

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 350/00249/2014

Date of order: 24.3.2024

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Pranab Kumar Saha,
Son of Sri Tarapada Saha,
Aged about 62 years,
Residing at 408/5, Ashoknagar,
Police Station - Ashoknagar,
District - 24-Parganas (North)
And working as Section Officer (General)
In the Council of Scientific and Industrial Research (CSIR),
Poly-Technology at Kolkata.

..... Applicant

- VERSUS -

1. Union of India,
Service through the Secretary,
Ministry of Science and Technology,
Anusandhan Bhawan,
Rafi Marg,
New Delhi - 110 001.
2. The Director,
Central Glass & Ceramics Research Institute
Having its
Office at 196, Raja S.C. Mullick Road,
Kolkata - 700 032.
3. The Director,
Indian Institute of Chemical Biology,
Having its office at
4, Raja S.C. Mullick Road,
Jadavpur,
Kolkata - 700 032.

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4. The Administrative Officer,
Indian Institute of Chemical Biology,
Having its Office at
4, Raja S.C. Mullick Road,
Jadavpur,
Kolkata - 700 032.

5. H.N. Bonia,
Residing at near RRL,
Gate No. 2, Post Office - Pulibor,
Jorhat - 785006.

6. Bishen Lal,
Residing at J-1/51,
Budh Vihar,
New Delhi - 110 086.

7. Mrs. Sampoo Sengupta,
Working as Section Officer at
Indian Institute of Chemical Biology,
4, Raja S.C. Mullick Road,
Jadavpur,
Kolkata - 700 032.

.. Respondents

For the Applicant : Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the Respondents : Mr. J.K. Unnikrishnan, Counsel
Mr. K. Chakraborty, Counsel
Mr. P. Sanyal, Counsel

ORDER

Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal in second stage litigation under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

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"a) To quash and/or set aside the impugned speaking order issued by the respondent authority dated 3.12.2013 being No. 3-20/20/2010-E.I issued by the Deputy Secretary, Council of Scientific & Industrial Research, New Delhi whereby and whereunder the claim of the applicant has been rejected by not following the solemn order passed by this Hon'ble Tribunal dated 8.8.2013 in O.A. No. 210 of 2010 being Annexure A-24 of this original application;

b) To quash and/or set aside the impugned CSIR letter dated 26.6.2009 regarding antedating the promotion of the applicant to the post of Section Officer (General) when his junior has got the same and impugned office memo dated 10.8.2009 issued by the Administrative Officer, Indian Institute of Chemical Biology being Annexure A-16 and A-18 of this original application;

c) To pass an appropriate order directing the respondent authority to antedating your applicant's promotion to be post of Section Officer (General) with retrospective effect from date when his juniors has got the same with effect from 1.10.1986 and to give all consequential benefits;

d) To pass an appropriate order directing the respondent authority to consider the promotion of your applicant as Section Officer (General) with retrospective effect from date when his juniors has got the same by considering his DPC promotion as arisen on 1.10.1986 in which your applicant is very much entitled to for the same;"

2. Examined pleadings, documents on record, CSIR, Administrative Service (Recruitment & Promotion) Rules, 1982 along with the judgment and orders cited by Ld. Counsel.

3. The applicant's case, in brief, is that, the applicant, an UDC (re-designated as Assistant General Gr. II) was promoted as Assistant (General) Gr. I through the Departmental Test Quota on 9.5.1988, and, that, one Shri Bishan Lal, UDC (private respondent No. 6), who was admittedly junior to the instant applicant in the seniority list of UDCs as per seniority list dated 1.2.1988 (Annexure A-1 to the O.A.), was promoted as Assistant (Gen.) Gr. I through DPC on 1.2.1989. Both were promoted in the vacancy year of 1988-89.

As per DoPT's O.M. dated 3.7.1986, the Department Promotion Committee (DPC), the Department Test Quota (DTQ), the Direct Recruitment Quota (DRQ) would be determined according to rotation of quota vacancies

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reserved for such mode of recruitment in the Recruitment Rules (Annexure R-1 to the reply).

Promotion to the post of Assistant (G) Gr. I is regulated by the provisions of Part - II Section II (5) of Administrative Services (Recruitment & Promotion) Rules, 1982. In terms of such Rules, the post of Assistant (G) Gr. I is filled up 50% by promotion from Assistant (General) Gr. II, 25% by limited departmental competitive examination and 25% by direct recruitment. The inter se seniority of the Assistant (G) Gr. I would be determined on the basis of plotted ratio of 2:1:1 through DPC, DTQ and DRQ in terms of above rotation of quota vacancies.

