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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1355/2004
Miscellaneous Application No.1142/2004

With

Original Application No.1356/2004
Miscellaneous Application No.1143/2004

New Delhi, this the 7th day of March, , 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)

O.A.No.1355/2004:

1. Vipin Bhatnagar,
Deputy Director (Chemistry)
Presently working on deputation as Joint Director
Directorate of Plant Protection
Quarantine and Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
NH-IV, Faridabad – 121 001.
2. B.D.Brahamchari,
Deputy Director (Chemistry)
Directorate of Plant Protection
Quarantine and Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
NH-IV, Faridabad – 121 001.
3. Dr. Hari Prasad,
Deputy Director (Chemistry)
Directorate of Plant Protection
Quarantine and Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
NH-IV, Faridabad – 121 001.
4. Dr. R.S.Sharma,
Deputy Director (Chemistry)
Directorate of Plant Protection
Quarantine and Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
NH-IV, Faridabad – 121 001. .. Applicants

(By Advocates: Sh. V.S.R.Krishna with Sh. S.N.Anand)

Versus

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- 2 —
1. Union of India through Secretary
Ministry of Agriculture
(Department of Agriculture & Cooperation)
Krishi Bhawan, New Delhi.
 2. The Secretary
Department of Personnel and Training
North Block
New Delhi.
 3. The Secretary
Union Public Service Commission
Dholpur House
New Delhi. ... Respondents

(By Advocate: Sh. D.S.Mahendru)

O.A.No.1356/2004:

1. Rakesh Kumar
Assistant Director (Chemistry)
Directorate of Plant Protection
Quarantine and Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
NH-IV, Faridabad – 121 001.
2. B. N.Jha,
Assistant Director (Chemistry)
Directorate of Plant Protection
Quarantine and Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
NH-IV, Faridabad – 121 001.
3. V.D.Gaekwad
Assistant Director (Chemistry)
Directorate of Plant Protection
Quarantine and Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
NH-IV, Faridabad – 121 001.
4. R.K.Sharma,
Assistant Director (Chemistry)
Directorate of Plant Protection
Quarantine and Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
NH-IV, Faridabad – 121 001. .. Applicants

5. D.Bhattacharya
Assistant Director (Chemistry)
Directorate of Plant Protection
Quarantine and Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
NH-IV, Faridabad - 121 001.
6. Dr. (Mrs.) Vandana Seth
Assistant Director (Chemistry)
Directorate of Plant Protection
Quarantine and Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
NH-IV, Faridabad - 121 001.
7. Vijendra Singh
Assistant Director (Chemistry)
Directorate of Plant Protection
Quarantine and Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
NH-IV, Faridabad - 121 001.
8. Raj Singh
Assistant Director (Chemistry)
Directorate of Plant Protection
Quarantine and Storage
Department of Agriculture & Cooperation
Ministry of Agriculture
NH-IV, Faridabad - 121 001. .. Applicants

(By Advocates: Sh. V.S.R.Krishna with Sh. S.N.Anand)

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1. Union of India through Secretary
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Union Public Service Commission
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New Delhi. ... Respondents

(By Advocate: Sh. D.S.Mahendru)

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ORDER

By Mr. Justice V.S. Aggarwal:

By this common order, we propose to dispose of the following two Original Applications which basically involve a common question:

Original Application No.1355 /2004
with
Original Application No.1356/2004

For the sake of convenience, we are taking the facts of the case from OA No.1355/2004.

2. Applicants seek that Clause-11 of the Recruitment Rules which prescribes the method of filling of posts in the grade of Joint Director (Chemistry) in the ratio of 33.33% by promotion and 66.66% by deputation should be quashed and direction should be issued to amend the Clause-11 of the Recruitment Rules incorporating the method of filling up the post of Joint Director by promotion, failing which by deputation as was recommended by the Fifth Central Pay Commission.

3. Some of the relevant facts are that the applicants are working as Deputy Director (Chemistry) in the Directorate of Plant Protection, Quarantine and Storage, Ministry of Agriculture. They contend that the Fifth Central Pay Commission after taking note of acute stagnation and other related aspects in various cadres constituting the service, recommended for merger and re-designation of various posts in Chemistry discipline at the level of Joint Director, Deputy Director, Assistant Director and Plant Protection Officer.



4. The Fifth Central Pay Commission in Para 56.22 had recommended that so far as the filling up of posts of Joint Director (Chemistry) is concerned, it should be merged, re-designated as Joint Director (Chemistry) and filled by promotion failing which by transfer on deputation.

