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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 996/87
Sh.H.P.Chamola

Date of decision: 19.4.93
... Petitioner

versus

Union of India through
Secretary,
Ministry of Agriculture &
Cooperation (Deptt. of Agricultural
Research & Education) New Delhi
& ors.

Respondents

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, MEMBER (A)

For the Petitioner ... Sh.G.D. Gupta, Counsel.

For Respondents ... Sh.A.K. Sikri, Counsel.

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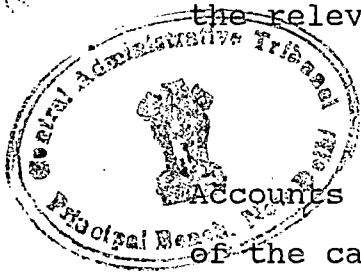
For Respondents 6, 10,
11 & 13.

... Sh.E.X. Joseph, Counsel

JUDGEMENT (ORAL)

(BY HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN)

The petitioner Shri H.P. Chamola has approached this Tribunal seeking quashing of the seniority list of Assistant Accounts Officers in the Indian Council of Agricultural Research (for short ICAR) in so far as he has been placed below Respondents 4 to 16 and for consequential benefits regarding promotion, difference in emoluments etc. To appreciate the case of the petitioner, it is necessary to advert to the relevant facts as follows:-



We are concerned in this case with the Accounts branch of the ICAR which originally consisted of the cadres of Assistant, Junior Accounts Officer in the scale of Rs. 550-900 and that of Accounts Officer in the scale of Rs. 650-1200. Sometimes in the year 1978, the post of Junior Accounts Officer appears to have been redesignated as Superintendent (Audit and Accounts).

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Respondents 4 to 16 were serving in the office of the Accountant General of Central Revenues (for short, AGCR) from where they came on deputation to the ICAR between 1974 and 1978. In their parent department, they were holding the posts of Section Officer in the scale of Rs.500-900. On deputation they came to be appointed as Accounts Officer in the scale of Rs.650-1200. So far as the petitioner is concerned, he was a member of the service of ICAR and was holding the post of Junior Accounts Officer redesignated as Superintendent (Audit & Accounts) from May 1974 in the scale of Rs.550-900. When such was the position, the ICAR took steps to restructure the Accounts branch. For that purpose "Service Rules for the combined cadre of Accounts officer in the Indian Council of Agricultural Research, 1978" (for short, the Rules) were brought into force with effect from 1.1.79 as is clear from the order dated 29.3.79 produced as Annexure 'F'. Rules 7 and 15 of the said rules which provide for constitution of the cadre and seniority, being relevant are extracted as below:-



Rule 7" Constitution of Cadre: The cadre will be initially constituted by absorbing on a selective basis the existing incumbents of the posts who are willing to be absorbed and who are found suitable. Future recruitment to the service will be made in accordance with the recruitment rules."

Rule 15" Seniority: Inter-seniority of the persons appointed/promoted in each grade of the cadre after initial constitution of the service will be made in accordance with the general principles of seniority followed by the Central Government."

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Annexed to these rules are the recruitment rules for the post of Assistant Accounts Officer which are required to be followed for future recruitment to the said cadre. The feeder cadre for promotion to the cadre of Assistant Accounts Officer is Superintendent(Audit & Accounts) in the scale of Rs.550-900 with three years of service in the grade who have opted for the Accounts cadre. It is not necessary for us to advert to other modes of recruitment prescribed therein. It is clear from Rule 4 of the said Rules which speaks of composition of the cadre that it speaks of only three cadres of Accounts Officer in the Scale of Rs.700-1300, Senior Accounts Officer in the scale of Rs.1100-1600 and that of Chief Accounts Officer in the scale of Rs.1300-1700. The cadre of Assistant Accounts Officer is not specified as forming part of the cadre covered by the rules. It was explained that this was so because formal approval for inclusion of the cadre of Assistant Accounts Officer was not received from the governing body of the ICAR. The ICAR subsequently gave approval on 5.6.79 whereupon the cadre of Assistant Accounts Officer became the first cadre among the four cadres as contemplated by Rule 4.

2. It is to the newly constituted cadre of Assistant Accounts Officer in the scale of Rs.650-1200 that the petitioner came to be promoted by order dated 11.9.79(Annexure 'H') with effect from dated 24.8.79.

