

18

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1935 of 2002

New Delhi, this the 1st day of September, 2003

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE R.K. UPADHYAYA, MEMBER (A)

1. Shri Harbans Singh
H. No. 1315, Sector 19,
Faridabad-121 002.
2. Shri S.P. Bhartiya
Sr. Geologist,
Geological Survey of India (NR)
Sector-E, Aliganj,
Lucknow (UP).
3. Shri Eshwara
Sr. Geologist,
Geological Survey of India (CR)
Pune.
4. Shri Durairaj
Sr. Geologist,
Geological Survey of India,
Tiruvanthapuram,
Kerala.

... Applicants

(By Advocate: Shri V.S.R. Krishna)

Versus

Union of India

Through

1. The Secretary,
Ministry of Mines,
Government of India,
Shastry Bhawan,
New Delhi.
2. The Director General,
Geological Survey of India,
27, Jawaharlal Nehru Road,
Kolkatta.

... Respondents

(By Advocate: Shri R.P. Aggarwal)

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (J)

The four applicants have filed this OA whereby they are impugning seniority list dated 5.8.2000 in the cadre and Grade of Geologist SR. as on 1.8.2000 wherein

k

the applicants have been assigned a lower seniority position as compared to their earlier position in the seniority list dated 20.11.1990.

The facts in brief are that all these applicants belong to SC category and are presently working as Senior Geologists under the respondents. Initially all these applicants were appointed as Geologists (Jr) and Geologist (Asst) on the basis of a competitive examination conducted by the UPSC.

It is further submitted that as far Recruitment Rules for the post of Geologist (Sr.), a Geologist (Jr.) with 5 years of service are eligible to be considered for promotion. Applicants were considered for the promotional post from Geologist (Sr) against the reserved post in the year 1985 and they were given promotion by duly constituted DPC. Accordingly they are promoted in March, 1985 and they were assigned seniority number 761, 752, 753 and 755 respectively as per Annexure A-4.

It is further stated that the above position continued till 21.9.99 when the respondents issued a memorandum purportedly in pursuance of the decision of the Mumbai Bench in OA No. 292/94 filed by one Shri D.M. Mohabey. A review DPC was held to review the DPCs of 1985. In the memo it was stated that initially the DPC was constituted for 370 vacancies and now the respondents submit that inspite of 370 vacancies there are 411 vacancies so they are conducting a review DPC despite the fact that there was no direction to review the DPC.

h

It is further submitted that the result of the issuance of memo dated 21.9.99 had been that incumbents who are more than 7 years junior had been shown senior to the applicants. It is submitted that the so called excess vacancies can be said to be filled up in the year 1989 for the year 1985 and cannot by any stretch be deemed to be vacancies of 1985 calling for constitution of a review DPC by clubbing all the vacancies filled up on that date and year.

It is only because of mala fide attitude of official respondents that the respondents have wrongly came to the conclusion that number of vacancies in the year 1985 was 411 instead of 370 which was filled up in the year 1985.

It is further pleaded that period of more than 14 years have lapsed and the Union of India has on its own tried to convene a review DPC and thus they are trying to unsettle the settled position. It is also submitted that the official respondents have failed to realise that in the interregnum period of 14 years certain vested rights have been created and hence it makes little or no sense to disturb the settled position. The applicants further submit that the whole action was reportedly taken to deprive the applicants who belong to weaker sections of the Society of their vested rights of seniority and higher promotions on the basis of the promotions having taken place in the year 1985.

The applicants still submit that no vacancies are available in the grade of Geologist (Sr) in the year 1985 and the respondents have malafidely computed the

K



number of vacancies to be 411 instead of 370. Even otherwise 41 vacancies are shown to be unreserved whereas there is a provision for 22.5% of reservation.

It is pleaded that if the vacancies are not filled for number of years then the same should be deemed to have lapsed.

