

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 262 OF 1994
Cuttack, this the 14th day of September, 2000

R.K.Hatwar

....Applicant

Vrs.

Union of India and another ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *NO*.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
14.9.2000

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)
.....

R.K.Hatwar,
Agricultural Officer-cum-Director In-charge,
Central Cattle Breeding Farm,
Chiplima, P.O-Basantapur,
Via-Godbhaga,
Dist.Sambalpur (Orissa)
Pin-768 111 Applicant

Advocates for applicant - M/s. R.B.Mohapatra
J.K.Nayak,
U.K.Bhatt
N.R.Routray

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1. Union of India, represented by
the Secretary to Government of India,
Department of Animal Husbandry & Dairying,
Ministry of Agriculture,
At-Krishibhawan, New Delhi-110 001.
2. Animal Husbandry Commissioner,
Department of Animal Husbandry,
& Dairying, Ministry of Agriculture,
Krishi Bhawan, New Delhi-110 001..... Respondents

Advocate for respondents - Mr.A.K.Bose,
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

Som In this Application the petitioner has prayed
for a direction to the respondents to consider the application
of the petitioner for promotion to the post of Director,
Central Cattle Breeding Farm with effect from September 1990
as against five vacant posts on the basis of seniority and
eligibility as per the Recruitment Rules, 1969. He has also
prayed for a declaration that the decision of the respondents
for giving promotion only to Veterinary Graduates isolating

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the Agriculture Graduates is null and void. He has also asked for a direction to the respondents to allow him the Career Advancement with effect from 1.10.1992 as he has reached the maximum of the scale of Rs.2000-3500/- since long.

2. The applicant's case is that he was appointed as Agricultural Officer in Central Cattle Breeding Farm (CCBF), Similiguda in Koraput district on 7.1.1974 and has been working as such being in Group-B gazetted rank. He has completed 20 years of continuous service without any promotion. Consequent on superannuation of Dr.S.K.Sinha, Director, CCBF, Chiplima in Sambalpur District, he was directed to take over charge from Dr.Sinha and remain in charge of the post of Director, CCBF, Chiplima. Accordingly he has been discharging the duties of Director, CCBF, Chiplima with effect from 31.1.1992 which is borne out by the letter dated 11.3.1992 (Annexure-A/3). According to the recommendation of the Fourth Pay Commission a Central Government employee is eligible to get at least two promotions during his service career. This recommendation is being implemented in almost all the Ministries, Departments and Subordinate Offices under Government of India. In the Department of Animal Husbandry & Dairying under which the applicant is working, a Stockman/Agriculture Assistant is getting promotion to Group-B gazetted post by virtue of length of service and seniority. Similar promotion is also being given to ministerial staff. But even though the applicant is highly qualified technically and seniormost Group-B official working in CCBF, his case has been neglected and he has not been promoted to the post

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of Director, Central Cattle Breeding Farms (Class I posts) Recruitment Rules, 1969 (Annexure-A/4) provide that for the post of Farm Superintendent, essential qualification is Degree in Agriculture/Animal Husbandry/Dairying/Veterinary Science of a recognised University or its equivalent and Post-Graduate Degree in Animal Genetics of a recognised University or its equivalent and seven years experience of management of dairy farms in a responsible capacity. On 12.3.1992 respondent no.1 issued letters to all State Governments/Union Territories (Annexure-A/5). With regard to CCBFs four posts of Director were notified. Again on 26.6.1992, besides the four posts mentioned above, one more post of Director for Regional Station for Forage Production and Demonstration was notified (Annexure-A/6). In letter dated 24.7.1992 (Annexure-A/7) Under Secretary to Government of India, Ministry of Agriculture, Department of Animal Husbandry & Dairying issued letters to all Directors of CCBFs calling for bio data in respect of Animal Geneticist, Agriculture Officer, Veterinary Officer, Livestock Officer and Veterinary Assistant Surgeon for recruitment to the post of Director, CCBF. The applicant has stated that in letter dated 4.9.1992 (Annexure-A/8) the Ministry of Finance circulated a Scheme for career advancement of Group-C and Group-D employees. The applicant has stated that respondent no.1 made an advertisement on 12.3.1993 inviting applications for filling up five posts of Director in the scale of Rs.3000-5000/- on ad hoc basis, in response to which the petitioner made an application along with prescribed bio data directly to respondent no.1 and also sent another application through proper channel. In his bio data he mentioned about papers published by him on different subjects and detailed courses of studies for M.Sc.(Dairy) in Animal Genetics & Breeding at

