

I.C.A.R.

Vs

T.K.Suryanarayan

(G.N. Ray, G.B.Pattanaik JJ)

05.08.1997

ORDER

1. Leave granted.

2. Heard learned counsel for the parties.

3. Appeal arising out of in SLP[C] No. 16873 of 1995, the order passed by the Central Administrative Tribunal, Hyderabad Bench on 25th November, 1993 in O.A. No.992/91 is under challenge. The Tribunal by the impugned judgment has allowed the application filed by the respondents Nos. 1 to 3 in view of the fact the Indian Council of Agricultural Research having allowed large number of employees to get promotion in different units on the basis of educational qualification and the said respondents having also been given promotion on the basis of higher educational qualification should not suffer any prejudice by denying such promotions on the around that the Technical Service rules of Indian Council of Agriculture Research enforced with effect from 1.10.1975 do not permit such promotion. The Tribunal has also proceeded on the footing that if the said respondents had reached the grade of T-1-3 category 1 even on promotion, the said respondents, having requisite qualification for holding the posts in Grade T-2-3 of category 2, was entitled to accelerated promotion to the said T-2-3 grade.

4. It may be indicated that in a similar case, the Indian Council of Agricultural Research and Director, Central Tobacco Research Institute, Rajamundry challenged the decision of the Central Administrative Tribunal, Cuttack Bench against the judgment of the said Tribunal in favour of one Shri Khetra Mohan Das.

5. A three Judge's Bench of this Court has considered the import of Rule 5-1 and 7-2 of the said Service Rules coming into force on 1st October 1975. It has been clearly indicated in the said decision of this Court reported in 1994(6) J.T.482 (SC)=1994 Suppl(3) SCC 595 that the question of fitment in grade T-1-3 in category No.1 and consequential accelerated promotion to grade T-2-3 in category No.2 on the basis of educational qualification of such employee on the date of enforcement of the said service Rules in an one time exercise. If an employee does not get fitment on the date of enforcement of the said Rules in the grade t-2-3 of category 1, the question of accelerated promotion to Grade T-2-3 of category 2 on the basis of educational qualification can not arise. It has been clearly indicated that despite higher education qualification required for holding the post in Grade T-2-3, if the initial fitment has not been made in Grade T-1-3 such employee is not entitled to claim accelerated promotion to Grade T-2-3 of category 2. Such employee can come to the higher grade only on the basis of promotion as envisaged in Rule 7. It may however be indicated at this stage that later on there has been some relaxation in the matter of requisite educational qualification for

holding the post in grade T-2-3. It has been held in the case of Khetra Mohan Das that promotion cannot be given contrary to the said Service Rules. Precisely for the said reason, the decision of the Central Administrative Tribunal, Cuttack Bench in Khetra Mohan's case was set aside.

6. Mr. De. the learned counsel appearing for the respondents in SLP[C] No. 16873 of 1995 has, however, submitted that the decision rendered in Khetra Mohan's case could not be taken into consideration for deciding the correctness of the impugned judgment of the Tribunal. In the case of Khetra Mohan the claim of promotion of a direct recruit was involved and the claim of promotion of in-service employees in view of long experience over the years did not come up for consideration in the said case. Mr. De. has also submitted that the respondents in this case were in the pay scale of Rs. 425-700 before 1st January, 1997. Therefore their cases were required to be considered differently. Mr. De has also submitted that in any event, hostile discrimination has been made to these respondents. Large number of employees similarly circumstanced have got have promotion but the institute inexplicable reasons chose not to challenge such order for promotions even though such promotions directed to be given were contrary to the said Service Rules. Such discriminatory stand has resulted in an unfortunate situation where number of employees who are similarly circumstanced are holding superior posts. But in the case of these respondents, the institute appears to be keen in enforcing the Service Rules by ignoring the fact that the respondents. had qualification to hold superior grades when the said Service Rules were introduced. Mr. De has lastly contended that out of the three respondents, two have already attained the age of superannuation and only one of the respondents is still in service but if the impugned judgment of the tribunal is interfered with, the said respondent will suffer serious prejudice. Mr.De has submitted that in the special facts of this case, this Court should not be inclined to interfere in exercise of its discretionary power under Article 136 of the Constitution.

