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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH NEW DELHI

O.A. No. 1174 of 1987

Date of decision: 21.10.1988

1. S.P.Rout, Deputy Director( ad hoc ) Commission for Scheduled Castes and Scheduled Tribes, Lok Nayak Bhavan, New Delhi-110 003.
2. C.B.Sharma, Dy. Director(Ad hoc) M/o Welfare, T.D.Division, New Delhi.
3. Dr. PSK Menon, Joint Director ( on deputation), M/o Welfare TD Division, New Delhi.
4. R.K.Pradhan Dy. Director(Adhoc) Field office of the Commission for SC & ST at Guwahati.
5. Dharam Paul Asstt. Director(adhoc), Commission for SC&ST Hqs. New Delhi.
6. RV Venkatachalam, Asstt. Director(ad hoc) Commission for SC&ST, Hqs. New Delhi.
7. P.Kotaiah, Asstt. Director( ad hoc) Field Office of the Commission for SC &ST at Hyderabad.
8. MM Sharma Asstt. Director ( ad hoc ) office of the Commissioner for SCs and STs New Delhi.
9. Dr. V.P. Patel Asstt. Director( ad hoc) Field Office of the Commission for SCs and STs at Bhubaneswar.
10. Y.P.Marwaha, Asstt. Director( ad hoc) M/o Welfare, SCD Division, New Delhi.
11. SS Malhotra, Asstt. Director( ad hoc ) o/o Commissioner for SC & STs New Delhi.
12. Dr. Lalit Kumar Asstt. Director ( ad hoc ) Commission for SCs & STs Hqs New Delhi.
13. VM Parmar Asstt. Director( ad hoc ) M/o Welfare SCD Division, New Delhi.

.... applicants.

Vs.

1. Union of India through its Secretary, M/o Welfare, Shastri Bhavan New Delhi -110 001.

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2. The Secretary Union Public Service Commission, Dholpur House, New Delhi 110 011.
3. The Secretary, Commission for Scheduled Castes and Scheduled Tribes, Lok Nayak Bhavan, New Delhi-110 003.
4. The Commissioner for Scheduled Castes & Scheduled Tribes, West Block I, RK Puram New Delhi-110066.

... Respondents.

CORAM : The Hon'ble Mr. P.K.Kartha, Vice Chairman, (J)  
The Hon'ble Mr. S.P.Mukerji, Vice Chairman (A)

PRESENT : Mr. J.P. Verghese, Advocate, Counsel for the applicant.  
Mr. P.H.Ramchandani, Advocate, Counsel for the respondents.

(JUDGMENT of the Bench delivered by  
Hon'ble Mr. S.P.Mukerji, Vice-Chairman  
(A).)

JUDGMENT :

Shri S.P.Rout and 12 others who are working as Joint Director (On deputation), Deputy Director ( Ad hoc ) and Assistant Directors ( Ad hoc ) in the joint cadre of technical posts in the Ministry of Welfare, National Commission for Scheduled Castes and Scheduled Tribes and the office of the Commissioner for Scheduled Castes and Scheduled Tribes, have moved this application under Section 19 of the Administrative Tribunals Act, 1985 praying that they may be declared to be holding the posts of Assistant Directors on regular basis with effect from the due dates with consequential benefits of arrears of pay etc. and their claim should be considered for promotion to the posts of Deputy Directors.

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They have also prayed that the respondents should be restrained from appointing or recruiting any other incumbent to the posts of Assistant Director without considering the claims of the petitioner and to set aside the impugned order dated 9.7.1986 promoting two officers to the posts of Deputy Directors in the aforesaid joint cadre.

