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CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No. 1128/96 with O.A.1129/96.

Date: September 25, 1996.

Between:

O.A.No.1128/96.

Dr.B.S.R.Murthy Applicant.

And

1. The Union of India represented by its Secretary, Ministry of Mines, Department of Mines, Shastry Bhavan, New Delhi 110011.
2. Union ~~ex~~ Public Service Commission represented by its Chairman, Dholpur House, Shajahan Road, New Delhi 110001.
3. The Director General, Geological Survey of India, 27, Jawaharlal Nehru Road, Calcutta 700016.

Respondents.

O.A.No.1129/96.

T.Mohan Rao. Applicant.

And

1. The Union of India represented by its Secretary, Ministry of Mines, Department of Mines, Shastry Bhavan, New Delhi 110011.
2. Union Public Service Commission represented by its Chairman, Dholpur House, Shajahan Rd., New Delhi 110001.
3. The Director General, Geological Survey of India, 27, Jawaharlal Nehru Rd. Calcutta 700016.

Respondents.

Counsel for the applicant in
O.A.~~xx~~ 1128/96 and O.A.1129/96

Sri B.Venkateswara Rao.

Counsel for the respondents in
O.A.1128/96 and O.A.1129/96.

Sri N.R.Devraj, Senior
Standing counsel for
Respondents.

CORAM:

HON'BLE SHRI JUSTICE M.G.CHAUDHARI, VICE-CHAIRMAN

HON'BLE SHRI H.RAJENDRA PRASAD, MEMBER (A)

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JUDGMENT

Oral Order (per Hon. Mr. Justice M.G.Chaudhari, Vice-Chairman)

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Heard Sri V.Venkateswara Rao for the applicant. Heard Heard

Senior
Sri N.R.Devraj, Standing counsel for the respondents.

Both the above applications involve same points. Hence these two O.As., are being disposed of by a common order.

2. The matter was elaborately argued for admission and Sri Devraj also replied to the submissions made by Sri Venkateswara Rao on the merits of the cases. All the aspects were elaborately discussed during the course of arguments. Hence, we propose to dispose of the matters finally by this order.

3. Both the O.As., are formally admitted. Notice waived by Sri Devraj, Senior Standing Counsel for the respondents. Both the applications are taken up for final orders.

4. Dr.B.S.R. Murthy, applicant in O.A.1128/96 is presently holding the post of Director (Selection Grade) Geophysics, Geological Survey of India, Southern Region, at Hyderabad. The applicant Sri T.Mohan Rao in O.A.1129/96 is working in the same capacity as Director (Selection Grade) at Hyderabad. The scale of pay of both the applicants is Rs.4500--5700 and it appears that both of them have reached the maximum of the scale and also are drawing stage increments. The case of both the applicants is

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that they became eligible for being considered for promotion to the higher post of Deputy Director General (Geo-Physics) in the scale of pay of Rs.5900-6700, which post is required to be filled in by selection and promotion. The eligibility for consideration extends to seven streams although each stream is a separate unit for seniority and promotion upto the level of Deputy Director General. Both the applicants became eligible on fulfilment of the prescribed criteria for promotion in the year 1989 and 1992 respectively. According to the applicants though one post fell vacant in May, 1994, no DPC meeting was convened until it met on 28/29-8-1996. They aver that they have reliably learnt that Respondent No.3 submitted proposals in January, 1996 to Respondent No.1 only for filling up the vacancy which arose in May, 1994 and therefore the DPC would make a selection only for that single post. But although two more vacancies occurred, one in May, 1996 and another in July, 1996, consequent upon the retirement of the incumbents of those posts on superannuation, proposals have not been made to the DPC for selection of candidates for those posts. Consequently, although both the applicants were included amongst the candidates who were in the zone of consideration for the 1994 vacancy for which the DPC has met they apprehend that in the event they not being selected the opportunity that can be available to them if the panel were to be prepared taking into account the two additional vacancies will be lost. Thus they would have better chance to get

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selected and promoted should they miss the selection by the present DPC which was held in August, 1996. They therefore, seek direction to the respondents to hold Review DPC to consider their cases with other eligible candidates for promotion to the vacancies that occurred in May, 1996 and July, 1996. In aid of that relief they also pray that the respondents be restrained from publishing the panel pursuant to the DPC meeting held in August, 1996.

5. Sri Devraj learned standing counsel for the respondents raised a preliminary objection to the maintainability of the applications on the ground that it is presumptuous on the part of the applicants to proceed on the assumption that they will not be selected by the DPC and included in the panel and the applicants clearly have approached at a premature stage. Thus they do not have any cause of action in presenti. We find considerable force in this submission. However, we have also examined the matter from other various angles on merits.

