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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION No. 288/2001
DATE OF DECISION : THIS THE 7TH DAY OF JANUARY, 2004.

Hon'ble **Mr. J.K.Kaushik**, Judicial Member
Hon'ble **Mr. G.R. Patwardhan**, Administrative Member

Harish Kumar Sharma S/o Shri Nathu Ram
Aged 40 years, Scientific Assitt., Heavy Water
Plant, Kota, R/o PC & NL, Heavy Water Plant
(Kota), Anushakti District Chittorgarh.

.....Applicant.

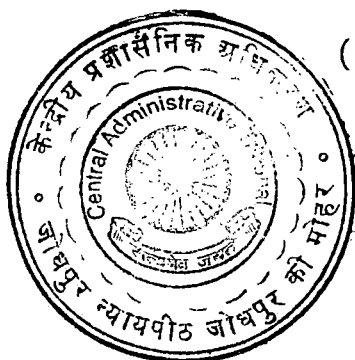
(Mr.Vijay Mehta,Advocate, for applicant)

versus

1. Union of India through Secretary,
Department of Atomic Energy,
Chatrapati Maharaja Shivaji Marg,
Mumbai.
2. Heavy Water Plant (Kota)
Anushakti District Chittorgarh through
Its General Manager.

.....Respondents.

(Mr.Vineet Mathur,Advocate,for respondents)



Order
[By G.R.Patwardhan]

This is an application by Shri Harish Kumar Sharma, working as Scientific Assistant in Heavy Water Plant, Kota, under the department of Atomic Energy. The respondents are the Union of India through the Secretary, department of Atomic Energy and the General Manager, Heavy Water Plant, Kota. Annexure A/1 dated 4.5.2001, which is a communication from the General Manager to the applicant has been challenged. In this communication, the applicant has been informed that there are fixed number of posts in the Qualification Incentive Scheme

(QIS) and that specified criteria of experience and academic qualification is to be considered for various positions in the scheme. It has also been mentioned that personnel who fulfil the criteria are considered for suitable positions based on their technical seniority and that in the present circumstances the applicant could be considered for QIS Level IV only.

2. Learned advocates for both the parties have been heard. The applicant through arguments and through written application and supplementary submissions, has specifically laid emphasis on the following points :-

- (i) That the applicant has continuously put in about 16 years of service beginning 26.4.1983 and possesses qualification of BSc which is the minimum qualification for entry as Scientific Assistant.
- (ii) That 11 seats are available for Level III as per Annex.A/3.
- (iii) No notification was issued for making applications for giving the benefits of the scheme and no applications were invited.
- (iv) When the applicant came to know of the Scheme, he made a representation on 3.4.2001 requesting respondent no. 2 to consider his case for giving benefit in Level III.
- (v) In the reply that is under challenge, the respondent has not only ignored the claim of the applicant for giving him Level III positions but, has also brought



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in an element of 'technical seniority' which does not find mention in the scheme.

- (vi) As the benefits of Level III are to be given on completion of 8 years of service and 11 posts are available, the applicant should have been called to compete in examination.
- (vii) That under the Merit Promotion Scheme, vacancies are not relevant, but under QIS, number of slots have been prescribed which is arbitrary and needs to be quashed.
- (viii) The reply has been signed by the Administrative Officer which is not permissible.

3. In the rejoinder filed by the respondents as also the Supplementary reply filed by them, following points have been brought out :-



- (i) The department of Atomic Energy operates two Schemes QIS and Merit Promotion Scheme. Qualification Incentive Scheme is for payment of incentive to personnel who have acquired prescribed skill through special training, experience and have done specific assignments. The Scheme is made applicable only after a particular plant unit meets necessary prerequisites like adequate facility for theoretical and practical training as well as for conducting qualification tests. The QIS was

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introduced from 1.4.1995, 10 years after the plant
went into operation.

(ii) The number of positions under the Scheme at specific levels are limited in terms of Unit's requirement and are operated within the number sanctioned in the Scheme.