2. The brief facts of the case are as follows. In the aforesaid joint cadre there were 16 posts of Research Officers in the Group-B scale of Rs.650-1200. In accordance with the Recruitment Rules of 1970, they (R.O's) were entitled to be considered for promotion to the immediate next higher Grade-A posts of Deputy Directors in the scale of Rs.1100-1600, after completing six years of regular service in the grade of Research Officer(B). By two orders dated 19.10.1979, all the 16 posts of Research Officers (B) were upgraded to the Group-A scale of Rs.700-1300 in the following terms : -

" Sanction of the President is hereby accorded to the upgradation of eight permanent posts of Research Officer/Analyst (Welfare Statistics) and one temporary post of Research Officer in the field offices under the Commission for Scheduled Castes and Scheduled Tribes, New Delhi from the existing pay scale of Rs.650-30-740-35-810-EB-880-40-1000-EB-1200 to the pay scale of Rs.700-40-900-EB-40-1100-50-1300, with effect from the dates on which the higher grade posts are filled up in accordance with the prescribed procedure." (emphasis added).

At that time, admittedly, all the applicants were holding lien against the post of Research Officer(B) on regular and permanent basis. On the same day (19.10.1979 the respondents created 13 more posts of Research Officers (Group A) in the pay scale of Rs. 700-1300. No Recruitment Rules for filling up

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the <sup>29</sup>Group-A posts ( <sup>potentially</sup>16/ upgraded and 13 newly created ) of Research Officers could be framed till 12-4-1985.

The-refore, the incumbents of the posts of Research Officers (B) could <sup>be</sup>neither/automatically promoted to Group-A scale nor considered for regular promotion. In the meantime, since the 13 newly created posts of Research Officers(A) had to be filled up, these posts were down-graded on 13-1-1981 and filled up in accordance with the Recruitment Rules of 1970. The <sup>potentially</sup>upgraded 16 posts of Research Officers were not touched but their designation was changed to that of Assistant Directors on 28-8-1984. At present, there are 16 Group-A posts of Assistant Directors in the scale of Rs. 700-1300 and 17 Group-B posts of Research Officers in the scale of Rs. 650-1200 in the joint cadre. According to the revised Recruitment Rules of 1985, posts of Assistant Directors are to be filled up 40% by promotions of Research Officers (B) with three years of regular service in that grade on the basis of selection, and 60% by direct recruitment. On the finalization of the revised Recruitment Rules <sup>of 1985</sup> and on the recommendations of duly constituted D.P.C., 7 out of 16 posts of Assistant Directors, were filled up by promotion of Research Officers(B) w.e.f. June 8, 1987 in accordance with the order of 21-7-1987 and 9 posts falling in the direct recruitment quota were advertised by the Union Public Service Commission on 4-7-1987. Interviews have been held but appointments of the direct recruits were stayed by the Tribunal. The applicants' grievance is that since their posts on which they are holding lien were upgraded they should have been deemed to have been regularly and automatically appointed to upgraded posts of Research Officers (A) in the scale of Rs. 700-1300 w.e.f. 19-10-1979 and re-designated as Assistant Director w.e.f. 28-8-1984. They should have been given the benefit of pay scale of Rs. 700-1300 from 19-10-1979 in accordance with F.R. 23. They have been kept as Assistant Directors on

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ad hoc basis. They have thus challenged the recruitment initiated by the respondents for filling up the posts of Assistant Directors.

3. The petitioners have also challenged the promotions made to the posts of Deputy Directors by the impugned order of 19-7-1986 on the ground that the selections were made by manipulating the panel and <sup>the</sup> consideration zone. On this, the respondents have stated that the two vacancies of Deputy Directors comprised one vacancy of 1977 and the other of 1982. The DPC prepared separate panels after considering all eligible officers separately for the years 1977 and 1982. The applicant No.1 was considered for the 1977 vacancy and applicant Nos.1,2, 3 and 4 for the 1982 vacancy. Therefore, according to them, <sup>been</sup> there has no irregularity.

