

(A6)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

O.A.No.41 of 1990.

B.K.SinghApplicant.

Versus

Union of India & 40 othersRespondents.

Hon'ble Mr.Justice U.C.Srivastava,V.C.

Hon'ble Mr.A.B.Gorthi,A.M.

(By Hon'ble Mr.A.B.Gorthi,A.M.)

By means of this application, Shri B.K.Singh, the applicant, requests our intervention to determine his seniority as a Senior Hydrogeologist vis-a-vis some of the respondents in a particular manner he claims that it should have been done. This will be evident from the reliefs sought by him, which are reproduced below:-

- "(a) direct the authorities to place the applicant either at Sl.6 of the 1984 vacancies or at the top of 1985 vacancies with his date of promotion being 4.3.1985 or to take Shri Jagannathan-respondent no.5 to 1984 vacancies and place Shri M.C.Jindal at Sl.No.1, the applicant at Sl.No.2 and Shri S.N.Dullu at Sl.No.3 of the 1985 vacancies and to treat their promotion from 2.3.1985, 4.3.1985 and 11.3.1985 respectively, if necessary by quashing the orders contained in Annexure-A1 to the extent necessary, and
- (b) grant such other relief(s) as may be deemed fit and proper in the circumstances of the case by this Hon'ble Tribunal with costs of the application."

2. The essential grievance of the applicant, however, is against the Office Order No.96 of 1989 dated 7.2.89 which places him at Sl.No.6 of the batch of Officers recommended for promotion to the post of Senior Hydrogeologist against the vacancies for the year 1986. The genesis of the problem lies in the initial selection and promotion of the applicant to the post of Junior

Hydrogeologist in 1974 against the vacancies existed in 1973. The applicant, who was working as Assistant Hydrogeologist, was selected by UPSC as a direct recruit and his merit position was at Sl.No.5 out of a total number of 84 candidates selected. He worked as a Junior Hydrogeologist from 2.4.1974 till 3.3.1985 when he was further promoted as a Senior Hydrogeologist. After having been selected by the Departmental Promotion Committee(D.P.C.) held for the year 1984. The seniority list that was prepared as on 1.1.78 was circulated to all concerned vide Central Ground Water Board's letter dated 2.12.1980. The applicant had no grievance against it, but a promotee candidate V.H.Sikka challenged the same before the High Court of Punjab and Haryana through Civil Writ Petition No.3392 of 1981. In that writ petition, the main issue agitated by Shri Sikka was that in the matter of his promotion against the vacancies created in the year 1973, the respondents ignored the recruitment rules as existed in 1972 and followed the said rules as amended in 1974. Whereas the recruitment rules of 1972 provided for 100% posts of Junior Hydrogeologists to be filled by promotion failing which by direct recruitment, the amended rules of 1974, however, restricted the quota of promotees to 20% leaving the remaining 80% for direct recruitment. The selection made to fill-up the vacancies existing in 1973 by applying the amended rules of 1974 resulted in giving extra advantage to direct recruits over the promotees. Consequently, the High Court of Punjab and Haryana quashed the seniority list of 1978 and directed the Central Ground Water Board to prepare a fresh seniority list, vide judgment dated 1.1.1985. In the mean time, the applicant and also four of his colleagues were promoted to the post of Senior Hydrogeologists.

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When the applicant was thus working in his promoted post of Senior Hydrogeologist, the respondents revised the 1978 Seniority List and re-fixed the seniority of the applicant at Sl. No. 5 of the Officers who were deemed to have been recommended against the vacancies for the year 1986. Consequently, the applicant's seniority has come down by several stages because a number of promotees came-up to be considered as senior to him. The applicant challenges the revised seniority list on the ground that it is malafide and arbitrary and the review DPC which re-fixed the seniority acted beyond its jurisdiction and power. He also contended that his service as a Senior Hydrogeologist from the date of his promotion (3.3.1985) could not have been ignored in fixing the seniority in the grade of Senior Hydrogeologist.

3. The respondents have refuted the claim of the applicant by stating that it was mis-conceived and untenable. They have also given a detailed version as to how the seniority of the applicant was originally fixed in the seniority list of 1978 and how it came to be revised and re-fixed. During 1973, 34 departmental candidates were eligible for promotion to the post of Junior Hydrogeologist and the remaining 75 posts were released for direct recruitment through the UPSC. The UPSC had after due selection nominated 59 candidates including the applicant for appointment against the ^{the} quota for direct recruits. As regards 34 departmental candidates, although they were eligible for promotion to the post of Junior Hydrogeologist against the vacancies existing in 1973, they could not be promoted till 1976 as their DPC could not be convened. The vacancies of 1973 were to be filled in accordance with Recruitment Rules of

