

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No: 276/92

Transfer Application No: ---

DATE OF DECISION: 12-9-95

Shri Govind Ganpat Narayane

Petitioner

Mr. D.V. Gangal

Advocate for the Petitioner

Versus

Union of India & 6 ors.

Respondent

Mr. V.S. Masurkar

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member(J)

The Hon'ble Shri M.R. Kolhatkar, Member(A)

1. To be referred to the Reporter or not ? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal ? ☒

M.R. Kolhatkar
(M.R. KOLHATKAR)
M(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.276/92

Shri Govind Ganpat Narayane,
Central Labour Institute Quarters,
Type III/9, N.S.Mankikar Marg,
Sion, Bombay - 400 022.

.. Applicant

-versus-

1. Union of India
through
Secretary,
Ministry of Labour,
Shramshakti Bhavan,
New Delhi - 110 001.
 2. Director General,
Factory Advisory Service
and Labour Institute,
N.S.Mankikar Marg,
Sion, Bombay - 400 022.
 3. The Chairman,
Union Public Service Commission,
Dholpur House, Shahajan Road,
New Delhi 110 011.
 4. The Commissioner for SC/ST,
West Block No.I, Wing No.7,
First Floor, R.K.Puram,
New Delhi - 110 022.
 5. Shri M.Murashetty,
Deputy Director General &
Vigilance Officer,
Office of the Director-General,
Factory Advice Service and Labour
Institute, N.S.Mankikar Marg,
Sion, Bombay - 400 022.
 6. Dr.S.K.Sensarma,
Director-in-charge
(Physiology Division)
C.L.I., Sion, Bombay-400022.
 7. Shri V.L.Kathane,
Director Safety & Liaison
Officer for SC/ST, Sion,
Bombay - 400 022.
- .. Respondents

Coram: Hon'ble Shri B.S.Hegde, Member(J)
Hon'ble Shri M.R.Kolhatkar, Member(A)

Appearances:

1. Mr.D.V.Gangal
counsel for the
applicant.
2. Mr.V.S.Masurkar
Counsel for the
respondents.

JUDGMENT:
(Per M.R.Kolhatkar, Member(A))

Date: 12-9-95

In this O.A. the applicant has claimed a variety of reliefs some of which go back to the year 1978. There is a preliminary objection ^{counsel for respondents} from / to the O.A. on the ground of limitation and multiplicity of reliefs. M.P.287/92 was filed for condonation of delay and MP 894/93 was filed for production of certain documents. We have decided to dispose of the MPs along with O.A. We note that the main grievance of the applicant relate to his non promotion or non selection to a higher post in his department ^{viz.} to the post of Asstt. Director or Deputy Director. We also note that one of the issues raised is regarding the qualifications possessed by the applicant and whether they fulfill the essential requirements of the recruitment rules and whether the non selection of the applicant either to the post of Asstt. Director or Deputy Director was on account of any misunderstanding in this regard or malafides. We are not inclined to reject the O.A. out of hand on the ground of limitation. We, however, wish to clarify that we propose to consider the application as one in which the main grievance of the applicant is non promotion to the post of Asstt. Director or non selection to the post of Deputy Director and we shall not consider any other grievances of the applicant. The applicant, being aggrieved by the non selection, has also entered into correspondence with the Commissioner for SC/ST who has also been made a party respondent No.4. The applicant has also impugned the order of UPSC (Annexure A-42) which has found him unsuitable for the post of Deputy Director (Physiology). Neither the UPSC nor the

Commissioner for SC/ST has filed their reply. The counsel for the applicant contended that respondent No.2, Director General, Factory Advisory Service and Labour Institute, had submitted a report to the Commissioner for SC/ST, respondent No.4 and argued that this report is a statutory report and that the Tribunal should direct respondent No.2 to file the report. The counsel for respondents No.1,2,5,6 & 7 ~~has~~ denied that any such report whatever ^{was} submitted to the Commissioner for SC/ST. The applicant has also not been able to produce any communication from the Commissioner for SC/ST either to him or to Govt. Therefore we are going to consider the pleadings raised by the applicant in relation only to non promotion/ non selection for higher post in his own department.

2. In order to understand the issues involved it may be necessary to set out certain facts. The applicant was appointed as Lab Assistant Grade I on 4-7-1970 in Central Labour Institute under respondent No.2. At the time of selection, he possessed B.Sc. Degree with Chemistry, Zoology and Geography as his subjects. The applicant was promoted as Junior Scientific Assistant (Physiology) on 2-5-1974 and he was further promoted to the post of Technical Assistant (Physiology) 15-10-1975. In the course of re-organisation of the department this post came to be redesignated as Senior Scientific Assistant.

