

Central Administrative Tribunal
Principal Bench

New Delhi, dated this the 1st March 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

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1. O.A. No. 1465 of 1999

Shri B.S. Ahuja,
S/o Shri Kartar Singh Ahuja,
Working as Commissioner (PP),
Ministry of Water Resources,
New Delhi-110001.

.. Applicant

(By Advocate: Shri M.K. Gupta)

Versus

1. Union of India through
the Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-110001.
2. The Secretary,
Dept. of Personnel & Training,
North Block,
New Delhi-110001.
3. Union Public Service Commission
through the Secretary,
Dholpur House,
New Delhi-110003.
4. Shri A.K. Mahana
5. Shri S.K. Aggarwal
6. Shri V.R. Shastri
7. Shri A. Sekhar

.. Respondents

(By Advocate: Shri N.K. Aggarwal for respondents 1, 2 and 3,
from for respondents 4, 5, 6 and 7)
2. O.A. No. 2570 of 1999

Shri K.R. Subramanian,
S/o late Shri K.N. Ramalingam,
R/o 207/10, Sector-1,
Pushpa Vihar,
New Delhi-110017.

.. Applicant

(By Advocate: Shri M.K. Gupta)

Versus

1. Union of India through
the Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Marg,

New Delhi-110001.

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Dept. of Personnel & Training,
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New Delhi-110001.
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through the Secretary,
Dholpur House,
New Delhi-110003.
 4. Shri S.K. Aggarwal
 5. Shri V.R. Shastri
 6. Shri A. Sekhar .. Respondents
- (By Advocate: Shri N.K. Aggarwal)

ORDER

S.R. ADIGE, VC (A)

As both O.As involve common questions of law and fact they are being disposed of by this common order.

O.A. No. 1465 of 1999

2. Applicant impugns respondents' order dated 6.2.98 (Annexure A-3), and rejection of his representation by respondent's order dated 24.6.98 and 31.12.98 (Annexure A-1 Colly.). He seeks a declaration that respondent's action in superceding him in the promoted grade of Sr. Administrative Grade by his junior is illegal and arbitrary and seeks restoration of his seniority as Sr. Administrative Grade.

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3. As per Central Water Engineering (Group A) Service Rules 1965. (Annexure A-2) posts in SAG are to be filled by promotion of officers in JAG with 8 years regular service in the grade (including service if any in Selection Grade) or 7 years service in Group A posts in the service out of which at least four years regular service should be in Jr. Administrative Grade and having field experience or experience of investigation for two years in a post in J.A.G. and/or Senior Time Scale of the service.

4. A DPC under UPSC met in December, 1997 to consider promotions to 11 vacancies of SAG for the year 1996-97 and 13 vacancies of SAG for the year 1997-98. The DPC prepared separate yearwise panels for each of the aforementioned year, and after preparation of the same, the DPC recommended a consolidated panel of 20 officers for promotion to SAG. Applicant's name was recommended at Sl. No. 10 of the consolidated panel, whereas the names of Respondents 4 to 7 were recommended at Sl. No. 6, 7, 8 and 9 respectively of the consolidated panel.

5. Respondents are on record as stating that the DPC did not include applicant's name in the 1996-97 panel whereas the four officers mentioned above, though junior to him were included, because on the crucial date i.e. 1.10.96 he did not have two years field experience or experience of investigation in a post in J.A.G. and/or STS. As applicant had completed two years field experience as on 1.10.97 he

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became eligible for promotion in terms of the Service Rules and was accordingly included in the 1997-98 panel.

6. On applicants' behalf, reliance has been placed on Rule 6 (6) of the rules which reads as follows:

"If an officer ^{appointed} ~~appointed~~ to the post in the service is considered for the purpose of promotion to the higher post, all persons senior to him in the grade shall also be considered. Notwithstanding that they do not fulfill the prescribed qualifying service, if the shortfall is not more than 1 year, and provided they have successfully completed their probationary period, if prescribed."

7. Applicability of aforesaid Rule 6 (6) has been rejected by respondents vide impugned order dated 31.12.98, in which it has been pointed out that field experience is not considered as qualifying service for promotion purposes.

8. The question for adjudication is whether field experience can be considered as qualifying service.

9. We have considered this matter carefully. Col.4 in Schedule III of the aforementioned rules which have been framed under Article 309 of the Constitution lays down that posts in SAG are to be filled in the manner outlined in para 3 above. Although that Column is titled "Field of Selection and Minimum qualifying service for promotion", it is clear that the underlined word and between the

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required length of qualifying service and the prescribed period of field/investigation experience means that the length of qualifying service and filed/investigation experience have to be treated as separate entities and the candidate has to satisfy both requirements. Hence field experience cannot be considered as qualifying service to give applicant the benefit of Rule 6(6). Hence this ground fails.

10. It has also been contended by applicant that if he did not acquire the 2 years' filed/investigation experience on 1.10.96 it is not because of any fault of his. In this connection, in the reply to the supplementary affidavit of respondents filed by applicant on 15.10.2001 it has been averred by him that during the period 1977-95 he was kept at Delhi due to work requirements of CWC/Ministry of Water Resources, and not on his own request. At no point of time was he transferred out of Delhi to any field unit. Since he was handling important work assignments, the Ministry did not consider posting him outside Delhi. Even if he had been posted immediately on his representation in July, 1994, he would have completed the 2 years mandatory field posting by July, 1996, well ahead of the crucial date i.e. 1.10.96. It has been pointed out that it took respondents almost 6 months to post him outside Delhi in January, 1995 leading to a shortfall of ^{only about} ~~2 or more~~ 2 months or so in the 2 years field posting experience requirement as on 1.10.96. Furthermore on the actual date of the DPC he had

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acquired the 2 year mandatory field experience. Thus he should not be made to suffer for respondents' inaction in not giving him a field posting.

11. Respondents have not clarified why despite applicant's representation for a field posting made in July, 1994, it took them nearly 6 months to locate a field posting for him vide their order dated 11.1.95. Indeed if applicant had been given a field posting immediately on receipt of his representation in July, 1994 it is not unlikely that he would have acquired the mandatory 2 years field experience on the crucial date i.e. 1.10.96.

12. Under the circumstance we dispose of this OA with a direction to respondents to examine the circumstances under which applicant was not granted a field posting soon after receipt of his representation of July, 1994 and why it took them nearly 6 months to locate a field posting for him. If upon such examination, which should be by means of a detailed, speaking and reasoned order under intimation to applicant, respondents conclude that the delay in granting applicant a field posting was avoidable, they should consider whether applicant can be deemed to have completed the 2 years field experience on 1.10.96 and accordingly proceed in accordance with law thereafter. These directions should be implemented within 3 months from the date of receipt of a copy of this order.

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13. Applicant claims the same relief as claimed in OA No.1465/99 discussed above.

14. In this case however we note that applicant in his representation dated 29.11.94 (Annexure.R-3) had specifically stated that he was prepared to go on transfer outside Delhi only after August,1996 owing to his sons education and therefore he be allowed to continue in Delhi upto atleast August,1996 after which he could be transferred if absolutely necessary.

15. In view of applicant's own aforementioned request for retention in Delhi till August,1996, he cannot hold respondents, responsible for not posting him to a post which would have given him the mandatory 2 years field experience as on 1.10.96.

16. Hence this OA warrants no interference.

DIRECTION

17. Under the circumstance, OA No.1465/99 is disposed of in terms of para 12 above, while OA No.2570/99 is dismissed. No costs.

18. Let a copy of this order be placed in each case record.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)
/ug/

S.R. Adige
(S.R. Adige)
Vice Chairman (A)