✓ Th order hows that it ccords regular promotion

placing the petitioner on probation for a period of two years. So far as Respondents 4 to 16 are concerned, their cases for absorption in the cadre of Assistant Accounts Officer were considered by the Departmental Promotion Committee on 11.9.79. The decision of the Departmental Promotion Committee is contained in Annexure R-7 and reads as follows:-

" After some discussion the D.P.C. decided that the deputationists will be considered for absorption in the post to which they are on deputation irrespective of their status in their parent Departments. The D.P.C. also decided that the officers who have been absorbed will count the seniority in their respective posts from the date of their initially joining the post on deputation. The absorption will be effective from 1st September, 1979."

Para III of the said order says that Respondents 4 to 16 have been found fit for absorption to the cadre of Assistant Accounts Officer. The names of Respondents 4 to 16 with whom we are concerned in this case are found at Sl.No.12 onwards. The decision of the D.P.C was given effect to and Respondents 4 to 16 were offered absorption by Annexure 'R-7A' dated 15.9.79. Respondents 4 to 16 having given their consent they were duly absorbed as Assistant Accounts Officer with effect from 1.9.79 by orders made sometimes in June 1980. After the promotion of the petitioner and the absorption of Respondents 4 to 16 a provisional seniority list of Assistant Accounts Officer at the initial constitution stage as on 1.9.79 was prepared and circulated. It

contains the names of Respondents 4 to 16 who came to be appointed on absorption. The petitioner's name was not there obviously for the reason that the said list was limited to those who came by the process of initial constitution. This list was finalised and final seniority list was issued vide Annexure 'R-8' dated 23.3.81. It is thereafter that the petitioner made a representation as per Annexure 'J' complaining that his name had not been included and that his name should be included above Respondents 4 to 16 he having got into the cadre of Assistant Accounts Officer earlier than them. The response of the ICAR to his representation is contained in the communication dated 2.7.86 (Annexure 'S'). In the said letter addressed to the petitioner, it is stated that the persons who were absorbed from the date subsequent to the date of promotion of the petitioner shall have to be placed below him and, therefore, the proposal to revise the seniority list should be notified and objections invited. The proposal to place the petitioner below Respondents 4 to 16 was duly notified and after considering objections, the final seniority list was prepared as per Annexure 'X' dated 12.12.86. It is clear from the same that the petitioner had been placed at Sl.No.16 below Respondents 4 to 16. It is by Annexure 'Z' dated 21.3.87 that the petitioner was informed of the reasons for rejecting his representation and placing him in the seniority list below Respondents 4 to 16. Being aggrieved by the

rejection of the representation and the final seniority list in which the petitioner has been placed below Respondents 4 to 16, the petitioner has approached this Tribunal for the reliefs adverted to earlier.

3. It was submitted by Shri G.D. Gupta, learned counsel for the petitioner that Respondents 4 to 16 should not have been placed in the seniority list above the petitioner firstly for the reason that the petitioner came to be promoted to the cadre of Assistant Accounts Officer with effect from 24.8.79 whereas Respondents 4 to 16 came to be absorbed in that cadre only with effect from 1.9.79. As the petitioner became a member of the cadre on a date earlier than Respondents 4 to 16, the learned counsel submitted that the petitioner is entitled to claim seniority over Respondents 4 to 16. It was also submitted that Respondents 4 to 16 must be regarded as having come on deputation to the ICAR not to the equivalent posts but to higher posts. It was pointed out that in the parent department Respondents 4 to 16 were Section Officers in the scale of Rs.500-900. They came to be appointed on deputation as Accounts Officer in the scale of Rs.650-1200. The very fact that they came to be appointed on deputation to posts carrying much higher scale of pay it was urged by itself is sufficient to indicate that Respondents 4 to 16 were not holding posts in the parent department equivalent to the post of Accounts Officer in the scale of Rs.650-1200 which post

