

B/w

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW
this the 24th day of January '2000.

ORIGINAL APPLICATION NO. 206 of 1992.

HON'BLE MR D.C. VERMA, MEMBER(J)
HON'BLE MR A.K. MISRA, MEMBER(A)

Subhash Chander Sharma, aged about 51 years, s/o

Sri Ram Rattan Sharma, Resident of 2/14, Vivek
Khand-II, Gomti Nagar, Lucknow.

Applicant.

By Advocate: Sri Sharad Bhatnagar.

Versus.

Union of India through the Secretary, Government of India, Ministry of Steel and mines, Department of mines, Shastri Bhawan, New Delhi.

2. The Director General, Geological Survey of India, jawahar lal Nehru Road, Calcutta.

3. Sri A.M. Rakshit, Director (Geology), c/o Director General, Geological Survey of India, Calcutta.

4. Sri R.n. pattanayak, Director (Geology), G.S.I., Calcutta.

5. Sri S.P. Saxena, Directo(Geology), G.S.I., Calcutta and fourty one others.

Respondents.

By Advocate: Sri Sunil Sharma.

O R D E R.

A.K. MISRA, MEMBER(A)

By the present O.A., the applicant seeks the following relief:-

"(i)The remarks in the ACRs remaining uncommunicated which have proved prejudicial to the promotion of the applicant, be quashed.
(ii)To pass orders to the effect that the advice contained in the ACR for the year ending 1987 should have been communicated separately and be expunged from the above ACR.

Subhash Chander Sharma
(iii)To kindly direct the respondents 1 & 2 to hold review DPC to recommend the candidature of the applicant for promotion to the post of Director (Geology) against 23 vacancies of the year 1989-90 at his place of seniority, giving due consideration to his achievements stated in his representations

and ordering that the advisory remarks ^{ACR} for the assessment year 1986-87 should not be viewed adversely any more. The orders may also kindly be passed that full benefits in the matters of seniority and pay etc. be given to the applicant/petitioner as a consequence of this promotion."

2. Pleadings on record have been perused and the learned counsel for the parties have been heard at great length.

3. The brief facts of the case are that the applicant was appointed in October'65 as Geologist Junior Class-I through UPSC. He was promoted as Geologist Senior Class I in September'74. The next promotion due in the rank of Director (Geology) in the pay-scale of Rs.3700-5000/- ~~XXXXXX~~ was in the junior Administrative Grade. There is no dispute that the next promotion as Director (Geology) was a selection post. On behalf of the applicant, it was stated that the applicant was due for promotion as Director (Geology) in 1987-88 for which DPC met on 8.2.90, but the applicant was ignored for no reason. The applicant was finally promoted as Director (Geology) on 20.5.92 by a Review DPC meeting held for promoting Senior Geologists against vacancies of the year 1989-90. Prior to this Review DPC, according to the applicant, he was ignored for promotion in the following three years:-

1.	1987-88	19 Vacancies
2.	1988-89	21 vacancies
3.	1989-90	23 vacancies

4. The DPC for 23 vacancies for the year 1989-90 was held in April'91 in which the applicant was ignored for promotion. Later on Review DPC held on 22/23.4.92 which took into consideration the question of promotion of officers to the ^{grade} of Director (Geology) for 23 vacancies of 1989-90 and 20 vacancies of 1991. Since 157 additional vacancies occurred in the year 1991 as a result of

which cadre review, the review DPC met on 22/23.4.92 took into consideration the question of selection of officers for promotion to the grade of Director (Geology) for 177 vacancies. It was as a result of that this review DPC, the applicant was finally promoted as Director (Geology) on 20.5.92. The applicant was also given the seniority w.e.f. 10.5.91 i.e. the date on which his junior in the approved panel for the year 1990-91 was promoted (copy of the order dated 10.3.93 as Annexure CA-1). The applicant has challenged his supersession in the DPC held on 8.2.90 for filling-up 19 vacancies for the year 1987-88 by filing a petition before this Tribunal (O.A. No. 308/90). The applicant's petition was disposed of by this Tribunal by order dated 27.1.92 and the Tribunal found no adverse remarks in any of the years except remarks of an advisory nature which were recorded in the applicant's ACR for the year 1986-87. The Tribunal accordingly while dismissing the applicant's petition directed that the next DPC will take into consideration the so-called adverse remarks as advisory in nature and will consider the achievements made by the applicant as has been stated in his representation. Since the judgment of the Tribunal was delivered on 27.1.92, the applicant again got superseded in the DPC held in April'91 for filling-up 21 vacancies for the year 1988-89 and 23 vacancies for the year 1989-90. As already stated, the applicant was finally promoted in the Review DPC held on 22/23.4.92. The applicant has stated that his earlier supersession in the DPC held in April'91 for filling-up 21 vacancies of 1988-89 and 23 vacancies of 1989-90 and in the DPC held on 8.2.90 for filling-up 19 vacancies of 1987-88 was on account of remarks in the on account of the advisory nature of the ACR for the year 1986-87 which were wholly unjustified because the ACR for the year 1986-87 was communicated



to him by letter dated 14.9.87 by the Dy. Director General, G.S.I. itself stated that the remarks recorded in the ACR for the year 1986-87 are in the nature of advice for improvement and shall not be treated as adverse. The advisory remarks recorded in the ACR for the year 1986-87 reads as under:-

"Ability to express: He has average ability in expressing himself.

