

(RESERVED
On 31.03.2015)

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH,
LUCKNOW.

This the 23rd day of April 2015.

ORIGINAL APPLICATION NO. 393 OF 2009.

HON'BLE MR. NAVNEET KUMAR, MEMBER- J.
HON'BLE MS. JAYATI CHANDRA, MEMBER- A.

Kashi Ram Verma, aged about 54 years, S/o Sri Gaya Prasad Verma, R/o 59 Satyalok Colony, Sitapur Road, Lucknow working as Lab Assistant Grade 1, Geo Physical Workshop, Geological Survey of India, Northern Region, Lucknow.

.....APPLICANT

Advocate for the applicant: Shri A. Moin

VERSUS

Union of India through

1. Secretary (Mines), Department of Mines, Shastri Bhawan, New Delhi.
2. Director General, Geological Survey of India, 27 Jawaharlal Nehru Calcutta -16.
3. Senior Deputy Director General, Geological Survey of India, Northern Region, Aliganj, Lucknow.

.....RESPONDENTS

Advocate for the respondents: Shri K.K. Shukla

ORDER

BY HON'BLE MS. JAYATI CHANDRA, MEMBER- A.

Through this Original Application filed under section 19 of Administrative Tribunals Act, 1985, the applicant seeks the following relief(s):-

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- “i) to quash the impugned order dated 8.9.2009 passed by Senior Deputy Director General i.e. Respondent No.1, as contained in Annexure A-1 to the O.A.*
- (ii) to direct the respondents to promote the applicant as Junior Technical Assistant (G/W) in grade pre-revised Rs.425-700/- revised pay scale Rs.1400-2300 (CCS (RP) Rules 1986) w.e.f. 10.5.1987 with all consequential benefits including arrears of pay taking into consideration the orders dated 2.1.2004, 7.1.2004 and the office noting dated August 2006 read with the Order dated 24.6.2008 issued by the Respondent No.2, as contained in Annexure A-9 to the O.A.*
- iii) To pay the cost of this application.*
- iv) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed”.*

3. The facts as averred by the applicant is that he was initially appointed as Geophysical Workshop Assistant (G.W.A) on 10.5.1982 and confirmed by means of order dated 3.9.1982. The next level of promotion available to G.W.A. was that of Junior Technical Assistant (JTA). As per Recruitment Rules of G.T.A 25% of vacancy was to be filled by direct recruitment and 75% by promotion from G.W.A., having five years regular service on basis of seniority-cum-fitness (Annexure A-3). In the year 1984, there were of total five vacancies in the Northern Region. As per recruitment rules, 25% i.e. one vacancy should have been earmarked for filling up through direct recruits and rest four through promotion as per roster of promotion. The vacancies should have filled up as per follows:

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Vacancy No.1	By promotion
Vacancy No.2	By promotion.
Vacancy No.3	By promotion.
Vacancy No.4	By direct recruitment
Vacancy No.5.	By promotion.

4. The seniority position of G.W.A at the time of filling up the vacant posts was as follows:-

- (a) Arun Kumar Srivastava
- (b) Arun Malviya
- (c) S.K. Lal
- (d) K.R. Verma – the applicant.

5. The respondents wrongfully calculated the last two vacancies as required to be filled by direct recruitment resulting in loss of promotion opportunity for the applicant in the year 1987, after he became eligible for such promotion. The applicant submitted his representation through proper channel on 14.05.1987. Taking cognizance of his representation, respondent No.2 by means of order dated 2.1.2004, admitted that the mistake has been committed in diverting the promotee quota vacancy to the direct recruitment contrary to O.M dated 22.12.1959 and requested for reviewing the case of the applicant (Annexure A-6). A letter was also sent by OM dated 7.1.2004 (Annexure A-7) by respondent Nos. 2 to respondent No. 1

