

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.499 of 1987

R.K. Tiwari and Others Applicants

Versus

Union of India & Others Respondents

Hon. Mr. Justice Kamleshwar Nath, V.C.

Hon. Mr. I.K. Rasgotra, Member (A)

(By Hon. Mr. Justice K. Nath, V.C.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking a declaration that the appointment of respondents 4 to 10 as Scientists grade I in the scale of Rs.700 - 1300 with effect from 27.2.87 by order dated 12.3.87, Annexure-V is null and void and at the same time seeks the promotion of the applicants on that post with effect from the same date i.e. 27.2.87 on the allegations that persons junior to the applicants were promoted on that date. There is also a prayer to quash an order dated 11.5.87, Annexure-X by which the applicants' representations against the appointment of respondents 4 to 10, and refusal to promote the applicants, was rejected.

2. Applicants 1 to 3 while working as Research Assistants were promoted by order dated 24.2.82, Annexure-I as Temporary Research Officers (other than Engineering and Statistical) while applicant No.4 was similarly promoted by order dated 9.6.82, Annexure-II

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in the scale of Rs.650-1200. The next promotion from the post of Research Officer in the scale of Rs.650-1200 is to the post of Scientist grade I in the scale of Rs.700 - 1300.

3. The Forest Research Institute and Colleges (Group 'A' & Group 'B', non tenure posts) Recruitment Rules, 1966 provide *inter alia* for appointment to the post of Senior Research Officers in the pay scale of Rs.1100-504600. These Rules were amended by Annexure-III dated 10.12.84 according to which Research Officers possessing B.Sc. degree and having eight years regular service in the grade were eligible for promotion to the post of Senior Research Officers. By notification dated 20.2.1987, Annexure-3A a new set of rules called Forest Research Institute and Colleges (Scientific group 'A' post) Recruitment Rules, 1987 was enforced. It is by these rules that the post of Scientists grade I in the scale of Rs.700 - 1300 was created. These posts were 84 in number including 75 posts of Research Officers in the scale of Rs.650 - 1200; seven posts of Research Officers in the scale of Rs.700 - 1300, one post of Senior Research Officer (junior class I) in the scale of Rs.700 - 1300 and one post of Wood Working Officer in the scale of Rs.700 - 1300 were also included in the new post of Scientist grade I. The Schedule attached to the Rules described the post of Scientist grade I to be a selection post, 75% of which were to be filled by direct recruitment and 25% by promotion failing which by direct recruitment. The minimum educational

qualification for eligibility was the Master's degree in Science as distinguished from B.Sc. for the post of Research Officers as in the past. Research Officers were eligible for promotion if they have put in three years regular service in the grads. Special provision for initial constitution of the service was made in Rule 5. A Screening Committee was constituted under Sub rule (3) of Rule 5. Sub rules (4) and (5) of Rule 5 run as follows :-

"(4) The Screening Committee while evaluating the suitability of Research Officers (Rs .650-1200) under Sub Rule 2 for induction into the Scientist grade I (Rs.700 - 1300) shall take into consideration their qualifications, performance, merit and seniority. Such officers should possess atleast a B.Sc. degree or diploma in Engineering from a recognized University or equivalent. The Screening Committee shall decide its own method and procedure.

(5) The case of such of the officers as are not found suitable for induction under Sub Rule (2) at the time of initial constitution shall be reviewed every year at the maintenance stage."

4. Rule 9 sets out the power of the Central Govt. to relax any of the provisions of the Rules with respect to any class or category of persons in consultation with the Commission where it is necessary or expedient in the opinion of the Central Govt. to do so. The entries in column 7 dealing with educational and other qualifications contains a note that qualifications were relaxable at the discretion of the Commission in the case of candidates otherwise well qualified.

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5. It may be mentioned that one of the reliefs claimed in this petition was to declare Sub Rule (5) of Rule 5 of the 1987 Rules to be null and void in so far as it concerns the applicants because, according to the applicants, the applicants having only B.Sc. degree became ineligible for the post of Scientists grade I in the scale of Rs. 700 - 1300 although under the Rules as amended on 10.12.84, Annexure-III Research Officers having B.Sc. qualification could be promoted as Senior Research Officers in the scale of Rs.1100 - 1600. At the time of the arguments, the learned counsel for the applicants gave up the relief for quashing sub rule (5) of Rule 5 of 1987 Rules because it was immediately noticeable that for the purposes of promotion to the post of Senior Research Officer in the scale of Rs.1100 - 1600 under Rule, Annexure-II the Research Officer was required to have atleast eight years regular service in the grade which none of the applicants, having been appointed in the year 1982, possessed.