6. We cannot go back to the question as to why the applicants were not promoted after 1992 when they became eligible for consideration and until their names were considered by the DPC held in August, 1996. It is alleged by the applicants that the respondents had delayed holding the Annual meetings of the DPC during the previous years deliberately to facilitate empanelment of another officer for promotion and the delay had resulted in depriving them

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of the opportunity of being promoted till now. It is submitted that the applicant Sri T.Mohan Rao is due to retire on 31-1-1997 and therefore, unless the vacancies that occurred during this year which should have been anticipated had been considered by the DPC held in August, he cannot get the opportunity to be promoted during the remaining period before his retirement and that would cause grave injustice to him. Reliance is sought to be placed on OM.22011/5/86-EST.(1) dated 10-4-1989 issued by the Department of Personnel and Training on the subject of preparation of Year-wise Panels of DPC where they have not met for a number of years, in support of the prayer for direction to constitute a Review DPC so that the panel to be prepared by the DPC which met in August, 1996 could be widened and chances of the applicants to be promoted rendered brighter.

7. There cannot be denial of the fact that DPC meetings were not held regularly annually but that circumstance is not necessary to be examined by us in view of the decision of the Hon'ble Supreme Court in Dr. N.D.MITRA AND ANOTHER Vs. UNION OF INDIA AND OTHERS (1994(4)SCC474) and the decision rendered by the Lucknow Bench of the Central Administrative Tribunal in the case of P.L.NARULA AND OTHERS Vs. UNION OF INDIA AND OTHERS (O.A.53/96 dated 25-7-1996). The case before the Supreme Court also related to the officers of the Geological Survey of India and the question raised was ^{about} delay in holding the DPC meetings.

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Their Lordships were pleased to observe that the Government of India must hold the meetings of the DPC at the same time to fill up vacancies of Dy. Director Generals available in various disciplines in Geological Survey of India. It was also observed as follows:

"The respondents shall keep the date of retirement of any of the eligible officers in view and preferably hold the meetings of the DPC before the said date"

We would rely upon this observation in particular during the course of further discussion.

8. The decision of the Lucknow Bench (supra) is directly relevant to the instant case. In that case three officers of the Geological Survey of India had sought a direction to the respondents i.e., UNION OF INDIA, Ministry of Mines, Director General of Geological Survey of India and UPSC., to fill all the posts of Dy. Director General (Geology) which had occurred till the date of convening the DPC. It was alleged that the DPC for filling up the posts had not been held for more than three years inspite of the guidelines contained in the OM dated 10-4-1989 and that on account of serious lapses on the part of the respondents in not holding DPC meetings annually, nine senior Directors had already retired and there were 20 posts lying vacant and were required to be filled up. The respondents explained that the delay had occurred as it had not been administratively feasible to hold DPC for Dy. Director General

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level in various disciplines during the years 1992, 1993 and upto 31-3-1994 and that though the DPC proposals submitted by the Department were processed by the Ministry those were restricted to the vacancies which existed on 31-3-1995 and that a total of 27 vacancies was available as on that date. It was also indicated on behalf of the respondents that efforts were being made to draw DPC as early as possible.

9. Learned Members of the division Bench of C.A.T., noticed the judgment of the Supreme Court in N.D.MITRA's Case (supra) and the directions given therein to the respondents. It was noted that one of the applicants in the case (before the bench) was due to retire by the end of November, 1996. Eventually the following order was passed:

"In view of the above, we only provide that the respondents may keep the directions given by the Hon'ble Supreme Court in N.D. Mitra's case in view and may convene a DPC at the earliest, but not later than one month from the date a copy of this order is received by the respondents."

10. It is not disputed before us that the vacancy of 1994 for which the DPC has met in August, 1996 was included in the 27 vacancies mentioned in the above decision of the Lucknow Bench and consistently with the directions in that order, the DPC meeting was held within one month on 28/29-8-1996. Having regard therefore to the abovementioned decisions,

the delay that had occurred prior to holding the meeting of DPC in August, 1996 since 1994 is no longer a ground to support the claim of the applicants particularly as both of them have admittedly been included in the Zone of consideration of the DPC.

11. That takes us to the question as to whether the said DPC should have been required to prepare a panel taking into account the two vacancies that arose in May and July, 1996 respectively i.e., by taking into account three available vacancies and not only one. In this connection OM dated 10-4-1989, Department of Personnel and Training contains the guideline in para 3.1 that the DPC should be convened at regular annual intervals to draw panels which could be utilised for making promotions against the vacancies occurring during the course of a year. The words "Occurring during the course of a year" do not contemplate future vacancies occurring in the following year to be taken into account by the DPC concerned with preparing a panel for a particular year (from April to March). It is not therefore possible to accept the contention of the applicants that the two vacancies occurring in the year 1996 should have been taken into account by the DPC held in August, 1996. Apart from that aspect, as already stated the said DPC was constituted with reference to the vacancies that had occurred upto 31-3-1995 and in view of the direction of the Lucknow Bench in P.L.NARULA's case (supra) the DPC could not be expected to take into account the further vacancies. Moreover,

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the contention of the applicants that only those two vacancies should be taken into account would not solve the problem as in view of the decisions of the Supreme Court and the Lucknow Bench of Central Administrative Tribunal, mentioned above, it would require DPC meetings to be held for all the disciplines where the vacancies of DDG are available to be filled. The vacancies at other places apart from the two vacancies mentioned by the applicants as may have occurred ^{or} would occur during the years 1-4-1995 to 31-3-1996 and 1-4-1996 to 31-3-1997 will have to be taken into account by the DPCS., constituted for selection to fill up those posts. Thus the stage for constituting a DPC for the two vacancies that occurred in May and July, 1996 is yet to be over. In view of the decision of the Supreme Court the need to hold the meetings at regular intervals and without much gap of time between the occurrence of the vacancies and the meeting of DPC needs no reiteration and it follows that the respondents would take necessary steps to hold the meetings of the DPC., without loss of time and as soon as feasible. It is not therefore possible to accept the contention of the applicants that the DPC meeting held in August, 1996 should have been required to take into account the two vacancies occurred in the year, 1996.

