

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO.535 OF 1997

Allahabad, this the 31st ~~th~~ day of May, 1999.

CORAM : Hon'ble Mr.S.K.Agrawal, Member(J)
Hon'ble Mr.G.Ramakrishnan, Member(A)

S.K.Chaudhary,
S/o. Sri S.N.Chaudhary,
Type- 4/6, N. S. I. Campus Colony,
KANPUR

.....Applicant

By Shri K.K.Tripathi, Advocate

Versus

1. The Union of India,
through the Secretary,
Ministry of Food,
Government of India,
New Delhi.
2. The Joint Secretary (Sugar),
Ministry of Food,
Govt.of India, Krishi Bhawan,
New Delhi.
3. The Director,
National Sugar Institute,
Kalyanpur, Kanpur.
4. Smt. Susma Nath, Joint Secretary,
Grievances Ministry of Food Common
Department of Food Krishi Bhawan,
New Delhi.
5. A.K.Gupta, Junior Technical Officer,
N. S. I. Kanpur.

.....Respondents

By Shri Ashok Mohiley, Advocate.

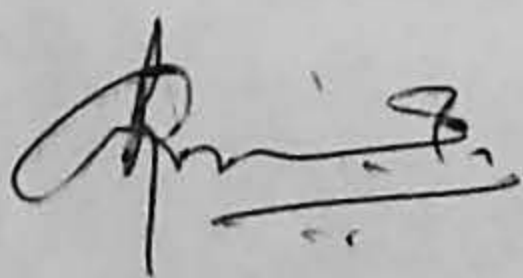
O R D E R

(By Hon'ble Mr.G.Ramakrishnan, Member(A))

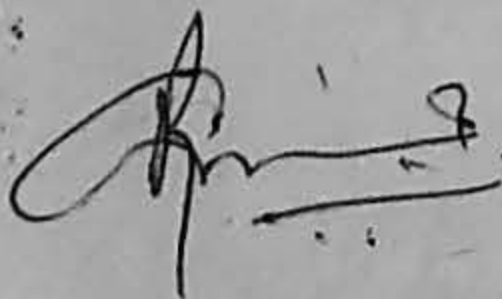
This is an application filed by the applicant
against the order dated 2-12-96 (Annexure - A-1) issued

by respondent No.3 to give current charge of Asstt. Professor Sugar Engineering and declaring respondent No.5 as overall incharge of the Experimental Sugar Factory, Kanpur.


2. The applicant claimed that he was the seniormost Assistant Engineer (Electrical) in the National Sugar Institute and was posted at Experimental Sugar Factory, Kanpur. He joined his service in the Institute on 4-6-90 having been selected by the UPSC . According to him the next higher promotional post is Senior Technical Officer (Engg.)/Asstt.Professor of Sugar Engineering in the scale of Rs.3000-5000. The applicant was recruited in the scale of Rs.2000-3500 which pay scale was changed to Rs.2200-4000 retrospectively w.e.f. 1-1-86. He claimed that he had worked in the National Buildings Construction Corporation in the pay scale of Rs.2200-4000 before joining the NSI, Kanpur and prior to that he had served in Private Sector for about three years, and he stated that at the time of filing the O.A. in June,1997 he had acquired about 11 years of experience, out of which more than 7 years was in the grade carrying the pay scale of Rs.2200-4000 and according to him he was eligible for promotion to the next higher grade post of Senior Technical Officer (Engg.)/Asstt.Professor of Sugar Engineering in the pay scale of Rs.3000-5000 as per the recruitment rules modified in 1994. The applicant claimed that he was the seniormost incumbent in the feeder cadre for promotion to the Sr.Technical Officer/ Asstt.Professor Sugar Engineering to be filled up by promotion. He claimed that in the absence of Asstt. Professor of Sugar Engineering/ S.T.O. (Engg.)



