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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION ON NO. 96 OF 1996

...

Cuttack this the 22nd day of November, 1999

Gulab Prasad and others

Applicants

-Versus-

Union of India & Others

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
22.11.99

22.11.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 96 OF 1996
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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1. Gulab Prasad, S/o. Late Algu Prasad
2. K.J.Anandha Kumar, S/o. K.A.Janardhana Shenoi
3. Supriya Brahma, S/o. Sudhir Kumar Brahma
4. A.K.Chattopadhyay S/o. Late Sri
U.P.Chattopadhyay
5. Goutam Sen, S/o. N.K.Sen

All are Asst.Hydrogeologists, Central Ground Water
Board, South Eastern Region, 24-Kharvela Nagar,
Janpath, Bhubaneswar-751001

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Applicants

By the Advocates : M/s.G.A.R.Dora
V.Narasingh
J.K.Lenka

-Versus-

1. Union of India through Secretary to
Government of India, Ministry of Water
Resources, Shram Shakti Bhawan,
New Delhi
2. Chairman, Central Ground Water Board,
C.G.O.Complex, N.H.4, Faridabad, Haryana
3. Union Public Service Commission, through
its Secretary, Dholpur House, Shahjahan Road, New
Delhi
4. Department of Personnel and Training
Ministry of Home Affairs, through its
Secretary, New Delhi

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Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Five applicants, serving as Assistant Hydrogeologists in the Office of Central Ground Water Board, Bhubaneswar filed this application on 7.2.1996 with the following prayers.

- a) Quash the rules at Annexure-A/1 (Central Ground Water Board) (Scientific Group 'A' Posts) Recruitment Rules, 1995 being violative of Articles 14 and 16 of the Constitution; or to direct the respondents to include the applicants in the Flexible Complementing Scheme retrospectively with consequential benefits; and
- b) direct the respondents to consider/promote the applicants as Scientist 'B' on completion of three years and as Scientist 'C' on completion of five years with consequential benefits

At the time of hearing Shri G.A.R.Dora, the learned counsel for the applicants had not pressed the prayer for quashing the Recruitment Rules, 1995, but confined his contentions to other two prayers. Hence controversy raised in this regard in the application need not be referred.

2. Facts are not in controversy. Applicants 1 to 3 were directly recruited as Assistant Hydrogeologists through Union Public Service Commission and joined on 18.3.1987, 28.11.1985 and 28.12.1987 respectively. Applicants 4 and 5 were promoted as Assistant Hydrogeologists from the post of Senior Technical Assistant(Hydrogeology) and joined on 18.5.1987 and 27.5.1987 respectively. The post of Assistant Hydrogeologist is a Group B (Class II) post.

Prior to enforcement of the Recruitment Rules, 1987 (since repealed) the present posts of Scientist B, Scientist C and Scientist D in 1995 Recruitment Rules were designated as Junior Hydrogeologist, Senior Hydrogeologist

and Director respectively. Direct recruitment to the post of Assistant Hydrogeologist and that of Scientist B is made through the Union Public Service Commission under one and the same examination and a select list is prepared on the basis of availability of vacancies and according to number of vacancies, persons mentioned in the select list are first considered for the vacancies of Scientist B posts and the remaining persons in the merit list are considered for appointment against the vacancies of Asst. Hydrogeologists.

Through Office Memorandum dated 28.5.1986 (Annexure-A/3) the decision of the President of India in the matter of reorganisation of working in Scientific Department was published. One such decision relates to Flexible Complementing Scheme providing in situ promotions to the Scientists whose work was satisfactory, but restricting to the grades to Rs.700-1300, Rs.1100-1600/- and Rs.1200-2000/- with a provision that the total number of posts in the grade of Rs.1500-2000/- will not be more than 30 per cent of the total number of posts in those three grades. Even the Scientists in the scale of Rs.650-1200/- were included in the Scheme beginning with the Grade Rs.650-1200/- through direct recruitment. However, under the 1995 Recruitment Rules, the posts held by the applicants, i.e. Group B posts covered by the scale of Rs.650-1200/- as on 28.5.1986 have, ^{now} been included under the Flexible Complementing Scheme through which in situ promotions were made effective.

It is the case of the applicants that the the educational qualifications are criterion for recruitment to the post of Assistant Hydrogeologists and Scientist B.

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Both Scientist B and Assistant Hydrogeologist perform the same job and are engaged under the practical working of the organisation and they are assigned the same work and discharged identical duties as would be evident under Annexures A/4 and A/5, the official circulars pertaining to the Annual Action Plan for the years 1994-95 and 1995-96 respectively. It is further urged that Office Memorandum dated 28th May, 1986 defines Scientific posts as posts requiring a minimum educational qualification of Master Degree in Science and the minimum educational qualification Master Degree in Science is required for the post of Assistant Hydrogeologist. Yet in the recruitment rules of 1995 benefit of Flexible Complementing Scheme had not been provided to the Assistant Hydrogeologists while providing such benefits to the Scientists B, C and D, which resulted in stagnation of promotions in the cadre of Assistants Hydrogeologists to the higher grades.