3. It appears from the pleadings and from documents that the applicant has subsequently improved his qualifications. At page 97 is the M.Sc. Degree certificate obtained by the applicant. It is seen that the applicant has passed M.Sc. Degree of

Shivaji University, Kolhapur in IInd Class as on 27-8-87 in the subject of Zoology. He passed this degree by appearing for four theory papers and by submitting a thesis which was accepted. It is seen from the certificate given by the Head of the Department at page 100 that he was examined in four theory papers which included Physiology and Environmental Science. It is further stated that his research was in the field of applied physiology and the topic was "Experimental Studies on Rest Pause due to Muscular Work". The certificate further states that the department gave permission to carry out his experimental studies on industrial workers from the Bombay Region using the facilities of the Industrial Physiology Division of the Central Labour Institute, Bombay under the supervision of his guide. Hence his specialisation of M.Sc. is in Industrial(applied) Physiology.

4. It appears that the applicant had applied for the post of Research Officer(Physiology) in his department. The essential qualification for this post was a degree in Physiology of recognised University or equivalent qualification. The interview letter dt. 4-9-1978 had stated that the invitation is subject to the production of a certificate from a competent authority showing that Physiology was one of the subjects at B.Sc. level failing which he will not be interviewed. The applicant sent a representation to the UPSC in which he took the stand that one Dr.S.Kumar, who was an M.Sc. in Zoology/^{was} recruited for the post of Asstt. Director(Physiology) on the basis of advertisement dated 16-6-73. He ^{i.e. Dr. Kumar} was able to show that his qualification

11/11

- (2) The departmental Senior Scientific Assistant possessing Master's degree in Physiology with five year's regular service in the grade will also be considered along with outsiders and in case he is selected for appointment, the same shall be deemed to have been filled by promotion."

From these qualifications we see that so far as the post of Assistant Director(Physiology) ^{is concerned} the present applicant who is a Sr. Scientific Assistant possessing Master's Degree in Zoology, with five years' regular service in the grade could lay claim to be considered for promotion after September '87 when he received his Master's Degree and when he had also completed more than five years service as SSA provided he is able to establish that he possessed equivalent qualification. While the ^{claim} of the applicant in respect of the selection as in 1978 does not deserve any consideration his claim for being considered for the post of Asstt. Director by promotion after September '87 certainly deserves consideration if he is able to show that he possessed equivalent qualification.

6. It appears that applicant has applied for enrolling for Ph.D degree. At page 106 is the letter dated 16-3-1988 rejecting his request to register. At page 107 is the letter dt. 29-3-1988 in which he made a representation. At page 108 is letter dt. 10-6-88 in which permission has been granted to him for registering himself for Ph.D with Shivaji University as an external candidate subject to certain conditions. The applicant has also claimed certain reliefs in regard to initial rejection of application ~~and subsequent permission~~ and subsequent but conditional permission to register to Ph.D. We are ~~not~~ not inclined to consider any relief in this regard ^{as} indicated by us earlier.

was equivalent to the qualification prescribed for the post advertised and finally he was selected and appointed. As noted by us the applicant has passed B.Sc. with Chemistry, Zoology and Geography. On this basis he claimed equivalence. We have made note of this fact because although the selection in respect of which the applicant has a grievance pertains to the recent years the issue raised was the same and there was no satisfactory clarification to the issue raised viz. whether a degree or a post graduate qualification in Zoology could be treated as equivalent to a degree or post graduate qualification in Physiology. On this point, the counsel for respondents apart from raising the point of limitation argued that respondent has no relevant record about this case at this late hour.

5. Let us at this stage glance to the qualification for the post of Assistant Director (Physiology) by promotion. These qualifications are given at R-1 of the written statement in following terms:

"Promotion/transfer on deputation (including short-term contract)
(1) Officers under the Central Government/State Government/Public Undertakings/Recognised Research Institutions/Statutory or Autonomous Organisations:

- (a)(i) holding analogous posts on regular basis, or
(ii) with three years' regular service in posts in the Scale of Rs.2000-3500 or equivalent; or
(iii) with five years' regular service in posts in the scale of Rs.1640-2900 or equivalent; and
(b) possessing the educational qualifications and experience prescribed for a direct recruits under column 8.

7. We have already pointed out that the department is not of much help on the main point at issue. They have stated that the question of equivalence of a degree in Zoology and a degree in Physiology falls within the purview of Human Resource Development Ministry, according to the Govt. of India (Allocation of Business) Rules, 1961 and the burden is on the applicant to show that his qualifications are equivalent to M.Sc. in Physiology.

8. Let us consider as to what material the applicant has filed in support of his claim for equivalence. We have already referred to the M.Sc. certificate of the applicant and the certificate filed by the applicant from the head of the department. At page 85 is an extract given by the applicant in connection with the case of grant of study leave to the applicant. From this extract it is seen that various theory papers consisted of following topics:-

"Paper-I : Advanced Morphology, Physiology, Embryology and Phylogeny of non-chordates, with emphasis on comparative aspects; cytology and genetics.

