

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 4/3 DAY OF Feb, 2011)

**Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S.N.Shukla, Member (A)**

Original Application No.430 of 2002
(U/s 19, Administrative Tribunal Act, 1985)

Dr.Chandra Mauli Srivastava,
Plant Protection Officer (P.P.)
Central Integrated Post Management
Centre, Khajari Road, Gorakhpur.

..... **Applicant**

**Present for Applicant :Shri Shyamal Narain, Advocate.
Shri R.B. Tripathi, Advocate**

Versus

1. Union of India, through the Secretary
Ministry of Agriculture, Krishi Bhawan
Rafi Marg, New Delhi-11.
2. Joint Director, Plant Protection, D.A.C
Krishi Bhawan, New Delhi.
3. Under Secretary, Administration,
For Plant Protection Advisor,
Directorate of Plant Protection
Quarantine and storage, N.H.I.V
Faridabad, Haryana.

..... **Respondents**

Present for Respondents : Shri R.K. Srivastava., Advocate

O R D E R

(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)


The applicant was initially appointed on 1.9.1984 as
Assistant Pathologist in Plant Quarantine Division in the pay

scale of Rs.650-1300. There were three divisions in the department of Plant Protection and Quarantine and Storage which later on under restructuring in 1988 were merged and redesignated as Plant Protection Officers (PPO).

2. The next hierarchical promotion as per the then existing Recruitment Rules was Deputy Director (pay scale 3000-4500 pre-revised). Annexure -1 refers. The qualification requirement for such promotion is 8 years experience of regular service as PPO.

3. Some time in 1990 an intermediate post with the appellation 'Assistant Director (Virology Bacteriology)' was created. This post, as per the relevant Recruitment Rules, was to be filled up, not by promotion, but by direct recruitment. Annexure-3 refers. As the aforesaid post of Assistant Director did not have any promotional avenue while the post of PPO which applicant and other similarly situated are holding has the next promotional post of Deputy Director, the applicant chose not to apply for the aforesaid post. The said post was filled up by one Dr.K.C.Gupta.

4. Dr.K.C.Gupta, Assistant Director along with some others filed O.A 564/99 before the Principal bench at Delhi challenging the then existing recruitment rule of Deputy Director. His claim was to the effect that the post of Asst.

that they have not ignored the interest of the applicants in the matter of promotional avenues. Revised Recruitment Rules of PPOs provide that five years regular service in the grade has been kept for 100% promotion to the post of Assistant Director. Their interests have further been safeguarded by introducing a special clause under column 11 pertaining to the method of recruitment to the post of Deputy Director as per the revised recruitment rules.

9. The applicant has filed his rejoinder. He had contended that the interest of the PPOs had never been safeguarded by the respondents. To cite example vide para 11 of the rejoinder he has stated the respondents had made promotion upto persons namely Dr.K.C.Gupta and Dr.Satya Naraina in May 2003 ignoring the interests of all other PPOs. These two persons were junior to the applicant and they belong to AD (PPP). Annexure RA-II refers. The applicant has also referred to the Assured Career Progression introduced by the government effective from 9.8.1999 and stated that he was the beneficiary of the said claim and his pay scale has been revised to the Deputy Director w.e.f. 9.8.1999.

10. Supplementary counter and supplementary rejoinder have also been exchanged which by and large carried the same contentions.

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7. The above revised Recruitment Rule (Annexure-12) thoroughly removed the promotional prospects of the applicant and other similarly situated and as such the applicant has preferred this OA on various grounds as contained in para 5. The relief sought for interalia is as under:-

- a) *Declare the impugned Recruitment Rule 2002 as illegal, irrational and discriminatory.*
- b) *Quash the communication/order dated 1.2.2002 rejecting representation of applicant.*
- c) *Direct the respondent to promote the applicant and other PPO (PP) on the post of Deputy Director (PP) treating the PPO (PP) as feeder cadre as per Recruitment Rule 1987.*
- d) *Direct the respondents to grant seniority to the applicant over and above Assistant Director (PP) while making promotion on the post of Deputy Director (PP).*

8. Respondents have contested the OA. They have justified creation of the post of Assistant Director and also the reason as to why the same was not made as a promotional post but direct recruitment. The Vth Central Pay Commission specifically recommended that various categories of posts should be merged together under each discipline in order to provide maximum promotional avenues for all grade of posts in each discipline. The Commission's recommendation also included bringing of isolated post of Ministry in the respective discipline. These were accepted by the Government by G.S.R 569 (E) dated 30.9.1997. As regards non availability of promotional chances to the PPOs the respondents have stated

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Director should be made as the feeder category for the post of Deputy Director. In their counter the respondents had contended that the educational qualifications etc for the post of PPO were adequate to qualify for further promotion of Deputy Director. Annexure-6 refers. The Tribunal disposed of the OA on 24-07-2000 (Annexure 7) with a direction to the respondents to take final decision in the matter of revision of Recruitment Rules preferably within 8 months. In the said order dated 24.7.2000 an observation was also made referring to the respondents' reply that the interest of all concerned including Plant Protection Officer who are stated to be stagnating since long will also be kept in view.

