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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 694/2004

This the 26th day of March, 2005

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A.SINGH, MEMBER (A)

V.K. Yadav
S/o Late Sh. Bal Krishanji,
R/o Q.No.1105, Type V,
Central Govt. Officers Quarters,
N.H.IV, Faridabad,
Haryana.

....Applicant

(By Advocate: Sh. Yogesh Sharma)

Versus

1. Union of India through
The Secretary to the Govt. of India,
Ministry of Agriculture,
Department of Agriculture & Co-operation,
Krishi Bhawan,
New Delhi.

2. The Under Secretary,
Ministry of Agriculture,
Department of Agriculture & Co-operation,
Krishi Bhawan,
New Delhi.

3. The Pant Protection Advisor
to the Govt. of India,
Ministry of Agriculture & Co-operation,
Directorate of Plant Protection Quarantine,
& Storage, N.H.IV,
Faridabad (Haryana).

....Respondents

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

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J) :

Applicant has challenged the order of the respondents dated 13.6.95 and 11.10.95 being illegal, unjust and arbitrary and seeks a direction to the respondents to recalculate the vacancies of Deputy Directors since 1987 and constitute a review DPC for preparing yearwise panel. He further prays for a

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direction to the respondents to grant him promotion to the post of Deputy Director from the date of the vacany with all consequential benefits.

2. Applicant was appointed as Deputy Locust Entomologist Grade A at Headquarter Jodhpur on 1.1.1979. He was confirmed w.e.f. 1.1.1981. In 1987 the post of Dy. Locust Entomologist was redesignated as Assistant Director (Entomology) and the post of Locust Entomologist was redesignated as Dy. Director (Entomology). A new post of Locust Entomologist/Dy. Director (E) was created on 22.10.86. Applicant was the only eligible candidate for being considered for promotion to the said post but he was not promoted. The recruitment rules were modified vide notification dated 4.7.1987 and 75% posts were to be filled by promotion and 25% by transfer or deputation or promotion. The vacancies were first to be filled up against promotion quota of 75%. In 1987 four posts of Dy. Director (E) were vacant. In 1989 one more post of Dy. Director (E) fell vacant on the retirement of Sh. Mathur at Chennai. A new post was also created in 1989. The respondents did not convene DPC since 1991 for filling up promotion quota whereas 25% quota was filled up by appointment on deputation against one post in September, 1989. Out of 5 posts which were vacant in 1987, the respondents arbitrarily promoted three senior officers leaving the applicant to be at Sl. No.4 in the seniority list. In January 1992 applicant was promoted against the post which was created in 1989 denying promotion to him for 3 years between 1989 to 1992. As a result, he was also denied promotion to the next higher post of Joint Director in 1994 since the respondents arbitrarily decided to abolish one post of Joint Director (E) by order dated 31.3.94. Applicant was due for promotion in 1997 but on account of abolition of one post of Joint Director (E) he was deprived of the promotion. He was ultimately promoted in 2003. Now the post of Director (IPM)-cum-Additional Plant Protection Advisor is vacant and the applicant being seniormost officer in the IPM Scheme is eligible for that post but he did not fulfill the condition of 3 years service as Joint Director so he is not eligible to be considered for the same

Respondents, as such, by their illegal action deprived the applicant of his promotion to the post of Dy. Director (E) in the year 1989 when the post had fallen vacant. Applicant filed OA-68/91 in Jodhpur Bench of the Tribunal which was disposed of on 4.11.1993 directing the respondents to consider the representation of the applicant. The respondents passed order on 13.6.95. Applicant challenged this order in OA-1148/95 before Calcutta Bench of this Tribunal. During its pendency the respondents passed order dated 11.10.95 which was challenged by way of filing a miscellaneous application in the OA. After the applicant was transferred to Amritsar, the said case was got transferred to this Bench and was given new OA No.999/2002. On 30.7.2003 applicant withdrew the OA and was granted liberty to file a fresh OA impugning both the orders in a consolidated application. Hence this OA.