Paper-II: Advanced Morphology, Physiology, Embryology and Phylogeny of Chordates, comparative anatomy, Evolution and Ecology.

Physiology: Physiology of neuromuscular system, nutrition, respiration, excretion, circulation, reproduction, vitamins and hormones, Functions of Skin."

9. At Annexure A-41, page 115 is the account of work done by the applicant while working in Central Labour Institute. It is shown that as Senior Scientific Assistant from 15-10-1975 he has done the following work:

"Nature of duty

- i) Technical assistance in Laboratory/Field Research/Studies/Surveys/training programmes/Reports etc.
- ii) Collection, collection and interpretation of data collected.
- iii) Assist in procurement, maintenance,

repair, stock taking and the like of Laboratory equipment including keeping of Stock Registers,

iv) Demonstration of Scientific equipment/ appliances to visitors to the Laboratory.

v) Procurement of chemical and other laboratory appliances,

vi) Supervision of cleanliness of the Laboratory.

vii) Any other work assigned by the superiors."

10. As observed ^{us} by above, the applicant applied for the post of Assistant Director in 1978. He was not considered for the same because he was not eligible at that time. Thereafter he applied for the post of Assistant Director on 12-2-1988 vide page 102 and it appears that his application was forwarded by his department with the following remarks:

"At present two posts of Officers and one post of Scientific Assistant are lying vacant in this Division. We find that the work in the Division pertaining to the Plan and Non-Plan activities is being severely affected due to non-availability of the above-mentioned technical officers and staff. Even otherwise, the total strength of the sanctioned posts in the Division is meagre. The Action Plan for activities of the Division submitted earlier is subject to the availability of the services of the technical personnel. In view of this, it is strongly recommended that the case of Shri G.G. Narayane for ad-hoc appointment to the post of Assistant Director (Physiology) may be considered. He has now got the requisite qualification and experience required for the post of Assistant Director (Physiology)."

This was signed by the then Director-in-charge
Mu (Physiology) P.N. Saha. It is clear from the

endorsement that Mr. Saha, Director-in-Charge of Physiology who is a technically qualified person and working in the same field did not have any doubt in his mind that the applicant possessed qualifications equivalent to Master's Degree in Physiology. Subsequently again on 19-12-89 the applicant has filed an application for the post of Assistant Director Physiology vide page 109. At page 139 is also a reference to the applicant's application dt. 19-9-91 for the post of Assistant Director(Physiology) with reference to the advertisement in the Employment News dt. 14-20th September, 1991. Thus it is clear that the applicant has thrice applied for the post of Assistant Director and atleast on one occasion applicant's application was strongly recommended by the head of the department for ad-hoc appointment pending regular selection but no action was taken. On the point of applicant's claim to the post of Assistant Director, the department has stated that ad-hoc arrangement was not found feasible due to administrative reasons. Department has taken a general stand that "an employee has no say as to how the post is to be filled up. It depends on the provisions of the Recruitment Rules and the Recruitment Rules do not recognise ad-hoc recruitment avoiding established procedures". However, we are in the dark as to what happened to the three applications he has made in the absence of any counter from the UPSC, so far as the direct recruitment is concerned and in the absence of any clear cut statement from the head of the department so far as his promotion to the post is concerned.

11. The applicant has contended that subsequently he had applied for the post of Deputy Director(Physiology) for which the qualifications are as below:(vide R-1 to the written statement)

"Essential:

- (i) Master's Degree in Physiology of a recognised University or equivalent.
- (ii) Five years' experience in the field of Applied Physiology/Work Physiology/Economics.

Note:1: Qualifications are relaxable at the discretion of the UPSC in case of candidates otherwise well qualified.

Note:2: The qualification regarding experience is relaxable at the discretion of the UPSC in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes if, at any stage of selection the UPSC is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them.

Desirable:

Experience of conducting training programmes and surveys and handling in industry of modern equipment. "

12. According to the applicant, he appeared for the interview but he was not selected either because the UPSC was given misleading information regarding equivalence or because the UPSC was advised by the departmental representative on the Committee viz. Dr.S.K.Sensarma(who succeeded Dr.Saha) and who had a grudge against the applicant because he spoiled his CR for the year 88-89. In this case the applicant has relied on Annexure R-6 of the department in which the department has given its own observations, about whether the applicant has got essential qualifications. The same may be reproduced in full:

"1. The qualification prescribed for the post of Asstt. Director and above in the Department of Physiology is a Masters Degree in Physiology. The documents mentioned at (1) & (2), above namely original Degree and the marksheet do not mention the word "Physiology" or any specialised paper in Physiology. However, the document No.1 mentions that the work was done partly by research.

