

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.214/99.

DATED THIS ^{23rd} THE MARCH, 2004

CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN
HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

1. Ashim Kumar Saha,
aged about 43 years,
2. Prafulla Bhalchandra Sarolkar,
aged about 44 years,
3. H.M. Ramchandra,
aged about 44 years,
4. Anjan Kumar Chatterjee,
aged about 43 years,
5. Rituraj Kishor Shrivastava,
aged about 46 years,
6. Kamal Kumar Chatterjee,
aged about 48 years.

(Applicants Nos. 1 to 6 all residents of Nagpur, working in the post of Geologist (Senior) in the office of the Deputy Director General, Geological Survey of India, Central Region, Seminary Hills, Nagpur).


..... Applicants.

(Applicants by R.K.Shrivastava, Advocate)

And

1. Union of India,
through its Secretary,
Ministry of Steel & Mines,
Department of Mines, Shastri Bhavan,
New Delhi 110 001.
2. The Director General,
Geological Survey of India,
27, Chowringhee Lane, Calcutta
700 016.
3. Ashish Kumar Roy,
Geologist (Senior),
Geological Survey of India,
Training Institute,
Bandlaguda, Hyderabad - 500 068.

..2/



4. Vibhuti Bhushan Shrivastava,
Geologist (Senior), OP. U.P. - E.G..
Division (South), Posted at
Geological Survey of India,
Northern Region, Plot No.2, Sector
"E", Aliganj, Lucknow, 226 020.

Nos.3 and 4 - Departmental Promotees to the post of Geologist (Junior) in 1978 arrayed as respondents in representative capacity for and on behalf of all such departmental promotees of the year 1978 under Order I Rule 8 of the Civil Procedure Code 1908.).. Respondents (Respondents by Shri V.S. Masurkar, Advocate)

O R D E R

[Per: Muzaffar Husain, Member (J)]:

Aggrieved by the order dated 08.6.1998 and the impugned communication dated 23.11.1998 issued by Respondent No.2 refusing to assign correct seniority to the applicants as well as refusing to fix the applicants 2 to 6 (direct recruits) interse seniority with Respondent No.3 and 4 and consequential denial of promotion to the post of Geologist (C) with effect from February, 1995, the applicants have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. The applicants have claimed the following reliefs.

- (i) quash and set aside the impugned order dated 08.6.1998 (Annexure I)
- (ii) quash and set aside the impugned order dated 23.11.1998 (Annexure -II)
- (iii) direct the respondents 1 and 2 to assign the applicant's correct seniority in the grade of Geologist (Jr.) by fixing the seniority of



departmental promotee Geologists (Jr.) of 1978 batch inter se with the direct recruits of 1977 Regular and 1977 Special batch appointed in March, 1978 and October 1978 respectively, in accordance with the Recruitment Rules which require the vacancies to be filled in the ratio of 1:1 between the direct recruits and departmental promotees in that recruitment year (i.e. 1978);

- (iv) direct the respondents to hold review D.P.C. for the post of Geologist (Sr.) in respect of 199 vacancies and not merely for 41 vacancies, pursuant to the impugned orders dated 08.6.1998 and 23.11.1998;
- (v) direct the respondents to grant deemed dated promotion on the post of Geologist (Sr.) with effect from February 1985 to the applicants and further direct the respondents to grant consequential benefits such as seniority, increment, pay fixation etc. and pay arrears thereof together with interest at the market rate;
- (vi) grant any other relief which this Hon'ble Tribunal deems fit in the facts and circumstances of the case;
- (vii) award the costs of this application from the respondents.



2. In brief the facts of the case are as follows. The applicants No.1 to 4 were selected by the Union Public Service Commission (UPSC) pursuant to Geologists' Examination of March 1977 for the post of Geologist (Jr.) in the Geological Survey of India. The applicants No.5 and 6 were selected for the post of Geologist (Junior) pursuant to Geologists' Examination October, 1977. Consequently, they were appointed in March 1978 and October 1978 respectively to the post of Geologist (Jr.). The applicants have a common grievance and are praying for common reliefs. As such they have filed a joint application. It is also submitted that Respondent No.1 is the cadre controlling authority and appointing authority. The respondent No.2 is the Head of Department of the applicants. Respondents 3 and 4 are arrayed as respondents in their representative capacity for and on behalf of the departmental promotees of 1978 batch under Order 1 Rule 8 of the Civil Procedure Code, 1908. The applicants further submit that the present dispute is in relation to the interse seniority of the departmental promotee Geologists (Jr.) who were promoted from the feeder cadre and directly recruited Geologists (Jr.) The recruitment rules for the post of Geologist (Jr.) provide that the recruitment to that post should be made 50% by promotion failing which by direct recruitment through a competitive examination to be conducted by adhoc selection by open advertisement through UPSC and 50 per cent through competitive examination to be conducted by the UPSC, adhoc selection by open advertisement through the Commission.



