

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE.

DATED THIS THE NINTH DAY OF DECEMBER, 1986.

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman,
and
Hon'ble Shri L.H.A. Rego, Member (Admn.).

APPLICATION No. 210 of 1986 (T)
(W.P. No. 16805 of 1979)

Between:

H.S. Anantapadmanabha,
Research Officer,
Sandal Research Centre,
Government of India,
Malleswaram,
Bangalore-3. (Shri H.S. Jois, Advocate)Applicant.

and

1. Union of India,
rep. by its Secretary,
Ministry of Food, Forest & Agriculture,
Central Secretariat,
New Delhi-1.

2. The President,
Forest Research Institute & Colleges,
P.O. New Forest,
Dehradun.

3. A.K. Anantanarayana

4. C.R. Rangaswamy,

5. Smt. B.S. Kamala,

6. V.S. Tandon,

7. Shivprasad,

8. J.D. Jain,

9. S.C. Mishra,

10. S.P. Singh, and

11. S.P. Juyal.

All Majors, Research Assistants Gr.I,
now Research Officers,
C/o The President, F.R.I. &C,
P.O. New Forest,
Dehradun.

....Respondents.

(Shri M.S. Padmarajaiah, Senior C.G.S.C. for R1 & R2;
Shri T.K. Anantha Murthy, Advocate for R.3;
Shri Munir Ahmed, Advocate for R.4)

This case coming up for hearing today, Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman, made the following:

O R D E R

In this transferred application received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act, 1985 ('the Act'), the applicant has challenged the orders dated 22.10.1979 (Exhibits E & F) of the President, Forest Research Institute and Colleges, Dehradun ('the President'), in so far as they related to the promotion of respondents 3 to 11, his non-promotion and his reversion.

2. The applicant initially joined service as a Research Assistant Grade-I ('RA G.1') on 18.9.1964 in the Forest Department of the Government of India. He was promoted as a Research Officer ('RO') on 23.8.1976 on an ad hoc basis, from which day he has been working as RO.

3. The recruitment to the posts of RO, with which only we are concerned, is governed by the Forest Research Institute and Colleges (Class I and Class II non-tenure posts) Recruitment Rules, 1966 ('the 1966 Rules') promulgated by the President of India on 20.10.1966 under the proviso to Article 309 of the Constitution. The 1966 Rules have been substantially amended by the Forest Research Institute and Colleges (Group 'A' and Group 'B' non-tenure posts) Recruitment (amendment) Rules, 1979, made on 26.9.1979 which also have no bearing on the controversies in this case.

4. Under the 1966 Rules, the recruitment to the posts of RO by promotion was regulated as hereunder:

S.No.	Name of Post.	Whether selection post, or non-selection post.	Method of recruitment, whether by direct rectt., or by promotion, or by deputation/transfer & percentage of the vacancies to be filled by various methods.	In case of rectt. by promotion, deputation/transfer, grades from which promotion deputation/transfer to be made.
18.	RESEARCH OFFICER (posts other then Engineering and Statistical.)	Selection.	Promotion 33 1/3% Direct Recruitment 66 2/3%.	By promotion of (i) Research Assistants Grade-I possessing the basic academic qualifications, viz., a Bachelor's degree in the relevant subject and possessing 3 years service as Research Assistant Gr.I; (ii) Research Assistants Gr.I, who are recipients of Howard's Gold Medal and have put in atleast 8 years service in the grade.

The posts of RO are selection posts, and therefore in making promotions on merit becomes the pre-dominant factor and not mere seniority in the lower cadre of Research Assistants Gr.I.

5. For a variety of reasons, with which we are not now concerned, regular promotions to the cadre of RO from 1973 to 19.8.1979 was not made by Government, except making ad hoc promotions. On 20.8.1979, a Departmental Promotion Committee (DPC), constituted by the competent authority, examined the cases

of the applicant, respondents 3 to 11, and all other officers that were within the range of selection, and prepared a Select List of persons found suitable for promotion to the then available posts of RO of the department. Accepting the recommendations of the DPC, the President on 22.10.1979 issued two orders, one promoting respondents 3 to 11 and several others, and the other, reverting the applicant, and several others, with whom we are not concerned in this case. Hence this application.

6. The applicant has asserted that many of the persons promoted by the DPC and the President, were already holding the posts of RO as direct recruits to those posts, and therefore, they could not have been promoted to the very same posts. The applicant had contended that promotions to the posts of RO should have been made on the basis of seniority -cum- merit, and if so done, he should have been promoted on 22.10.1979, in preference to respondents 3 to 11, who were all juniors to him.

7. In their statement of objections filed before the High Court, and the Additional Statement filed in pursuance of our order made on 17.9.1986, respondent Nos. 1 and 2 have justified the promotion of respondent Nos. 3 to 11, and others.

8. Respondents 3 and 4, who are represented by a counsel, have supported respondents 1 and 2. Respondents 8, 10 and 11, to whom we will make a special reference, though duly served, have remained absent, and are unrepresented.

9. Shri H. Subramanya Jois, learned advocate, has appeared for the applicant. Shri M.S. Padmarajaiah, Senior Central Government Standing Counsel, has appeared for respondents 1 and 2. Shri T.K. Anantha Murthy and Shri Munir Ahmed, learned advocates, have appeared for respondent Nos. 3 and 4 respectively.

10. Shri Jois contends that respondents 8,10 and 11, who had been appointed as ROs as direct recruits and were working in that capacity, could not have been promoted against the very same posts, as had been done by the DPC and the President.