(iii) That grade seniority and fitness is an essential criteria in the QIS as all the employees cannot be accommodated at the higher levels for want of functional positions.

(iv) There are many employees senior to Shri Sharma who are eligible for consideration for promotion to Level III and as such the applicant can be considered only for Level IV. It is due to this reason that like many others, the applicant was not allowed to go through the process of examination for Level III as the Scheme is not based on any competition.



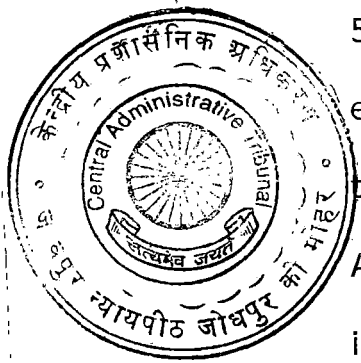
(v) No one junior to Shri Sharma has been considered for QIS Level III.

(vi) The Administrative Officer of the Heavy Water Plant is equivalent to the Under Secretary to the Government of India and is thus, authorised for filing affidavits and as such, the objection taken by the applicant, is not well founded.

4. The applicant has tried to show through Annexures A/2 and A/3, how the QIS is operated at different levels. Annexure

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A/3 is a Chart which is suggestive of some of the posts and the number of positions that are available under the Scheme. Annexure A/5 is a Schedule of written examination for QIS. In the reply filed by the respondents Annexure R/1 indicates the QIS circulated on 30.1.1989 and suggests in detail how the eligible individuals possessing requisite qualification, will have to complete field check list and will require to qualify for written examination as also fulfil certain other criteria. An enclosure to the Scheme indicates that for Incentive Level 3, Diploma in Engineering or a Degree in Science with 16 years or more as experience is one of the criteria. Obviously, therefore, the applicant feels that he is eligible for being considered for Level III.



5. What is not clear from the written submissions is, how the exact process of short listing persons for QIS is to be made, though, the word 'Field Check List' appears in the Scheme at Annex.R/1. It is not explained what the term means or how the individual concerned is to complete this field check. Though, there is a mention that the concerned persons will have to qualify themselves in the written examination conducted by the Head of Units, it is not made clear, if at periodic intervals, the unit have to ask for any application or have to put to examination those who are otherwise qualified by virtue of educational and experience criteria. This much, therefore, has to be inferred that the Scheme as appended at Annex.R/1 is either not in its entirety or if it is the only document on the Scheme, then it lacks clarity and objectivity.

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6. The applicant has also through his pleadings tried to show how the QIS is arbitrary. He has drawn a parallel between the QIS and the Merit Promotion Scheme and alleges that while the Merit Promotion Scheme does not have any fixed number of positions for promotion, the QIS attempts to restrict the same by prescribing particular number of slots at every level. He, therefore, proposes to compare the two and perhaps, would like the QIS to be operated without any restriction on the number of slots in each level. Since at present, the issue is not about the legality of either the QIS or the Merit Promotion Scheme and since promotion is a matter of policy and cannot be claimed as a matter of right, it would not be appropriate to consider this objection and pass any comment on either of the Schemes.

7. However, taking for a moment that the QIS as operated by the respondents is, what is contained in Annexure R/1, it must be concluded without much difficulty that the procedure prescribed for operating the Scheme is not very clear and leaves many issues for surmises. Perhaps that may be the reason why, in the communication (Annexure A/1) the respondents have also used a term 'Technical Seniority' – which does not find mention in the Scheme as appended to Annexure R/1.

8. To that extent, the impugned communication lacks objectivity and is, therefore, quashed. The respondents are directed to pass a reasoned order on the claim of the petitioner within three months and communicate the same. The petitioner would be free to agitate the matter again, if so advised. The O.A. is allowed accordingly. No costs.




(G.R. Patwardhan)
Adm. Member


(J.K. Kaushik)
Judl. Member

Part II and III destroyed
in my presence on 23/10/13
under the supervision of
section officer (1) as per
order dated 18/10/13

D.H. Shrivastava
Section officer (Record) 23.10.2013

Recd
[Signature]

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