3. The Department(Respondents) in their counter filed on 10.4.1997 take the stand that in the Central Ground Water Board, Flexible Complementing Scheme was introduced in respect of only those falling under the (Central Ground Water Board Scientist Group 'A' Posts) Recruitment Rules, 1995 and not to other posts like Assistant Hydrogeologists, which are the posts of Group B in the scale of Rs.2000-3500/- . Though recruitment to the post of Assistant Hydrogeologist and the post of Scientist B or C is done through U.P.S.C., the post of Assistant Hydrogeologist is not equivalent either to Scientist B or Scientist C. The post of Scientist Group B is a promotional post of Assistant Hydrogeologist having three years of regular service. Flexible Complementing Scheme

has been introduced only for Scientists and the scale of Rs.650-1200/- as referred to in Annexure-A/3 is only in respect of Scientists inducted in that scale. Applicants do not come under the definition of Scientist and as such Flexible Complementing Scheme is not applicable to them. However, the definition of Scientist, Scientific Posts and Scientific Department is being reviewed and is pending consideration of the 5th Pay Commission. Decision regarding application of Flexible Complementing Scheme can only be feasible after receipt of the report of the 5th Pay Commission. Unless the definition of Scientist and Scientific Department is further reviewed and extended to include the persons like the applicants, question of treating the applicants as Scientists to cover under the Flexible Complementing Scheme does not arise. The Respondents also denied the averment of the applicants about the stagnation of their promotions, because, besides being entitled to be considered for promotion after putting in three years of service, they can also compete with other candidates in the Geologist Examination directly. On these grounds the respondents opposed the prayer of the applicants in this Original Application.

4. We have heard Shri G.A.R.Dora, learned counsel for the applicants and Shri A.K.Bose, learned Sr. Standing Counsel appearing for the respondents. During hearing xerox copies of judgment dated 14.8.1997 in O.A.886/96 of the C.A.T., Ernakulam Bench and judgment dated 12.2.1998 in O.A. 60/96 of C.A.T., Jaipur Bench were filed, so also the report dated 22.12.1995 of the Committee for Reorganisation of Central Ground Water Board, comparative chart of the work assigned to Assistant Hydrogeologists

vis-a-vis Scientist, ~~but~~ (without the signature or designation of the authority, if any, and hence we did not take note of those documents) and prospectous for the Geologist Examination 1992. All these have been perused along with the record.

5. The main controversy is in respect of implementation of Flexible Complementing Scheme in regard to the post of Assistant Hydrogeologists. Annexure-A/3, (Flexible Complementing Scheme) will reveal that the Scheme covers mainly the posts held by the Scientists. Ranganaya Naidu Committee report dated 22.12.1995 (xerox copy filed by the applicants) does not clearly reveal this aspect of the matter. However the Committee recommended that the Flexible Complementing Scheme must be extended to include the posts in the Group B level, i.e. having the scale of pay of Rs.2000-3500/- as in the case of the applicants, besides other posts. We understand that 5th Pay Commission has in the meantime submitted its report. ^{as} ~~If~~ per that report posts of Assistant Hydrogeologist come under the expression "Scientist" the applicants would be eligible to be considered to get the benefit of promotion under the Flexible Complementing Scheme. Respondents are, therefore, directed to take a decision in this regard with reference to 5th Pay Commission' report within a period of 90 (Ninenty) days from the date of receipt of this order.

6. Judgment dated 14th August, 1997 in O.A.886/96 of Ernakulam Bench centres around controversy in regard to promotion of a Junior Hydrogeologist in the Central Ground Water Board, a Group C post to the post of Senior Hydrogeologist, and as such is not relevant for consideration in this case. Similarly, judgment dated 12.2.1998 in O.A.60/96 of Jaipur Bench relates to a

dispute in regard to non-publication of names of the and applicants holding the posts of Scientist B in the eligibility list for promotion to the post of Scientist C by virtue of their seniority. Hence this judgment is not relevant to deal with the subject matter of the present application.

7. It has been submitted during hearing that as per rules, D.P.C. is to meet at least once in a year to consider promotions of Assistant Hydrogeologists, who are eligible for promotion, but no D.P.C. has been held since last several years. In fact, as per recruitment rules of 1995, an Assistant Hydrogeologist having three years of regular service is eligible for consideration for promotion to the post of Scientist B. The applicants have joined as Assistant Hydrogeologists in the year 1985 and 1987. The learned Sr. Standing Counsel Shri Bose, on our query ~~filed~~ without being able to contradict this contention of the applicants, ^{filed} xerox copy of letter dated 11.1.1991 of the Government of India which reveals that in 1996 and 1998 no D.P.C. was held. However, in 1997, 29 Assistant Hydrogeologists were promoted to the post of Scientist B and applicant No.2, viz. K.J. Anand Kumar is one among these 29 promotees. It is, however, not clear from this letter whether the cases of other applicants were considered by the D.P.C. for promotion. If their cases have not been considered in the D.P.C. convened in the year 1997, we direct the respondents to convene the D.P.C. for consideration of their promotion within a period of 90(Ninety) days from the date of receipt of this order.

As earlier indicated there is prayer for promotion

of the applicants to the post of Scientists Group C because of their regular services as Assistant Hydrogeologists for eight years. But the 1995 Recruitment with Rules ~~deals~~/direct promotion from the post of Assistant Hydrogeologist to the post of Scientist C. Hence this prayer is disallowed.

In the result the Application is disposed of as per observations and directions made in Paragraphs 5 and 7 above, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
22.11.99

22-11-99
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO