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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

ORIGINAL APPLICATION NO.290/00062/2014

RESERVED ON : 06.03.2018

PRONOUNCED ON :

08.06.2018

CORAM:

HON'BLE MS. B.BHAMATHI, MEMBER (A)

HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J)

JAGDISH PRASAD S/O SHRI MATHURA LAL SHRINGI, AGED 52 YEARS,
RESIDENT OF GR NO.30-A, HEAVY WATER PLANT KOTA RESIDENTIAL
COLONY, RAWATBHATTA, DISTRICT CHITTORGARH. AT PRESENT POSTED
AS S.A./F. HEAVY WATER PLANT, KOTA.

...APPLICANT

(BY ADVOCATE: SHRI GANPAT LAL PRAJAPAT)

VERSUS

1. UNION OF INDIA THROUGH ITS CHIEF EXECUTIVE, HEAVY WATER BOARD, V.S.BHAWAN, ANUSHAKTI NAGAR, MUMBAI- 400094.
2. THE ADMINISTRATIVE OFFICER, HEAVY WATER PLANT KOTA, ANUSHAKTI-323303.
3. THE GENERAL MANAGER, HEAVY WATER PLANT (KOTA), ANUSHAKTI-323303.

...RESPONDENTS

(BY ADVOCATE: MR. K.S.YADAV)

ORDER

PER: SURESH KUMAR MONGA, MEMBER (J)

THE PLEADED CASE OF THE APPLICANT HEREIN IS THAT HE PASSED SECONDARY EXAMINATION IN THE YEAR 1977 AND THEREAFTER IN THE YEAR 1981, HE COMPLETED DIPLOMA IN CHEMICAL ENGINEERING. HE WAS APPOINTED AS SCIENTIFIC ASSISTANT-B BY THE RESPONDENT ON 13.9.1983. HE WAS PROMOTED AS SCIENTIFIC ASSISTANT-C ON 12.4.1989 AND

ULTIMATELY POSTED AS SCIENTIFIC ASSISTANT-E W.E.F. 1.2.2000 VIDE ORDER DATED 12.10.2002. IT HAS FURTHER BEEN AVERRED THAT THE RESPONDENTS PROPOSED THE APPLICANT FOR PROMOTION IN VIEW OF HIS ADDITIONAL QUALIFICATION I.E. AMIE (CHEMICAL ENGINEERING) IN THE YEAR 2002. THE APPLICANT IS A DEGREE HOLDER AND ONE SHRI R.N.KASOTIA IS A DIPLOMA HOLDER. THE RESPONDENTS ISSUED AN INTERVIEW LETTER DATED 7.4.2006 TO BOTH FOR CONSIDERATION OF PROMOTION UNDER MERIT PROMOTION SCHEME. IN THE SAID PROCESS, THE APPLICANT COULD NOT GET PROMOTION. WHEREAS, SHRI R.N. KASOTIA WAS PROMOTED AND FEELING AGGRIEVED BY HIS PROMOTION ORDER, THE APPLICANT FILED AN ORIGINAL APPLICATION BEFORE THIS TRIBUNAL, BUT THE SAME WAS DISMISSED ON 7.3.2007 WITH LIBERTY TO APPROACH THE DEPARTMENT BY MAKING A COMPREHENSIVE REPRESENTATION. CONSEQUENTLY, THE APPLICANT SUBMITTED A REPRESENTATION WITH THE RESPONDENT DEPARTMENT ON 20.3.2007, WHICH HAS YET NOT BEEN DECIDED. IT HAS FURTHER BEEN AVERRED THAT THE RESPONDENT DEPARTMENT PROMOTED PERSONS JUNIORS TO THE APPLICANT NAMELY SHRI RAM SINGH AND SHRI R.N.PRASAD ON THE POST OF SCIENTIFIC OFFICER-E IN THE YEAR 2008. WHEREAS, THE APPLICANT HAS BEEN DEPRIVED FROM SUCH PROMOTION. THE RESPONDENT DEPARTMENT VIDE ORDER DATED 22.3.2012 PROMOTED SHRI A.K.JAIN ON THE POST OF SCIENTIFIC OFFICER-E WITH IMMEDIATE EFFECT THOUGH SHRI JAIN IS MOST JUNIOR TO THE APPLICANT BECAUSE HE JOINED THE SERVICES ON 28.4.1983. WHEREAS, THE APPLICANT JOINED THE SERVICES ON 1.9.1982. FURTHER ASSERTION OF THE APPLICANT IS THAT THE RESPONDENT DEPARTMENT CALLED HIM FOR INTERVIEW FOR THE POST OF SCIENTIFIC OFFICER-D AND HE APPEARED IN THE SAID INTERVIEW, BUT THE AUTHORITIES DID NOT FIND HIM FIT FOR PROMOTION ON THE GROUND THAT HE HAS NOT SECURED 60% MARKS IN AMIE DESPITE THE FACT THAT THE APPLICANT PASSED THE AMIE IN THE YEAR 2002 AND THE CONDITIONS OF THE YEAR 2003 ARE NOT APPLICABLE IN HIS CASE. THE RESPONDENTS HAVE SELECTED CANDIDATES JUNIOR TO THE APPLICANT FOR PROMOTION WHO PASSED THEIR AMIE BETWEEN 1992 TO 2003 AND HAVE SECURED LESS THAN 60% MARKS. THE APPLICANT WAS NEVER CALLED BY THE RESPONDENTS FOR DEPARTMENTAL QUALIFYING EXAMINATION AND THEY HAVE ONLY CALLED 4 EMPLOYEES FOR THE SAID EXAMINATION ON 23.6.2011. AGGRIEVED BY AN ORDER DATED 22.3.2012, THE APPLICANT PREFERRED ORIGINAL APPLICATION NO.170/2012 BEFORE THIS TRIBUNAL AND THE SAID ORIGINAL APPLICATION WAS DISPOSED OF ON 16.7.2013 WITH A DIRECTION TO THE APPLICANT TO FILE A DETAILED REPRESENTATION BEFORE THE RESPONDENT DEPARTMENT AND THE RESPONDENTS WERE DIRECTED TO PASS A REASONED AND SPEAKING ORDER WITHIN A PERIOD OF FOUR MONTHS FROM THE DATE OF RECEIPT OF SUCH REPRESENTATION. PURSUANT TO THE ORDER DATED 16.7.2013 PASSED BY THIS TRIBUNAL, THE APPLICANT SUBMITTED A DETAILED