2. As regards specialisation in Industrial (Applied) Physiology, the document at Sl.No. 3 above states that "His research as part of his post-graduate course was in the field of Applied Physiology and the topic was 'Experimental Studies on Rest Pause due to muscular work'. The last paragraph of the letter concludes with the statement: "Hence his specialisation of M.Sc. is Industrial(Applied)Physiology". While this document is on the letter head of the concerned University and is signed by the Professor and Head of the Department of Zoology, the document cannot be relied upon as the certificate regarding qualification, as equivalent to a University Certificate. By the same token, document No.4 by the Research Guide also certifies the work done by Shri G.G.Narayane in the field of Applied Physiology. These two documents are more like testimonials than University Certificates.

3. Statement showing the number of marks by Shivaji University does not give any marks for the thesis whereas 4 theory papers of Zoology carrying 100 marks each are mentioned.

4. There has been some correspondence between Dr.S.K.Sensarma, Director-in-charge (Physiology) and Head of Office, CLI in April 1990. In this correspondence, there is a letter from Shivaji University addressed to Dr.Sensarma. This letter is signed by the same Dr.A.T.Varute, as Member Executive Council and Head of the Dept. of Zoology (Document No.5). This letter categorically

mentions that "there is no specialization in Industrial Physiology in M.Sc. Zoology in Shivaji University." Document No.5 reduces the weight to be given to Document No.3 and the statement in the last paragraph stands contradicted.

5. In the result the conclusion based on documents examined is that Shri G.G.Narayane has a Degree in Zoology in which the thesis was done in the field of Applied Physiology and not Masters Degree in Zoology with specialisation in Industrial(applied) Physiology.

Regarding point No.(ii) in the letter by Union Public Service Commission, the Degree (M.Sc.)(Document 1) submitted by Shri G.G.Narayane categorically mentions that he has obtained the Degree of Master of Science in Zoology "partly by papers and partly by research". There is no doubt on the issue.

In the light of this, a suitable reply may be sent to UPSC. "

13. So far as the non selection of the applicant by the UPSC for the post of Dy.Director(by direct recruitment) on the ground of bias is concerned, the department has stated that the Ministry's representative does not participate in the actual process of selection. His role in the interview Board is confined solely to apprising the Board and the candidates of the requirements of the post, service conditions, career prospects etc. within the organisation and such other information as may be sought by the Board or the candidates. He is not supposed to ask the candidates questions or give his impressions of the suitability or otherwise of any of the candidates. So far as the grievance of the applicant regarding harassment of the applicant as he belonged to SC community is concerned, the respondents have invited our attention to the gist of correspondence and the

letter sent to the applicant by head of the department which appears at page-143. This is on the subject of "Harassment and discrimination against Scheduled Caste employee in the Central Labour Institute, Bombay." In this letter which is dated 4-11-1991 Shri Narayane was assured that Dr.S.K.Sensarma had nothing against him. There are certain other references too which are not relevant for our purpose. We have already observed that nothing has been heard about the applicant's complaint to SC/ST Commissioner. We are also not satisfied that mere presence of Dr.Sensarma has in any way influenced the selection committee of UPSC in not selecting the applicant for the post of Dy.Director. We are not inclined to grant any relief so far as his non selection to the post of Deputy Director by way of direct recruitment is concerned. But we are still left with the question of educational qualifications and experience possessed by the applicant and his suitability for the post of Asstt.Director(Physiology).

14. The applicant has alleged that specific qualification of M.Sc.(Physiology) which has been prescribed by the department is to favour the candidates from Calcutta University which is the only University which awards M.Sc. Degree in this specific subject. We are not inclined to accept this contention as no material has been placed before us in relation to M.Sc. course in over 150 Universities in India. Moreover, since the essential qualification can also be read in relation to "equivalence to M.Sc.(Physiology)" the applicant can have no grievance so long as his educational qualifications are treated as being equivalent to M.Sc.(Physiology).

15. The essential question is regarding the scope of the term "Physiology vis-a-vis "Zoology". The Concise Oxford Dictionary, 1990 edition defines Zoology as "the scientific study of animals specially with reference to the structure, physiology, classification, habits and distribution". It is thus clear that the area of Physiology is included in the area of Zoology. So far as the term Physiology is concerned the same is defined in the same dictionary as "the science of functions and phenomena of living organisms and their parts." Considering that the applicant had passed M.Sc. with four theory papers in Zoology and Physiology was an integral part and considering that his research work was in the area of Physiology and also taking into account the contention of the applicant regarding the selection of Dr.S.Kumar possessing M.Sc. degree with Zoology for the post of Asstt.Director (Physiology) in 1973 which point has not been controverted by the respondents and considering the certificate given by his own head of department regarding his suitability for adhoc appointment as Asstt.Director(Physiology) it appears to us that the applicant has made a strong case for holding that he possessed the essential qualification for the post of Asstt.Director(Physiology) by promotion. It could have been better for the department to have obtained a clarification in this regard from the nodal ministry viz. Ministry of Human Resource Development rather than giving a very negative assessment regarding his qualification which we have reproduced above(para 12).