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National Dairying Research Institute, Karnal. He made a representation on 14.2.1994 (Annexure-A/10) to respondent no.1 to consider his case for promotion to the post of Director, CCBF taking into account his seniority and eligibility. In the said representation the applicant also pointed out about amendment to the Recruitment Rules of 1969 in respect of recruitment/promotion to the five vacant posts of Director. He pointed out that even if such amendment has come into force this should not be given retrospective effect. He made a further representation on 10.3.1994 (Annexure-A/11) pointing out that earlier Recruitment Rules of 1969 provided for promotion equally for Agriculture and Veterinary Graduates with Post-Graduate Degree in Animal Genetics & Breeding. The applicant apprehends that the departmental authorities are going to give promotion to other incumbents ignoring Agriculture Graduates working as Group-B gazetted officers even though the amended Recruitment Rules have not been circulated. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

3. The respondents in their counter have opposed the prayers of the applicant. They have stated that the Recruitment Rules for the post of Director, CCBF were amended in 1993. The amendment was undertaken as per the recommendation of the Indian Veterinary Council Act, 1984. The proposal was also mooted to change the mode of recruitment as 100% by promotion failing which by transfer on deputation, failing which by direct recruitment. The respondents have stated that the post of Director, CCBF is basically a veterinary post on account of duties and responsibilities

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attached to the post and the educational qualifications for the post require conformity with Indian Veterinary Council Act, 1984. In view of this, the Agriculture Officers were excluded from the feeder cadre for the purpose of promotion. It is further stated that this was also done to provide promotional avenue to Animal Geneticists, Veterinary Officers, Veterinary Assistant Surgeons and Livestock officers working in the CCBFs and possessing Bachelors Degree in Veterinary Science and Animal Husbandry as minimum qualification and in the process requirement of Agriculture Dairying Degree as educational for the post of Director, CCBF was done away with. These qualifications were also recommended under the Indian Veterinary Council Act. The Department of Personel & Training and the Union Public Service Commission having concurred in the proposal for amendment, the amended Recruitment Rules were notified on 26.7.1993 (Annexure-R/1). The respondents have furtherstated that the Department have decided to provide promotional avenue to Agriculture Officers with minimum qualification of Bachelors Degree in Agriculture by putting them inthe feeder grade to the post of Directors of Regional Station for Forage Production & Demonstration (RSFP&D). The proposal for amendment is still under consideration in consultation with the Department of Personnel & Training and Union Public Service Commission. Once the Recruitment Rules for Directors, RSFP&D are notified, the applicant will be considered for the post of Director, RSFP&D which is equivalent to the post of Director, CCBF. It is stated that as the Recruitment Rules for the post of Director, CCBF have been amended, the applicant is not eligible to be considered for the post of Director, CCBF.

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4. The applicant in his rejoinder has mentioned that the post of Director, CCBF involves general administrative duties and does not warrant specialisation in the stream of agriculture or veterinary science. He has stated that before amending the Recruitment Rules in 1993 no suggestion or objection was invited from the aggrieved Agriculture Officers working in CCBF. The applicant has also disputed the averment of the respondents that the educational qualification for the post of Director, CCBF requires conformity with Indian Veterinary Council Act, 1984. He has stated that three non-veterinarians, namely, G.P. Ram who is M.Sc. (Agriculture), G.R. Sharma who is a simple Matriculate with a Diploma in short course in Animal Husbandry, and Shri L.S. Rana who is an I.A. with a diploma of short duration in Veterinary Compounder have been included in feeder grade for promotion to the post of Director, CCBF, which is not in conformity with the Indian Veterinary Council Act, 1984. As regards the submission of the respondents that Agriculture Officers are being made as feeder grade for promotion to the post of Director, RSFP&D, the applicant has stated that RSFP&D is a different organisation with separate set of establishment and there are Fodder Agronomists working as Group-A Officers in that organisation. Because of opposition of senior officers from RSFP&D, the Recruitment Rules for the post of Director, RSFP&D could not be amended even after lapse of three years and this was also not agreed to by Union Public Service Commission. The applicant has stated that he was selected for one post of Director, CCBF but this was not given effect to till the Recruitment Rules of 1993 came into force. He has further stated that during the pendency of the OA, ad hoc