REPRESENTATION ON 9.8.2013 AND REQUESTED TO CONSIDER HIM FOR PROMOTION FROM THE RETROSPECTIVE DATE WHEN HIS JUNIORS WERE PROMOTED. THE RESPONDENTS DECIDED THE SAID REPRESENTATION VIDE ORDER DATED 6.12.2013 HOLDING THAT THE SECRETARY, TROMBAY COUNCIL VIDE HIS NOTE DATED 20.4.2011 HAD GRANTED PERMISSION TO APPEAR IN THE DEPARTMENTAL QUALIFYING EXAMINATION FOR TRACK CHANGE PROMOTION FROM SCIENTIFIC ASSISTANT TO TECHNICAL OFFICER TO THOSE EMPLOYEES WHO WERE GRANTED PERMISSION TO ACQUIRE ADDITIONAL QUALIFICATION PRIOR TO FEBRUARY, 2003 AND ACQUIRED M.SC. AMIE, B.E., B.TECH. OR EQUIVALENT EXAMINATION IN THE APPROVED DISCIPLINE WITH MARKS BETWEEN 50 TO 60%. ACCORDINGLY, THE APPLICANT WAS ASKED TO APPEAR IN THE EXAMINATION WHICH WAS CONDUCTED ON 30.7.2011 AS ONE TIME EXEMPTION CASE. A LARGE NUMBER OF EMPLOYEES OF THE DEPARTMENT APPEARED IN THE SAID EXAMINATION AND WERE CONSIDERED FOR PROMOTION TO THE POST OF TECHNICAL OFFICER. HOWEVER, THE APPLICANT DID NOT APPEAR IN THE EXAMINATION AND THUS NOT UTILIZED THE OPPORTUNITY GIVEN TO HIM FOR TRACK CHANGE. AGAIN, DURING JUNE, 2012 ONE MORE OPPORTUNITY WAS GIVEN TO THOSE EMPLOYEES WHO HAD SECURED MARKS BETWEEN 50% TO 60% IN THE APPROVED DISCIPLINE BETWEEN FEBRUARY, 2003 TO 31.12.2008 AND THEY WERE CALLED FOR APPEARING IN THE DEPARTMENTAL QUALIFYING EXAMINATION CONDUCTED ON 9.6.2012 FOR TRACK CHANGE PROMOTION FROM SCIENTIFIC ASSISTANT TO TECHNICAL OFFICER. HOWEVER, THE APPLICANT DID NOT APPEAR IN THE SAID EXAMINATION WITHOUT ASSIGNING ANY REASON.

AGGRIEVED BY THE ORDER DATED 6.12.2013 PASSED BY THE RESPONDENTS ON HIS REPRESENTATION, THE APPLICANT HAS PREFERRED THE INSTANT OA INVOKING THE JURISDICTION OF THIS TRIBUNAL U/S 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985.

2. THE RESPONDENTS BY WAY OF FILING A JOINT REPLY HAVE JOINED THE DEFENCE AND OPPOSED THE CLAIM OF THE APPLICANT. IT HAS BEEN PLEADED THAT THE SCIENTIFIC AND TECHNICAL PERSONNEL IN THE DEPARTMENT OF ATOMIC ENERGY AND ITS UNITS ARE COVERED UNDER THE MERIT PROMOTION SCHEME OF THE DEPARTMENT OF ATOMIC ENERGY. THE PROMOTION NORMS AND RECRUIT NORMS/RULES ARE FRAMED BY A HIGH LEVEL SCIENTIFIC COMMITTEE KNOWN AS TROMBAY COUNCIL/TROMBAY SCIENTIFIC COMMITTEE, WHICH CONSISTS OF EMINENT SCIENTISTS AND ENGINEERS OF THE DEPARTMENT OF ATOMIC ENERGY. UNLIKE THE NORMAL PRACTICE PREVAILING IN THE CENTRAL GOVERNMENT ORGANIZATIONS, WHERE A PERSON IS PROMOTED ONLY AGAINST CLEAR VACANCIES, SENIORITY ETC., THE SCIENTIFIC/TECHNICAL PERSONNEL IN THE DEPARTMENT OF ATOMIC ENERGY ARE COVERED UNDER THE MERIT PROMOTION SCHEME. THE EMPLOYEES ARE CONSIDERED FOR SCREENING ON COMPLETION OF

PARTICULAR NUMBER OF YEARS' SERVICE IN THE PRESENT GRADE. THE AVAILABILITY OF VACANCIES AND HIGHER LEVEL POST IS NOT THE CRITERIA. WHEREAS, THE POST HELD BY THE INCUMBENT IS UPGRADED BY CREATION OF NEXT HIGHER POST AND THE LOWER POST HELD BY THE INCUMBENT IS ABOLISHED.

