

**Central Administrative Tribunal
Principal Bench**

OA No.3398/2013

**Reserved on : 19.01.2017
Pronounced on: 25.07.2017**

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)**

Dr. Sudhanshu Mohan
S/o Shri Jitendra Mohan Sinha
Aged about 46 years,
Research Assistant, Department of Physical Chemistry at
National Sugar Institute, PO, NSI, Kalyanpur Kanpur,
Uttar Pradesh 208017. Applicant.

(By Advocate : Shri Aditya Kumar Dubey)

Vs.

1. Union Public Service Commission
Through its Chairman
Dhaulpur House, Shahjahan Road,
New Delhi 110 007.
2. Union of India
Through Secretary
Ministry of Consumer Affairs
Food & Public Distribution
Department of Food and Public Distribution
Krishi Bhawan,
New Delhi. ... Respondents.

(By Advocates : Shri H. K. Gangwani and Shri D. S. Mahendru)

: O R D E R :

Justice Permod Kohli, Chairman:

The applicant in the present OA initially joined Central Agmark Lab, Nagpur, Ministry of Agriculture as Junior Chemist on 26.03.1999. He thereafter joined the National Sugar Institute (NSI) Kanpur under the Ministry of Consumer Affairs, Food and Public

Distribution, Department of Food and Public Distribution as Research Assistant (Physical Chemistry) on 08.06.2000. It is stated that the applicant joined the NSI, Kanpur as Research Assistant (Physical Chemistry) in the same scale of Junior Chemist which he was having in the Central Agmark Lab, Nagpur, for better promotional avenue. The applicant was having M.Sc (Chemistry) qualification at the time of his joining NSI, Kanpur. Later, he did his Ph.D (Chemistry) from the same institute. The promotional channel in the NSI at the time of his joining was Research Assistant (Physical Chemistry) in the Grade Pay of Rs.2800/-, Group-C, non-gazetted, then Junior Scientific Officer in the Grade Pay of Rs.5400/-, Group-A Gazetted, then Professor Physical Chemistry in the Grade Pay of Rs.8700, Group -A, Gazetted and Director in the Grade Pay of Rs.10000/-, Group-A Gazetted.

2. It is the case of the applicant that at the time of his joining as Research Assistant (Physical Chemistry), the essential qualification prescribed was M.Sc (Chemistry). The method of recruitment for the next post of Junior Scientific Officer (Physical Chemistry) as per GSR No.67 dated 13.12.1994 is as under:-

Column 8	Column 10	Column11
Age prescribed for direct recruits will not apply in the case of promotee	Promotion/Transfer on deputation (including short term contract) failing which by direct recruitment	Point 2: The departmental Research Assistant (Physical Chemistry) with 8 years regular service in the grade will also be considered. In case he is selected for appointment the post shall

		<p>be deemed to have been filed by promotion.</p> <p>The departmental officers in the feeder category who are in the direct line of promotion shall not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion.</p>
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It is accordingly stated that in view of the aforesaid recruitment rules laying down the conditions of service for promotion to the post of Junior Scientific Officer, the mode of appointment to Research Assistant was composite one and the first preference was to fill up the post by promotion. Respondent No.2 amended the aforesaid recruitment rules vide GSR No.404 (E) dated 03.06.2002. Under the amended recruitment rules following was prescribed:-

Column7	Column11
Age not exceeding 35 years (Relaxable for government servants upto five years)	Direct recruitment only

It is further the case of the applicant that since 2002 to 2007, respondent No.2 was planning to formulate rules to fill up the promotional post of Junior Scientific Officer by promotion. The NSI, Kanpur has different departments, namely, Department of Bio-Chemistry, Department of Organic Chemistry and Department of Physical Chemistry. In all the departments, similar rules were operating prescribing similar promotional avenues, and in all such

departments, the recruitment rules were also amended in the year 2002 whereunder the post of Junior Scientific Officer was to be filled up by direct recruitment only prescribing the upper age limit as 35 years. According to the applicant, in the year 2007, recruitment rules of Bio Chemistry and Organic Chemistry departments were again amended. Vide GSR No.7 (E) dated 05.02.2007 (**Annexure P/4**), the post of Junior Scientific Officer was required to be filled up in the following manner:-