An All India Seniority List of Assistant (G) Gr. I (as on 1.1.2002) was prepared for the purpose of promotion to the post of SO (G) (Annexure R-2 to the reply). In 2004, the applicant had objected (Annexure A-9 to the O.A.) to positioning of private respondent No. 6 above him in the said seniority list. His prayer was, thereafter, regretted by CSIR vide their communication dated May 3, 2006 at Annexure A-10 to the O.A. stating that the seniority of the candidates promoted through DPC is fixed on the basis of their dates of joining whereas the seniority of the candidates promoted /appointed through DTQ/DRQ is fixed on the basis of their merit in panel, and, that, the applicant's request is not tenable as because seniority had been fixed with reference to his place in the merit panel of DTQ and his name has been plotted in accordance with the requisite instructions in this matter. The applicant, thereafter, once again represented at A-11 to the O.A. vide which, while reiterating that he was senior to private respondent No. 6, he had underlined that while he had been promoted in 1988 under DTQ and Sri Lal, private respondent No. 6 had been promoted in 1989 under DPC, he was penalized for having qualified in the departmental examination (DTQ), and not

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having been promoted in the DPC quota prior to private respondent No. 6, upon which his seniority would have been retained (Annexure A-11, A-12 and A-13 to the O.A.).

The respondents, thereafter, replied to his representations vide their reply at Annexure A-14 to the O.A. stating that his claim was not admissible as per rules. The applicant continued to object to such decision vide his representation at Annexure A-15 to the O.A. to be rejected vide response dated A-16 to the O.A. The applicant, once again, reiterated his claim at Annexure A-17 to the O.A., upon which, vide Annexure A-18 to the O.A., he was clearly informed that as the decisions of the authorities have been formally communicated to him vide their response dated 26.6.2009 (Annexure A-16 to the O.A.), further representations on the same subject cannot be entertained.

Being aggrieved with the non-consideration of his representations, the applicant approached this Tribunal in O.A. No. 350/00210/2010 (*Pranab Kumar Saha -vs.- Union of India & ors.*). This Tribunal disposed of the said O.A. by directing the respondents to clarify as to how, on the basis of instructions of DoP&T dated 3.7.1986, a person promoted through departmental quota in 1988 would be assigned seniority below a person inducted under departmental promotion quota (DPC) in 1989, particularly, when the incumbent inducted under DPC was admittedly junior to the applicant by virtue of his date of appointment in the feeder grade, and how assignment of seniority on the basis of merit of a previous year, be affected by assignment of seniority on the basis of date of joining in subsequent year.

The respondents, in compliance to such orders, issued a speaking order at Annexure A-24 to the O.A. vide which they regretted the claim of the

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applicant, upon which, the applicant had approached this Tribunal, in the instant litigation, challenging, inter alia, the said speaking order.

4. The applicant would rely on the orders of this Tribunal in its Bombay Bench in *O.A. No. 880 of 1989 [(P.M. Pail (Kum.) v. Union of India & ors.)]* in which the Tribunal had held that delay in holding DPC in time due to misinterpretation of court's order cannot deny promotion to eligible candidate from due date with retrospective monetary benefits and promotion with due seniority, and, also on this Tribunal's orders in Guwahati Bench in *O.A. No. 222 of 1993 dated 6.6.1996 (Morgan D. Syiem v. Union of India & ors.)* by which this Tribunal had ordered that the official should be promoted on the due date as per rules, even if the DPC met at a later date.

Further reliance has been placed on this Tribunal's directions in Principal Bench in *O.A. No. 2424 of 1995 dated 19.4.1996 (D.S. Malik & ors. v. Union of India & ors.)* in which it was held that if a person has been promoted, but not on the date on which he should have been promoted due to some administrative error, then the employee should be assigned correct seniority vis-à-vis his juniors already promoted irrespective of the date of promotion.

4. The respondents, would, primarily rebut the claim of the applicant on the following grounds:-

- (i) That, the All India seniority list of Assistant (G) Gr. I has been prepared in accordance with the Administrative Service (Recruitment & Promotion) Rules, 1982 of CSIR, and, that, in the seniority list of 2002, private respondent No. 6 was admittedly senior to the applicant.

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(ii) That, the contention that had he not been selected through DTQ for the purpose of promotion to the post of Assistant (G) Gr. I, he ought to have been senior to private respondent No. 6 in the post of Assistant (G) Gr. I through an earlier DPC has no logic as the applicant cannot be considered for promotion to the post of Assistant (G) Gr. I by interchanging and/or deviating from the settled mode of promotion, and, that, such decision was conveyed to the applicant repeatedly by the respondent authorities vide their letters dated 30.1.2008 as well as 26.6.2009 as annexed in the O.A.

