

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00022/2017

Date of Order: This, the 03rd day of December 2019

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)



1. Rupali Thakur Bhuyan
2. Ganesh Chandra Sarmah
3. Arup Kr. Bora
4. Dr. (Mrs) Bimala Nazir Gohain
5. Pabitra Kr. Sarma
6. Sri Binod Boruah.

(All are Superintending Geologists, SU (State Unit)
Geological Survey of India
North East Region, 44, Lakhi Nagar Path
R.G. Baruah Road, Guwahati – 781005.

...Applicant

By Advocates: Sri M.K. Choudhury, Sr. Advocate,
 Sri N. Baruah & Sri P. Bharadwaj.

-VERSUS-

1. The Union of India
Represented by the Secretary
To the Government of India
Ministry of Mines (Department of Mines)
New Delhi – 110001.
2. The Director General
Geological Survey of India
Ministry of Mines, 27
Jawaharlal Nehru Road
Kolkata – 700016.

3. The Deputy Director General
Geological Survey of India
Ministry of Mines, 27
Jawaharlal Nehru Road
Kolkata – 700016.
4. The Deputy Director
(Personnel & Administration)
Geological Survey of India
15A & B, Kyd. Street, Kolkata – 700016.
5. The Additional Director General
Geological Survey of India
North Eastern Region, Shillong.



... Respondents

By Advocate: Sri S.K. Ghosh, Addl. CGSC

ORDER (ORAL)

MANJULA DAS, MEMBER (J):-

This case was last heard on 03.12.2019 at admission stage. After hearing both the parties, the present O.A. was disposed of.

2. The present O.A. has been filed by the applicant through Sri M.K. Choudhury, Sr. counsel along with Sri N. Borah, learned counsel, under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“8(i) To set aside and quash the impugned communication(s) dated 14/18.07.2016 rejecting the representations dated 3.6.2016 seeking grant of notional promotion and other

consequential relief (s) in terms of the judgment and order dated 25.02.2014 passed by the Hon'ble CAT, Lucknow Bench in O.A. No. 221/2006;



- (ii) To direct the respondent authorities to grant notional promotion to the applicants to the cadre of Geologist (Jr.) from the date, the vacancies occurred between 1999-2000 according to their respective seniority and with all consequential benefits;
- (iii) To direct the respondent authorities to hold a review DPC and to grant notional promotion to the applicants to the post of Geologist (Sr.) according to their revised date of joining in the grade of Geologist [erstwhile Geologist (Jr.)].
- (iv) To direct the respondent authorities to refix the seniority of the applicants in the gradation list of Senior Geologist as on 01.01.2013 by inserting the names of the applicants ante-dating with their immediate junior officers in the gradation list of Geologist as on 01.07.2005 revised on 10.02.2015 in terms of the judgment and order dated 25.02.2014 passed in O.A. No. 221/2006 by the Hon'ble CAT, Lucknow Bench;
- (v) To direct the respondent authorities to make notional changes in the subsequent promotions granted to the applicants to the posts of Senior Geologist and Superintending Geologist; and
- (vi) Cost of the application."

2. Grounds for relief are as follows:-

- (i) That the impugned action on the part of the respondent authorities in denying parity of treatment by applying the ratio of the judgment and order dated 25.02.2014 passed by the Hon'ble CAT, Lucknow Bench, is illegal arbitrary and in violation of the statutory provisions of law governing the field.
- (ii) That the fact situation detailed in this application clearly shows that the respondent authorities had failed to hold timely and regular DPC meetings between 1999-2000 when the applicants became eligible for promotion to the post of Geologist (Jr.) and

there were available vacancies and such promotion were given only in 2004 thereby causing grave prejudice to the applicants and denial of their legitimate due.



- (iii) That the rejection of the claim of the applicants for grant of notional promotion to the cadre of Geologist (Jr.) and other consequential reliefs in terms of the judgment and order of the CAT, Lucknow is wholly arbitrary and illegal and discriminatory and not founded on any acceptable justifiable reasons. In fact the impugned communication dated 14/18.07.2016 does not disclose any cogent reason for declining the relief as sought for by the applicants and runs counter to all principles of natural justice and fair play in administrative action.
- (iv) That the respondent authorities failed to appreciate the fact that the applicants were also equally circumstanced as the applicants in O.A. No. 221/2006 and therefore, ought to have acted fairly and extended parity of treatment to the applicants in terms of the judgment and order rendered by the CAT, Lucknow Bench by granting notional promotion to the cadre of Geologist (Jr.) and refixed their seniority for purposes of the subsequent promotions to the post of Senior Geologist and Superintending Geologist.
- (v) That the respondent authorities while rejecting the representations have done so without putting forth any reason that would put the applicants in a different footing from that of the applicants in O.A. No. 221/2006 to deny the reliefs granted by the CAT, Lucknow Bench to the present applicants. In fact, the impugned communication having impliedly and tacitly acknowledged the fact that the present applicants are similarly situated ought to have granted similar relief to the applicants in terms of the said judgment and order dated 25.02.2014 and the denial thereof must be construed to be arbitrary, illegal and smacks of hostile discrimination that merits interference by this Tribunal.
- (vi) That the impugned action of the respondents is ex-facie illegal, arbitrary, unfair, discriminatory and opposed to the settled position of law which has clearly violated the fundamental right of the applicant