Column 11	Column12
<p>Composite Method: Deputation (including short term contract) plus promotion, failing which by direct recruitment.</p>	<p>Deputation (including short term contract) plus promotion:- Officers of the Central/State Government/Universities/Recognised Research Institutes/Public Sector Undertakings/Semi Government/Autonomous or Statutory Organisations:-</p> <p>(a) (i) holding analogous posts on a regular basis; or (ii) with five years' regular service in posts in the scale of Rs.12000-16500 or equivalent; or (iii) with ten years' regular service in posts in the scale of Rs.10000-15200 or equivalent; and</p> <p>(b) Possessing the educational qualifications prescribed for direct recruits in column8.</p> <p>Note 1: The departmental officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationist shall not be eligible for consideration for appointment by promotion.</p> <p>Note 2: The Departmental Assistant Professor of Organic Chemistry in the</p>

	<p>scale of Rs.1000-15200 with ten years, regular service in the grade shall also be considered along with deputationists. In case he/ she is selected for appointment to the post the same shall be deemed to have been filled by promotion.</p> <p>(Period of deputation (including short term contract) including the period of deputation (including short term contract) in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department of the Central Government shall ordinarily not exceed five years. The maximum age-limit for appointment by deputation (including short term contract) shall be not exceeding 56 years as on the closing date of the receipt of applications.</p>
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Similar amendments have been carried out in the Department of Bio Chemistry vide GSR No.268 (E) dated 28.03.2007 (**Annexure P/5**).

The same is as under:

Column 11	Column12
<p>Composite Method: Deputation (including short term contract) plus promotion, failing which by direct recruitment.</p>	<p>Deputation (including short term contract) plus promotion:- Officers of the Central/State Government/Universities/Recognised Research Institutes/Public Sector Undertakings/Semi Government/Autonomous or Statutory Organisations:-</p> <p>(a) (i) holding analogous posts on a regular basis; or (ii) with five years' regular service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs.12000-16500 or equivalent in the parent cadre Department; or (iii) with eight years' service in the grade rendered after appointment thereto on a</p>

	<p>regular basis in the scale of pay of Rs.10000-15200 or equivalent in the parent cadre/Department; and</p> <p>(b) Possessing the educational qualifications and experience prescribed for direct recruits under column (8).</p> <p>2. The Departmental Assistant Professor (Bio Chemistry) in the scale of pay of Rs.1000-15200 with ten years, regular service in the grade will also be considered along with outsiders. In case he/ she is selected for appointment to the post, the same shall be deemed to have been filled by promotion.</p> <p>Note 1. The departmental officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationist shall not be eligible for consideration for appointment by promotion.</p> <p>Note 2. Period of deputation (including short term contract) including the period of deputation (including short term contract) in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department of the Central Government shall ordinarily not exceed five years. The maximum age-limit for appointment by deputation (including short term contract) shall be not exceeding 56 years as on the closing date of the receipt of applications.</p>
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But no such amendment of 2002 recruitment rules has been carried out insofar as the department of Physical Chemistry is concerned. The applicant being aggrieved of different treatment to the officers of department of Physical Chemistry made certain representations right

from 2007. It is stated that the applicant made representations dated 24.05.2007, 27.11.2012, 14.03.2013, 25.03.2013, 13.06.2013, 07.08.2013 and 27.08.2013. None of the above representations have been responded to.

3. On the basis of 2002 recruitment rules, an advertisement No.12/2013 was published in National Employment News dated 24.- 30th August, 2013 Vacancy No.4 (Vacancy No.13081204224) by respondent No.2 for recruitment to the post of Junior Scientific Officer (Physical Chemistry) by direct recruitment. The applicant challenged the said advertisement and the process of selection. During the pendency of the present OA, the selection process was completed by respondent No.1 and one candidate, namely, Sanjiv Sardar was selected to join the post on 05.09.2014 at NSI, Kanpur. The prayer of the applicant for interim order was declined by the Tribunal vide order dated 11.09.2013. He accordingly filed W.P. (C) No.7743/2013 before the Hon'ble High Court of Delhi, which was disposed of with the following directions:-

“ 1. Interim order dated October 10, 2013 declining ex-parte ad – interim relief to the petitioner is under challenge.