3. Respondents controverted the allegations made by the applicant in the reply filed to the OA. It was pleaded that post of Locus Entomologist was sanctioned w.e.f. 22.10.1986 and it was treated to have been created with effect from the date of its filling up as per recruitment rules. The post was to be filled up by direct recruitment only. Applicant was working on a lower post of Dy. Locust Entomologist which did not form the feeder grade of promotion to the higher post of Locust Entomologist as the post of Locust Entomologist was to be filled up by direct recruitment only. As such the allegation of the applicant that he was the only suitable and eligible candidate for promotion to the said post is misconceived. Under the rationalization/revision of the recruitment rules the post of Locust Entomologist along with certain other posts requiring similar educational qualification etc. was merged into a single cadre of Deputy Director (Entomology). Similarly in feeder grade the post like Deputy Locust Entomologist and certain other posts were merged to form the cadre of Assistant Director (Entomology). The revised recruitment rules of Deputy Director (Entomology) were notified on 4.7.87 but the recruitment process for filling up the vacant post of Deputy Director (Entomology) as per the amended rules could

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be started only in 1988 after the seniority list of the feeder grade of Assistant Director (Entomology) was finalized on 12.1.88. Applicant has admitted in his representation dated 17.10.94 that there were 5 vacancies of Deputy Director (Entomology) in September 1987 which also included the vacancy caused due to the retirement of Sh. Mathur at Chennai. But in para 4.5 of the OA the applicant alleged that another vacancy was caused due to retirement of Sh. Mathur during 1989 apart from newly created post of Deputy Director (Entomology) under Quarantine Scheme w.e.f. 18.12.89. Both these statements were contradictory. The correct position was that Sh. M.Krishna Kumar, Dy. Director (Entomologist) had retired on 30.6.1987 while he was posted as RQPS Chennai. Therefore, five vacancies of Dy. Director (Entomology) available during September, 1987 were inclusive of this vacancy. Out of the aforesaid 5 vacancies the post vacated by Dr. A.D.Pawar on promotion as Joint Director (Entomology) in September, 1987 was not to be filled up as the same was to be abolished in lieu of creation of higher post of Dy. Director (Entomology) which was redesignated as Joint Director (Entomology). Thus, only four vacancies were required to be filled up, three of them by promotion and one by deputation as per the recruitment rules. The recruitment process for filling up one post by deputation and three posts by promotion was initiated in consultation with the UPSC during 1988. The recruitment process by deputation method came to be completed in September, 1989 with the appointment of Sh. N.Krishnaswamy to the post of Dy. Director (Entomology), the recruitment roster was started from that method of recruitment in terms of the instructions contained in DOPT OM dated 24.6.1978. Remaining three posts falling in promotion quota were filled up vide UPSC letter dated 18.12.1990 and Sh. Harish Chandra, Dr. Meena Gupta and Dr. M.P.Mishra were appointed to the post of Dy. Director (Entomology) on 16.1.1991. Applicant was considered by the DPC but his name was not recommended in the select list. Thus, while point No.1 in the recruitment rule was allocated by deputation method, point No.2 to 4 were earmarked to represent 75% promotion quota

vacancies. A new post of Dy. Director (Entomology) was sanctioned under the quarantine scheme in December 1989 as such 5th vacancy which fell at the point No.5 of the recruitment roster again represented the 25% deputation quota and the same was to be filled up by deputation method. Subsequently, another vacancy was caused due to the retirement of Sh. N.P.Ramchandani w.e.f. 1.9.1990 which fell on point No.6 of the roster representing the promotion quota. Against this vacancy pertaining to the year 1990, the DPC recommended the name of the applicant and its recommendation was received vide UPSC letter dated 3.1.1992 and consequently the applicant was appointed to the post of Dy. Director (Entomology) on 27.1.1992. From the above, it is clear that there was only one vacancy in 1989 which was of newly created post under quarantine scheme and it fell on point No.5 in the roster, it was to be filled up by appointment on deputation basis. The other vacancy caused due to retirement of Sh. Krishan Kumar and not Sh. Mathur as claimed by the applicant became available initially in September, 1987 and not in 1989. This vacancy along with other two vacancies fell at point No.2 to 4 of the roster earmarked for promotion quota and three persons were promoted against those vacancies. Applicant does not have indefeasible right to claim promotion from the date of occurrence of the vacancy. No employee had any right to have a vacancy in the higher post filled as soon as the vacancy occurs. The promotions are also to be made on the basis of select list prospectively and not retrospectively. Applicant was appointed to the post of Dy. Director (Entomology) w.e.f. 27.1.1992 and granted promotion to the post of Joint Director (Entomology) in 2003 on his turn as per his seniority. The post of Director (IPM) fell vacant on 31.12.2003 due to the retirement of Dr. A.D.Pawar. In terms of the Recruitment Rules the senior most amongst Joint Director (PP) and Joint Director Entomology in the feeder grade with three years regular service were eligible for promotion. The only officer eligible for the said post was Dr. M. C. Diwakar, Joint Director (PP) but he could not be granted promotion as he himself was retiring from service w.e.f. 31.1.2004. The other

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two officers in order of seniority, namely, Dr. O.R.Reddy, Joint Director (PP) and the applicant did not fulfill the criteria of three years regular service in the grade as laid down in the recruitment rules. As such they could not be granted promotion.

