

O.A. No. 3071/91
O.A. No. 3110/91 ✓
O.A. No. 3111/91

Date of decision 20.8.91

Central Revenue Service
Association

Applicants

V/s

Union of India & Others

Respondents

CORAM:

The Hon'ble Mr. J.P. Sharma, Member (J)
The Hon'ble Mr. I.P. Gupta, Member (A)

For the Applicants

Shri G.B. Singh with
Shri Gurmeet Singh,
Counsels.

For the respondents

Shri R.R. Bharti, Counsel

(1) Whether Reporters of local papers may be
allowed to see the Judgement ?

(2) To be referred to the Reporters or not ?

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[Delivered by Shri I.P. Gupta, Member (A)]

These three O.As. are being dealt with
together as they raise issues which are similar
in nature.

2. The Central Revenue Chemical Service is
a service under the control of Central Board of
Excise and Customs, Department of Revenue, Ministry
of Finance. The posts of Chemical Examiner Grade I
(Rs. 3000-4500) and Chemical Examiner Grade II
(Rs. 2200-4000) are Group 'A' posts whereas the
post of Assistant Chemical Examiner below the post
of Chemical Examiner Grade II is a Group 'B' post
in the scale of Rs. 2000-3500. The number of posts
of Chemical Examiner Grade I, Chemical Examiner
Grade II and Assistant Chemical Examiner are said

to be 17, 24 and 66 only.

3. Promotions to the posts of Chemical Examiner Grade I are made on the principle of selection from amongst Chemical Examiner Grade II with five years service in the grade. The promotion quota is 75% and the remaining 25% is the direct recruitment quota according to the recruitment rules. As regards the posts of Chemical Examiner Grade II, 50% is to be filled by direct recruitment and 50% by promotion by adoption of the method of selection according to recruitment rules. In so far as the posts of Assistant Chemical Examiner are concerned, the rules enjoin that 75% posts would be filled by promotion and 25% by direct recruitment.

4. The Counsel for the applicants contended that the Third Pay Commission observed as follows :-

" We understand that the Department is considering the question of stopping direct recruitment at the level of Assistant Chemical Examiner. We think that this step would considerably improve the promotion prospects upto Class II levels. We would recommend that the 25% direct recruitment at present at the level of Chemical Examiner Grade I may also be stopped."

5. The Learned Counsel for the applicant further contended that an Expert Committee on the reorganisation of Central Revenues Chemical Service also recommended in its report on 10th August 1979 that direct recruitment only at one level i.e. Chemical Examiner Grade II to the extent of 50% should be resorted to. He added that though the Government was inclined for 100% departmental promotion as recommended by the Expert Committee and some communications were also exchanged with the Department of Personnel and U.P.S.C. yet the recruitment rules

had not been revised yet to provide for 100% promotion.

6. The Counsel for the applicants argued that the Department, however, took a practical cognizance of the desirability of the 100% departmental promotion to the post of Chemical Examiner Grade I from 1975 onwards. The last direct recruitment of the said post was made in 1970. As regards the Chemical Examiner Grade II, the last direct recruitment was made in 1974. In regard to posts of Assistant Chemical Examiner, the direct recruitment was held around 20 years back.

7. As regards filling the posts by promotion a regular D.P.C. was convened on 17th August, 1976 for the post of Chemical Examiner Grade I and thereafter on 7.4.1981 and later on 8.2.1991 and 13.9.1991. For Chemical Examiner Grade II, DPC for promotion against departmental quota was held in 1977 and in 1990. In respect of the post of Assistant Chemical Examiner, the Counsel for the applicants mentioned that only 7 posts were filled from departmental candidates and the rest have been left for direct recruitment.

8. The reliefs sought are for issue of directions to the respondents to :-

(i) Treat the officers mentioned at S.Nos. 1-3 of the statement at Annexure A-6 in O.A.No. 3110/91 as having been appointed on regular basis as Chemical Examiner Grade I from the respective dates they were initially appointed on adhoc basis.

(ii) Fill all the existing vacancies of Chemical Examiner Grade I, Chemical Examiner Grade II and Assistant Chemical Examiner by 100% promotion.

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persons
(iii) Treat 12/ mentioned in Annexure A-1
of O.A. No. 3111/91 as having been
appointed on regular basis as Chemical
Examiner Grade II from the respective
dates on which they were appointed on
ad hoc basis.

(iv) Treat the ad hoc service of officers
at S.Nos. 13 to 31 of Annexure A-3
of O.A. No. 3111/91 as regular service
in the posts of Chemical Examiner Grade II.

(v) Permit the departmental candidates other-
wise eligible to compete for direct
recruitment quota in future in relaxation
of the prescribed age limit.