2. Grievance of the petitioner is that if the advertisement resorting to direct recruitment to the post of Junior Scientific Officer (Physical Chemistry) is not stayed and appointment is made, the Original Application filed by the petitioner would be rendered infructuous.

3. We do not agree.

4. Any appointment made would obviously be subject to the decision in OA No.3398/2013 filed by the petitioner. But, least what would be required would be to direct the respondents that the incumbent proposed to be appointed by direct recruitment should be clearly made aware that his/her appointment is subject to any decision which may be pronounced in OA No.3398/2013 so that the person concerned cannot claim any equity in his/her favour by pleading that he/she has left a job at hand when he/she was offered appointment by the respondents.

5. We dispose of the writ petition directing that if any offer of appointment is issued by the respondent the candidate concerned would clearly be informed that the offer is subject to the decision which may be rendered in OA No.3398/2013.

6. No costs.

7. DASTI.

CM N.16494/2013

Dismissed as infructuous."

It is stated that the above named candidate later resigned from the post of Junior Scientific Officer in November 2015 and the post is still lying vacant. The applicant later applied for amendment of the prayer in the present OA vide his MA No.2241/2015 seeking to challenge the amendment to the RRS vide GSR No.404 (E) dated 03.06.2002. This MA was allowed vide order dated 16.07.2015. The applicant accordingly filed the amended OA seeking the following reliefs:-

" a. Allow the present OA No. direct the respondents to amend/or to declare ultra vires the Notification GSR No.404 (E) dated 03.06.2002 as it is violative of natural justices as in the same organization similarly situated

persons are having promotion avenues whereas the present applicant has been deprived.

b. Pass such other and further orders or direction as this Hon'ble Court may deem just and proper in the facts and circumstances of the case."

4. Amendment to the recruitment rules is challenged by the applicant on four counts, viz., (i) that vide the aforesaid amendment, promotional chances of the applicant have been totally taken away; (ii) the applicant has no promotional avenue whatsoever, which is violative of his fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India; (iii) the impugned notification dated 03.06.2002 is discriminatory in nature and (iv) similarly situated persons belonging to two other departments under the NSI, Kanpur, i.e., Department of Bio Chemistry and Department of Organic Chemistry are governed by 2007 recruitment rules whereunder the post of Junior Scientific Officer (Bio Chemistry and Organic Chemistry) is to be filled by composite mode, i.e., deputation (including short term contract) plus promotion, failing which by direct recruitment.

5. Respondent Nos.1 & 2 have filed their separate counter affidavits. The UPSC, i.e., Respondent No.1 in its short affidavit has simply stated that the issues involved in the present OA concern the Ministry of Consumer Affairs, Food and Public Distribution, Department of Food and Public Distribution and no relief has been

sought against the UPSC. Hence, the Commission has requested the respondent No.2 to defend the case.

6. Respondent No.2 has filed a detailed counter affidavit. It is stated by respondent No.2 that the applicant, Dr. Sudhanshu Mohan, joined at National Sugar Institute, Kanpur on the post of Research Assistant (Physical Chemistry), a Group-C non-gazetted, non ministerial post in the pay scale of Rs.4500-125-7000/- (pre-revised) on 08.06.2000. Upon implementation of 6th Central Pay Commission, the revised pay scale of Dr. Sudhanshu Mohan is Rs.5200-20200/- (PB-1) plus Rs.2800/- as Grade Pay. It is further stated that though the applicant is working on the same post of Research Assistant (Physical Chemistry), however, he has been awarded first financial upgradation w.e.f. 23.03.2009 under MACP Scheme in the Pay Band-2, i.e., Rs.9300-34800/- with Grade Pay of Rs.4200. National Sugar Institute, Kanpur is said to be a premium Scientific and Technological Institute of the Government of India and is a subordinate office under the administrative control of Ministry of Consumer Affairs, Food & Public Distribution, Department of Food and Public Distribution, New Delhi. It is stated that the Institute has various divisions. Each division is headed by a Professor who is assisted by the Assistant Professor and Junior Technical Officer/Junior Scientific Officer in the feeder and other administrative works of the Institute. It is further admitted position

