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ORIGINAL APPLICATION NO. 353 of 1989.

Date of decision : 27.6.91

Dr.D.P.Singh ... Applicant.

Versus

Union of India & Others. Respondents.

For the applicants:- M/s.Jitamitra Mohanty,
J.B.Patnaik,K.K.Panda,
Advocates.

For the Respondents: Mr. Ganeswar Rath,
Senior Standing Counsel (Central)

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ? *yes*.
3. Whether Their Lordships wish to see the fair copy of the Judgment ?

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J U D G M E N T .

The application is one for a direction to appoint the applicant as the Head of the Central Tuber Crops Re-search Institute, Regional Centre, Bhubaneswar.

2. The case of the applicant, put in brief, is that he joined the Research Institute at Bhubaneswar, on 31.7.85, as an S-3 Scientist. At that time R-3 was the scientist in charge. There are a set of rules, Agricultural Research Service Rules, 1975, concerning the conditions of service and postings, transfer and deputation. These rules provide that if an S-3 Scientist or above is available in any particular discipline at an Institute, only such scientist should become Head of Division, but if no S-3 Scientist in a particular discipline is available in the Institute, the post would be filled up by transfer of suitable Scientist from those grades working in other Institutes. On 15.6.1987 the Indian Council of Agricultural Research issued guidelines for appointment of Heads of Regional stations on a rotational basis. According to these guidelines a person belonging to the eligible category i.e. scientist S-3 and S-4 of the relevant discipline, is to be Head of the Regional Station for a period of 5 years and no extension beyond that period is to be granted, a copy of the guidelines is Annexure-1 to the application. Respondent No.3 completed his tenure of 5 years more than a year prior to the filing

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of the application. He (the applicant) draws salary in the scale of pay Rs.4500- Rs.7300/- whereas Respondent No.3 draws in the Scale of Rs.3700/- - Rs.5700/- and is in a grade lower than he. Though he is a Scientist S-3 and was available at the station, as after the expiry of the 5 years tenure of Respondent No.3, he was not made the Head, he brought this fact to the notice of Respondent No.2 by a letter dt.1.8.88 & sent reminders but received no reply. Respondent no.2 by his order dt.5.6.89 appointed Respondent no.4 as the Head of the Central Tuber Crops Research Institute, Regional Centre, Bhubaneswar ~~xxxxxx xxxxxxxx~~ for 5 years. Respondent No.4 is also junior to him and has been transferred from Privendrum. In short, the applicant's claim is that he ought to be appointed as the Head of the Bhubaneswar Regional Centre he being the Senior most S-3 Scientist available at the station.

3. Respondents 1 and 2 have filed a reply and they do not dispute the existence of guidelines for posting and appointment of Heads of Divisions or stations but their case is that Annexure-1 to the application is only an addendum to the guidelines issued in 1982(Annexure-A) which provided for appointment on rotational basis, this was amended in 1984 vide Annexure-B. In 1989 the Indian council of Agricultural Research (ICAR) decided that no person can be appointed as the Head of ^a Division for the 3rd. time. The

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guidelines prescribe that only persons suitable and having the necessary eligibility can be appointed as the Heads. The Scientist in charge of a Regional Centre stands on the same footing as the Head of a Division. It is the suitability and not seniority which matters most in the appointment of a Head of a Division a Regional Centre, the very fact that the appointment of Heads is to be on a rotation basis would suggest that at times a person Junior may be the head. These respondents have disputed the correctness of the applicant's averment that the rotational appointment of the Head should be made from amongst the Scientist of the Regional Centre, the rotation according to these respondents, is to be made amongst the Scientist of the Institute of which the Regional Centre is a part and not necessarily from amongst the Scientist at the Regional Centre. A Regional Centre is not a Regional Station, a Regional Station is independent of the Institute in financial matters.