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requesting him to review the case of the applicant. Further an office noting made on 4.8.2006 by respondent No. 2 that one post of Junior Technical Assistant may be provided to the Northern Region in order to offset to wrong done to the applicant (Annexure A-8). This information was made available to the applicant through the mechanism of R.T.I. The applicant submitted a detailed representation on 10.9.2007 to the respondent No.3 for redressal of his grievance in accordance with the view expressed on 2.1.2004 and 7.1.2004 by respondents etc. but nothing was done. Again the respondent NO.2 forwarded the case of the applicant to respondent NO. 3 (Annexure A-9) by his letter dated 24.06.2008 urging him therein to resolve the issue at his end. It is pertinent to mention that the matter of promotion of the applicant is Regional matter, which should be dealt within the Region itself. In this case, Northern Region is headed by respondent No.3, but no action has been initiated by him. The applicant filed O.A. No. 359 of 2008 praying for being promoted to J.T.A w.e.f. 10.5.1987 with all consequential benefits. This O.A. was disposed of by order dated 12.1.2009. The extract of which is quoted below:-

"5. It is the case of the applicant that he is entitled for promotion to the post of Junior Technical Assistant (G/W) in grade Rs.427-700/- revised pay scale of Rs.1400-2300 w.e.f 10.5.1987 as per statutory recruitment rules with all consequential benefits and he also made representation in the

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year 1987 itself and the same is still pending without disposal and further, the respondent No.2 also directed the respondent No.3, who is competent authority to consider the claim of the applicant for promotion and resolve the issue vide order dated 24.6.2008 (Ann-A-1). But the respondents have taken objections that the applicant is not entitled for promotion to the post of Junior Technical Assistant (G/W) in view of new Recruitment Rules, which came into effect w.e.f. 21.05.2001 and further, the claim of the applicant is also bared by limitation in view of such new recruitment rules and further, the order Dt. 24.6.2008 (Ann-A-1) issued by respondent No.2 is only inter-office communication and as such, the O.A. is not maintainable. The respondents have also admitted that the representation of the applicant is still pending. It is the duty of the Respondent NO.3, who is competent authority to disposed of the same and pass a reasoned order. Without considering such pending representation of the applicant, it is not open to the respondents to deny his claim on the pretext of new recruitment rules and also on the ground of limitation without passing any orders. Thus, the objection of the respondents that the claim of the applicant is barred by limitation on the ground that new Recruitment Rules came into effect w.e.f. 31.5.2001 is not at all maintainable. Further, the respondents also admit that the representation of the applicant is still pending and in such circumstances allowing the claim of the applicant is not at all justified.

In view of the above circumstances, O.A. is disposed of with a direction to the respondent No. 3 to consider the pending representation of the applicant in respect of his promotion to the post of Junior Technical Assistant (W/S) and pass

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reasoned order as per Rules within a period of three months from the date of supply of the copy of this order. No costs".

6. In the consideration of the same, respondent have passed the impugned order dated 08.09.2009 rejecting the case of the applicant, hence this O.A.

7. The respondents have denied the claim of the applicant through their counter affidavit, in which they have stated that the applicant was appointed on the post of J.W.A on 10.5.1982. Consequent upon recognition of Group 'C' cadre w.e.f. 01.08.1984, the Dy. Director General, (P).G.S.I. vide O.M dated 01.08.1984 allotted five posts of J.T.A to the Northern Regional Office with the bifurcation that 3 posts were to be filled up by promotion and 2 posts by direct recruitment. As per recruitment rules, the post of J.T.A was required to be filled up 25% through direct recruitment and 75% post through departmental promotion from amongst J.T.As having 5 years of regular service. Accordingly, three posts were filled by D.P.C. in the year 1985 from amongst eligible incumbent. At that time as disclosed in the impugned order, the applicant did not have the qualifying five years of service. The remaining two posts were kept in abeyance as per instruction received from C.H.Q letter dated 26.11.1986. The applicant became eligible for promotion only in 1987.

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However, by then two posts out of 5 allotted to Northern Regional Office in 1984 had already been kept in abeyance vide letter dated 26.11.1986 and subsequently abolished w.e.f. 03.04.1998 vide letter No. A-Surr. of posts/D/(P)/93 dated 03.04.1998. In the year 1995, one vacancy occurred which was filled up by an S.C. candidate and subsequently they were implementation of 6th C.P.C. report with consequential effect on the service condition etc. of the applicant, which was not being reproduced as not being relevant to the relief claimed.