IT HAS FURTHER BEEN PLEADED THAT THE APPLICANT WAS RECOMMENDED FOR PROMOTION TO THE POST OF SCIENTIFIC OFFICER-D DURING FEBRUARY, 2004 AS A SPECIAL CASE FOR TRACK CHANGE PROMOTION BASED ON HIS ADDITIONAL QUALIFICATION OF AMIE ACQUIRED BY HIM DURING 2002. HOWEVER, HE WAS SCREENED OUT BY THE SCREENING COMMITTEE AS HE WAS NOT HAVING REQUISITE PERCENTAGE OF MARKS. THE APPLICANT GOT ONLY 54.24% MARKS IN SECTION-A AND 57.9% MARKS IN SECTION-B OF THE AMIE EXAMINATION HELD ON 20.9.2002. HOWEVER, HE WAS AGAIN RECOMMENDED FOR PROMOTION TO THE POST OF SCIENTIFIC OFFICER-D AND ONE TIME RELAXATION WAS GRANTED FOR ALL THOSE WHO ACQUIRED THEIR HIGHER QUALIFICATION AND SCORED LESS THAN 60% MARKS. BUT THE SELECTION COMMITTEE DID NOT RECOMMEND THE APPLICANT FOR THE POST OF SCIENTIFIC OFFICER-D. THE PROMOTION NORMS FOR TRACK CHANGE PROMOTION TO THE POST OF SCIENTIFIC OFFICER/TECHNICAL OFFICER WERE REVISED IN FEBRUARY, 2003 AND ACCORDINGLY, REQUIREMENT OF 60% MARKS IN AMIE EXAMINATION WAS MADE ESSENTIAL. THE APPLICANT HAD COMPLETED AMIE IN THE YEAR 2002 BY SECURING LESS THAN 60% MARKS AND HE WAS GIVEN ONE CHANCE AS PER THE PREVAILING PROMOTION NORMS. HOWEVER, HE COULD NOT QUALIFY THE SAME. HE WAS NOT CONSIDERED FOR TRACK CHANGE PROMOTION FROM SCIENTIFIC ASSISTANT-E TO THE POST OF SCIENTIFIC OFFICER-D. IN THE YEAR 2009, THE PROMOTION NORMS BASED UPON ADDITIONAL QUALIFICATION WERE FURTHER REVIEWED AND DEPARTMENTAL QUALIFYING EXAMINATION FOR TRACK CHANGE PROMOTION FOR THE CANDIDATES, WHO HAVE ACQUIRED MORE THAN 60% MARKS IN THE AMIE/BE/B.TECH./M.SC. ETC. WERE INTRODUCED. HOWEVER, THE TROMBAY COUNCIL VIDE NOTE DATED 20.4.2011 HAS GRANTED PERMISSION TO THOSE WHO ACQUIRED ADDITIONAL QUALIFICATION PRIOR TO FEBRUARY, 2003 WITH MARKS BETWEEN 50-60% TO APPEAR IN THE DEPARTMENT QUALIFYING EXAMINATION FOR TRACK CHANGE PROMOTION FROM SCIENTIFIC ASSISTANT TO TECHNICAL OFFICER AS A ONE TIME MEASURE. ACCORDINGLY, THE APPLICANT WAS REQUESTED TO APPEAR IN THE EXAMINATION, WHICH WAS CONDUCTED ON 30.7.2011 AS ONE TIME EXEMPTION. A LARGE NUMBER OF EMPLOYEES ALSO APPLIED AND APPEARED IN THE SAID EXAMINATION AND WERE CONSIDERED FOR PROMOTION TO THE POST OF TECHNICAL OFFICER. HOWEVER, THE APPLICANT DID NOT APPEAR IN THE SAID EXAMINATION AND THUS NOT UTILIZED THE OPPORTUNITY GIVEN TO HIM FOR TRACK CHANGE PROMOTION. AGAIN DURING JUNE, 2012, ONE MORE OPPORTUNITY WAS GIVEN TO THOSE EMPLOYEES WHO HAVE SCORED THE

MARKS BETWEEN 50-60% IN THE APPROVED DISCIPLINE BETWEEN FEBRUARY, 2003 TO 31.12.2008. SUCH CANDIDATES WERE INFORMED FOR APPEARING IN THE EXAMINATION CONDUCTED ON 9.6.2012 FOR TRACK CHANGE, BUT STILL THE APPLICANT DID NOT APPEAR IN THE SAID EXAMINATION. IT HAS FURTHER BEEN PLEADED THAT THE APPLICANT HAS BEEN GIVEN AMPLE OPPORTUNITY TO BECOME A SCIENTIFIC OFFICER/TECHNICAL OFFICER BY WAY OF TRACK CHANGE, BUT EITHER HE HAS NOT QUALIFIED IN THE INTERVIEW OR HE HAS NOT UTILIZED THE CHANCE GIVEN TO HIM. HOWEVER, HE HAS BEEN PROMOTED FROM TIME TO TIME IN HIS CADRE REGULARLY BASED ON MERIT PROMOTION SCHEME. WITH ALL THESE PLEADINGS, THE RESPONDENTS HAVE PRAYED FOR DISMISSAL OF THE OA.

3. THE APPLICANT HAS FILED A REJOINDER TO THE REPLY AND WHILE REITERATING THE FACTS ALREADY PLEADED IN THE OA, HE MADE FURTHER ASSERTIONS THAT HE SCORED MORE THAN 60% MARKS IN HIS AMIE BY WAY OF SECURING 54.24 % MARKS IN SECTION-A, 57.9% MARKS IN SECTION-B AND A GRADE OF 9-10 IN HIS PROJECT WORK. THE RESPONDENT DEPARTMENT HAS ONLY CONSIDERED THE MARKS OBTAINED BY HIM IN SECTION-A AND B OF AMIE EXAMINATION AND IGNORED THE MARKS OBTAINED BY HIM IN HIS PROJECT, WHICH IS A MANDATORY STEP IN COMPLETING THE AMIE DEGREE. THE APPLICANT HAS ALSO PLEADED THAT HE WAS NOT INFORMED/NOTIFIED BY THE DEPARTMENT ABOUT THE EXAMINATION TO BE CONDUCTED IN THE YEAR 2011 AND 2012 AND HE CANNOT BE GOVERNED BY ANY OTHER NORMS WHICH CAME INTO EFFECT AFTER THE YEAR 2002 AND, AS SUCH, HE DESERVES TO BE GIVEN CHANCE OF PROMOTION BY WAY OF TRACK CHANGE FROM THE YEAR 2003 ITSELF.