3. The direct recruitment in the above hierarchy of posts is made only in the cadre of Assistant Geologist and Geologist (Jr.). The direct recruitment is made on the basis of an open competitive examination conducted by the UPSC called "Geologists Examination". It is further submitted that they were appointed to the post of Geologist (Jr.) by direct recruitment in March, 1978 and October 1978 respectively, whereas the respondents 3 and 4 were promoted to the post of Geologist (Jr.) on 11.7.1978. Respondents 1 and 2 prepared a gradation list of Geologist (Jr.) in the year 1982. The said list showed departmental promotees of 1978 batch enblock senior to the direct recruits of 1977 batch and 1977 (special) UPSC batch appointed in March 1978 and October 1978 respectively. While the departmental promotee Geologist (Jr.) were shown enbloc from seniority position 744 onwards to 933 the direct recruits of 1977 batch and 1977 special UPSC batch were shown enblock junior from Sr. No. 990 to 1084. The applicant No.1 is shown at Sr. No.994 and the applicant No.6 is shown at Sr. No.1038. It is further submitted by the applicant that the gradation list of 1982 is prima facie faulty and illegal and for the reason that the departmental promotees promoted to the post of Geologist (Jr.) in 1978 should have been fixed in the seniority list vis-a-vis direct recruits of 1977 and 1977 (special) UPSC batches in the ratio of 1:1 as per the recruitment rules of the post of Geologist (Jr.). However, the respondents 1 and 2 contrary to the recruitment rules, fixed the seniority of departmental

Shing

promotees of 1978 batch with direct recruits of 1973, 1974 and part of 1976 UPSC batch. Direct recruits were appointed on 03.4.1974, 12.5.1975 and 12.5.1977 respectively. Obviously, it was an incorrect fixing of interse seniority and therefore, it gave rise to litigation. One Shri Tridib Lashkar and 27 others including applicants 4 and 5 filed writ petition No.1220 of 1985 before Calcutta High Court challenging the gradation list of the year 1982 as well as 1983 of Geologist (Jr.), which was allowed. The respondents preferred an appeal before Division Bench of the Hon'ble High Court. The Division Bench modified the order of the learned Single Judge and directed the respondents to draw up a fresh seniority list on the basis of date of intial appointment to the post of Geologist (Jr.) either by way of promotion or directly. It was further directed that for the purpose of preparation of the list, the gradation list of the year 1982 is to be treated as the basis and no change is to be made in respect of seniority positions shown in the 1982 list subject to ofcourse, any omissions, which is to be made from that list on account of death, transfer, retirement, resignation, or any other change of similar nature, but strictly limited to the same. Shri Tridib Lashkar thereafter preferred Special Leave Petition before the Hon'ble Supreme Court. Hon'ble Supreme Court further modified the order of the Division Bench of Calcutta High Court directing that while drawing up the fresh seniority list, the Government shall not be



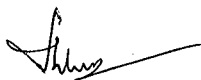
precluded from taking into account, the mistakes which it considers relevant and appropriate to be considered. Despite the categorical direction of the Hon'ble Supreme court that the respondent would be liable to consider the mistakes committed in assigning the interse seniority between the direct recruits and departmental promotee candidates which it considers relevant and appropriate, it did not do so. subsequently, the same mistake was repeated in the seniority list of Geologists (Jr.) as on 31.8.1989 and Geologists (Sr.) as on 01.02.1985. The applicants, therefore, represented to respondents 1 and 2. However, none of the representations of the applicants were considered by the respondents. Therefore, the applicants were compelled to move this Hon'ble Tribunal by OA NO.292/94 praying interalia that correction of seniority list and grant of deemed dated promotion. This Hon'ble Tribunal by order dated 19.3.1997, was pleased to direct the respondents to hear and decide the objections raised by the applicants vide their representations within a period of six weeks. The respondent No.2 stated in the speaking order dated 08.6.1998 that the post of Geologist (Jr.) is required to be filled 50% by direct recruitment and 50% to be filled promotion and a gradation list of Geologist (Jr.) as on 01.3.1983 was drawn. The decision of Respondent No.2 dated 08.6.1998 to accept the seniority list dated 01.02.1982 as the basis for further seniority list is arbitrary and illegal for the reason that in the seniority list of 1982, the applicants' seniority was not fixed with the departmental promotees



