

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



O.A. No.350/00916/2014.

Date of Hearing : 12.12.2019

Date of order : 4.1.2020



Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble -Dr.(Ms) Nandita Chatterjee, Administrative

1. Shri Mrinal Kanti Hajari
Son of late Naresh Chandra Hajari
Aged about 52 years,
Residing at 91 Bidhan Park,
Baranagar, P.S. Baranagar,
P.O Nawapara, Kolkata-700090.
2. Shri Sanjay Kumar Dey
Son of Shri Anil Chandra Dey
Aged about 46 years,
Residing at Ambagan Nabapally,
P.S Barasat, P.O. Nabapally,
Kolkata - 700126.
3. Shri Uttam Kumar Mondal
Son of Shri Narendra Nath Mondal,
Aged about 53 years,
Residing at Vill & P.O. Alida, P.S. Mograhat,
Dist. South 24 Parganas, Pin - 743355.
4. Shri Tapas Kumar Pandit
Son of Late Sambhu Nath Pandit,
Aged about 46 years,
Residing at Vill & P.O. Majinan,
P.S. Dhaniakhali, Dist. Hooghly
Pin - 712302.
5. Shri Rajesh Roy son of late Hari Pada Roy,
Aged about 39 years, residing at 25/9,
Vivekananda Park, Post Garia,
P.S. Bansdrani, Kolkata-700084.

Applicants are all presently engaged as Upper Division Clerk (UDC) at different Sections of The Central Head Quarter of Geological Survey of India at Kolkata-700016.

.....Applicants

By Advocate : Mr J.R. Das.

- Versus -



1. Union of India through the Secretary to the Govt. of India, Ministry of Mines, Shastry Bhavan, New Delhi – 110001.
2. The Director General, Geological Survey of India, 27, Central Headquarter, J.L. Nehru Road, Kolkata – 700016.
3. The Deputy Director General (Personnel), Geological Survey of India, Central Headquarter, 27, J.L. Nehru Road, Kolkata – 700016.
4. The Director (Personnel), Geological Survey of India, Central Headquarter, 27, J.L. Nehru Road, Kolkata – 700016.
5. The Administrative Officer, Geological Survey of India, Central Headquarter, 27, J.L. Nehru Road, Kolkata – 700016.
6. Shri Sujit Kumar Halder (SC) son of late Sudhir Kumar Halder, Posted as Assistant at Accounts-II, Geological Survey of India, Central Headquarter, 27, J.L. Nehru Road, Kolkata – 700016.
7. Shri Nagendra Singh son of late Ram Kaish Singh Posted as Assistant at EPABX, Dharitri Building, Geological Survey of India, Central Headquarter, 27, J.L. Nehru Road, Kolkata – 700016.

.....Respondents

By Advocate Mr B.P. Manna

ORDER

MS BIDISHA BANERJEE, MEMBER(J)

The applicants 5 in number serving as UDC in different Sections of Central Headquarter at Geological Survey of India (GSI) Kolkata who aspire for promotion to the Grade of Assistant Group 'B' Non Gazetted in PB- II,

Rs.9300-34800/- with Grade Pay of Rs.4200/- have sought for the following reliefs :



- "a) An order granting leave to the applicants under Rule 4(5)(a) of CAT(Procedure) Rules 1987 to move this application jointly.
- b) An order directing the respondents to cause necessary amendment/correction of the promotion order dated 04.09.2013 to provide the names of the applicants herein since being similarly situated in all purpose.
- c) An order directing the respondents to effect/cause regular promotion to the applicants herein through effecting necessary correction in the DPC dated 7.8.2013 since the applicants have already been found 'fit' in the said DPC and that the term 'not approved' cannot and should not be allowed to effect cancellation of the said DPC since already stated to be as 'Not cancelled' and be directed to be effected within no time, however, with due correction to effect regular promotion to the applicants herein.
- d) An order directing the respondents to cause necessary amendment of the new Recruitment Rules to include DOPT OM No.AB-14017/12/88-Estt.(RR) dated 25.03.1996 to provide Retention of existing eligibility service to correct the anomaly once for all.
- e) An order directing the respondents to produce/cause production of all relevant records before the Hon'ble Bench with copy to the Ld. Advocate appearing for the applicants for conscionable justice.
- f) Any other order or further order/orders as to this Hon'ble Tribunal may deem fit and proper."

