

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1683/87.
T.A. No.

198

DATE OF DECISION July 3, 1989.

Shri V.P.Saini & Ors

Petitioner s.

Shri G.D.Bhandari,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondents.

Shri Sanjeev Ralli for R 1 & 3. Advocate for the Respondent(s)

Shri P.C.Sharma, for R 5.

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *Very*
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

B.C. Mathur
(B.C. MATHUR)
VICE-CHAIRMAN
3.7.1989.

(A)
(AMITAV BANERJI)
CHAIRMAN
3.7.1989.

3
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Regn. OA No. 1683/87

Date of decision: July 3, 1989.

V.P. Saini & Ors

... Applicant

vs.

Union of India & Ors

... Respondents

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman

Hon'ble Mr. B.C. Mathur, Vice Chairman

For the Applicant

.. Shri G.D. Bhandari,
counsel.

For the respondent No. 1 & 3

.. Shri Sanjeev Ralli,
counsel.

For the respondent No. 5

.. Shri P.C. Sharma, counsel

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji, Chairman)

S/s V.P. Saini, J.B. Goel, A.K. Manchanda and
A.P. Sharma have jointly filed this Original Application
on 19.11.1987 under Section 19 of the Administrative
Tribunals Act (hereinafter referred to as the 'Act').

The respondents are (1) Union of India through Secretary,
Department of Agricultural Research Education, Ministry
of Agriculture, Krishi Bhavan, New Delhi (2) The Director,
Indian Council of Agricultural Research, Krishi Bhavan,
New Delhi and (3) The Director, Indian Agricultural
Research Institute, Pusa Institute, New Delhi.

The Applicant's grievance is that by an order dated 21.3.87 the respondents promoted S/Shri Y.P. Chadha and K.K. Chakravarty, Assistants to the post of Superintendents and by subsequent order dated 2.10.87 promoted four Assistants S/s Rohtas, B.L. Jain, Herminder Singh and N.K. Jain to the post of Superintendents in the grade of Rs. 550-900 without holding a Departmental Competitive Examination (hereinafter referred to as the 'Examination') in 1987. They have prayed in this application two reliefs, firstly, that the impugned promotion/appointment order of Respondents 4 to 9 be declared illegal, bad in law and void ab initio and these two orders dated 21.3.87(A-1) and dated 2.10.87(A-2) be set aside and quashed and secondly, a direction be given to the Respondents to hold the Examination as envisaged in the Recruitment Rules within a specified schedule of time before making any appointments to the posts of Superintendent grade Rs. 550-900. They had also prayed for an interim relief to restrain Respondents 1 to 3 not to make any more appointments in the quota of 33 1/3% without holding an Examination or at least till decision of the case. On the date the Application was admitted, the Division Bench issued an interim order dated 7.12.1987 stating that any promotion made till the above date would be subject to the outcome of the Application. Subsequently, on 7.12.87 the Respondents

counsel made a statement that the Respondents shall not make any appointments on ad hoc or regular basis in the quota of 33 1/3% without holding an Examination as per the existing rules. In view of this, the court held that there was no necessity to grant interim relief as prayed for.

The facts which are in a narrow campus are not disputed. The Applicants were working as Assistants in the grade of Rs. 425-700 in the Indian Agricultural Research Institute (hereinafter referred to as 'IARI'), New Delhi which is a research institute of the Indian Council of Agricultural Research under the Ministry of Agriculture, Government of India. The Stenographers and Assistants in the grade of Rs. 425-700 in the IARI have a channel of promotion as Superintendent in the grade of Rs. 550-900 through two sources, a Limited Departmental Competitive Examination and promotion on the basis of seniority/suitability. Recruitment Rules for the posts of Superintendent grade Rs. 550-900 were circulated by the Respondents vide letter No. 8(3)/82-Per.III dated 4.10.83 (Annexure A-3). It stipulated 66 2/3% by promotion and 33 1/3% by way of Limited Departmental Competitive Examination confined to Assistants/Stenographers in the scale of Rs. 425-700 of the concerned Institutes, having not less than 3 years of service in the grade of Assistant/Stenographer on the 1st of January of the year in which the examination is held. This pertains to the Research