that the Chemistry Division is having four divisions, namely, Agriculture Chemistry, Organic Chemistry, Physical Chemistry and Bio-chemistry.

7. The post of Research Assistant is said to be a Group-C, non gazetted, non ministerial post. It is stated that under the 1971 Recruitment Rules, the mode for filling up the post of Junior Scientific Officer (Physical Chemistry) was through direct recruitment and post of Research Assistant (Physical Chemistry) was not in the feeder cadre of Junior Scientific Officer (Physical Chemistry). 1971 Recruitment Rules were replaced by 1980 Recruitment Rules and under the revised rules also neither the post of Junior Scientific Officer was to be filled up through direct recruitment nor the post of Research Assistant is in the feeder cadre of Junior Scientific Officer. The 1980 Recruitment Rules were later revised in the year 1994 whereunder the method of recruitment was made composite one, i.e., by promotion/transfer on deputation (including short term contract) failing which by direct recruitment. Under the 1994 Recruitment Rules, the departmental Research Assistants (Physical Chemistry) with eight years regular service in the grade were also to be considered for the post of Junior Scientific Officer and in case they are selected for appointment, the post shall be deemed to have been filled by promotion. The 1994 Recruitment Rules were further revised in 2002. Under the pre-revised

recruitment rules, 1971, 1980 and 1994, the post of Junior Scientific Officer was a Group-B post whereas under the 2002 Recruitment Rules, the post of Junior Scientific Officer was upgraded to Group-A post.

8. The respondents have placed on record order dated 21.02.1997 which *inter alia* reads:-

“ To

The Director
National Sugar Institute,
Kanpur (UP)

Sub : Pay scales in the NSI, Kanpur- Implementation of the CAT Judgment OA No.542/90 dated 31.5.96.

Sir,

I am directed to say that in pursuance of the above mentioned judgment of Allahabad Bench of CAT dated 31.5.1996, it has been decided with the approval of Ministry of Finance (Department of Expenditure) to give the revised scales of pay to the following posts of the National Sugar Institute, Kanpur:-

S.No.	Designation	Existing scale of pay	Revised scale of pay
9.	Junior Scientific Officer	Rs.2000-3500	Rs.2200-4000

2. The above-mentioned revised pay scales will be effective from 1.1.1986 and should be implemented forthwith.”

It is also the case of the respondents that the Recruitment Rules were framed by the department in consultation with UPSC, DoP&T and

Ministry of Finance. It is further stated that the Research Assistant is a Group-C post whereas Junior Scientific Officer is a Group-A post, and thus, the post of Research Assistant cannot be a feeding channel for Group-A post. The respondents have also mentioned that the post of Junior Scientific Officer (Physical Chemistry) could not be filled up, and was deemed abolished and revived. However, these facts are not relevant for purposes of present controversy.

9. The respondents have also referred to Advertisement No.12/2013 dated 24-30th August, 2013 issued by the UPSC to fill up the post of Junior Scientific Officer (Physical Chemistry). It is stated that the said post already stands filled up by direct recruitment.