1972 under which 100% posts were to be filled up by promotion, failing which by direct recruitment. However, applying the Amended 1974 Rules which introduced a quota of 20% for promotees and 80% for direct recruits, a large number of direct recruits, including the applicant, were promoted in 1974. At the same time, the cases of the promotees were not considered for the reason that DPC could not be convened before 1976. The DPC that was held in 1976 recommended 22 Officers including Shri V.M. Sikka (respondent No.6) for promotion as Junior Hydrogeologist. Some of the respondents, though recruited by DPC, 1976 only, were appointed as Junior Hydrogeologist in 1974 against the vacancies of 1973. As the applicant and some of the respondents were appointed/promoted as Junior Hydrogeologist after the enforcement of Amended Rules of 1974, the relative seniority of direct recruits and promotees was fixed according to the provisions of the Amended Recruitment Rules and the merit awarded by the UPSC and DPC. The seniority was fixed following the rota-system of one promotee and four direct recruits. Accordingly, the seniority list was prepared on 1.1.78 wherein the name of the applicant was shown at Sl.No.5. The said seniority list was challenged by Shri V.M. Sikka, respondent No.6 successfully before the High Court of Punjab and Haryana, as already stated. As the High Court quashed the seniority list and directed the respondents to prepare a fresh seniority list, the respondents applied 1972 Rules in fixing the seniority of promotees who became eligible for promotion against the vacancies of 1972-73 as senior to the direct recruits. This was done in 1987. However, in the mean time, the applicant along with four other

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candidates were selected for promotion to the post of Senior Hydro-geologist against the vacancies of 1983-84. This was done on the basis of their original seniority as contained in 1978 seniority list as the same remained operative till it was quashed by the High Court of Punjab and Haryana in 1985. With the revision of the seniority list and as stated above, the seniority of the applicant came down considerably.

4. With a view to give immediate relief to Shri V. M. Sikka- respondent no.6 and others, 29 Officers were promoted as Senior Hydrogeologists on adhoc basis pending DPC and filling up ^{of} the posts on regular basis vide Office Order No.1109 of 1987 dated 7.7.87. In order to regularise the adhoc promotion as well as promotion made on the recommendations of earlier DPC held in 1984 (which selected the applicant for promotion of Senior Hydrogeologist), the review DPC was held which with a view to implement the judicial verdict, recommended the Officers for promotion in order of merit as under:-

i) Against 1982vacancies	15 Officers
ii) Against 1984vacancies	32 Officers
iii) Against 1986vacancies	11 Officers.

5. The applicant was recommended by review DPC against vacancies of 1986 and he stands at Sl.No.6 in order of merit of the candidates. This is apparent from the Office Order No.96 of 1989 dated 3.2.89 (Annexure-A1 to the application which is the impugned order)

6. The applicant through his rejoinder affidavit has reiterated his grievance that he having been selected for promotion by the DPC 1973 and having been promoted accordingly, the period of his working on the promoted post could not have been ignored by

the respondents in the matter of fixing his seniority. He also challenged the competency of DPC to recommend the candidates against the vacancies of different years and to refix their order of merit.

7. The applicant was a respondent in writ petition filed by Shri V.N. Sikka but did not contest the same. Moreover, the revised seniority list of 1987 was circulated to all concerned but the applicant did not protest.

8. The applicant alleged that action of the respondents in fixing his seniority in the manner that they did was mala fide and discriminatory. The respondents have explained as to how the entire exercise of revision of the seniority list of 1978 had to be carried out in compliance with the judgment of the High Court of Punjab and Haryana. It is not that the seniority of the applicant alone was affected. As can be seen from a comparison of seniority list of 1978 (Annexure-VII to the counter-affidavit) and revised ~~xxx~~ seniority reflected in the impugned order dated 3.2.89 (Annexure-XIII), placement of several other Junior/Senior Hydrogeologists has also undergone^a change in 1989 list. We are, therefore, unable to accept the applicant's allegation of discrimination or mala fides..

9. The applicant has also questioned the methodology adopted by the D.C which reviewed the recommendation of earlier D.Cs held in 1983 and 1984 and contended that it had no authority to change the order of merit decided by the original D.C. It is, however, clear that the applicant's selection by the D.C in 1984 and his consequent promotion as Senior Hydrogeologist in 1985 were irregular because in doing so, the concerned authority ignored the recruitment rules of 1972 and wrongly applied the amended rules of 1974, thus, defeating the purpose of the recruitment process.

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of promotees their due promotion and giving the direct recruits, including the applicant, an extra advantage of out of turn promotion. This aberration had to be corrected as per judgment of the High Court of Punjab and Haryana which was sought to be done by the review DPC. Except for the fact that the review DPCs recommendations nullified the benefit of the early promotion of the applicant, he has not been able to show if the review DPC violated any specific provisions of law and if so, how. On behalf of the respondents no.1 to 3, it was clarified that the review DPC evolved its own procedure and accordingly it was on its recommendation that office-Order No.96 of 1989 dated 3.2.89 (impugned order) was issued.

J.C. In the result, we find that the application is without merit and it is hereby dismissed. There shall be, however, no order as to cost.



Member (A)

Dated: 17 Feb 1992

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Vice Chairman