5. The applicants' grievance is that by introducing an element of fixed percentage of 33.33 by promotion and 66.66 by deputation, failing which by direct recruitment, respondents have increased the stagnation rather than ameliorating their grievance. The applicants claim that after recommendation of the Fifth Central Pay Commission, now the respondents cannot substitute the recruitment rules. The arbitrary alteration of existing conditions of service violates Articles 14 and 16 of the Constitution and it denies the equal opportunity for feeder grade incumbents to be promoted. It has been pleaded that qualified and eligible officers are available in the feeder grade. The Fifth Central Pay Commission was an expert body which had gone into all facts and in this backdrop the above said reliefs are being pressed.

6. Some further facts in this regard can also be mentioned. According to the applicants, on 25.5.1998, the Department of Personnel & Training had asked all the Departments to substitute the existing scales by revised scales; amend the recruitment rules to incorporate consequential changes and hold DPCs. After seven years of the date of implementation of the Fifth Central Pay Commission's report, the respondents came forward to implement partially the recommendations to merge the grades and re-

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designate them without taking any further action to issue combined seniority lists. The Recruitment Rules which prescribed their promotional quota of 33.33%, violates their fundamental rights to be considered for promotion.

7. In the reply filed, the application has been contested.

8. The respondents contend that proposal relating to revision of various posts in the Chemistry discipline was initiated in accordance with the recommendations of the Fifth Central Pay Commission. After merging and re-designation of various posts under the Chemistry discipline, the sanctioned strength of various Groups 'A' and 'B' was:

S.No.	Posts	Total No.	Category
1.	Joint Director (Chemistry)	6	Group A
2.	Joint Director (Chemistry)	6	- do -
3.	Asst. Director (Chemistry)	7	- do -
4.	PPO	12	Group B
5.	Sr. SSA-II	44	- do -
6.	Sr. SSA-III	10	- do -

9. It has further been pointed that the recommendations of the Fifth Central Pay Commission was recommendatory in nature. No injustice has been caused nor the action was arbitrary.

10. Before proceeding further, one can easily refer to the relevant columns of the Recruitment Rules of 2004, i.e., Columns



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10, 11 and 12 for the post of Joint Director (Chemistry). The same reads:

Column 10: Period of probation, if any:	1 year for direct recruits
Column 11: Method of recruitment whether by direct recruitment/absorption and percentage of posts to be filled by various methods:	<p>33.33% promotion failing which by deputation (including short term contract).</p> <p>66.66% deputation (including short-term contract) failing which by direct recruitment.</p>
Column 12: In case of recruitment by promotion/deputation/absorption, grades from which promotion/deputation/absorption to be made:	<p>Promotion:</p> <p>Deputy Director (Chemistry) in the scale of pay of Rs.10000-15200 with five years' regular service in the grade.</p> <p>Note: Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors shall also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying/eligibility service.</p> <p>Deputation (including short term contract):</p> <p>(a) (i) Officers under the Central/ State Governments /Union Territories/ Public Sector Undertakings/ Semi-Governments/ Autonomous or Statutory Organisations/ Agricultural Universities/ Recognised Research Institutions or Councils, the</p>

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	<p>parent cadre/Department; or</p> <p>(ii) with five years service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs.10000-15200/- or equivalent in the parent cadre/department; and</p> <p>(b) possessing the educational qualifications and experience prescribed for direct recruits under column (8).</p> <p>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 deputationist shall not be eligible for consideration for appointment by promotion.</p> <p>Period of deputation (including short term contract) including period of deputation (including short term contract) in another ex-cadre post held immediately preceding this appointment in the same or some other organization/Department of the Central Government shall ordinarily not to exceed four years. The maximum age limit for appointment by deputation (including short term contract) shall be not exceeding 56 years as on the closing date of the receipt of applications."</p>
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11. The Fifth Central Pay Commission had been set up and in Paragraph 1.41, the Commission recorded certain procedural aspects which read:

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"1.41 In a major departure from the procedure followed by previous Commission, this Commission decided to take expert opinion of research institutes of excellence. Nineteen studies on selected topics concerning Central Government employees were assigned to organizations like the Indian Institute of Public Administration, National Productivity Council, Institute of Defence Studies and Analysis, Institute of Applied Manpower Research, Management Development Institute, Centre for Policy Research, Tata Consultancy Services, Fiscal Research Foundation, Tata Economic Consultancy Services, M/s Noble House and the Strategic Management Group. The details of the items of study and the institutions to whom these were assigned may be seen in Annexe 1.10. The consultants had wide-ranging discussions with the concerned departments and associations of employees. Reports of all these institutions were received and analyzed in the then fix the pay scales for other posts in the various Ministries and Departments of the Central Government. This is followed by a Section on the officers and employees of the Supreme Court of India and the High Court of Delhi. We conclude this Part by suggesting the pattern for the Union Territories."