4. DURING THE COURSE OF HEARING ON 5.12.2017, THE LEARNED COUNSEL FOR THE APPLICANT SUBMITTED THAT THE APPLICANT PASSED THE AMIE EXAMINATION IN SEPTEMBER, 2002 AND SUBMITTED AN APPLICATION FOR TRACK CHANGE IN OCTOBER, 2002. HOWEVER, HE WAS NOT CONSIDERED FOR TRACK CHANGE TO THE POST OF SCIENTIFIC OFFICER IN DECEMBER, 2002, DECEMBER, 2003 AND DECEMBER, 2004. THOUGH HIS NAME WAS RECOMMENDED TO THE SCREENING COMMITTEE IN 2004 FOR CONSIDERATION, BUT HE WAS SCREENED OUT BY THE SCREENING COMMITTEE AS HE DID NOT SCORE 60% OF MARKS IN THE AMIE EXAMINATION. LEARNED COUNSEL ALSO POINTED OUT THAT SHRI M.S.CHAUHAN WHO ALSO SECURED LESS THAN 60% MARKS WAS CONSIDERED FOR PROMOTION TO THE POST OF SCIENTIFIC OFFICER-D IN SEPTEMBER, 2004. HOWEVER, THE LEARNED COUNSEL APPEARING FOR THE RESPONDENTS WHILE REFERRING TO ANN.R/6 POINTED OUT THAT THE APPLICANT'S CASE WAS FORWARDED AND RECOMMENDED UNDER HEADING "ON ACQUIRING ADDITIONAL QUALIFICATION" AND HE WAS ALSO RECOMMENDED FOR PROMOTION AS A SPECIAL CASE IN THE YEAR

2002 FOR THE NEXT HIGHER GRADE OF SCIENTIFIC OFFICER-D/SCIENTIFIC ASSISTANT-F. THUS, A SITUATION EMERGED WHEREIN IT WAS CONSIDERED APPROPRIATE TO ISSUE DIRECTIONS TO THE RESPONDENTS TO FILE ADDITIONAL AFFIDAVIT CLARIFYING THEREIN WHETHER THE APPLICANT REPRESENTED FOR TRACK CHANGE PROMOTION AS SCIENTIFIC OFFICER IN OCTOBER, 2002 AND IF SO, WHY HE WAS NOT CONSIDERED? THE RESPONDENTS WERE ALSO DIRECTED TO INDICATE WHETHER IN SPITE OF THE RECOMMENDATIONS MADE IN 2004, THE SCREENING COMMITTEE REJECTED THE APPLICANT'S CASE ON ACCOUNT OF HIS NOT SECURING 60% MARKS IN HIS GRADUATION EXAMINATION. APART FROM THIS, THE APPLICANT WAS ALSO DIRECTED TO FILE AN AFFIDAVIT ALONG WITH THE REPRESENTATION SUPPOSEDLY MADE BY HIM IN OCTOBER, 2002 AND ALSO TO INDICATE WHETHER HE APPEARED IN ANY INTERVIEW FOR THE POST OF SCIENTIFIC OFFICER-D. THE ORDER DATED 5.12.2017 IS REPRODUCED HEREINUNDER:-

“WE HAVE HEARD THE LEARNED COUNSELS FOR THE APPLICANT AND THE RESPONDENTS FOR QUITE SOME TIME. DURING THE HEARING THE LEARNED COUNSEL FOR THE APPLICANT SUBMITTED THAT THE APPLICANT PASSED THE AMIE IN SEPTEMBER, 2002 AND SUBMITTED AN APPLICATION FOR TRACK CHANGE IN OCTOBER, 2002 ITSELF. HOWEVER, HE WAS NOT CONSIDERED FOR TRACK CHANGE TO THE POST OF SCIENTIFIC OFFICER IN DECEMBER, 2002, DECEMBER, 2003 OR DECEMBER, 2004. THOUGH HIS NAME WAS RECOMMENDED TO THE SCREENING COMMITTEE IN 2004 FOR CONSIDERATION, BUT HE WAS SCREENED OUT BY THE SCREENING COMMITTEE AS HE DID NOT ACQUIRE 60% OF MARKS. ON THE OTHER HAND, ONE SHRI M.S.CHAUHAN WHO ALSO SECURED LESS THAN 60 % MARKS WAS CONSIDERED FOR PROMOTION OF SCIENTIFIC OFFICER-D IN SEPTEMBER, 2004. HE WAS CALLED FOR INTERVIEW UNDER MERIT PROMOTION SCHEME IN APRIL, 2005. THE SAME WAS NOT FOR TRACK CHANGE BUT FOR ROUTINE PROMOTION TO SCIENTIFIC ASSISTANT-F. THE LEARNED COUNSEL FOR THE RESPONDENTS REFERRING TO ANN.R/6 MENTIONED THAT HIS CASE WAS FORWARDED AND RECOMMENDED UNDER HEADING ‘ON ACQUIRING ADDITIONAL QUALIFICATION’ AND HE WAS ALSO RECOMMENDED FOR PROMOTION AS A SPECIAL CASE FOR ACQUIRING ADDITIONAL QUALIFICATION IN THE YEAR 2002 FOR THE NEXT HIGHER GRADE OF SO-D/SAF ON 1.2.2004.

WE ARE INFORMED BY THE BOTH COUNSELS THAT PAY SCALE AND GRADE PAY WAS SAME FOR SO-D AND SA/F. IT WAS ALSO INDICATED THAT IN FEBRUARY, 2003, THERE WAS A CHANGE IN THE RULES BY WHICH THE PERSONS ACQUIRING AMIE DEGREE WITH LESS THAN 60% MARKS WOULD NOT QUALIFY FOR TRACK CHANGE.

