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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.62 of 2006
Cuttack, this the 29th day of January, 2009

V.S.Mankar Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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O.A.No. 62 of 2006

Cuttack, this the 29th day of January, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Sri Vyakanta Sakharam Mankar, aged about 50 years,
S/o.Skharam Upsrao Mankar at present working as Live Stock
Officer, Central Cattle Breeding Farm, Sunabeda, Orissa, Dist.
Koraput.

.....Applicant

By the Advocate :M/s.K.P.Mishra, S.Mohapatra, T.P.Tripathy.

- Versus -

1. Union of India represented through the Ministry of Agriculture,
Secretary to Government of India, Department of Animal
Husbandry, Dairying and Fisheries, Krushi Bhawan, New Delhi.
2. Director, Central Cattle Breeding Farm, Sunabeda, Dist.
Koraput, Orissa.

....Respondents

By Advocate :Mr. S.B.Jena,ASC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant, is a Live Stock Officer of Central Cattle Breeding
Farm, Sunabeda in the District of Koraput. Being aggrieved by the order
under Annexure-A/2 dated 20/30-06-2005 rejecting his prayer for grant
of second financial up-gradation under ACP has filed this Original
Application under Section 19 of the A.T. Act, 1985 seeking the following
relief:

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- “(i) To hold/declare the clause 16 of the clarification and condition No.6 as arbitrary, illegal and cannot be sustainable in the eye of law;
 - ii. Quash the Rules, 1993 as far as it concerned the educational qualification for promotion to the post of Director;
 - iii. Quash the impugned order dated 30.06.2005 under Annexure-A/2, passed by the Respondent No.1 by concurrently holding the same is bad, illegal and cannot be sustainable in the eye of law;
 - iv. Direct/order the Respondents to grant 2nd Financial Up-gradation (scale of pay) to the Applicant from April, 2004 i.e. on completion of 24 years of regular service;
 - v. Pass such other order(s)/direction(s) as may be deemed fit and proper in the bona fide interest of justice.”

2. Respondents filed their counter opposing the stand of the Applicant by stating that Live Stock Officer is the feeder grade of Director. As per the Recruitment Rules the Live Stock Officer is eligible for consideration for promotion to the post of Director provided he is having ten years regular service in the grade having B.V.Sc and A.H. qualification. Applicant was promoted to the post of Live Stock Officer in the year 1999. As the Applicant was lacking the qualification of B.V.Sc and A.H. qualification, he was not entitled to the benefit of second financial up-gradation under the ACP. As such, there having no wrong in the order of rejection under Annexure-A/2, this OA is liable to be rejected.

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3. Heard rival submissions of the parties and perused the materials placed on record including the Recruitment Rules placed at Annexure-A/3, ACP schemes/subsequent clarifications issued by the DOP&T vis-à-vis the order of rejection of the claim of applicant under Annexure-A/2.

4. Admitted fact of the matter is that the applicant is an M.Sc (Agriculture) in Animal Husbandry and Dairying. He was appointed as Technical Assistant (Group C) through direct recruitment under the Respondents on 10.03.1980. He was promoted to the post of Live Stock Officer (Group B) w.e.f. 06.03.1999. During argument, it was reiterated by the Learned Counsel for the Applicant that the Live Stock Officer is the feeder cadre of the post of Director, Central Cattle Breeding Farm. Applicant got one regular promotion in the year 1999 and completed 24 years of regular service in the year 2004. As per the scheme of ACP an employee is entitled for two financial up-gradations if no regular promotion during the prescribed period of (12 and 24 years) has been availed by an employee. If an employee has already got one regular promotion he shall qualify for the second financial up-gradation only on completion of 24 years of regular service under the ACP Scheme. But according to the Applicant, without due application of mind the Respondents rejected the claim of the applicant on the ground that he is

