

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 843 of 1986
~~T.A.X.No.~~

DATE OF DECISION 3-4-1987.

P.K.Chatterjee ... Petitioner

Shri K.L.Bhatia Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

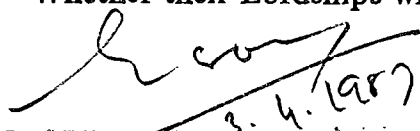
Shri P.H.Ramachandani Advocate for the Respondent(s)


CORAM :

The Hon'ble Mr. V.S.Bhir, Member (A)

The Hon'ble Mr. G.Sreedharan Nair, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?


(G. SREEDHARAN NAIR)
MEMBER (J)


(V. S. BHIR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

O.A.No.843 of 1986.

3-4-1987.

P.K.Chatterjee

...
vs.

Applicant.

Union of India and others ...

Respondents.

For applicant:

Shri K.L.Bhatia, counsel.

For respondents:

Shri P.H.Ramachandani, counsel.

Coram:

The Hon'ble Mr.V.S.Bhir, Member. (A)

The Hon'ble Mr.G.Sreedharan Nair, Member (J)

(The Judgment of the Tribunal delivered
by The Hon'ble Mr.G.Sreedharan Nair)

The applicant who is a Senior Scientific Assistant (Research and Development, for short R & D) attached to the Central Indian Pharmacopoeia Laboratory, referred to hereinafter as C.I.P.L. Ghaziabad, has filed this application challenging the recruitment to the post of Scientific Officer, Grade II (R & D) on the basis of the Rules regulating the method of recruitment of certain Group A and B Posts in the C.I.P.L. issued by the Government of India by notification dated 17-9-1985. According to these Rules, the post of Senior Scientific Officer Grade II (R & D) is to be filled up by direct recruitment. The ground urged is that the Rule relating to the recruitment to the post of Senior Scientific Officer Grade II (R & D) is arbitrary, discriminatory and bad in law. It is alleged that as regards the post of Senior Scientific Officer Grade II in the other Divisions of the C.I.P.L., the method of recruitment has been fixed as by promotion of Senior Scientific Assistant and as such different methods of recruitment have been



laid down by the Rules in respect of similar and identical posts of the same organisation. There is also the plea that persons holding similar posts of Senior Scientific Assistants in the other Divisions have been given more advantageous, favourable and preferential treatment in the matter of promotion to higher posts while the applicant who is working as Senior Scientific Assistant (R & D) has been deprived of the same.

2. A reply has been filed on behalf of the respondents wherein it is contended that while already there were posts of Senior Scientific Officer Grade II and Senior Scientific Officer Grade I in the Chemistry, Pharmacology ^{and} Microbiology units, the only post in the R & D unit was of Senior Scientific Assistant. The Government decided to create a post of Senior Scientific Officer Grade II for research on problems relating to drug standardisation and preparation of analytical data on drugs for inclusion in Indian Pharmacopoeia/ National Formulary. As an Officer of ability was required for the post, it was decided in consultation with the Department of Personnel and the U.P.S.C. to fill up the post of Senior Scientific Officer Grade II which was newly created by direct recruitment and not by promotion. Accordingly, provision was made in the Recruitment Rules. The work in the R & D unit is of a highly scientific nature involving skills and aptitude for research, while that in the other units is of routine nature. The nature of work and responsibility of the post of Senior Scientific Officer Grade II in the R & D unit are different from the corresponding posts



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in the other units. Hence it is contended that there is no violation of Articles 14 and 16 of the Constitution of India or discrimination or arbitrariness in the provision in the Rules for filling up the post by direct recruitment.

3. The short question that arises for determination is whether the provision in the Central Indian Pharmacopoeia Laboratory, Ghaziabad (Group A and B Posts) Recruitment Rules, 1985, prescribing the method of appointment to the post of Senior Scientific Officer Grade II (R & D) by direct recruitment is violative of Articles 14 and 16 of the Constitution of India.

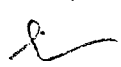
4. In the C.I.P.L. there are five Divisions. They are, Chemistry, Pharmacology, Microbiology, Pharmacognosy and Research and Development (R & D). In the first three Divisions, the posts of Senior Scientific Assistant, Senior Scientific Officer Grade II and Senior Scientific Officer Grade I were already in existence. In the Pharmacognosy Division, there were the posts of Senior Scientific Assistant and Senior Scientific Officer Grade II. In the R & D Division, there was only the post of Senior Scientific Assistant and that too only one, which is being held by the applicant. The post of Senior Scientific Officer Grade II in the Chemistry, Pharmacology and Microbiology Divisions are to be filled by promotion of Senior Scientific Assistants, failing which by direct recruitment. When a post of Senior Scientific Officer Grade II was created in the R & D Division, the Recruitment Rules provided the mode of recruitment to the post as direct recruitment. This deviation in the mode of recruitment compared to other Divisions has been attacked by the ~~counsel of the~~ applicant as discriminatory and as such violative of Articles

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14 and 16 of the Constitution. This attack has been countered by the counsel of the respondents by stressing that the nature of the R & D Division and its functions are entirely different and of a more onerous nature. On hearing counsel on either side, we are not inclined to accept the plea of the applicant.