4. In the rejoinder, applicant controverted the allegations of the respondents made in the reply and reiterated his own pleas. According to him, there were 10 posts of Dy. Director (E) earmarked for the feeder channel for promotion and two posts of Joint Director (Entomology) but the applicant was denied promotion to the post of Deputy Director (Entomology) after completing 5 years of service as Assistant Director (E) even though the post of Dy. Director (E) was available and he was eligible also. Had the applicant been promoted on the date of availability of vacancy after completing 5 years service in the post of Dy. Director (E), the applicant would have become eligible for further promotion to the post of Joint Director (E). But the post of Joint Director (E) was abolished when the applicant became eligible and entitled for promotion to the post of Joint Director (E). The order of the respondent for abolishing the post of Joint Director (E) was illegal and unjust. It was also alleged that there was no need of exhausting roster point No.1 and 5 by deputationist first. Filling up the roster point No.9 by deputation method by appointment of Sh. N.Krishnaswamy, Plant Protection Officer was not justified and he should get the promotion against the vacancy which was created during 1989. Sh. Harish Chandra was already working on the post of Dy. Director (E) at FSIL, Bikaner . He was at Serial No.9 in the seniority list. This vacancy was not filled in as Sh. Harish Chandra was given promotion at Jodhpur where the applicant was posted as Dy. Director (E) during the year 1991. The vacancy was not filled up as per roster. There is also no justification for not filling up the post of Joint Director after retirement of Sh. Pawar in the year 1990 when the Dy. Director in the feeder grade was eligible for promotion the post was not filled up within a year. It was kept in abeyance and later on it was abolished due to the fault of the administration for which applicant should not have been

punished. After the abolition of the said post, 11 Deputy Directors were deprived of the right of promotion. On the other hand, 8 Dy. Director (PP) were getting promotion against two posts of Joint Directors (PP) making the juniors becoming seniors due to the wrong decision of the respondents. Other allegations were also controverted.

5. We have heard the learned counsel for the parties and have carefully gone through the record.

6. The grievance of the applicant is that he was not given promotion to the post of Deputy Director (E) in 1989 when a vacancy was available for his promotion. He was promoted in 1992. By delaying his promotion from the post of Assistant Director (E) to the post of Dy. Director (E) from 1989 to 1992, the applicant was deprived of promotion to the next higher post of Joint Director (E) in 1994. He was promoted in 2003. Consequently, he was deprived of completing 3 years regular service as Joint Director and becoming eligible for next promotion to the post of Director. He is also aggrieved that when his turn for promotion to the post of Joint Director came the post of Joint Director was abolished in the year 1994. According to the applicant, 5 and not 4 vacancies in the post of Dy. Director (E) were available in 1987. Applicant is impugning the orders dated 13.6.95 and 11.10.95 of the respondents. Former is the order of the respondents whereby in compliance with the order of Jodhpur Bench of this Tribunal passed in OA-61/91, the representation of the applicant was considered and rejected. It is a speaking and reasoned order. The order dated 11.10.95, on the other hand, is an office memorandum of the Ministry of Agriculture of the Government of India whereby certain posts in Group A in the Directorate of Plant Protection Quarantine and Storage were abolished w.e.f. 1.4.94. This included the post of Joint Director (E).

7. The first controversy is about vacancy position between 1987 and 1989. According to the applicant there were 5 vacancies in the post of Dy. Director (E) in 1987. Three posts were filled by promotion against promotion quota of 75%

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as per recruitment rules. The next vacancy was to be filled in by the mode of deputation. But the 5th vacancy, which was available for promotion of the applicant, who was the next senior officer, was not filled. Instead the applicant was considered and was promoted, against 6th vacancy, which was created in 1990. He lamented that his promotion was delayed from 1989 to 1992, which prejudicially affected chances of his further promotion to the post of Joint Director and the Director. He admitted that one post of Joint Director (E) was abolished in 1994.