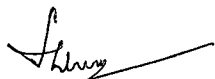
which was necessary as per the recruitment rules. Therefore, a seniority list which is contrary to the rules and which does not maintain the ratio between the direct recruits and departmental promotees is per se illegal. The respondents further issued a communication dated 23.11.1998 in reply to the representation dated 21.8.1998 of the applicants. In the said communication, the respondents stated that the departmental promotee batch of 1978 was interpolated in the ratio of 1:1 with part of direct recruit batch, part of Geologists' Examination 1973 and the whole of Geologists' Examination 1974 and part of 1976 who joined the Geological Survey of India in between 1974 to 1977. It is submitted that such an exercise was clearly impermissible as per rules and was clearly violative of the rules for the reason that direct recruits of 1973, 1974 and 1976 cannot be interpolated with the departmental promotees of 1978. Therefore, the exercise done by the respondents in fixing the inter se seniority between the departmental promotees of 1978 with the direct recruits of 1973, 1974 and 1976 was clearly illegal and is liable to be quashed and set aside. It is further submitted that respondents 1 and 2 ought to have prepared a gradation list which assigns inter se seniority of 1:1 to the direct recruits and departmental promotees of the same recruitment year. Consequently, the impugned communications dated 08.6.1998 and 23.11.1998 are liable to be quashed and set aside. The reason put forth by the respondents in its communication dated 23.11.1998 justifying the holding of Departmental Committee only for 411 posts and not 499 posts is incorrect and unsustainable.



4. The respondents have also filed Affidavit of N.K.Datta dated 15.6.1999 in reply and stated that so far as the posts of Junior Grade Geologists are concerned recruitment rules have been framed and as per the said recruitment rules, the said vacancies are to be filled in on the basis of 50:50 as between the promotees and direct recruits and the said posts are required to be filled in through intervention of the UPSC. In so far as the promotional posts are concerned, the feeder cadre post for being promoted to the post of Geologist (Junior) is that of Assistant Geologist and any person, who is required to be considered for being promoted to the said post, the eligibility criteria is that he ought to complete three years regular service in the grade of Assistant Geologist. In so far as the seniority in the grade of Geologist (junior) is concerned, the same was drawn up sometime on or about 1st March, 1983 strictly in accordance with the principles as contained in the office Memorandum No.9/11/55/RPR dated 22nd December, 1959 issued by Ministry of Home Affairs, Government of India by observing the concept of quota rota system. After having drawn up the said seniority lists, it was circulated to all concerned. Some of the direct recruits filed a Petition challenging the validity of the seniority lists, the Writ Petitions were disposed of by an order dated 6th September, 1985 quashing the said list as was drawn on 9.7.1983 assign the respective seniority list to the junior batch of 1982 against which the appeal was preferred before the Division Bench of



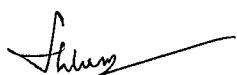
the Calcutta High Court by the Govt. and promotees who were affected by the said order. The said appeals were decided by order dated 19.3.1987 with the direction that first Seniority List should be drawn on the date of initial appointment to the post of Geologists (Junior) either way of promotion or direct recruitment. Shri Tridib Lashkar and others filed SLP in the Hon'ble Supreme Court. The Hon'ble Supreme Court disposed of the SLP upholding the judgement of the Hon'ble Calcutta High Court with the further direction that while drawing up of the fresh seniority list Govt. shall not be precluded from taking into account mistake which it considers to be relevant and appropriate to be considered. The said direction was in addition to the direction as contained in order dated 18.3.1987 issued by the Division Bench of the Calcutta High Court. After careful consideration of the factors involved the implications of legal constraints on various Courts, the Govt. of India decided to accept the seniority list of the First Feb. 1982 as the basis of further seniority list. It was also not considered necessary to make any minor change to the seniority list as accepted on 1.2.1982 except for deletion of names of those officers who were not in Grade of Geologists (Junior) and accordingly a seniority was drawn up for purposes of considering the candidates for being promoted to the post of Geologists (Senior). They have further stated that the department was giving the consensus decision



not to disturb the seniority as of 1.2.1982 which had not been prepared on the basis of the quota rota system relevant to the Recruitment Rules. So far as the posts of Geologists (Juniors) are concerned. Fixing of seniority subsequent to 1.2.1982 has been done following the directions issued by the Hon'ble High Court as approved by the Hon'ble Supreme Court. The respondents have also narrated about the vacancy position that so far as vacancies are concerned, the vacancies had been only for 411 and not more than 411 as sought to be contended by the applicants in the O.A. When the vacancies considered by the Departmental Promotion Committees were looked into and ultimately it was found that there were 41 vacancies considered less Review DPC meeting was ordered and the same was taken place and considered for 411 vacancies and the DPC was taken place as a result and sequence of the order passed by the Tribunal in case of D.M. Mohabay & 9 Ors. Hence the respondents have prayed for dismissal of the OA.

