technical Assistant (Chemistry), a Class-II non-gazetted post, meant to be filled in, by promotion, failing which by direct recruitment, as per Recruitment Rules. Their case further is that inspite of having represented to the respondents, nothing worth the while has happened, on the ground that, for the next promotional post, one of the essential requirement is that the incumbents should be Post Graduates.

The applicants' contention is that, as per Recruitment Rules for departmental candidates, Technical Assistants (Chemistry) and Senior Analysts with five years' regular service in the respective grade, are eligible to be promoted as Senior Technical Assistants (Chemistry) but, the applicants, inspite of possessing the said requisite qualification, are not being promoted as Senior Technical Assistants. Their case further is that inspite of respondents having initiated amendment in this respect, of Recruitment Rules, as far back as 1980-81, no headway has been made so far. On the contrary, it has been learnt that the file on the subject has been misplaced somewhere, at concerned quarters, and, in result, nothing has progressed further. They allege malafides in the displacement of the file, and also in initiating the move for amendment of the Recruitment Rules, as, according to the applicants, no such amendment is even required. Further, after somehow misplacing the file on the subject and still calling the D.P.Cs., when the so-called amendments have not been finalised for the last about 10 years or so, also alludes to the malafides on the part of respondents, and discrimination against the applicants. They, therefore, seek the following reliefs:-

- (1) that the impugned order be set aside and respondents directed to promote the applicants in accordance with the Recruitment Rules (Annexure-3), by seniority-cum-fitness, which is the normal criteria

for promotion posts;

(ii) if the respondents still insist that amendment to Recruitment Rules (Annexure-4) is necessary, these amendments be got approved at the earliest, within a reasonable specified time, say 6 months, as already a number of years have elapsed;

and

(iii) promotions, if any, made during the interim period should be held in abeyance or at any rate treated as ad hoc, subject to review on the finalisation of Recruitment Rules.

2. The respondents, in the counter filed, have opposed the applicants' case, stating that, as per the existing Recruitment Rules, the essential qualification of a degree in M.Sc. in Chemistry, or Agriculture Chemistry or Analytical Chemistry, is an essential requirement even for departmental candidates, for their promotion to the post of Senior Technical Assistants (Chemistry). However, they further stated that a proposal to amend the Recruitment Rules, in this regard, for departmental candidates, based on similar educational qualifications, in the case of departmental candidates, in some sister divisions of the department, was initiated in 1980-81 and sent to the Ministry, sometimes in July, 1983. But, the file concerned has somewhere been misplaced in the department of Personnel & Training. They, however, deny the allegations regarding wilful or intentional misplacement of the file, in question. In view of long correspondence

with the authorities concerned, which included the U.P.S.C. and the complexities involved, the time consumed resulting in the delay in finalisation of the matter to effect the amendment in the Recruitment Rules, was held to be justified, in the circumstances of the case. The respondents also justified the non-promotion of the applicants to the post of Senior Technical Assistants, which being the selection post, as per the existing Recruitment Rules, has to be processed in accordance with the instructions on the subject as per Department of Personnel & Administrative Reforms O.M.No.14017/24/76-Estt./RR dt. 22.5.1979).

3. In the rejoinder filed on behalf of the applicants, the contentions raised by them in the O.A. were more prominently specified, by listing out the exact issues involved, and praying for a specified time, in case the proposed amendment in the Recruitment Rules was still insisted upon, by the respondents.

4. The pleadings in this case were completed in March, 1987. Thereafter, the applicants had filed on 30.9.1987, as additional document, a copy of the Gazette of India dated 5.1.1974 relating to Directorate of Plant Protection, Quarantine and storage (Junior Chemical Assistant) Recruitment Rules 1973. Thereafter, M.P.No.944/89 was filed on 24.4.1989 for early hearing of the case. As one of the grounds for the prayer, a reference was made to the recruitment rules for Senior Technical Assistant (Chemistry), notified on 21.1.1989 with retrospective effect from 26.8.1978. A copy of this recruitment rule was annexed to the M.P. It was contended that this this Gazette Notification was issued to cover

the wrong done by the respondents. The M.P. for early hearing was allowed by the Hon'ble Chairman under his orders dated 19.10.1989. Again on 21.9.1991, the applicants submitted 7 additional documents including gazette notification dated January 13, 1990 notifying the Directorate of Plant Protection, Quarantine and Storage, Senior Technical Assistant (Chemistry) Recruitment Rules, 1989. According to these recruitment rules, the post of Senior Technical Assistant (Chemistry), in the scale of Rs.1640-2900, has been made a non-selection post to be filled up by promotion failing which by direct recruitment. The qualification prescribed for direct recruits is M.Sc. with one year's research/practical experience. (Quality & Processing) However, for promotion from Technical Assistant/and Chemical Assistant with 5 years' regular service in the grade, the qualification prescribed is B.Sc. degree in Chemistry from a recognised University or equivalent.