The Pay Commission went on to record that the whole idea of having Public Service Management first and Pay scales later is that we should first decided what we are going to do with our bureaucracy its size, efficiency, productivity, etc.



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12. In paragraphs 51.34, the Commission referred to the direct recruitment among the scientific staff existing at almost every level. The Pay Commission in this regard recorded:

“51.34 Direct recruitment among the scientific staff exists at almost every level of pay scales and without any uniform linkage with qualification. We observe that some Post-graduate and engineering degree entrants are placed in the scale of pay of Rs.1400-2300, while some are placed in higher scales. The entry level of graduates in science also varies from the scale of pay of Rs.1200-1800 to Rs.1640-2900. Scientific staff have demanded that Ph. D. degree holders must uniformly be placed in Group A and Engineers in Group B Gazetted levels, irrespective of the post in which initial recruitment has taken place. The Second CPC favoured elements of direct recruitment at Class II and Senior non-gazetted positions based on a uniform application of qualifications. The 3rd CPC also based its recommendations on qualification. We have been informed that direct entry at too many levels creates problems of stagnation.”

It went on to record about the demands and the Memoranda that has been issued and refer to Flexible Complementing Scheme in the following scenario:

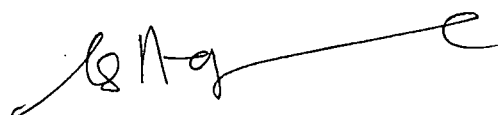
“56.18. The Directorate has been declared as a scientific and technical organisation since May, 1988 but does not enjoy the benefits of the Flexible Complementing Scheme applicable to such organizations. The S&T Officers have demanded extension of Flexible Complementing Scheme not only to the Group A levels but also Scientific

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Staff at Group B & C levels. Elsewhere in this Report we have made our recommendations on the Assured Career Progression (ACP) Scheme and a modified Flexible Complementing Scheme restricted to R & D professionals. Since the officers of this Directorate are not covered by the definition of R & D professionals suggested by us, We do not recommended extension of FCS to them. They will, however, be governed by the provisions of the ACP Scheme recommended by us. It is also recommended that as a measure to check stagnation multiple levels of direct entry in a single Group should be discontinued. Isolated posts in each stream should be merged with the cadre posts of the stream and filled by promotion as far as possible. The posts of Director (NPTTI) and Director (IPM) alongwith Director (CIL) and Secretary (CIB) should be redesignated as Addl. Plant Protection Advisor. The posts of Addl. Plant Protection Advisors should be merged for purposes of promotion seniority may be formed for promotion to higher posts. The changes at the levels of Joint Director and below should be effected stream-wise in the manner discussed in the succeeding paragraphs."

13. Ultimately, it was further recommended:

"56.22 There are two posts each of Joint Director (Chemistry) and Director (Regional Labs) and one post each of Senior Deputy Director, Senior Chemist all in the pay scale of Rs.3700-5000. These six posts should be merged, redesignated as Joint Director (Chemistry) and filled by promotion failing which by transfer on deputation. The lone post of Deputy Director (Chemistry) and two posts of Sr. Scientific Officer (Chemistry), all in the pay scale of rs.3000-4500 should be merged, redesignated as Deputy Director (Chemistry) and filled entirely by promotion. There are two posts of Asstt. Director (Chemistry) and five posts of



Scientific Officer (Chemistry).

14. In pursuance of the recommendations of the Pay Commission, the competent authority had accorded the sufficient time to re-designate and merge certain posts and it created six posts of Joint Director (Chemistry). It is on the strength of these facts that the applicants' learned counsel had raised the grievance that what had been recommended by the Pay Commission has been undone. The order that has now been passed amending the Recruitment Rules is discriminatory. Pay Commission is stated to be an expert body. The amendment would materially effect the promotional avenues of the applicants and the expert body recommendations could not have been changed in this manner.

15. The learned counsel for the applicants relied upon the decision of the Supreme Court in the case of **PURSHOTTAM LAL AND OTHERS v. UNION OF INDIA AND ANOTEHR**, (1973) 1 SCC 651. In the cited case, Shri Purshottam Lal and others were employed in the Forest Research Institute and College, Dehradun. It is a department of Government of India. On 23.3.1967, the President, Forest Research Institute said that certain questions pertaining to them were being examined. The controversy was as to from which date there should be revision in the pay scales. The Supreme Court held that the said persons could not be discriminated and that the revised pay scales should be paid from 1.7.1959 as recommended by the Pay Commission. Indeed, this is not the controversy before us in the present application.