10. We have heard learned counsel for the parties at length.

11. The factual background as emerged from the pleadings of the parties is indisputed amongst the parties. Up to 1994, the post of Junior Scientific Officer was being filled up by direct recruitment and the post of Research Assistant was not in the feeding channel. However, under the 1994 Recruitment Rules, the post of Junior Scientific Officer was to be filled up by promotion/transfer on deputation (including short term contract) failing which by direct recruitment as per GSR No.67 dated 13.12.1994. A Research Assistant with eight years of regular service in the grade was eligible to be considered against the said post and if selected/appointed shall be deemed to have been appointed by promotion. The applicant was

recruited as Research Assistant on 08.06.2000 when 1994 Recruitment Rules were in operation. Admittedly, he had a promotional avenue, not only up to the post of Junior Scientific Officer but further promotions, even up to the rank of Director in the hierarchy of service as notified under the Recruitment Rules. By virtue of impugned amendment dated 03.06.2002 as notified vide GSR No.404, not only the composite mode of recruitment has been altered to direct recruitment but even upper age limit cap has also been introduced. Under the 1994 Recruitment Rules, there was no upper age limit for recruitment/appointment to the post of Junior Scientific Officer. However, under the 2002 Recruitment Rules, the upper age limit has been prescribed as 35 years (relaxable for government servants up to five years), meaning thereby, that the upper age limit for in-service members is 40 years. After the amendment of 2002 Recruitment Rules, the applicant or any other person working as Research Assistant in Physical Chemistry cease to have any promotional avenue whatsoever except the financial upgradation which is applicable to all the employees irrespective of the fact whether one has regular promotional avenues or not? Thus, the MACP Scheme has been introduced which gives financial upgradation in cases where the government servant does not earn promotion for number of years on account of non availability of vacancies or his/her respective seniority position despite availability of promotional

avenue. The said scheme cannot be equated with the regular cadre promotional opportunity. It goes without saying that every government servant who enters into the government service has desire to progress in career by way of promotion. It is a known fact that progression in career induces a sense of hard work, responsibility, zeal to work and commitment to job. Promotional opportunities always press the government servant to work hard to achieve the higher positions/ranks apart from better salary/emoluments. It is under these circumstances, every government servant is provided an opportunity to progress in service career and if no opportunity is provided for promotion/progression in one's career, it becomes so depressive that the government servant often loses the commitment to his duty/job and also the sense of responsibility which is detrimental not to his own career but for the wellness of the Institution and ultimately for the governance of the country.

12. It is now a settled position that it is the government servant's fundamental right under Articles 14 and 16 of the Constitution of India to have promotional opportunities. It is in this context that the validity of the rules needs to be examined.

13. It is admitted case of the parties that under the 1994 Recruitment Rules, all the four divisions of Chemistry were at par, so far the promotional avenues are concerned. The post of Research

Assistant whether under the Physical Chemistry or Organic Chemistry, Bio Chemistry and Agriculture Chemistry was the feeding channel for the post of Junior Scientific officer. Their nature of duties and Pay scales were equivalent. The 2002 Recruitment Rules were amended vide GSR No.404 (E) dated 03.06.2002 in respect to all the divisions of Chemistry, i.e., Physical Chemistry, Organic Chemistry, Bio Chemistry and Agriculture Chemistry for recruitment to the post of Junior Scientific Officer and the post of Research Assistant had seized to be a feeding channel for the post of Junior Scientific Officer. The post of Junior Scientific Officer was required to be filled up by direct recruitment only for which the upper age gap was also prescribed as 35 years with relaxation condition for government servants up to five years. The Recruitment Rules for the divisions of Chemistry, namely, Organic Chemistry and Bio Chemistry have again been revised. The revised recruitment rules for Organic Chemistry have been notified vide GSR No.70 (E) dated 05.02.2007 and for Bio Chemistry vide GSR No.268 (E) dated 28.03.2007. In both the above recruitment rules, the Schedule prescribing mode for the recruitment to the post of Junior Scientific Officer is as under:-

Organic Chemistry			Bio Chemistry		
Col.(9)	Col.(11)	Col.(12)	Col.(9)	Col.(11)	Col.(12)
Age: No.	Composite method: Deputation (including short-term)	Deputation (including short term contract) plus	Age: No	Composite method: Deputation(including short-term)	Deputation (including short term contract) plus