5. The manner in which recruitment to a particular post is to be made has to be determined keeping in mind the efficiency in manning the post. The necessity for the creation of a post, the method of filling up the same and the qualifications to be insisted are all matters which have to be primarily decided by the administration. More so, in the case of a technical institution as the C.I.P.L. Hence, utilising its expertise, ^{if} the administration arrives at a decision on that matter, it cannot be subjected to judicial review unless it is violative of the Constitution or of the law.


6. The attack by the applicant based on the principle of equality of opportunity and the vice of discrimination cannot be supported. True, the R & D Division is one of the five Divisions of the C.I.P.L. But as the name itself indicates it stands on a footing that is different from the other Divisions, for, it deals with research and development. It has been specifically urged in the reply filed by the first respondent that it was decided by the Government to fully develop this unit and it was with that end in view that the post of Senior Scientific Officer Grade II was created for the first time for research on problems relating to drug standardisation and preparation of analytical data on drugs for inclusion in Indian Pharmacopoeia/



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National Formullary. As such, if it was decided to fill up the post by direct recruitment ~~xx~~ with an Officer possessing innovative ability to work independently on research problems and having wide experience in the field, it cannot be struck down on the simple ground that promotion of the Senior Scientific Assistant has not been prescribed as a mode of filling up the post as in the case of the other Divisions. There is also the important circumstance that while the post of Senior Scientific Assistant in the other Divisions is to be filled up both by promotion as well as by direct recruitment, in the case of the Senior Scientific Assistant of R & D only direct recruitment is prescribed for appointment. Admittedly, the applicant has come in as a Senior Scientific Assistant through such direct recruitment. It cannot be said that the functions performed by the Senior Scientific Assistant in all the Divisions are similar or that their duties and responsibilities are one and the same. Merely because the posts are of the same rank and the nomenclature is the same, they cannot be considered as equals for all purposes. The decision of the Supreme Court in Randhir Singh vs. Union of India and others (A.I.R. 1982 S.C.879) may be usefully referred to in this context.

7. Counsel of the applicant invited our attention to the guidelines issued by Government of India regarding framing of recruitment rules in paragraphs 3.12.2 and 3.12.3 of the consolidated instructions. We are not able to find anything therein to hold that prescribing the mode of appointment to the post of Senior Scientific Officer Grade II (R & D) as by direct recruitment is violative of these guidelines. What is laid down there is only that promotion may be kept as a method of recruitment depending upon the availability of the field of consideration



and that care should be taken to see that the base for promotion is strong. As regards isolated posts, the desirability of keeping the method of recruitment of transfer on deputation or short-term contract is also referred to. Where the field of promotion consists of only one post, the method of recruitment by transfer on deputation (including short-term contract)/ promotion is prescribed according to the instruction contained in paragraph 3.12.5. Evidently, it is for consideration of the departmental officers also along with the outsiders. In the instant case, though the post of Senior Scientific Officer Grade II (R & D) is proposed to be filled by direct recruitment, it is open to the applicant as well ~~xx~~ to stake his claim for recruitment.

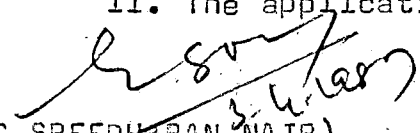
8. A Government servant cannot be heard to complain that by prescribing the mode of direct recruitment for filling up a responsible higher post, grievance is caused to him as his chance of promotion is affected. It is well-settled that chance of promotion does not fall within conditions of service. It may be that the introduction of the Rule prescribing the mode of direct recruitment for filling up the newly created post may have an impact on the fortune of the applicant. But in determining whether the Rule as such is unfair or unjust, such impact has no relevance at all.

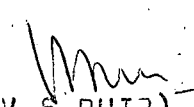
9. It is seen from the records that consequent on the creation of the post of Senior Scientific Officer, Grade II (R & D), when applications were invited for filling up the post by direct recruitment, the applicant had also submitted his application and it was after coming to know that the U.P.S.C. had restricted the number of candidates for interview to a particular limit, within which the applicant did not

fall, that he has come forward to challenge the rule prescribing the mode of appointment to the post. The reason for making such a restriction has been explained in the reply of the respondents by pointing out that the U.P.S.C. had made it clear in the advertisement itself that all persons who fulfil the essential qualifications are not entitled to be called for interview and that where the number of applications received in response to the advertisement is large and it will not be convenient or possible for the Commission to interview all these candidates, the Commission may restrict the number of candidates for interview to a reasonable limit on the basis of the qualification and experience higher than the minimum prescribed in the advertisement or by holding screening test.

10. We hold that the impugned Rule relating to the recruitment to the post of Senior Scientific Officer, Grade II (R & D) is legal and valid and that the applicant is not entitled to the reliefs claimed.

11. The application is dismissed.


(G. SREEDHARAN NAIR)
MEMBER (J)
3-4-1987


(V. S. BHIR)
MEMBER (A)
3-4-1987