

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 462/1991 199  
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DATE OF DECISION 25.8.92

S.G.Varma Applicant (s)

M/s. S.Subramani, M.Balagovindan Advocate for the Applicant (s)

Versus

Director General  
Council of Scientific and Respondent (s)  
Industrial Research, Rafi Marg,  
New Delhi and three others.  
Mr.M.C.Sen Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. **S.P.MUKERJI, VICE CHAIRMAN**

The Hon'ble Mr. **N.DHARMADAN, JUDICIAL MEMBER**

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 21.3.1991 the applicant who has been working as Stores and Purchase Assistant in the Regional Research Laboratory, Trivandrum under the Council of Scientific and Industrial Research has prayed that his services from 16.12.1981 should be recognised for the purposes of seniority and he should be given appropriate place in the Seniority List of Stores/Purchase Assistant Grade IV and Grade V as on 30.12.1983. He has also prayed that respondents 1 and 2 may be directed to consider him for the post of Deputy Stores and Purchase Officer Grade II in the 33 1/3% quota reserved for promotion through Departmental Competitive Examination pending which even the direct recruitment quota should not be filled up. The brief facts of the case can be summarised as follows.

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2. The applicant was originally appointed as Assistant Store Keeper at Magnesium Project on 25.6.1977 and through Selection Committee promoted as Store Keeper grade VI in the scale of Rs.330-560 with effect from 16.6.81. When the incumbent of Stores Purchase Assistant Grade IV in the scale of Rs.550-900 died and the post fell vacant it was downgraded as Stores/Purchase Assistant Grade V and the applicant who was still on probation in the lower Grade VI of Rs.330-560 was given a temporary officiating promotion with effect from 16.12.81 on completion of his probation in Grade VI, vide the order dated 9.11. 1983 at Annexure-I. The Magnesium Project was closed on 29.12.87 and the CSIR decided to redeploy the employees of the Magnesium Project at par with the CSIR Laboratories . The redeployed employees of the Magnesium Project were to be treated as holding the same supernumerary posts as personal to them and the posts <sup>are to</sup> ~~will~~ disappear on their retirement. The Departmental Promotion Committee having recommended the applicant's name for regular appointment as Stores/Purchase Assistant Grade V in the old scale of Rs.425-700 and the revised scale of Rs.1400-2600 , the applicant was redeployed in the Regional Research Laboratory, Trivandrum vide the memorandum dated 8.6.88. The applicant joined the Laboratory on 13.7.88. When the All India Seniority List of Stores Purchase Assistant Grade IV (as on 31.10.88) and Grade V (as on 30.12.83) were circulated vide the circular dated 6th December 1988 (Annexure-IV) and <sup>when</sup> ~~the~~ applicant did not find his name in them, he represented on 14.12.88 (Annexure-V) praying that since he was working as Stores/Purchase Assistant Grade V

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with effect from 16.12.81 his name should be included in the All India Seniority List of Grade IV and Grade V. When these lists were finalised without including the applicant's name, he filed another representation dated 8.2.89 at Annexure-VI praying that his name be included in the All India Seniority List of Stores/Purchase Assistant Grade V on the basis of his service in that grade from 16.12.81 in the Magnesium Project. His name was still not included when the revised Seniority List was published on 12.7.89 at Annexure-VIIA. He sent another representation at Annexure-VIII praying that his name be included in the seniority list of Stores/Purchase Assistant Grade V (now Grade III) with retrospective effect.

3. The applicant was informed vide the communication dated 1st February 1991 at Annexure-IX that since the All India Seniority List circulated in January 1989 contained the names of only those Grade V Stores/Purchase Assistants who had been appointed on a regular basis before 1.1.34 <sup>since</sup> and <sup>the</sup> applicant was appointed only on 7.6.88 his name could not be included. It was also mentioned that ad-hoc services are not counted for determining the seniority. The applicant's grievance is that since his name is not included in the Seniority List as on 31.12.83 he cannot appear in the examination for promotion to the grade of Deputy Stores Purchase Officer. A written examination and interview were held in 1990 but he has been left out.

4. In the counter affidavit the respondents have stated that on 16.6.1981 when the applicant was promoted

from Grade VI to Grade V he had not completed five years of approved service (as prescribed in the CSIR Administrative Rules) in Grade VI. He had just completed only six months of probation. Thus the applicant's statement that he was the only candidate eligible to be appointed to Grade V on 16.12.81 is not correct. He has not completed five years of approved service even now and therefore he is not eligible for promotion to Grade III. The post of Deputy Stores and Purchase Officer can be filled up in the 33 1/3% quota by those who had completed eight years of service in the grade of Rs.1400-2600 on the basis of seniority <sup>or</sup> five years of service in that grade for being eligible to appear in the Departmental Competitive Examination.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Since the applicant had not completed five years of approved service in Grade VI, i.e., Rs.330-560 on 16.12.81 and had completed only six months of service in that grade, he was not eligible for promotion to Grade V in the scale of Rs.425-700/1400-2600. Thus his ad-hoc service from 16.12.81 to 18.7.88 when he was regularly promoted to Grade-V cannot be taken into account for the purpose of seniority or as regular service. In Direct Recruit Class II Engineering Officers Association v.s. State of Maharashtra and others, AIR 1990 SC 1607 a Full Bench of the Hon'ble Supreme Court held as follows:-

