

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

O.A.no. 53/2004

Lucknow this the 26<sup>th</sup> day of July, 2004.

HON. SHRI M.P. SINGH, V.C.

HON. SHRI M.L. SAHNI, MEMBER(J)

Dr. Mohd. Ishaq, aged about 52 years, son of late Shri Deen Mohammad, resident of Type III/71, Geological Survey of India Colony, Sector Q, Aliganj, Lucknow.

Applicant.

By Advocate Shri R.C. Singh.

versus

1. Union of India through Secretary, Ministry of Coal and Mines, Deptt. of Mines, G.S.I. Shastri Bhawan, New Delhi.
2. D.G., G.S.I., Govt. of India, 27, Jawahar Lal Nehru Road, Kolkata.
3. Secretary, Public Service Commission, Shahjahan Road, new Delhi.
4. Secretary, DOPT, North Block New Delhi.

Respondents.

By Advocate Shri Deepak Shukla for Shri Prashant Kumar.

O R D E R

By M.L. SAHNI, Member(J)

This application is directed against the order dated 23.1.2004 (Annexure A) whereby the applicant Dr. Mohd. Ishaq and two others have been promoted from the post of Assistant Chemist Grade I to the post of Chemist (Jr) in the pay scale of Rs 8000-175-13500) w.e.f. 1.2.04 and posting the applicant at Marine Wing, G.S.I. Vizag. It is prayed by the applicant that the impugned order be partially modified to the extent that the applicant is provided pay scale of Rs 10,000/- to Rs 15,200/- and partially quash the same which pertains to the posting of the applicant <sup>at</sup> Marine Wing at Vizag.

2. We have heard the learned counsel for the parties at length and have given our thoughtful consideration to the pleadings.

3. The case of the applicant briefly stated is that ~~the~~ as per O.M. dated 25.5.98 (Annexure 3) the persons with 2 years of service in the pay scale of Rs 7500 to 12000 can be promoted to the pay scale of Rs 8000-13500 and on completion of 6 years service to the pay scale of Rs 10,000-15000. But the petitioner who is Assistant Chemist grade I and has completed more than 6 years of service has not been provided the pay scale of Rs 10,000 to Rs 15200/-; that inspite of making representation to respondents 1 and 2 to consider the applicant for promotion to the post of Chemist Senior, and availability of 28 posts, he has not been considered for promotion.

4. According to the applicant in the recently constituted D.P.C. the petitioner is alleged to have been promoted to the pay scale of Rs 8000-13500. The service rules have not been amended and the respondents appear to have opted <sup>for</sup> the Memorandum which provided the <sup>avenues</sup> of promotional pay scale of Rs 8000 to Rs 13,500 and Rs 10,000 to Rs 15,200/-. This promotional order has <sup>been</sup> issued on 23.1.2003 posting the applicant to Marine Wing, G.S.I. Vaizag. The grievance of the applicant is that the impugned order does not <sup>give full</sup> ~~fulfil~~ the entire advantages to the petitioner though the Memorandum dated 25.5.98 provided the higher pay scale of Rs 10,000 to Rs 15200 and the applicant even after completion of 21 years of service is not being posted to the vacant promotional post i.e. Chemist Senior and therefore, the order is punitive.


5. The impugned order is assailed, interalia on the ground that the order is bad inasmuch as the applicant's children are below 10 <sup>years</sup> of age and as per precedent of this Department he should not have been posted to a far-away place which does not provide educational advantages. The applicant's wife is <sup>working</sup> ~~posted~~ as Research Officer in the Ministry of Health. Govt. of India and is posted at Lucknow and his posting to far-away place would disurb his family.

6. The respondents, who have constested the application, contended that the applicant has nothing to do with 19 posts and he is not eligible for promotion to the post of Chemist Senior till date; that the DOPT did not accept the proposal on the ground "the diversion of posts from DR <sup>o</sup>qu~~tao~~ is attendant with complications relati~~g~~ to reservation, especially of Posts meant for OBC category". It is further stated that the vacant posts could-not be filled-up through DPC due to non-availability of eligible officers in the feeder cadre of Chemist (Jr.); that as per O.M. dated 25.5.98 the officers holding the pay scale of Rs 7500-1200 will be eligible for consideration for promotion in the pay scale of Rs 8000-13,500/- and to the post of Chemist (Jr) (pay scale Rs 8000-1250) from Assitant Chemist Gr-I and from Chemist (Jr) to Chemist (Sr.) (pay scale Rs 10,000-15.200, after completion of eligibility as per recruitment rules subject to availability of vacancies; that mere completion of residency period in the <sup>-a-</sup>grade of Asstt. Chemist Gr. I does not confer any right for getting promotion to the post of Chemist (Sr) without touching intermediate post i.e. Chemist (Jr.). The promotion order from Assistant Chemist grade I to Chemist (Jr. ) was issued on 23.1.04 as per recruitment rules for he post of Chemist (Jr.). It is stated that the employer has a vested and inherent right to keep any post unfilled, promotion in abeyance, looking to the administrative requirement. The respondents have <sup>further</sup> stated that the applicant appears to be reluctant to join on his new place of posting, otherwise there was no substantial grievance to address the Hon'ble Tribunal.

7. At the time of arguments copy of order dated 12.5.2004 was produced whereby the offer of promotion made vide the impugned order (Annexure A) stands cancelled and withdrawn due to the failure on the part of the applicant to join the post of Chemist (Jr.) at Marine Wing Vizag.

8. We have heard the learned counsel for the parties at length and have given our thoughtful consideration to pleadings.

9. Without dilating upon the rival contentions of the parties, we feel that in view of the impugned order (Annexure A) having been canceled and withdrawn vide order dated 12.5.2003, there survives no cause of action because of the changed circumstances brought by the order dated 12.4.2004. There is left no order either for modification or for quashing as prayed. Hence, we hold that the O.A. has become infructuous. The same is dismissed for the reasons stated above. No order as to costs.



(M.L.SAHNI)

Member(J)

S.A.



(M.P.SINGH)

VICE CHAIRMAN