

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.3137/2017

This the 17th day of July, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)

1. Vivek Purwar, Senior Administrative Officer (A)
S/o H. G. Purwar,
R/o B-35, Krishi Vihar,
New Delhi-110048.
2. Kumar Rajesh, Under Secretary (A)
S/o A. K. Prasad,
R/o B-33, Krishi Vihar,
New Delhi-110048.
3. Sanjeev Kumar Sinha, Under Secretary (A)
S/o R. J. Prasad,
R/o D-2, Harbhajan Enalave, Pusa,
New Delhi-110012.
4. Pankaj Kumar, Sr. A.O. (A)
S/o A. C. Jayaswal,
R/o A-1-1/2, IVRI,
Bareilly, UP-243122.
5. Sachin Agnihotri, Sr. A.O. (A)
S/o R. P. Agnihotri,
R/o D-7, Gehoon Vihar, IIWBR,
Karnal-132001.
6. Vampad Sharma, Under Secretary (A)
S/o Late Krishan Chand Sharma,
R/o D-29, IARI, New Delhi-110012.

7. Abhishek Srivastava, Sr. A.O. (A)
S/o Rakesh Mohan,
R/o D-19, CSSRI, Resident Campus,
Kachwa Road, Zarifa Farm,
Karnal, Haryana.

... Applicants

(By Mr. M. K. Bhardwaj, Advocate)

Versus

1. Union of India through
Secretary, Department of Agricultural
Research & Education (DARE) & Director General,
Indian Council of Agricultural Research (ICAR),
Krishi Bhawan, New Delhi-110001.
2. Secretary,
Indian Council of Agricultural Research (ICAR) and
Additional Secretary, DAIRY,
Krishi Bhawan, New Delhi-110001.
3. Deputy Secretary (Administration),
Indian Council of Agricultural Research (ICAR),
Krishi Bhawan, New Delhi-110001.
4. K. N. Chaudhary,
Dy. Secretary, ASRB,
B-17, Krishi Vihar,
New Delhi-110048.
5. V. K. Sharma,
Dy. Secretary, ICAR,
B-82, 3rd Floor, Amar Colony,
Lajpat Nagar, New Delhi-110024.
6. V. D. Naniwadekar,
Dy. Secretary.
7. Roja Sethumadhavan,
Retired Dy. Secretary, ICAR,
Qtr. No.880, Sec-9, R.K.Puram,
New Delhi-110022.

8. Kamla Bisht,
Dy. Secretary, ICAR,
160, Block No.23, Lodhi Colony,
New Delhi-110003.

9. N. K. Jindal,
Retired Dy. Secretary, ICAR,
C-III, Narwana Apartment,
I.P. Extension, Patpar Ganj,
Delhi-110092.

... Respondents

Respondent Nos.4 to 9 represented through Respondent No.2, Secretary, Indian Council of Agricultural Research (ICAR) and Additional Secretary, DAIRY, Krishi Bhawan, New Delhi-110001.

(By Mr. Sachin Chaujan and Mr. Rajeev Sharma, Advocates)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicants were initially appointed as Administrative Officers (AOs) [Group 'A' Junior Time Scale] in the Indian Council of Agricultural Research (ICAR), under the Department of Agricultural Research and Education (DARE), Ministry of Agriculture and Farmers' Welfare, Government of India, between 2006 and 2012. They were promoted to the next higher post of Senior Administrative Officer (SAO). The promotion from the post of SAO is to that of Deputy Secretary (DS). It is stated that another feeder category for the post of DS is Under Secretary (US), and that the distinction between the

post of DS, on the one hand, and SAO, on the other hand, is more of place of posting, that functional.

2. The common avenue of promotion from the posts of SAO and US, is DS. For quite some time, problems have been arising in the context of promotion to that post on account of non-integration of seniority of the two feeder categories. Promotions were being made on the basis of *ad hoc* rules or procedure. Later on, rules were framed, and on 28.09.2012, a memorandum (Annexure A-1A) was issued through which amendment was caused to the recruitment rules, to the effect that ratio of 3:2 shall be maintained between the two categories of SAO and US respectively, for promotion to the post of DS. It was also indicated that the ratio in terms of number of vacancies for the sources of SAO and US would be 18 and 12 respectively, against the cadre strength of 30 of the post of DS.

3. The applicants challenge the said amendment and the ancillary proceedings on several grounds. It is stated that though no exception can be taken to the ratio of 3:2 fixed under the impugned order Annexure A-1A, the clause, which is to the effect that the future promotions shall be made only from the cadre from which the retirement or resignation takes place, is

highly objectionable. The applicants contend that once the ratio is fixed, the vacancies in the post of DS that arise from time to time, must be filled up by promoting candidates in the ratio of 3:2, and on account of the stipulation mentioned above, serious illegality is taking place. Other contentions are also urged.

4. On behalf of the respondents, a detailed counter-affidavit is filed. It is stated that after a prolonged exercise, the rules came to be amended in the year 2012. It is stated that the necessity to add the clause at the end arose on account of the fact that even after the posts of DS are filled by promotion in the stipulated ratio, anomaly was arising on account of retirement of DSs who were promoted from US category within a short time after promotion, and the resultant vacancies were being claimed by the officers from the other feeder category, and to avoid the imbalance, the clause was added. It is further stated that this very amendment was challenged before the Ernakulam Bench of this Tribunal by filing OA No.946/2012, and through its order dated 31.08.2015, the Bench dismissed the OA.