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promotion has been given to five officers of which three officers, namely, G.P.Ram, G.R.Sharma and L.S.Rana are not Veterinary Graduates. The applicant has also stated that the Amendment Rules excluding Agriculture Graduates are illegal and should be struck down. On the above grounds, he has reiterated his prayer in his rejoinder.

5. We have heard Shri R.B.Mohapatra, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have also perused the records. The learned counsel for the petitioner has filed written note of submissions along with a memo of citations enclosing copies of certain decisions which have also been taken note of. The learned counsel for the petitioner has referred to the following cases which have also been taken note of:

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- (i) Kishori Mohanlal Bakshi v. Union of India, AIR 1962 SC 1139;
 - (ii) Moti Ram Deka v. N.E.Frontier Railway, AIR 1964 SC 600;
 - (iii) Roshan Lal v. Union of India, AIR 1967 SC 1889;
 - (iv) Indravadan H.Shah v. State of Gujarat and another, AIR 1986 SC 1035;
 - (v) State of Jammu & Kashmir v. K.N.Khosa, AIR 1974 SC 1;
 - (vi) State of Uttar Pradesh and another v. Ram Gopal Shukla, AIR 1981 SC 1041;
 - (vii) State of Punjab v. Joginder Singh, AIR 1963 SC 913;
 - (viii) All India Station Masters & Assistant Station Masters Association v. General Manager, AIR 1960 SC 384;

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- (ix) State of Uttar Pradesh v. Babu Ram, AIR 1961 SC 751;
- (x) The State of West Bengal and another v. Nripendra Nath Bagchi, AIR 1966 SC 447;
- (xi) State of Mysore v. Padmanava Acharya, AIR 1966 SC 602;
- (xii) B.S.Vadra v. Union of India, AIR 1969 SC 118; and
- (xiii) J.Pandurangarao v. The Andhra Pradesh Public Service Commission, AIR 1963 SC 268.

6. The first submission of the learned counsel for the petitioner is that amendment of the Recruitment Rules for promotion to the post of Director, CCBF excluding Agriculture Graduates from the feeder categories is violative of Article 14 as this unreasonably restricts/denies the chances of promotion to the applicant who is an Agriculture Graduate. It has been further submitted that the post of Director, CCBF mainly deals with administrative nature of duties and responsibilities, and special qualification of Veterinary Graduation or Agriculture Graduation is not required for the post. The respondents, on the other hand, have mentioned in their counter that the post of Director, CCBF mainly involves work relating to animal husbandry and therefore the field of promotion has been confined to Veterinary Graduates. They have further stated this amendment to the Recruitment Rules which has come into force with effect from 26.7.1993 (Annexure-R/1) has been made to bring it in conformity with the Indian Veterinary Council Act, 1984. The applicant has stated that notwithstanding the amendment, three persons who are not Veterinary Graduates and have only Diploma have been brought into the feeder grade and has mentioned that

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they have also been given ad hoc promotion to the post of Director, CCBF. The Tribunal cannot take a view with regard to the nature of duties and responsibilities of the Director, CCBF. It has been submitted by the learned counsel for the petitioner that the applicant has been kept in charge of the post of Director, CCBF for long period of time and this itself would show that the post does not require discharging of duties and responsibilities which can be performed only by a Veterinary Graduates. The admitted position is that the applicant was kept in charge of the post of Director, CCBF as on a vacancy arising in that post. He was not given appointment to the post even on ad hoc basis, and on the basis of the fact that the applicant has discharged the duties of Director, CCBF for sometime it is not possible to hold that the post does not involve duties and responsibilities which can be discharged by veterinary graduates. In any case it is for the departmental authorities to take a view in the matter. It is no doubt true that prior to the amendment of the Recruitment Rules for the post of Director, agriculture graduates were also entitled to be considered for promotion along with veterinary graduates. But it is always open for the departmental authorities to reconsider the matter and take a different view. The only point to be seen is, if such amendment is violative of Articles 14 and 16 of the Constitution. The learned counsel for the petitioner has relied on the decisions of the Hon'ble Supreme Court in the cases of State of Uttar Pradesh v. Babu Ram (supra), Nripendra State of West Bengal and another v. Nripendra Nath Bagchi, and State of Mysore v. Padmanava Acharya (supra) in support of his