5. The applicant preferred a comprehensive representation dated 14.12.2001 and 6.2.2002 (Annexure 8 & 9) requesting the respondents for retention of promotion chances of PPOs directly to the grade of Deputy Director without any need to become Assistant Director.

6. In the meantime vide Annexure 10 the respondents had merged certain posts in the wake of Vth Central Pay Commission Recommendation. By Annexure-11 the respondents had rejected the representation of the applicant and Recruitment Rules, 2002 for the post of Deputy Director in supersession of the earlier Rules were published vide Annexure-12 to the OA.



11. As the presence of both counsels simultaneously could not be available, and since the case is of 2002 vintage, with the consent of the parties order was reserved and permission was granted to file written submission.

12. The counsel for the respondents has submitted his written submission. He had narrated the entire history in respect of creation of Assistant Director's post; merger of the same with the other posts in the main stream, and redesignation and also interalia recommendation of Vth Central Pay Commission, and the extent of safeguarding the interest by the respondents of the applicant and similarly situated PPOs. It has also been stated in the written argument that the applicant being more junior could not have been promoted as his seniors were required to be considered first for promotion to the post of Deputy Director.

13. Written arguments as well as the entire pleadings were carefully scanned. The grievance of the applicant is that introduction of an intermediate grade of Assistant Director and supersession of earlier recruitment rules for the post of Deputy Director are illegal and unjust as the same have thoroughly obliterated the prospects of PPOs. In so far as creation of the post of Assistant Director is concerned, the same does not provide for promotion chances to the PPOs, as the mode of appointment is by way of Direct Recruitment.

And, at the time of introduction of this intermediate post, the same was treated as a specialized one and was kept as an isolated stand-alone post without any promotional prospects. The decision by the applicant and similarly situated in not to apply for that post was quite logical as the said post of Assistant Director had no promotional prospects while continuing as PPO would enable the applicant to have the higher promotion of Deputy Director under the then Recruitment Rules. It was only when Dr.K.C.Gupta approached the Tribunal for promotional prospects above the post of AD that the idea of giving promotional prospects arose and by way of coincidence around that time, the isolated post of AD could be merged with the main stream. Expectation was that while revising the Recruitment Rules for the post of Deputy Director, the interest of the PPOs would be adequately safeguarded while opening promotional avenue to the Assistant Director as well. But the revised Recruitment Rules for the post of Deputy Director had completely eclipsed the promotional prospects of PPOs. The recruitment rules to the post of Deputy Director provide for filling up of the vacancies as under:-

Assistant Director (Plant Pathology) with five years regular service in the grade failing which 8 years combined service as Asstt. Director (Plant Pathology) and Plant Protection Officer (Plant Pathology).



The above stipulation of 8 years combined service is incompatible since the post of Assistant Director is by way of direct recruitment and the essential qualification are as under:-

Essential:-

- (i) *M.Sc. Degree in Plant Pathology or M.Sc degree in Agriculture with specialization in Plant Pathology or M.Sc degree in Botany with specialization in Plant Pathology from a recognized University or equivalent.*
- (ii) *3years research/field experience in Plant Virology, etc., and field in which experience is required shall be specified at the time of recruitment.*

14. The applicant in his comprehensive representation has neatly brought out the anomalous situation.

iv) *It may be observed that the PPOs (PP) senior to the officers like Dr. K.C. Gupta were made junior to their juniors due to not providing promotional avenue to the PPOs (PP) for the newly created posts of AD (PV & PB) only on the pretext of Ads (PV & PB) being specialized posts. If that argument of specialized posts was valid at that time for not considering PPOs (PP) in the feeder channel, than how come these incumbents in the specialized posts are now being brought against the Plant Pathology posts, thereby inflicting another loss on PPOs (PP) who only remained in the feeder cadre for the posts of DD (PP). If carefully observed, terming the posts of AD (PV & PB) as specialized posts in the beginning denied promotional avenues to PPOs (PP) and now considering them again above the PPOs (PP) who are very senior and stagnating for years is just providing a direct bye-pass to the officers like Dr.K.C.Gupta who earlier bye-passed seniors in the name of specialized posts and now again trying to bye-pass senior PPOs (PP) by coming back in the feeder channel in case of Deputy Director (Plant Pathology) through AD (PP) and providing promotion to PPOs (PP) to the post of AD (PP) instead of DD (PP). It may be reiterated that as on date no post or cadre of AD (PP) exists in this Directorate.*

v) *In fact, the posts of AD (PV & PB) should have been kept isolated being specialized posts and given ACP which is also a recommendation of V CPC. However considering their case sympathetically, being colleagues, PPOs (PP) did not object on their being also given an opportunity to promotion to the post of DD (PP) through a combined eligibility based on qualifying service i.e. PPOs (PP) with 8 years regular service in the grade and AD (PV&PB) with 5 years regular*



service in the grade which is in consonance with the guidelines of DOPT. Although the same post cannot be made as a feeder cadre for promotion to two different higher posts with varied experience can be kept in the feeder channel to a higher post. Accordingly, the RRs were earlier proposed by the Department.