4. We have heard the arguments of the learned Counsel <sup>for both parties and gone through the documents carefully.</sup> for both the parties and gone through the documents carefully. The main question to be considered by us is whether the applicants are entitled to automatic elevation to Class-A scale of Rs. 700-1300 by virtue of upgradation orders dated 19-10-1979. <sup>in the terms</sup> The upgradation orders <sup>as quoted above,</sup> are not <sup>upgradation</sup> simpliciter but <sup>the upgradation</sup> is subject to the condition that the upgradation is to be "with effect from the dates on which the higher grade posts are filled up in accordance with the prescribed procedure." So long as, therefore, these posts are not filled up in accordance with the prescribed Recruitment Rules, the posts will continue to carry the scale of Rs. 650-1100. Since the prescribed procedure came into being through the Recruitment Rules notified on 12-4-1985, the upgradation cannot be anterior

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to that date and will be available only to the persons who are appointed to those posts in accordance with the Recruitment Rules. In view of the conditional rider in the orders of upgradation as discussed above, FR 23 cannot be of any avail to the applicants. The relevant portion of FR 23 is as follows:-

" The holder of a post, the pay of which is changed, shall be treated as if he were transferred to a new post on the new pay: provided that he may at his option retain his old pay until the date on which he has earned his next or any subsequent increment on the old scale, or until he vacates his post or ceases to draw pay on that time-scale. The option once exercised is final". (emphasis added)

It will be clear from the above that the benefit of enhanced pay will accrue only when there is a change in the scale of pay. In the instant case before us, the change materialises only on the satisfaction of the following two conditions:-

- a) A person is selected in accordance with the Recruitment Rules of 12-4-1985; and
- b) the selected person takes charge of the post to hold it or if he is already holding the post his selection is notified.

Since only Applicant Nos. 1, 2 and 3 were selected in the promotion quota through the regularly constituted D.P.C. in accordance with the Recruitment Rules of 12-4-1985, only they will be entitled to the higher scale and that also from the date they are notified <sup>to take over</sup> on selection. In respect of other applicants, neither of the aforesaid

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two conditions is satisfied and, therefore, they cannot be held to be entitled to the higher scale. Applicants Nos. 1,2 and 3 will be deemed to be holding the posts of Research Officers Grade-B till 21-7-1987 and thereafter, the posts of Assistant Directors in the higher scale on regular basis. The other applicants will be deemed to be holding the posts of Research Officers Grade-B as in their case, the upgradation and re-designation cannot be deemed to have materialized in their favour.

5. In Sampathkumaram Vs. Central Provident Fund Commissioner and another, 1983(1) SLJ(Karnataka) Service Rules(which is in pari materia with FR 23) as follows:-

"....There would be a deemed promotion and appointment of an incumbent to a higher post if there is only one post held by an incumbent and that post is upgraded, there being no post in which he could continue ..... If <sup>among</sup> among several posts is upgraded, no person holding a post in the lower cadre can claim that he must be deemed to have been promoted to the upgraded post".

6. As regards promotions to the posts of Deputy Directors, the respondents have clarified that the vacancies were filled up as in 1977 and 1982. Accordingly, Recruitment Rules of 1970 will apply in accordance with which the Research Officers with six years of regular service after regular appointment would be eligible. Since all the eligible Officers including those <sup>among</sup> of the applicants who <sup>were</sup> ~~are~~ eligible in 1977 and in 1982, were considered, the selection of Deputy Director by the impugned order dated 9.7.1986 cannot be faulted. The applicants in the rejoinder have stated that for the 1979 vacancy of Deputy Director, five candidates, including Shri Raut at No.4 and Mr. C.V. Sharma at No.5

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should have been considered. The respondents have stated that the DPC had considered Shri Rout, applicant No.1 for the 1977 vacancy. So far as Shri C.V.Sharma is concerned from the list of Research Officers at Annexure-IX to the counter affidavit, it is seen that he was appointed as Research Officer on a regular basis on 4.2.1975. He did not, therefore, complete six years of service in 1977 and, therefore, was not eligible. There is no merit in the contention of the applicant.

7. In the conspectus of facts and circumstances of the case, we see no justification in allowing the application and reject the same. There will be no order as to costs.

*S.P. Mukerji*  
21.10.88  
( S.P. MUKERJI )  
VICE CHAIRMAN(A)

*P.K. Kartha*  
21/10/88  
( P.K. KARTHA )  
VICE CHAIRMAN(J)

21.10.1988.