

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 128 of 1996

Present : Hon'ble Dr. B.C. Sarma, Administrative member.

Hon'ble Mr. D. Purkayastha, Judicial Member.

Shri P.K. Ranganathan, son of Late P.S. Krishnamurthy, presently employed as Director (Personnel) (Selection Grade) in the Geological Survey of India, 4, Chowringhee Lane, Calcutta-700 016, residing at Flat No. D-12, 2nd M.S. Building, 234/4, AJC Bose Road, Calcutta-20.

...Applicant

-v e r s u s -

1. Union of India service through the Secretary, Govt. of India, Ministry of Mines, Shastri Bhawan, New Delhi-110 001.
2. Secretary to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Deptt. of Personnel and Training, North Block, New Delhi-110011.
3. The Director General, Geological Survey of India, 27, Jawaharlal Nehru Road, Calcutta-700 016.

...Respondents.

For the applicant : In person.

For the respondents : Ms. Kanika Banerjee, counsel.

Heard on _____

Order on 20.1.98

O R D E R

D. Purkayastha, JM

The applicant Sri P.K. Ranganathan, presently holding the post of Director (Personnel) (Selection Grade) in the Geological Survey of India raised a demand before the authority stating inter-alia that since the D.P.C. considered the case of the applicant for grant of selection grade and found him fit for promotion in the selection grade, with effect from 1.1.86, as the vacancy was available, he was entitled to get selection grade with effect from 1.1.86 but he was granted selection grade with effect from 1.7.93 instead of 1.1.86. It is also alleged that his immediate senior officer Sri K.D. Ramnani did not become eligible for selection grade till 1.7.93 and thereby he was not granted selection grade till 1.7.93

And thereby, he is entitled to get all benefits of selection grade with effect from 1.1.86 instead of 1.7.93 for the reason that respondents deprived him promotion to selection grade for $7\frac{1}{2}$ years from 1.1.86 from which he was due for the grant of the same. Accordingly, the applicant was eligible for the post of Director (Personnel) (Selection Gr.)

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w.e.f. 1.1.86 and the post had been left unfilled till 1.7.93. But subsequently the applicant was granted selection grade in the post of Regional Administrative Officer (Selection Gr.) under the pay scale of Rs.4500-5700 with effect from 1.7.93. The said denial of promotion in the selection grade is highly arbitrary, illegal. Feeling aggrieved by the said order by granting selection grade in the post of Regional Administrative Officer by letter dated 18.11.94 with effect from 1.7.93 has approached this Tribunal for issue direction upon the respondents to grant him selection grade from 1.1.86 ~~in modification of the order~~ and notification dated 25.11.94 and 8.11.94 and to grant all consequential financial benefits settled within the period of three months.

2. The case is resisted by the respondents by filing a written statement. They denied the claim of the applicant stating inter-alia that the applicant joined G.S.I. in 1982 and, therefore, his eligibility should be accrued only in 1985. It is also stated that the selection grade in Gr.'A' Central Service is a non-functional selection grade. Accordingly appointment to the Selection Grade may be made according to seniority based on suitability taking into account the following factors:-

- a) Overall performance.
- b) Experience;
- c) Any other related matters;

The order of creation of the post took effect from 1.1.86. The Gr.'A' post in the Technical and Non-technical disciplines of G.S.I. are called Central Service Group 'A'. When the Department of Personnel and Training O.Ms dated 14.8.87 and 9.12.87 were issued, there were no selection grade posts in the administrative discipline of G.S.I. In O.A. No.134 of 1990 filed by Sri Suraj Prakash Vs. Union of India & Ors, CAT, Allahabad, Lucknow, the CAT, Lucknow directed the post of selection grade be created in the administrative and financial streams of G.S.I. and the prayer for promoting the applicant to the selection grade has to be considered on merit as per the rules and conditions made down in the Govt. order. Pursuant to CAT directions, three posts in administrative disciplines and one post in financial stream. *the treated* The main