4. From the averments in the application and the counter it would appear that the parties are agreed with regard to the 5 years tenure of a Head of a Centre and appointment of Scientists S-3 or S-4 by rotation, but the dispute is whether such appointment is to be made any from amongst the Scientists available at the Centre. The answer to this question would depend on the interpretation of the guide-

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lines and Annexure-F to the counter, a copy of the salient features of the Agricultural Research Service. From Annexure-F it would be found that the objective of the service is to promote team work and genuine professional collaboration on an inter-disciplinary basis by inducting proven talent and experience by direct recruitment and besides other things to facilitate mobility of Scientists from one Institute of the I.C.A.R. to another. The major Disciplines of the service have been stated in para-3 of Annexure-F, they are Agricultural Sciences, Animal Sciences, Social Sciences and Technology. From Para-6 of that Annexure-F it would be found that there would be separate cadre strength for each Institute which may have one or a group of Disciplines. The learned counsel for the parties agree that there are more Institutes than one under the I.C.A.R..

5. Mr.G.Rath for the respondents has referred to the averment in the counter that a Regional station is not the same as Regional Centre and so he has contended, the applicant on the strength of an Annexure-1 cannot claim to be appointed as the Head of the Regional Centre at Bhubaneswar. Mr.J.Mohanty for the applicant has referred to para-5 of the counter and has contended that as the position of the Scientist in charge of a Regional Centre, i.e. the Head of the Centre, is identical with that of the Head of a Division

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Annexure-1 would apply. This contention of Mr. Mohanty carries force. In Annexure-H, the order of appointment of Respondent No.4 is as the Head of the Centre at Bhubaneswar on a rotational basis for 5 years, thus it is clear that the rule of rotational appointment of heads also applies to Regional Centres.

6. As has been indicated above, the case of the applicant is that as at the time of the expiry of the 5 years term of Respondent no.3, he, a Scientist S-3, was available, no person could be appointed as the Head by a transfer from another place. Annexure-1 states that it has been decided to fill up the positions of Heads of Regional Stations on rotational basis for a period of 5 years from amongst the eligible scientists belonging to S-3 and S-4(personal) grades of the relevant discipline of A.R.S. in accordance with the criteria laid down for ~~a~~ manning positions of Heads of Divisions at the Research Institutes. A copy of the guide lines is Annexure-A to the counter and Para-3 of that annexure being relevant may be quoted,

" 3. If in any Division/Department no Scientist is considered suitable for the position of the Head of that Division/Department a suitable scientist from any other Institute may be transferred and posted as Head of that Division/Department by the I.C.A.R. in consultation with the Directors concerned. When under such circumstances a Head of a division is transferred from one Institute to another in the same position, his appointment as Head of Division in the new Institute will be treated as a fresh tenure".

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On reading Para-3 of Annexure-A, quoted above, it would be manifest that this paragraph would apply only if no suitable scientist is available in the particular Institute. If in any Division or Department of the Institute there be a suitable person there can be no bar to the appointment of such a person as the Head. Though the applicant has filed a rejoinder, he has not denied the averment of respondents 1 and 2 that the Bhubaneswar Centre is a part of the Central Tuber Crops Research Institute having its headquarters at Trivendrum. There is no dispute that Respondent No.4 is a Scientist S-3 working in the head quarters of the Institute and as such his transfer to Bhubaneswar Regional Centre cannot be said to be a transfer from one Institute to another, ~~it~~ really is from one centre of the Institute to another. Some argument has been addressed by the learned counsel regarding the Seniority of the applicant & Respondent No.4, but we need not enter into the question of seniority as the materials placed before us are not sufficient to reach a conclusion in this regard. In view of para-II of Annexure-F it is also not necessary to be gone into.

7. The applicant has alleged that he made a number of representations to appoint him as the head of the Centre but none of them was replied to. The contesting respondents have averred that the representation of the applicant dt.12.6.89 was conside-

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considered and rejected by the council. Annexure-D to the counter is the copy of the intimation from the I.C.A.R. to the Director, Central Tuber Crops Research Institute. In this intimation no reason has been assigned for not accepting the representation of the applicant. No other material has been placed before us to suggest the reason for rejection of the representation. In the absence of a statement of reason, it cannot be said that there was a proper application of mind. It is a cardinal principle of justice that a person is entitled to know the reason of rejection of a prayer to which he may seemingly, it not properly, be entitled.

8. In the circumstances we would direct Respondent No.2 to reconsider the representation the applicant and if he rejects it, should inform the applicant of the reasons for such rejection. The case is accordingly disposed of. No costs.

Prasanta Kumar 27.6.91
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Vice- Chairman.

M. K. Singh 27.6.91.
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Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack/ K. Mohanty.
Etc.

