

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

1. O.A. NO. 615/93 DECIDED ON : 27-08-93
G. C. ROY & THREE ORS. ... PETITIONERS
Vs.
UNION OF INDIA & ORS. ... RESPONDENTS
2. O.A. NO. 1343/92
DR. SATYA PRAKASH ... PETITIONER
Vs.
UNION OF INDIA & ANR. ... RESPONDENTS
- ✓ 3. O.A. NO. 2109/92
V. K. DHINGRA ... PETITIONER
Vs.
UNION OF INDIA & ORS. ... RESPONDENTS
4. O.A. NO. 696/93
V. K. DHINGRA ... PETITIONER
Vs.
UNION OF INDIA & ORS. ... RESPONDENTS

CORAM :

THE HON'BLE MR. JUSTICE S. K. DHAON, V.C.(J)
THE HON'BLE MR. B. N. DHOUNDIYAL, MEMBER (A)

1. Whether to be reported to the Reporter? Yes
2. Whether reporters of local newspapers may be allowed to see the Judgment?
3. Whether to be circulated to other Benches?

(B. N. Dhoondiyal)
Member (A)

(S. K. Dhaon)
Vice Chairman (J)

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Shri B. B. Raval, Counsel for Petitioners in
O.A. Nos. 615/93 & 696/93

Ms. Sandhya Goswami, Counsel for Petitioner
in O.A. No. 2109/92

None for the Petitioner in O.A. No. 1343/92

Shri M. L. Verma, Counsel for Respondents No.
1 & 2 in OAs 615/93 & 696/93

Shri B. B. Dinkar, Counsel for Respondent No. 3
in OAs 615/93 and 696/93

Shri Vijay Mehta, Proxy Counsel for Shri N. S.
Mehta, Counsel for Respondents in OA 1343/92
& OA 2109/92

J U D G M E N T

HON'BLE SHRI B. N. DHOUNDIYAL, MEMBER (A) :-

The controversy raised in all the above O.A.s is similar and we consider it appropriate that all of them be disposed of together in a common judgment.

2. In O.A. 615/93, the applicant, Shri G. C. Roy, has challenged the irregular posting and regularisation of Shri Dhir Singh at Food Research & Standardisation Laboratory (for short 'FRSL'), Ghaziabad against the recruitment rules. In O.A. 696/93, Dr. V. K. Dhingra challenges his mala fide transfer to accommodate the said Shri Dhir Singh. In O.A. 2109/92, he alleges that the post of Director, FRSL, Ghaziabad has been declared as a reserved post to benefit Shri Dhir Singh even though this post is a single isolated and scientific one. In O.A. 1343/92, Dr. Satya Prakash alleges that one post of CTO has been kept vacant for almost three years to accommodate Shri Dhir Singh. By separate interim orders passed in these O.A.s, the respondents have been restrained from regularising the services of Shri Dhir Singh or transferring Dr. Dhingra outside the FRSL, Ghaziabad or going ahead with selection to the post of Director.

3. The main argument putforth by the applicants is that though the Central Food Laboratory, Calcutta and the FRSL, Ghaziabad are both under the Ministry of Health and Family Welfare, these are independent units, each having its own cadre and recruitment rules. In case of FRSL, Ghaziabad, the post of Senior Analyst is to be filled up 100% by promotion and there is no scope either for direct recruitment to the post nor the post of Senior Analyst can be

filled up by transfer/deputation. Shri Dhir Singh was recruited as Senior Analyst in the Central Food Laboratory, Calcutta but under orders dated 20.9.1989, he was transferred to FRSL, Ghaziabad on compassionate grounds on temporary basis for a period of three months. This term has been ^{bn} extended from time to time and he is being rotated for the purpose of adjustment against various posts in various disciplines for which he is neither qualified nor eligible. At one time he was even adjusted against the post of Micro Biologist for which he had no qualifications. The applicants apprehend that Shri Dhir Singh will be given a post of Senior Analyst and they will be deprived of promotional opportunities.