5. We have heard learned counsel for the parties and gone through the records.

6. Learned counsel for the respondents has raised preliminary objection regarding maintainability of the OA on account of non joinder of the necessary parties. He has argued that the applicants have filed this OA against the official respondents as well as private respondents 4 and 5 in their representative capacity as



provided under Order 1 Rule 8 of the Civil Procedure Code. Whereas the relief sought by the applicants in this O.A. will affect the seniority of thousands of persons. Order 1, Rule 8 contemplates suits in a representative capacity by some persons only where a large number of persons having similar rights are involved. Similarly, it also contemplates that a plaintiff may institute a suit against some persons only as defendants, holding them in a representative capacity, or representing a large number of persons having the same interest.

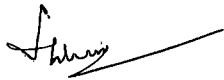
The applicability of this Rule is also subject to certain conditions, namely:

- (a) *The parties must be numerous.*
- (b) *They must have the same interest in the suit, e.g. suit by a member of the community on behalf of the community; suit by a member or secretary of the club or association.*
- (c) *The Court's permission for filing a representative suit must be obtained either at the institution of the suit or afterwards.*

Shree

(d) Notice must be given to the parties whom it is proposed to represent.

7. In the present case applicants have filed this O.A. against the official respondents as well as private respondents No.4 and 5 in their representative capacity. There is nothing on record that Respondent No.4 and 5 has given any consent to be defended in representative capacity or other persons, likely to be effected have authorised them to defend their case on their behalf. There is also nothing on record to show that notice has been given to the other persons to be defendant in representative capacity. As regards the common interest of the parties it cannot be inferred that the private respondents No.4 and 5 and other persons to be affected have the same interests in the subject matter of the O.A. because they may have interse dispute of seniority and further more consequent to the decision of the Tribunal seniority ^{of L} ⁴ ^A thousands ⁴ of persons will be affected and the persons so effected who are not directly representing the case will be deprived of their legitimate right for defending their case properly and it would be violative of the principle of natural justice. Learned counsel for the respondents have further contended that the applicants are seeking



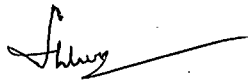
directions against the respondents No.1 and 2 to assign them correct seniority in the grade of Geologists (Junior) by fixing the seniority of departmental promotee (Junior) of 1978 batch interse , with the direct recruit of 1977 regular and 1977 special batch, appointed in March, 1978 and October, 1978 respectively in accordance with the Recruitment Rules which requires vacancies to be filled in the ratio of the 1:1 between direct recruits and departmental promotees of that recruitment year. And, therefore, the O.A. suffers from delay and laches.

8. The learned counsel for the applicant placed reliance on the following decisions.

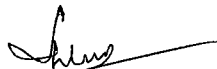
(1) *A.J. Fernandis vs. Dvl. Manager, South Central Railway And Ors.* 2001 SCC (L&S) 217

(2) *B.S. Bajwa and Another vs. State of Punjab & Ors.* 1998 SCC (L&S) 611

The Chart showing the date of appointment as Geologists (Junior) and promotion to the post of Geologists (Senior) and the seniority position of the applicant is at Annexure A.3 to the O.A. indicates that all the applicants were appointed in 1978 as Geologists (junior) and promoted as Geologists (Senior) in the year 1992.



The learned counsel for the respondents has raised the contention that they should have challenged at the time of promotion in 1992 though their promotion/ seniority be given from the year 1985 now they cannot raise objection relating their seniority in the earlier feeder grade. It is not disputed that the applicants were promoted as Senior Geologists in the year 1992 and now they are having prayed to issuance of directions to Respondent No.1 and 2 to assign the applicants correct seniority in the grade of Geologists (Junior) by fixing seniority of the departmental promotees which is settled as way back in 1982 by filing this O.A. in the year 1999. The gradation list of the year 1982 allotting 1978 as the year of the allotment to the applicant has almost settled the seniority list which need not be disturbed after the lapse of 17 years. In the case of *Y Ramamohan and Ors vs. Govt. of India and ors.* 2002 SCC (L&S) 911, the apex Court has held that the *Subterfuge adopted by applicant would not entitle the applicant to get over the delay.* In the case of *A.J. Fernandis vs. Divl. Manager, Sourth Central* 2001 SCC (L&S) 217 the applicant challenges the promotion of the another employees after a period of 4 long years held liable to be dismissed. In the case of *B.S. Bajwa and Anr. vs. State of Punjab and Ors.* the apex court has held that the question of seniority should not be reopened in such situations after a lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case in making such a grievance. This alone was sufficient to decline interference under Art.226 and to reject the writ petition.