Institutes under the Indian Council of Agricultural Research (ICAR). In the case of recruitment by promotion, it would be confined to Assistants having five years of service in the grade and the DPC was to be constituted by the Council in consultation with the Agricultural Scientists' Recruitment Board. There was provision for reservation for Scheduled Castes and Scheduled Tribes according to the percentages fixed from time to time by the Government of India for similar posts.

On 26th December, 1987 the Respondents issued a Circular No. 4-28/83 P.II inviting applications for the posts of Superintendents by way of Departmental Competitive Examination quota of 33 1/3% of the posts. These posts related to the year 1984. A number of Assistants/ Stenographers applied in response to the aforesaid Circular and competed in the test. On the recommendations of the DPC, five Assistants were appointed on promotion as Superintendents in the grade of Rs. 550-900 by Office Order dated 22.3.1985 (Annexure A-6). By this, appointments to the vacancies for the year 1984 for which the Examination was held ~~xxxx~~ were completed. After this, no Examinations were held for the years 1985, 1986 and 1987 but a Circular was issued on 6.11.86 for holding a Departmental Competitive Examination. Applications were submitted by eligible candidates but no tests were conducted

by the Respondents. Subsequently, six posts of Superintendents in the grade of Rs. 1640-2900 (old 550-900) fell vacant and a Circular was issued inviting applications but once again no tests were held. To sum up, no Departmental Competition Examination was held for the years 1985, 1986 and 1987. However, the Respondents issued an Office Order No. 2-7/85-P 11 dated 21.3.87 by which they promoted two Assistants, respondents No. 4 and 5 to the posts of Superintendents grade Rs. 550-900 (Annexure A-1). These were based on the Examination held in the year 1984. They issued another Office Order dated 2.10.87 whereby four more Assistants, Respondents No. 6 to 9 were appointed as Superintendents on the basis as above.

The Applicants and others submitted representations against the above appointments without holding Departmental Competitive Examination. There was no response to that. Applicant No. 1 submitted a separate representation on the same lines which was rejected on the plea that rules do not support his case (Annexure A-8). The Applicants have thereafter come to the Tribunal and have urged among others the following grounds -

- (a) That the Selection/Tests were to be held yearly when the vacancies occur and the Test which is held for a particular year cannot be extended to cover vacancies of future years particularly when sufficient number of candidates were available every year.

(b) That all the vacancies that were available to be filled in by Competitive Examination were filled up and five Assistants were promoted vide Annexure A-6 to the posts of Superintendents. Consequently, no further promotions could be made on the basis of the Examination held in the year 1984. The promotions of Respondents No. 4 to 9 were malafide and arbitrary.

(c) A reference was made to a case of T.R. Mehta v. UOI (T 326/85 decided on 14.8.87) where the Division Bench held that DPC/Tests/Selection must be held yearly. It was further contended that the impugned promotion/appointment orders (Annexure A-1 & A-2) were in violation of the policy direction issued by the Department of Personnel & Training (Annexure A-4).

(d) There was hostile discrimination against the Applicants and the impugned orders have resulted in having undue benefits to the Respondents and have deprived the Applicants of their legal right to compete for the posts of Superintendents in the grade of Rs. 550-900.

