

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT : HYDERABAD

O.A.No. 465 of 1987

Date of Order: 21-3-1990

Between:

C.R.Prabhakaran ..

Applicant

and ..

1. The Dy.Chief Executive (Admn.),  
Nuclear Fuel Complex, Hyderabad.
2. The Manager, Personnel & Admn.,  
Department of Atomic Energy,  
Nuclear Fuel Complex, Hyderabad.

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Respondents

Appearance:

For the Applicant : Shri C.Venkatakrishna, Advocate.  
For the Respondents : Shri Naram Bhaskar Rao,  
Addl.C.G.S.C.

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THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.  
THE HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL).

(JUDGMENT OF THE BENCH DELIVERED BY HON'BLE SHRI B.N.JAYASIMHA,  
VICE-CHAIRMAN)

1. The applicant is an employee of the Nuclear Fuel Complex, Hyderabad. He has filed this application seeking direction to the respondents to regularise his services as Assistant Accounts Officer.
2. The applicant states that he originally joined the Bhabha Atomic Research Centre (BARC), Department of Atomic Energy, as Lower Division Clerk (Junior Assistant) in June 1964. He was promoted as U.D.C. in the year 1969 and was subsequently transferred to the Nuclear Fuel Complex, Bombay, and later transferred to the N.F.C., Hyderabad. He was promoted as

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Assistant Accountant in the year 1974 and was confirmed in that post w.e.f. 1-2-1983. He has been officiating in the higher promotional post of Assistant Accounts Officer on adhoc basis both prior to and after 1-2-1983. He states that the department holds periodical departmental examinations and to earn promotion as an Assistant Accounts Officer, the passing of both Part-I and Part-II examinations is treated as a desirable qualification. The applicant was not successful in passing the part-II examination. The applicant contends that there are no notified rules published in Gazette with respect to recruitment and promotion and much less for adhoc appointments. He contends that as he is promoted as Assistant Accounts Officer without any preconditions, it has to be assumed that the respondent has waived and relaxed the conditions, if any, and that there is no rule coming in the way of promoting him from the substantive post of Assistant Accountant to that of Assistant Accounts Officer. He, therefore, contends that the order appointing him on adhoc basis on 2-5-1987 and extended upto 22-8-1987 is not legal and he is entitled to be promoted on regular basis as Assistant Accounts Officer. He, therefore, filed this application.

3. The respondents say that the applicant has been officiating as an Assistant Accounts Officer purely on an adhoc basis against leave vacancies. The Department of Atomic Energy conducts a centralised examination for the post of Assistant Accountant and above. These examinations are conducted regularly every year. Passing of the Part-II Departmental examination is essential for regular appointment. The contention of the applicant that it is only a desirable qualification is not correct. Those persons, who have cleared the SAS examination or those above 48 years of age, are granted exemption. The applicant being aware of this fact, appeared

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for Part-II examination on three occasions but could not pass the same. He failed in Part-II Departmental Exam during 1983, 1985 and 1987. In 1984 he chose to absent himself. In 1983 he was appointed as an Assistant Accounts Officer in a short term vacancy. He could not be appointed as Assistant Accounts Officer on regular basis as he failed in the departmental examinations held in 1983, 1985 and 1987. The applicant does not, therefore, fulfill the said essential qualification for the post of Accounts Officer. Norms in regard to the eligibility for recruitment/promotion to the post of Assistant Accounts Officer were notified during March 1975 and are indicated in all the circulars issued while notifying the examination. The applicant's 3½ years adhoc appointment as Assistant Accounts Officer does not confer any legal right for claiming regular appointment. For these reasons, the respondents contend that the application should be dismissed.

4. The applicant in his reply to the above states that in the case of one P.C.Mathew and Smt.K.P.Kalyanikutty, who were promoted as Assistant Personnel Officers, were included in the Central Cadre and in these two cases the norms prescribed for these posts in the Circular dated 22.12.1974 were not followed. He is being discriminated by not applying the same principle as applied to Shri P.C.Mathew and Smt.K.P.Kalyanikutty.

