

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT DERABAD

0.5/95

Dated, the 29 April, '99.

BETWEEN 3

1. V. Narayana Raju
2. Tata Satyanarayana
3. Ashok Patalay
4. P. Hariprasad Reddy
5. M. Narasimhachari
6. S. Renuka

... Applicants

A N D

1. The Union of India,
represented by its Secary,
Ministry of Water Resces
Ground Water,
Shram Shakti Bhavan,
New Delhi.
2. The Chairman,
Central Ground Water Id.,
Jam Nagar House,
Man Singh Road,
NEW DELHI 110 011.
3. The Chief Hydrogeolo~~o~~ and Member,
Central Ground Water Id, N.H.IV,
Faridabad 121 001,
Haryana

... Respondents

COUNSELS :

For the Applicants

Mr. G.S. Rao

For the Respondents

Mr. N.R. Devaraj

CORAM :

THE HON'BLE MR. H. RAJENPRASAD, MEMBER (ADMIN)

THE HON'BLE MR. B. S. JARAMESHWAR, MEMBER (JUDL)

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O R D E R

(PER: HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER (JUDL))

1. Heard Mr. G.S. Rao, Learned Counsel for the applicants and Mr. N.R. Devaraj, Learned Standing Counsel for the respondents.
2. This is an application under Section 19 of the Administrative Tribunals Act, 1985. The application was filed on 15.11.1994.
3. There are 6 applicants in this O.A. They are working as Senior Technical Assistants (Geophysics) (in short "STA(GP)" in the respondents' Ground Water Board (in short "the Board") in Southern Region, Hyderabad.
4. They all possess Masters Degree in Geophysics or Technical or Applied Electronics.
5. They submit that they were direct recruits and they have been working in the same post for the last 5 to 17 years. The Staff strength of STA(GP) is about 30. Their grievance is that the respondents have not provided any promotional avenues to STA(GP), whereas STA(Hydro Geology) (in short STA(HG) and STA of other disciplines like Hydro-Chemistry and Drilling etc. were provided.
6. They have been unjustly discriminated against. The respondents have not created sufficient number of higher promotional posts for STA(GP) whereas STAs of other disciplines have chances of accelerated promotional opportunities.
7. They submit that a Multi-Disciplinary Committee in its report submitted in August, 1990 deprecated the tendency of the Board in its attitude towards STA(GP) and recommended that reasonable career prospects at all levels are of course essential in any organisation.

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8. The Board has not formulated any proper and comprehensive recruitment and promotional policy.

9. The Recruitment Rules vide GSR 657 dt. 4.6.73 (Annex-A2). It was amended in GSR 975 dt. 19.7.78 omitting entry pertaining to Asstt. Geophysist (Annex-A3). Their grievance is that between 1973 and 1978 no DPC was convened to consider the case of promotion of STA(GP), and that the post of Assistant Geophysists was abolished without filling it.

10. In 1979, the recruitment rules were amended vide GSR 1495/dt. 30.11.79 (Annex-A4). As per the amendment 50% of the posts are to be filled by promotion and 50% of the posts are to be filled by Direct Recruitment. A person with M.Sc. (Geo-
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physics) was eligible only for the post in Geophysics/and not for a Geology Discipline. They submit that this action was discriminatory. They submit L was not eligible for analogous posts even though they were in the same scale of pay of Rs.500-900 (Rs.1640-2900). They submit that it is a malafide discrimination.

11. In 1984, Recruitment Rules for Junior Geophysists were amended which permitted a Logging Technician (WLT) with 3 years experience eligible for promotion to Junior Geophysist. The amendment affected/ their promotional prospects.

12. In 1987, new Recruitment Rules called CGWB (Scientific G Group 'A' posts) Recruitment Rules were framed by vide GSR 434 dt. 18.5.87 (Annex-5) providing 50% of the posts of Junior Geophysist (Scientist 'B') to be filled by promotion failing which by direct recruitment and 50% by Direct Recruitment. The applicants submit M.Sc. (GP) were discriminated by the Recruitment Rules, 1987.

13. The experience prescribed for the post of Junior

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Junior Geophysist (Scientist 'B') is 5 years as STA(GP) whereas the experience prescribed for Junior Hydrogeologist (Scientist-B) carrying the same scale of pay of Junior Geophysist is 4 years (3 years as Assistant Hydrogeologist and 1 year as STA(HG)). That is to say the persons recruited as STA(HG) can become Junior Hydrogeologists and also Junior Geophysist with less experience whereas STA(GP) can never become Junior Hydrogeologist and ~~had~~ to work at least 5 years to be eligible for the post of Junior Geophysist. Thus they submit that this is ex-facie unfair, unreasonable and discriminatory.

14. Their grievance is that they were not considered for promotion to the post of Junior Geophysist (Scientist 'B'). They submit that DPC has to be convened to consider the case of STA(GP) for promotion to Scientist 'B' as there are a number of eligible candidates having the requisite experience of ranging from 5 to 20 years.

15. While the O.A. was pending the UPSC issued Advertisement in Advertisement No.1 of 1996 and invited applications for 6 posts of Junior Geophysists. They submit that they are in fact discharging the duties of Junior Geophysists.

16. They had challenged the Advertisement issued by the UPSC on the ground that there was no need to go in for Direct Recruitment as there were eligible candidates for promotion in the Board.

17. Hence, they have filed this O.A. for the following reliefs :

1. To strike down the Recruitment Rules

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for recruitment of Junior Geophysicists (Scientist-B), Junior Hydrogeologists (Scientist-B) and for higher posts in those disciplines (Annexure-A.5) and the Recruitment Rules for recruitment of STA's(GP) and STA's(HG) Annexures-A6, A-6.A, A-7, and A-7.(A), "by declaring those Rules are illegal, arbitrary, unjust, unreasonable, discriminatory, unconstitutional and void in so far as they provide for recruitment and promotion of persons holding qualifications in disciplines other than Geophysics, such as Geology, Applied Geology, Electronics, Hydrology, Physics and Radio Physics, to the posts of Senior Technical Assistants (Geophysics) (STA's (GP) for brevity and Junior Geophysicists (Scientist-B), also, and not vice versa, and deprive the persons in Geophysics disciplines equal opportunity in direct recruitment and promotion and subject them to incidious discrimination and step-motherly treatment and deny them just and equitable recruitment and promotional opportunities and block even the meagre promotional opportunities resulting in stagnation of the Applicant STA's(GP) in the same post and grant them consequential relief of direction to the Respondents to fill up the posts of Junior Geophysicist (Scientist-B) only with the Applicant STA's(GP) having qualifications in Geophysics/working in Geophysics discipline with retrospective effect from the date they have copleted 5 years eligible service for promotion to the posts of Junior Geophysicist (Scientist-B) and grant them all consequential benefits such as further promotions, arrears of pay and allowances attached to those posts, seniority and others", and to direct the respondents to frame a set of appropriate Recruitment Rules and Promotion Rules, inter-alia, providing reasonable promotional avenues, at least two or three to all the STA's (GP) and put an end to the discrimination in Recruitment/promotional opportunities in these disciplines and also to introduce a scheme for time bound promotion by

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creating adequate number of posts.

2. Declare that direct recruitment for the posts of Junior Geophysicists (Scientists-B) as envisaged in UPSC Advertisement Nos.1 of 1996 and 9 of 1996 is violative of Articles-14 and 16 of the Constitution of India and contrary to the mandatory provisions which prescribed 50 : 50 for promotion and direct recruitment.

3. Declare that the reservation of 5 posts of Junior Geophysicists (Scientist-B) for SC/ST/OBC in the UPSC advertisement Nos. 1/96 and 9/96, in addition to the one post already reserved and filled up previously, is illegal, inequitable and discriminatory and violative of Articles-14 and 16 of the Constitution of India and contrary to the reservation policy.

4. Declare that the CGWB Assistant Geophysicists Recruitment Rules 1995 have no effect on the STA's (GP) who have already completed 5 years service and that they continue to be eligible for direct promotion to the posts of Junior Geophysicists (Scientist-B) as per the recruitment and promotion rules already existing on the date of filing of the O.A. 6 of 1995 on 15.11.1994.

5. Declare that the amendment proposed on 2.11.1993 (Annexure-R.4) to the recruitment and promotion rules, 1972 have no effect on the STA's (GP) who have already completed 5 years service and became eligible for promotion to the posts of Junior Geophysicists (Scientist-B) and that they continue to be eligible for direct promotion to the posts of Junior Geophysicists (Scientist-B) as per recruitment and promotion rules already existing on the date of filing of this O.A.6 of 1995 on 15.11.1984.

6. Direct the Respondents to immediately convene the Departmental Promotion Committee and consider the

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Applicant STA's(GP) who have completed 5 years of service for promotion to the posts of Junior Geophysicists (Scientist-B) as per the recruitment and promotion rules as existing on the date of filing of this O.A. 6 of 1995 and promote them, if necessary, by creating supernumerary posts, without bunching the vacancies and give retrospective effect to the promotions from the date the posts were sanctioned or fallen vacant and the date on which the concerned STA's(GP) completed 5 years service at that relevant time, and also to consider them and promote them to the next higher posts of Scientist 'C' and 'D' with retrospective effect as per the eligibility conditions existing at that time.

7. Direct the Respondents to provide reasonable promotional opportunities to the existing STA's (GP) to the post of Junior Geophysicists (Scientist-B) as per the recruitment and promotion rules existing at the time of filing of this O.A. 6 of 1995 on 15.11.994."

8. To direct the respondents to treat all the STA's(GP) and STA's(HG) as one integrated cadre and designate them as Scientists-A and maintain common seniority list for promotion to the next higher cadre of Scientist-B as done in accordance with the new Recruitment and Promotion policy of 1987 in the case of Junior Geophysicists, Junior Hydrogeologists who are all integrated into one cadre and designated as Scientist-B and the higher posts of Scientist-C and Scientist-D as they are all carrying equivalent

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responsibilities in the Board which is treated as a Scientific Multi-disciplinary Organisation.

9. To direct the Respondents to re-classify all the existing sanctioned posts of Assistant Geophysicists as Junior Geophysicists since the Recruitment and promotion rules, 1987 provide for Junior Geophysicists and not Assistant Geophysicist posts and fill-up these posts with STA's (GP) by convening Departmental Promotion Committee immediately.

10. To direct Respondents to immediately pay the STA's (GP) the salary (pay + allowances) payable to Junior Geophysicists (Scientist-B) as they are in fact discharging the functions of Junior Geophysicists (Scientist-B) until they are promoted as Junior Geophysicists (Scientist-B) and also pay the arrears of difference of salary within a period of three months.

11. To direct the respondents to prescribe job specifications to each of the posts and

12. Direct the contending respondents to pay the applicants the costs of this application.



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18. The applicants further submit that the STA(GP) in the Board have been discriminated against; that the respondent authorities have not created promotional opportunities; that whereas STAs of other disciplines like Hydrogeology, and Hydro-Chemistry, etc. are provided with accelerated promotions, for the Board has failed to consider their cases for promotion to the post of Junior-Geophysist and that they curtailed their promotional prospects by appointing STA(HG) as Junior-Geophysists. Thus they submit that the Board had given promotions to 2 persons in the year 1985 and 3 persons in the year 1992 to the post of Junior Geophysists (Scientist 'B'). Further their grievance is that the DPC was not convened for considering the cases of promotion of STA(GP) during the past 21 years and no recruitment rules were made to fill up the posts of Assistant Geo-Physists sanctioned vide letter No. 26-58/89-Estt (M) dt. 27.3.92. Their grievance is that the Board promoted the STAs of other disciplines to higher posts ignoring the claims of STA(GP). They submit that the recruitment Rules 1987 notified on 18.5.87 and published in the Gazette in 6.6.87 had been issued repealing of the earlier Recruitment Rules and as per the new rules, the discipline-wise differentiation viz. Hydrogeology, Geophysics, Chemistry and Hydro-meteorology. The have been done away with. New Recruitment Rules provided uniform channel of promotion from Scientist-B to Scientist-C and Scientist-C to Scientist-D irrespective of their discipline. Accordingly, common seniority lists have been prepared for all these posts. The STA's(GP) with 5 years experience and Assistant Geologists with 3 years experience are eligible for promotion to the post of Scientist 'B'. Thus they submit



that all the posts of Scientist 'B' are to be filled up with as per inter se seniority. Hence, there is no justification to deny them the promotion and they shall be treated as one integrated cadre.

19. They submit that there are large number of experienced STA's (GP) with 5 to 20 years of continuous and unblemished service, the Departmental Promotion Committees shall have to be convened immediately to consider their cases of promotion to the post of Scientist 'B' year-wise on completion of 5 years of service, not by bunching all the vacancies. They must be promoted with retrospective effect. They submit that the work of Geologists and Geo-physists has been recognised as supplementary and complementary to each other in this multi-discipline Scientific organisation and when no the common seniority lists have been prepared, it is unjust and unreasonable to continue the differentiation at the level cadre of STA(GP) which are feeder/posts to the promotional posts of Scientists 'B'. Thus they submit that they must be promoted to the post of Scientist 'B' with retrospective effect.

20. The respondents have filed a reply on 5.12.95. They submit that the Flexible Complementing Scheme (for short "the FCS") was introduced vide Notification No.5-32/84-GW dt. 18.5.87 in the matter of promotions from Scientist 'B' to Scientist 'C' and Scientist 'C' to Scientist 'D'. These rules are called CGWB (Scientists Group 'A' posts) Recruitment Rules, 1987. The Scheme is not applicable to Group 'B', 'C' and 'D' posts. The question of preparation of common seniority list for STA(GP) or STA(HG) does not arise. The applicants are holding Group 'C' posts. Group 'C' posts are neither complementary nor carry equal responsibilities. They are having different recruitment rules and different



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nature of duties. They cannot be bunched together.

21. The posts of STA(GP) is a feeder post to Assistant Geophysist, Scientist 'B' and Junior Geophysist, etc.

There are no norms to promote an employee immediately after completion of prescribed period of service in the existing grade.

22. The posts of STA(GP) and STA(HG) are different posts. Next higher promotions are accorded subject to their eligibility and as per the Recruitment Rules.

23. Inter se seniority or common seniority is done only in cases where 2 or more feeder posts without providing any quota are to be considered for promotions under the F.C.S. The categories of STA(GP) and STA(HG) do not come under the F.C.S.

24. The Board is always thinking for the better career prospects of its staff not only in cases of STA(GP) but also in other disciplines. The Govt. has sanctioned 14 posts of Assistant Geophysist which will be filled from STA(GP) after publication of the Recruitment Rules and receipt of revival of the posts from the Government.

25. As a result of the policy of the Govt. certain posts were abolished only by chance. The Board had pursued with the Ministry to save the posts from abolition about 2 years ago. However, the Board was constrained to consider the abolition in the larger interest of the Board.

26. As none of the incumbents in STA(GP) had completed the prescribed 3 years of regular service in the post of Assistant Geophysist, the DPC could not be convened.

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27. They submit that STA(GP) can be promoted to the post of Assistant Geophysist and then to the post of Junior Geophysist.

28. One post of Assistant Geophysist (Group 'B' Gazetted) was sanctioned vide Ministry's notification exclusively for dt. 1.6.73 in the Board for/UNDP Project, but the same was abolished w.e.f. 30.9.74 on closure of the Project.

29. The educational qualification for Direct Recruits to the post of Junior Geophysist is M.Sc. in Physics, Radiophysics, Applied Physics, Geology or Applied Geology (Annexure-R1). The prescribed qualifications in feeder post for STA(GP) required for Direct Recruits are M.Sc.in Physics, Electronics or Geology or Applied Geology or even degree holders with the background of Physics of at least B.Sc level is essential. The STA(GP) and STA(HG) cannot be converted as they are different. They submit that the posts of Well Logging Technician (WLT) was an isolated post without any promotional avenue. The Board considered to provide promotional avenue for the said post. Hence the recruitment Rules for the post of Junior Geophysist was amended. This amendment has not at all affected the promotional prospects of STA(GP).

30. The Recruitments for the post of Junior Physicist and Junior Hydrogeologists are different though the scale of pay is identical. In case of promotion to the Junior Hydrogeologist (Group 'A') from feeder category of Assistant Geologist (Group 'B') is 3 years and not 4 years. However, keeping in view the creation of the/posts of Assistant Geophysist, the recruitment rules for the post of Junior Geophysist are being amended and awaiting

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approval of the Government. The Recruitment Rules are in order and they need not be struck down.

31. Officers in the Board are deployed on field duties only according to the need or necessity. It does not mean that in case a STA(GP) or STA(HG) is deployed on the field duty he can be considered fit to discharge the duties of Junior Hydrogeologist.

32. As at present promotional avenues exist in the Board for STA(GP) are -

i) A STA(GP) can aspire to become Asstt. Geophysist (Newly created 14 posts).

ii) STA(GP) to Junior Hydrophysist.

iii) Junior Geophysist to Scientist 'C' (GP)

iv) Scientist 'C' (GP) to Scientist 'D'

33. These promotional posts are filled as and when they fell vacant through promotion/Direct Recruitment in accordance with the Rules.

34. They have never promoted an Officer of Hydrogeological discipline to Geological discipline.

35. During 1973 there was a post of Assistant Geologist (Group 'B') for a time bound Project-- an intermediate channel between STA(GP) and Junior Geophysist (Group 'A'). But the same was abolished w.e.f. 30.9.74 after closure of the Project. However, the Govt. has again created intermediary channel by creating posts of Assistant Geophysist (Group 'B'). Hence, the question of promoting STA(GP) to Junior Geophysist (Group 'A') does not arise. Now a proposal has been sent for reclassification of the post of Assistant Geophysist into Junior Geophysist and approval of the Govt. is awaited.

36. The Board has convened the DPC according to availability of posts in a particular cadre.

37. They submit that the following new posts have been

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sanctioned in the Geophysics Discipline :

- i) Junior Geophysist - 4.
- ii) Asst. Geophysist - 4.
- iii) STA(GP) - 20.

38. The applicants cannot compare their duties with the duties of other Officers. Their version that they have been discharging the duties of the Junior Geophysist (Group 'A') is not correct. Hence, they cannot claim the emoluments of Junior Geophysist (Group 'A'). On these grounds they have prayed for dismissal of the O.A.

39. The applicants have filed a rejoinder. In the rejoinder they submit that the respondents took more than a year to file the reply. In the meanwhile, they have created intermediary promotional post called Assistant Geophysist only to deprive their promotional opportunities. It is stated that the applicants have already put in more than 5 years of service in the cadre and are eligible for consideration for promotion to the post of Junior Geophysist (Group 'A'). However, the respondents in order to deny their legitimate promotional avenue have come forward by creating the post of Assistant Geophysist.

o The respondents are amending the Recruitment Rules for Geophysists and prescribing 3 years of regular service as Assistant Geophysist for promotion to Junior Geophysist Group 'A'. They state that there are 9 posts of Junior Geophysist to which they are eligible for promotion. The exclusion of STAs from the FCS is unreasonable and amounts to discrimination. They submit that automatic promotions are given by the respondents to the Junior Geophysists Scientist 'B' and others by specifically amending the rules. They cannot be denied to them. The steps taken by the respondents for revival of the

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14 posts of Assistant Geophysists which were sanctioned a few years back but were lapsed for want of Recruitment Rules for those posts. Nobody prevented them to frame the Recruitment Rules. The requirement of experience as Assistant Geophysist is clearly aimed at denying them promotion to the post of Junior Geophysist (Group 'A'). This is absolutely illegal and malafide. The respondents have done this ^{manoeuring} only with vengeance as the applicants have approached this Tribunal.

40. As it is the STA(GP) with 5 years experience is eligible for promotion to the post of Junior Geophysist Group 'A', but the respondents having taken steps to preempt their claims for promotion to the post of Junior Geophysist which were already vacant by creating 14 intermediary lower promotional posts. They submit that they are exhibiting discriminatory attitude towards them. They submit that when the Assistant Geophysist post was created earlier in the year 1973 they had not stated how they filled up that post for a short period. Further, they submit that by abolishing the said post of Assistant Geophysist, the respondents repealed the Recruitment Rules during July, 78. Therefore, their contention that there was no STA(GP) promoted/recruited as Assistant Geophysist is illogical. Further, vide Annexure-4, the respondents omitted the requisite experience as Assistant Geophysist for promotion to the post of Junior Geophysist in the year 1979 and therefore, as a result the STA(GP) were eligible for consideration for promotion to the post of Junior Geophysist but still the respondents did not consider them for promotion.

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Hence, the STA(GP) were not provided with any realistic promotional opportunities. The common seniority lists have been drawn up for persons in Geophysics, Hydrogeology, Applied Geology, Geology, Chemistry, Hydrometrology and others for FCS, but the same has not been extended to STA(GP). The qualification and experience prescribed are discriminatory. The existing STA(GP) shall have to be considered for promotion to the post of Junior Geophysist Scientist 'B' as per the rules existing when they completed the requisite 5 years of service as STA(GP), if necessary by creating supernumerary posts and also by promotion to higher posts complying with the FCS. Hence cannot be legally applied to them.

41. When the STA(GP) is deployed to do the work of Junior Geophysist it can be inferred that there were posts in Junior Geophysist, Group 'A'. Hence, it is unjust in not agreeing for sufficient number of Junior Geophysists Group 'A'.

42. The respondents have not furnished the details of posts filled by SC/ST as per the the reservation quota in the various grades. i.e. from STAs to Scientist 'D' in various disciplines. They submit for 4 posts of Junior Geophysist Scientist 'B' are reserved for SC/ST and they were advertised in January, 1996. Further no posts of SC/ST were reserved and advertised in the paper for other disciplines. Reservation of 4 posts for SC/ST amounts to denial of opportunities for STA(GP) in the existing 9 posts of Geophysists Group 'A'. They submit only STA(GP) are subject to step-motherly treatment. Their contention that they are creating 14 posts of Assistant Geophysists is contradictory. Thus they submit particularly, the STA(GP) have not been provided with sufficient promotional opportunities.



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43. The grievance of the applicants herein is that the respondents Board has not provided any promotional avenues for them and that they have been working in the same scale of pay for the last 20 years. Further, they submit that the STA/GP have been unnecessarily discriminated against whereas STAs of other discipline like STA(HG) have accelerated promotions. It is stated that the STA(GP) and STA(HG) are in the same scale of pay.

44. It is an admitted fact that the Board has not considered the case of the applicants for promotion for the last 20 years. They relied upon the observations made by the Hon'ble Supreme Court in the case of CSIR Vs. KGS Bhatta (reported in AIR 89 SC page 1972) in paras 9, 12 and 14, the Hon'ble Supreme Court has observed as follows :

"9. That then is the scope of bye-law 71(b)(ii). But that does not mean that we should interfere with the relief granted to respondent 1. By pointing out the error that crept into the decision of the Tribunal we need not take to its logical end which will defeat justice. Respondent 1 is not a lay-man. He is a highly qualified engineer. Although joined service with a diploma in Engineering he later passed Bachelor of Engineering (B.E) and also acquired M.Tech degree and one more diploma (DPM). He was, however, left without opportunity for promotion for about twenty years. This is indeed a sad commentary on the appellant's management. It is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See: Principles of Personnel Management Flipo Edwin B.4th Ed. p. 246). Every management must provide realistic opportunities for promising employees to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of

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administrative costs, misallocation of personnel, low morale and ineffectual performance, among both non-managerial employees and their supervisors." (See : Personnel Management by Dr. Udai Pareerk p. 277). There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions. (See: "Management of Personnel in Indian Enterprises by Prof. NN Chatterjee, Chap. 12 p. 128). The appellant appears to have overlooked this basic requirement of management so far as respondent 1 was concerned till N.R. and A.S. were introduced.

12. But this Court under Article 136 exercises power only when there is supreme need. The decision on individual disputes of seniority, promotion, reversion, suspension, pay fixation, etc. are not ordinarily interfered with even though it is viewed as erroneous. The Tribunal may fall into some legal errors but if substantial justice has been rendered to a person, this Court will not interfere with such a decision. In Rashpal Malhotra v. Satya Rajput, (1987) 4 SCC 391 : (AIR 1987 SC 2235), this Court expressed the view that even if legal flaws might be electronically detected in the order of the Tribunal or Court, this Court will not interfere unless there is manifest injustice or substantial question of public importance.

14. In the instant case as already noticed, that respondent - 1 has suffered and stagnated for about twenty years in the same scale from inception due to defective promotional policy. Therefore, we decline to interfere with the relief granted by the Tribunal although we do not agree with the views expressed on the scope of bye-law & 71(b)(ii).

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45. In our humble opinion the Board must act as a model employer. The Board forms part and parcel of the Ministry of Water Resources. It is clear that the respondents have not taken the case of the STA(GP) for promotion to higher scales of pay. It is now made clear that the respondents failed to provide an opportunity for promotion to the applicants for the last 20 years.

46. The applicants submit their next promotion is to the post of Junior Geophysist Scientist 'A' post. They submit that they having put in the requisite number of years of service in the cadre of STA(GP) for being eligible for consideration to the post of Junior Geophysist Scientist 'B', their cases were not considered for promotion.

47. - the pendency of the O.A., the respondents created posts of Assistant Geophysist. This post is an intermediary post between the of STA(GP) and the Junior Geophysist Scientist 'B' post. The applicants submit that the action of the respondents in creating the posts of Assistant Geophysists is only to deny them the legitimate claim for promotion to the post of Junior Geophysist Scientist 'B'. We cannot consider that the action of the respondents in creating the post of Assistant Geophysist is with an intention to deprive the promotional avenues of the applicants. As already submitted the applicants have already put in the requisite number of years of service for being eligible for promotion to the post of Junior Geophysists. However, it is for the respondent authorities to consider their application for the post of Junior Geophysist if they are otherwise eligible. Promotion cannot be claimed merely on the basis of the requisite number of years of service. It depends on many other conditions like eligibility, suitability and service records.

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49. The case of the applicants is that the posts of STA(GP) and STA(HG) are in the same scale of pay and that they may be clubbed together. Thus they submit that in doing so, the STA(GP) will have chances of promotion. They further submit that the educational qualifications required for the post of STA(GP) and STA(HG) are one and the same.

- - - - - ~~the case of amalgamation of, upgradation of, restructuring of the posts are the prerogative of the Executive. We cannot interfere with those matters. It is for the respondents Board to take into consideration the contention of the applicants to club the posts of STA(GP) and STA(HG) depending upon the work-load, experience and man-power requirement for these posts.~~

50. In this connection, we feel it appropriate to refer to the decisions of the Hon'ble Supreme Court in the case of Union of India and Others Vs. NY Apte and Others (reported in 1998 SCC (R&S) 1673 and 1998(6)SCC 741). In paras 7 to 9 the Hon'ble Supreme Court has observed as follows :

"7. We have already pointed out that in 1978, when the 1969 Rules were partially superseded and the posts of MG I and MG II were bracketed with higher posts all ~~the~~ of which were termed as Group A posts, the persons holding the posts of AM lost their chance of getting promoted to the post of MG II as the same was to be filled up entirely by direct recruitment though they had the requisite educational qualification. The only promotional avenue available to them under the R 1969 Rules was closed. Necessarily, the rule-making authority had to make an alternative provision for such qualified persons with an avenue of promotion. Hence, the 1978 Rules widened the field of consideration for promotion to the post of MG I by including persons who had put in a longer number of years of service either as AM exclusively as MG II and AM put together. It is obvious that the rule-making authority gave credit to the experience gained by AM either as AM or as AM and MGII for a specified number of years. When

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the educational qualifications are same and the scales of pay are almost equal, there is nothing wrong in equating MG with five years' approved service in the grade with MG II with total of 8 years (combined approved service, in the grades of MG II and AM as well ~~approximated~~ ~~xxx~~ as AM with 10 years approved service in the grade. The mere fact that on account of certain fortuitous or other circumstances, a person with equal educational qualification entered the service in a lower grade will not keep him permanently inferior or unequal to a person who had entered a higher grade and prevent him from being placed on a par with the latter after gaining sufficient experience in the service.

8. Further, what all has been done in the Rules is only to include such persons in the field of consideration and give an opportunity to them to be considered for promotion. It should not be forgotten that such promotion is only by selection and that too by a Board consisting of higher officials in consultation with the UPSC on each occasion. In such a situation, there is no warrant for the contention of the respondents that they have been deprived of any right. It is too well settled that chance of promotion is not a right, nor a condition of service.

9. There is no merit in the contention that thereby unequalls have been made equals. A person holding the post of MG II for five years cannot claim that a person holding the post of MG II and AM on a combined service of 8 years is not equal to him; nor can it be said that the person holding the post of AM for ten years is not equal to either of them. The matter of equation of posts is entirely within the domain of the rule-making authority and unless the rule is wholly unreasonable and irrational, the Court will not interfere with the same."

51. The respondent Board must keep in view the above observations, and also the recommendations of the Multi Disciplinary Committee sent in August, 1980. It must also bear in mind that its employee must at least get a promotion in his career and he cannot be made to stagnate in a particular post through-out his career. The Board must follow the reservations roaster also in considering the cases of promotions.

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52. Annexure-5 is the Recruitment Rules 1987. It came into force from 6.6.87. As per these rules, the posts of Junior Geophysist Scientist 'B' are to be filled up 50% by promotion and failing which by transfer on deputation, failing which 50% by Direct Recruitment. According to these rules the Board issued notification Bearing No.1 of 1996 and 6. of 1996 inviting applications to fill up the posts of Geophysists. The contention of the applicants is that when they themselves are available in the Board itself, then the course of action taken by the Board in notifying the advertisements and inviting applications was not justified.

53. As already observed 50% of the posts are to be filled in by Direct Recruitment. Then that is so, the quota prescribed for the Direct Recruits must be filled in by the Board. In that view of the matter, we do not feel any irregularity in the Board notifying the advertisement for filling up the posts against the direct recruitment quota. The Board must have worked out the cadre strength and reservation points before issuing the advertisement. We wish to observe that the UPSC has not been made a necessary party in the O.A. Further respondents Board has to notify the vacancies in accordance with the Rules. Merely because certain reserved candidates are available for the posts of Junior Geophysists, the Board cannot fill up the quota prescribed for the Direct Recruits. The applicants attempted to question the legality of the rules 1987. We do not find any illegality in the Rules, 1987.

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Merely because the Board failed to provide promotional avenues to the applicants for all these years, the action taken by them to fill up the posts of Junior Geophysists, Scientist 'B' against the Direct Recruitment quota cannot be termed illegal. The Board must be fair enough to concede the demands of the in service candidates if they are eligible for the posts and fill up the same

54. The applicants have prayed for multi reliefs. The reliefs are described in ... para 8.1 to 8.12. In the first para they prayed for striking down the recruitment rules 1987. They contend that the Rules 87 are illegal and unconstitutional. They submit that the rules provided for recruitment and promotion of persons holding qualifications in disciplines other than STA Geophysists, such as Geology, Applied Geology, Electronics Hydrology, Physics and Radio Physics to the posts of Senior Technical Assistants and Junior Geophysists. Thus they contend that the rules deprived the persons in the Geophysics. We do not find ~~any~~ reason for such discrimination. The recruitment rules have been framed taking into consideration the need ~~or~~ necessity of the Board in various disciplines. Merely because the rules do not provide promotional avenues to the Geophysicists it cannot be held that the rules are ~~either~~ arbitrary or illegal.

55. The respondents, challenged the advertisements No.1 and 6 of 1996 as violative of Article 14 and 16 of the constitution of India. By these advertisements 6 posts of Junior Physists, Scientist 'B' have been advertised. As already observed, the recruitment rules provide 50% by promotion and 50% by direct recruitment. When that is so, the Board has taken into consideration the cadre-



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strength in the cadre of Junior Geophysist and advertised. The Board must/consider/to fill up the posts against direct recruitment quota. Hence, we do not find any reasons to set aside the advertisements issued by the UPSC. The IMCC has not been made a necessary party to this O.A. Hence, without hearing the UPSC it may not be reasonable to set aside or quash the advertisements.

56. In the advertisements No.1 of 1996 and 6 of 1996 5 posts of Geophysists are reserved for SC/ST/OBC candidates.
..... submit that the reservations were in addition to the one post already reserved and filled up previously and illegal. Reservations have to be made ~~taking~~ depending upon the cadre strength of Junior Geophysists. Accordingly, the Board has taken a view to reserve 5 posts of Junior Geophysists in SC/ST/OBC as per the roster point. In that view of the matter, we do not find any illegality in reserving 5 posts for reserved community candidates.
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5 posts for reserved community candidates.
57. They further seek for a declaration that the rules
Assistant Geophysist Recruitment Rules 1995 have no effect
on the STA(GP). As already observed the posts of Assistant
Geophysists were created during the pendency of the O.A.
The Rules are prospective in nature unless there is clear
indication in the rule to operate retrospectively. As
already observed ---
requisite number of years of qualifying service for promotion
to the posts of Junior Geophysists xxxx
Scientist-B. xxxx then we feel that the
cases of the applicants must be considered first for the
post of Junior Geophysists before filling up the posts of

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Assistant Geophysists under the recruitment rules, 1995 by them. In case the applicants fail to come up to the mark for promotion to the post of Junior Geophysists then those candidates may be considered for promotion to the post of Assistant Geophysists under the Recruitment Rules, 1995.

58. For that reason we do not find any illegality. Therefore, the applicants cannot claim that the Recruitment Rules 1995 for Assistant Geophysists have no effect on them. As already observed promotions cannot be claimed as a matter of right.

59. The Board has to take into consideration for creation of a common seniority list of STA(GP & STA(HG) if such a course of action, ~~of action~~ is beneficial to the applicants.

60. The Board must not allow its employees to stagnate out in a particular post through his career. It must provide at least one promotion in one's career. The respondents have not denied the fact that the applicants being direct recruits have been working as STA(GP) for over 20 years. We feel this may not be proper.

61. The Recruitment Rules 1995 is prospective in nature. It can have no retrospective application. Hence, the Board must consider the cases of the applicants for promotion to the post of Junior Geophysists (Scientist-B) for the vacancies available against promotion quota, earlier to 1995. If all or any of the applicants are found eligible they must be promoted to the post of Jr. Geophysist (Scientist 'B').

62. If any of them is left over, then their cases be considered for promotion to the post of Assistant Geophysicist.

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63. Rest of the reliefs prayed for in para 8 are

64. Time for compliance is 4 months from the receipt of a copy of this order.

65. O.A. is ordered accordingly. No costs.

BS
(B.S. JAI PARAMESHWAR)
MEMBER (JUDL)

29.4.99

HRP
(H. RAJENDRA PRASAD)
MEMBER (ADMIN)

Dated, the 29th April, '99

COPY TO:-

1. HONNO
2. HHRP M(A)
3. HBSJP M(B)
4. B.R. (A)
5. SPARE

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. ASIR :
VICE-CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN
MEMBER (A)

THE HON'BLE MR. B.S. JAI PARI
MEMBER (D)

DATED: 29.4.99

ORDER / JUDGEMENT

MR. A.Y. C.P. NO.

IN

C.A. No. 6/95

ADMITTED AND INTERIM
ISSUED.

ALLOWED.

C.P. CLOSED.

R.A. CLOSED.

DISPOSED OF WITH

DISMISSED.

DISMISSED AS

ORDERED/REJECTED

NO ORDER AS TO

Central Administrative Tribunal
Hyderabad DESPATCH

12 MAY 1999

Hyderabad - 500 001
HYDERABAD BENCH