

Central Administrative Tribunal  
Principal Bench  
New Delhi

O.A.No.1847/2012  
M.A.No.1532/2012

Order Reserved on: 14.11.2017  
Order pronounced on 20.11.2017

Hon'ble Shri V. Ajay Kumar, Member (J)  
Hon'ble Ms. Nita Chowdhury, Member (A)

1. S.K.Jain

Aged about 52 years  
S/o Late Sh. A.R.Jain  
r/o H-276, Ram Krishna Vihar  
I.P.Extn., Delhi – 110 092.

2. Bhupender Dutt

Aged about 46 years  
s/o Sh. Keshav Dutt  
r/o AG-1/148-B, Vikas Puri  
New Delhi. ... Applicants

(By Advocate: Dr. Ashwani Bhardwaj with Ms. Vinay S. Bhardwaj)

Versus

1. Union of India

Through the Secretary  
I.C.A.R.  
Krishi Bhawan  
Dr. Rajendra Prasad Road  
New Delhi – 110 014.

2. Director General

Indian Council of Agricultural Research  
Krishi Bhawan  
Dr. Rajendra Prasad Road  
New Delhi – 110 014. ... Respondents

(By Advocate: Shri Praveen Swaroop)

## **ORDER**

### **By V. Ajay Kumar, Member (J):**

The applicants, two in number and working as Senior Sales Assistants under the 2<sup>nd</sup> Respondent-Indian Council of Agricultural Research, filed the OA seeking the following relief(s):

- "a. QUASH AND SETASIDE the Order No.F.No.18(2)/2011-Estt.IV dt.27.12.2011, AND
- b. DIRECT the Respondents to classify the post of Sr. Sales Assistant to Technical category and consequently GRANT promotions to the applicants on the higher posts of Asstt. Business Manager & Business Manager, on the basis of their past services, as per the recruitment rules, with all consequential benefits, and/or if the respondents do not want to shift the applicants from Administrative category to Technical category, then the respondents must be directed to consider the case of the applicants for the promotion to Section Officer, Under Secretary, Deputy Secretary, on the basis of their service w.e.f. 1991, as Sr. Sales Assistant, with all consequential benefits, and
- c. DIRECT the Respondents to grant the pay scales higher or at least equivalent to the post of Assistant, with all consequential benefits of arrears of pay etc., and
- d. IN THE ALTERNATIVE, Direct the Respondents to provide adequate promotion avenues to the applicants either in the administrative category or Technical category, from the date of their appointment on the post of Sr. Sales Assistant, with all consequential benefits of pay allowances, seniority etc. & further promotions, if any, with all consequential benefits, and
- e. Pass any other order or direction which this Hon'ble Tribunal thinks fit and proper in the facts and circumstances of the case.".

2. MA No.1532/2012, for filing a single application, is allowed.

3. Heard Dr. Ashwani Bhardwaj and Ms. Vinay S. Bhardwaj, the learned counsel for the applicants and Shri Praveen Swaroop, the learned counsel for the respondents, and perused the pleadings on record.

4. The main grievance of the applicants is that they were appointed as Senior Sales Assistants during the years 1991 and 1992 respectively and though after a lapse of about 25 years, they did not get even a single promotion and hence, the respondents shall be directed to reclassify the post of Senior Sales Assistant to Technical Category and accordingly promote the applicants to the higher posts of Assistant Business Manager and Business Manager with all other consequential benefits.

5. It is not in dispute that the Government of India introduced the ACP/MACP Schemes to remove stagnation, i.e., wherever the employees are not getting promotions for want of sufficient vacancies in promotional posts and that the applicants were granted the financial up-gradations under the said Schemes as they were not granted the regular promotions. It is also not in dispute that the respondents vide their Office Order dated 24/27.11.2008, as modified vide Office Order dated 22.06.2010, made the posts of Senior Sales Assistants wherein the applicants are working as eligible for 50% posts of Section Officers to be filled up by the Limited Departmental Examinations by amending the relevant Recruitment Rules and thereby promotional avenues were created for the applicants and that the applicants, in pursuance of the said Office Orders, have appeared in the LDCE Examination – 2011 for promotion to the post of Section Officer but failed to qualify in the said Examination. In these circumstances, we do not find any merit in the submissions made by the applicants.

6. Further, in **P.U.Joshi & Others vs. Accountant General, Ahmedabad and Others**, (2003) 2 SCC 632, the Hon'ble Apex Court observed as under:

"10. We have carefully considered the sub-missions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

7. Since, categorization/classification, of a particular post as administrative or technical is in the exclusive realm /prerogative/dominion of the administrative authorities, and this Tribunal cannot direct the respondents to classify or re-classify a particular post in a particular category in exercise of its judicial review power, except under exceptional circumstances as observed by the Hon'ble Apex Court in **P.U.Joshi's** case (supra). The applicants failed to show any such exceptional reasons.

8. In the circumstances and for the aforesaid reasons, the OA is dismissed, being devoid of any merit. No costs.

(Nita Chowdhury)  
Member (A)

(V. Ajay Kumar)  
Member (J)

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