

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.444/05

Friday, this the ...8th day of June 2007

C O R A M :

**HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.GAUTAM RAY, ADMINISTRATIVE MEMBER**

C.M.Krishna Das,
S/o.V.K.Kunhirama Kurup,
Assistant Grade II (Stores & Purchase),
Regional Research Laboratory, Industrial Estate,
Pappanancode, Trivandrum – 19.

...Applicant

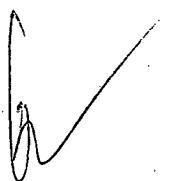
(By Advocate M/s.T.C.Govindaswamy & Sumy P Baby)

Versus

1. The Controller of Administration,
Regional Research Laboratory,
(Council of Scientific & Industrial Research),
Industrial Estate P.O., Trivandrum – 19.
2. The Director,
Regional Research Laboratory,
(Council of Scientific & Industrial Research),
Industrial Estate P.O., Trivandrum – 19.
3. Joint Secretary (Administration),
Council of Scientific & Industrial Research,
Anusandhan Bhawan, No.2,
Rafi Marg, New Delhi – 01.
4. Shri.Sasidharan,
Assistant Grade I (General),
Regional Research Laboratory,
(Council of Scientific & Industrial Research),
Industrial Estate P.O., Trivandrum – 19.Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC [R1-3])

This application having been heard on 6th June 2007 the Tribunal on
...8th June 2007 delivered the following :-

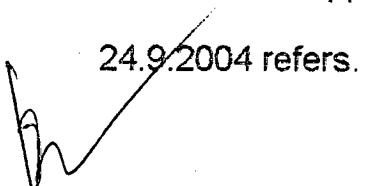


ORDER

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

When a post is created after the trifurcation of a single cadre had been formed, whether any option preferred by any one could be acted upon to fill up the new post, is the question.

2. The facts capsule : The applicant is functioning as Assistant Grade II in the Purchase and Stores Wing. Earlier, the set up was that there was only one cadre called the General Cadre of ministerial staff, consisting of Assistant Grade III, Assistant Grade II and Assistant Grade I. This General Cadre had single seniority and was looking after the functions of general administration, the finance and accounts aspects as well as stores and purchase. Vide Annexure A-1 circular dated 12.4.2004, as per the CSIR letter dated 10th July 2003 and 22nd March 2004 on the subject matter of Rationalisation of Administrative cadres, fixing the staff strength of General/F&A/S&P and inviting option from the staff who were working in the General Cadre for transfer to F&A/S&P cadres, options were called for, fixing the last date as 20th April 2004. The applicant had applied for the same. He was transferred to Stores and Purchase Wing. Annexure A-3 dated 23rd April 2004 refers. This order contains the names of Assistants Grade I & II who have exercised their option. The name of 4th respondent does not figure in this list. The CSIR gave one more opportunity to those who did not apply in response to earlier circular. Annexure A-4 dated 24.9.2004 refers.

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3. Vide Annexure A-5 the strength of Assistant (S&P) Grade I was increased from two to three and the Director, Regional Research Laboratory, Thiruvananthapuram was asked to recast the three rosters (DPC, DTQ, DRQ) of Assistant (G) and Assistant (S&P) at Assistant Grade I level. The applicant by communication dated 13.4.2005 (Annexure A-6) stated that the sanctioned strength of Assistant (S&P) Grade I being three, as per CSIR Rules 50% of three posts (i.e. two posts) come under DPC and that since there is only one individual who has been posted by way of promotion, the new post of Assistant (S&P) Grade I be made tenable by promotion through DPC.

4. With reference to Annexure A-5 order dated 14.3.2005 whereby the new post of Assistant Grade I was created, the Regional Research Laboratory requested CSIR to clarify as to whether Assistant (G) Grade I in excess of the sanctioned strength can be shown against the Assistant (S&P) Grade I. Annexure A-7 refers. In response to the aforesaid clarification, the CSIR vide order dated 5/8.4.2005 informed the Regional Research Laboratory, Thiruvananthapuram that option exercised earlier by Assistant (G) Grade I for transfer to S&P cadre be effected in accordance with the extant instructions on the subject and if no such optees are available most junior Assistant (G) Grade I be transferred to S&P cadre.

5. It is after the above information was received from CSIR that on 25.4.2005 the Regional Research Laboratory informed CSIR that after recasting the rosters, the additional post of Assistant (S&P) Grade I has been shown under DPC quota. In other words, after the publication of this

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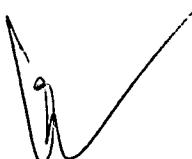
communication the earlier position to fill up the post by transfer got eclipsed and the post should be filled by DPC. However, this was not done and the applicant penned a few representations and it is in response to representation dated 13.4.2005 and 2.5.2005 that the respondents have stated that as per the orders issued by CSIR on the subject, request for promotion to the post of Assistant (S&P) Grade I could not be acceded to. Annexure A-9 refers. It is against this order that the applicant has preferred this O.A.

