

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Transfer Application No. 34 of 1999

Jabalpur, this the 11th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Smt. Asha Kudoppa, W/o. Shri
R.L. Kudoppa, aged about 38
years, R/o. Aishwarya Apartment,
Sarva Dharma Colony, Kolar Road,
Bhopal (M.P.).

... Applicant

(By Advocate - Smt. S. Menon)

V e r s u s

1. The Secretary, Indian Council
of Agricultural Research,
Krishi Bhawan, New Delhi-110001.
2. Central Institute of Agricultural
Engineering (CIAE), Post : Nabi
Bagh, Barasia Road, Bhopal-
462 018 (M.P.).
3. Shri Bhikari Prasad, Adult,
Sr. Clerk, O/o. Sr. Administra-
tive Officer, Central Institute
of Agricultural Engineering, Post
Nabi Bagh, Barasia Road, Bhopal.
4. Shri B.D. Vishwakarma, Adult,
Sr. Clerk, O/o. Sr. Administrative
Officer, Central Institute of
Agricultural Engineering, Post :
Nabi Bagh, Bhopal.

... Respondents

(By Advocate - Shri B.da.Silva)

O R D E R

By G. Shanthappa, Judicial Member -

The applicant has filed this transfer application seeking the relief to quash the impugned orders of promotion/Annexure P-4 and P-5, dated 7.1.1999, whereby the respondents Nos. 3 and 4 have come to be promoted to the post of Senior Clerk in the pay scale of Rs. 4000-100-6000/-.

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2. The brief facts of the case as stated by the applicant are that the Indian Council of Agricultural Research has issued a letter dated 15.12.1998, on the basis of the recommendations of the Cadre Review Committee and in pursuance of the matching savings of the said Institute, granted approval for upgradation of 11 posts of Junior Clerks on surrender of 11 posts of Junior Clerks. The consideration for the said posts were to be done by the Departmental Promotion Committee for upgradation subject to the seniority-cum-fitness and not by promotion. The recruitment rules applicable for promotion to the post of Senior Clerk is a non selection post and the method of recruitment to the said post is 75% by promotion and 25% on the basis of the result of Limited Departmental Competitive Examination restricted to Junior Clerks having rendered three years service in the grade and Junior Stenographers having rendered one year's service in the grade. The applicant stated that provision has also been made in the rule for reservation for SC/ST candidates. The applicant belongs to scheduled Tribe category. The applicant has produced the recruitment rules for the post of Senior Clerks in the Research Institutes under ICAR as per Annexure P-2, dated 11th December, 1986, in which the selection for the post of Senior Clerks a non selection post is made from those ^{Junior Clerk} who have rendered 5 years of service in that grade. There is a provision for reservation for the SC/ST officials according to the percentages fixed from time to time by the Government of India. As per Government Instruction dated 30.12.1977, the principle

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of seniority subject to the rejection of unfit should be strictly applied for the appointment to selection grade in all Group-C and D cadres.

2.1. As per the circular 3.10.1977 the seniority list of Junior Clerks were prepared and the name of the applicant appeared at serial No. 12. The respondent No. 3 is at serial no. 13 and respondent No. 4 at serial No. 15. Among the respondents Nos. 3 and 4 the applicant is senior. The respondents could have upgraded the post for which the approval was conveyed by the Government and instead thereof, the respondents have promoted the junior employees vide order dated 7.1.1999, ignoring the case of the applicant. The respondents have illegally promoted the juniors of the applicant, without following the rota-quota rosters. Considering the promotions of the respondent No. 3 and 4, violates the instructions of the ICAR at Annexure P-1.

Aggrieved by the said action the applicant submitted her representation dated 22.01.1999 requesting the respondents to consider her case. The applicant submitted that she had a good record and there are no adverse remarks in her service. Hence the impugned order of promotion dated 7.1.1999 is illegal and unjust. The respondents have violated the Government instruction dated 15.12.1998. The seniority of the applicant has not been considered for upgradation to the post of Senior Clerk. In view of the judgment of the Hon'ble Supreme Court in the case of Gurdayal Singh Fijji Vs. State of Punjab, the case of the applicant has to be considered before the DPC. As the adverse remarks in the ACR was not communicated to the