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lacking in the qualification for holding the post of Director, although in the Recruitment Rules it has been provided that educational qualification will not be applied to promotee officers working in the Cattle Breeding Farm on the date of notification of the recruitment rules. Recruitment Rules came into force in the years 1993. As such, according to the Applicant, he is entitled to the second financial up-gradation under the ACP scheme retrospectively. By relying on the decision of the Apex Court in the case of Food Corporation of India and Others v Parashotam Das Bansal and others (2008) 5 SCC 1000, Learned Counsel for the Applicant submitted that on the one hand the applicant was denied the benefit of ACP and on the other hand by imposition of the qualification norm he has been ousted from the zone of consideration for the post of Director and promotion being a normal incidence of service necessary direction be issued to the Respondents to make provision for promotion or for grant of ACP in relaxation of normal rules.

5. Relying on the Rules it has been contended by the Respondents' counsel that Recruitment Rules clearly provide that Livestock officer with ten years regular service in the grade having the qualification of B.V.Sc and A.H would be eligible for consideration to the post of Director. As on the date of notification of the Recruitment Rules, the Applicant had not completed ten years of regular service in the feeder



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grade, he was not entitled to claim any such relaxation. Subsequently in regard to the ACP scheme dated 9th August, 1999 a clarification was issued by the DOP&T *inter alia* providing that as per the condition No.6 all promotion norms have to be fulfilled for up-gradation under the scheme. As such no up-gradation shall be allowed if an employee fails to qualify departmental/skill test prescribed for the purpose of regular promotion. According to the Respondents' counsel since the Applicant did not fulfill the conditions his case was rightly rejected which needs no interference.

6. It is seen that on the recommendation of the Fifth Central Pay Commission, the Government of India introduced the scheme commonly known as 'ACP' through OM dated 9th August, 1999 in other words it came into force with effect from the date of publication i.e. 9th August, 1999. According to the Applicant he was promoted to the post of Livestock Officer w.e.f. 6.3.1999. As such as per the ACP scheme the breakup period is 12 and 24 years and if an employee has already got one regular promotion he shall qualify for the second financial up-gradation only on completion of 24 years of regular service. Clause 6 of the ACP scheme as also clause 16 of the clarification subsequently issued clearly provides that one must fulfill all promotion norms for up-gradation under the Scheme. Up-gradation under ACP scheme is within the hierarchy of

the promotional avenues available to an employee. It is a policy decision of the Government and in policy decision of the Government there is hardly any thicker line available for this Tribunal to interfere. Therefore, the Applicant must prove that although he was entitled to he was illegally deprived of the benefit. The stand of the Applicant that as per the Recruitment Rules since he was an appointee prior to the Rules under Annexure-A/3 the qualification should not be a bar for him to get the benefit of ACP. If it is so he should not have sought for quashing of the imposition of the qualification in the Recruitment Rules. However, as on the date of notification of the Rules under Annexure-A/3 applicant was not having the requisite ^{service} ~~years~~ of ten years. Therefore, viewed the matter from any angle, it cannot be said that there has been any illegality in the order of rejection of the claim of the Applicant.

7. In service jurisprudence the prescription of qualification not only refers to numeric superiority but is essentially related to better mental capacity, ability and maturity to shoulder the responsibilities which are entrusted to the candidates after their selection to a particular post. All the more it is important for efficient and effective administration. The basic object of prescribing a minimum qualification is to put a cut off level for a particular job in accordance with the minimum competency required for the performance of that job. In the

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case of **Shailendra Dania and others vs. S.P.Dubey and others** –[2007] 2 SCC (L&S) 202 it has been held by the Apex Court that there can be no manner of doubt that higher technical knowledge would give better thrust to administrative efficiency and quality output. To carry out technical specialized job more efficiently, higher technical knowledge would be the requirement.

8. Further in the case of **P.U. Joshi and others v Accountant General, Ahmedabad and others**, 2003(2) SCC 632 it has been held by the Apex Court that “there is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

9. For the reasons stated above, this OA sans any merit and therefore, the OA stands dismissed by leaving the parties to bear their own costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)