

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLCIATION NO.1585 OF 1999

ALLAHABAD THIS THE 22nd DAY OF December 2006.

HON'BLE MR. JUSTICE KHEM KARAN, V.C.
HON'BLE MR. P.K. CHATTERJI, A.M

K. Ganesan, Senior Clerk Audit and Accounts Section Indian Institute of Vegetable Research (formerly Project Directorate of Vegetable Research), 1. Gandhi Nagar (naria), Varanasi.

.....Applicant

(By Advocate: Sri V. Nath)

VERSUS.

1. The Project Director, Indian Institute of Vegetable Research (formerly Project Directorate of Vegetable Research), 1. Gandhi Nagar, (naria) Varanasi 221005.
2. Union of India through Secretary Indian Council of Agricultural Research Krishi Bhawan, New Delhi 110001.
3. The Deputy Director General (Hart.) Indian Council of Agricultural Research Krishi Bhawan, New Delhi 110001.
4. Shri Y.R. Nimbekar (N), Under Secretary (N) Indian Council of Agricultural Research Krishi Bhawan, New Delhi 110001.
5. The Commissioner National Commission for S.C & ST 5th Floor Lok Bhawan Khan Market, New Delhi 110001.
6. Shri U.N Tewari, Assistant, Indian Institute of Vegetable Research, 1, Gandhi Nagar (naria), Varanasi-221005.

.....Respondents

(By Advocate: Shri Vivek Rai holding brief for Shri V.K. Singh)



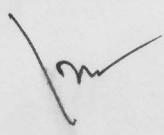
O R D E R

By MR. JUSTICE KHEM KARAN, V.C.

The applicant wants that the appointment of respondent NO.6, on the post of Assistant be quashed and he be promoted as Assistant w.e.f 19.5.1996, with benefits of pay etc. together with interest @ Rs.18% per annum on arrears.

2. His case in brief is that on 19.5.1996, where he completed three years as Senior Clerk in Indian Institute of Vegetable Research, Varanasi, he became eligible for promotion to the post of Assistant, but inspite of there being two vacant posts of Assistant and there being reservation in promotion in favour of Scheduled Caste, the respondent No.1 did not convene Departmental Promotion Committee (for short D.P.C) till 1997. He alleges that he gave several representations to the respondents one after the other, for considering his candidature for promotions as the 1st vacancy in the roster of 49 points was to be filled from Scheduled Caste and he belonged to that category. He goes on to complain, that the respondent NO.1, gave many lame excuses, such as administrative inconvenience, not fulfilling the requirement of five years experience as Senior Clerks not clearing the Bank Reconciliation statement. He says that the amendment made in the recruitment Rules, in October, 1997, providing five years experience, in place of three year as Senior Clerk, would not be applicable to the vacancies existing before that change, in view of decision of Chandigarh Bench of this Tribunal in O.A. NO.357/PB/ of 1997 and several other decisions. According to him the respondent NO.1, promoted respondent NO.6, to the post of Assistant vide letter dated 22.1.1999, who was junior to the applicant, ignoring his claim.

3. The respondents have contested the claim by filing reply. They say that non-convening of D.P.C was not

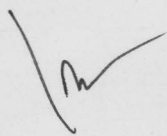


deliberate but was owing to administrative reasons, such as ban on appointment, imposed by Indian Council of Agriculture Research, vide letter NO. F.No.15.15/97 Estt. Dated 14.7.1997. They say, after the ban was lifted, D.P.C considered the applicant and others including respondent No.6, for promotion to the post of Assistant but the applicant was not found fit, whereas the respondent No.6 was found fit, so was promoted. In para 4, it is clearly stated that old procedure was adopted by D.P.C. in considering the claim of applicant and respondent NO.6. They say, only one post of Assistant was available, to be filled in by promotion, so the same was not treated reserved for Scheduled Caste candidates as roster was not applicable to single vacancy.

4. In rejoinder to this reply, the applicant has tried to say that ban on promotion/appointment came in June-July, 1997, and there is no explanation as to why D.P.C. was not convened in between 19.5.1996 to June-1997. He says, no adverse remarks were ever communicated to him, till filing of rejoinder and he being the seniormost Senior Clerk, was entitled by all means to get promotion in May, 1996 itself but it was deliberately denied to him on lame excuses.

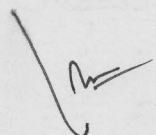
5. We have heard the parties counsel quite at length and have perused the material on record. We are constrained to observe, that this is a classic example, where the applicant, a member of Scheduled Caste, has been victim of deliberate official discrimination and deliberate attempt on the part of respondent NO.1, to deprive him of his legitimate expectation.

6. This much is clear from the pleadings of the respondents themselves, that before June-July 1997, there was no ban of ICAR, on promotion/appointment, to the post of Assistant. What prevented the respondent No.1, from



convening DPC for considering the promotion of Senior Clerks to the post of Assistant, in between May, 1996 to June, 1997 has not satisfactorily been explained. It is averred in para 4 (i) (i) supported by Annexure 4, that instead of taking up the matter of Senior Clerks for promotion to the post of ASstt., the respondent No.1 initiated the process of taking Junior Clerks to the post of Assistants. Para 13 of reply, would reveal that the justification for taking Junior Clerks to the post of Assistant, ignoring the claim of Senior Clerks for such promotion, is quite unintelligible illogical. Amendment in the Rules, prescribing 5 years experience as Senior Clerk in place of three years, came much after in October, 1997. At least before October 1997, the applicant was eligible for being considered for promotion to the post of Assistant. We find it difficult to ~~repeat~~^{reject &} the contention of applicant, that the respondent NO.1, designedly avoided to convene D.P.C for considering his promotion to the post of Assistant, though vacancy was available, after 19.5.1996 and the applicant was eligible at least till the Rules were amended in October, 1997.

7. But the question is as to whether this Tribunal can now, cancel the promotion of respondent NO.6 and ask the respondent to promote the applicant to the post of Assistant w.e.f 19.5.1996. We have considered it from practical and legal angle. Firstly, it is difficult to say that deferring of consideration of promotion from 19.5.1996 to June-July 1997, till ban was imposed, could be said to be in breach of any express Rule. Nothing has been brought to our notice, which compels the authority concerned to fill in the vacant post within a specified period. Secondly, when the matter was considered in 1998, the candidature of applicant was rejected and the respondent NO.6, was found fit for promotion. Thus Tribunal may not be justified in entering the question as to whether recommendation of DPC was or was not justified.

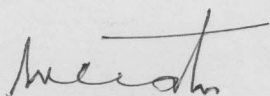


As stated earlier, the respondents have come with a case that this promotion was considered in accordance with old Rules, which were in vogue in 1996, there appears much force, in the submission of official respondents, that rule of reservation was not attracted to single vacancy/post. So, for all these reasons, the relief sought by the applicant cannot be granted by Tribunal.

8. In the result, the O.A. is disposed of with the direction to the respondent NO.2, to look into the matter and take remedial measures as it thinks fit and issue necessary guidelines, to ensure that legitimate expectations of employees, in the matter of promotion are not frustrated in the manner it has been done in the case of applicant.

No order as to costs.

1/12/2006
22.12.06



Member-A

Vice-Chairman.

Manish/-