(iii) That, based on the All India seniority list of Assistant (G) Gr. I, the private respondent No. 6 was promoted to the post of SO (G) in 2006 and the applicant was promoted in 2008.

(iv) That, the promotion accorded to the private respondent No. 6 vis-à-vis the applicant had reached finality following the seniority list of 2002, and, that, the said seniority list was not challenged by the applicant at the material point of time, namely, within 8th February 2002 as per the circular dated 21.1.2002 at Annexure R-2 to the reply.

(v) That, as per DOPT O.M. dated 3.7.1986 (Annexure R-1 to the reply) as well as per the CSIR Administrative Service (Recruitment and Promotion) Rules, 1982, (ASRAP) Rules, the ratio followed is 2:1:1 for 2 post of DPC:1 post of DTQ: 1 post of DRQ. The same has been scrupulously followed as evident from the seniority lists.

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In October, 1986, a number of additional posts of Assistants had been created by upgradation of the posts of UDCs on Cadre Review and it was provided that the promotions against the newly upgraded posts would be made in accordance with the provisions of the CSIR Administrative Service (Recruitment & Promotion) Rules.

The rules provide for promotions to take effect from the date of issue of orders on the recommendations of the DPC.

(vi) Promotion from the post of Assistant to the next higher post of Section Officer was based on the date of seniority of the incumbent as Assistant in the Seniority List, it was decided vide CSIR letter No. 17(157)/86-E.II dated 11th June, 1987, that the promotion of UDCs to the post of Assistants on cadre review will be made effective notionally w.e.f. 1st October, 1986 so as to safeguard their seniority. The promotion to the additional posts would be through DPC to the newly created additional posts of Assistants as reflected in the Seniority List of 2002.

That, once the DPC promotions to the newly created posts on account of cadre review were over, the ratio as fixed in accordance with the (ASRAP) Rules in the ratio of 2:1:1 (for 2 posts of DPC : 1 post of DTQ : 1 post of DRQ) has been followed while preparing the seniority list of 2002.

(vii) That, the applicant was offered an opportunity of an appointment with the Joint Secretary (Admn.) CSIR as advised vide CSIR letter dated 05.03.2014 (at R-4 of reply of the respondents), but the applicant failed to avail of such opportunity.

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(viii) Having joined the post of Assistant under the Departmental Test Quota (DTQ), the plaintiff cannot, at this stage, seek retrospective promotion under DPC.

The respondents would also furnish, in support the ratio in *Shiba Shankar Mohapatra & ors. v. State of Orissa & ors. Civil Appeal Nos. 7537-7541 of 2009* in which the issue before the Hon'ble Court was regarding the principle of seniority for preparation of a combined gradation list of SIs (St) and SIs (G). The Hon'ble Apex Court, while holding that the Hon'ble High Court had failed to decide on the said issue, directed preparation of a combined list in conformity with eligibility criterion. The Respondents would particularly highlight the ratio,

"....the settled legal proposition which emerges is that once seniority is fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In *K.R. Mudgal, 1987 (1) SLJ 221 (SC)*, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed."

5. The present dispute on inter se seniority is with regard to a person promoted by a departmental test (DTQ) in 1988 and another promoted on recommendation of DPC in the subsequent year. We have heard both Ld. Counsel, examined documents on record, and perused the cited judicial pronouncements to infer as follows:-

(i) That, the CSIR Administrative Service (Recruitment & Promotion) Rules, 1982 lay down the following regarding uniform date of promotion:-

(3.2.3) Uniform date of promotion:

While conveying approval to the additional posts of Assistants created by up-gradation of the posts of UDCs on cadre review vide D.O. letter of even number, dated 1st October, 1986, it was provided that the promotions against the newly upgraded posts

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will be made in accordance with the provision of the CSIR Administrative Service (Recruitment & Promotion) Rules.

In accordance with the provision of the rules, the promotions take effect from the date of issue of the orders on the recommendations of the DPC."