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contention that the Executive Government cannot make any rule which is violative of any provision of the Constitution. This position is too well settled for us to refer to any judicial pronouncement on this point. The only point to be seen is, if the amendment of the Recruitment Rules in July 1993 is violative of Articles 14 and 16 of the Constitution. The law is well settled that any classification by itself does not involve discrimination if the classification bears an intelligible differentia with the object sought to be achieved. In this case the respondents have stated and we have no means of taking a contrary view that the post of Director, CCBF is basically a veterinary post on account of the duties and responsibilities attached to the post. Amongst the veterinary graduates and agriculture graduates a classification is possible and it cannot be said that the classification is discriminatory because the respondents have stated that the duties and responsibilities relate to veterinary subjects. In view of the above, the classification between agriculture graduates and veterinary graduates cannot be taken to be discriminatory. The decision of the Hon'ble Supreme Court in the case of All India Station Masters and Assistant Station Masters Association v. General Manager (supra) relied upon by the learned counsel for the petitioner can be referred to in this context. It is not necessary to go into facts of that case. It is only to be noted that in that case the Hon'ble Apex Court held that concept of equality can have no existence except with reference to matters which are common as between individuals between whom equality is predicated. The Hon'ble Supreme Court also held in that case that assuming without deciding that matters of promotion are matters relating to employment within the meaning of Article

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16(1) such equality of opportunity in matters of promotion must be equality as between the members of same class of employees and not equality between members of separate independent classes. In this case the veterinary graduates and agriculture graduates belong to two distinct and separate classes and therefore it cannot be said that no distinction can be made between the two classes with regard to promotion to the post of Director, CCBF. In Roshan Lal's case (supra) the promotees and direct recruits were absorbed in one cadre and the Hon'ble Supreme Court held that for further promotion from that cadre, no discrimination can be made between them. In the instant case the officers with Veterinary Degree and officers with Agriculture Degree in the feeder posts as per the original Recruitment Rules for the post of Director, CCBF were not in one cadre and therefore this decision can have no application to the facts of the present case. In view of the above, we hold that the amendment to the Recruitment Rules for the post of Director, CCBF, making only veterinary graduates eligible for the post is not violative of Article 14 of the Constitution and therefore this contention of the learned counsel for the petitioner is held to be without any merit and is rejected.

7. The second contention of the learned counsel for the petitioner is that even though the Recruitment Rules have been amended the vacancies in the post of Director, CCBF, had arisen much prior to the amendment of the Recruitment Rules which have come into force with effect from 26.7.1993 and therefore the pre-existing vacancies have to be filled up according to the Recruitment Rules for the post of Director, as these stood at the time when the vacancies arose. It has also been submitted that the selection process for filling up

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the vacancies was initiated by the respondents on 12.3.1992 vide Annexure-A/5 and therefore the vacancies have to be filled up in accordance with the Recruitment Rules prior to the amendment and the applicant would be entitled to be considered even though he is an agriculture graduate. In support of the above contention, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Y.V.Rangaiah and others v. J.S.Rao and others, 1983 SLR 789(SC), in which their Lordships have observed as follows:

"....The vacancies which occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules...."