8. Conversely, the respondents denied that there were five vacancies in the post of Dy. Director (E) in 1987. It is submitted that in his representation dated 17.10.94 applicant had himself admitted that in September 1987 there were five vacancies including a vacancy caused due to the retirement of Sh. Mathur at RPQS, Chennai. In para 4.5 of the OA, however, he stated that another vacancy was caused due to the retirement of Sh. Mathur in the year 1989 and yet another vacancy was created in quarantine scheme on 18.12.89. The allegations of the applicant were ex facie contradictory. The respondents contended that in fact Sh. Krishna Kumar, Dy. Director (E) had retired on 30.6.87 at RQPS Chennai. Therefore, there were five vacancies of Dy. Director (E) in September, 1987. Out of the five vacancies, one post which was vacated by Sh. A.D.Pawar on promotion as Joint Director (E) in September, 1987 was not to be filled up as the same was abolished in lieu of creation of higher post of Dy. Director (BC) which was redesignated as Joint Director (E). As a result, only four vacancies were available in 1987 which were required to be filled up, three by promotion and one by deputation as per new recruitment rules. The promotion process started in 1988 but the promotion process of one post which was to be filled up by deputation, completed in September, 1989 and one Sh. N.Krishnswamy was appointed as Dy. Director (E). For this reason the recruitment roster started first from that method of recruitment in terms of DOPT OM dated 24.6.78. Remaining three posts were filled in by promotion of three officers senior to the applicant. Applicant

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was also considered for promotion by the DPC, but his name was not recommended in the select list. According to the respondents the recruitment roster point No.1 was allocated to 25% deputation quota and point No.2 to 4 were earmarked for 75% promotion quota. In 1989 a new post of Dy. Director (E) was sanctioned in quarantine scheme, which was the 5th vacancy as per the recruitment roster and fell in 25% deputation quota so it was to be filled in by deputation method. When another vacancy occurred due to retirement of Sh. N.P.Ramchandani on 1.9.1990, which fell on point No.6 of the recruitment roster, it was to be filled up by promotion and the applicant on being recommended by UPSC was granted promotion on 27.1.92.

9. Applicant has not denied that in the representation dated 17.10.94, he had himself alleged that there were five vacancies in the post of Dy. Director (E) in 1987 which included one vacancy caused due to the retirement of Sh. Mathur, RPQS, Chennai. According to the respondents, the vacancy was caused due to retirement of Sh. Krishna Kumar, and not Shri Mathur RQPS at Chennai in June, 1987. There is no allegation that two vacancies were caused by retirement of two officers, Sh. Mathur and Sh. Krishna Kumar, in RQPS, Chennai. There is no reason why the vacancy position given by the respondent should not be accepted.

10. Applicant in the rejoinder to the counter reply contended that old roster which was in use should have been used and there was no need to make fresh roster and filling in roster point No.1 & 5 by the candidates recruited by deputation method. According to him, the roster points No.10 to 12 should have been exhausted ~~since~~ point No.9 was already filled on ad hoc basis by giving promotion to Sh. Harish Chandra. Sh. N.Krishnaswamy, Plant Protection Officer was wrongly appointed at roster point No.9. He ought to have been promoted at point No.12 after the applicant's promotion and the vacancy, which was created in 1990, should be filled up by deputation method. It is submitted that Sh. Harish Chandra was given promotion against 1989 vacancy at Jodhpur where the applicant was performing the same duties of the post of Dy. Director (E) till the

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posting of Sh. Harish Chandra in 1991. That vacancy was not filled up as per the roster point. He pointed out to the office order dated 16.1.1991 at page 19 of the OA whereby Sh. Harish Chandra, Dy. Director (E)(Adhoc), FSIL, Bikaner was transferred on promotion to Locust Sub-Station, Jodhpur. According to the applicant, the post of Dy. Director (E), FSIL, Bikaner remained vacant. But no such case was pleaded by the applicant in the OA. It was not stated in the OA that even after the appointment of Sh. Harish Chandra on the post of Dy. Director (E) one more post of Dy. Director (E) was vacant at FSIL which was in addition to the posts which were accounted for by the respondents in the reply.