ACCORDING TO THE APPLICANT, HE WOULD HAVE BEEN ELIGIBLE TO BE CONSIDERED BEFORE FEBRUARY, 2003 AS HE HAS ALSO ACQUIRED DEGREE IN SEPTEMBER, 2002 AND MADE APPLICATION IN OCTOBER, 2002. THE SAID REPRESENTATION/APPLICATION HAS, HOWEVER, NOT BEEN PRODUCED IN THE OA. HE WAS NOT CONSIDERED THEREAFTER IN SPITE

OF ONE TIME RELAXATION GIVEN IN 2004, THOUGH SHRI M.S.CHAUHAN WHO ALSO SECURED LESS THAN 60% MARKS WAS CONSIDERED FOR SCIENTIFIC OFFICER-D IN 2004. LD. COUNSEL FOR THE RESPONDENTS COULD NOT CLARIFY THE POSITION. SINCE THERE IS LACK OF CLARITY ON THIS ASPECT, WE DIRECT THE LEARNED COUNSEL FOR THE RESPONDENTS TO FILE AN ADDITIONAL AFFIDAVIT CLARIFYING WHETHER THE APPLICANT REPRESENTED FOR TRACK CHANGE FOR PROMOTION TO SCIENTIFIC OFFICER IN OCTOBER 2002, AND IF SO, WHY HE WAS NOT CONSIDERED ? THEY SHOULD ALSO INDICATE WHETHER IN SPITE OF THE RECOMMENDATIONS MADE IN 2004, THE SCREENING COMMITTEE REJECTED THE CASE OF THE APPLICANT ON ACCOUNT OF HIS NOT SECURING 60% MARKS IN HIS GRADUATION EXAMINATION. THEY SHOULD ALSO CLARIFY THE POSITION REGARDING SHRI M.S.CHAUHAN REGARDING THE MARKS SECURED BY HIM IN GRADUATION EXAMINATION AND WHEN HE WAS CONSIDERED FOR TRACK CHANGE AND APPOINTED TO SCIENTIFIC OFFICER-D. THEY SHALL ALSO CLARIFY WHETHER THE APPLICANT WAS AT ANY TIME CONSIDERED FOR SCIENTIFIC OFFICER-D AND WAS REJECTED ON THE BASIS OF THE INTERVIEW IN VIEW OF THE FACT THAT THE COMMUNICATION DATED 6.12.2013 (ANN.A/2) MENTIONS IN PARA 26 AND 27 THAT THE SELECTION COMMITTEE DID NOT RECOMMEND HIM FOR SO-D ON THE BASIS OF PERFORMANCE IN THE INTERVIEW. A COPY OF THE SAID PROCEEDINGS BE ALSO ENCLOSED WITH THE AFFIDAVIT. THE LEARNED COUNSEL FOR THE APPLICANT SHOULD ALSO PRODUCE THE REPRESENTATION MADE BY THE APPLICANT SUPPOSEDLY MADE IN OCTOBER, 2002 FOLLOWING PASSING OF THE AMIE EXAMINATION. HE SHOULD ALSO CATEGORICALLY INDICATE WHETHER HE APPEARED IN ANY INTERVIEW FOR THE POST OF SO-D AS MENTIONED IN PARA 26 AND 27 OF THE COMMUNICATION. BOTH THE AFFIDAVITS SHALL BE FILED WITHIN A PERIOD OF THREE WEEKS. THE MATTER BE POSTED FOR HEARING THEREAFTER ON 08.01.2018.”

PURSUANT TO THE AFORESAID ORDER, THE APPLICANT AS WELL AS THE RESPONDENTS HAVE FILED THEIR RESPECTIVE ADDITIONAL AFFIDAVITS. IN THE AFFIDAVIT DATED 8.1.2018, IT HAS BEEN AVERRED BY THE APPLICANT THAT HE PARTICIPATED FOR ACQUIRING ADDITIONAL QUALIFICATION ON 20.9.2002 AND OBTAINED THE QUALIFICATION OF AMIE FROM THE INSTITUTION OF ENGINEERS (INDIA) AND INFORMED THE DEPARTMENT ON 29.9.2002 ABOUT HIS ADDITIONAL QUALIFICATION. THE ENTRY WITH REGARD TO HIS ADDITIONAL QUALIFICATION WAS MADE BY THE DEPARTMENT IN HIS SERVICE BOOK ON 10.12.2002. IT HAS FURTHER BEEN STATED THAT HE WAS NEVER GIVEN ANY OPPORTUNITY OF BEING INTERVIEWED FOR PROMOTION ON THE BASIS OF ACQUIRING ADDITIONAL QUALIFICATION IN THE YEAR 2003 AND 2004. IT HAS FURTHER BEEN STATED THAT HE WAS INTERVIEWED BY THE DEPARTMENT IN THE YEAR 2005 AS A TIME BOUND PROMOTION TO THE NEXT HIGHER GRADE WITHOUT CONSIDERING ADDITIONAL

QUALIFICATION. THE INTERVIEW CONDUCTED BY THE DEPARTMENT WAS NOT FOR TRACK CHANGE FROM SCIENTIFIC ASSISTANT TO SCIENTIFIC OFFICER.