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service. The officers categorised as 'fit' should be placed in the panel in the order of the seniority in the grade for which promotions are to be made. The applicant has adverse entries in the year 1996-97 and 1997-98. The adverse entry for the year 1996-97 was communicated and against which the applicant had submitted ~~his~~^{her} representation dated 5.8.97. The said representation was decided and rejected vide office memorandum dated 23.8.97. With regard to adverse entry for the year 1997-98, the representation is under consideration. The case of the applicant has been considered by the DPC on the basis of the annual confidential report for the year 1992-93 to 1996-97. The service record of the applicant was not satisfactory, hence the recommendations of the DPC were not in her favour and was found 'Not Yet Fit' for the upgraded post of Senior Clerk. The applicant has not made out any case for grant of the reliefs as prayed in the OA. The qualification or eligibility criteria for consideration of the promotion from Junior Clerk to Senior Clerk is 5 years service in the grade as provided in Clause 10 of the Recruitment Rules. The official respondents have not shown any favouritism while complying with the recommendations of the DPC. The averments made by the applicant that the rota quota roster is to be followed is totally baseless in the light of the upgradation of posts and the question of sanctioned post lying vacant does not arise. The eligible candidates have been screened by the DPC convened in accordance with rule and the applicant was also subjected to the said screening but not found fit for appointment to the promotion post. Hence there is no violation of principles of natural

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applicant, it shows that there was no adverse remarks in the service records of the applicant. Since the applicant has fulfilled the eligibility criteria to be in the zone of consideration, the respondents have violated the rights of the applicant. Hence the relief as prayed for in this OA is liable to be granted.

3. The respondents have filed their reply denying the averments made in the OA. According to the respondents there was an approval for upgradation of 11 posts of Senior Clerks received from the ICAR vide order dated 15.12.1998. The respondents further submitted that, in accordance with rule and instructions on the subject contained in Swamy's Master Manual for DDO's and Heads of Offices, Chapter IV-Promotion Page 107, Para 34, for assessing suitability of incumbents for upgraded posts, the criteria and procedure prescribed is as follows :


When upgradation involves

a higher replacement scale,
higher responsibilities, or
higher qualification

Criteria to be adopted

Assessment by DPC is necessary and appointment to upgraded post will be made prospectively.

Accordingly, the DPC was constituted. There were 24 candidates who had put in 5 years of qualifying service on the post of Junior Clerk. The same was screened by the DPC. The post for Senior Clerk being a non-selection post, the non-selection method was followed. As per recruitment rules where promotions are made on non-selection basis, the DPC need not make a comparative assessment of the records of Officers and it should categorise the officers as 'fit' or 'not fit' for promotion on the basis of their record of



justice, fair play and equity.

4. Heard the learned counsel for the parties and perused the records carefully.


5. To consider the relief of the applicant, the necessary facts are to be considered. For promotion to the post of Senior Clerk under the respondents as per recruitment rules is 5 years service in the grade as provided in Clause 10 of the recruitment rules. The age relaxation is in accordance with the Government rules/instructions. The method of recruitment is 75% by promotion and 25% on the basis of the result of Limited Departmental Competitive Examination restricted to Junior Clerks rendered three years service in the grade and Junior Stenographers having rendered one year's service in the grade. The relevant ACRs of the eligible candidates were considered for the year 1992-93 to 1996-97. The respondents^{and} have considered the case of the applicant^{and} they find that the respondents Nos. 3 and 4 are eligible and their names were placed before the DPC and the DPC has recommended their names for selection. The applicant was not qualified because she was not fulfilling the eligibility criteria. Hence her name was not considered before the DPC.

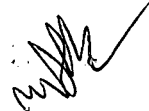
5.1. The respondents have produced Annexure R-III, dated 23rd August, 1997 intimating the applicant regarding rejection of her representation made on the adverse entries in the ACR for the year 1996-97. The same was not challenged by the applicant. Since the ACR of the applicant was not satisfactory, the recommendations of

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the DPC were not in favour of the applicant and she was not found fit for upgradation to the post of Senior Clerk. On the basis of the office memorandum dated 2nd July, 1997 the respondents have followed the roster system. The respondents have considered the revision of pay scale/upgradation of post from the date of regular appointment of the incumbent to the upgraded post vide official memorandum dated 4th February, 1992.

6. Accordingly, we are of the considered view that the applicant has failed to prove her case for promotion to the post of Senior Clerk in the pay scale of Rs. 4000-100-6000/-. Hence the Transfer Application is dismissed. No Costs.


(G. Shanthappa)
Judicial Member

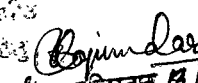

(M.P. Singh)
Vice Chairman

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पृष्ठंकन सं ओ/न्यो.....जबलपुर, दि.....
पतिलिपि अचो पित्त:-

- (1) सचिव, उच्च न्यायालय नर रमेशचन्द्र, जबलपुर
- (2) आवेदक श्री/श्रीमती/.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/.....के काउंसल
- (4) बंधुपत्तन, बंधुपत्तन, जबलपुर न्यायालय
सूचना एवं आवेदक काउंसलर हेतु

Smt S. Meen.
B. Jashwanthi, A.H.


उप निदेशक 13/2/04

Tuggeeb
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13.2.04
6:00 P.A