5. We have heard Shri C.Venkatakrishna, learned Counsel for the applicant and Shri Naram Bhaskar Rao, learned Additional Central Government Standing Counsel for the respondents.

6. The main ground urged by the applicant is that the respondents having <sup>him</sup> appointed as an adhoc Assistant Accounts Officer and allowed him to continue for 3½ years, they cannot

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revert him now on the ground that he has not passed the examination. He urges that a relaxation of the qualification prescribed should be given in his favour, <sup>and</sup> by virtue of his long adhoc service, his services should be regularised as Assistant Accounts Officer without insisting on his passing the examination. We are unable to accept this contention. The norms were notified in March 1975 and it has been applied to all persons. The norm prescribes passing of the departmental examination in both the parts i.e. Part I and Part II. The applicant has taken the examination thrice, but did not pass the part-II of the examination. The applicant is still eligible to take the examination and qualify in the same, so that he fulfills the requirements laid down for the post. We do not see any merit in the contention that because he has been working on an adhoc basis for  $3\frac{1}{2}$  years, he should be exempted from passing the examination. As regards P.C.Mathew and Smt.K.P.Kalyanikutty, both of them belong to a different cadre namely Personnel and Administration. The applicant cannot derive any support on that account. The learned Counsel for the applicant states that in the case of one G.B.K.Rao, the respondents allowed him promotion as Assistant Accounts Officer even though he had not passed the exam. The learned Counsel for the respondents points out that Shri G.B.K.Rao was promoted much before the norms were prescribed. We do not, therefore, ~~agree~~ <sup>find</sup> that there is any discrimination on this account.

7. It is well settled that it is open to Government to lay down new norms for promotions in the interests of efficiency and public interest. It is not the case of the applicant that the norms fixed have no relation to the job requirements of the post or that they are unreasonable. These norms, as we have observed earlier, are applicable to all the employees.

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The contention that no rules have been notified under Article 309 of the Constitution and the norms laid down cannot be enforced is not valid. In B.N.Nagarajan vs. State of Mysore (AIR 1966 SC 1942), the Hon'ble Supreme Court observed that even in the absence of any statutory rules it is always open to the Government to make recruitment and appointment to posts through administrative instructions. Such instructions should, however, ensure the equality of opportunity to all guaranteed under Articles 14 and 16. In this case, the norms apply to all and therefore the absence of statutory rules governing promotions cannot be said to render the norms laid down by administrative circular invalid.

8. In the course of the arguments, Shri Venkatakrishna brings to our notice that by an O.M.No.20/4/2/88 CCS/720, dated 3rd August 1989, certain exemptions from the norms prescribed have been given in respect of promotions within the quota prescribed for promotion on the basis of seniority-cum-fitness. He states that the applicant is eligible for exemption under this circular. If the applicant is senior enough to come within the zone of consideration under this quota, it is open to him to represent to the respondents who will duly consider his case in accordance with his eligibility under the said circular.

9. Shri Venkatakrishna says that the applicant should be promoted on adhoc basis so long qualified persons are not available. The respondents will consider the case of the applicant for adhoc promotion in the event of there being no qualified officer, in accordance with the norms and practices observed by the department for such adhoc promotions.

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10. In the result, the application is dismissed. No costs.

(Dictated in the Open Court)

*B.N.Jayashree*  
(B.N.JAYASIMHA)  
VICE-CHAIRMAN

*D.Surya Rao*  
(D.SURYA RAO)  
MEMBER (JUDICIAL)

*Thiru G. P. Rao*  
DEPUTY REGISTRAR (A)

Date: 21-3-1990

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TO:

1. The Deputy Chief Executive (Admn.) Nuclear Fuel complex, Hyderabad.
2. The Manager, Personnel & Admn., Department of Atomic Energy, Nuclear Fuel complex, Hyderabad.
3. One copy to Mr. C. Venkatakrishna, Advocate, 7-1-571, Subash Road, Secunderabad-500 003.
4. One copy to Mr. Naram Bhaskara Rao, Addl. CGSC, CAT, Hyderabad.
5. One spare copy.

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