2. The admitted facts that emerge from the pleadings are that they were found fit by the DPC for such promotion, to be accorded on ad-hoc basis. The applicants were promoted as UDC on 29.01.2008. In terms of the Recruitment Rules (RR) prevailing at the material time, an UDC with 5 years of regular service was entitled to promotion to the next higher post of Assistant. A proposal for relaxation in the residency period of an UDC for promotion to the post of Assistant in Central Headquarter GSI, Kolkata, was placed before the Director General, GSI. The DG, GSI, granted one time relaxation in the residency period to the applicants, for such promotion, since, as on 01.01.2013 the applicants herein along with some others did not complete 5 years regular service in the Grade of UDC as on the crucial

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date for reckoning eligibility for promotion against the vacancy year 2013-14, when in terms of the Recruitment Rules (RR) 5 years regular service was mandatory for promotion to Assistant. A DPC was held on 07.08.2013 for grant of ad-hoc promotion, and the applicants were also found fit but by that time the new RRs were already framed and had come into effect from 01.03.2013, whereby and where under the residency period of 5 years for UDC to be promoted to Assistant, was enhanced to that of 10 years. The applicants are aggrieved as the private respondents got one time relaxation in the residency period against the vacancy year 2012-13 for which the crucial date was 01.01.2012, when the old RRs was in force, while they were deprived.

3. The respondents have categorically submitted that the matter was examined by the competent authority and since it was not in conformity with DOPT guidelines an order was issued on 01.05.2017 reverting the said 2 incumbents Sujit Kumar Halder and Nagendra Singh (the private respondents) from the post of Assistant to UDC on 12.08.2013 and 13.08.2013 respectively. That, upon completion of 10 years of service from the date of engagement as UDC the present applicants have also been accorded promotion to the next higher post of Assistant in the month of September, 2018 and therefore the present O.A which was preferred in 2014, has become infructuous.

4. Learned counsel for the applicant would vociferously contend that since Shri Sujit Kumar Halder and Nagendra Singh were given promotion with effect from 2013 and 22 clear vacancies were available, that too, before promulgation of new rules, they ought to be considered eligible for the vacancy year 2013-14 having completed 5 years regular service on 01.01.2013 which was the crucial date for determining the eligibility for the

vacancy year 2013-2014, and they ought to be accorded promotion against the 2013-2014 vacancy.

5. From the materials on record, we discern that the grievance of the applicants emanate from the promotion granted to Sujit Kumar Halder and Nagendra Singh in relaxation of the residency period, with effect from the year 2013.



6. We infer that the said incumbents completed 5 years as on 12.08.2013 and 13.08.2013. The vacancies against which they were considered belonged to the vacancy years 2012-2013 for which the crucial date was 01.01.2012 they did not complete 5 years of service, as was reflected in terms of erstwhile RR. By the time they became eligible, the new RR was in force and hence they were wrongly allowed the promotion.

7. However, the respondents have placed an Office Order dated 01.05.2017 as contained in Annexure R/1 which demonstrate and exemplifies that on the recommendation of the Review DPC, held on 27.04.2017, the DG, GSI approved reversion of the private respondents to the post of UDC w.e.f. 12.08.2013 and 13.08.2013 respectively, and the applicant who claim promotion w.e.f. 2014 (in terms of earlier RR) should not have any quarrel with Sujit Kumar Halder and Nagendra Singh. Further, they have already been allowed promotion from the date they completed the residency period in terms of the new RR that came into force during the consideration for promotion against the vacancy year 2013-2014.

8. We further note that the crucial date for determining eligibility for vacancy year 2012-13 when the previous RR was in force was 01.01.2013 and as on 01.01.2013 the applicants had not completed 5 years regular service, that was to be mandatorily completed in order to earn promotion to the post of Assistant. The new RR was introduced from 01.03.2013 and in

terms of the new RR the residency period of an UDC to earn promotion to the post of Assistant became 10 years.

9. Having failed to show or establish their legal right to earn promotion on the basis of the previous (old) RR that held the field until 30.04.2013, the applicants being not eligible for promotion to Assistant on the crucial date i.e. 01.01.2013, have failed to make out a case warranting interference.



10. The O.A is therefore, dismissed. No order as to costs.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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