he used to perform the duties of the said post on a number of occasions in addition to the duties of his own post, which included maintenance of Electrical equipments of Experimental Sugar Factory, teaching/training etc. Applicant stated that one post of S.T.O.(Engg.)/Asstt.Professor of Sugar Engineering had been lying vacant in the National Sugar Institute, Kanpur for the previous six years. He claimed that there was nothing adverse against his work and conduct and he had been performing his duties efficiently and sincerely to the satisfaction of his superiors. He stated that he had made a representation dated 27-9-94 addressed to the Secretary, Ministry of Food, Govt.of India, New Delhi requesting that he may be promoted to the post of S.T.O.(Engg.) and that the same was illegally turned down on 24-11-94 according to the old service rules which required 5 years experience, and Degree of Bachelor of Engineering in Electrical or Mechanical. He stated that when the pay scale of Asstt.Prof. of Sugar Engineering was changed from Rs.3000-4500 to Rs.3000-5000 the Government also changed the recruitment rules by making a notification on 25-10-94. Thereafter the applicant claimed to have submitted another representation dated 12-9-95 addressed to the Director, National Sugar Institute, Kanpur requesting that proper steps be taken for promotion to the vacant post of S.T.O.(Engg.)/Asstt. Professor of Sugar Engineering so that he can avail the chance of due promotion to the said post. He followed it up with another representation dated 16-9-96 addressed to the Secretary, Ministry of Food, Govt.of India, New Delhi again requesting for promotion. He stated

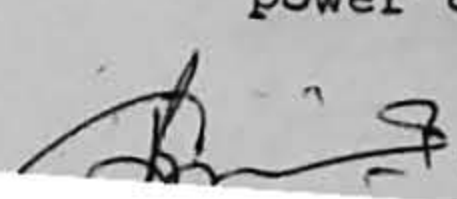


that he had not received any reply to this representation. Applicant claimed that the departmental head of the applicant namely Professor of Sugar Technology had strongly recommended the case of the applicant for promoting him to hold the current charge of post of S.T.O. (Engg.)/Asstt. Professor of Sugar Engineering but ignoring his earlier stand the acting Director, National Sugar Institute, Kanpur omitted to consider such recommendation and he had not been given the chance of holding current charge of post of S.T.O. (Engg.)/Asstt.Prof.of Sugar Engineering. The applicant further stated that he came across an office order No.Estt.16(1)/66-II, dated 2-12-96 issued on behalf of Director, National Sugar Institute, Kanpur stating that Sri A.K.Gupta respondent No.5 Junior Technical Officer (Sugar Technology) had been declared as Operational Incharge and occupier of the Experimental Sugar Factory, National Sugar Institute, Kanpur in which it had also been ordered that the entire staff strength of the Experimental Sugar Factory would come under the control of the said respondent No.5. The applicant claimed that this order was illegal, malafide, arbitrary and untenable, as the applicant was entitled to hold current charge of the post of Asstt. Professor of Sugar Engineering and occupier of the Experimental Sugar Factory as he was holding the post of Assistant Engineer (Electrical) and he was also the seniormost incumbent of his cadre and that Sri Gupta came from Technology strand and post of S.T.O. Engineering/Asstt.Prof. of Sugar Engineering was to be filled up by those having Engineering qualifications and having experience in the Engineering line. A copy of the order dated 2-12-96 was filed as annexure-A1 to the O.A. Applicant challenged this



order on the grounds that according to G.O. dated 24-1-93 respondent No.3 was not authorised to exercise the statutory powers, as he was appointed to perform only current duties of a post. Further applicant stated that according to the new recruitment rules the Asstt. Professor of Sugar Engineering could be filled up by Asstt.Engineer Electrical or Mechanical having Degree in Bachelor of Engineering and 7 years regular service in the scale of Rs.2200-4000. Further the cadre of respondent No.5 was different and he did not possess the required qualifications of Degree in Engineering, Electrical/Mechanical and 7 years continuous experience in the field of Engineering, so the impugned order was illegal, arbitrary and against the service recruitment rules and was liable to be set aside.

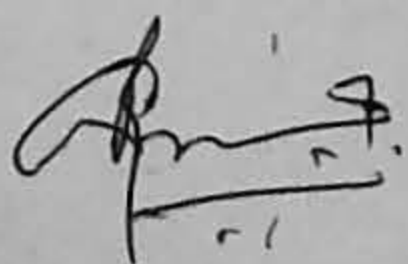
3. Further he stated that inspite of his representations and reminders to the respondents, respondent No.3 illegally ignoring the representations of the applicant and overlooking the recruitment rules notified on 25-10-94 gave illegally the charge of Asstt. Professor of Sugar Engineering to respondent No.5. As the order was wholly illegal and arbitrary, he prayed for the same to be set aside. Applicant further stated that giving overall charge to the respondent No.5 of the Experimental Sugar Factory was insulting and humiliating to him as the same was given to Junior Technical Officer who came neither in the cadre of Sugar Engineering nor possess the qualifications for Asstt. Professor of Sugar Engineering. ~~XXXXXXXXXXXX~~ Further the applicant took the ground that giving power to respondent No.5 of apprising the character