(ii) In the speaking order (Annexure A24 to the O.A.), the respondents have attempted to respond the issues raised by the Tribunal as follows:-

(a) As per CSIR Administrative Services (Recruitment & Promotion) Rules, recruitment to the vacant posts of Assistant (Gen) Gr. I is made in the following manner : 50% by DPC, 25% by DTQ and 25% by DRQ. This implies recruitment to the vacant posts of Assistant (Gen) Gr. I is made in the ratio of 2(DPC) : 1 (DTQ): 1(DRQ). Further, CSIR follows financial Year as the 'Vacancy Year'. In the Year 1988-89, vacant posts of Assistant (General) Gr. I were filled up through both DPC & DTQ. Shri Saha qualified the Departmental Test and joined on the post of Assistant (Gen.) Gr. I under DTQ on 9.5.1988. Shri Bishan Lal was appointed to the post of Assistant (Gen.) Gr. I through DPC and he joined the post on 1.2.1989. Both the persons were appointed to the post of Assistant (Gen.) Gr. I in the same vacancy year i.e. 1988-89.

(b) For fixing the seniority of Assistant (Gen.) Gr. I including that of S/Shri Saha and Bishan Lal appointed during the vacancy year 1988-89, the following method was adopted so as to maintain the ratio of 2 (DPC):1(DTQ):1(DRQ)

DPC
DPC
DTQ
DRQ
DPC
DPC
DTQ
DRQ

The seniority in the above manner was fixed with reference to the modes of recruitment during the vacancy year 1988-89, as also the position on the panel/merit list/select list of respective quota i.e. DPC, DTQ and DRQ, irrespective of the date of joining.

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(c) The All India Seniority list of Assistants (G) Gr. I, was issued vide CSIR letter No. 3-33(125)/2002-E.I dated 08.08.2001 in which names of persons who had joined upto 31.3.1988 were included. Thereafter, tentative Seniority List of Assistants (G) Gr. I, including names of Shri Saha and Shri Bishan Lal, who had joined upto 1991 was notified vide CSIR letter No. 3-33(125)/2002-E.I dated 23.01.2002. The final seniority list was issued vide CSIR letter No. 3-33(125)/2002-E.I dated 12.8.2002, after considering the representations and objections against the tentative seniority list, containing names of Shri P.K. Saha (at Sl. No. 127) and Shri Bishan Lal (at Sl. No. 99). The placement of the incumbents in the list was as per the aforesaid DOPT O.M. dated 3.7.1986. The names of incumbents appointed in the year 1988-89 were plotted on the seniority list in the ratio of DPC (2):DTQ(1):DRQ(1). Since there were no more appointees of DPC & DRQ beyond Sl. Nos. 123, all appointees of 1988-89 under DTQ were plotted enbloc.

(d) The Final Seniority list issued on 12.08.2002 was never contested by Shri Saha and thus it attained finality. Lists in the subsequent years viz. 2004, 2006 & 2008 were based on the placements done in the seniority list dated 12.08.2002."

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(iii) The seniority list as on 1.1.2002 (Annexure R-2 to the reply), was circulated with a direction that objections, if any, had to be preferred within 8 February, 2002.

The applicant has admitted that he has received the final seniority list of 2002 on 2.9.2002.

He had objected to such seniority list at Annexure A-9 to the O.A., namely, on 5.5.2004 which is way beyond the deadline of February, 2002 and also much after receiving the list in September, 2002. There are no good reasons to explain the delay of nearly two years in objecting to the seniority list. Hence, the ratio of *Shiba Shankar Mohapatra (supra)* applies.

(iv) Further placements were made in years 2004, 2006 and 2008 from the said seniority list dated 12.8.2002 but, in the absence of corroborating documents, the applicant had reportedly not raised any objections to further placements done in accordance with the said seniority list of 2002.

(v) That, the names of all incumbents promoted in the financial year 1988-89 were plotted in the seniority list in the ratio of DPC(2):DTQ(1):DRQ(1). Once the promotees/appointees of DPC, DTQ and DRQ, were exhausted as per the ratio, all remaining promotees of 1988-89 under DTQ were plotted enbloc w.e.f. Sl. No. 124 of the list.

(vi) Upon an examination of the seniority list of 2002 at Annexure R-2 to the reply, we find that the private respondent No. 6 is enlisted at Sr. No. 109 and the applicant at Srl. No. 138. While respondent No. 109 was promoted as per DPC quota, the applicant was promoted under DTQ quota. We also find that, an

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incumbent at Srl. No. 130, Smt. Suman Lata Gaur was promoted under DTQ quota on 12.4.1988, prior to that of the applicant but was placed below private respondent No. 6. Similarly, the incumbent at Srl. No. 137, Shri A.K. Handa had been appointed on 11.4.1988 (prior to the applicant), and he was also placed below private respondent No. 6. Therefore, it is obvious that the dates of promotion against newly upgraded posts reflect the dates of issue of orders upon recommendations of DPC as provided under the Rules, exhaustion of the DTQ, DPQ quota as per the prescribed ratio and further enlistment of DTQs as per their relative position in the DTQ merit list.

