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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1948/2003

This the 30th day of January, 2004

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI BHARAT BHUSHAN, MEMBER (J)

1. Central Revenue Chemical Service Association (CRCSCA), Central Revenue Control Laboratory, Hill Side Road, Pusa Campus, New Delhi, through its General Secretary, Shri Anwar Alam.
2. D.K.Srivastava, Chemical Assistant Gr.-I, Officiating as Assistant Chemical Examiner, Central Revenue Control Laboratory, Hill Side Road, Pusa Campus, New Delhi.
3. Madan Singh Rawat, Chemical Assistant Gr.-I, Officiating as Assistant Chemical Examiner, Chemical Laboratory, New Customs House, Bellard Estate, Mumbai-38.
4. R.B.Saxena, Chemical Assistant Gr.-I, Officiating as Assistant Chemical Examiner, Central Revenue Control Laboratory, Hill Side Road, Pusa Campus, New Delhi.
5. D.N.Tyagi, Chemical Assistant Gr.-I, Officiating as Assistant Chemical Examiner, Jawahar Custom House, Nhava Sheva, Raigarh (Maharashtra).
6. Rajiv Anand, Chemical Assistant Gr.-I, Officiating as Assistant Chemical Examiner, Central Revenue Control Laboratory, Hill Side Road, Pusa Campus, New Delhi.
7. Shailender Bahadur, Chemical Assistant Gr.-I, Officiating as Assistant Chemical Examiner, Chemical Laboratory, New Custom House, Bellard Estate, Mumbai-38.

6. P.K. Aggarwal.
Chemical Assistant Gr.-I,
Officiating as Assistant Chemical
Examiner, Central Revenue
Control Laboratory,
Hill Side Road, Pusa Campus,
New Delhi.
7. Virender Kumar,
Chemical Assistant Gr.-I,
Officiating as Assistant Chemical
Examiner, Jawahar Custom House,
Nhava Sheva, Raigarh,
Maharashtra.
10. Gahgadhar Sunkaro,
Chemical Assistant Gr.-I,
Officiating as Assistant Chemical
Examiner, Jawahar Custom House,
Nhava Sheva, Raigarh,
Maharashtra.

... Applicants

(By Shri S.G. Aggarwal, Advocate)

-versus-

1. Union of India through
Chairman, Central Board of
Excise & Customs,
Ministry of Finance,
Dept. of Revenue, North Block,
New Delhi.
2. Member (A S & S T),
Central Board of Excise and Customs,
Ministry of Finance, Deptt. of Revenue,
North Block, New Delhi.
3. Director (Revenue Laboratories),
Central Revenue Control Laboratory,
Hill Side Road, Pusa Campus,
New Delhi.
4. Secretary,
Central Board of Excise and Customs,
Ministry of Finance, Deptt. of Revenue,
North Block, New Delhi.

... Respondents

(By Shri R.R. Bharti, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K. Majotra, V.C. (A) :

Applicants are officers in the Central Revenue Control Laboratory under the Central Board of Excise and Customs, Department of Revenue, and are employed as Chemical Assistants Grade-I (Group-C). They have been

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promoted to the post of Assistant Chemical Examiner (Group-B) on ad hoc basis from time to time for a specific period or till the posts are filled on regular basis, whichever is earlier. They are aggrieved that no DPC has been held for the years 2001-02, 2002-03 and 2003-04 for promotion of Chemical Assistant Grade-I (Group-C) to the post of Assistant Chemical Examiner (Group-B).

2. The learned counsel of applicants stated that DPC should be held on annual basis as per guidelines. Inaction on the part of respondents has resulted in denial of promotion, seniority and consequential financial gains to the applicants despite existence of several vacancies. The learned counsel has relied on order dated 22.10.2003 in OA Nos.526/2002 and 87/2002 in the cases of **K.Satyanarayana Murthy & Ors.** and **N.S.Tomar & Ors.**, respectively, v. **Union of India & Ors.** (Mumbai Bench). In that case similar persons as the applicants had contended that though they were eligible to get promotion to the post of Chemical Examiner Grade-II but because no DPC had been held, they were deprived of regular promotion. In the meanwhile, the respondents had amended the recruitment rules accommodating more candidates from direct recruitment. They were aggrieved that service in the said post as Chemical Examiner Grade-II was not regularised. They had sought promotion to the post of Chemical Examiner Grade-II against vacancies in various years by holding year-wise DPCs. Respondents were directed in that case to take steps for filling up the vacant posts on regular basis from the