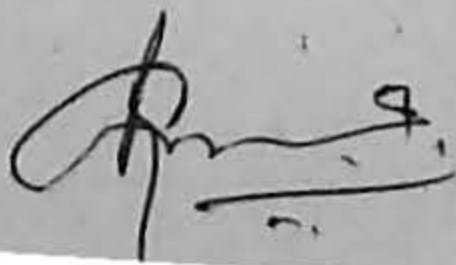
rolls of Assistant Engineer was against the statutory provisions of recruitment rules of appointment and the action of respondent No.3 was with ill motive and malafide intention to insult and humiliate the applicant. Applicant sought for the following reliefs-

- (1) To allow the application and set aside the order dated 2-12-96 passed by the respondent No.3.
- (2) Issue a direction to the respondent No.1 to give the charge of Asstt.Professor of Sugar Engineering to the applicant with all other powers which has been given to the respondent no.5.
- (3) Any other direction as this Hon'ble Tribunal may deem fit and proper on the circumstances of the case in the interest of justice.
- (4) Award cost of the application.

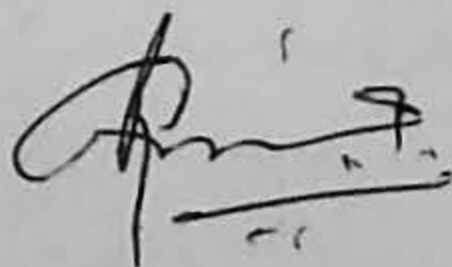
4. Respondents filed Counter Affidavit and resisted the claim of the applicant. While admitting that the applicant had completed 7 years of service as on 30-6-97 at National Sugar Institute, Kanpur in the scale of Rs.2200-400 they stated that as per existing recruitment rules (i) Asstt.Engineer Electrical/Mechanical with 10 years of regular service in the respective post in the scale of Rs.2000-3500 were eligible for promotion for the post of Asstt. Prof. of Sugar Engineering, and (ii) Lecturer in Sugar Engineering with 7 years of regular service in the pay scale of Rs.2200-4000 was eligible for the promotion for the post of Asstt. Professor of Sugar Engineering.



Further they stated that since the pay scale of Asstt. Engineer Electrical/Mechanical as a result of the decision of C.A.T. had been revised to Rs.2200-4000 from Rs.2000-3500 and thereby equating the same with the pay scale of Lecturer in Sugar Engineering the applicant became eligible for promotion to the post of Asstt. Professor of Sugar Engineering. However, this needed amendment to the recruitment rules and since there was a temporary ban relating to revision of directives, action had not been taken to revise the recruitment rules. Further they stated that there was no record to substantiate that the applicant was entrusted with additional duties of Asstt. Professor of Sugar Engineering. They stated that there was a vacancy of Asstt. Professor of Sugar Engineering which could not be filled up for want of finalisation of revised recruitment rules within a period of one year of the occurrence of the vacancy and by the time the recruitment rules could be revised, the post became more than one year old and had to be revived. The post had not been revived and as such there was no vacancy of Asstt. Professor of Sugar Engineering. The respondents denied the averments of the petitioner that he was performing his duties efficiently and stated that his behaviour was not at all upto the mark, in support of which they annexed a number of documents with the C.A. While admitting that post of Asstt. Prof. of Sugar Engineering was vacant for the last six years respondents stated that the Ministry vide letter dated 13-10-94 had observed that the applicant was not eligible for the promotion to the next higher grade as he had not put the required number of years of