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stand of the respondents is that D.O.P.T. is the highest authority in the matter of policy decision. The present matter was placed before the Apex Body (DOP&T) for final decision namely, whether the service rendered in other Govt. organisation in Gr.'A' service, should be counted towards length of service (entering 14th years for getting ~~N.F.S.G.~~) for getting selection grade. The Under-Secretary, Department of Personnel & Training in answer to the notes in respect of the issues involved in this case ^{opined} ~~was~~ that "the presumption made by the Ministry of Mines in their notes sidelined 'X' on page 15/ ante that the Gr.'A' service, rendered in other organisation/service cannot be taken into account for reckoning the qualifying service for grant of NFSG is confirmed". The respondents state that the aforesaid D.O.P.T.'s order regarding selection grade in Gr.'A' service is also an executive instruction and the Apex Body, namely DOP&T has only clarified such earlier executive instruction, contained in O.M. dated 14.8.87 and 9.12.87 to the effect that the service rendered in other organisation will not come for required number of service in G.S.I. Thereby, the application is devoid of merit and is liable to be rejected.

3. The applicant also filed rejoinder to the reply filed by the respondents ^{in it} which is stated that the respondents had accepted the total Gr.'A' service rendered by the applicant as qualifying service for the purpose of selection grade. And thereby, it cannot be said now that a group 'A' service in the Border Road Organisation prior to the joining in the G.S.I. would not be counted as qualifying service for grant of N.F.S.G. in G.S.I.

4. We have heard the arguments of both the parties. The applicant appeared in person. We have also heard arguments of Mrs. K. Banerjee, Id. counsel for the respondents. Mrs. Banerjee also filed written arguments in this case. The main grievance of the applicant in this case is that he was eligible for the grant of selection grade in the year 1986. But the respondents delayed the matter on the ground that one person senior to the applicant was not found eligible for promotion in the selection grade. Thereby, he was not given benefit of selection grade though he was eligible for getting selection grade in the year 1986.

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The applicant relies on a decision reported in 1998 (7) ATC 63 where it is held that seniority will be taken only amongst persons eligible. Seniority cannot be substituted for the purpose of eligibility. He also referred to some other decision reported in 1991(1) 698 (Ernakulam Bench) dated 30.12.90 (Sri N.B. Radha Krishan Vs. Chief Engineer, Military Engineering Service). We have perused the application as well as the judgment referred to by the Id. counsel in his application. It is a case of the applicant that he was eligible for grant of selection grade in accordance with statutory rules governing the same as on 1.1.86, since, he had completed 13 years of group 'A' service in March 1985 and vacancy in the SG was also available in the year of 1986. ~~As he was to given promotion to the SG with effect from 1.1.86~~ ~~But due to arbitrary and unjustified actions of the respondents he was denied the promotion in the selection grade.~~ When we look into the representation (Annexure-V) filed by the applicant, it is found that he made his first representation to the Secretary to the Govt. of India, Ministry of Steel and Mines, Deptt. of Mines, New Delhi ~~on 22.12.92~~ ^{in the month of March 1990} for creation of three non-functional posts in the selection grade in the Junior Administrative Grade (Gr. 'A' services) in the administrative stream of the Geological Survey of India. It is also found from the letter dated 16.9.92 (Annexure-III) that the President of India had been pleased to sanction to the creation of 4(four) posts of Director (Selection Grade) in the Administrative and Finance Stream in Geological Survey of India with effect from 1.1.86 subject to the conditions mentioned in the Department of Personnel and Training O.M. No.19/1/86-PP dated 14.8.87. And thereafter the applicant was appointed in the selection grade with effect from 1.7.93 vide notification dated 9.11.94(Annexure-IV to the application). And said representation was subsequently followed by another representation dated 20.3.95 (Annexure-V to the application). So we find that the question of limitation in respect of filing the application by the applicant is involved. The applicant did not file any application for condonation of delay in this case. The question of limitation in the proceedings before the CAT was considered by a Seven Judge Bench of the Hon'ble Apex Court in the case of S.S. Rathore Vs. State of M.P. (A.I.R. 1990 SC 10), it was held by the Hon'ble Apex Court that as per Govt. servant is concerned

the limitation prescribed in the AT Act 1995 shall apply. It was further held by the Hon'ble Apex Court that whereas the statutory remedy is provided entertaining the appeal of representation is made and where no such order is made, though the remedy has been availed of, six months period from the date of preferring of the appeal or making of the representation shall be taken to be the date when the execution shall be taken to find first arising.

