

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.8810/2003**

% **Date of Decision: 09.08.2011**

Indian Council of Agricultural Research Petitioner

Through Mr.B.S.Mor, Advocate.

Versus

Ram Kumar & Ors. Respondents

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner, Indian Council for Agricultural Research has challenged the order dated 2nd January, 2003 passed by the Central Administrative Tribunal, Principal Bench in O.A No.315/2001 titled as 'Sh.Ram Kumar & Ors v. Union of India and Ors' partly allowing the original application in respect of Sh.Ram Kumar, respondent No.1 and directing the petitioner to promote Sh.Ram Kumar to the post of Section

Officer in terms of the panel recommended by the DPC held on 22nd September, 1989.

2. Brief facts to comprehend the disputes are that respondent Nos.1 to 4 joined the ministerial staff of the petitioner on 17th September, 1966 as Lower Divisional Clerks. Their service conditions are regulated by the Rules and Regulations framed for the ICAR (Petitioner's Headquarters). Respondents No.1 to 3 were regularly promoted and were employed as Assistants. The next post of promotion from the post of Assistant was that of Section Officer.

3. Respondent No.1, Sh.Ram Kumar had filed an original application before the Tribunal contending, inter-alia, that he was considered for promotion by DPC held on 22nd September, 1989 and the said DPC recommended his name against the 15 vacancies.

4. The grievance of respondent No.1 was that though he was recommended for promotion against the 15 vacancies, after filling up 14 vacancies, he was not promoted on the ground that respondent No.4, Sh.Madan Mohan had made a representation that he was senior to respondent No.1 in the post of Assistant and, therefore, he had to be promoted and not respondent No.1.

5. Respondent No.1 had contended that respondent No.4 was holding a post of Junior Store Keeper, which post had been merged with the post of Upper Division Clerk (UDC) and as a consequence of the merging he was shown senior to respondent No.1 in the provisional seniority list dated 18th July, 1989 of UDC and Assistant where respondent No.1 had been shown at Sl. No.190. Respondent No.4 had alleged that he was given seniority in the grade of UDC w.e.f 1st August, 1978 and was placed at Sl No. 65 in the seniority list of UDCs subject to approval of the Governing body. The matter regarding the seniority of the Respondent no.4 was placed before the Governing Body. The Governing Body, however, declined to confirm the seniority of Respondent No.4 observing that individual cases need not be brought before the Governing Body unless there is deviation from the approved principles. A DPC was held on 22nd September, 1989 in which the respondent no.4 was considered on the basis of seniority given to him in the grade of UDC w.e.f 1.8.1978 subject to approval of the Governing Body, and respondent No.4 was appointed to the grade of Assistant with the stipulation that the belated promotion of respondent No.4 ipso facto would not affect his seniority.

6. The Secretary of the Petitioner had approved the inclusion of posts of Senior Store Keeper in the pay scale of Rs.425-700 and Junior

Store Keeper in the pay scale of Rs.330-560 in the cadre of Assistant and UDC. Respondent no.4 was given the seniority in the grade of UDC w.e.f 1.8.1978 and was placed at Sl. No. 65 in the seniority list of UDCs subject to the approval by the Governing Body. The Governing Body had not given the approval to the case of respondent no.4.

7. The representations were invited against the merger. Respondent No.1 had filed a representation against the seniority given to respondent No.4, Sh.Madan Mohan, however, his representation was not decided entailing filing of an original application being O.A No.360/1999 by respondent No.1. The said original application of respondent No.1 was disposed of by the Central Administrative Tribunal by an order dated 16th August, 2000 directing the petitioner to consider the representation made by respondent No.1 by passing a speaking order within a period of three weeks from the date of receipt of copy of the order.

