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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No.283 of 1993

Date of Decision: 17.11.1993

Chintamani Mohapatra

Applicant(s)

Versus

Union of India & Others

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.

17.11.93
VICE-CHAIRMAN

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MEMBER (ADMINISTRATIVE)

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Respondents

For the applicant

M/s. Deepak Misra
R.N. Naik, A. Deo
Advocates

For the respondents

Mr. Akhaya Mishra
Addl. Standing Counsel
(Central)

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C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE - CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR. H. RAJENDRA PRASAD, MEMBER (ADMN): In this application, Dr. Chintamani Mahapatra, Senior Scientist, Central Avian Research Institute, Regional Centre, Chowdwar, Cuttack, has questioned the posting of Dr. B. K. Panda, (Respondent 5) Senior Scientist, Project Directorate of Poultry, Hyderabad, as Officer Incharge of the Regional Centre. He is aggrieved by the action of the Administrative Officer, Central Avian Research Institute, Izzatnagar, who issued the said posting order. The grievances of the applicant are that:

- a) despite being 'the senior-most senior scientist', the impugned posting order has placed him in a subordinate capacity to a scientist who is junior to him;
- b) though he has been with the Regional Centre since its inception, viz., 28.12.1992,

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Dr.Panda, who has been posted much later, i.e., 23.9.1993, has been placed above him in administrative hierarchy at the said Centre;

- c) the impugned order has the effect of down grading him to mere Scientist as against his acknowledged status of Senior Scientist;
- d) although Dr.Panda was only posted on transfer to Central Avian Research Institute, Izzatnagar, by the Indian Council of Agricultural Research, the Administrative Officer of the former Institute, by an erroneous interpretation of these orders, has posted him to be Officer Incharge of the Regional Centre at Chowdwar.

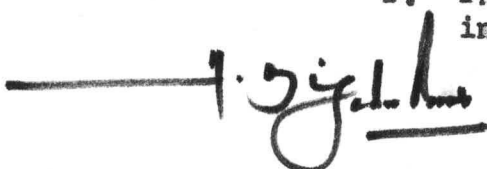
2. The applicant prays for directions to be issued to the Respondents to allow him to continue as Officer Incharge of the Regional Centre and for the quashing of the impugned orders (No.1-1-(34)/80 (Part) dated 11th May, 1993) issued by the Administrative Officer, Central Avian Research Institute, Izzatnagar.

3. Amplifying the bases of his claim, the applicant submits that -

- i) he was placed in basic scale of senior scientist (Rs.3700/- to 5700/-) in 1987, whereas Dr.Panda was so placed only in 1989.
- ii) he obtained a doctorate in 1987, whereas Dr.Panda secured a Ph.D in only 1989.
- iii) he is "an expert in poultry science as he belongs to the discipline of poultry science in Agricultural Research Service", whereas Dr.Panda belongs to the discipline of Veterinary Medicine
- iv) his qualifications, field of specialisation, expertise and previous experience make him better fitted to be incharge of the Regional Centre than Dr.Panda.

4. The two main planks of the applicant's arguments are:

- 1. The erstwhile scheme of placing scientists in S.2 & S.3 categories was given up on



1.1.1986, and such of the scientists who were given the new(replacement) scale of Rs.3700 - Rs.5000/- were henceforth to be designated as Senior Scientists if they held a Ph.D. degree, and as Scientists Selection Grade, if they did not have a Ph.D. degree. And, accordingly, he was designated a Senior Scientist earlier than Respondent 5.

2. The Indian Council of Agricultural Research had posted Respondent 5 merely to be under Central Avian Research Institute, Izzatnagar, but the Administrative Officer of the latter institute, by an erroneous interpretation of the said orders, re-posted the said Respondent to Chowdwar Centre without any justification.

5. Before proceeding to examine facts, the reply of the Respondents, and the details of various arguments advanced, we should, at the outset, like to make the observation that a number of assertions have been made in this case which were found, in the light of subsequent disclosures, to be misleading and designed to cause confusion. Half-truths have been freely advanced and documents concealed in part apparently deliberately. A certain dissembling has been in evidence and considerable amount of disingenuousness has been employed to reinforce patently incorrect positions. Considering that the contestants in this case are highly qualified and responsible scientific officers, we were dismayed by the mutual cavilling and constant striving for one-upmanship indulged in by these enlightened individuals. The contenders seemed to be more interested in settling legal scores than in promoting or contributing to the well-being of the institution to which they stand posted. Where the learned doctors were legitimately required to be conscientiously performing the tasks allotted to them in

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the interest and service of a newly-established institution, they seemed content to be displaying avoidable litigious tendencies. The alacrity with which they swore affidavits at various times to buttress various points was truly amusing, were the zeal not, at the same time, been so misplaced and misemployed in reciprocal acrimony.