5. In view of the settled position of law we find that applicant got promotion in the selection grade with effect from 1.7.93 by notification dated 9.11.94 (Annexure-IV at page 23 of the O.A.) But it appears that the ~~respondents~~ ^{applicant} filed representation on 8.11.94 (Annexure-V at page 31) stating that he was at a loss to understand reasons for granting him said promotion only with effect from 1.7.93, whereas he was eligible for selection grade from 1.7.86 and vacancy was available from 1.1.86 which has been left unfilled. It is found from the representation dated March '90 (Annexure-V at page 25 of the O.A.) that he requested the authority creation of selection grade posts in the Junior Administrative Grade (Gr.'A' Services) in the administrative stream of G.S.I. It is found from the letter dated 16.9.92 (Annexure-III at page 22 of the O.A.) the 4(four) posts in the selection grade were created and sanctioned by the authority with retrospective effect from 1.1.86 with concurrence of the Finance Department letter dated 16.9.92. And thereafter on the recommendations of the D.P.C. applicant was appointed and promoted in the selection grade with effect from 1.7.93 by letter dated 9.11.94 (Annexure-IV at page 23 of the O.A.). From this fact it is found that the applicant first made representation on 8.11.94 by a letter (marked as Annexure-V at page 31) to the authorities claiming that he was entitled to be promoted in the selection grade with effect from 1.1.86 and he was denied that promotion ~~for~~ ^{though} he was found eligible as per rule for promotion in the selection grade with effect from 1.1.86. And it is alleged by the applicant that respondents delayed the promotion of the applicant in the Selection grade for more than seven years. From this fact it is not explained by the applicant why he did not approach the authority for giving promotion with retrospective effect prior to filing the representation in the March 1990 by Annexure-V at page 25

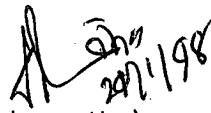
of the application when he was denied the promotion in selection grade as per eligibility prescribed by the rules with effect from 1.1.86. So it is found that his cause of action arose in the year 1986 when he was entitled to be promoted in selection grade as per eligibility. And applicant also did not explain why he delayed to approach the Tribunal or Court for getting selection grade for the last ~~8 (years) before~~ ^{8 (years)} ~~ten~~ years from the date of filing the claim of promotion by a letter dated 8.11.94. However, it is found that after creation of posts vide letter dated 16.9.92 (Annexure-III of this O.A.) he was given promotion in the selection grade with effect from 1.1.93 vide letter dated 9.11.94 (Annexure-IV).

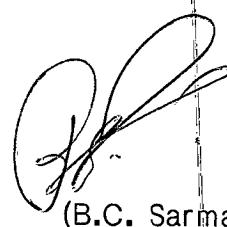
6. It is a well-settled law that right of consideration is guaranteed only, right of promotion is not ~~granted~~, whatever may be the reason, the case of the applicant was not considered by the respondents before the creation of the selection grade post in the said stream by a letter dated 16.9.92 and the applicant has got promotion on 9.11.94 with effect from 1.7.93. It is not a case of the applicant that his junior officer was allowed to be enjoyed the selection grade prior to him. The case of the applicant is that one officer senior to the applicant was not eligible for consideration of the selection grade and for that reason his case was not considered. So denial of promotion with effect from 1.1.86 is arbitrary. Such contention of the applicant cannot be accepted for the reason that the applicant has no right to get promotion to a vacancy which arose due to creation of selection grade post in the year 1992 only. The applicant, therefore, ^{is not} only be considered for vacancies which arose after creation of the posts vide letter dated 16.9.92. It is true that selection grade posts were created with retrospective effect from 1.1.86, yet we are of the view that, this does not by itself confer any right on the applicant for retrospective promotion, because no other selection was made after creation of posts vide letter 16.9.92.

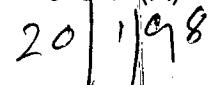
7. In view of the circumstances, he approached this Tribunal in the year of 1996, after expiry of the period of limitation prescribed by section 21 of the AT Act and thereby, it is barred by the law of limitation as ^{if vacancy was available before creation of posts vide letter 9.11.94 (Ann IV)}

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laid down by the Hon'ble Apex Court referred to above. And we are of the view that the application is time-barred and is devoid of merit and is liable to be rejected. Accordingly the application is rejected awarding no costs.


(D. Purkayastha)
M e m b e r (J)


(B.C. Sarma)
M e m b e r (A)


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