service as prescribed in the recruitment rules. The Institute had also advised him of this on 24-11-94. They also denied that officers of Instrumentation Division and Organic Chemistry Division were given current duty charge as mentioned by the applicant. While admitting that the office order dated 2-12-96 was issued, respondents stated that at that time both the applicant and respondent No.5 were in the pre-revised scale of Rs.2000-3500 and respondent No.5 having joined the post of Junior Technical Officer (Sugar Technology) on 25-8-81 was having longer length of service than the applicant. Further at that time when the office order was issued, the respondent No.5 was the seniormost officer in the Experimental Sugar Factory and, therefore, according to the respondents the order issued was neither illegal nor malafide, nor arbitrary nor untenable. They stated that the applicant by virtue of the judgement of the Bench of this Tribunal and on revision of pay scale became entitled to the pay scale of Rs.2200-4000 from the date of his joining. It was also stated that respondent No.5 who was holding the charge of the Experimental Sugar Factory from 2-12-96 had been promoted to the post of Asst.Prof. of Sugar Technology w.e.f. 7-7-97 after having been recommended by the D.P.C. The said post of Asst. Prof. of Sugar Technology was in the pay scale of Rs.3000-5000. They stated that the petitioner was not entitled to any of the reliefs because of the facts and circumstances stated by them and the O.A. was liable to be rejected.



5. Applicant filed rejoinder and reiterated the pleas made by him in the original application.

6. There was further exchange of C.A. and R.A. as the applicant filed a Stay application during the pendency of the O.A.

7. Heard the learned counsel for the parties. Learned counsel for the applicant took us through the pleadings made in the O.A. He and the applicant in the written arguments submitted, relied on the ratio of the judgement of Hon'ble Supreme Court in the case of Govt. of A.P. and another Vs. A.V. Venugopala Rao reported in 1994 (28) ATC 783, Govt. of India order No. MHA O.M.No. 1/1/55-RPS dated 1-2-55, Subpara (ii) that officiating appointment should be made according to the seniority list. He argued that the applicant being the seniormost eligible candidate in the feeder cadre his claim was genuine and bonafide. He contradicted the respondents' statement that the respondent No.5 was senior to the applicant. He stated that both applicant and the respondent No.5 belong to different cadres. He cited Supreme Court ruling given in the case of Somraj & Others Vs. State of Haryana reported in (1990) 13 AT.C. 702 where the Hon'ble Supreme Court held -

"Two separate cadres, separate seniority, the employees of other cadre are not entitled for common seniority."

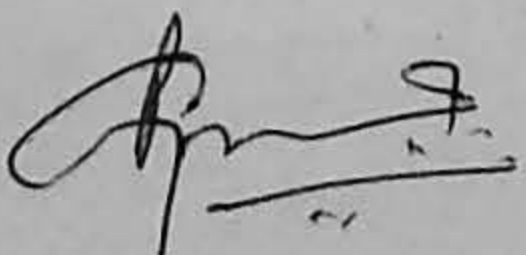
8. The applicant also acted on the ruling of the Hon'ble Supreme Court in the case of Union of India Vs. Ravi Shankar & another reported in (1998) 3 SCC 146, wherein the Hon'ble Supreme Court held -

"Those not possessing requisite qualification have no such right of appointment."

Further the applicant submitted that the old communications which were filed alongwith the C.A. was misleading information regarding the conduct of the applicant. He claimed that except the single annual confidential report of the year 1992 all his character rolls were upto the mark and the remaining communications were irrelevant. He submitted that minor penalty did not constitute a bar to eligibility and consideration for promotion in support of which he referred to Deptt. of Personnel O.M. dated 15-5-71, 13-5-71 and 7-2-61 as also the order of the Guwahati Bench of this Tribunal in C.N.Phukan Vs. Union of India & Others reported in 210 Swamy's CL Digest 1995/1. He submitted that if the applicant's earlier service was taken into account he would be eligible for promotion to the post of Asstt. Prof. of Sugar Engineering / S.T.O.(Engg.) for which he relied on C.A.T./Madras Bench order in the case of O.A. 1854/93 decided on 5-4-95 P.Vintirya Vs. U.O.I. which held that previous service in the same grade could be taken as a consideration for the promotion to the next higher grade.

9. Learned counsel for the respondents took us through the various pleadings made in the C.A. which had already been brought out by us in paragraph-3 above.

10. We have given careful consideration to the submissions made by the learned counsel for the parties



as well as rival pleadings and have perused the whole record.

11. We have considered the various citations submitted by the learned counsel for the applicant and made in the written arguments by the applicant. We are of the considered view that in the facts & circumstances of this case, the ratios cited will not be applicable.