9. The Learned Counsel for the applicants pleaded
that ad hoc appointments were regularised from subse-
quent date and not from the date of ad hoc appointment
whereas the respondents should have regularised from
the date of ad hoc appointment, since the quota rule
had broken down inasmuch as no direct recruitment was
resorted to for years and the reservation for vacancies
for direct recruitment was not justified. The respondents
themselves violated the recruitment rules by not
resorting to direct recruitment and, therefore, the
inference is irresistible that the quota rule had broken
down. The regularisation should therefore be done
from the respective dates of ad hoc appointment irres-
pective of the consideration whether the vacancies were
against promotion quota or direct recruitment quota.
In this connection he cited the case of Direct Recruit
Class II Engineering Officers Association v/s State
of Maharashtra [JT 1990 (2) SC 264]. He further

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cited the case of G.C. Pillai and Others v/s
Union of India and Others [1 (1990) ATLT(CAT) 58] 7
where it was observed as follows :-

" If enough direct recruits are not
available, the vacancies should be
carried forward and filled in later
years by the direct recruits. A
reasonable period for the carry forward
scheme will be three years, not more
(vide Co. A.S. Aiyar & Others v. Bala-
subramanyam & Others, 1980 SCC (L&S) 145)."

Therefore he contended that in no case the vacancies
against direct recruitment should be carried beyond
three years.

10. The contention of the Learned Counsel for the
respondents were -

- (i) The application is barred by limitation.
- (ii) The posts have been filled from time to
time in accordance with the rules. The
number of posts in the cadres being small,
recruitments have not been made with
regularity. In so far as the posts of
Chemical Examiner Grade I are concerned,
according to recruitment rules 25% vacancies
are to be filled by direct recruitment
with five years regular service in the
grade. Their year-wise vacancy position
was as under :-

<u>Year</u>	<u>Vacancy</u>
1983	4
1984	3
1985	1
1986	1
1989	3
1990	3

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[4 direct recruitment 11 by promotion]

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Since none of the officers in the consideration list had rendered qualifying service of five years in the Chemical Examiner Grade II, it was decided with the approval of the competent authority to relax the qualifying service and treat the above vacancies as for the year 1990. Even ad hoc service rendered by the candidates was taken into account. 7 officers were promoted to Chemical Examiner Grade I on recommendation of DPC of 8.2.1991. Two more officers were promoted on recommendations of DPC on 13th September 1991. Further posts of Chemical Examiner Grade I cannot be filled by promotion because no officer in the feeder cadre is eligible. The filling of four posts by direct recruitment is under consideration in consultation with the Union Public Service Commission.

- (iii) The post earmarked for direct recruitment cannot be diverted to promotee quota and that would be in violation of the recruitment rules.
- (iv) The total strength of Chemical Examiner Grade II is 24 of which only 50% falls within the promotion quota and 12 vacancies pertaining to the year 1983 to 1989 against promotion quota were filled on the recommendations of DPC which was held on 10th January 1990.
- (v) As regards Assistant Chemical Examiner, the last DPC was held on 23rd October 1990. There were 13 vacancies of which 3 fell under direct recruitment quota and the remaining under promotion quota and out of 10 vacancies for promotion quota six related to the year 1987, one to 1988 and 3 to 1990.

11. Let us analyse the facts and issues involved in the O.As. As regards the question of limitation, the Counsel for the applicants pointed out that the application challenged the orders of 1990 and 1991 and applications filed in 1991 are within the period of limitation. However we find that amongst the reliefs sought orders in respect of 12 persons mentioned at para 8(iii) of this order were issued on 9.4.1990 and the application was filed on 24.12.1991. On the file of O.A.No. 3111 there is no application for condonation of delay. We shall, therefore, put this relief aside and not consider it on ground of limitation. As regards relief at para 8(i), the orders regularising them as Chemical Examiner Grade I were issued on 22.2.1991 and the prayer in this regard is not hit by limitation. The other reliefs are for continuing grievances and they are being discussed further in the succeeding paras.

12. So far as the Chemical Examiners Grade I are concerned, Annexure 6-A shows that 7 ad hoc Chemical Examiners were ^{re}gularised as Chemical Examiner Grade I from dates in February 1991, though they were promoted on ad hoc basis as Chemical Examiner Grade I from periods ranging between 1986 to 1988. Out of 7 two have already retired and the remaining 2 were promoted from the stage of Chemical Examiner Grade II to Chemical Examiner Grade I and they had not held the post of Chemical Examiner Grade I in ad hoc capacity prior to regular appointment. Therefore in regard to the whole list it was only with reference to S.Nos. 1 to 3 that the Counsel for the applicants has requested for treating the officers as appointed on regular basis as Chemical Examiner Grade I from the dates they were initially appointed on ad hoc basis.