General Assessment:- Intelligent and hard working, he is a very good field officer with robust health. Tends to be impatient at times"

5. The order of this Tribunal dated 27.1.92 passed in the case of the applicant in O.A. No. 308/90, while dismissing the applicant's petition stated that when-ever the DPC meets again, it will take into consideration the adverse remarks as advisory in nature and will also take into account the achievements of the applicant as detailed in his representation to the departmental authorities. Subsequently, the applicant filed M.P. No. 758/92 stating that he was promoted on 20.5.92 as Director (Geology) in consequence of review DPC and his seniority has also been restored vis-a-vis the promotees for the year 1990 who figured as respondent nos. 27 to 46 of this O.A. Accordingly, the applicant prayed for deletion of names of the respondents serialised from 27 to 46 who were promoted against the vacancies for the year 1990. He has stated that his grievance against the promotions made in the year 1989 still continues and officers promoted in the year 1989 figured at sl. no. 3 to 26 of this O.A.

6. In the Counter filed on behalf of the respondents, it has been stated that supersession of the applicant by the DPC held on 8.2.90 for filling-up 19 vacancies for the year 1987-88 and



the subsequent supersession in the DPC held in April'91 for filling-up 21 posts for the year 1988-89 and 23 vacancies for the year 1989-90 was based on the record of the applicant vis-a-vis the record of the other officers including his juniors who were found better and more suitable than the applicant for promotion as Director (Geology). It has also been stated on behalf of the respondents that in consequence of the judgment dated 27.1.92 given by this Tribunal, the applicant has already been promoted in the review DPC held in April'92. It has further been stated that the G.S.I. has approached the Government/Ministry for notional promotion of the applicant w.e.f. 10.5.91. As already stated above, by order dated 10.3.93 the applicant has been given seniority w.e.f. 10.5.91 i.e. from the date his junior in the approved panel for the year 1990-91 was promoted (Annexure -1 to C.A.)

7. In the Rejoinder, the applicant has stated that his grievance is now confined to loss of promotion against 23 vacancies of the year 1989-90. It has been stated in the Rejoinder that in so far as the review DPC is concerned, it met in April'92 for considering promotions against 177 vacancies for the year 1990-91 which included 20 regular vacancies for this year and 157 vacancies created as a result of cadre review. It has further been stated that facts before DPC relating to the applicant's case did not undergo any change between April'91 when the DPC met for filling-up 21 vacancies for the year 1988-89 and 23 vacancies for the year 1989-90 and the facts relating to the



applicant in April'92 when the review DPC met for filling-up 177 vacancies in the grade of Director (Geology). Accordingly, it has been argued on behalf of the applicant that he should have been given promotion in 1991 itself and ~~the~~ seniority over the respondent nos 3 to 26 of this O.A. It has been stated that he had been denied promotion in the DPC held in April'91 only because of the advisory remarks in his ACR for the year 1986-87 which were communicated to him by the departmental authorities by letter dated 14.9.87 in which it was specifically mentioned that the said remarks were advisory and will not be treated as adverse. The same view was taken by this Tribunal in the order dated 27.1.92 passed in the case of the applicant in O.A. no. 308/90. This position remained unaltered in 1991 also.

8. In the light of the factual position discussed above, the grievance of the applicant is now confined only to his promotion which should have been made in May'91 in pursuance of the DPC held in April'91 and giving him seniority over and above the officers promoted against the vacancies for the year 1989-90 in consequence of the DPC held in 1991. Thus, the applicant in effect is claiming seniority over 23 officers, who were promoted against the vacancies for the year 1989-90.

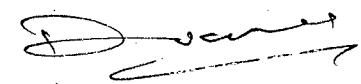
9. On consideration of the factual position discussed above in detail and the submissions made on behalf of the parties, we are inclined to take a view that the applicant should have been promoted against 23 vacancies for the year 1989-90 in consequence of DPC held in April'91. Although, the applicant was subsequently promoted in consequence of the Review DPC held in April'92 and was given ~~the~~ promotion with retrospective effect from



10.5.91 vide order dated 10.3.93, it appears that the seniority to which he is entitled over his juniors promoted against the vacancies of 1989-90 in consequence of the DPC held in April'91 has not yet been given to him. Accordingly, we are of the view that the applicant shall be taken as promoted on notional basis against 23 vacancies for the year 1989-90 in consequence of the DPC held in April'91 and be given his rightful seniority.

9. In the result, the O.A. is allowed as above with no order as to costs.


MEMBER(A)


MEMBER(J)

LUCKNOW:DATED: 24th January 2000

GIRISH/-