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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 40 OF 1999
Cuttack this the 19th day of September/2001

Sudam Charan Behera ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? ✓.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? ✓.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 2001

19.9.01
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.40 OF 1999
Cuttack this the 19th day of September, 2001

CORAM:

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

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Sudam Charan Behera, aged about 40 years,
Son of Niranjan Behera, at present working
as Scientist 'B', Junior Hydrogeologist,
Office of Central Ground Water Board, South
Eastern Region, Orissa, Bhubaneswar

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Applicant

By the Advocates

M/s.Ganeswar Rath

-VERSUS-

1. Union of India represented through the Secretary, Ministry of Water Resources, Shramashakti Bhawan, New Delhi
2. Central Ground Water Board represented through its Chairman, Ministry of Water Resources, C.G.O. Complex, N.H.-4, Faridabad

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Respondents

By the Advocates

Mr.A.K.Bose,
Sr.Standing Counsel
(Central)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL) : Applicant, Sudam Charan Behera, serving as Junior Hydrogeologist (Scientist 'B') In the Office of Central Ground Water Board, South Eastern Region, Bhubaneswar and who was appointed in the Feeder Cadre of Assistant Hydrogeologist w.e.f. 1.6.1984 (Annexure-1) prays for the following relief.

- a) To direct the respondents to hold review DPC/Bard of Assessment in order to consider the case of the applicant for promotion to the post of Scientist 'C' and if he is found suitable for promotion in accordance with the rules, grant him promotion with effect

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from the date from which other persons mentioned in the eligibility list dated 25.10.1995 have been granted promotion;

- b) To consider the applicant for promotion to the post of Scientist 'D';
- c) To give necessary consequential benefits to the applicant; and
- d) to issue any other direction or directions, as the Hon'ble Tribunal deems fit and proper

2. The post of Junior Hydrogeologist, i.e., Scientist 'B' is a Group A post. Above that cadre is the post of Scientist 'C', i.e., Senior Hydrogeologist. The post of Scientist 'D', i.e., Director is above the cadre of Scientist 'C'. The posts under Scientists 'C' and 'D' also come under Group A category.

3. On completion of three years of service as Asst. Hydrogeologist, the applicant became eligible for promotion to the cadre of Scientist 'B'. However, the D.P.C., which met in 1987 to consider promotions to the cadre of Scientist 'B' recommended promotions against vacancies only upto the year 1985. The next D.P.C. met only in the year 1993. Its recommendations were implemented by passing orders dated 30.6.1995 (Annexure-2) promoting 16 Assistant Hydrogeologists including the applicant to the cadre of Scientists 'B'. However, the order did not indicate the corresponding years of vacancies against which promotions were made. Before publication of the seniority list of Scientists 'B', respondents by order dated 25.10.1995 (Annexure-3) published a list of officers under Scientists 'B', who were by then eligible for promotion to the cadre of Scientists 'C'. The name of the applicant has not been included in that list on the ground that he had not completed five years of regular



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service in the grade of Scientist 'B', as required under the Central Ground Water Board (Scientific Group 'A' Posts) Recruitment Rules, 1995 (in short Rules, 1995) (Annexure-8). Only on 1.1.1997 the seniority list of Scientists 'B' was published vide Annexure-5.