11. As such, it is clear that there were only five vacancies in the posts of Dy. Director (E) in 1987. One of these posts was decided to be not filled up as it was abolished in lieu of creation of a higher post of DD (BC), which was redesignated as Joint Director (E). Applicant has himself filed the copy of the order whereby the post of Joint Director (E) was abolished w.e.f. 1.4.94 by order dated 11.10.95 which is impugned in the OA.

12. As a result, there were only four vacancies in the post of Dy. Director (E) in 1987. One more post was created in December, 1989. Sixth vacancy became available in 1990.

13. Now the question that arises for consideration is whether those vacancies were to be filled as per old roster or new roster and if new roster was prepared after new Recruitment Rules whether first three vacancies were to be filled in by promotion quota. It is the case of the applicant and also appears from the documents, which have been filed that the service was reorganized and the posts of Dy. Locust Entomologist and some other analogous posts were amalgamated and were designated as Assistant Director (E) and the posts of Locust Entomologist and some other posts were amalgamated and were redesignated as Dy. Director (E) in 1986. Simultaneously new Recruitment Rules were also framed. Since it was not a case of mere change of designation but the service was reorganized, and new recruitments and promotions were to be made in accordance

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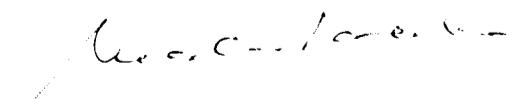


with new Rules. 25% by deputation and 75% by promotion from the feeder cadre, use of a new roster for filling in the posts become necessary. As regards the starting of the roster, DOPT OM dated 24.6.1978 ((Annexure R-3) of the reply of the respondents) has provided as under:-

"The following are some among the diverse methods being adopted by various departments in regard to the starting point of the roster:-

- (a) The mode of recruitment for which action has been initiated first,
- (b) The mod of recruitment through which first appointment was made after the notification of the recruitment rules;
- (c) The mod of recruitment mentioned first in the recruitment rules for the post concerned;
- (d) The mod of recruitment which is the most predominant."

14. Admittedly, there was no express provision in the recruitment rule for starting of the roster for filling up of the post of Dy. Director (E) against 75% promotion quota and 25% deputation quota. In the absence of such an express provision the respondents were obliged to follow this OM. Respondents have stated in the reply that the process for filling up of the four posts of Dy. Director (E) , three by promotion and one by direct recruitment, was started in 1988 but the process for filling up one post by deputation mode was completed, first in September 1989, and the recruited officer Sh. N.Krishnaswamy was appointed to the post of Dy. Director (E). In accordance with the instructions in the OM reproduced above, the recruitment roster would, thus, start from the first post going to be filled up against 25% deputation quota. The remaining three posts were to be filled in by 75% promotion quota. There is no illegality or irregularity in the respondents filling in the remaining three posts by promotion quota. The 5th post which was created in 1989, accordingly, went to the 25% deputation quota and, as such, was filled in by appointment on deputation basis. When another post fell vacant in 1990 it was to be filled up by 75% promotion quota and the applicant was accordingly promoted in January 1992.



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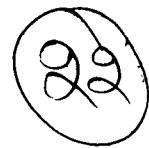
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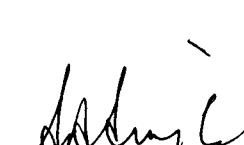
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15. We do not find any legal infirmity in the method of starting of the roster adopted by the respondents for filling in the posts. The claim of the applicant that he ought to have been considered for promotion in 1987 or even 1989 is not tenable.

16. The contention of the applicant that there was no justification for abolishing the post of Joint Director (E) in 1994, to our view, has no force. The creation or abolition of posts is in the domain of the State policy. No employee has indefeasible right to claim his promotion from the date the vacancy has occurred. Applicant had a right only to be considered for promotion. He was duly considered and was promoted to the post of Dy. Director (E) as per Recruitment Rules and the roster adopted for filling in the posts by promotion and deputation mode. He cannot challenge abolition of the post of Joint Director (E) in 1994 when a new post of Dy. Director was created and another post was upgraded to the post of Joint Director. The applicant has no case even if one post of Joint Director was abolished when his turn for promotion came or his delayed promotion to the post of Dy. Director (Entomology) and resultant delay in promotion to the post of Joint Director has deprived him a chance to become Director which post is lying vacant since the applicant did not fulfill minimum qualifying service as Joint Director.

17. Having regard to the above discussion, we do not find any force in the OA and dismiss it. No Costs.


(S.A. SINGH)
Member (A)


(M.A. KHAN)
Vice Chairman (J)

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