There were two counter-affidavits filed in this case, one by Dr. A.M. Michael, Director, Indian Agricultural Research Institute and another by Shri B.L. Jain (Respondent No. 6) on his behalf as well as on behalf of Respondents No. 4, 7, 8 and 9. A counter affidavit on behalf of Shri K.K. Chakravarti has also been filed. On behalf of the Respondents No. 2 and 3, the Director, IARI pointed out in his Affidavit that Respondents 6 to 9 were promoted by Office Order dated 29.10.87 and not by an Office Order dated 2.10.87. The main thrust contained in paragraphs 6(viii) and 6(ix) is that Annexure A-4 pertains to the holding of the DPC meeting annually for considering the

promotions in the quota of 66 2/3% i.e. by way of promotion but nowhere it speaks of holding annually Departmental Competitive Examination. It was, however, admitted that according to the Recruitment Rules, three years experience shall be reckoned on 1st January of the year in which the Examination is held. But it was disputed that the said Recruitment Rules impliedly or otherwise provided that the posts should be filled in yearly. In other words, the contention was that there was no requirement under the relevant Recruitment Rules to hold Limited Departmental Competitive Examination every year as contended by the Applicants. In regard to the Departmental Competitive Examination held from December 28, 1984 to January 2, 1985, it was stated that none of the present Applicants appeared at that time as they were not eligible. Further, 11 candidates including Respondents 4 to 9 were declared successful after the declaration of the result of the above Examination. Five posts of Superintendents were filled in by appointing five successful candidates out of the 11 declared successful and the other six candidates were appointed as Superintendents in due course of time vide Office Orders dated 21.3.87 and 29.10.87. It was further stated that selections made in the above competitive test held in 1984-85 were not confined to fill in the vacancies pertaining to the year 1984 only. It was denied that the vacancies occurring in the years 1985 and 1986 could not be filled in on the

basis of the Examination conducted in 1984. Reference was made to the Office Memorandum dated 8th February, 1982 issued by the Government of India, Department of Personnel & Administrative Reforms (Annexure R-3/1) which dealt with validity period of the list of selected candidates prepared on the basis of the Departmental Competitive Examination. It was stated that the candidates who had been selected in the said Examination must be accommodated even at the cost of reduction in the number of candidates in the next recruitment and the selected candidates should be given appointment first before starting appointment of the successful candidates. Consequently, it was urged that vacancies in the grade of Superintendents pertaining to the years subsequent to 1984 could be filled in by appointing candidates selected in the Competitive Examination held in 1984-85. It was further stated that it has been the policy of the Respondent Institute to appoint all candidates who have been selected in the Competitive Examination held for various posts so as to give effect to the Government of India Office Memorandum dated 8th February, 1982 (Annexure R-3/1). The issuance of Circulars dated 6.11.1986 and 3.7.1987 by the Institute was not denied. It was admitted that Examinations were not held in those years. It was put forward that Applicants Nos. 3 and 4 had requested not to hold

Departmental Competitive Examination in the year 1986 as they would become eligible to appear in the Examination only in the year 1987. The allegations that the promotion of the Respondents 4 to 9 were illegal was denied. although none of the Applicants represented against the promotion of Respondents 4 to 9 as Superintendents on the basis of the Competitive Examination held in 1984-85. The Applicant No. 1 had not completed three years service on the date of the representation made by him. It was denied that the appointments of Respondents 4 to 9 were either arbitrary, or illegal or bad in law or void ab-initio. It was stated that in the case of T.R. Mehta v. UOI(Supra) the Division Bench observed that the DPC/Selection must be held yearly, the word 'Test' in paragraph 6(xxi) D between the words 'DPC' and Selection' was wrong and it was introduced to mislead the Tribunal. // Respondent No. 4 took the stand that the OA was misconceived. The answering Respondent had been promoted on his own merit and there was no cause of action to file the OA against the answering Respondent. Respondent No. 4 had been promoted by an appropriate order on merit on the basis of panel formulated by the duly constituted DPC after the Limited Departmental Competitive Examination held in 1984 and result announced in 1985. It would be valid initially for one year and the period could be extended for another

