

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

(12)

O.A. No. 2519/89.

New Delhi, this the 19th day of May, 1994.

SHRI J.P. SHARMA, MEMBER(J).

SHRI B.K. SINGH, MEMBER(A).

Shri S.S. Bhatia,  
Son of Shri Sujan Singh Bhatia,  
Chemist, Central Ground Water Board,  
Central Chemical Laboratory,  
4, Sapru Marg,  
Lucknow-226001, and  
resident of C-396, Indiranagar,  
LUCKNOW.

...Applicant

By advocate : Shri K.B.S. Rajan.

VERSUS

1. The Secretary,  
Ministry of Water Resources,  
Government of India, Shram Shakti Bhawan,  
New Delhi.
2. The Chairman,  
Central Ground Water Board,  
Ministry of Water Resources,  
Krishi Bhawan, New Delhi.
3. The Chief Hydrogeologist and Member,  
Central Ground Water Board,  
Jamnagar House, Man Singh Road,  
New Delhi-110011.
4. Shri Y.P. Kakker, Senior Chemist,  
Central Ground Water Board,  
House No.3005, Sector 32 D, Chandigarh.
5. Shri S.R. Tamta, Senior Chemist,  
Central Ground Water Board,  
S.W. Region, Raju Kshatriya Educational Trust  
Building, 31st Cross, 4th Block, Jainagar,  
Bangalore-11.
6. Shri K.M. Rajagopalan, Senior Chemist,  
Coastal Kerala Ground Water Project,  
Central Ground Water Board, Brother's House,  
Ulloore Junction, Trivendrum-695011.

...Respondents

By advocate : Shri V.S.R. Krishna.

O R D E R (ORAL)

SHRI J.P.SHARMA:

The applicant joined the respondents' service as

Senior Technical Assistant in Central Ground Water Board in August, 1963. He was promoted as Assistant Chemist in April, 1964 in Geological Survey of India. He was again transferred along with the post to Central Ground Water Board. Next promotional post is that of Chemist and where the recruitment rules provide 50% by promotion of the Assistant Chemists with 3 years regular service in the grade failing which by direct recruitment and 50% by direct recruitment with eligible qualifications, referred to in the recruitment rules. It transpires that in the year 1972 in the Annual Confidential Roll, there was an adverse reported duly conveyed to the applicant against which he made a representation which was ultimately expunged on 9-9-74. However, in the meantime, 2 direct recruits Y.P. Kakker and S.R. Tamta joined on the basis of notification of vacancies by direct recruitment on 11-5-1973 and 11-1-1974, respectively. The applicant was promoted as Chemist on 20-8-75. The respondents circulated a seniority list on 20-6-1984 and the applicant was shown junior to both respondent no.4 and 5. It appears that the applicant as well as the respondents no.4 and 5 during the course of their service career got further promotion as Senior Chemist but their relevant date is not available. It has also come during the course of the arguments that the applicant has been compulsorily retired as a measure of punishment inflicted in a departmental inquiry for overstaying in Libya which amounted to a misconduct.

2. The applicant in this application has prayed for quashing of the seniority list circulated provisionally by the letter dated 20-6-84 and final seniority list circulated by the letter dated 27-8-84. The applicant

has also claimed for consequential reliefs for redrawing the seniority list and for consideration of the applicant for inclusion in seniority and for promotion at the various stage.

3. The official respondents as well as private respondents filed separate reply to the original application and opposed the grant of the relief prayed for by the applicant. It is stated by the official respondents that the applicant was considered by the DPC in the year 1974 but was not considered fit and, as such, the UPSC has advertised the post of Chemist for direct recruitment and respondents no.4 and 5 were selected and given appointment according to the rules. The respondents no.4 Y.P.Kakker has also stated in the reply that after the expunging the remarks of the applicant, a review DPC was ordered which was held in February, 1978 to consider the applicant for promotion as Chemist on the basis of the order expunging the adverse remarks for the year 1971-72 and the said review DPC did not select him and it came to the same finding as the DPC held in 1974.

4. We heard the counsel for the parties at length. The learned counsel for the applicant referred to a decision of Aruna Choudhary vs. State of Bihar reported in 1984 SLJ(1) p.514. Their Lordships in that case have held that in case the aggrieved party has a clean chit after expunging of the remarks, then he should be re-considered for promotion with retrospective effect. In the present case, the question is not primarily of giving the applicant a promotion with effect from a date earlier to joining of respondent no.4 and 5. The applicant has claimed seniority over respondent no.4

and 5. Respondent no.4 and 5 joined the service as direct recruits and they were not of the promotee cadre like the applicant. Even then the case of the applicant was considered by the review DPC in February, 1978 as averred in the counter filed by respondent no.4 Shri Y.P.Kakker. The applicant, therefore, should not have any grudge on that account also.

5. However, we have also considered the case from another angle. The direct recruit becomes a member of the service the moment he joins and takes charge and he will get the benefit of seniority from that date. A promotee who has been selected subsequently cannot have a march over such a direct recruit who has joined earlier. Here is not a case of earning any officiating period by the promotee. Here the case is that the applicant was rightly considered by the DPC of 1974 because of adverse remarks of earlier year which was expunged subsequently after DPC had already submitted its recommendations. The recruitment rules provide 50% by promotion failing which by direct recruitment and the remaining 50% by direct recruitment. The recruitment rules have powers vested with the competent authority of relaxation of rules. When none of the promotees was eligible for whatsoever reasons, the vacancies were notified for direct recruitment on 100% basis. Respondent no.4 and 5 have joined as a result of selection notified for those vacancies. Thus, the applicant cannot claim any benefit of 50% quota nor of ante-dating his promotion as Chemist which was given to him in 1975 from a date earlier when respondent no.4 and 5 joined after due selection by UPSC.

6. There is another hurdle in the case of the applicant inasmuch as the applicant had a grievance

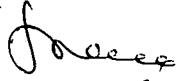
that respondent no.4 and 5 have been given appointment in the promotee quota ignoring the claim of the applicant at least at the time when on 9-9-74 the adverse remarks were expunged, he should have sought a judicial review in the competent forum after exhausting the administrative remedies. If he has not done so, he is at fault. Subsequent to that, higher promotions have taken place in the cadre upto the level of Senior Chemist of respondent no.4 and 5. The matters which are now settled cannot be unsettled after about 20 years and we are firm in our view by the decision of the Constitutional Bench in the case of DIRECT RECRUITS CLASS II ENGINEERS ASSOCIATION v. STATE OF MAHARASHTRA reported in I.R. 199c (2) Sc. 264.

7. In view of the above facts and circumstances, the application is totally devoid of merit and is dismissed, leaving the parties to bear their own costs.



(B.K.SINGH)

MEMBER(A)



(J.P.SHARMA)

MEMBER(J)

'KALRA'