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad-hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

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6. Even otherwise since the promotion to Grade V post on 16.12.81 was a local arrangement in the Magnesium Project which was not included in the overall CSIR cadre, the ad-hoc promotion given to him in 1981 cannot be allowed to give him an undue benefit over the eligible candidates in the regular cadre to which he was absorbed on a regular basis only on 7.6.88. On the closure of the Magnesium Project the applicant was redeployed in the CSIR Laboratories and in accordance with the latest ruling of the Supreme Court in CA No.628/88, Balbir Sardana vs. Union of India decided on 29th January, 1992 surplus staff absorbed has to start with bottom seniority.

7. So far as his eligibility for promotion as Deputy Stores and Purchase Officer Grade II is concerned, the applicant has produced in a subsequent hearing the order dated 30th September 1988 issued by the CSIR at Annexure-XI which reads as follows:-

" I am directed to state that the matter regarding (1) fixation of seniority and (2) the method of counting of their past service for assessment promotion after re-deployment/absorption in various Laboratories/Institutes of surplus staff of Magnesium Project, Jamshedpur was under consideration of the CSIR for some time past. Now in consultation with Sr.Financial Adviser, CSIR it has been decided that:-

1. Fixation of seniority in the respective grade of surplus staff will be determined from the date of rejoining in the recipient organisation.
2. However, the service rendered in the Magnesium Project will be counted for Leave/ Increment and assessment promotion etc. Monetary benefit of assessment promotion will be given to them from the date otherwise

due to them. The staff of Magnesium Project will continue to be governed by Assessment Promotion Scheme by which they were governed in the Magnesium Project before rejoining other CSIR Labs./Instts."

The learned counsel for the applicant conceded that in so far as seniority in Grade-V is concerned, the aforesaid communication does not entitle him to count his service in the Magnesium Project for purpose of seniority. He, however, stressed that in accordance with para 1(2) of the aforesaid communication, his entire service in Grade-V from 16.12.81 should count for qualifying him for promotion in the examination quota to Grade-II of Deputy Stores and Purchase Officer.

8. In accordance with the CSIR Administrative Services (Recruitment and Promotion) Rules, a copy of which has been appended by the applicant at Annexure-X, promotion to Grade-II as Deputy Stores and Purchase Officer is made in the following manner:-

"4. Grade II-Dy. Stores and Purchase Officer/Dy. Stores Verification Officer (Rs. 2000-3500)

Recruitment to this grade shall be made as follows:

(i) 33-1/3% by promotion from amongst Stores/Purchase Assistants in the grade of Rs. 1400-2600 who have completed not less than 8 years approved service in that grade on the basis of seniority (on all India basis) subject to rejection of unfit and on the recommendations of the DPC, which shall interview the eligible candidates.

The existing incumbents in the grade of Rs. 1640-2900 will hold this post and grade as personal to them. They will, however, be eligible for consideration for promotion to the grade of Rs. 2000-3500 on completion of not less than 3 years of approved service in their existing grade of Rs. 1640-2900 or combined 8 years service in the grade of Rs. 1400-2600 and Rs. 1640-2900.

(ii) 33 1/3% by promotion on the result of departmental competitive examination from amongst officers

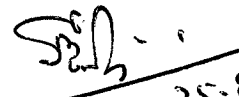
in the grade of Rs.1640-2900 with not less than 3 years service or combined service of 5 years in the grades of Rs.1640-2900 and Rs.1400-2600 and officers in the grade of Rs.1400-2600 in the stores and purchase cadre, Senior Stenographers and Assistants (General and Finance) who have completed not less than 5 years service.  
(emphasis added)

The applicant is claiming eligibility for promotion through Departmental competitive examination under clause (ii) above. The learned counsel for the respondents, however, argued that since the applicant did not complete 5 years of approved service in Grade-V, whether in the Magnesium Project or in the CSIR, he is not eligible. We feel that since in clause (ii) above for Departmental examination "only "5 years service" is mentioned and not "5 years of approved service," the applicant is eligible to appear in the Departmental examination by virtue of his service in Grade-V from 16.12.81. If the intention was to make those with 5 years of approved service only as eligible, there was nothing to prevent the authors of the Recruitment Rules to say so, as they have specifically used the words "approved service" in clause (i) of the Recruitment Rules, quoted above.

9. In the circumstances we allow the application in part only to the extent of directing that the applicant should be allowed to appear in the <sup>ensuing</sup> Departmental examinations for promotion as Deputy Stores and Purchase Officer in Grade-II by virtue of his service in Grade-V with effect from 16.12.81. There will be no order as to costs.

  
25.8.92

(N. DHARMADAN)  
JUDICIAL MEMBER

  
25.8.92

(S. P. MUKERJI)  
VICE CHAIRMAN