six months as per the Rules. The promotion of the answering Respondent had been made after a prolonged representation resulting in a Review DPC and the merit obtained by the answering Respondent in the same. The answering Respondent was promoted against one of the vacancies of Superintendents on 21.7.1987 on the basis of 1984-85 Departmental Competitive Examination and it could not be said irregular or bad in law. The answering Respondent has set out in his counter affidavit the various representations made by him from time to time to the authorities in regard to the Examination held in 1984-85 and ultimately the Respondents promoted him by an order dated 21.3.1987. He relied on Respondent No. 3 to give appropriate reply in regard to the promotion granted to him in the rank of Superintendent. He asserts that he had been duly selected and the OA filed by the Applicant was misconceived and must be set aside. // We have examined the case of Respondent No. 4 carefully and we find no distinction in his case from that of Respondents 5 to 9. If he had not qualified within the first 5 in 1984 Examination, he was not entitled to be appointed in the vacancy of that year. If it would show that his position was better than the first five who were ordered to be promoted, something could be said but that is not his case. Further, if that was the case, then the person who was promoted as Superintendent against him, he should have been made a party in the O.A.

We have heard Shri G.D. Bhandari, counsel for the Applicant, Shri Sanjeev Ralli, counsel on behalf of Respondents Nos 1 & 3, Shri P.C. Sharma for Respondent No. 5.

There is no doubt that there were two sources of promotions to the post of Superintendent in the IARI from the rank of Assistants/Stenographers who had put in three years service in the grade of Rs. 425-700. Whenever vacancies occurred in the posts of Superintendents in the IARI, 2/3rd of the posts were to be filled up by promoting Assistants on the basis of seniority/fitness. The remaining 1/3rd posts were filled up from amongst Assistants/ Stenographers in the grade of Rs. 425-700 who had put in three years of service in that grade. There is no dispute between the parties that as far as the promotion was concerned, the DPC would meet every year, draw up a panel and promote to the posts of Superintendents all those who had been selected as and when vacancies occurred in 66.2/3rd % quota. The dispute between the parties really hovers round the question whether the Limited Departmental Competitive Examination was to be held annually for filling up 1/3rd quota and secondly, if a panel of names was proposed which was in excess of the vacancies of that year and whether candidates out of that panel could be appointed as Superintendents in the subsequent year without holding any further Examination.

(19)

Learned counsel for the Applicant urged that, the Examination was an annual affair. 1/3rd of quota could not be filled in by promotees on the basis of seniority/selection. It had to be confined to direct recruitment i.e. those Assistants and Stenographers who had put in three years in the grade of Rs. 425-700 and the number of candidates could be equal to the number of vacancies to be filled in by their category of employees. In other words, their contention was that it would be evident every year as to how many vacancies in the posts of Superintendents were there and 1/3rd of the posts would be reserved to be filled up from amongst successful candidates after the Departmental Examination. It was contended that the number of candidates to be declared successful would be equal to the number of posts available in that year. It was further urged that even if a panel was prepared, that panel would hold good only for that period and if one of the selected candidates did not join, then the next one in the panel would take his place. But the panel's life could not exceed for filling up the posts next year. The reason given was that one year later there would be further vacancies and besides some more persons would be eligible after having completed three years service as Assistant/Stenographers in the grade of Rs. 425-700. In case the candidates whose names found place in the panel after the Examination were appointed in

subsequent years, it would mean that the candidates who were eligible in the subsequent years by virtue of having put in three years services as Stenographers/Assistants would be deprived of their chances.

