

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 653/90 **199**
T.A. No.

DATE OF DECISION 31.8.1990.

Shri Harjeet Singh Goel **Petitioner** Applicant

Shri B. S. Charya **Advocate for the Petitioner(s)** Applicant

Versus
Director General of Health Services & Others

Respondent

Smt. Raj Kumari Chopra

Advocate for the Respondent(s)

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The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D. K. Chakravorty, Administrative Member.

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?

(Judgement of the Bench delivered by Hon'ble
 Mr. P. K. Kartha, Vice-Chairman)

The applicant, who is working as Junior Scientific Assistant in the Directorate General of Health Services, is aggrieved by the decision of the respondents to fill up one post of Senior Scientific Assistant (Pharmacognosy) at the Central Indian Pharmacopoeia Laboratory, Ghaziabad, by the method of promotion/transfer on deputation basis. The respondents have addressed a circular letter dated 5.2.1990 to all State Governments, Union Territory Administrations and all the Ministries/Departments of the Government of India, inviting volunteers for the post. This is under challenge before us in the present application. The applicant has prayed for quashing the impugned circular, to restrain the respondents from taking any steps pursuant

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thereto, to direct them to consider him for promotion to the post of Senior Scientific Assistant (Pharmacognosy) and to direct them to treat him as having been promoted after he is found so eligible from the date when the post was vacant in July, 1988 with all consequential benefits.

2. The conditions of eligibility, according to the impugned circular, are that the applicants to the post should be holding analogous posts or should possess five years' service in posts in the scale of Rs.1400-2300 or equivalent and possess Master's Degree in Pharmacy/Botany of a recognised University, or equivalent and one year's experience of the pharmacognostical aspect.

~~.....~~ It is further stipulated that the departmental Junior Scientific Assistant (Pharmacognosy) with five years' regular service in the grade shall also be considered and in case he is selected, the post will be treated as having been filled by promotion. The Note appended to the Circular reads as under:-

"Note: Junior Scientific Assistants appointed prior to the date of publication of these rules having 5 years regular service in the grade shall be considered for promotion irrespective of the discipline they belong.

(The departmental officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion. Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same organisation/department shall ordinarily not exceed 3 years."

3. According to the recruitment rules of 1985, there is one post of Junior Scientific Assistant (Pharmacology), one

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post of Junior Scientific Assistant (Pharmacognosy), 10 posts of Junior Scientific Assistant (Chemistry) and three posts of Junior Scientific Assistant (Microbiology). There is one post of Senior Scientific Officer (Chemistry), one post of Senior Scientific Officer (Pharmacology), one post of Senior Scientific Officer (Microbiology), 2 posts of Senior Scientific Officer, Grade II (Chemistry), one post of Senior Scientific Officer (Microbiology), one post of Senior Scientific Officer, Grade II (Research and Development), one post of Senior Scientific Officer, Grade II (Pharmacology), 2 posts of Senior Scientific Assistant (Research & Development), four posts of Senior Scientific Assistant (Chemistry/ Sample Warden), 2 posts of Senior Scientific Assistant (Microbiology), one post of Senior Scientific Assistant (Pharmacology), and one post of Senior Assistant (Pharmacognosy).

4. As regards Senior Scientific Assistant (Pharmacognosy), the rule of 1985 provides as under:-

"The departmental Junior Scientific Assistant (Pharmacognosy) with 5 years regular service in the grade shall also be considered and in case he is selected, the post will be treated as having been filled by promotion.

Note: Junior Scientific Assistants appointed prior to the date of publication of these rules having 5 years regular service in the grade will be considered for promotion irrespective of the discipline they belong.

(The departmental officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationists shall be not be eligible for consideration for appointment by promotion."

5. The applicant is also a candidate for the post of Senior Scientific Assistant (Pharmacognosy) and his name is also under consideration, along with others. Earlier also, he was considered for the post of Senior Scientific Assistant

in another discipline, namely, Pharmacology, but later on he withdrew his candidature. The applicant became eligible for consideration for the post of Senior Scientific Assistant (Pharmacognosy) in view of the note in the recruitment rule extracted above. Prior to 1985, the posts of Senior Scientific Assistants were not notified disciplinewise. Under the rules of 1985, the posts of Junior Scientific Assistant are disciplinewise because the next higher posts of Senior Scientific Assistant are also disciplinewise.

6. The recruitment rules of 1985 provide that the post of Senior Scientific Assistant (Pharmacognosy) is a selection post and it is to be filled "By promotion/transfer on deputation failing which by direct recruitment." The selection on each occasion shall be made in consultation with the Union Public Service Commission.

7. The guidelines issued by the Ministry of Personnel, Public Grievances and Pensions in March, 1988, provide that "In cases where the method of promotion is by selection and the field of promotion consists of only one post, the method of recruitment by "transfer on deputation (including short-term contract)/promotion" is prescribed so that departmental officers are considered along with outsiders. If the departmental candidate is selected for appointment to the post, it is to be treated as having been filled by promotion; otherwise, the post is to be filled by deputation/contract for the prescribed period of deputation/contract at the end of which the departmental officers will again be afforded an opportunity to be considered for appointment to the post."

8. The contention of the applicant is that he as well as eleven incumbents of the post of Junior Scientific Assistants are eligible for promotion and that the

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alternatives mentioned in the recruitment rules of 1985 have to be exhausted in terms of priority. As the departmental candidates are available for promotion, the respondents should exhaust that alternative before resorting to the mode of "transfer on deputation". As against this, the respondents have contended that they have acted in conformity with the guidelines issued by the Department of Personnel in 1988, mentioned above and that the interests of the eligible departmental candidates have not been adversely affected by resorting to the composite method followed in the matter of selection.

9. We have considered the rival contentions and have gone through the records carefully. The post of Senior Scientific Assistant (Pharmacognosy) being a selection post, the applicant can only claim the right to be considered for promotion. However, we are of the opinion that the suitability of the persons in the field of promotion should be exhausted in the first instance before resorting to the method of transfer on deputation. Para. 3.124 of the O.M. issued by the Department of Personnel & Training in March, 1988 would apply only in a case where "the field of promotion consists of only one post". In the instant case, though there is only one promotional post, the field of promotion consists of all Junior Scientific Assistants (Pharmacognosy) with five years' regular service. Junior Scientific Assistants appointed prior to June, 1985 having five years' regular service in the grade, will be considered for promotion, irrespective of the discipline to which they belong. Therefore, para 3.12.6 mentioned above, will not be attracted to the present case.

10. In the facts and circumstances of the case, we direct the respondents not to fill up the post of Senior

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Scientific Assistant pursuant to the impugned circular dated 3.2.1990. They shall first exhaust the suitability for promotion of eligible departmental candidates, as mentioned in the preceding paragraph, in consultation with the Union Public Service Commission. If any one of them is found suitable for promotion, he shall be promoted as Senior Scientific Assistant.

There will be no order as to costs.

The interim order passed on 24.4.1990 and continued thereafter, is made absolute.

(Signature) -

(D. K. Chakravorty)
Administrative Member
31/8/1990

(Signature)
31/8/90

(P. K. Kartha)
Vice-Chairman (Judl.)