IN THE AFFIDAVIT DATED 6.3.2018 FILED BY THE RESPONDENTS, IT HAS BEEN DEPOSED THAT THE APPLICANT ACQUIRED THE ADDITIONAL QUALIFICATION I.E. AMIE IN THE YEAR 2002 WITH 54.52 % MARKS IN SECTION-A AND 57.9 % MARKS IN SECTION-B. ON HIS REQUEST, THE ADDITIONAL QUALIFICATION WAS ENTERED IN HIS SERVICE BOOK AND HE WAS APPRISED VIDE NOTE DATED 10.12.2002. ON THE BASIS OF THE SAID ADDITIONAL QUALIFICATION, HIS CASE WAS FORWARDED TO HWB (CO) FOR TRACK CHANGE PROMOTION DURING FEBRUARY, 2003, BUT THE SAME WAS NOT APPROVED. IN THE YEAR 2004, THE APPLICANT'S CASE WAS AGAIN FORWARDED FOR TRACK CHANGE PROMOTION TO SCIENTIFIC OFFICER-D OR NEXT HIGHER GRADE. HOWEVER, ON BOTH THE OCCASIONS HIS CASE WAS DECLINED BY THE SCREENING COMMITTEE CONSTITUTED FOR THE PURPOSE IN VIEW OF HIS SECURING LESS THAN 60% MARKS AS PER REVISED NORMS , WHICH CAME INTO EFFECT IN THE YEAR 2003. IT HAS FURTHER BEEN SUBMITTED THAT AS PER MERIT PROMOTION SCHEME, TILL 2005 THE PROMOTIONS OF SCIENTIFIC AND TECHNICAL PERSONNEL WERE CONSIDERED ON A PARTICULAR RATIONALISED DATE I.E. 1ST FEBRUARY AND 1ST AUGUST OF EVERY YEAR. THE APPLICANT SUBMITTED HIS MARKSHEET OF AMIE DEGREE IN SEPTEMBER, 2002 AND BY THAT TIME THE PROMOTION DATE OF THE APPLICANT WAS ALREADY OVER AND HIS CASE COULD NOT BE CONSIDERED IN THE YEAR 2002 IN THE MONTH OF FEBRUARY, WHEN THE ADDITIONAL QUALIFICATION WAS NOT ON RECORD. SUBSEQUENT TO HIS SUBMISSION OF DEGREE OF ADDITIONAL QUALIFICATION, IN THE YEAR 2003 HIS CASE FOR TRACK CHANGE FOR THE POST OF SCIENTIFIC OFFICER-D AS A SPECIAL CASE WAS RECOMMENDED THOUGH THE REVISED NORMS WERE INTRODUCED IN THE YEAR 2003. HOWEVER, DUE TO THE REVISED NORMS, THE SCREENING COMMITTEE DID NOT RECOMMEND THE CASE OF THE APPLICANT FOR TRACK CHANGE AS HE HAD OBTAINED ONLY 57.9% MARKS I.E. LESS THAN THE PERCENTAGE FOR TRACK CHANGE. THOUGH THERE WAS A CHANGE IN PROMOTION NORMS IN 2005, HIS CASE WAS AGAIN FORWARDED AS A SPECIAL CASE FOR TRACK CHANGE PROMOTION IN VIEW OF HIS ADDITIONAL QUALIFICATION, BUT THE STANDING SELECTION COMMITTEE DEFERRED HIS CASE FOR PROMOTION TO THE POST OF SCIENTIFIC OFFICER-D BASED ON HIS PERFORMANCE IN THE INTERVIEW, THEREFORE, HIS NAME COULD NOT BE APPROVED FOR TRACK CHANGE PROMOTION. IN THE YEAR 2006, APPLICANT'S CASE WAS FORWARDED IN NORMAL COURSE FOR PROMOTION TO THE NEXT HIGHER GRADE AND HE QUALIFIED THE INTERVIEW AND HE WAS PROMOTED AS SCIENTIFIC ASSISTANT-F W.E.F. 1.2.2006. WITH REGARD TO SHRI M.S.CHAUHAN'S CASE, IT HAS BEEN DEPOSED THAT HE ACQUIRED ADDITIONAL QUALIFICATION OF AMIE IN THE YEAR 2004 WITH 60.64% MARKS AND WAS RECOMMENDED FOR CONSIDERATION OF PROMOTION

W.E.F. 1.8.2004 TO THE POST OF SCIENTIFIC OFFICER-C AND NOT FOR SCIENTIFIC OFFICER-D. AS SHRI CHAUHAN WAS WORKING AS PANEL COORDINATOR FOR OPERATION OF EXCHANGE UNIT AND ACQUIRED HIGHER QUALIFICATION OF AMIE, BASED ON HIS ABILITY TO SHOULDER HIGHER RESPONSIBILITIES, HIS CASE WAS RECOMMENDED FOR PROMOTION TO THE GRADE OF SCIENTIFIC OFFICER-C. THE SELECTION COMMITTEE AFTER ASSESSING HIM SUITABLE IN THE INTERVIEW, RECOMMENDED HIM FOR PROMOTION. THE APPLICANT DID NOT SUBMIT ANY REPRESENTATION IN OCTOBER, 2002. HE WAS GRANTED OPPORTUNITY TO APPEAR IN THE DEPARTMENTAL EXAMINATION CONDUCTED ON 30.7.2011 AND 9.6.2012, BUT HE DID NOT APPEAR IN THE SAME.

5. HEARD LEARNED COUNSELS FOR THE PARTIES.

6. LEARNED COUNSEL FOR THE APPLICANT CONTENDED THAT THE APPLICANT ACQUIRED THE AMIE DEGREE IN SEPTEMBER, 2002 AND MADE AN APPLICATION IN OCTOBER, 2002 BUT STILL HE WAS NOT CONSIDERED FOR PROMOTION TO SCIENTIFIC OFFICER-D. IT WAS HIS FURTHER CONTENTION THAT SHRI M.S.CHAUHAN WHO ALSO SECURED LESS THAN 60% MARKS IN AMIE WAS CONSIDERED FOR PROMOTION TO SCIENTIFIC OFFICER-D IN 2004 WHEREAS, THE APPLICANT WAS IGNORED ON THE PRETEXT THAT HE SECURED LESS THAN 60% MARKS IN AMIE DEGREE. HIS FURTHER CONTENTION WAS THAT SHRI A.K.JAIN, WHO WAS MUCH JUNIOR TO THE APPLICANT WAS ALSO PROMOTED IN THE YEAR 2012 AND THE APPLICANT'S CASE WAS IGNORED ILLEGALLY AND ARBITRARILY. LEARNED COUNSEL FURTHER CONTENDED THAT THOUGH THE RULES WERE CHANGED IN 2003 BUT SINCE THE APPLICANT OBTAINED AMIE DEGREE IN 2002 AND SUBMITTED THE SAME BEFORE THE AUTHORITIES, THEREFORE, THE AMENDED RULES OF 2003 CANNOT BE APPLIED FOR CONSIDERING HIS CASE FOR PROMOTION. LEARNED COUNSEL FURTHER SUBMITTED THAT EVEN THE MARKS SECURED BY THE APPLICANT IN AMIE EXAMINATION CANNOT BE CONSIDERED LESS THAN 60% AS HE SECURED 54.52 % MARKS IN SECTION-A, 57.9 % MARKS IN SECTION-B AND A GRADE OF 9-10 IN HIS PROJECT WORK. THE RESPONDENT DEPARTMENT HAS ONLY CONSIDERED THE MARKS OF THE APPLICANT OBTAINED BY HIM IN SECTION-A AND SECTION-B OF AMIE EXAMINATION AND IGNORED THE MARKS OBTAINED BY HIM IN HIS PROJECT. HE, THUS, CONTENDED THAT THE SCREENING COMMITTEE ARBITRARILY SCREENED OUT HIS CASE AND RESULTANTLY, PROMOTION WAS ILLEGALLY DECLINED.