6. Coming to the facts of the case the applicant bases his claim on the fact that he secured his doctorate earlier than Respondent 5. He also claims that he is an expert in poultry science. Apart from the fact that the applicant's supposed excellence is self-professed, the same does not in any way seem to diminish the value of the experience, qualifications and the overall suitability of his adversary. The Ph.D. Degree (a copy of which has been annexed to the application) conferred on the applicant indicates his field of study as Animal Production and Management, which, incidentally, does not necessarily reveal any special or specialised expertise in the limited area of poultry science. Likewise, Respondent 5, according to the applicant, is from Veterinary Medicine field, and, - by evident implication, - less suitable on that score to hold the post of Officer Incharge of the Regional Centre.

7. These are matters which cannot certainly be decided on the basis of claims by individuals interested in themselves, but are to be adjudged by someone who is technically competent to deal with such issues. The Director, Central Avian Research Institute, is beyond

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doubt one such whose views have the stamp of authority and finality. And it is his unambiguously stated opinion that, of the two officers, it is Respondent 5 who is more competent to superintend 'the conservation, improvement, multiplication of elite germplasm at the first hand', which is professed to be the salient objective with which the Regional Centre was established. Such being the expert view of a technically qualified and competent authority, we have no scope, choice or reason to differ from it, or to accept the self-proclaimed suitability of an interested party. Thus, as far as suitability is concerned, a comparative assessment has already been made of the two scientists by someone who has the technical stature and the administrative authority to pronounce on this question. We accept the same without reservation.

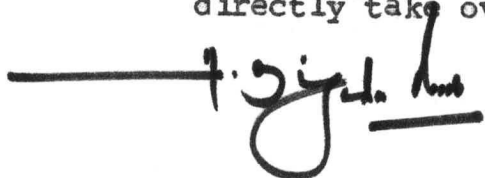
8. Next comes the question of specialisation of the two officers in the chosen or allotted field of their work on ground. It is stated that the applicant was working in the Division of Poultry Product Technology in C.A.R.I., prior to his present posting. There being no corresponding post in the Regional Centre at Chowdwar, the applicant was regarded as having been posted against the only other available post of Veterinary Officer sanctioned for it. This is a plausible explanation and cannot be disputed.

9. Allied to the fact emerging from the preceding paragraph is the attendant circumstance of the applicant's own posting to the Regional Centre. As per order No.E-15-92-Estt. dated 23.9.1992 issued by Director, C.A.R.I.,

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Izzatnagar, Dr.C.M.Mohapatra was to 'also act as Incharge of the Regional Centre without any extra remuneration'. This phrasing clearly indicates that the concerned authorities did not regard the applicant's appointment at the Regional Centre as anything more or other than a temporary working arrangement. This was obviously necessary because the establishing of the Centre had been approved, as can be judged from the very first sentence of the said order, and someone was evidently needed to get the organisation started on ground. It is entirely possible that the applicant was quite willing for the transfer. Thus the interests of the authorities and the applicant coincided at that point of time and his posting helped commence the preliminary work concerned with the establishment of the new centre at Chowdwar. It is significant that a clear indication was also given in the same order that the said posting would not give the applicant any claim of seniority. These indications, taken together, establish beyond doubt that Dr.Mohapatra's posting to the Regional Centre was no more than in the nature of an administrative first-step in the establishment of the Regional Centre.

10. In contradistinction to the above arrangement, the subsequent posting order of Dr.B.K.Panda to the Regional Centre (No.40 (S.3) 2/89-Per.II dated 28th December, 1992) is equally clear on the nature of his posting. The Director, Project Directorate, Poultry, Hyderabad, was asked by ICAR to advise Dr. Panda to directly take over charge of the Regional Centre. The



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Director, CARI, was also asked to intimate the assumption of charge at Chowdwar by Mr. Panda. And finally the order also asked Dr. Panda to take over charge of the Regional Centre immediately. None of these directions leaves any scope for slightest ambiguity. Against this backdrop, it is amply clear that Dr. Mohapatra's posting to Chowdwar was in the capacity of acting incharge of the Regional Centre and that the subsequent posting of Dr. Panda was by way of placing in position a regular officer incharge of the same centre. More importantly the orders of posting in respect of Dr. Mohapatra were issued by Director, CARI, Izzatnagar, which is one of the units under the ICAR, whereas the order of posting in respect of Dr. Panda was issued by the Council itself. This fact alone should settle with finality the relative position of the two contestants and the question of who was intended to be the Officer Incharge of the Centre.

