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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 356 OF 2000  
Cuttack, this the 4th day of July, 2001

Sri Gobardhan Behera ..... Applicant

Vrs.

Indian Council of Medical Research and  
others .... 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)

S. N. S.  
(SOMNATH SORI)  
VICE-CHAIRMAN  
4.7.2001

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH,  
Cuttack, this the 4th day of July, 2001

ORIGINAL APPLICATION NO. 356 OF 2000

CORAM:

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

.....  
Sri Gobardhan Behera, aged about 45 years,  
son of Ainthu Charan Behera, Section Officer, Office of the  
Director, Regional Medical Research Centre,  
Chandrasekharpur, Bhubaneswar, District-Khurda

.... ...Applicant

Advocates for applicant - M/s K.C.Kanungo  
S.Behera  
R.N.Singh

Vrs.

Indian Council of Medical Research,  
represented through

1. The Director General, Indian Council of Medical Research, Ansari Nagar, PO Box No. 4911, New Delhi-29.
2. Director, Regional Medical Research Centre, Chandrasekharpur, Bhubaneswar-23, District-Khurda.

..... Respondents

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

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the notice, dated 16.12.1999 (Annexure-1) calling for applications for the post of Accounts Officer in Regional Medical Research Centre (hereinafter referred to as "RMRC"), Bhubaneswar, on the ground of it being violative of the Department of Personnel & Training's memorandum, dated 25.5.1998 (Annexure-5). The second prayer is for a direction to the respondents to initiate the selection process for the post after amending the Recruitment Rules.

The third prayer is for quashing Rule 10(1)(a) of the Recruitment & Promotion Rules for Group "A" Administrative (Ministerial) Staff, 2000 (hereinafter referred to as "Recruitment & Promotion Rules, 2000") and to modify the above rule by incorporating the service requirement of five years instead of six years.

2. The respondents have filed counter opposing the prayers of the applicant. After the applicant had amended the OA, additional counter has been filed. The applicant has filed rejoinder to the original counter and additional rejoinder to the additional counter. We have perused the pleadings of the parties and have heard Shri K.C.Kanungo, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents. The learned counsel for the petitioner has filed written note of submissions which has also been perused.

3. For the purpose of considering this petition it is not necessary to go into too many facts of this case. The relevant facts required for the purpose of determination of the dispute are generally admitted. Admittedly, the applicant is working as Section Officer in RMRC, Bhubaneswar, under Indian Council of Medical Research ("ICMR" for short). In the notice, dated 6.12.1999 (Annexure-1) applications were invited for filling up of the post of Accounts Officer on regular basis. In the circular it was mentioned that departmental candidates holding the post of Section Officer with six years of service including two years in the Accounts Section or persons holding equivalent post in the scale of pay of Rs.8000/- shall be eligible to apply and preference will be

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given to such Section Officers who have undergone training in Cash & Accounts Work in ISTM. The petitioner applied for the post and admittedly he had not put in six years of service as Section Officer. According to him, he had put in five years and four months as Section Officer. The applicant has stated that after introduction of the pay scales recommended by the Fifth Pay Commission, the Department of Personnel & Training in their letter dated 25.5.1998 (annexure-5) directed all Departments to amend the Recruitment Rules to bring those in lines with the fixed qualifying service for promotion to particular grade as mentioned in Annexure-A to the memorandum. In this memorandum it has been mentioned against serial 23 that for promotion from the post carrying pay scale of Rs.6500-10500/- to the post in the pay scale of Rs.8000-13500/-, which is the pay scale for the Accounts Officer in RMRC, Bhubaneswar, the required qualifying service is 5 years. The applicant has stated that the RMRC, Bhubaneswar, is a research institute subordinate to ICMR and according to the Bye-laws of ICMR (Annexure-4) in all matters regarding the service conditions of employees of the Council, Fundamental and Supplementary Rules and such other Rules and orders issued by Government of India from time to time shall mutatis mutandis apply to the employees of the Council. It is stated by the applicant that in the letter at Annexure-5 the Department of Personnel & Training had directed all the Departments of Government of India to amend the Recruitment Rules. But without doing the same RMRC, Bhubaneswar, has initiated selection process for the post of Accounts Officer without amending the service requirement for promotion to the post of Accounts Officer

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from six years to five years as Section Officer. During the pendency of this O.A., the relevant Recruitment Rules have been amended and these amended rules, which came into force from 1.8.2000, provide that 50% of the posts of Accounts Officer shall be filled in by promotion from amongst Section Officers who have completed not less than six years of service in that grade with minimum two years experience in Budget, Accounts and Audit related works. They should have B.Com. Degree and preference will be given to candidates who have passed three months Cash & Accounts Training organised by ISTM. The applicant has stated that the amendment Rules are also not in accordance with the directions of the Department of Personnel & Training at Annexure-5. In his additional rejoinder the petitioner has mentioned that notwithstanding coming into force of the new Recruitment Rules with effect from 1.8.2000 in which the requirement of service for Section Officer for promotion to the post of Accounts Officer was retained as six years, National Institute of Cholera & Enteric Diseases, Calcutta, another research institute of ICMR has issued an Employment Notice on 26.12.2000 (Annexure-8) in which service requirement for Section Officer for promotion to the post of Accounts Officer has been mentioned as five years. In the context of the above, the applicant has come up with the prayers referred to earlier.