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now stands designated as Assistant Accounts Officer under the new Rules. It was also submitted that Respondents 4 to 16 have not produced any order or decision of the ICAR holding that the posts held by them in their parent department were equivalent to the posts on which they came on deputation to the ICAR. Reliance was placed on the order of the Government dated 22.12.59. Reliance was also placed on the letter of the ICAR dated 30.10.85 (Annexure 'O') wherein it is stated that the general principle laid down in the order of the Government of India dated 22.12.59 relating to seniority of persons initially appointed in the Council and thereafter absorbed in service of the Council has to be fixed in the cadre in which they are absorbed with reference to the date of their absorption and not on the basis of the date of their deputation. Relying on the order of the Government and the decision of the ICAR it was maintained that the seniority of Respondents 4 to 16 has to be determined in the cadre of Assistant Accounts Officer taking into account the date of absorption and not the date from which they were in the equivalent posts in the parent cadre or from the date on which they came to be appointed on deputation in the ICAR. The stand taken by the respondents, on the other hand, is that having regard to the provisions of Rule 7 of the Rules, persons who got inducted at the initial constitution of the service have to be regarded as seniors to those who are recruited in accordance with the rules that came into force with effect from 1.1.79.

4. It is clear from the scheme of the Rules that the initial constitution as well as subsequent recruitment to the cadres are regulated by specific provisions in that behalf. Rule 7, in our opinion, is of crucial importance to the decision of this case. It speaks of the constitution of the cadre which includes the cadre of Assistant Accounts Officer at any rate with effect from 5.6.79. The promotion of the petitioner as also the absorption of Respondents 4 to 16 took place after 5.6.79. It is but right that we should proceed on the basis that the Assistant Accounts Officer became a part of the cadre contemplated by Rule 4. Rule 7 which speaks of the constitution of the cadre makes it clear that the cadre has to consist of persons inducted by two processes. The two processes contemplated by the Rule are absorption on a selective basis of the existing incumbents of the posts and future recruitment to the post in accordance with the new rules. The expressions "initial" and "future" used in Rule 7 indicate the order in which the two processes have to be operated upon. The rule says that the cadre will be initially constituted by absorbing on a selective basis the existing incumbents of the posts who are willing to be absorbed. In Black's Law Dictionary the word "initial" is given the meaning 'that which begins or stands at the beginning'. Having regard to the use of the expression that the cadre will be initially constituted by absorbing on selective basis the existing incumbents of the posts it is clear that the first step

to be taken according to the mandate of Rule 7 is to absorb on selective basis the existing incumbents of the posts. The other process by which induction has to be made to the cadre as is clear from the expression "future recruitment" is that that process has to be resorted to only after the initial constitution by absorbing on selective basis the existing incumbents of the posts. We, therefore, have no hesitation in holding that Rule 7 commands the ICAR to take steps for absorption into the cadre of the existing incumbents of the posts and thereafter to resort to future recruitment in regard to vacancies that remain unfilled even after absorption or vacancies that arise thereafter. That being the clear effect of Rule 7, we have no hesitation in holding that that class of persons who come by the process of absorption of the existing incumbents have to be placed in the seniority list above those who come by the process of future recruitment. We would like to make it clear that the process of initial constitution is by absorbing on selective basis the existing incumbents and does not govern subsequent absorption of later deputationists.

5. We are really not concerned in this case with the problem of relative seniority among those who stand absorbed as Assistant Accounts Officer. There does not appear to be any controversy in that behalf. What

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principle should be followed for fixing their relative seniority therefore, need not detain us. So far ^{as the} relative seniority of Respondents 4 to 16 and the petitioner is concerned, that would be regulated by the application of Rule 7 and not any other provision. It is not possible to agree with the contention of the learned counsel for the petitioner that the order of the Government dated 22.12.59 (Annexure 'P') and the letter of the ICAR dated 30.10.85 (Annexure 'O') govern the facts of this case.