9. In view of the aforesaid decision, the application suffers from laches and barred by limitation.

10. So far as the merit is concerned, it transpires that one Tridib Lashkar and 27 others challenged the validity of the gradation list of the Geologists as on 1.3.1983 before the Calcutta High Court which was held by the Hon'ble High Court and thereafter the Govt. preferred an appeal before the Division Bench of the Calcutta High Court while disposing of the appeal in its judgement observed as under:

"Accordingly we direct the respondents to draw up a fresh seniority list on the basis of the date of initial appointment to the post of Geologists (Junior) either by way of promotion or directly, in the light of the observations made by the learned Judge as affirmed by us within a period of three months from today in accordance with law. The post of Geologist (Senior) is to be filled up in accordance with the same. For the preparation of the list, the 1982 list is to be treated to be the basis. No change is to be made in respect of the seniority position in the 1982 list subject of course to any omission which is to be made from that list on account of death, transfer, retirement, resignation or of any other change of similar nature but strictly limited to the same. So far as the seniority of the persons promoted after 1982 list the same shall be strictly on the basis of the date of continuous appointment. If any promotion has been given, whether before or after the issue of Rule Nisi, on the basis of the retrospective seniority then that is also quashed and set aside, subject to this, however, that if they could be otherwise fit in except on such basis, they will be so fit in. The appointments made on adhoc basis by virtue of departmental committees in letter dated 17th January 1985 is not to be disturbed so far as these persons whose names appear in the 1982 list. Promotion to the post of Geologist (Senior) would be made on the basis of the gradation list to be prepared pursuant to the order of the learned trial Judge as modified by this Court. However, this will not prevent the authority concerned in the meanwhile to give adhoc or officiating promotion till the finalisation of the gradation list pursuant to our direction but the same shall proceed on the

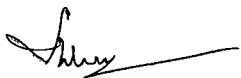
[Signature]

basis of 1982 gradation list and of continuous service thereafter. Subject to the modification specified in this order, the judgement and order of the learned trial Judge is affirmed and the appeal is disposed of accordingly. There will be no order as to costs."

In *Tridib Laskar & Ors. vs. UOI* in SLP No.6678/87 the Division Bench of the Hon'ble Supreme Court vide their order dated 7.3.1989 disposed of the SLP upholding the judgement of the Calcutta High Court with its operative part as follows:

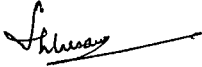
"We have heard the learned counsel and would like to add that while drawing up the fresh seniority list, Government shall not be precluded from taking into account mistake which it considers are relevant and appropriate to be considered."

On perusal of these decisions it indicates that Shri Tridib Laskar and Others challenged the validity of the Gradation list of the Geologists (Junior) dated 1.3.1983 and not the gradatin list of 1982 before the Hon'ble High Court and the Division Bench directed that no change is to be made in respect of the seniority position shown in 1982 list subject of course to any omission which is to be made from that list on account of death, transfer, retirement, resignation or of any other change of similar nature but strictly limited to the same. The Hon'ble Supreme Court further directed that the Govt. shall not be precluded from taking into account mistake which it considers to be relevant and appropriate to be considered. The applicants in this case are challenging the order of respondents dated 8.6.1998 and 23.11.1988. (Annexure 1 & 2) passed in



pursuance of the order of the Tribunal in O.A. No.292/94 keeping in view of the seniority list of 1982. In this way they are asking other senioritylist of 1982 which was directed to be basis of the drawing of the seniority list, according to the direction of the Division Bench of the Calcutta High Court and modified by the Hon'ble Apex Court. Therefore this method adopted by the applicants itself disentitled them to any relief.

10. In view of the aforesaid dicussion, the O.A. being devoid of merits, thus liable to be dismissed and dismissed accordingly. No order as to costs.


(Muzaffar Husain)
Member (J)


(A.R. Agarwal)
Vice Chairman

Sj*