7. PER CONTRA, LEARNED COUNSEL FOR THE RESPONDENTS ARGUED THAT THE APPLICANT ACQUIRED THE ADDITIONAL QUALIFICATION OF AMIE IN THE YEAR 2002 WITH 54.24% MARKS IN SECTION-A AND 57.9% MARKS IN SECTION-B. HE GAVE HIS REQUEST ON

29TH SEPTEMBER, 2002 FOR MAKING ENTRY OF HIS ADDITIONAL QUALIFICATION IN HIS SERVICE BOOK. THE PROMOTIONS OF SCIENTIFIC AND TECHNICAL PERSONNEL ARE CONSIDERED ON A PARTICULAR RATIONALIZED DATE I.E. 1ST FEBRUARY AND 1ST AUGUST OF EVERY YEAR. BY THE TIME THE APPLICANT SUBMITTED HIS MARKSHEET OF AMIE DEGREE IN SEPTEMBER, 2002, THE PROMOTION DATE OF THE APPLICANT WAS ALREADY OVER AND HIS CASE COULD NOT BE CONSIDERED IN THE YEAR 2002. HIS CASE WAS FORWARDED TO HWB (C) FOR TRACK CHANGE PROMOTION IN FEBRUARY, 2003 AND AGAIN IN 2004, BUT ON BOTH THE OCCASIONS, THE SAME WAS DECLINED BY THE SCREENING COMMITTEE AS HE SECURED LESS THAN 60% MARKS. IN 2005, HIS CASE WAS AGAIN FORWARDED AS A SPECIAL CASE FOR TRACK CHANGE PROMOTION IN VIEW OF HIS ADDITIONAL QUALIFICATION, BUT THE STANDING COMMITTEE DEFERRED THE PROMOTION BASED ON HIS PERFORMANCE IN THE INTERVIEW. LEARNED COUNSEL FURTHER CONTENTED THAT IN THE YEAR 2006, THE APPLICANT'S CASE WAS FORWARDED IN NORMAL COURSE FOR PROMOTION IN THE HIGHER GRADE AND HE QUALIFIED AND PROMOTED AS SCIENTIFIC ASSISTANT-F W.E.F. 1.2.2006. HE FURTHER SUBMITTED THAT SHRI M.S.CHAUHAN, WHO WAS PROMOTED AS SCIENTIFIC OFFICER-C W.E.F. 1.8.2004 QUALIFIED THE AMIE EXAMINATION WITH 60.64% MARKS AND, THEREFORE, THE APPLICANT CANNOT BE ALLOWED TO SAY THAT HIS JUNIOR HAVING LESS THAN 60% MARKS IS PROMOTED. THE APPLICANT WAS ALSO GIVEN OPPORTUNITY TO APPEAR IN THE DEPARTMENTAL EXAMINATION CONDUCTED ON 30.7.2011 AND 9.6.2012, BUT HE FAILED TO APPEAR IN THE SAME. LEARNED COUNSEL THUS CONTENTED THAT THE INSTANT OA DESERVES TO BE DISMISSED.

8. CONSIDERED THE RIVAL CONTENTION OF THE LEARNED COUNSELS FOR THE PARTIES AND PERUSED THE RECORD.

9. ADMITTEDLY, THE APPLICANT AFTER ACQUIRING AMIE QUALIFICATION APPRISED THE RESPONDENT DEPARTMENT VIDE HIS LETTER DATED 29.9.2002 ABOUT THE SAID ADDITIONAL QUALIFICATION AND REQUESTED THEM TO ENTER THE SAME IN HIS SERVICE RECORD. THE SAID FACT WAS NOTED BY THE RESPONDENTS IN HIS SERVICE RECORD AND HE WAS APPRISED ABOUT THE SAME ON 10.12.2002. SINCE THE RESPONDENTS WHILE FOLLOWING THE NORMS BASED ON THEIR PROMOTION POLICY HAVE RATIONALIZED THE DATES I.E. 1ST FEBRUARY AND 1ST AUGUST OF EVERY YEAR FOR MAKING CONSIDERATION OF THE SCIENTIFIC AND TECHNICAL PERSONNEL FOR PROMOTION, THEREFORE, THE APPLICANT'S CASE COULD NOT BE CONSIDERED IN THE YEAR 2002 AS BY THE TIME THE APPLICANT GOT HIS ADDITIONAL QUALIFICATION RECORDED IN HIS SERVICE RECORD IN SEPTEMBER, 2002, THE PROMOTION DATE OF THE APPLICANT WAS ALREADY OVER. THEREAFTER, THERE WAS CHANGE IN THE POLICY AND AS PER THE REVISED NORMS INTRODUCED IN THE YEAR 2003, THE CANDIDATES WHO SECURED LESS THAN 60%