4. The eligibility list dated 25.10.1995 (Annexure-3) was published for promotions to the posts of Scientists 'C' under the Flexible Complimentary Scheme (in short F.C.S. Scheme). In the seniority list published on 1.1.1997, the applicant figures at Sl. No.19. Officers under Sl. Nos. 9 and 10 of that seniority list, who, like the applicant did not find place in the eligibility list under Annexure-3 filed Original Application No.60/96 before the C. A. T., Jaipur Bench claiming promotions to the cadre of Scientists 'C' on various grounds, one of which is that one Rana Chatterjee, who was junior to them in the cadre of Assistant Hydrogeologist, as per the seniority list under Annexure-4 was promoted and appointed to the post of Scientist 'B' on 4.10.1990 and as such when the eligibility list was published on 25.10.1995, they had completed five years of service in the Cadre of Scientists 'B', as per rules. The Jaipur Bench of the Tribunal by judgment dated 12.9.1998 held that the applicants therein were eligible for being considered for promotion to the posts of Scientist 'C' by 25.10.1995 and accordingly directed the Department to hold a review DPC/ Board to consider the case of the applicants to the posts of Scientist 'C' and if found suitable, grant them promotion w.e.f. the date on which the other persons mentioned in that eligibility list dated 25.10.1995 were promoted, along with necessary consequential benefits. Similarly officials, who



were in the same footing as that of the applicants filed Original Applications before different Benches of the C.A.T., i.e., O.A.Nos. 68/99, 420/99, 17/99 and 236/99 before the Chandigarh Bench, Jaipur Bench, Lucknow Bench and the Principal Bench, respectively. Through interim orders (Annexure-7 series) these Benches directed the Department to conduct separate interviews for those applicants and keep the result of the selection in the sealed cover.

These facts mentioned in the Original Application are not in controversy.

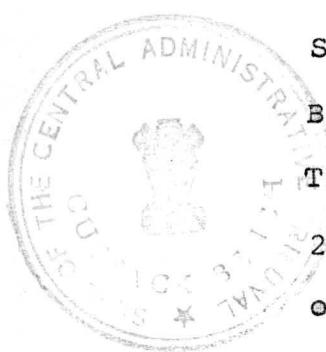
The grievance of the applicant is that the Department should not have published the eligibility list on 25.10.1995, without first publishing the seniority list of Scientists 'B'.

Be that as it may, in the civil list dated 1.1.1997 (Annexure-5) in respect of Junior Hydrogeologists the applicant being placed at Sl. No.19 was shown senior to Rana Chatterjee who figured at Sl. No.23 and was promoted to this cadre on 4.10.1990, i.e., nearly five years earlier than the applicant. If the Department had taken note of the fact that the applicant was due for promotion to the post of Scientist 'B' in the year 1987 itself, he would have been treated as having eight years of regular service in Scientist 'B' cadre and would have been eligible for promotion to the post of Scientist 'C' by 1995 as per Recruitment Rules vide Annexure-8. According to applicant, definition of regular service under these rules would include not only the actual service rendered in a particular post, but also any period of service taken into account for the purpose of seniority in case of those appointed at the initial constitution of the recruitment rules.

Further, according to applicant, schedule of these recruitment rules provides that one would be eligible for promotion to the cadre of Scientist 'C' if he has regular service of five years in the cadre of Scientist 'B' in the scale of Rs.2200-400/-, or with eight years of regular service in the scale of Rs.2000-3500/-. At any rate, in view of the promotion of his junior Shri Rana Chatterjee on 4.10.1990, he is deemed to have been promoted to that cadre on 4.10.1990 and as such would have been eligible for promotion to Scientist 'C' cadre and found place in the eligibility list dated 25.10.1995 and thereafter to the post of Scientist 'D'.

Respondents in their counter do not dispute the factual aspects as averred in the Original Application but oppose the relief claimed by him. According to them Flexible Complimentary Scheme (F.C.S.) was introduced in the Central Ground Water Board vide Government Notification dated 18.5.1987 (Annexure-R/1).

The same was further modified vide notification dated 28.6.1995, i.e., the Recruitment Rules of 1995 (Annexure-8) of the O.A. This scheme is applicable to Group A posts only. To be eligible for in situ promotion to the Grade of Scientist 'C' one must complete five years of regular service as Scientist 'B'. Similarly, Scientist 'C' on completion of five years regular service in that Grade would be eligible for in situ promotion to the Grade of Scientist 'D'. Applicant having joined as Scientist 'B' on promotion on 17.7.1995, had not completed five years of regular service in that grade by the time the eligibility list dated 25.10.1995 was published. Since he was not found eligible for promotion to the post of Scientist 'C', question of his promotion to



Scientist 'D' would not arise. It is not as though one would be automatically promoted to Scientist 'B' on completion of three years service in a feeder cadre and the promotion depends on the availability of vacancies. As against the judgment of C.A.T., Jaipur Bench, the Department had preferred application before the High Court of Rajasthan.