11. The question of deciding the mutual seniority of contestants in this case has proved to be vexing. This is partly because, despite several opportunities and directions to that effect, the respondents were unable, or unaccountably reluctant, to produce a proper seniority list. This reluctance was largely the cause for the delay in disposing of what is essentially a straight-forward case, in its early stages, besides presenting needless complications during the subsequent hearings. We were unable to comprehend the reasons for the respondent's inability to comply with this simple direction. And when it came finally, the information

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was in driblets which had to be pieced together to draw any inference from it. Be that as it may, eventually we have had to take note of subsequent clarifications given on behalf of the respondents. The position as ^{is that,} intimated, among the Scientists of Agricultural Research Service, for the purpose of promotion, and for the purpose of first screening, the entire period of service in the grade, including the service rendered ^{elsewhere, and later} in the pre-revised scale of pay, is taken into consideration.

12. In amplification of this, it has been stated that while the applicant commenced his initial career as a Junior Veterinary Officer in the pay scale of Rs.400/- to Rs.620/- under the Government of Orissa, the Respondent 5 started his career as Lecturer in QUAT in the Scale of Rs.700/- to Rs.1600/-. The applicant served the State Government for 3 years 11 months and 12 days prior to joining the I.C.A.R. Respondent 5, on the other hand, served the University for five years and eight months and eleven days before being appointed under the I.C.A.R. terms. Respondent 5 has teaching experience while the applicant has none.

13. Both the applicant as well as Respondent 5 have a case of availing an excess of two days' joining time; the same had been allowed in one case and had not yet been condoned in the other case. This factor is, however, not very relevant to the present case and is therefore ignored.

14. It is mentioned that the respondent 5 was in receipt of a higher pay than the applicant at the point of

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entry in the service of I.C.A.R. In this connexion it is also explained that when promotions are made from more than one feeder grade in different scales of pay, or even in identical or equivalent scales of pay, the persons upto the number of vacancies for each feeder grade, as per quota, will be selected and interpolated in a combined select list.

15. In the light of the clarifications provided on this aspect of the case, we have to concur with the view that Respondent 5 is in fact senior to the applicant as maintained by the Opposite Parties.

16. As regards the applicant's repeated assertion that the orders of ICAR had been mis-interpreted by the Director, CARI, in posting Respondent 5 to the Regional Centre, there is absolutely no validity in it. Actually, we are constrained to observe, the orders of the ICAR have in fact been sought to be misinterpreted by the applicant himself as is evident from the fact that a part of the orders which left no room for any ambiguity on this score was concealed. We hold, therefore, that there has been no misinterpretation by the Director, CARI, of the orders of ICAR, and that orders issued by the Director are actually in consonance and compliance with the council's orders.

17. Taking into consideration the totality of facts and circumstances of this case, we hold that the contentions of the applicant are misplaced and unproven on all counts. There is no strength in his application

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and it deserves to be disallowed. We therefore reject the application of Dr.C.M.Mohapatra as wholly lacking in merit. The orders issued by us on 25.6.1993 to the effect that neither Dr.Mohapatra nor Dr.Panda will remain incharge of the said Institution until further orders is hereby withdrawn and the arrangement envisaged in ICAR Order No.40 (S-3) 2/89-Per dated 28th December, 1992 is permitted to take immediate effect.

18. Before we part with the case we consider it necessary to also add that the present arrangement whereby two officers, equally qualified and within the narrowest proximity to one another in terms of seniority, are required to work in close understanding and co-operation. Judging by the mutual antagonism displayed by them, we have grave doubts as to whether any cooperation, leave alone understanding or adjustment, is at all likely or possible. This does not seem to be conducive to the smooth functioning of a nascent institution of considerable importance to the Region. It is one of the axioms of administration that the person who is required to exercise an overall control of any institution should be sufficiently senior in his grade to be able to discharge his functions adequately and effectively. This basic requirement is not fulfilled in the present case. We would leave it to the authorities concerned to decide as to whether they would like the present unsatisfactory placements to continue indefinitely, or to find some other solution lying within their administrative powers. This observation is made because it appears to us to

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be the minimum that may be required for the health and continued progress of the institution.

19. Thus the application is disposed of.

No costs.


VICE-CHAIRMAN


MEMBER (ADMINISTRATIVE)

17 Nov 93

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 17.11.1993/B.K.Sahoo