guaranteed under Article 14 and 21 of the Constitution of India. In view of that, the impugned communication dated 14/18.07.2016 is liable to be interfered by this Tribunal.

3. The respondents filed their written statement on 07.09.2017.

4. Heard Sri M.K. Choudhury, Sr. Advocate along with Sri N. Boruah, learned counsel for the applicant and Sri S.K. Ghosh, learned Addl. CGSC for the respondents.



5. At the time of argument, Sri M.K. Choudhury, learned Sr. Advocate for the applicants basically asking that similar individuals in similar situation should be treated similarly. Accordingly, Sr. Advocate submits that since the case of the present applicants is exactly similar with the applicants of CAT, Lucknow Bench (order dated 25.02.2014 in O.A. No. 221/2006), hence similar order may be passed in the case of the present applicants also.

6. Sri Ghosh, later on, raised an objection on limitation/delay point where the Sr. Advocate for the applicant, to support of his case, has placed a judgment of **Collector, Land Acquisition and another Vs.**

Katiji, AIR 1987 SCC 1353, relevant portion of which reads as follows:-

"The legislature has conferred the power to condone delay by enacting S. 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause"

8. We have perused the decision as cited by the learned Sr. Counsel for the applicants of CAT, Lucknow Bench dated 25.02.2014 in O.A. No. 221/2006 wherein the Co-ordinate Bench has ordered as follows:-



"18. In view of the above, this O.A. is disposed of with a direction to the respondents to grant notional promotion to the applicants from the date of occurring of the vacancies in accordance with the seniority. The respondents are also directed to re-fix the impugned seniority list and grant all consequential benefits to the applicants within a period of three months from the date of receipt of the copy of this order. Needless to say such order will be subject to out come of SLP No. 553/2006. No order as to costs."

9. The applicants made their representations on 02.06.2016, 03.06.2016 respectively before the appropriate authority i.e. respondent No. 2 (The Director General, Geological Survey of India, Ministry of Mines, 27, Jawaharlal Nehru Road, Kolkata) through proper channel with a request for upgradation of seniority position on the revised gradational list of Geologist as on 01.07.2015 as per the directive of the judgment on O.A.

No. 221/2006 passed by CAT, Lucknow Bench. The respondent authorities vide their reply under No. 32013/Sr. Geol./Rep./2015/19A-Vol.III dated 14/18.07.2016 intimated to applicant No. 1 by denying the claim of the applicants as here under:-



"In this context, it is stated that consequent upon the judgment dated 13.02.2014 in O.A. No. 221/2006 passed by the Hon'ble CAT, Lucknow Bench, the gradation list of Geologist [erstwhile Geologist (Jr.)] as on 01.07.2005 was revised finally and uploaded in the GSI Portal on 09.04.2015 with proper scrutiny and in the light of DoPT OM. All the representations received in the matter at that time were disposed by this office with the implication that no further representation in this regard would be entertained by this office.

As such, your request for upgrading of seniority position cannot be acceded to."

10. Sri S.K. Ghosh, learned Addl. CGSC however, submitted that he has no objection and agreed to for consideration of the case of the applicants in the light of the judgment and order of CAT, Lucknow Bench dated 25.02.2014 in O.A. No. 221/2006.

11. In view of the above, we deem fit and proper to direct the respondent authorities to consider the case of the applicant. Accordingly, we direct the respondent authorities to verify as to whether the applicants in the instant O.A. are similarly situation with the applicants of CAT, Lucknow Bench in O.A. No.221/2016 or not. If the

respondent authorities found that the instant applicants are similarly situated with the applicants of Co-ordinate Bench of Lucknow Bench (supra), similar benefits to be extended to them also by refixing the seniority with all consequential benefits.

12. With the above directions, O.A. stands disposed of. No order as to costs.



(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

PB