	<p>contract) plus promotion, failing which by recruitment.</p> <p>promotion:- Officers of the Central/State Government/Universities/Recognised Research Institutes/Public Sector Undertakings/Semi Government/ Autonomous or Statutory Organisations:-</p> <p>(a) (i) holding analogous posts on a regular basis; or (ii) with five years' regular service in posts in the scale of Rs.12000-16500 or equivalent; or (iii) with ten years' regular service in posts in the scale of Rs.10000-15200 or equivalent; and</p> <p>(b) Possessing the educational qualifications prescribed for direct recruits in column8.</p> <p>Note 1: The departmental officers in the feeder category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationist shall not be eligible for consideration for appointment by promotion.</p> <p>Note 2: The Departmental Assistant Professor of Organic Chemistry in the scale of Rs.1000-15200 with ten years, regular service in the grade shall also be considered along with deputationists. In case he/ she is selected for appointment to the post the same shall be deemed to have been filled by promotion.</p> <p>(Period of deputation (including short term contract) including</p>		<p>contract) plus promotion, failing which by recruitment.</p> <p>promotion:- Officers of the Central/State Government/Universities/Recognised Research Institutes/Public Sector Undertakings/Semi Government/ Autonomous or Statutory Organisations:-</p> <p>(a) (i) holding analogous posts on regular basis in the parent Cadre/Department; or (ii) with five years' service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs.12000-16500 or equivalent in the parent cadre Department; or (iii) with eight years' service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs.10000-15200 or equivalent in the parent cadre/Department; and</p> <p>(b) Possessing the educational qualifications and experience prescribed for direct recruits under column (8).</p> <p>2. The Departmental Assistant Professor (Bio Chemistry) in the scale of pay of Rs.1000-15200 with ten years' regular service in the grade will also be considered along with outsiders. In case he/ she is selected for appointment to the post, the same shall be deemed to have been filled by promotion.</p> <p>Note 1. The departmental officers in the feeder</p>
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		<p>the period of deputation (including short term contract) in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department of the Central Government shall ordinarily not exceed five years. The maximum age-limit for appointment by deputation (including short term contract) shall be not exceeding 56 years as on the closing date of the receipt of applications.</p>		<p>category who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationist shall not be eligible for consideration for appointment by promotion.</p> <p>Note 2. Period of deputation (including short term contract) including the period of deputation (including short term contract) in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department of the Central Government shall ordinarily not exceed five years. The maximum age-limit for appointment by deputation (including short term contract) shall be not exceeding 56 years as on the closing date of the receipt of applications.</p>
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It is nobody's case that the nature of duties and job profile of the Research Assistant/Scientific Assistant for the Physical Chemistry is different on any score than those in the divisions of Organic Chemistry and Bio Chemistry.

14. Respondent No.2 in para 7 of the counter affidavit has referred to the duties and functions of the Research Assistant, which reads as under:-

“ 7. That the Research Assistants are basically to assist the Junior Scientific Officer, Assistant Professor and Professor of the Divisions in handling teaching, researches and for administrative work of the Institute. It is summarized as under:-

- i) To take lectures and practical classes of students.
- ii) Assisting Professors and Assistant Professors of respective Departments in research on problems connected with type of work.
- iii) Other miscellaneous work assigned by the Senior Officers of respective departments.”

From the reading of the aforesaid paragraph, it is evident that the duties of Research Assistant in all the divisions of Chemistry are similar, and thus how can the Research Assistants in the division of Physical Chemistry be treated differently than those from the divisions of Organic and Bio Chemistry. Ex-facie there does not seem to be any distinguishing feature between the post of Research Assistant in the division of Physical Chemistry and other divisions of Organic and Bio Chemistry or even at the level of Junior Scientific Officer in these branches.

15. It is argued on behalf of the respondents that to lay down conditions of service is the prerogative of the employer and employer in its wisdom has laid down the conditions of service, hence no fault can be found with it. The respondents have relied upon the judgment of Apex Court in *P. U. Joshi others vs. Union of India & Ors.*, wherein their Lordships have held as under:

"We have carefully considered the submissions 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."