Respondents are contesting the OA. The respondents in their reply pleaded that the sanctioned strength in the grade of Geologist (Senior) as on 1.1.1985 was as under:-

" (a) Sanctioned strength before ... 571

Ist Cadre Review

(b) Post sanctioned on 1st Cadre

Review w.e.f. 21.6.84 ... 405

(c) Total Sanctioned strength

as on 1.1.1985 ... 376

(d) Incumbent in the grade of

Geologist (Sr) as on 1.1.1985 ... 565

(e) Clear vacancies for

consideration of DPC ... 411"

A DPC meeting was held on 17/18.1.1985 in Geological Survey of India Kolkata to consider promotion to the post of Geologist (Sr) against 411 clear vacancies then available and no representation was received by any of the candidates upto serial No.923 of the seniority

27

list. Accordingly, the DPC considered all the four officers for promotion to the grade of Geologist (Sr) on the basis of seniority list upto Sl. No. 923.

It is stated that on the basis of the assessment of the DPC, the DPC recommended a panel containing 357 officers belonging to unreserved candidate starting from Rajender Dubey and ending with Shri Nand Kishore Agarwal, 11 SC category officers and 1 ST officer was recommended. Subsequently a review DPC was held on 23.8.85 which included another officer who was eligible for promotion but had not been included in the select list of 2000 due to oversight.

Respondents also admit that the DPC held on 17/18.1.1985 and review DPC was held on 20.3.85 which together recommended 370 officers (358 UR and 12 SC/ST) for promotion which has been reviewed recommending 411 officers which included 396 unreserved, 12 SC and 51 ST. The increase in the number of officers was made because of the fact that the 41 unreserved officers below Shri N.K. Aggarwal at Sl. No. 923 who were eligible for promotion even on 17/18.1.1985 had been left out on account of representation made against inter-se-seniority and had to be included because of the directions of the CAT, Nagpur.

It is, therefore, prayed that the OA has no merits and the same should be dismissed since the same has been done in accordance with the judgment given by the Larger Bench.

JK

23

we have heard the learned counsel for the parties and gone through the records of the case.

The learned counsel for the applicant submitted that assuming for the sake of arguments that 411 vacancies had become available on 1.11.1985 and earlier it had been wrongly calculated and then also by applying the principles of reservations out of 411, 319 vacancies could be filled by unreserved candidates 61 by SC and 31 by ST candidates but the Government had filled up 396 vacancies under the unreserved category and only 12 vacancies of SC/ST had been filled up which has been shown against the principles to be followed for filling up the vacancies of reserved category and Government should have filled up first the general and thereafter filled SC/ST and if the SC/ST was not available only then after dereservation the respondents could have filled further vacancies by unreserved candidates and that even if the SC/ST were not available then after the quota of 319 the remaining unreserved vacancies could have been filled after getting dereservation done after the SC/ST vacancies had been filled up.

Shri R.P. Aggarwal appearing for the respondents had no answer to the preposition put forward by the applicants. However, Shri Aggarwal submitted that the seniority list annexed is only a provisional one and objections have been invited and Government is yet to decide the objections received from various employees.

The respondents also submitted that the representation submitted against the provisional gradation seniority list is still under consideration and

h

21

the OA is premature to that extent particularly in para 4.7 respondent do say that they have received objections against the impugned seniority list by a number of incumbents in the grade of Geologists (Sr) so the apprehension of the applicants to treat the gradation list as on 1.8.2000 as Final is found to be imaginary.

In our view also since the seniority list of Geologist (Sr) which has been issued on 1.8.2000 is not final and the department has yet to come with a final list as admitted by the respondents in their reply so no directions are required to be issued on this behalf and the OA is a premature one. However, while taking any further step for promotion etc. on the basis of the alleged provisional seniority list the department shall keep in view giving a suitable place to the SC/ST candidates including applicants in the seniority list as per the relevant reservation roster and the instructions of DOP&T and judicial pronouncements on the subject.

The OA is disposed of with the above directions. No costs.

Ch. B. Upadhyaya

(B. K. UPADHYAYA)
MEMBER(A)

Kuldip Singh

(KULDIP SINGH)
MEMBER (JUDL)

Rakesh