There is substance in what was urged on behalf of the Applicants. If the vacancies were to be determined each year, the Examination had also to take place each year. If a panel was drawn up, that would be utilised only for the purpose of filling in vacancies where one of the selected candidates declined to join or left the service or was unable to join the service. The Rule referred to in Annexure A-4 clearly stipulated an annual Examination on the basis of those Assistants/Stenographers who had completed three years service on the first of January of the year in which the Examination is held. The relevant part of the Annexure A-3 reads as follows :

Method of recruitment (a) (i) 66 2/3% by promotion whether by direct recruitment or by promotion or by deputation/transfer. (ii) 33 1/3% by way of limited Departmental Competitive Examination confined to Assistants and Stenographers in the scale of Rs. 425-790 of the concerned Institutes, having not less than 3 years service in the grade of Assistant/Stenographer, as on 1st January of the year in which the examination is held

There can be no manner of doubt that only those employees would/eligible to appear in the Examination who be had completed three years service on the 1st January of the

-14-

year in which the Examination was held.

The point is that 33 1/3% of the quota in the posts of Superintendents had to be filled up by taking the Examination. If there were a number of vacancies arising in any particular year in the posts of Superintendents, only 66 2/3% could be promoted on the basis of seniority-cum-fitness.

For the remaining 33 1/3% ^{quota} an Examination was imperative and that examination would ^{be} for the benefit of all those Assistants/Stenographers who had put in three years service as on 1st January of the year of the Examination. There is a clear indication that if there be three vacancies for the posts of Superintendents in a particular year, then an Examination had to be held for selecting one candidate by Examination. We are of the ^{view} that the Rules as given in Annexure A-3 clearly stipulate filling in of 1/3rd posts of Superintendents in any particular year by Examination and that Examination will include all Assistants/Stenographers who had put in three years as on 1st January of that year. It, therefore, means that all those who had completed three years had a right to sit for the Examination for the post of Superintendents. It further means that those posts could not be appropriated for some other category.

The main thrust of the argument in this case as noticed above, was that Respondents 4 to 9 were declared successful in the Examination for the year 1984-85 and

they were entitled to be promoted in the vacancies that occurred in 1985 or 1986 or 1987 because their names had been included in the panel of successful candidates for the 1984 Examination. It is true that their names were included in the list of successful candidates but the total number of vacancies for 1984 were only 5. Five admittedly had been promoted and there was no dispute about their promotion. The other six employees had been declared successful but there was no vacancy for them in the year 1984. Consequently, they could not be appointed in 1984. They could only be accommodated provided any one of the first five had declined the promotion or could not accept the post but that situation never came about. The Respondents 4 to 6 remained on the panel and in the year 1987 they were issued appointment orders as Superintendents. Could this be done? We are firmly of the view that this could not be done. When the Examination was for a particular year and it was well known even before the Examination was held that a specific number of vacancies were to be filled up by limited Departmental Competitive Examination, then only the said number could be promoted, as tallied with the number of vacancies available for promotion by Examination. It is true that no Examinations were held in ^{the} years 1985, 1986 and 1987 but that does not mean that the six names which

(3)

were held over in the panel of 1984 Examination of which results were declared in 1985 could be awarded promotional posts without holding an Examination in the year 1987.

By that time, ~~numerous~~ other candidates had become eligible and they were deprived of their chance.

There was an argument that when Respondents 4 to 6 passed the Examination in 1984, the Applicants were not even eligible to take the Examination. This argument is not relevant. They were not contesting the Examination of 1984 at all. The Respondents 4 to 6 may have qualified but they were not within the first five. Consequently, they had no right to be appointed for the vacancies for the year 1984. Five had been appointed and that ended the vacancies of that year. We do not know how many vacancies arose in 1985, 1986 and 1987 for those figures were not revealed from the pleadings before us. Possibly, there were vacancies in 1985, 1986 and 1987 and if that was so, then Examination had necessarily to be held for each year.