16. We next come to the question as to whether in the light of what we have found above

we can grant any relief to the applicant. We have observed that the applicant has thrice applied for the post of Asstt. Director but the results are not intimated. When we specifically asked the respondents we were told that the post of Asstt. Director (Physiology) stands abolished and the only post to which the applicant can lay a claim by way of promotion is Assistant Director (Industrial/Hygiene). In our view this stand of the respondent is extremely unhelpful. As we see the situation, the work of the Labour Institute is conducted in two divisions of industrial physiology and Industrial Hygiene. The applicant had evidently worked continuously in the area of industrial Physiology. He had got his M.Sc. degree with four papers in Zoology which comprised several topics in Physiology, his research in M.Sc. is in the area directly relating to Physiology. We are, therefore, at a loss as to why inspite of his successive applications for the post of Asstt. Director (Physiology) the case of the applicant was not considered by the official respondents. We also take note of the fact that the applicant belongs to Scheduled Caste and that he has also shown an uncommon motivation for improving his qualifications in the area first by obtaining M.Sc. degree during service and thereafter by registering for the Ph.D in the same area. The previous head of the department had in fact recommended his name for adhoc appointment, but the subsequent head of the department does not appear to have supported the case of the applicant. While we are not in a position to give a clear finding of malafide on the part of respondent No.6 we are left with a feeling that with a more supportive head of the department incharge, the case of the applicant for promotion could not have gone by default so far.

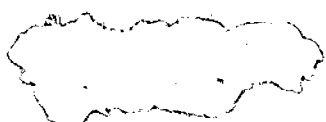
17. In this connection we have to observe that while an employee does not have a right for promotion, he has certainly a right to be considered for promotion. The Hon'ble Supreme Court has emphasised the need for proper promotion policy to be adopted by various organisations in atleast two cases. In CSIR vs. K.G.Bhatt(1989(4)SCC 635) it was observed by the apex court that "a person is recruited by an organisation not just for a job but for a whole career. One must, therefore, be given an opportunity to advance." In Dr.Ms.O.Z.Hussain vs. Union of India(1990(Supp)SCC 688) the apex court observed "This Court has on more than one occasion pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incident of service." We have also to observe that the applicant belongs to Scheduled Caste and the state is ^{Required to be} mindful of its duty to give an opportunity to the members of socioeconomically backward community for advancement in terms of the mandate under Article 16(4) of the Constitution. We further observe from the letter dt. 12-2-88 at page 102 which is an application of the applicant on the subject of ["]filling up of the post of Assistant Director(Physiology)on ad-hoc basis, ^{"that} the applicant had acknowledged the fact that he would be crossing the age bar for recruitment within 6 to 7 months from now.

18. In the light of the above discussion I dispose of this application by issuing following directions to the department.

O R D E R

19. The material on record prima-facie shows that the applicant possesses essential qualifications for being promoted to the post of Assistant Director (Physiology) in his own department. The case of the applicant has suffered after 1988 because of unhelpful attitude of department. The applicant may make a detailed representation to respondent No.1, Secretary, Ministry of Labour, through proper channel for considering his case for promotion to the post of Assistant Director (Physiology) in his own organisation. The respondent No.1 may consider his representation as well as observations made in this judgment and if necessary also consider revival of the abolished post of Assistant Director(Physiology) after having inter departmental consultation. If the post of Assistant Director(Physiology) could be revived the department is directed to consider the case of the applicant for the same, keeping in view his educational qualifications, experience and service record and take an appropriate decision. In view of the background, department may consider waiving the age limit. The department should also send a reply to his representation in a speaking manner. The action in this regard may be completed within six months of the communication of this order.

There will be no order as to costs.



M/R Kolhatkar
(M.R. KOLHATKAR)
Member(A)

1. I have had the advantage of studying the order of my learned brother Shri M.R. Kolhatkar. It is with utmost respect and regret that I find myself unable to agree with the conclusion for the reasons set forth in the subsequent paragraphs.

2. The main grievance of the Applicant in this O.A. relates to non-promotion to a higher post i.e. Assistant Director or Deputy Director. Firstly, whether the applicant fulfills the essential qualification as per recruitment rules. Admittedly, the Applicant is an M.Sc. in Zoology, whereas the recruitment rules envisage the essential qualification as M.Sc. Physiology with 5 years regular service in the grade could be considered. The applicant obtained the M.Sc. Zoology in 1987. His contention is that the degree in M.Sc. Zoology should be treated as equivalent to M.Sc. Physiology. The qualification prescribed for the post are given below :-

"Promotion/transfer on deputation (including short-term contract).