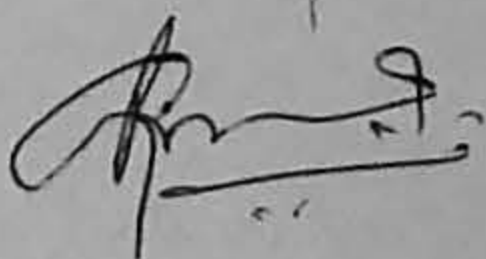
12. The first relief sought for by the applicant is to allow the application and set aside the order dated 2-12-96 passed by respondent No.3. This office order reads as under :-

"With immediate effect Sri D.Mukherjee, A.P.S.E. ESF is transferred to Advisory Division.

Sri A.K.Gupta, JTO (ST) is hereby declared as Operational incharge and occupier of the Experimental Sugar Factory. Thus the entire staff strength of E.S.F. shall work under the control of Sri A.K.Gupta, JTO(ST). Sri A.K. Gupta shall perform his duties under the direct control and advice of Sri S.K.Gupta, P.S.T. However, as and when required for engineering aspects Sri A.K.Gupta may seek guidance and advice from R.K.Behl, PSE(Fxth).

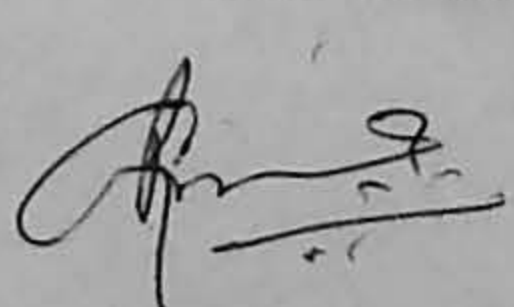
This issues with the approval of the Director."

It is very clear from the above order that this is not a promotion order. The respondents have avered that on 2-12-96 Sri A.K.Gupta respondent No.5



had longer length of service (though they have used the word 'senior to') than the applicant as both were in the same grade of Rs.2000-3500 on that day, Sri Gupta having been appointed in 1981 and the applicant having been appointed in 1990. The respondents have also stated that respondent No.5 has been promoted to the grade of Rs.3000-5000 w.e.f. 7-7-97 as Asstt. Professor of Sugar Technology. Admittedly this would indicate that respondent No.5 is in a higher grade than that of the applicant. Therefore the applicant by no stretch of imagination can say that he is senior to respondent No.5 at present. Therefore, we are unable to accede to this relief sought for by the applicant as the respondents have acted in a fair manner posting the person with longer length of service as the incharge of the Experimental Sugar Factory.

13. The second relief sought for by the applicant is for issuing a direction to respondent No.1 to give the charge of the Asstt.Professor of Sugar Engineering to the applicant with all other powers which had been given to respondent No.5. Respondents have stated that due to non filling of this post from 1989 onwards due to non-finalisation of the revised recruitment rules this post has lapsed. It had been averred in the C.A. that efforts were being made to revive this post. As it had been shown as a post to be filled by promotion, we direct respondent No.2 to take a decision in the matter regarding the revival of the post within a period of four months from the date of receipt of this order.

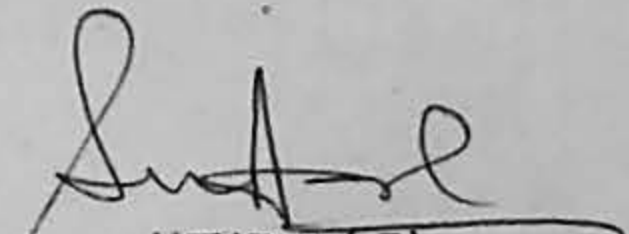


14. We find that even if the post is revived as directed in para 13 above, unless Recruitment Rules finalised in 1994 (which was prior to the revision of the pay scale of A.E. Electrical/Mechanical) are modified, the applicant cannot claim promotion to the post of Asstt. Professor of Sugar Engineering even on completion of 7 years of service. We direct the respondents to carry out the necessary modifications within four months from the date of receipt of copy of this order.

15. As regards applicant's plea that his experience outside the National Sugar Institute may be taken into account for the purpose of promotion as APSE/STO(Engg.) we direct the respondent No.2 to take a decision in the matter.

16. We dispose of this O.A. with the above directions given in paras 13,14 and 15 with no order as to costs.


31/5/99
MEMBER(A)


MEMBER(J)

/satya/