6. This takes us to the examination of the relevant facts in this case. Respondents 4 to 16 were existing incumbents on 1.1.1979. It cannot and it is not disputed that Respondents 4 to 16 were absorbed on a selective basis in pursuance of the decision of the DPC and, hence became part of the initial constitution of the cadre. The order absorbing them itself clearly states that they were absorbed with effect from 1.9.79. It is no doubt true that the DPC has stated that the seniority should be fixed taking into consideration the dates on which Respondent 4 to 16 came on deputation to the cadre equivalent to that of Assistant Accounts Officer. This does not mean that Respondents 4 to 16 must be deemed to have become members of the regular service with effect from the dates on which they came on deputation to the ICAR. Until Respondents 4 to 16 were absorbed in the ICAR they were Government servants on the basis of which they secured their retirement

benefits upto 31.8.79. It is, therefore, not just and proper to regard Respondents 4 to 16 as having become regularly appointed Assistant Accounts Officer with effect from the dates on which they came on deputation to the ICAR . They can be regarded as having become Assistant Accounts Officer only from 1.9.79. The decision of the DPC must only be understood as having relevancy for the purpose of assigning ranking amongst Respondents 4 to 16 which has to be done taking into account the respective dates on which they came on deputation. We, therefore, hold that so far as Respondents 4 to 16 are concerned they must be regarded as having become part of the initial constitution of the cadre of the Assistant Accounts Officer with effect from 1.9.79 and not from any anterior date. So far as the petitioner is concerned, he has been duly promoted by order dated 11.9.79 as Assistant Accounts Officer with effect from 24.8.79. If nothing more has to be said about the situation it is obvious that the petitioner having entered the cadre of Assistant Accounts Officer by promotion on a date earlier than Respondents 4 to 16 who were inducted into the cadre by absorption, the petitioner has to be placed in the seniority list above

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Respondents 4 to 16. But what comes in the way of our accepting such a position is the statutory provision contained in Rule 7. We have already interpreted Rule 7 as requiring the ICAR to constitute the cadre of Assistant Accounts Officer firstly by absorbing on selective basis the existing incumbents and filling up other vacancies by making recruitment in accordance with the rules. The proper course which should have been adopted by the ICAR having regard to the clear mandate of the statutory provision contained in Rule 7 was to complete the process of absorption of the existing incumbents in the first instance and thereafter fill up the vacancies by resorting to the process of promotion. The ICAR has subverted this process and has acted in violation of Rule 7. If the ICAR had acted consistent with the rules, the absorption should have taken place first and thereafter the promotion of the petitioner and others. The ICAR reversed this process in violation of Rule 7 and promoted the petitioner with effect from 24.8.79 and absorbed Respondents 4 to 16 from a later date with effect from 1.9.79. We will not be justified in the circumstances in granting the relief to the petitioner to place him above Respondents 4 to 16, as granting of such relief would be clearly opposed to the

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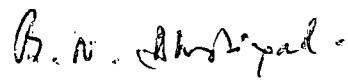
mandate of Rule 7. As justice and equity are the principles that should guide the Tribunal in its decision making process, in our opinion, it would be unjust and inequitable having regard to the circumstances of the case to direct the placing of the petitioner above Respondents 4 to 16 in violation of Rule 7. We say so also for the reason that whereas Respondents 4 to 16 were functioning right from the date on which they came on deputation in the higher cadre of Assistant Accounts Officer or equivalent, the petitioner was functioning in a lower post until he came to be promoted with effect from 24.8.79. The same view was taken by the ICAR when rejecting the representation of the petitioner.

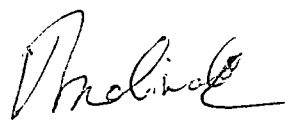
7. In the circumstances, it is unnecessary for us to examine that Respondents 4 to 16 were holding posts equivalent to that of Assistant Accounts Officer in their parent department before they came on deputation. What is relevant for purposes of absorption under Rule 7 is the post the person was holding on 1.1.1979. It is in that post that he is entitled to be absorbed even if he was holding lower post in his parent department. Under Rule 7 what is relevant is whether the person concerned was the existing incumbent of the post in which he is being absorbed. It is nobody's case that Respondents 4 to 16 were not holding posts equivalent to the post of Assistant Accounts Officer on the date on which they came to be absorbed. In that

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view of the matter, it becomes unnecessary for us to examine the level at which Respondents 4 to 16 were functioning in their parent department before they came on deputation.

8. For the reasons stated above, this petition fails and is dismissed. Having regard to the circumstances, it is clear that the mistake of the ICAR led to the present dispute which could have been avoided. Hence, it is a fit case to award cost to the petitioner. The ICAR is directed to pay a sum of Rs.1000/- to the petitioner as costs.


(B. N. Dhoundiyal)
Member (A)


(V.S. Malimath)
Chairman

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