1) Officers under the Central Government/
State Government/Public Undertakings/
recognised Research Institutions/Statutory
or autonomous organisations :

(a) (i) holding analogous posts on regular
basis or

(ii) with three years' regular service
in posts in the scale of Rs. 2000-3500
or equivalent; or

(iii) with five years' regular service in
posts in the scale of Rs. 1640-2900
or equivalent and

(b) possessing the educational qualifications
and experience prescribed for a direct
recruits under column 8.

(b) possessing the educational qualifications and experience prescribed for a direct recruits under column 8.

- 2) The departmental Senior Scientific Assistant possessing Master's degree in Physiology with five year's regular service in the grade will also be considered alongwith outsiders and in case he is selected for appointment, the same shall be deemed to have been filled by promotion."

From these qualifications we see, that so far as the post of Assistant Director (Physiology) is concerned, the present applicant who is a Senior Scientific Assistant possessing Master's Degree in Zoology with five years regular service in the grade could lay claim to be considered for promotion after September 1987 when he received his Master's Degree and when he had also completed more than five years service as SSA provided he is able to establish that he possessed equivalent qualification. While the claim of the applicant in respect of the selection as in 1978 does not deserve any consideration and his claim for being considered for the post of Asstt. Director by promotion after September 1987 deserves consideration if he is able to show that he possessed equivalent qualification.

3. The Applicant applied for the post of Assistant Director in the year 1978 but he was not considered for the same, because he was not eligible at that time; thereafter, he applied for the post of Assistant Director in 1988 and his application was forwarded by his department and recommended for adhoc appointment to the post of Asstt. Director, pending regular selection; but no action was taken by the Respondents. Again, he

applied in 1990 on the basis of Employment News. He applied for the post of Deputy Director for which he was called for interview, considered but not selected. The admitted fact is, that it is a selection post. It is for the competent authority to choose the candidate as per comparative merit. There was no reservation quota for SC/ST. He appeared for general category; therefore, it is immaterial, how many times he applied. The UPSC has got their own way of selection method. It is not his case that he was not considered, but he failed to make out a case that degree of M.Sc. Zoology is equivalent to M.Sc. Physiology. Though he furnished a letter issued by the University vide dated 2-4-1990, on the query made by the Director in-charge of the Institute to the University, they in turn have clearly stated that no specialisation in Industrial Physiology at M.Sc. Zoology.

4. The Respondents in their reply denied the contention of the Applicant and urged that the Applicant in fact did not comply with the recruitment rules for consideration to the post of Asstt. Director or Deputy Director as the case may be. Nevertheless, his application was forwarded to the competent authority who after considering his candidature did not select him. The Respondents also raised a plea, that the applicant claims plural relief which is not permissible under Rule 10 of the Administrative Tribunals Act/Rules and equally the application is barred by time under section 21 of the Administrative Tribunals Act because the applicant seeks relief from 1978 onwards. The stand of the department is whether the degree of M.Sc. Zoology is equivalent to degree in M.Sc. Physiology or otherwise it is not for the Court to equate the degree. It is for the competent authority i.e. UPSC/DPC to consider the same. However,

the Respondents at any stage did not consider the degree in M.Sc. Zoology is equivalent to M.Sc. Physiology.

5. In the absence of any malafide or arbitrariness in the selection made by the UPSC, I am of the considered opinion that the UPSC is not required to file any reply as they are impleaded only as proforma Respondents in this O.A. Therefore, it goes without saying that they made the selection on the comparative assessment of candidates. My learned brother has negated the contentions of the applicant in so far as his claim for Dy. Director and other reliefs, therefore, I am in agreement with the same. The essential qualification is M.Sc. Physiology of a recognised University or equivalent. In para 12 of the note, it is stated that he appeared for the interview but not selected. It is a well settled proposition of law that promotion is not a matter of right but has a right to be considered for promotion; in fact, he has been considered for the post of Dy. Director in the instant case and that being so, the Applicant has not made out any case for our interference. Further, it is not the function of the Tribunal to assess the service records of Government servant and order his promotion on that basis. It is for the authorities to evaluate the same and make recommendations based on such evaluation. The ground of bias has also not been established. It is a well settled principle that malafide or bias action is never presumed but has to be proved. On perusal of the application, I do not find any such ground exists in this case. Therefore, I regret, there is no merit in the O.A. and the same is required to be dismissed.