8. The applicant has filed his rejoinder reply stating moreorless the same thing as pleaded in the O.A. itself.

9. During the course of arguments, the learned counsel for the applicant placed reliance upon the order dated 24.04.2012 passed by the Madras High Court in W.P. No. 25333 of 2011 and W.P. No. 01 of 2011 M. Ramasamy Vs. the Transport Commissioner in which the following observation was made:-

"It is well settled law that nobody can take benefit of his/her own wrong. If the respondent wrongly did not promote the petitioner on the due date, the petitioner cannot be allowed to suffer. The department has already realized the mistake and promoted the petitioner with retrospectively and place him above his immediate junior i.e. Smt. S. Padma.23 Once Tmt. S. Padma stands promoted, it cannot be said that the petitioner does not have the requisite experience, as the petitioner would be

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deemed to have been promoted on the due date, as any other interpretation will defeat the object of retrospective promotion and will amount to denying the consequential benefits. 24. The impugned order therefore, on the face of it being arbitrary and outcome of non application of mind, having not taken note the promotion of the petitioner with retrospective effect i.e. from the date of his junior was promoted, is hit by Article 14 of the Constitution. 25. The impugned order therefore is nothing but colorable exercise of power, thus hit by Article 14 of the Constitution of India which cannot be sustained in law. the pendency of alleged charge memo also cannot come in way of the petitioner, as common enquiry was ordered, and on a writ filed by one of the employee, charge memo stands quashed".

10. We have heard counsels for the parties and perused the records.

11. The case of the applicant is a claim for being promoted on the post of J.T.A w.e.f 10.05.1987 after having completed the qualifying five years of service as J.W.A having been recruited in 1982. In this case, the applicant himself has stated that there were five vacancies in the year 1984. Three of these vacancies were filled up in 1985. The applicant had not completed the qualifying period of service for consideration for promotion in the year 1985. He became eligible for consideration of promotion only after completing five years in the year 1987. By then, out of the total vacancy of 5 posts, two had been kept in abeyance by order dated 26.11.1986. The controversy regarding whether they

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are to be filled by the direct routes or by promotion routes become redundant in view of the administrative decision not to fill up the said vacancies. There is no whisper of any kind that there was a decision to revive the vacancies. The question of filling them up either through direct route or promotion routes arises only when there are posts. Subsequently these posts were abolished w.e.f. 03.04.1998. The applicant had never raised any kind of protest against such surrender or the earlier decision to keep two posts in abeyance.

12. The fundamental principle of promotion is that there must be a post available against which an eligible person/persons may be considered. Promotion is not a matter of right. It is only the consideration for promotion in keeping with the promotion rules that is the right of an employee. The applicant has not denied that he would have been eligible for consideration of promotion only after completing 5 years of qualifying service. By his own averment, he completed such benchmark only in the year 1987. He has not averred that the two vacancies of 1984 (or more particularly the one vacancies as his averment was required to be filled up by promotion) were ever allotted to any other employee by-passing him or even that it was filled up by open market recruitment. The applicant has produced copies of certain inter departmental correspondences as also office noting. These inter

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departmental correspondences cannot be the basis for granting any relief as these are purely interim in nature. The claim of the applicant is for promotion against the number of posts as were available in 1984, filled up in 1985 and kept in abeyance in 1986 – all these steps were concluded prior to his becoming eligible for promotion. The applicant has relied upon the order of the High Court of Madras in M. Ramasamy (supra). The facts of the case cited is different from the present case. The case cited deals with the question of non-inclusion of the names of the petitioner in panel of eligible persons whereas in this case the issue is that a promotional post was not available.

13. In view of the above, there is no merits in this, ^{Case T.A. J. An} hence, ~~hence~~ the O.A. is dismissed. No order as to costs.

J. Chandra
Member (A)

V.R. Gopal
Member (J)

Manish/-