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In the case of P.Mahendra v. State of Karnataka, AIR 1990 SC 405, the Hon'ble Supreme Court have held that it is a well settled rule of construction that every statute or statutory rule is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. In that case rules for appoinemtnt to the post of Motor Vehicle Inspector were amended bringing about change in the eligibility criterion for such promotion. The Hon'ble Supreme Court have held that the amending rules did not have retrospective effect and could not adversely affect the rights of candidates who have qualified for selection and appointment on the date they applied for the post. It was also held that as the process of selection had already commenced when the amending rules came into force, the amending rules could not affect the existing rights of those candidates who are being considered for selection. The learned counsel for the

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petitioner has also relied on the case of P.Murugeshan and others v. State of Tamil Nadu and others, 1993 SCC (L&S) 445. Facts of this case are highly complicated and it is not necessary to go into those. It is only necessary to note that it was held by the Hon'ble Apex Court that the vacancies arising within the prescribed period prior to commencement of the amendment, shall be filled in accordance with the pre-amended rules. In the case of Gopal Krishna Rath v. M.A.A.Baig, 1999 SCC(L&S) 325, it was held that when the selection process has actually commenced and the last date for of receipt of applications is over, any subsequent change in the recruitment rules regarding qualification will not affect the process of selection which has already commenced. In that case the appellant possessed the necessary qualifications as advertised on the last date of receiving applications. These qualifications were in accordance with the rules and guidelines then in force. Interview in that case was held on 11.5.1992. The eligibility conditions were changed with effect from 19.9.1991. Even then the selection of the appellant was upheld because on the last date of receipt of applications he had the necessary qualifications. Our attention has also been drawn to the case of Vice-Chancellor, University of Allahabad v. Dr.A.P.Mishra, 1997 (2) AISLJ 97. That case related to change of rules with regard to reservation for SC, ST and OBC. It was also noted by the Hon'ble Supreme Court in that case that a wait-listed candidate does not have any vested right in his favour to get appointment. The facts of this case are widely different. The same point has been considered by the Hon'ble High Court of Rajasthan in a Full Bench decision in the case of S.L.Verma v. Rajasthan State Electricity Board. 1999(2) SLR 383. In that case the Hon'ble High Court of Rajasthan have held that the amended qualifications shall

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not be applicable to vacancies occurring prior to the date of enforcement of the amended rules and such vacancies shall be filled in accordance with the qualifications prescribed on the date of occurrence of vacancies. It was also held that a rule can be amended retrospectively, but such retrospective effect cannot be allowed to take away the vested rights of citizens. In the instant case the amended rules which are at Annexure-R/1 specifically provide that the amended rules will come into force on the date of their publication in the official gazette. Thus, the amended rules have been clearly given prospective effect. In view of this, it is clear that the vacancies arising prior to such amendment, as in the case here, will have to be filled up in accordance with the recruitment rules for the post of Director, CCBF as those were then. It is also to be noted that by letter dated 12.3.1992 (Annexure-A/5) the recruitment process had already been initiated and therefore the amended rules cannot be brought into play to disqualify the applicant for being considered for the post of Director, CCBF. The learned counsel for the petitioner has referred to one more decision of the Hon'ble Supreme Court in the case of State of Rajasthan v. R. Dayal and others, 1997(1) SLJ 496, and the decision of the Mumbai Bench in the case of Dharam Das v. Union of India and another, 4/98 Swamysnews 53, but it is not necessary to refer to these cases. In view of our above discussions we hold that the applicant is entitled to be considered for the post of Director, CCBF in respect of the vacancies which had arisen prior to the date the amended rules came into force on 26.7.1993. The applicant has prayed that he should be promoted to the post of Director, CCBF with effect from September 1990 and should be given all consequential service and financial

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benefits. This prayer is without any merit because all that we have held is that the applicant has a right to be considered for promotion to the post of Director, CCBF. This necessarily means that he has to be considered and if found suitable, is to be given promotion, and only with effect from the date of such promotion, if any, he will be entitled to the service and financial benefits of the post.

8. The last contention of the learned counsel for the petitioner is that he has been working in his present post for the last 20 years and in accordance with the Ministry of Finance's O.M. dated 4.9.1992 (Annexure-A/8) he is entitled to career advancement. This contention is also without any merit because this circular applies only to Groups C and D employees, and the applicant by his own admission has been holding a Group-B post right from the beginning. This contention is also held to be without any merit and is rejected.

9. In the result, therefore, the Original Application is partly allowed in terms of our observation and direction above. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
14.9.2000
VICE-CHAIRMAN

September 14, 2000/AN/PS