4. Counter affidavits have been filed by Shri Dhir Singh, as well as by the Union of India. The official respondents have categorically stated that there is no proposal to consider absorption of Shri Dhir Singh at FRSL, Ghaziabad on a regular basis. They have also stated that he will have to report back to his parent Laboratory after the last extension provided to him and have also shown to us a copy of the letter relieving him from his present assignment on 31.5.1993.

5. A perusal of rules notified on 6.1.1977, called ^{bn} 'The Food Research and Standardization Laboratory, Ghaziabad (Senior Analyst) Recruitment Rules', clearly shows that Junior Analyst with five years' service are eligible for promotion and consultation with the Union Public Service Commission (UPSC) is necessary. There is no provision for appointment on transfer. Rule 5 defines the powers of relaxation as under :-

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"5. Power to relax :- Where the Central Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing, and in consultation with the Union Public Service Commission, relax any of these rules with respect to any class or category of persons."

There is no averment by the respondents that the posting of Shri Dhir Singh was done in relaxation of the rules and the UPSC was consulted. We, therefore hold that Shri Dhir Singh was posted and continued at FRSL, Ghaziabad in an irregular manner. However, as we have noted that he has already been relieved, no further discussions ^{are} required in O.A. Nos. 615/93, 1343/92 and 696/93. These O.A.s are disposed of with the directions to the respondents to - (a) refrain from re-posting Shri Dhir Singh at FRSL, Ghaziabad de hors the rules; (b) not to effect any transfer of the existing incumbents outside FRSL, Ghaziabad without their consent; (c) not to keep vacant the post of Senior Analyst/CTO unless the competent authority certifies that there is no requirement for filling up these posts; and (d) arrange for convening of the DPC to consider all eligible candidates for promotion to vacant posts.

6. We may now consider the issue raised by Dr. V. K. Dhingra in O.A. 2109/92, i.e., the reservation of the post of Director, FRSL, Ghaziabad even though it is a single isolated and scientific post. The advertisement by the UPSC on 27.6.1992 (Annexure A-1) shows that this post in the scale of Rs. 4500-5700/- has been reserved for Scheduled Caste candidates. The scientific posts above the lowest Class-I posts are exempted from the purview of reservation by

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Government of India order dated 23.7.1975. The O.M. dated 23.7.1975 extending the scheme of reservation for SCs and STs in scientific and technical posts clearly specifies that this extension would be upto and including the lowest grade of Class-I in the respective services wherever they have been hitherto exempt from the purview of the scheme of reservation so far on the ground that the posts were intended for conducting, directing, guiding research work. Only such of the scientific and technical posts as satisfy all the following conditions are to be exempted from the purview of the reservation orders :-

- "(i) The posts should be in grades above the lowest grade in Class I of the Service concerned.
- (ii) They should be classified as 'scientific or technical' in terms of Cabiner Secretariat (Department of Cabinet Affairs), O.M. No. 85/11/CF-61(1), dated 28.12.1961; and
- (iii) There should be posts for conducting research or for organising, guiding and directing research."

7. No counter has been filed but during the course of arguments, the learned counsel for the respondents contended that grouping of posts for the purposes of operating the roster is allowed. However, as there are only seven posts of Directors in the different departments of Ministry of Health and Family Welfare and while the circular dated 11.11.1971 of the Department of Personnel clearly states that posts of similar status and salary may be grouped for the purpose of reservation, but in such a case the groups so formed should not ordinarily consist of less than 25 posts. The underlying idea is that these posts should be of similar status, similar salary

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and require similar qualifications. It has been held that where there is only one post in the cadre, it shall not be reserved. In view of the above provisions relating to exemption of higher scientific posts from the ambit of the reservation scheme and failure of the respondents to show how the post could be reserved by adopting the grouping method, we hold that the post of Director, FRSL, Ghaziabad could not have been reserved for SC candidates. The whole issue shall be re-examined in consultation with the Union Public Service Commission in the light of the above observations and orders de-reserving the post of Director shall be issued within a period of three months from the date of receipt of this order.

8. With these directions, these applications are disposed of finally. No orders as to costs.

(B. N. Dhoundiyal)
Member (A)

(S. K. Dhaon)
Vice Chairman (J)

as

Attached into copy
Anil Kumar
Co. Cl
27.08.93