5. We have also heard the learned counsel for the parties. The applicants' case was urged from another angle also. Their contention was that by promoting some of their juniors, with the Post Graduation as their educational qualification, their stagnation in the present post has been further perpetuated, besides offending the principles of natural justice, equity and good conscience. By referring to a number of authorities, both of Supreme Court as well as of this Tribunal,

listed in the margin\* below, it was urged that provision of promotional avenues is a must for sustaining the interest of government servants in their job, and denial thereof, kills their initiative. From that stand point also, it was urged that, an early action to promote the applicants from their present post to the next one, is necessary.

6. The learned counsel for the respondents stated that with the promulgation of the revised recruitment rules on 13.1.1990, the main relief sought by the applicants has already been given. Under these recruitment rules the applicants with B.Sc. degree in Chemistry had become eligible for promotion to the post of Senior Technical Assistant (Chemistry) on the basis of seniority-cum-fitness. In fact Shri R.D. Sagar, the first applicant in this OA, has already been promoted as Senior Technical Assistant (Chemistry) on the basis of the new recruitment rules. The learned senior counsel for the applicants contended that the promulgation of the old recruitment rule on January 21, 1989 with

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\* (i) ATR 1990(1) SC 1437;  
(ii) AIR 1989 SC 1972;  
(iii) 1989 Supp. SCC 519;  
(iv) AIR 1990 SC 1391;  
(v) AIR 1990 SC 311;  
(vi) AIR 1989 SC 1972;  
(vii) AIR 1988 SC 1033, and  
(viii) decision dated 1.6.1990 by Principal Bench of Central Administrative Tribunal in O.A.No.2247/89.

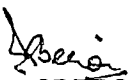
retrospective effect from 26th August, 1978 was bad in law. In equity also, when the respondents had agreed on principle way back in 1981 that B.Sc. degree in Chemistry shall be the prescribed qualification for promotion, they should have, in all fairness, notified the new recruitments rules in January, 1989, by which time it must have been ready, having been under preparation for almost a decade, instead of retrospective notification of the old rules. More so, as the explanatory memorandum below the January 21, 1989 notification certifying that "nobody will be adversely affected by the publication of the recruitment rules with retrospective effect" was not factually correct. He relied on the rulings in AIR 1987 SC 415; 1984(2) SCR 476 and ATR 1991 SC 1902. The learned counsel for the respondents vehemently opposed this submission as the applicants had never challenged the vires of the January, 1989 recruitment rules.

7. The learned senior counsel for the applicants submitted that injustice has been done to the applicants over the last several years and some of them had been superseded by their juniors with M.Sc. qualification during this period. In the interest of fair play and justice, he prayed that, notwithstanding the promulgation of January, 1989 recruitment rules, respondents should promote the applicants to the post of Senior Technical Assistant (Chemistry) with retrospective effect. This could be done, according to him, by way of a special dispensation, without un-doing the promotions already given to the persons junior to the applicants by creating, if necessary a few supernumerary.



posts from back dates. The respondents opposed this plea of the applicants on the ground that it is neither legally permissible nor administratively feasible to disturb the promotions which have already <sup>been</sup> made in February, 1981, July, 1985 and May, 1986. The applicants have already obtained, substantial relief though, somewhat belatedly. Some promotions have since been made in accordance with the new recruitment rules, and some of the other applicants are expected to get their turn in due course. Further, adequate promotional avenues are now available for these employees.

8. It is clear from the above discussion that the applicants have already been granted the main relief prayed for in the original application. The new recruitment rules have been promulgated in January, 1990 and one of the applicants has already been promoted. We see no good grounds for any interference in the matter except to impress upon the respondents to consider all the eligible applicants for promotion to the post of Senior Technical Assistant (Chemistry) as expeditiously as possible. The application is disposed of accordingly, with no order as to costs.

  
(T.S. OBEROI)  
MEMBER(J)

  
(D.K. CHAKRAVORTY)  
MEMBER(A)