5. We heard Shri M. K. Bhardwaj, learned counsel for the applicants, and Shri Sachin Chauhan and Shri Rajeev

Sharma, learned counsel appearing on behalf of the respondents, in detail.

6. The applicants were selected and appointed as AOs through the process of direct recruitment. All of them have been promoted as SAOs. Though it is stated that some other AOs similarly selected and appointed as the applicants, were promoted to the post of US, the record is not clear on this aspect. Suffice it to say that the post of SAO and US stand at the same footing, in the context of promotion to the next higher post of DS, and both are feeder categories to that post.

7. Whenever there exist more feeder categories than one, for promotion to the higher category, the employer is required to evolve methods, to maintain the balance among the various categories. One such method is to prepare a combined seniority list, by interpolating the seniority of the employees from all the feeder categories. While in some cases, the date of appointment can be a criterion, in other cases, different criteria need to be adopted. Another method of handling the situation would be to fix a ratio to be maintained among various categories, for the purpose of choosing candidates for promotion.

8. Obviously because it may lead to several complications, the respondents did not choose the option of preparing the common seniority list of SAOs and USs. On the other hand, they have fixed the ratio of 3:2 between those two categories. The basis for this ratio was that the approved strength of SAOs is 39, whereas that of USs is 23. The ratio so fixed for promotion was to result in allocation of 18 posts of DS for the SAO category, and 12 posts for US category

9. Normally, the problem relating to promotion to a higher post from two or more feeder categories would stand resolved with the fixation of ratio. However, the age at which the promotion is generally earned by the candidates in the respective feeder categories, would bring with it certain complications. If, as a pattern, the candidates from one source get promotion at a late age or a later stage, compared to the candidates from the other source, the former would retire earlier in the promotional post. If the resultant vacancy is to be filled just by maintaining the ratio, the overall composition of the promotional post is bound to get disturbed. In the instant case itself, the SAOs are entitled to get 18 posts of DS, and the US category, 12 posts, on the basis of ratio of 3:2. It is not

denied that the candidates coming from the category of US get promotion at a relatively higher age, and for that reason, they retire a bit early, after promotion. For example, if by a particular date, four DSs who came from the category of US, and one DS from the category of SAO retire, and the resultant vacancies are to be filled up by maintaining 3:2 ratio, the SAOs would get three posts on promotion, though only one candidate promoted from their category, has retired. In contrast, though four DSs who were from the category of US retire, only two candidates from their category would get an opportunity to be promoted. If this result repeats for certain years, a situation may emerge where the candidates coming from US category in the post of DS may be reduced to miniscule proportion. That in turn may lead to a situation, where most of the incumbents in the category of US retire without there being any chance of promotion, whereas almost every one of their counter-parts in the SAO category may get the promotion. It is with a view to remove this imbalance, that Note 3 came to be added in the amendment, which reads as under:

“Note 3: Presently, out of 30 DS/CAO, 22 are from SAO cadre and 8 are from US cadre. There

is thus, shortfall in the US cadre by 4. In order to restore the respective strength of SAO and US at 18:12 respectively, subsequent promotions to the post of DS/CAO shall be made from US cadre to fulfil the current shortfall. Thereafter, promotions shall be made from the cadre from which retirement etc. Takes place.”

10. Reliance is placed by the learned counsel for the applicants on the judgment of the Hon’ble Supreme Court in *Paramjit Singh Sandhu & others v Ram Rakha Mal & others* [(1982) 3 SCC 191]. That was a case in which roster system was being operated. In a 100-point roster, each category is assigned its own place. The cycle repeats itself as and when the incumbents retire, and vacancies are filled. Once the slot is clearly earmarked, the question of verifying as to which category the retiring incumbent hails from, becomes redundant. If a roster is operated, the ratio between various categories continues to be maintained at any given point of time, except with the small and negligible variations.

11. In the instant case, the rules do not contemplate a roster. The mere fixation of ratio does not ensure proper, just and equitable distribution of posts between the two feeder categories. An employer has to make, amend and enforce the service rules to ensure proper representation, on the one hand,

and efficiency in the administration, on the other hand. Whatever be the justification in framing rules at the inception, amendments are warranted whenever an unforeseen situation crops up. Even the best of the minds cannot prepare a set of rules which would hold good for all times to come, and which can be applied for all categories of services. Many a time, the very basis for which a specific rule or amendment was made, may turn out to be irrelevant, depending on the nature of changes and developments that take place in the administration.

12. The applicants are not able to demonstrate that any injustice has been caused to them, or there is any under-representation in the cadre of Deputy Secretary for their category. At any rate, the provision which is now under challenge, has been upheld by the Ernakulam Bench of this Tribunal in its order dated 31.08.2015 passed in OA No.946/2012.

13. We do not find any merit in the OA. The same is accordingly dismissed. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)
/as/

(Justice L. Narasimha Reddy)
Chairman