vi) It may be stated that in no case the Plant Pathology discipline where no post of AD (PP) exists as on date can be compared with the Entomology discipline where the post of AD (E) existed since long back and provided promotional avenues to the lower post of PPO (E) continuously. Also there was no provision in the Entomology Discipline for promotion from the post of PPO (E) to the post of DD (E) due to existence of posts of AD (E) in between. The only opportunity to channelise the feeder cadre in Plant Pathology Discipline came through when the posts of Assistant Directors were termed as specialized, which deprived the chance of promotion to the PPOs (PP). It is now done, it would harm the PPOs (PP), who are very senior and stagnating.

Vii) It may be stated that the Honourable V Central Pay Commission was probably not aware of the true facts fully about the Plant Pathology discipline and framing of RRs for the post of AD (PV&PB) as specialized posts while recommending for creating a cadre of AD (PP) by merging/redesignation and making it a feeder channel for promotion to the posts of DD (PP). Had the V CPC been aware of the truth, it would not have put PPOs (PP) at loss. And, perhaps, DOPT is also not aware of such manipulations and developments of the past. Otherwise it would have also been considerate enough to PPOs (PP) who are so senior and stagnating for years together. Even a Group 'B' gazetted officer who was appointed from Allied Services in the year 1977 might have become at least a Director level officer in a Ministry, if not Joint Secretary. Then why should it happen to a Group 'B' Gazetted Officer appointed in 1977 through direct selection that he should retire in the same post. This recommendation of V CPC may, therefore, not be implemented for the sake of justice for PPOs (PP)

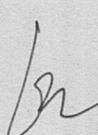
viii) It may also be stated that is the PPOs (PP) with 8 years experience were eligible for promotion to the post of DD (PP). Moreover, how can they now be recommended for being in the feeder cadre for promotion to a lower post of Assistant Director. Such a derogatory recommendation of V CPC, which *prima-facie*, appears good; needs to be rejected by the Government. The PPOs (PP), who have suffered loss of status as well as monetary, due to not keeping the Assistant Directors post promotional earlier, could at least be given a graceful feeder cadre for promotion to the post of DD (PP). PPOs (PP) never objected to (PV) & (PB) being considered simultaneously through a combined seniority list based on qualifying service.

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15. The applicant's anguish in not getting any promotion for the past decades is not unjustified as initially, prior to the amendment to the Recruitment Rules for the post of Deputy Directors, the PPO had the promotional prospects and the introduction of intermediate post was of no use in so far as promotion to AD is concerned and in so far as the revision of Recruitment Rules for the post of Deputy Director, by virtue of the requirement of experience in the grade of Asst. Director, the promotional prospects have been completely shut to the applicant. It is appropriate to refer to the observations of the Apex Court in the following cases, wherein the thrust is that there must be assured promotional prospects for every one in the Government services:

(a) In the case of **Raghunath Prasad Singh vs Secretary, Home Police Department, Government of Bihar (1988 Supp SCC 519)** the Apex Court has held as under:-

4. Before we part with the appeal, we would like to take notice of another aspect. In course of hearing of the appeal, to a query made by us, learned counsel for the appellant indicated the reason as to why the appellant was anxious to switch over to the general cadre. He relied upon two or three communications which are a part of the record where it has been indicated that there is no promotional opportunity available in the wireless organisation. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organisation within six months from today by appropriate amendments of rules. In case the State of Bihar fails to comply with this direction, it should, within two months



thereafter, give a fresh opportunity to personnel in the police wireless organisation to exercise option to revert to the general cadre and that benefit should be extended to everyone in the wireless organization

- b) In C.S.I.R. vs K.G.S.Bhatt, (1989) 4 SCC 635 the Apex Court has held as under:-

The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors.² There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions.

