



**Central Administrative Tribunal
Principal Bench**

**O.A. No.2189/2020
M.A. No. 2786/2020**

New Delhi, this the 24th day of March, 2021

(Through video conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A. K. Bishnoi, Member (A)**

1. Dr. Manjula Kiran
Aged about 39 years,
W/o Dr. Sachin Kumar
R/o 206/CV3, Supertech Capetown,
Sector 74, Noida.
2. Dr. Sanjay Mendiratta
Aged about 40 years,
S/o Sh. K. R. Mendiratta
R/o C2/102, First Floor,
Sector 36, Noida 201303.

... Applicants

(By Advocate : Mr. C. M. Gopal with Mr. Gautam Das)

Versus

1. Union of India
Through Secretary
Ministry of Health and Family Welfare
Nirman Bhawan,
New Delhi.
2. Director
National Institute of Biologicals,
A-32, Sector-62,
Institutional Area, Phase-II,
Noida 201309 (UP).

... Respondents

(By Advocates : Dr. Ch. Shamsuddin Khan and Mr. Jasbir Singh)

: O R D E R (ORAL) :**Justice L. Narasimha Reddy, Chairman :**

The applicants were selected and appointed as Junior Scientists in the year 2010 in the National Institute of Biologicals, an autonomous institute under the Ministry of Health and Family Welfare. The Recruitment Rules (RRs) provided for promotion to the post of Scientist Grade-III, on completion of five years of service in the post of Junior Scientist.

2. At the relevant point of time, the appointments to the post of Scientist Grade-III were to be made through promotion to the extent of 66% from the feeder category and 33% by way of direct recruitment. The RR's were amended in the year 2015. The ratio was changed to the one of 33% by way of promotion and 66% by direct recruitment. In the year 2019, the respondents issued an advertisement proposing to fill up 3 posts of Scientist Grade-III, through direct recruitment.

3. The applicants filed this OA challenging the said advertisement. According to them, when the posts exist, they ought to have been filled up in accordance with the ratio stipulated under the un-amended RR's, and there is absolutely no basis to divert all the three vacancies to the direct recruitment quota. Certain other grounds are also raised.

Item No.35



4. On behalf of the respondents, a detailed counter affidavit and an additional affidavit, are filed. According to them, appointment to the post of Scientist Grade-III, used to be exclusively by way of direct recruitment till the year 2008 and a provision was made for promotion to the extent of 66% in the year 2008. It is stated that after reviewing the entire situation, the RRs were amended restricting the promotion to 33% and leaving 66%, for direct recruitment. It is also stated that the balance in this behalf was perfectly maintained for filing the sanctioned strength of 12 posts upto the year 2015, and that 6 more posts were sanctioned at the relevant point of time. It is stated that the notice was issued in respect of three posts, which were immediately available and the ratio was never disturbed, and as of now there are 10 posts of Scientist Grade-III appointed through promotion and 8 officers, appointed through direct recruitment. Various contentions urged by the applicants are denied.

5. Today, we heard Mr. C.M. Gopal, learned counsel for the applicant and Dr. Ch. Shamsuddin Khan & Mr. Jasbir Singh, learned counsel for the respondents.

6. The controversy in this OA is about the method of promotion to the post of Scientist Grade-III. It is not in dispute that the applicants acquired the eligibility to be considered for promotion. It has already been mentioned that till the year

Item No.35



2008, appointment to the post of Scientist Grade-III was exclusively through direct recruitment, but it was modified in the year 2008, providing for appointment by way of promotion to the extent of 66%. The Rules were further amended in the year 2015. This time, the ratio of appointment through promotion was reduced to 33% and correspondingly, the ratio of direct recruitment was enhanced to 66%.

