

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO.1754/2003

New Delhi, this the 11th day of September, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI R.K.UPADHYAYA, MEMBER (A)

H.C.Joshi
R/o in C/o DD Sati, Milan Hotel
Rani Khet Road, Ram Nagar
Naintal, Uttaranchal

..... Applicant

(By Shri Anil Singal, Advocate)

vs.

1. Union of India through its Secretary
Deptt.of Agriculture Research & Education
Govt.of India-Cum-Director General
ICAR, Krishi Bhawan
New Delhi.
 2. The Secretary ICAR
Krishi Bhawan,
New Delhi.
 3. The Director ICAR Complex
NEH Region
Umroi Road
Umiam
Meghalaya.
- ... Respondents

(By Shri V.K.Rao, Advocate)

O R D E R (ORAL)

Justice V.S.Aggarwal:

Applicant (H.C.Joshi), by virtue of the present application seeks quashing of the order of 4.6.2003 purported to have been passed by the Indian Council of Agricultural Research (ICAR).

2. The relevant facts are that the applicant was posted at Barapani in Meghalaya as Hindi Officer (presently designated as Assistant



Director) on 26.4.1994. The said post was upgraded as Senior Hindi Officer vide communication of 3.2.1995 issued by the ICAR. The relevant portion reads:-

"With reference to your letter No.RC(HC)/4992 dated 19.7.93 on the subject cited above, I am to convey approval of the Council to the creation of following Hindi posts at ICAR Research Complex, Barapani.

1. Barapani, Shillong Headquarter	Sr.Hindi Officer One (Hindi Officer already in existence in the Institute is to be upgraded) (3000-4500)	"
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In pursuance of this communication, the Director, ICAR, Barapani, Meghalaya issued an order upgrading the scale of the applicant to the post of Senior Hindi Officer. The said order is to the following effect:-

"In pursuance of Council's letter F.No.3-8 (91)/I.A./II, dated 3.2.95 Shri H.C.Joshi, Hindi Officer (Asstt. Director O.L) in the scale of pay of Rs.2000-3500/-p.m. is hereby upgraded to the post of Sr.Hindi Officer in the scale of pay of Rs.3000-100-3500-125-4500/- p.m. with effect from 1.6.95 in view of upgradation of the existing post of Hindi Officer to Sr.Hindi Officer."

The applicant took charge and continued to work therein. After 8 years of the same, an order had been issued (the impugned order) whereby it has



been recorded that the applicant had been promoted against the upgraded post of Senior Hindi Officer (redesignated as Deputy Director (OL) which was erroneous because the applicant did not fulfil the eligibility conditions. Accordingly, he was reverted to the post of Assistant Director earlier designated as Hindi Officer.

3. By virtue of the present application, the applicant assails the said order.

4. On behalf of the applicant, it has been contended that:-

- (a) it was not promotion but upgradation of the post;
- (b) no notice while reverting the applicant to the lower post had been issued to show cause against such an action; and
- (c) after 8 years such an order could not be passed.

5. So far as the plea that the applicant had worked at the abovesaid post for 8 long years and now he cannot be reverted is concerned, we have no hesitation in rejecting the same. This is for the reason that if a person erroneously or on mistaken fact is promoted to a higher post, in that event,



it is never too late to correct the mistake that has occurred.

6. However, in the present case, the abovesaid principle will not have much significance. Before venturing into the same, we deem it necessary to deal with the objection of the respondents that the applicant should not have been promoted as Deputy Director (OL)/Senior Hindi Officer by the Director at Barapani, Meghalaya because he had no jurisdiction to promote the applicant. It was simultaneously urged that the applicant did not satisfy the conditions for being promoted as Senior Hindi Officer.

7. So far as first part of the argument that the Director was not competent to promote the applicant is concerned, the said contention though in principle may be correct, but requires little consideration. This is for the reason that the expression "upgradation to a post" is totally different from the expression "promotion of a person to a post". If the post is upgraded, the incumbent, unless there are other conditions imposed, would necessarily be upgraded to that post. We have already reproduced above the order that had been issued dated 3.2.1995. It clearly stipulates that the post of Senior Hindi Officer (Hindi Officer already in existence in the

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Institute is to be upgraded). Thus it is the post which was already existing that was upgraded. The question of promotion, therefore, did not arise.

8. We had put to the learned counsel as to what were the recruitment rules for the post of Senior Hindi Officer. He had drawn our attention to the recruitment rules with respect to the post of Deputy Director (OL) in the ICAR dated 31.1.2003 to contend that the applicant in any case was not eligible, but these rules obviously will have no role to play because they came into force in the year 2003 while the applicant was upgraded 8 years ago in 1995.

9. In that event, reliance was placed on the recruitment rules for the post of Senior Hindi Officer in the Headquarters of the ICAR. They even had been framed in April 1999 and otherwise also were confined to the Headquarters. In the preceding paragraph, we have already noted that the applicant was posted at Barapani in Meghalaya. Both these recruitment rules referred to above did not apply and our attention was not drawn to any other recruitment rules on the subject. Therefore, the thrust of the argument of the respondents' learned counsel must be held to be without merit.


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10. We have already referred to above and at the risk of repetition, it is mentioned that the post had been upgraded. The post was upgraded from the post of Hindi Officer which was already in existence at Barapani. Therefore, it was not a case of promotion. Once it is not a case of promotion, the question of undergoing the rigour of the promotion will not apply. In that view of the matter if the Director, ICAR issues an order, then it is not illegal. When the department itself had upgraded the post, it was only an order to be issued which need not be by the appointing authority.

11. No other argument was raised.

12. For these reasons, we allow the present application and quash the impugned order. The applicant would be entitled to all the consequential benefits. No costs.

Announced.


(R.K. Upadhyaya)
Member (A)


(V.S. Aggarwal)
Chairman

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