- c) Again in **O.Z. Hussain vs Union of India 1990 Supp SCC 688**, the Apex Court has held as under:-

7. This Court, has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate.

- d) Referring to the above decisions of the Apex Court, the Principal Bench of the Tribunal in the

case of **Debi Mukherjee vs Union of India and others (1992) 19 ATC 540** has held as under:-

"In view of the aforesaid legal position, we are of the view that it is the obligation of the Ministry of Health and family Welfare to provide promotional avenues to the applicant who has functioned in the post of Assistant Secretary for several years and has *looked* after the work of Assistant Director General as and when occasion had arisen. The respondents shall do the needful in the matter within a period of three months from the date of receipt of this order. Till then, the respondents shall not proceed with the filling up of the post through direct recruitment. The interim order directing the respondents to maintain the status quo as regards the continuance of the applicant in the post of Assistant Director General be maintained, is made absolute."

When the above order of the Tribunal was challenged before the Apex Court, the appeal was dismissed. The Apex Court has in the case of **P.K. Jaiswal (Dr) v. Debi Mukherjee, (1992) 2 SCC 148**, held as under:-

6. *For the above reasons, we are of the opinion that the decision reached by the Tribunal does not require any interference at our hands in exercise of the power under Article 136 of the Constitution. Hence, the appeal fails and is accordingly dismissed with no order as to costs.*

e) **Food Corporation of India v. Parashotam Das Bansal, (2008) 5 SCC 100,**

13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a superior court of the country.

16. The reaction of the respondents is not less responsive.

They too want to ensure that there is sufficient promotion prospect but the Recruitment Rules as they stand/come in the way of the applicants. For example, vide letter dated 06-01-

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2003 addressed to the Secretary, Ministry of Agriculture, while the respondents have now decided to keep the Recruitment to the post of Deputy Director (one-third by promotion and two-third by deputation) in abeyance, and has made the same as 100% by promotion. However, this does not in any way assist the applicant and similarly situated since the requirement of 5 years of service as Assistant Director or combined service as Assistant Director and PPO of 8 years would not be fulfilled by the PPOs who have not held the post of Asst. Directors. Thus, it is only the Assistant Directors who are full beneficiaries of 100% promotion. The Government cannot be permitted to take the stand "Heads I win, tail you lose"!

18. It is not difficult to find out a rational method, whereby both the Assistant Directors and PPOs have proportionate promotional opportunities. The Apex Court has, in the case of ***Dwarka Prasad v. Union of India, (2003) 6 SCC 535,*** held as under:-

17. *Normally, where officers are to be drawn for promotion from different posts in the feeder cadre, quota for each post in the feeder cadre is maintained proportionately to the sanctioned strength in that post. This, however, cannot be an inviolable rule of strict application in every case, with an absolute equality of arithmetical exactitude but may vary from case to case depending upon the pattern, structure and hierarchies in the departmental set-up as well as exigencies and balancing needs of administration. There are other relevant considerations, some of which have been mentioned above, which may require departure from the practice of fixation of quota for each post*



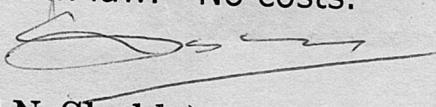
in the feeder cadre, solely proportionate to its strength.

19. Though the DOPT, the Nodal Ministry has held that hierarchy should be maintained (PPO to A.D. and A.D. to Dy. Director), the fact that the post of A.D. is made through direct recruitment (we are not aware whether there has been a change in the mode of recruitment) would result in the PPO stagnating in the same post. Again, it is not uncommon that from two posts constitute feeder post for one promotional post. For example, both Assistant Engineers (Group B) and Asst. Executive Engineers (Group A) form feeder category for the post of Executive Engineers in the C.P.W.D. (See A.K. Subraman vs Union of India (1975) 1 SCC 319) As such, keeping in view the observations of the Apex court in respect of career prospects as extracted above it is only appropriate that the respondents revise the Recruitment Rules for the post of Dy. Director by making both Asst. Director as well as PPOs as the feeder cadre, without expecting the PPO to become first Assistant Director.

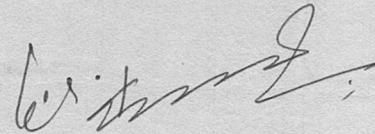
20. The **OA is thus allowed** to the extent that the impugned order dated 01-02-2002 is hereby quashed and set aside. Respondents are directed to provide for promotional avenue to the PPOs for the post of Dy. Director by working out a rational ratio between the Assistant Directors on the one hand and the PPOs on the other.

(Signature)

21. This OA was filed in 2002 when the applicant was about 49 years and by now he would be 58 years, only a few years remaining to superannuate. If immediate action to revise the Recruitment Rules is taken, perhaps, it would facilitate the applicant in seeing at one promotion in his entire career before his reaches superannuation. A period of six months for revision of Recruitment Rules, would, in our view, be a reasonable period and after the revision of the Rules, the applicant and other similarly situated persons could be considered for promotion to the post of Dy. Director in accordance with law. No costs.



(S.N. Shukla)
Member-A



(Dr. K.B.S. Rajan)
Member-J

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