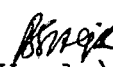
6. In so far as the post of Dy. Director is concerned, the applicant has been considered but not selected, perhaps on the ground that the degree of M.Sc. Zoology cannot be equivalent to M.Sc. Physiology as it is the opinion of DPC/UPSC. In para 13 of the order, it is clearly stated that the presence of Dr. Sensarma has in any way influenced the selection committee of UPSC in not selecting the applicant for the post of Dy. Director. We are not inclined to grant any relief so far as his non-selection to the post of Dy. Director by way of direct recruitment is concerned. In para 15, my learned brother has tried to analyse the dictionary meaning of "Physiology" and "Zoology". In my humble view, it is not for the Court to classify and it is for the concerned department of the Government of India and the concerned interview committee of the DPC to evolve their own guidelines for which the Court do not have any role to play. Similarly, the learned counsel for the Applicant contends that he should be considered for the post of Assistant Director. Since the post of 'Asstt. Director Physiology' stands abolished as per the affidavit filed by the Respondents, I am of the firm view, that the observations made by my learned brother in para 16 is un-called for keeping in view the proposition/ratio laid down by the Supreme Court in K. Rajendran v/s State of Tamil Nadu AIR 1982 SC 1107 wherein it is held that the "power to abolish a post which may result in the holder thereof, ceasing to be a Govt. servant has got to be recognised. But any action, legislative or executive taken pursuant to that power is always subject to judicial review. The question whether a person who ceases to be a Government servant according to law should be rehabilitated by giving an alternative employment is a matter of policy on which the Court has

no voice. Neither the decision in Moti Ram Deka's case, AIR 1964 SC 600 nor the decision in Papanna Gowda's case, 1969 SLR 50 lays down that the provisions of Article 311 (2) should be complied with before the services of a Government servant are terminated as a consequence of abolition of the post held by him for bonafide reasons. Similar view has been expressed in a recent decision of the Supreme Court in U.P. Bhoomi Sudhar Nigam Ltd. v/s Shiv Charan Gupta 1994 28 ATC 67. It has held that the abolition of post was bonafide and denial of post to the respondent was justified. In that context, the Supreme Court has observed that this Court authoritatively laid down that even if a vacancy is available and the employer bonafide declines to make an appointment, the candidate on the select list has no right whatsoever to claim appointment. Applying the aforesaid ratio of the referred to above, I am of the view, that Apex Court/it is not for the Court/Tribunal to question why the post of Asstt. Director has been abolished. In the present case, the applicant has not even been appointed to the post nor holding ^{the} post and he has only claimed that he should be considered for the post of Asstt. Director. Apparently, he has not been considered for the said post on the ground of essential qualification prescribed in the Recruitment Rules. As mentioned earlier, whatever the essential qualification or equivalent degree has to be judged by the concerned DPC who have their own guidelines for which the Court has no say in the matter. Therefore, I am of the view, that the Applicant has no locus standi to question the abolition of the post.


7. In the light of the above, for the sake of repetition, I say that the Application is not only barred by time under section 21 of the Administrative Tribunal Act but on merit


and also he has not made out any case for our interference. Since the application under section 19 will be governed by the provisions of section 21 of the Act regarding limitation. The provisions of section 21 of the Act as competent in themselves and those provisions shall have to be taken into consideration while directing whether the application is within limitation or not. Since the Applicant has not offered any explanation much less satisfactory for the delay and latches in approaching the Tribunal, the question of violation of Art. 14 in refusing him the relief will not arise. This proposition is upheld by the Supreme Court in Bhoop Singh's case (SC) (1992) 21 ATC 625. Therefore, all the contentions raised by the Applicant such as point of limitation, degree of M.Sc. Zoology should be treated as equivalent to that of M.Sc. Physiology, abolition of post are not tenable and cannot be accepted. For the reasons stated above, the applicant has not made out any case for our interference and the O.A. is liable to be dismissed. Accordingly, I dismiss the O.A. with no order as to costs.

O R D E R


(B.S. Hegde)
Member (J)

Since there is a difference of view, one of us viz. Shri M.R. Kolhatkar, Member (A) being inclined to allow the O.A. and to grant the reliefs as indicated in the order and the other viz. Member (J) being inclined to reject the application for the reasons indicated therein, we direct the Registry to place the matter before the Hon'ble Chairman, CAT, Principal Bench with a request to place the matter before a third Judge, so that the matter would be decided by a majority.


(M.R. Kolhatkar)
Member (A)


(B.S. Hegde)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

REVIEW PETITION NO.: 22/98 IN O.A. No. 276/92.

Dated this Monday the 5th day of October, 1998.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

G. G. Narayane Review Petitioner.
(By Advocate Shri D.V. Gangal)

VERSUS

Union Of India & Others .. Respondents.
(By Advocate Shri V.S. Masurkar)

: OPEN COURT ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is a review petition filed by the applicant. Since there is some delay in filing the review petition, the applicant has also filed a M.P. No. 123/98 for condonation of delay. Respondents' Counsel has filed reply to both. We have heard the Learned Counsels on the question of admission of R.P.