7. By the time, the 2015 RRs came into force, there existed 12 posts in the organization and they were filled as under:-

TABLE-1
BY PROMOTION

S. No.	Occupied by Promotees	Date of occupied the position
1.	Ms. Ajanta Sircar	03.02.2009
2.	Ms. Sudha V. Gopinath	03.02.2009
3.	Ms. Kanchan Ahuja	03.02.2009
4.	Dr. Rajesh Kumar Sharma	03.02.2009
5.	Ms. Gurminder Bindra	20.05.2009
6.	Ms. Shalini Tewari	20.05.2009
7.	Mrs. E. Madhu	01.10.2009
8.	Dr. Meena	06.05.2013

TABLE-2
BY DIRECT

S. No.	Occupied by Promotees	Date of occupied the position
1.	Shri Neeraj Malik	01.06.2004
2.	Dr. Charu Mehra Kamal	01.06.2004
3.	Dr. Richa Barranwal	21.08.2009
4.	Ms. Rashmi Srivastava	24.09.2009

The ratio of 66% by promotion and 33% by direct recruitment, was perfectly maintained.

Item No.35



8. Six more posts were sanctioned thereafter. By that time, the 2015 RRs came into force. The plea of the applicants that the un-amended rules must be operated, in respect of the vacancies that existed prior to the amendment, would hold good only in respect of the vacancies that existed at a time when the rules were made. The vacancies that are added later, need to be operated in accordance with the rules, which are in force at the relevant point of time.

9. After 2015, the respondents promoted two Junior Scientists to the post of Scientist Grade-III on 19.01.2016, when two Scientist Grade-III who were appointed through direct recruitment, were retired. It is not the case of the applicants that their chances of being promoted at that point of time were ignored and defeated in any way. In the changed scenario of proportion between the promotees and direct recruits under the 2015 RRs, the allocation is also bound to be changed. In other words, as of now, there are 18 vacancies and over the period, it must be operated in such a way that 33% are filled with the promotees and 66% by direct recruitment. It is a different matter that those who were already promoted under the 66% allocation would remain in service and the resultant vacancies have to be adjusted according to the rules. By the end of 2016, the picture emerged as under:



TABLE-3
BY PROMOTION

S. No.	Occupied by Promotees	Date of occupied the position
1.	Ms. Ajanta Sircar	03.02.2009
2.	Ms. Sudha V. Gopinath	03.02.2009
3.	Ms. Kanchan Ahuja	03.02.2009
4.	Dr. Rajesh Kumar Sharma	03.02.2009
5.	Ms. Gurminder Bindra	20.05.2009
6.	Ms. Shalini Tewari	20.05.2009
7.	Mrs. E. Madhu	01.10.2009
8.	Dr. Meena	06.05.2013
9.	Shri Pankaj Kumar Sharma	19.01.2016
10.	Shri N. Nanda Gopal	19.01.2016

TABLE-4
BY DIRECT

S. No.	Occupied by Promotees	Date of occupied the position
1.	Dr. Richa Barranwal	21.08.2009
2.	Ms. Rashmi Srivastava	24.09.2009
3.	Dr. Akansha Bishtl	17.09.2015
4.	Shri Tara Chand	14.10.2015
5.	Dr. Manoj Kumar	15.10.2015
6.	Shri Subhash Chand	15.10.2015
7.	Shri Jaipal Meena	15.10.2015
8.	Dr. Ashwani Kumar Dubey	04.08.2016

It cannot be said that there was any deviation from the proportion, stipulated under the service rules, to the detriment of promotees.

10. It is also brought to our notice that the applicants have taken part in the written test, that was held on 13.12.2020. They have to await the outcome thereof. Learned counsel for the respondents, however, submitted that the applicants were

Item No.35



adequately compensated on account of the delay in promotion, by extending them the benefit of MACP.

11. Learned counsel for the applicant also relied upon certain precedents. However, since the issue is fairly well settled and it is a matter of filling of vacancies, according to the rules, we have not chosen to reproduce them in detail.

12. We do not find any merit in the OA. It is accordingly dismissed.

(A. K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

March 24, 2021
/pj/jyoti/