MARKS IN THE ADDITIONAL QUALIFICATION CANNOT BE CONSIDERED FOR TRACK CHANGE PROMOTION. THOUGH THE APPLICANT'S CASE WAS RECOMMENDED FOR CONSIDERATION IN THE YEAR 2003 AND 2004, BUT STILL THE SCREENING COMMITTEE WHILE FINDING THE MARKS IN THE AMIE DEGREE LESS THAN 60%, DID NOT RECOMMEND HIS CASE. THE APPLICANT BY ALLEGING THAT ONE SHRI M.S.CHAUHAN WHO SECURED LESS THAN 60% MARKS WAS GRANTED PROMOTION IN THE YEAR 2004, HAS A GROUSE THAT HIS CASE WAS ARBITRARILY AND ILLEGALLY REJECTED IN THE YEAR 2002 AND 2003. THE PLEA RAISED BY THE APPLICANT'S COUNSEL IN THIS REGARD IS WITHOUT ANY BASIS AS WHILE FILING THE ADDITIONAL AFFIDAVIT, THE RESPONDENTS HAVE SPECIFICALLY POINTED OUT THAT SHRI M.S.CHAUHAN WHILE WORKING AS SCIENTIFIC ASSISTANT-D W.E.F. 1.8.2001 HAD ACQUIRED THE ADDITIONAL QUALIFICATION OF AMIE IN THE YEAR 2004 WITH 60.64% MARKS. SINCE SHRI CHAUHAN WAS WORKING AS PANEL COORDINATOR FOR OPERATION OF EXCHANGE UNIT AND HAD ACQUIRED HIGHER QUALIFICATION OF AMIE, THEREFORE, BASED ON HIS ABILITY THE SELECTION COMMITTEE WHICH MET ON 1.11.2004 AFTER ASSESSING HIS PERFORMANCE IN THE INTERVIEW RECOMMENDED HIS NAME FOR PROMOTION ON THE POST OF SCIENTIFIC OFFICER-C W.E.F 1.8.2004 AS PER THE EXISTING NORMS. IN THIS VIEW OF THE MATTER, WE DO NOT FIND ANY SUBSTANCE IN THE ARGUMENTS RAISED BY THE LEARNED COUNSEL FOR THE APPLICANT. THERE WAS NOTHING WRONG IN THE ACTION OF THE SCREENING COMMITTEE WHILE IGNORING THE APPLICANT'S CASE AS HE SECURED LESS THAN 60% MARKS IN THE ADDITIONAL QUALIFICATION I.E. AMIE. THERE IS NO TANGIBLE REASON TO ACCEPT THE ARGUMENTS OF THE LEARNED COUNSEL FOR THE APPLICANT WHEN HE CONTENDED THAT THE APPLICANT'S CASE OUGHT TO HAVE BEEN CONSIDERED IN THE YEAR 2002 AS HE ACQUIRED THE AMIE QUALIFICATION IN THE SAID YEAR AND HE SHOULD BE GIVEN PROMOTION WITHOUT MAKING APPLICATION OF AMENDED NORMS OF 2003 IN VIEW OF THE FACT THAT THE RESPONDENTS MAKE THE CONSIDERATION FOR PROMOTION ON RATIONALIZED DATES I.E. 1ST FEBRUARY AND 1ST AUGUST OF EVERY YEAR. SINCE THE APPLICANT HAD SUBMITTED HIS REQUEST FOR RECORDING HIS ADDITIONAL QUALIFICATION IN HIS SERVICE RECORD IN SEPTEMBER, 2002, THEREFORE, HIS CASE COULD NOT BE CONSIDERED FOR PROMOTION IN THE YEAR 2002.

EVEN THE APPLICANT'S CASE FOR PROMOTION WAS AGAIN FORWARDED AS A SPECIAL CASE IN THE YEAR 2005. HOWEVER, THE STANDING SELECTION COMMITTEE WHILE CONSIDERING HIS CANDIDATURE IN THE YEAR 2005 DID NOT FIND HIS PERFORMANCE UP TO THE MARK IN THE INTERVIEW AND, THEREFORE, HIS PROMOTION CASE WAS REJECTED.

IN THE YEAR 2006, THE APPLICANT'S CASE WAS FORWARDED IN NORMAL COURSE FOR PROMOTION TO THE NEXT HIGHER GRADE AND SINCE HE QUALIFIED THE INTERVIEW, THEREFORE, HE WAS PROMOTED AS

SCIENTIFIC ASSISTANT-F W.E.F. 1.2.2006. IT APPEARS THAT ALL EFFORTS WERE MADE BY THE DEPARTMENT BY FORWARDING THE APPLICANT'S CASE FOR TRACK CHANGE PROMOTION, BUT SINCE HE SECURED LESS THAN 60% MARKS IN THE ADDITIONAL QUALIFICATION OF AMIE AND ALSO FAILED TO SATISFY THE SELECTION COMMITTEE IN THE INTERVIEW WHEN HIS CASE WAS CONSIDERED FOR PROMOTION IN THE YEAR 2005, THEREFORE, WE DO NOT FIND ANY ILLEGALITY OR INFIRMITY IN THE ORDER ANN.A/2 PASSED BY RESPONDENT DEPARTMENT.

10. IT FURTHER REQUIRES TO BE NOTICED THAT THE APPLICANT WAS GIVEN OPPORTUNITY FOR TRACK CHANGE PROMOTION ALONG WITH OTHER EMPLOYEES IN THE YEARS 2011 AND 2012 ALSO, BUT HE DID NOT APPEAR IN THE DEPARTMENTAL EXAMINATION CONDUCTED ON 30.7.2011 AND 9.6.2012. THERE IS NOTHING ON RECORD TO ASCERTAIN THAT THE APPLICANT WAS NOT AWARE ABOUT THE SAID DEPARTMENTAL EXAMINATION CONDUCTED ON 30.7.2011 AND 9.6.2012. NO PLAUSIBLE REASON HAS BEEN PLEADED BY THE APPLICANT FOR HIS NON-APPEARANCE IN THE SAID DEPARTMENTAL EXAMINATIONS.

11. IN THE CONSPECTUS OF DISCUSSIONS MADE IN THE FOREGOING PARAGRAPHS, WE DO NOT FIND ANY MERIT IN THE INSTANT ORIGINAL APPLICATION AND, ACCORDINGLY, THE SAME IS HEREBY DISMISSED. HOWEVER, THERE SHALL BE NO ORDER AS TO COSTS.

(SURESH KUMAR MONGA)
MEMBER (J)

(B.BHAMATHI)
MEMBER (A)

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