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Therefore, the decision of the Supreme Court, referred to above, will not apply to the facts of the present case.

16. In that event, reliance was being placed on the well-known decision of the Supreme Court in the case of DR. (MS.) O.Z. HUSSAIN v. UNION OF INDIA, 1990 (Supp.) SCC 688. The facts therein were little different but reference was being made to Paragraph 7 of the Judgement of the Supreme Court which reads:

“7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical ‘A’ Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the ‘A’ category scientists in the non-medical wing of the Directorate.”

17. Indeed the binding force of the Judgment exists, but it is not applicable to the facts of the present case. Indeed provisions of promotion will increase efficiency and promotional avenues should be provided and but in the matter before us, the promotional avenues are being provided. The grievance of the applicants on the contrary is that it should be otherwise than what has been

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prescribed in the Rules. Therefore, the ratio deci dendi has little application in the facts of the present case.

18. Our attention was further drawn towards the decision of the Apex Court in the **STATE OF WEST BENGAL AND OTHERS v. DEB KUMAR MUKHERJEE AND OTHERS**, 1995 Suppl.(2) SCC 640. The Supreme Court in that case was dealing with the pay scales. It was held, in that backdrop that recommendations of the Pay Commission were not subject to judicial review.

19. In fact, it is settled principle that question of prescribing recruitment rules falls within the domain of the executive/legislature as the case may be. Unless it is arbitrary, the Court would be reluctant to interfere. The Supreme Court in the case of **UNION OF INDIA AND OHTERS v. S.L.DUTTA AND ANOTHER**, 1991 SCC (L&S) 406 had gone into this controversy and held that a right to be considered for promotion is a term of service, chances of promotion are not. If chances of promotion are diminished it will not make the decision arbitrary. On that ground alone, findings of the Supreme Court are:

“14. In connection with the question as to whether the conditions of service of respondent 1 could be said to be adversely affected by the change in the promotional policy, our attention was drawn by learned Additional Solicitor General to the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni [(1981) 4 SCC 130]]. There it was held by a bench comprising three learned Judges of this Court that mere chances of promotion are not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, chances of promotion are

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not. (See SCC p.141, para 16.) Reference was also made to the decision of this Court in *K.Jagadeesan v. Union of India* [(1990) 2 SCC 228] where the decision of this Court in *State of Maharashtra v. Chandrakant Anant Kulkarni* was followed."

20. To the same effect is the decision of the Supreme Court in the case of **J. RANGA SWAMY v. GOVERNMENT OF ANDHRA PRADESH AND OTHES**, 1990 SCC (L&S) 76. It was held that it is not for the Court to consider relevance of the qualification prescribed or in other words, this matter does not fall within the domain of the judicial review.

21. More recently, the Supreme Court in the case of **P.U.JOSHI & ORS. v. THE ACCOUNTANT GENERAL, AHMEDABAD & ORS.**, 2003 (1) SCSLJ 237 held:

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and with in the exclusive discretion and jurisdiction of the State subject of course, to the limitations or restriction envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or

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bifurcate departments into more and constitute different categories of posts or cadres by underrating further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

22. In other words, the Supreme Court categorically held that employees cannot claim that rule governing the conditions of service should forever be the same as the one when he entered service.

23. With this backdrop, we revert back to the facts of the present case. Because promotion indeed cannot be considered as a fundamental right, this Tribunal will not interfere in such like matters unless there are malafides or arbitrariness writ large to prompt us to interfere.

24. It is true that Fifth Central Pay Commission had made certain recommendations to which we have referred to above. The recommendations would be recommendatory in nature and otherwise also after the said recommendations, an order had been issued re-designating and merging certain promotions thereby creating posts of Joint Director (Chemistry) but that would not affect or prevent the State from amending the Recruitment Rules.

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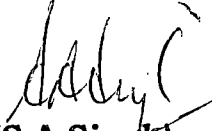
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In the amendment that has been effected to 1/3rd of the grade, has been prescribed for promotion to the post of Joint Director. Necessarily, this is a fact uncontroverted which falls within the domain of the executive. Keeping in view the nature of the work and the experience with the department, if any particular quota is prescribed, it cannot be termed that it would be arbitrary. Chances of promotion even if reduced, will not confer a right because as already pointed out above, there are no malafides that can be attributed or found on this count.

25. In fact, by increasing the quota of deputation, they will widen the scope by widening the horizon a senior post and consequently, the plea that has been so much thought of must be negatived.

26. For these reasons, both the Original Applications being without merit must fail and are dismissed.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

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