6. Respondents filed their reply wherein they have, after describing the chronological sequence of events, stated that it was based on CSIR communication (Dated 5.4.2005) that the post of Assistant (S&P) Grade I was sought to be filled up by transferring the private respondent who had already exercised his option. By Annexure R-1 this fact was informed to the applicant on 16.6.2005.

7. The applicant had filed a rejoinder and reiterated his stand and claims as in the O.A. In the additional reply the respondents have stated that the bifurcation of the cadre was not complete and the transfer of the 4th respondent from the General Cadre to S&P Cadre cannot be construed as illegal. In the second additional reply the respondents had annexed certain communications one of which is a circular dated 10th July 2003 inviting option. Yet another statement was filed by the respondents wherein Annexure R-5 was enclosed which is an application with reference to the letter No.3-33(1)/2003-E.I whereby the private respondent requested for permanent absorption in the Stores & Purchase Section Stream.

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8. Counsel for the applicant submitted that the entire action on the part of the respondents in inducting 4th respondent in the Grade of Assistant (S&P) Grade I is a stage managed affair. According to the counsel the said 4th respondent would not have applied for the post and as his wife has been serving in the administration, the records have been adjusted to show that there was an application from the said private respondent. He had further argued that the earliest circular dated 12.4.2004 was first circulated in Regional Research Laboratory, Thiruvananthapuram vide Annexure A-1 order and it was in response to the same that certain individuals including the applicant applied and that transfer had taken place vide Annexure A-2. It is the case of the applicant that had the private respondent applied earlier even without this circular having been circulated his name would have figured in, in OM dated 23.4.2004 (Annexure A-3). It has further been contended by the counsel that clarification given by CSIR vide Annexure R-5 was at a stage when the respondents felt that the newly created post could be filled by an ordinary transfer. However, when the applicant approached the respondents by Annexure A-7 representation, vide Annexure A-8 order dated 25th April 2005 the new post was to go to DPC quota. Since the applicant is the senior most candidate in the feeder grade he must be considered for promotion to the post of Assistant Grade I against this newly created post. When this post is tenable by DPC there cannot be a possibility of the same being filled by transfer of Assistant Grade I from the General Wing, as it would result in an imbalance of percentage of promotion, DTQ and DRQ.



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9. Per contra counsel for the respondents relied upon the communication at Annexure R-5 (filed along with counsel statement on 5th December 2006) and argued that the respondents have followed the directions of the CSIR.

10. Arguments were heard and documents perused. By virtue of Annexure A-8 order dated 25th April 2005 the post of Assistant (S&P) Grade I newly created should have to go to promotion quota only as percentage of quota has already been fixed. Under these circumstances, even if it is presumed that the 4th respondent had applied for transfer to S&P Wing, the same could not have been possible to be acceded to as there is no vacancy under lateral movement or direct recruitment quota. Necessarily, this post has to be filled up by considering eligible Assistant Grade II candidates in S&P Wing for promotion. By deciding to fill up the same by way of induction of private respondent, the applicant's claim has been frustrated. This is not permissible. Rejection of applicant's claim vide order dated 2.5.2005 impugned in this O.A has, therefore, to be necessarily rejected.

11. If the respondents felt that the private respondent having exercised his option for switching over to S&P Wing which was, however, not considered and should be accommodated, it could be possible by accommodating him against the two posts already existing prior to creation of new posts. For this purpose it has to be seen and ascertained that the private respondent is senior and the one who has been accommodated could not have been appointed had the private respondent been

considered on time. In that case also due notice should be given to the incumbent already posted therein. In any event the private respondent cannot stake his claim to be accommodated against the newly created post which is to be filled only by DPC. It has been stated that the private respondent continues only in general administration.

12. In view of the above, the O.A succeeds. Annexure A-9 order dated 2.5.2005 is quashed and set aside. It is declared that the applicant is eligible to be considered for promotion to the post of Assistant Grade I which arose in the S&P cadre on creation of the new post and earmarked under DPC quota. The respondents are directed to consider the case of the applicant for promotion to the post of Assistant Grade I in the S&P cadre and if found fit, promote him to the said post. The applicant is entitled to benefits arising out of such promotion only from the date he is so promoted and assumes higher responsibility. The task of conducting the DPC etc. and passing suitable orders be completed within a period of three months from the date of communication of this order. Cost easy.

(Dated the ...^{8th} day of June 2007)


GAUTAM RAY
ADMINISTRATIVE MEMBER

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K.B.S. RAJAN
JUDICIAL MEMBER