13. Law is settled that ad hoc appointments dehors the Rules do not establish any right. Further no regularisation in service can be allowed contrary to

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a statutory rule. It cannot be that in contravention of the statutory rule an ad hoc appointment is made and after some time that appointment is regularised circumventing the statutory rule in this manner. In the present case there was a quota for promotees and a quota for direct recruits. If somehow the posts could not be filled up by direct recruits and consequently these posts were filled up due to exigency of situation by promotee officers, there is nothing to indicate that these promotees were screened for promotion on the method of selection. However, it is nobody's case that these promotees were promoted in a haphazard manner. In fact, they appear at S.Nos. 1 to 3 of the list at Annexure A-6 and they are at the top. It had been pointed out by the respondents that none of the officers had rendered qualifying regular service of five years in Chemical Examiner Grade II and it was decided to relax the qualifying service and treat the vacancies against promotion quota as if they were for the year 1990. The recruitment rules in regard to promotion for the post of Chemical Examiner Grade I only stipulate five years' service in the grade and do not distinguish between ad hoc service and regular service. The first three officers in O.A. No. 3110 about whom relief has been sought were serving as Chemical Examiner Grade II on ad hoc basis from 1977/78 and, therefore, they had adequate experience. The officers at S.Nos. 1 to 3 have already been regularised, and there is none in the list who has been regularised from an earlier date to be affected if ^{their} ~~that~~ ad hoc service is treated for all purposes as regular. The direct recruits joining later will in any case rank junior since seniority between direct recruits and promotees regularly appointed within their respective quota must be determined by the length of continuous officiation. It cannot be said in this case that all

eligible officers were not considered, since even after considering all eligible officers, two vacancies remained unfilled. They are also not beyond the promotion quota since the respondents themselves have contended that out of 11 vacancies against promotion quota in 1990 only 9 could be filled because other officers were not eligible. A
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14. As the applicants appear to be senior-most amongst Chemical Examiner Grade I, and since nothing has been pointed out to us to the contrary and since they had the requisite experience according to the recruitment rules and have also been since regularised, we are inclined to take the view that the officers at S.Nos. 1 to 3 of O.A. No. 3110/91 are entitled to the benefit of the rule as enunciated in clause 8 of the summary of the Judgement of the Constitution Bench in the case of 'the direct recruit Class II Engineering Officers Association v/s the State of Maharashtra [JT 1990 SC 264] which reads as follows :-

"If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

15. As regards directing the respondents to fill all the existing and future vacancies by 100% promotion we must say that such a direction would be unconstitutional. Article 309 of the Constitution provides that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union to make rules regulating the recruitment until provision in that behalf is made by an act of the legislature. It is, therefore,

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for the legislative body or the executive to decide in what manner the posts are to be filled. All that we can direct in this case is that the vacancies against direct recruitment should not be carried forward beyond three years keeping in view the spirit of the judgement in the case of G.S. Pillai (Supra) and Col. A.S. Aiyar (Supra). Therefore such of the ad hoc Chemical Examiners Grade II as may have been officiating against vacancies ^{relating to promotion quota or} relating to periods prior to three years ^{either promotion or} direct recruitment quota) should be considered for regularisation according to rules and in case they are regularised the the treatment of the period of ad hoc service will depend on the legal position set out in the case of 'The Direct Recruits Class II Engineering Officers' Association' (Supra) where it was held :-

" If an appointment is made by way of step-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment

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itself is made in accordance with the rules applicable to substantive appointments as in the present case."

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16. As regards relief at item 8(v), the recruitment rules themselves permit of relaxation of age for Government servants.

17. Therefore our directions/orders briefly are :-

- (1) The ad hoc service as Chemical Examiner Grade I prior to regularisation of S.Nos. 1 to 3 of the Annexure A-6 in O.A. No. 3110/91 should be deemed as regular.
- (2) The request for direction to fill vacancies of Chemical Examiner Grade II and Assistant Chemical Examiner by 100% by promotion is rejected.
- (3) Such of the ad hoc Chemical Examiners Grade II as may have been officiating against vacancies relating to ^{promotion quota or relating to} periods prior to three years ~~(either promotion or direct recruitment quota)~~ should be considered for regularisation according to rules and in case they are regularised the treatment of the period of ad hoc service will depend on the legal position set out in the case of 'The Direct Recruit Class II Engineering Officers' Association' (Supra).

With the above directions/orders, the O.As. are disposed of with no order as to costs.

I.P. Gupta
Member (A)

28/8/92

J.P. Sharma
Member (J)

True copy
Attached

Original
8/8/92