The applicant therefore has not been discriminated with reference to similar circumstanced employees who had also qualified through DTQ. The applicant has cited the ratio in *P.M. Pail (supra)*, *Morgan D. Syism (supra)* and *D.S. Malik (supra)* to claim that his promotion should be ante dated given his eligibility in earlier DPCs. We find, however, that the applicant was promoted against departmental examination on 9.5.1988 and that his request for commensurate pay and allowances w.e.f. 1.10.1986 to 8.5.1988 was turned down by authorities vide communication dated 7.3.1991 at Annexure A-6 to the O.A.

The applicant claims that he is entitled to notional promotion w.e.f. 1.10.1986 vide orders dated 20.5.1988 at Annexure A-5 & A-7 to the O.A. but in the absence of impleadment of CSIR, New Delhi in the array of respondents, the grounds of withdrawal dated 7.10.1988 as referred to in earlier O.A. 350/210/2010 cannot be deciphered at this stage. It is also not the applicant's case that he had challenged such withdrawal of DPC promotions vide orders dated 7.10.1988 either by administrative requests or in seeking judicial

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intervention. The applicant would allege that he would not avail of the opportunity to meet JS (CSIR) despite notice of intimation, as TA/DA was not sanctioned to him, towards such travel. The applicant has not been able to establish as to whether TA/DA was permissible in the context of meeting the competent authority for redressal of his grievances.

6. It is a settled principle of law that even though an employee cannot claim to have vested right to have a particular position in any grade, he has a right to have his seniority determined in accordance with rules which were in force when he was borne in that cadre.

In *M.A. Haque (Dr.) vs. Union of India*, (1993) 2 SCC 213 at 219, the Hon'ble Apex Court had emphasized that rules would have to be followed strictly and not in breach.

In *Baidyanath Jena v. Union of India*, (1998) 7 SCC 727, it was ruled that when a criteria is laid down in the rules, the same will have to be followed.

The Hon'ble Apex Court in *H.V. Pardasanie v. Union of India*, 1985 (2) SLR 43 has held as follows:-

" There is no dispute that in the absence of any special provision regulating determination of seniority, length of continuous service in any particular grade would be the basis of determining seniority in that grade. The legal position is equally settled that if a rule prescribes a method of fixation of inter se seniority, the normal practice would not apply and the rule shall prevail, obviously subject to its constitutionality."

7. Based on the strength of his length of continuous service, the applicant would normally have appropriated a position senior to that of the private respondent No. 6. In the context of Para 3.2.3 read with the CSIR Administrative Service (Recruitment & Promotion) Rules, 1982, however, inter se

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seniority between the applicant and the private respondent No. 6 would be determined not from the date of appointment as Assistant (G) Gr. II but w.e.f. the date of promotion as Assistant (G) Gr. I as per the recommendations of DPC for newly upgraded posts.

If the CSIR Administrative Service (R&P) Rules, 1982 (supra) have been successfully assailed in any judicial fora, such facts have not been brought before us on record.

As reiterated in *Union of India v. N.R. Sundram*, 1982 (2) SLR 393 (Del-DB), that, although it is a generally accepted principle to compute seniority on the basis of length of continuous service, if the rules make it irrelevant, then the rules must be applied.

In the instant case, the applicant's original position of seniority in the gradation list of 1988 was altered in the gradation list of 2002 by virtue of the CSIR Administrative Service (Recruitment & Promotion) Rules, 1982, and, particularly, para 3.2.3 on the uniform date of promotion and abidance to DPC: DTQ: DPQ quota as per DoPT's O.M. dated 3.7.1986, on "Consolidated orders on seniority". In such backdrop, we would be guided by the Hon'ble Apex Court in *Prem Pal v. Union of India*, 1985 (2) SLR 233 which held that, if there has been substantial compliance in implementing the Scheme under the rules, judicial interference is not called for.

Accordingly, as the CSIR rules are not under challenge and the applicant has not been able to make out a case that there was any deviation in implementation of the rules, particularly, para 3.2.3 thereof, as well as in the

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provisions of DoPT's O.M. dated 3.7.1986, this Tribunal does not consider it necessary to intervene in the gradation list of 2002, the regret letters dated 28.6.2009, 10.8.2009 as well as the speaking order dated 3.12.2013.

The applicant's claim to DPC promotion w.e.f. 1.10.1986 is also belied as he had failed to challenge the orders dated 7.10.1988 vide which, his promotional orders w.e.f. 1.10.1986 upon recommendations of the DPC, stood as withdrawn.

8. The O.A. is thus dismissed. No order as to costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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