11. Shri Padmarajaiah, without disputing that respondents 8,10 and 11, had been appointed to the posts of RO as direct recruits, contends that they had been promoted as ROs to give them the benefit of seniority, in conformity with the order of Government made on 30.12.1976 in O.M. No. 22011/6/75-Estt.(D).

12. In paragraph 6, the applicant has asserted that persons at S.Nos. 3,4,5,7,8,12,13,14,18, 22 and 23 in the unreserved list, and S.No. 4 in the reserved list have all been appointed as ROs, and were holding the posts of RO well before 20.8.1979. But at the hearing, Shri Jois confined this assertion of the applicant to respondents 8,10 and 11 only, and not to all others, as earlier asserted by the applicant, who are also not made parties. We, therefore, confine our consideration to respondents 8,10 and 11 only.

13. In the additional statement filed, respondent Nos. 1 and 2 do not deny that respondent Nos. 8, 10 and 11 were direct recruits to the posts of RO. We have also noticed that these respondents, who have remained absent, do not also deny the same. On these facts, we can safely hold that these respondents are direct recruits to the posts of RO. Even otherwise, the documents produced by the applicant and respondents 1 and 2, conclusively establish that respondents 8, 10 and 11 had been appointed as ROs as direct recruits and were so holding the posts of ROs as on 20.8.1979.

14. A promotion, as a rule, is made from a lower post to a higher post only. The term 'promotion' itself means that. A promotion of a person holding that very post, as a direct recruit, to that very post, is something inconceivable and cannot be resorted to under any circumstances. We must, therefore, hold that the DPC and the President have committed a manifest illegality in promoting respondents 8, 10 and 11.


15. Paragraph 8 of the O.M. dated 30.12.1976, on which strong reliance is placed by Shri Padmarajaiah to sustain the promotion of respondent Nos. 8, 10 and 11, reads thus:

" It may happen that a government servant who is recommended for appointment to a post as direct recruit may also be among those eligible for consideration for promotion to the same post. An Officer does not lose his right of consideration for such promotion merely because he has been recommended for appointment against the direct recruitment quota. Therefore, such officers, if they are within the field of eligibility should be included in the list of officers for consideration by the DPC, excepting where the officer was holding the lower post in temporary capacity and has been appointed to the higher post as direct recruit before the date of the meeting of the DPC for promotion to the higher post."

This paragraph, very rightly, provides for considering the cases of those that had not still been appointed as direct recruits to the posts if they were within the range of selection. This paragraph does not say that those that have already been appointed as direct recruits to that very post should also be considered for promotion. If there cannot be a promotion, then the question of seniority also does not arise. The DPC and the President had totally misread this paragraph and had illegally promoted respondents 8,10 and 11. We have, therefore, no hesitation to reject this contention of Shri Padmarajaiah. But this conclusion of ours does not, necessarily, mean that the appointment of respondents 8,10 and 11 as ROs as direct recruits becomes invalid. We hasten to add that their appointment as ROs as direct recruits will be valid and is not affected by this order at all.

16. Shri Jois next contends that respondent No.3 had not the necessary eligibility prescribed in Columns 11 and 12 of the Rules, and therefore the DPC and the President should not have promoted him to the post of RO.

17. In his application, the applicant had not specifically pleaded that respondent No.3 was not eligible for promotion to the post of RO. When the applicant had not specifically pleaded the ineligibility of respondent No.3, we cannot countenance an oral argument to the contrary and hold that respondent No.3 was not eligible for promotion to the post of RO. We must, therefore,




reject this belated contention urged by the applicant against respondent No.3.

18. Learned counsel for respondents 1 and 2, and 3, emphatically assert that respondent No.3 was eligible for promotion.

19. When a duly constituted DPC consisting of senior officers had considered the case of respondent No.3 for promotion, and the President had promoted him, we must presume that he was eligible for promotion. We, therefore, reject this challenge of the applicant against respondent No.3.

20. We have carefully perused the proceedings of the DPC held on 20.8.1979, and also examined whether the applicant can be fitted against the vacancies made available by our declaration against respondent Nos. 8,10 and 11, and others if any of that category.

21. We find that the DPC, on an evaluation of the relative merits of all the eligible officers, excluding the direct recruits, had rated one Shri P.P. Bhola as 'outstanding', and many others as 'very good', and had graded the applicant and several others as 'good'. We cannot take exception to the gradings made by the DPC also. We find from the proceedings of the DPC and the order of promotion made by the President that the applicant had not been promoted on the ground that he had been graded only as 'good' and that there were many




others who had been graded as 'very good'. When these are the hard facts, we will not be justified in annulling the proceedings of the DPC on the order of promotion made by the President.

22. Admittedly, on 19.2.1982, the applicant had been promoted as an RO, evidently, on his subsequent performance, and he is holding that post ever since then, which also justifies us not to unnecessarily annul the earlier proceedings in their entirety..

23. On the foregoing discussion, we hold that the non-promotion of the applicant and the promotion of respondent Nos. 3 to 7 and 9, and others of that category, cannot be undone by us.

24. We do hope and trust that the seniority lists so far drawn will be re-examined and re-drawn by the authority with due regard to our declaration and law regulating the same.

25. In the light of our above discussion, we make the following orders and directions:

- (1) we strike down the proceedings of the DPC held on 20.8.1979 and the order made by the President on 22.10.1979 (Annexure-E) in so far as it promoted and appointed respondent Nos. 8, 10 and 11 to the posts of RO. But this order does not invalidate their appointments to the posts of RO as direct recruits; and
 - (2) we dismiss this application in all other respects.
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26. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

dms.

Ms. P. M. ...
9-12-86
VICE CHAIRMAN MEMBER (A) *...* 9. 12. 86