No doubt it is the prerogative of the employer to lay down the service conditions of an employee but nevertheless the employer is prohibited from discriminating between the similarly situated employees in the matters of emoluments, status and promotional avenues. Promotion may not be a right of a government servant but to be considered for promotion is held to be a inherent fundamental right of a government servant. Right of consideration can only be

available to a public servant if he has an opportunity or avenue for promotion. Where a government servant has no avenue or opportunity for promotion, his fundamental right to be considered for promotion is violated.

16. In the case of *Council of Scientific and Industrial Research and Another Versus K.G.S. Bhatt and Another*, 1989 (4) SCC 635, the Hon'ble Supreme Court has held as under:

"9. That then is the scope of bye-law 71(b)(ii). But that does not mean that we should interfere with the relief granted to respondent-1. By pointing out the error that crept into the decision of the Tribunal, we need not take to its logical end which will defeat justice. Respondent-1 is not a lay-man. He is a highly qualified engineer. Although joined service with a diploma in Engineering, he later passed Bachelor of Engineering (B.E.) and also acquired M. Tech. degree and one more diploma (D.P.M.). He was however, left without opportunity for promotion for about twenty years. This is indeed a sad commentary on the appellant's management. It is often said and indeed, abroitly, an organisation public or private does not 'hire a hand' but engages or employees a whole man. The 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. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See : Principles of Personnel Management by Flipo Edwin B. 4th Ed. p. 246). Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both no managerial employees and their supervisors". (See : Personnel Management by Dr. Uday Pareek p. 277). There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions. (See : Management of

Personnel in Indian Enterprises by Prof. N.N. Chatterjee, Chap. 12 p. 128). The appellant appears to have overlooked this basic requirement of management so far as respondent-1 was concerned till N.R. & A.S. was introduced."

17. In *Dr. Ms. O. Z. Hussain versus Union of India* 1990 (Supp)

SCC 688, the Hon'ble Supreme Court has held as under:-

"7. 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 incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical 'A' Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers. It is, therefore, necessary that on the model of rules framed by the Ministry of Science and Technology with such alterations as may be necessary, appropriate rules should be framed within four months from now providing promotional avenue for the 'A' category scientists in the non-medical wing of the Directorate.

8. This Writ Petition is allowed and the following directions are issued:

1. Within four months from today, the Ministry of Health and Family Welfare of the Union of India shall frame a set of appropriate rules, *inter alia*, providing suitable promotional avenue for the 'A' Group scientists in the non-medical wing of the establishment of Director General of Health Services;
2. These 'A' Group scientists shall be entitled to book allowance, higher degree allowance, risk allowance and conveyance allowance at the same rate as is admissible to doctors in the medical wing in the Directorate w.e.f. April 1, 1989;

3. Government shall examine the tenability of the claim of equal pay scales for this category of officers within four months from today.
18. In the instant case, we find that with the impugned amendments, the applicant is left with no promotional avenues at all. He is similarly situated as Research Assistants of any other division of Chemistry, namely, Organic Chemistry, Bio Chemistry and Agriculture Chemistry. His nature of duties is at par with those Research Assistants in Organic Chemistry, Bio Chemistry and Agriculture Chemistry. Though it is the prerogative of the employer to frame rules but any promotional policy which undermines or strangulate the fundamental rights of an employee and do not provide any promotional avenue is bad in law and violative of Articles 14 and 16 of the Constitution of India. Admittedly, the applicant had the promotional avenues at the time of his recruitment into service under prevalent 1994 Recruitment Rules. In the year 2002, by virtue of amendment to 1994 Recruitment Rules, this avenue has been taken away without providing any other promotional avenue. This situation is totally unacceptable in law.
19. In the above factual and legal position, we allow this OA and direct the respondents to provide promotional avenues to the applicant at par with the Research Assistants in other divisions of Chemistry, i.e., Organic Chemistry, Bio Chemistry and Agriculture Chemistry. Let a necessary provision be made in this regard within a

period of three months from the date of receipt of copy of this order. On requisite promotional avenues being created in accordance with law within the aforesaid period, the applicant shall be considered for promotion to the post of Junior Scientific Officer within a period of two months thereafter.

(Ms. Nita Chowdhury)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/