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4. In pursuance of our interim order, the petitioner's application was placed before the DPC and it was directed that the DPC should consider the suitability but not eligibility of the applicant vis-a-vis other candidates and no action should be taken on the recommendation of the DPC without leave of the Tribunal.

Subsequently, in our order, dated 25.10.2000, the departmental authorities were allowed to act on the recommendation of the DPC subject to the condition that any person appointed in pursuance of such recommendation should be clearly intimated in writing that his appointment would be subject to the result of this OA.

5. It has been submitted by the learned counsel for the petitioner that according to the Bye-laws of ICMR, the rules and orders issued by Government of India will mutatis mutandis apply to the employees of the Council in all matters regarding their service conditions. Extract of these Bye-laws is at Annexure-4. We are, however, not prepared to accept the contention of the learned counsel for the petitioner that because of this Bye-law, with the issuing of the memorandum dated 25.5.1998, the required period of service for Section Officer to be considered for promotion to the post of Accounts Officer has automatically been reduced from six years to five years, firstly because recruitment to any post has to be made in pursuance of the Recruitment Rules. In the circular at Annexure-5 issued by the Department of Personnel & Training, all Departments of Government of India have been directed to take up amendment of their Recruitment Rules and obviously, therefore, merely because of issuing of the memorandum, dated 25.5.1998 by the Department of Personnel & Training, the Recruitment Rules do not get modified or amended. The respondents have pointed out that the Executive Committee of ICMR have considered the memorandum dated 25.5.1998 and have amended the Recruitment Rules. In the new Recruitment Rules, which came into force from 1.8.2000, the service requirement of

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six years has been kept with the further stipulation that the applicant for the post has to be a Commerce Graduate. The Byelaws relied upon by the applicant provide that Government rules and orders will apply to the employees of ICMR *mutatis mutandis* which means with necessary modification. In view of this, it cannot be accepted that because of issuance of the memorandum, dated 25.5.1998, the service requirement is reduced to five years instead of six years. We find no reason for quashing that portion of the new Recruitment Rules which continues to keep the service requirement of six years with a further stipulation that the applicant for the post has to be a Commerce Graduate. As earlier noted, ICMR has within its powers amended the Recruitment Rules after taking into account the memorandum dated 25.5.1998 issued by the Department of Personnel & Training. It is nowhere provided that the service requirement mentioned for promotion to posts in different services as mentioned in Annexure-A to the memorandum must be necessarily followed by the respondents. In view of this, we find no reason to accept the prayer of the applicant to strike down the new Recruitment Rules maining the service requirement of six years and introducing the requirement of Degree in Commerce.

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6. As regards the employment notice issued by the National Institute of Cholera & Enteric Diseases, Calcutta for filling up the post of Accounts Officer, which is at Annexure-8, we note that this has been issued by that institute on 26.12.2000 after amendment of the Recruitment Rules on 1.8.2000 and in this notice the service requirement has been mentioned as five years. As this fact has been brought on record only in the additional rejoinder

filed by the applicant, the respondents have not had any opportunity to reply to the same. Moreover, uncontrovertible position is that recruitment to a post has to be made in accordance with the Recruitment Rules and even if it is taken for granted that some other institutes under ICMR have initiated selection for a similar post the terms of which are not in accordance with the Recruitment Rules, the case of the petitioner does not get strengthened in any way thereby.

7. Moreover, the petitioner has mentioned in a somewhat contradictory fashion and this has been pointed out by the respondents that the vacancy in the post of Accounts Officer in RMRC having arisen prior to the new Recruitment Rules coming into force from 1.8.2000, the selection has to be done in accordance with the earlier Recruitment Rules. This being so, even according to the earlier Recruitment Rules, the petitioner does not have the minimum service experience of six years. By his own admission he has put in five years and four months and therefore he is not eligible to be considered for promotion to the post of Accounts Officer.

8. In consideration of all the above, we find no merit in the Original Application which is accordingly rejected. The interim order stands vacated. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)  
4.7.2001  
VICE-CHAIRMAN