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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 1152 of 1987

Dhirendra Kumar Mukhopadhyay Applicants.

Versus

Union of India and others Respondents.

Hon'ble Mr. Mahraj Din, Member-Judicial
Hon'ble Mr. S. Das Gupta, Member-Administrative

(By Hon'ble Mr. S. Das Gupta, A.M.)

In this Original Application filed under Section 19 of the Administrative Tribunal Act, 1985, the petitioner has prayed that the respondents be directed to consider him for regular ~~appointment~~^{Promotion} and give him consequential benefit from 5.12.1986 when his alleged juniors were given regular promotion.

2. Admitted facts in this case are that the petitioner ~~was~~ initially joined on 23.6.1961 as Silt Analyst (later redesignated as Research Assistant) in the erstwhile Ganga Discharge Circle of Ganga Basin Water Research Organisation (for short, G.B.W.R.O.). On 12.9.1978 he was promoted as Senior Research Assistant on Adhoc basis. Vide Government of India, Ministry of Agriculture and Irrigation notification dated 3.11.1978 G.B.W.R.O. was merged with the Central Water Commission (for short, C.W.C.). The petitioner continued in the post of Senior Research Assistant on Adhoc basis even after merger. On 5.12.1986, four persons who were shown as junior to the petitioner in the seniority list of Research Assistants issued by the respondents on 31.3.1986 and who were working in C.W.C. prior to the merger were given

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regular promotion as Senior Research Assistant vide order dated 5.12.1986 issued by the respondent no. 2 (Annexure- A -S) . The petitioner submitted a representation to the respondent No. 2 stating that his juniors have been promoted and he should, therefore, be considered for promotion as Senior Research Assistant on regular basis. After repeated reminders, the representation was turned down stating that the promotions made were with regard to posts available prior to merger of G.B.W.R.O. with C.W.C.

3. The respondents in their counter have submitted that the impugned promotions were given against posts which were available with C.W.C. prior to merger which could not be filled basically on account of the fact that the matter of merger of C.W.C. with G.B.W.R.O. and others was on the anvil. Such promotions were made in line with the decision taken in the Office Council Meeting held on 11.11.1986 in C.W.C. in which statistical and Scientific Staff Association of the C.W.C. of which applicant among other are part and pareel participated . The decision taken in this meeting was to follow the advice given by the ministry that the pre-merger posts which were available in the pre-merger cadres could now be filled from amongst eligible personnel of the respective organisations, if the filling of such vacancies on regular basis was held up only due to being linked up with the question of merger and not for any other reason. They have also averred that the promotion of the applicant in G.B.W.R.O. prior to merger on adhoc basis was erroneous.

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4. As regards the adhoc promotion to the applicant as Senior Research Assistant in G.B.I.R.O. We are unable to appreciate the contention made by the respondents that such promotion was erroneously given by C.B.U.R.O. Which was a Government of India department as much as C.W.C.. Now that C.B.W.R.O. has merged into C.W.C. and lost its identity, it is in-appropriate for C.W.C. to try to blame a non-existent organisation which is now a component of C.W.C. for alleged erroneous promotion given to the petitioner. More over, the respondents have not shown how the promotion was erroneous except stating that certain special grounds on which adhoc promotion can be granted were not existent when adhoc promotion was given to the petitioner. It would be remembered that the said promotion was given way back in 1978 and the respondents cannot take the plea of error in promotion nine years after such promotion was given. It also does not appear that the respondents made any attempt to correct the so called error immediately or shortly after merger.

5. With regard to the regular promotion given under the order dated 5.12.1986 of the respondent No. 2 we find from the copy of the minutes of the 8th C.W.C. Office Council meeting held on 11.11.1986 (Annexure - R-2) that it was decided that pre-merger posts existing on the date of merger should be filled from respective streams if persons with adequate qualifications were available. The concerned establishment sections were directed to identify such posts and take steps to fill them accordingly. The above decision was in line with the advice given in the D.O. No.1/29/79 ESTT. I, dated 30.11.1979 (Annexure-R 1) from the Under Secretary in the department of Irrigation. The relevant portion of the advice is quoted below;

"It would be in order and justiable to fill as per the recruitment rules applicable to pre-merger posts such vacancies in the pre-merger cadres which were available from a date prior to 3.11.1978, if non-filling up of such vacancies on a regular basis was only held up having been linked with the merger questions and not for any other reason. Such pre-merger Vacancies in C.W.C./C.B.W.R.O./Dept. of Irrigation, if they were long-term and regular vacancies as per Deptt. of personal & A.R.S.O.M.No.22011/2/76-Est.(D) 30.4.1976 may therefore be filled from amongst officers of C.W.C./C.B.W.R.O./Dept. of Irrigation respectively who were eligible as per the recruitment rules then applicable i.e. before the date of merger to the post where such vacancies existed and which were not filled up on a regular basis pending merger."

6. In support of their action in filling pre-merger posts of Senior Research Assistant from amongst the employees of erstwhile of C.W.C., the respondents have cited the decision of Supreme Court in the case of Y.V. Rangaya and others Vs. Union of India and others 1983, S.C.C. (L & S) 382. In that case it was decided that the vacancies ~~which~~ which occurred prior to amendment of recruitment rules would be governed by the old rules and not by the amended rules. Although, the facts of that case are same ^{what} different from the facts of the instant case, the ratio ^{of the} decision in Rangaya's case would appear to be applicable to the instant case also. In that view of the matter, the promotions given to the employees belonging to the erstwhile C.W.C. against pre-merger vacancies cannot be assailed. However,

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by the same token, the respondents should have identified the pre-merger vacancies existing to the erstwhile G.B.W.R.O. and taken action to fill the same in accordance with the rules and procedure. Such an exercise does not, however, seem to have been carried out, although an assurance in this regard was given by the respondent no.2. In the 8th C.W.C. Office Council Meeting held on 11.11.1986, it would appear that while the department has acted upon the decision taken in the said meeting with reasonable expedition in respect of the erstwhile C.W.C., similar sense of urgency has not been shown in respect of the erstwhile G.B.W.R.O.

7. In view of the foregoing discussion, while we are not in a position to find any irregularity in the promotions given by the order dated 5.12.1986, since it ^{asserted} which has been evered by the respondents that the vacancies to which promotions have been given were in existence in C.W.C. prior to the merger, we hereby direct that the respondents should carry out an exercise to identify regular vacancies of Senior Research Assistant existing in the erstwhile G.B.W.R.O. prior to the merger and the promotion of the applicant be considered, if he is otherwise, eligible, against such identified post(posts). This exercise should be carried out urgently and preferably within a period of 3 months from the date of communication of this order. There will be no order as to Costs.

Member (A)

Member (J)

Dt: 43 November, 1993.
(n.u.)