7. No rejoinder has been filed by the applicant.

8. On 8.2.1999 when this Original Application was listed for the first time, this Bench directed the Department that in case the interview of the candidates for the posts of Scientist 'D' was not over by then, the applicant should be interviewed, but the result of the applicant should not be published without the leave of the Bench and should be kept in a sealed cover.

9. We have heard Shri S.N.Mishra, the learned counsel for the applicant and Shri A.K.Bose, the learned Senior Standing Counsel for the Respondents.

10. Before the hearing commenced, we were intimated that the High Court of Rajasthan had since upheld the decision of the C.A.T., Rajasthan in O.A.60/96. Xerox copy of the judgment of Rajasthan High Court was also made available to us and this formed part of the record. Similarly xerox copy of the order dated 4.01.2001 of the Government giving promotions to the concerned two officers to the grade of Scientist 'C' under F.C.S. w.e.f. 1.1.1994, pursuant to the decision of the C.A.T. Jaipur was also made available to us and this formed part of the record. Similarly xerox copies of common judgment dated 13.2.2001 of the C.A.T., Principal Bench in O.A.Nos.236/99 and 469/99, judgment dated 9.11.2000 of



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Jaipur Bench in O.A.57/99, order dated 18.12.2000 of the Principal Bench in O.A.1216/99, judgment of the C.A.T., Hyderabad Bench in O.A.1032/96 were made available to us.

11. As earlier stated the facts are not in dispute. On perusal of the judgments and orders of various Benches of the C.A.T. and the High Court of Rajasthan, it is clear that the issue involved in this Original Application is similar to the issues involved on those cases. It further reveals from the order dated 13.2.1001 of the Principal Bench that Ernakulam Bench of the Tribunal decided similar issue in favour of the applicants in O.A.886/95, disposed of on 14.8.1997.

12. It is true that the Principal Bench by order dated 18.12.2000 in O.A.1216/99 adjourned the case sine die, but that order was passed on the ground that the applicants therein sought extension of benefits of order dated 14.9.1999 of C.A.T., Hyderabad Bench in O.A.1032/96 and that order of the Hyderabad Bench was stayed by the Andhra Pradesh High Court on 3.4.2000. Then a question arose before this Bench whether hearing of this O.A. should be adjourned till the final disposal of the matter pending before the Andhra Pradesh High Court. Hearing the submissions of both sides, in order dated 19.6.2000, we held that there was no necessity to adjourn this case sine die and accordingly the matter was posted for regular hearing.

13. It is a fact that as Junior Hydrogeologist, Rana Chatterjee is junior to the applicant, so also to the ^{two} applicants of the O.A.60/96 disposed of by the Jaipur Bench. Even this Rana Chatterjee was shown junior to those two applicants and

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the applicant before us in the seniority list of Grade 'B' Scientist (Annexure-5). Still the fact remains this Rana Chatterjee was promoted and appointed as Scientist 'B' on 4.10.1990. The judgment of Jaipur Bench in O.A.60/96 having been upheld by the High Court of Rajasthan, the two applicants therein were promoted to the Grade of Scientist 'B' w.e.f. 1.1.1994.