7. Mr. Lalit, the learned counsel appearing for the respondent in SLP[C] No.19103 of 1995 has also supported Mr.De by contending that the management of Indian Council of Agricultural Research and its constituent units intend to take different stands resulting in hostile discrimination to a large number of employees. He has also drawn our attention to two letters issued by the Indian Council of Agricultural Research dated 27th January, 1979 and 28th January, 1990. Mr. Lalit has submitted that the said two letters indicate that the Indian Council of Agricultural Research was alive to the unfortunate situation created by the introduction of the said Service Rules and unmerited hardship meted out to a number of employees. It therefore, directed the concerned units not to implement the said Rules unit various representations received by the Institute were considered. Mr. Lalit has submitted that the respondents in these SLPs had requisite qualification to get promotion because of the relaxation of the educational qualification and all off them had long experience in service. He has therefore submitted that if the promotion claimed by them since allowed by the Central Administrative Tribunal is interfered with at this stage such decision is bound to bring complete frustration to these respondents. In the facts and circumstances of the case, this Court should refrain from interfering with the impugned decision of the Tribunal for ends of justice.

8. We are however, unable to accept the submission made by the learned counsel appearing in both these SLPs. Even if in some cases, erroneous promtions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee can not base his claim for promotion contrary to the statutory Service Rules in law courts. Incorrect promotion either given erroneously by the department by misreading the said Service Rules or such promotion given pursuant to judicial order contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory Service Rules. In a court of law, employees cannot be permitted to contend that the Service Rules made

effective on 1st October, 1975 should not be adhered to because in some cases erroneous promotions had been given. The statutory Service Rules must be applied strictly in terms of the interpretation of Rules as indicated in the decision of Three Judges Bench of this Court in Khetra Mohan's case. When the said Service Rules were introduced w.e.f. 1st October, 1975, one time exercise was required to be made to decide the fitment of the employees in different grades. Except in case of fitment in grade T-1-3 of Category 1 and consequential accelerated promotion to grade T-2-3 of Category 2, on the basis of qualification in no other case accelerated promotion on the basis of educational qualification is permissible. If relaxation of educational qualification is made effective on the date of enforcement of the said service Rules it will be a case of review of initial fitment. In all other cases, promotion is to be given in accordance with the said Service Rules and not otherwise. The respondents in these appeals were not entitled to get initial fitment in grade T-1-3. As a matter of fact, they got initial fitment in grade lower than Grade T-1-3. of Category 1. Therefore, they are not entitled to accelerated promotion on the basis of educational qualification consequent upon the initial fitment in Grade T-1-3. of Category 1. The impugned decisions of the Tribunal, therefore, cannot be sustained.

9. It may, however, be indicated that the question of unmerited hardship if any, and need for amendment of the Rules to remove such hardship are matters for consideration of the Rules making authority. It is reasonably expected that the concerned authority will be sensitive to unmerited hardship to large number of its employees, if occasioned by introduction of Service Rules so that appropriate remedial measures may be taken. Since the impugned orders of the Tribunal cannot be sustained in law, the impugned judgments in both the appeals are set aside. SPECIAL LEAVE PETITION[C] NO. 18567 OF 1995

10. No one has appeared for the respondent in SLP[C] No. 18567 of 1995. The respondent has informed the Registry of this court that he is not in a position to appear at the hearing of the matter. Since the impugned decision in this special leave petition cannot be sustained for reasons indicated in the other two matters, the impugned judgment in this S.L.P. is also set aside. The appeals and the S.L.P. are accordingly disposed of without any order as to cost.