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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.412 OF 2003

New Delhi, this the 28th day of October, 2003

**HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER**

S.S. Gautam,
Assistant,
Central Institute for Research on Goats,
(under Indian Council of Agricultural Research),
MAKHDOOM, Post Office : 281 122
(Farah) District – Mathura (U.P.).

Residential address :

House No.2, Vishnu Puri,
Bhuteshwar, MATHURA – 281004. Applicant

(By Advocate : Shri D.N. Sharma)

VERSUS

1. Union of India,
(Through:- The Secretary to the Government of India),
Ministry of Agriculture, Krishi Bhawan,
Dr. Rajendra Prasad Road, New Delhi-110001.
2. The Director General,
Indian Council of Agricultural Research,
Krishi Bhawan, Dr. Rajendra Prasad Road,
New Delhi-110001.
3. The Director,
Central Institute for Research on Goats,
MAKHDOOM, Post Office : FARAH - 281 122
(District – Mathura). Respondents

(By Advocate : Shri V.K. Rao, through learned proxy counsel
Shri Satish Kumar)

ORDER

Shri R.K. Upadhyaya, Administrative Member :-

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant claiming the following reliefs:-



- "(a) that Applicant is the senior-most Assistant and as per the revised Recruitment rules fulfils the prescribed conditions for promotion as Assistant Administrative Officer against 75% direct promotion quota. The respondents may kindly be directed to consider the case of applicant for the said promotion against available vacancy.
- (b) the respondents may further be advised that the ratio of promotion through direct promotion and through limited departmental examination being 3 : 1, the available vacancy be filled-up through direct promotion of the applicant and limited departmental examination be confined to 4th vacancy of the post of Asstt. Administrative Officer or when eligible candidates for direct promotion are not available.
- (c) that revised Recruitment rules effective w.e.f.27-7-2002, the applicant be deemed promoted as Assistant Administrative Officer w.e.f.27-7-2002, with all consequential benefits.
- (d) allow any other and further relief which may be deemed fit and proper in the circumstances of this case in order to safe-guard the interest of justice;
- (e) allow costs of this Application."

2. It is stated by the applicant that he was initially appointed as Junior Clerk in the Central Institute for Research on Goats, Makhdoom, Mathura, U.P., on 1.4.1982. Thereafter he was promoted as Assistant in the scale of pay of Rs.5500-9000 on 18.9.1990. The applicant claims that one post of Assistant Administrative Officer (in short 'AAO') fall vacant in the Institute on 23.6.2000. It is further claimed that as per seniority list of Assistants issued on 30.4.2002 (Annexure A-2), he is the senior-most Assistant. The respondents have revised the Recruitment Rules of

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various administrative posts, including the post of Assistant Administrative Officer, ^{as per their decision in the governing body} meeting held on 28.4.2000, ^{These} rules became effective on 27.7.2002. As per these rules, 75% of the vacancies are to be filled up by promotion and the remaining 25% vacancies are to be filled by Limited Departmental Competitive Examination (in short 'LDCE') confined to Supdt. (Admn.)/Sr. Steno. having three years regular service or five years combined regular service in the grade of Assistant & Supdt. (Admn.)/ P.A. & Sr. Steno. or five years regular service in the grade of Assistant/P.A. in the scale of Rs.5500-9000 as on the closing date notified for receipt of application for examination. The learned counsel stated that the applicant being senior-most should have been promoted as he was eligible and there was vacancy in the year 2000 itself. Even otherwise, the new rules provided for 75% posts to be filled up by promotion, therefore, the first three vacancies after coming into force of new rules should be filled up by promotion only. The applicant being senior-most should be promoted against the promotion quota and should not have been asked to appear in the LDCE.

3. Respondents have opposed the prayer of the applicant. According to the respondents, the applicant has not impleaded all the persons who appeared in the examination as necessary party. Therefore, this OA should be dismissed for want of impleadment of necessary parties. It has also been stated by the respondents that the applicant had appeared in the selection process for his promotion under the LDCE quota. After having appeared in the

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examination, he cannot now challenge the action of the respondents for filling up the post of AAOs against the LDCE quota. Before coming into force of new rules, all the posts of AAOs were to be filled up by way of promotion only. Accordingly all the three posts of AAOs stood filled up by promotion. Therefore when new Recruitment Rules came into existence, the next available vacancy has to be filled against LDCE quota only. The respondents have also stated that the revised Recruitment Rules became effective w.e.f.27.7.2000 and not w.e.f.27.7.2003 as stated by the applicant.

4. In the rejoinder, the applicant has stated that a vacancy in the Institute became available on 23.6.2000 when the old Recruitment Rules of promotion to the post of AAO to the extent of 100% were applicable. It is also clarified by the applicant that he had filed this OA on 18.2.2003 with a prayer for interim relief that the LDEC fixed for last week of February/1st week of March, 2003 to be stayed. Since this Tribunal had not granted any stay, he had appeared in the examination. This Tribunal by order dated 25.2.2003 had directed that any appointment that may be made would be subject to the final outcome of the present application. On these facts, it is stated that the plea of estoppel of the respondents is not based on correct appreciation of legal position.

5. We have heard the learned counsel of both the parties and have perused the material available on record.

6. It is an admitted fact that the vacancy against which the applicant has claimed his promotion arose in June 2000. If the new

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Recruitment Rules became effective on 27.7.2000 and that vacancy was to be filled up after coming into force of the new Recruitment Rules, it was justified on the part of the respondents to fill up the vacancy as per new Recruitment Rules only. It cannot be claimed by the applicant that he should have been promoted on the date on which the vacancy arose. There are certain preliminary preparations to be made before holding a meeting of the Promotion Committee. It certainly takes some time. The rules applicable on the date of ~~which~~ in such Promotion Committee meeting had to be followed. Since the new rules came into force on 27.7.2000, these rules had to be followed by filling up the vacancies, which arose prior to coming into force of the new rules. The decision of Ernakulam Bench of this Tribunal in the case of M. Bhaskaran Vs. Superintendent of Police and others (456 Swamy's CL Digest 1993) referred to and relied upon by the learned counsel of the applicant do not help the case of the applicant. It is not a case that the new Recruitment Rules were amended to the detriment of the applicant after certain process for promotion has completed and select list has already been prepared.

7. The only issue for consideration is whether first three vacancies to be filled up by promotion as per the Recruitment Rules or the first vacancy to be filled up by LDCE result. The respondents have stated that all the three posts were filled up by promotion and after the new Recruitment Rules, the first vacancy was to be filled by LDCE. There is nothing in the rules or any standing instruction brought to the notice of the Court that promotion quota has to be filled up first. Therefore, the view taken by the respondents to fill up

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the first vacancy after coming into force of the new Recruitment Rules by LDCE result appears to be reasonable. This was particularly because earlier vacancies were filled up by promotion only. On the facts of this case, we do not find any error in filling up the post to the extent of 25% by LDCE. Therefore, we do not find any merit in the claims of the applicant.

8. In the result, this OA is dismissed without any order as to costs.


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER


(SHANKER RAJU)
JUDICIAL MEMBER

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