2. The applicant filed the original application seeking a direction for promotion to the post of Assistant Director (Physiology) and then Deputy Director (Physiology) in the Office of the Director General, Factory Advisory Service and Labour Institute, Bombay.



Respondents had filed reply opposing the admission. The matter was heard by a Division Bench of this Tribunal. One of the serious points of dispute between the parties was, whether the applicant has necessary qualifications of M.Sc. (Physiology) for being considered for promotion to the post of Assistant Director/Deputy Director. The applicant had Master's degree in Zoology. One of the serious disputes argued before the Division Bench was, whether Master's degree in Zoology is equivalent to Master's degree in physiology to enable the applicant for being considered eligible for the post in question. The Hon'ble Members of the Division Bench disagreed on this question. The Hon'ble Member (Judicial) took a view that M.Sc.(Zoology) is not equivalent to M.Sc. (Physiology) and, therefore, the applicant was not eligible for being considered for the promotion post. The Hon'ble Member (A) took a different view and held that M.Sc. (Zoology) and M.Sc. (Physiology) were equivalent qualifications. In view of the difference between the two Hon'ble Members, the matter was placed before the third Member. The Hon'ble Chairman of the Tribunal who constituted the Third Member heard both sides and agreed with the view expressed by the Hon'ble Member (J), namely that the applicant does not have the required qualification since he holds degree in Master of Zoology which is not equivalent to Master's degree in Physiology.

In view of the opinion of the majority, the O.A. came to be dismissed.

3. Being aggrieved by the order of the Tribunal rejecting the claim, the applicant filed a M.P. No. 509/97 requesting the Tribunal to take some additional documents and reconsider ~~his~~[✓] view and allow the application. The same Bench which had earlier heard the matter, considered this matter again and rejected this application by an order dated 02.01.1998. It is observedⁱⁿ that order that the applicant cannot be allowed to challenge the order of the Tribunal on the ground that it is erroneous and he cannot invoke appellate jurisdiction on the part of the Tribunal in respect of its own order.


4. Then subsequently, the applicant has filed the present review petition taking number of grounds challenging the correctness of the order of the opinion of the majority in dismissing the application.

5. After hearing both sides, we find that this is not a fit case for admitting the review petition since the ground urged in the review petition and now pressed before us by Mr. D. V. Gangal, the Learned Counsel for the applicant, pertains to questioning the correctness of the order on merits. It was argued by the Learned Counsel that the order of this Tribunal was based on no evidence and the order is contrary to the evidence^{on} on record and it suffers from illegality, erroneous observations and perverse findings. He also submitted that the order suffers from error apparent on record. He also argued that the Tribunal has treated the pleadings of the respondents as evidence without there being no


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evidence in support of the allegations in the pleadings.

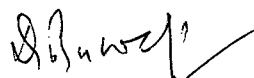
6. In our view, the arguments mentioned above do not come within the four corners of the Review Petition within the meaning of Order 47 Rule 1 C.P.C. It is not a case of their being apparent error on record but it is a case of requesting this Bench to sit in appeal over the decision of the previous Bench. A Co-ordinate Bench of the Tribunal in the guise of exercising review powers, cannot sit in judgement over the correctness of the findings recorded by another Co-ordinate Bench. The applicant's remedy, if he is aggrieved by the order of the Tribunal, is to challenge the order of the Tribunal before an appropriate forum like the High Court or Supreme Court. He cannot challenge the order of this Tribunal by way of a review petition taking number of grounds as if another Bench of the Tribunal can sit in appeal over an earlier decision of the same Tribunal. The grounds urged in the application and the grounds which are pressed before us, are in the nature of challenging the order by way of an Appellate Jurisdiction, which cannot be permitted while exercising review jurisdiction under Order 47, Rule 1 C.P.C. Hence, we do not want to consider any of the submissions made by the Learned Counsel for the applicant on merits of the case. Whether master's degree in Zoology is equivalent to Master's degree in Physiology, is a question which cannot be re-agitated before this Tribunal once again. The remedy of the applicant is elsewhere and certainly not by way of a Review Petition. Hence, without


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expressing any opinion on the merits of the controversy, we decline to exercise our jurisdiction for admitting the review petition for hearing on merits. Since we are not considering the review petition on merits, we observe that all contentions on merits are left open, which the applicant can agitate before an appropriate forum.

7. No doubt, there is few days delay in filing the review petition for which the applicant has offered some explanation. Since we are rejecting the review petition, we do not want to reject the M.P. for condonation of delay but reject the review petition on the ground that it is not maintainable since it does not come within the four corners of Order 47, Rule 1 C.P.C.

8. In the result, the review petition is rejected at the admission stage. M.P. No. 123/98 is allowed. No costs.


(D. S. BAWEJA)
MEMBER (A).


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

os*

25/10/98
order/Judgement despatched
to Applicant/Respondent(s)
on 26/10/98


29/10/98