The field/eligibility having expanded, the eligible candidates could not be deprived. The claim of the Respondents 4 to 6 is that once their names had been empanelled, they were entitled to be appointed before others. We are unable to agree. There were only five persons in the panel and if the DPC kept another 25 on the panel, it would mean that for ~~five~~ or ^{more} ~~2~~ years no eligible

candidate, who had completed three years of service as Stenographer/Assistant would be able to compete in the Examination. This would be in complete negation of the policy laid down in Annexure A-3. There is one more aspect of the matter. If there is no restriction on the number to be included in the panel, any number of names could have been selected, thus shutting the doors to other eligible candidates who qualified by virtue of their qualifying service

In our view, the Rules (Annexure A-3) lay down clear policy that 33 1/3% of the total vacancies in any one year had to be filled up by a limited Departmental Competitive Examination which was open to candidates who had completed three years of service as Stenographers/ Assistants. Consequently, an annual Examination was imperative if there were 3 or more vacancies in the posts of Superintendents in the IARI for that year. We are of the view that the successful candidates would be only those who qualified against the number of available vacancies to be filled up by Examination for that year. We are further of the view that the Rules provide when someone amongst the successful candidates did not join or the vacancy remained unfilled, then the same would be filled up from the names in the panel. There is, however, nothing in the Rules (Annexure 3) which permits drawing up of a large panel and filling the vacancies which occur in the subsequent years from the said panel. We are, therefore, of the opinion that the alleged orders dated 31.3.87 and 29.10.87 are bad in law and

must be quashed. We are, however, conscious of the fact that the Respondents 4 and 5 have been appointed vide Office Order dated 21.3.87 and the Respondents 6 to 9 by Office Order dated 29.10.87 and they have been working as Superintendents. Thus by quashing the orders, their appointments would be tenuous. But we propose that their appointments will be treated as ad hoc and they would be continued as such till the Examinations for the years 1985, 1986, 1987 and 1988 are held and if they succeed in those Examinations, their appointments be regularised accordingly. In case they did not succeed, they would have promotion quota. to be reverted, unless they are promoted under the 66 2/3% L

The Indian Council of Agricultural Research had issued a Circular letter dated 11.5.1988 in which it was clearly laid down that "a Select List will be prepared for vacancies ~~to be~~⁽⁰⁸⁾ filled up through Direct Recruitment as well Departmental Competitive Examination. This list will be based on the number of vacancies actually available on the date of declaration of the result. In other words, the number of candidates included in the Select List will be equal to the number of vacancies existing on the date of declaration of the result and will not exceed this number". This Rule came in 1988 and will not have effect on the earlier Examinations but will certainly apply for the Examination of the year 1988.

We were cited a case of Jiten Kumar Swain vs. Union of India & Ors (A.T.R. 1987(1) CAT 306. That was a case where the Applicant had appeared in a Test but his name did not appear in the list of successful candidates. He made representation. The Department found that he had passed the test and empanelled his name and promoted him. But subsequently his appointment was cancelled. The order of cancellation was challenged and was held to be illegal. This was a case of a casual Khalasi and the Rules which governed the promotion etc. were not the same as in the case of an employee of the IARI.

In view of the above, we set aside the appointment orders dated 21.3.1987 and 29.10.1987 but direct the Respondents 1, 2 and 3 to treat the appointments of the Respondents 4 to 6 as ad hoc and continue till the vacancies by Examinations in the years 1985, 1986, 1987 and 1988 are filled in. If they get selected, their services as Superintendents would be regularised but in case any one of them fails to qualify in the Examination he would have to be reverted. Such a situation may not arise if he is selected in the 66 2/3% quota of promotion on the basis of seniority/fitness. We further direct the Respondents 1, 2 and 3 to hold Examination for the vacancies to be filled for the years 1985, 1986, 1987 and 1988 separately after a gap of two months each beginning from August, 1989. All the eligible candidates who have

(16)

completed three years service as Stenographers/Assistants on 1st of January 1985 would be eligible to sit in the Limited Departmental Competitive Examination for the year 1985 and similarly for the years 1986, 1987 and 1988. There will be no order as to costs.

We order accordingly.

B.C. Mathur

(B.C. Mathur)
Vice Chairman
3-7-1989

AB

(Amitav Banerji)
Chairman
3-7-1989