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day/dates the vacancy/vacancies did arise and accordingly the seniority list was to be prepared. The entire exercise was to be completed within a period of four months. The learned counsel also relied on 1997 (2) AISLJ 103 : **Union of India & Ors. v. N.R.Banerjee & Ors.** In that case, controversy related to promotion to the post of Senior General Manager in the Indian Ordnance Factories under the India Ordnance Factories Services Rules, and as to when the vacancies in the above posts would arise. The Hon'ble Supreme Court observed as follows :

"5. D.P.Cs.- should be convened every year, if necessary , on a fixed date, i.e., 1st of April or May. In the middle of the para, by way of amendment brought on May 13, 1995, it postulates that very often action for holding D.P.C. meeting is initiated after the vacancy has arisen. This results in undue delay in filling up of vacancies and causes dissatisfaction among those who are eligible for promotion. It may be indicated that regular meeting of DPC should be held every year for each category of posts so that approved select panel is available in advance for making promotions against vacancies arising every year. Under para 3.2, the requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question. It would, thus, be seen that DPCs are required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the year for being filled up. The required material should be collected in advance and merit list finalised by the appointing authorities and placed before the DPCs for consideration. This requirement can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question."

3. The learned counsel of the respondents stated that last DPC for regular promotion to the post of Assistant Chemical Examiner was convened on 15.1.2001 for 8 regular vacant posts of Assistant Chemical Examiners. Admittedly, applicants had been promoted from time to time on vacancies arising against purely ad hoc promotion of regular Assistant Chemical Examiners to the post of Chemical Examiner Grade-II. In this backdrop, respondents have stated that applicants' request for regularisation of their ad hoc appointments with effect from 1998 as regularly promoted Assistant Chemical Examiners cannot be accepted. Respondents have also stated that DPCs have not been held during the year 2001-02 and 2002-03 due to non-availability of regular vacancies in the grade of Assistant Chemical Examiner after absorption of direct recruits nominated by the UPSC earlier. The learned counsel of respondents stated that at present there are only four regular vacancies in the grade of Assistant Chemical Examiner. The learned counsel further stated that only when ad hoc promotees to the post of Chemical Examiner Grade-II get regularised on those posts, more regular vacancies would occur in the post of Assistant Chemical Examiner and it would be possible for the respondents to consider the applicants for regularisation in the post of Assistant Chemical Examiners.

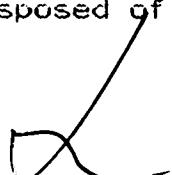
4. We have considered the rival contentions.

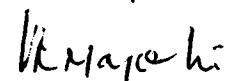
5. No doubt, 21 Chemical Assistants Grade-I (Group-C) have been working as Assistant Chemical

Examiners (Group-B) on ad hoc basis but on a regular basis only 4 posts of Assistant Chemical Examiners are lying vacant. 21 posts of Assistant Chemical Examiners have been filled up on ad hoc basis as an equal number of Assistant Chemical Examiners have been officiating on the post of Chemical Examiner Grade-II on ad hoc basis. As such, we go along with the respondents that there are only 4 regular posts of Assistant Chemical Examiners available with them.

6. In the light of the rulings cited above as also the facts and circumstances of the present case, respondents are directed to take steps for filling up the regular vacancies of the posts of Assistant Chemical Examiner (Group-B) from the dates these vacancies arose considering those eligible and falling within the zone of consideration with reference to the vacancies of each year, drawing panels year-wise and granting promotion to those found suitable, with consequential abenefits as per applicable laws, rules and instructions. This exercise has to be accomplished within four months from the date of communication of these orders.

7. With the above observations, this OA is disposed of, however, without any order as to costs.


(Bharat Bhushan)
Member (J)


(V. K. Majotra)
Vice-Chairman (A)

/as/