14. At this stage we may observe that the case disposed of by the Hyderabad Bench was somewhat different. The application before the Bench was filed challenging the exclusion of Junior Hydrogeologist ^{from} ~~of~~ the purview of the Flexible Complimentary Scheme, evolved in 1983 and modified in 1986, i.e., from Group A posts vide Recruitment Rules, 1987 and 1995. That application was ultimately allowed with a direction to consider the claim of the applicants therein for insitu promotions to Scientist 'B' from the date when the recruitment rules of 1987 came into force. In other words, the decision of C.A.T., Hyderabad Bench is more concerned with 1987 Recruitment Rules in respect of Grade 'A' Posts, which is not the case before us. Hence the stay order issued by the Andhra Pradesh High Court on the decision of the C.A.T., Hyderabad would not affect the merit of this case.

15. Perusal of common judgment dated 13.2.2001 of the Principal Bench in O.A.Nos.236/99 and 469/99, it is seen that applicants, viz. P.N.Singh, M.L.Parmar, S.K.Verma, Rajpal Singh, Smt.Puspala Jain, Jawed Raza and A.B.Kawde were promoted to the cadre of Scientist 'B' on 31.7.1997, i.e., much after the promotion of the applicant. The Division Bench disposed of the matter by taking note of the decision of



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Jaipur Bench in O.A.60/96 (upheld by the Rajasthan High Court) and and O.A.886/96 of Ernakulam Bench. Orders dated 12.1.1999, 25.1.1999 and 2.2.1999, of Chandigarh Bench in O.A.68/99, Lucknow Bench in O.A.17/99 and Principal Bench in O.A.231/99, respectively, directing the Department to consider the applicants therein for the posts of Scientist 'D' and further directing the Department that when pursuant to those orders (quoted above) persons junior to the applicants therein were promoted as Scientists 'C' on regular basis then the claims of the applicants therein should also be considered for promotion as Scientists 'C' w.e.f. the date their juniors were so promoted in accordance with the rules and in the event they being so promoted on regular basis as Scientists 'C', their claims for further promotion as Scientist 'D' w.e.f. January/February, 1999 should be examined in accordance with rules/instructions and judicial pronouncements on the subject.

16. Thus it is clear that both the decisions of Jaipur Bench in O.A.60/96 and the Principal Bench in O.A.236/99 and 469/99 bearing in mind that no D.P.C. was constituted after 1987 till 1993 and that some juniors to the applicants had been promoted earlier to the cadre of Scientists 'B', allowed the applications. After going through these two decisions we are of the view that the applicant before us is similarly placed and is entitled to relief prayed for by him.

17. At this stage we may observe that Ahmedabad Bench with direction, of the C.A.T. disposed of O.A.294/99 by observing that since the issue involved in that O.A. was identical with the issue involved in O.A.1216/99 pending before the Principal Bench, the rights of the applicant should not be regulated in

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accordance with the decision in O.A.1216/99. As earlier stated, applicants in O.A.1216/99 were also Asst. Hydrogeologists and prayed for extension of benefits of orders passed by C.A.T., Hyderabad Bench in O.A.1032/96. In Ahmedabad Bench case also the applicants were Asst. Hydrogeologists. Hearing of the O.A.1216/99 was adjourned sine die by the Principal Bench because of the stay order passed by the High Court of Andhra Pradesh against the decision of C.A.T., Hyderabad. As earlier stated, the applicant in the instant case and the applicants in other cases before the different Benches of the Tribunal, as quoted above being in the cadre of Scientist 'B' stand in a different footing. Hence, the judgment of Ahmedabad Bench would not be relevant for being considered.

18. In view of our discussion above, we direct the respondents to hold a review D.P.C./Board of Assessment in order to consider the case of the applicant for promotion to the post of Scientist 'C' in accordance with the rules, and if found suitable, promote him to that cadre w.e.f. the date on which other persons mentioned in the eligibility list dated 25.10.1995 have been granted promotions and consequently consider his case for promotion to the post of Scientist 'D'. This exercise shall be completed within six months from the date of receipt of copies of this order.

19. In the result, O.A. is allowed. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
19.7.2001

19.7.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.Sahoo//