8. Pursuant to the order dated 16th August, 2000, the petitioner passed an order dated 6th November, 2000 disposing of the representation of respondent No.1. While deciding the representation of the respondent No.1 by an order dated 6th November, 2000, the petitioner had held that respondent No.4 was appointed as a Junior Store Keeper on the regular post with effect from 1st August, 1978 and

on merger of the post of Junior Store Keeper with the post of UDC in the year 1979 he was inducted in the grade of UDC and placed at serial No.65 and a seniority list dated 14th February, 1989 was circulated. It was also held that the Governing Body's opinion was taken and pursuant thereto the decision of inclusion of the name of respondent No.4 at serial No.65 above Sh.L.C.Jain (Sl.No.66) in the seniority list of UDC became final. Regarding the representation of respondent No.1 it was held that besides the representation of respondent No.1 other representations were also received against placing respondent No.4 at serial No.65 in the seniority list dated 15th July, 1989 and these representations were also considered. The petitioner further held that the position of respondent No.4 in the grade of UDC is based on the merger of two grades and not on the basis of his position in the grade of LDC. Taking note of the fact that respondent No.1 had retired voluntarily from the service of petitioner on 17th February, 2000 (FN) it was held that no injustice had been done to the respondent No.1 and, therefore, the representation of respondent No.1 was not accepted also on the ground that the decision of inclusion of the name of respondent No.4 at serial No.188A in the provisional seniority list of Assistants had already become final.

9. The petitioner, however, while dealing with his representation did not consider and decide the plea of respondent No.1 that though respondent No.1 continued in the cadre, respondent No.4, Sh.Madan Mohan had elected to leave the cadre to join the ex-cadre post of Junior Store Keeper on regular basis with effect from 1st August, 1978 in terms of service conditions applicable to Junior Store Officer. It was also asserted that though respondent No.1, Sh.Ramesh Kumar had been promoted to the next higher grade of UDC and Assistant, respondent No.4, Sh.Madan Mohan on account of having joined the ex-cadre post was not considered. Respondent No.1 had also contended that he was promoted as Assistant first on ad-hoc basis and, thereafter, on the recommendation of the regular DPC he became a regular assistant with effect from 10th August, 1988 and thus became eligible for promotion to the next higher grade of Section Officer.

10. The Secretary of the petitioner, however, by the order dated 1st February, 1979 merged the cadre of Store Keeper Junior with the UDC in the petitioner's headquarter without any recruitment rules and without being the competent authority to pass such an order. The order dated 1st February, 1979 was stated to be an act of favoritism and, thereafter, it was contended that giving seniority to respondent No.4,

Sh.Madan Mohan was also not based on any recruitment rules nor was the Secretary of the petitioner competent to pass such an order.

11. It was also asserted on behalf of respondent No.1 that the merger was not approved by the competent authority nor was the recruitment rules revised. Merger of cadre was not approved nor was respondent No.4, Sh.Madan Mohan eligible as per the recruitment rules for promotion to the grade of Assistant. Respondent No.1 also contended that on account of all the irregularities committed by the petitioner in giving promotion and seniority to respondent No.4, he was forced to take voluntary retirement.

12. The respondent No.1 challenged the order dated 6th November, 2000 by filing the original application being OA. No. 315/2001 and sought a direction to the petitioner to promote respondent No.1 as a Section Officer with effect from the date of vacancy.

13. The petitioner before the Tribunal had contended, inter-alia, that Sh.Madan Mohan was placed at serial No.65 in the seniority list of UDC circulated on 14th February, 1989, which seniority list was approved by the competent authority by the circular dated 15th July, 1989 and the name of respondent No.4, Sh.Madan Mohan was also included in the

seniority list of Assistant circulated by the circular dated 18th July, 1989. It was contended in the circumstances that it is not correct that respondent No.4, Sh.Madan Mohan was not eligible for promotion to the grade of Assistant. The petitioner, however, did not categorically deal with the various pleas raised by the respondent No.1 that Sh.Madan Mohan, respondent No.4 had left the service to join the ex-cadre post of Junior Store Keeper and later on his induction as Assistant was not in consonance with the recruitment rules nor was the Secretary competent to pass such an order and also that the seniority of respondent No.4 could not be fixed in the cadre of UDC.

14. The Tribunal considered the pleas and contentions of the parties and held that this cannot be disputed that Sh. Ram Kumar, respondent no.1 was considered by DPC held on 22nd September, 1989 and his name was included in the panel of 15. He was, however, not promoted on account of dispute of seniority of Sh.Madan Mohan, respondent No.4. It was also noticed that Sh.Madan Mohan was inducted in the grade of UDC by the circular dated 14th February, 1989, which order was subject to the approval by the Governing Body. The Tribunal noticed that the Governing Body had held that individual cases need not be brought before it, and, thereafter, the competent authority by the order dated 15th June, 1989 had approved the name of Sh.Madan

Mohan to be placed at serial No.65. In view of these facts the Tribunal had held that since the seniority of Sh.Madan Mohan was decided only on 14th February, 1989 and subject to approval by the Governing body which was not done by the Governing body, his name could not have been sent for the DPC held on 22nd September, 1989 and, therefore, pursuant to the recommendation of the DPC, respondent No.1 ought to have been promoted and respondent No.4, Sh.Madan Mohan could not be given promotion to the post of Section Officer. The Tribunal declined the claim of respondent Nos.2 & 3 Sh.D.N.Upneja and Sh.R.C.Puri and thus allowed in part the original application and directed the petitioner to first promote Sh.Ram Kumar to the post of Section Officer in terms of the panel recommended by the DPC held on 22nd September, 1989.

15. From the order dated 2nd January, 2003 passed by the Tribunal it is also apparent that no one had appeared on behalf of the petitioner to argue the pleas and contentions raised by the petitioner. The Tribunal had passed the order on perusal of documents and records. The order is challenged by the petitioner primarily on the ground that respondent No.4, Sh.Madan Mohan was working in the grade of UDC and, therefore, was placed at serial No.65 and since the Governing Body in its meeting dated 14th March, 1989 had observed that individual cases need not be brought before it, therefore, the name of respondent No.4,

Sh.Madan Mohan was reflected in the seniority list of Assistant which was duly circulated on 15th July, 1989. It is also contended that respondent No.4 cannot be made to suffer on account of the lapse on the part of the petitioner.

16. No one has appeared on behalf of the respondents though a counter reply dated 23rd August, 2004 had been filed. Respondent No.1 has contended that the petitioners have misrepresented the facts by stating that the DPC was held on 24th September, 1989 and not on 20th November, 1998 which is clear from the order dated 8th April 2004 issued by the petitioner's itself, clearly establishing the fact that the DPC was held on 20th November, 1998. It was also contended that despite the directions of the Tribunal, the petitioner did not produce the order of the competent authority that is the Governing Body approving the induction of ex-cadre post of Junior Store Keeper. It was reiterated that the order in respect of respondent No.4, Sh.Madan Mohan was passed by an incompetent authority which was also not in accordance with the recruitment rules.

17. The learned counsel for the petitioner has contended that respondent Nos.1 to 3 in their original application had not challenged the order dated 6th November, 2000, deciding the representation of

respondent No.1 and declining his pleas and contentions and consequently respondent No.1 is not entitled for any relief.

18. This plea of the petitioner has to be rejected as respondent No.1 in his original application had categorically sought that the order of merger passed by the incompetent authority, Secretary, ICAR is illegal and had also sought direction to promote him as a Section Officer with effect from the date of the vacancy. The relief sought by respondent No.1 before the Tribunal is as under:-

- (i) That the O.A may please be allowed.
- (ii) That the order of merger passed by non-competent authority, Secretary, ICAR be declared illegal and quashed.
- (iii) That applicant No.1 be directed to be promoted as Section Officer w.e.f. the date of the vacancy.
- (iv) That respondent No.2 be directed to hold review DPC 1998-99 in respect of Section Officer taking into account the vacant posts, created and anticipated vacancies and direction be given to promote the applicants from the date of the vacancy.
- (v) That issue any other order/orders as may be deemed fit and proper for the redressal of the grievances of applicants.

19. In the circumstances, merely because the order dated 6th November, 2000, which was passed pursuant to the representation of respondent No.1, was not specifically challenged, the relief sought by

challenging the illegal order of merger passed by the petitioner of inducting respondent No.4, Sh.Madan Mohan in the cadre of UDC unlawfully and without following any recruitment rules, cannot be denied to respondent No.1. If there could not be inclusion of the posts of Senior Store Keeper in the pay scale of Rs.425-700 and Junior Store Keeper in the pay scale of Rs.330-560 in the cadre of Assistant and UDC, then the respondent no.4 could not have been given seniority in the grade of UDC w.e.f 1.8.1979, nor could he have been placed at Sl. No. 65 and consequently, nor could he have been considered for further promotion.

20. Despite repeated queries by the Court, the learned counsel for the petitioner is unable to show any recruitment rule on the basis of which respondent No.4 on his joining the ex-cadre post of Junior Store Keeper could again be inducted in the cadre of UDC and could be given the seniority in the same without having worked as UDC for any period of time. The learned counsel for the petitioner is also unable to show the terms and conditions for the merger approved by the Governing Body in accordance with the rules. Rather, it is contended that the Governing Body declined to deal with the case of respondent No.4. If that be so then how the name of respondent No.4 could have been sent and considered by the DPC held on 22nd September, 1989 has not been

explained. Nothing has been produced to show that the Governing Body had passed any resolution or authorized the Secretary to pass any order in case of individual employees or in the case of respondent No.4 specifically. This is also not denied that the matter was not considered by the Governing body on the grounds that the cases of individual matters were not to be placed before it. If such a decision was taken by the Governing Body then who was authorized to take decision has not been explained, nor any documents produced to demonstrate as to who could have taken such decisions and who infact had taken the decision. It has also not been explained as to whether the decision taken by any official of the petitioner required any ratification by the Governing Body or not. In the circumstances, it has not been established that the Secretary was competent to take the decision about the merger of posts and in respect of seniority of respondent No.4, without ratification by the Governing Body or that such powers were given to the Secretary which would have made the decision of the Secretary binding and not requiring any ratification by the Governing Body.

21. The learned counsel for the petitioner has also not explained or justified as to how respondent No.4 could be inducted as Assistant contrary to the recruitment rules nor has it been demonstrated that if the power of relaxation was with the petitioner, that pursuant to such

powers the terms and conditions of the recruitment rules were relaxed in the case of respondent No.4. This is also not disputed that the name of respondent no.4 was not included in the panel recommended by DPC. No review DPC had taken place for respondent No.4. Therefore, the promotion of respondent no.1 on the basis of inclusion of his name in the panel recommended by the DPC could not be denied to him. No cogent grounds have been made out by the petitioner for denying the promotion to respondent No.1 to the post of Section Officer in the facts and circumstances.

22. No cogent reason has also been disclosed by the learned counsel appearing on behalf of the petitioner regarding not appearing before the Tribunal and canvassing the pleas and contentions raised on behalf of the petitioner.

23. The learned counsel for the petitioner is further unable to show as to how the Secretary of the petitioner was competent to pass the order dated 1st February, 1979 for the merger of the cadre of Store Keeper Junior with the UDC in the petitioner organization and giving seniority to respondent No.4. No other pleas and contentions have been raised on behalf of the petitioner.

24. In the totality of the facts and circumstances no grounds have been made out which would show that the order of the Tribunal suffers from any illegality or irregularity or any such perversity which would require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

25. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed. Interim order dated 24.04.2004 is vacated and all the pending applications are also disposed of. Parties are however, left to bear their own costs.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

**AUGUST 09, 2011
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