6. The grievance now is that the applicants in the capacity of Research Officers were senior to respondents 4 to 10 and therefore the failure to promote them as Scientists grade I in the scale of Rs.700 - 1300 at the time of the promotion of respondents 4 to 10 by order dated 12.3.87, Annexure-V was null and void. It is stated in para 6(XV) of the Original Application that persons with service lesser than that of the applicants have been appointed as Scientists grade I. It is stated in para 19 of the Counter Affidavit that

length of service is not the criterion under Rule 5(2) and 5(4) of 1987 Rules under which selection was done by a Screening Committee on evaluation of qualification, performance, merit and seniority in the respective cadres set out ^{under} Rule 5(1). As already indicated, there were four classes of officers of which 75 were Research Officers like the applicants. It was next said that no person junior to the applicants in their own cadre was inducted as Scientist grade I. The applicants, however, urged in their para 11 of the rejoinder that length of service was taken into account for inducting Research Officers into the post of Scientists grade I as stated in the letter dated 20.7.87, Annexure-RA.III. It was pointed out that according to this letter induction of Research Officers was to be done only in 75 upgraded posts of Scientists grade I and for that purpose all officers working as Research Officers were considered in order of seniority and 75 of the senior most persons who were assessed as suitable were inducted into the post of Scientists grade I. These contents of Annexure-RA.III do not indicate that length of service as such was treated to be a criterion for the purposes of appointment as Scientists grade I although seniority was. The idea is that while all the officers working as Research Officers were considered in order of seniority only those 75 officers who were assessed as suitable and were senior most were inducted. It only means that suitable officers were inducted ^{and placed} in accordance with their seniority and not that senior most 75 persons were inducted irrespective of their suitability. However, the

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learned counsel for the applicants urged that seniority list had not been finalised and disposal of the objections was still pending when the Screening Committee made the selection and therefore the selection made was illegal. In para 6 (XXXVII) of the Original Application, it was stated that since no final seniority list had been prepared seniority was determined on the basis of length of service and yet the respondents who were appointed as Research Officers much after the applicants had been promoted. However, in para 21 of the Counter Affidavit, it was stated again that seniority was taken into consideration but not the length of service under 1987 Rules. In para 30 of the Counter, the statement is that a list dated 23.6.86 of Research Officers was circulated inviting objections with the warning that if objections are not filed within a stipulated time, it would be considered to be final. Only applicant No.2 made a representation and his name was included in the final list whereas other applicants did not. It was stated that a seniority list dated 13.2.87, Annexure-VI was issued in which the applicants have been placed junior to the respondents. The learned counsel for the respondents pointed out that the seniority had not been challenged in this application. The stand of the respondents in this regard seems to be correct because Annexure-RA.V is the O.M. dated 23.6.86 with which seniority list was circulated to all the concerned officers, and they were asked to submit their representations by 4.7.86 failing which it would be presumed that the seniority assigned was acceptable. Annexure-VI to the

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Original Application is the Office Memorandum dated 13.2.87 with which the seniority list of Research Officers as on 1.2.87 was sent to all the officers. It was again said that representations of a factual omission, if any, may be sent within a fortnight failing which it would be presumed that the seniority assigned is acceptable. It is not shown that any representation was made and is still pending.

7. However, the learned counsel for the applicants pointed out that according to para 33 of the Counter Affidavit, the Screening Committee met on 7.2.87 whereas the Rules of 1987, Annexure-3A were enforced from 20.2.87 and therefore the Screening Committee proceedings were illegal. The concept is that before the Rules were enforced, there was no question of the Screening Committee meeting and making any selection. The position is clarified in para 33 of the Counter Affidavit where it is stated that the draft rules as contained in Annexure-3A were approved by the U.P.S.C. on 12.8.86 and were only in the process of being notified after vetting by the Ministry of Law and therefore there was nothing illegal in the deliberations of the Screening Committee on 7.2.87. It is pointed out that ultimately the order inducting the Research Officers as Scientists grade I was issued on 12.3.87, Annexure-V which was certainly after the Rules had already been promulgated. The statement contained in para 33 of the Counter Affidavit regarding the approval of the Draft Rules by the U.P.S.C. is admitted in the

rejoinder but it is stated in para 23 of the rejoinder that the approval of the U.P.S.C. is not relevant because the Rules have been promulgated only from 20.2.87. We are of the opinion that since the Draft Rules were ultimately finalised on 20.2.87 in the form of Annexure-3A the proceedings of Screening Committee held on 7.2.87, which are essentially recommendatory in nature, cannot be said to be illegal or ultra vires. Office routine and processes for enforcement of Rules take a long time as if actions are taken in anticipation of the publication of the rules, the action may not be held to be illegal if it is not shown that in the ultimate rules as enforced there was any material change from the draft under which the anticipatory action was taken. In our opinion, therefore the contention of the applicants that they were senior to the respondents when the names of Research Officers were considered for appointment as Scientists grade I is not quite correct. It is significant that the applicants do not deny that no person junior to them within their cadre (out of the 4 cadres set out under Rule 5(1) of 1987 Rules) has been promoted. The applicants' grievance on the ground of seniority therefore is misconceived.

8. The last point urged by the learned counsel for the applicants is that the applicants are permanently prejudiced on account of 1987 Rules because while they are only B.Sc.s the minimum requisite qualification is M.Sc.

This apprehension is met by the provisions of Rules contained in the initial constitution clause, i.e. Rule 5 of 1987 Rules which provides for the qualification of B.Sc. in respect of Research Officers. Further Note 2 to column 7 of the Schedule as also Rule 9 of 1987 Rules contain provisions for relaxation of the Rules to meet the cases of hardship. Indeed, sub Rule (5) of Rule 5 ensures that the cases of officers who are not found suitable for induction at the time of initial constitution "shall be reviewed every year at the maintenance stage". It is not the position therefore that the applicants are permanently prejudiced by the Rules of 1987. Their case has to be considered every year at the maintenance stage.

9. No other point has been urged in this application which, for reasons indicated, must fail.

10. The application is dismissed; parties shall bear their costs.

S. C. Singh
Member (A)

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Vice Chairman
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Dated the 7th Dec., 1990.
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