13. The applicants indeed want a Review DPC to be directed. That submission can only be understood on the hypothesis that the proceedings of the DPC held in August, 1996

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are vitiated due to some irregularity and as a consequence thereof the applicants were denied selection by the DPC. That, however, is not the position at all. Both the applicants were very much included in the zone of considerations of officers at that selection and the result is yet to be known. The question of holding a review DPC therefore does not arise.

14. Sri Venkateswara Rao, learned counsel for the applicants however placed considerable reliance on para 6.4.2 of the above mentioned OM dated 10-4-1989. Clause (ii) of that para emphasises that where there has been non-reporting of vacancies due to error or omission (i.e., though the vacancies were there at the time of holding of DPC meeting that but those were not reported to it) ~~xxx~~ results in injustice to the officers concerned by artificially restricting the zone of consideration and the wrong done cannot be rectified by holding a second DPC or preparing an year-wise panel and further that in all such cases a review DPC should be held keeping in mind the total vacancies of the year. In our opinion as rightly submitted by Sri Dvraj, this situation does not arise in the instant case and therefore, no question of directing a review DPC to be held can arise. What is pertinent to note is that the clause speaks of the 'total vacancies of the year'. The question raised by the applicants is relating to the vacancies occurring in 1996 whereas the DPC which met in August, 1996 was concerned

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with the vacancies that had occurred upto 31-3-1995. No question, therefore of keeping these two vacancies of 1996 in mind could arise on the date when the DPC had met. The second requirement of the clause is that the available vacancies may not have been reported due to error or omission and it is only in such cases that the Review DPC may be constituted. The question of reporting the two vacancies could not arise ~~arise~~ as the DPC was constituted in August, 1996 specifically for the vacancies that had occurred upto 31-3-1995. Whether the DPC could have been asked to consider these two vacancies also as it had met after the occurrence of these vacancies is a question which we need not answer. Suffice it to say that the proceedings of the DPC cannot be held to be vitiated by reason of not taking those vacancies into account as it cannot be held that they had contravened any guidelines on the subject as seen in the foregoing discussion. We, therefore, find it difficult to accept the submission of the applicants that a Review DPC be constituted. The request is clearly premature at this stage inasmuch as both the applicants have been placed in the zone of consideration of the DPC and it cannot be presumed ~~xx~~ as a foregone conclusion that the DPC may not include the applicants in the selected panel. There is therefore no occasion for directing Review DPC. This should not be understood as leaving room for the applicants to revive the present request once again after the panel is announced

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on the basis of these observations which we have made only for the purpose of testing the question on hand.

15. Thus we find that the applicants have not disclosed any cause of action or grievance that is needed to be redressed as a matter of law in this O.A. However, since it is being stated that one of the applicants viz., Sri T. Mohan Rao, is due to retire on 31-1-1997, we would express the hope that the respondents would make a sincere endeavour to make it feasible to hold the DPC for vacancies as may be available including the two vacancies which occurred in May and July, 1996 respectively before the date of superannuation of Sri T. Mohan Rao would be reached. We are fortified in expressing this hope in view of the observation of the Supreme Court in Dr. N.D. Mitra's case which we have quoted earlier. Sri Devraj, learned senior standing counsel submitted that since the process involved relates to personnel from different streams needing the exercise to be carried out on All India basis and procedural requirements have also to be complied with the holding of the meeting of the DPC does ~~not~~ require considerable amount of time and it would not be possible for the respondents to state at this stage as to when precisely that would be possible to be done. We think that from now atleast till the middle of January, 1997 there is enough time within which the respondents may be expected to make efforts to hold the meeting of the DPC. The applicant,

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Sri T.Mohan Rao deserves consideration because had the holding of DPC meetings not been delayed after 1994 he would not have been placed in the precarious position of not having been left with enough time before his retirement to have an opportunity of being considered by the DPC more than once. We hope that the hope expressed by us above will receive due and prompt attention of the respondents.

16. In the result no cause of action is disclosed.

The O.As., are liable to be disposed of as not maintainable hence following Order:

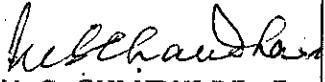
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17. O.A.1128/96 stands disposed of as not maintainable. No order as to costs.
(Subject to observations)

18. O.A.1129/96 stands disposed of as not maintainable. No order as to costs.
(Subject to observations)

19. Though the two applications have been disposed of by this common order, they shall be treated as separately disposed cases and a copy of this Order shall be kept in each O.A., for record.

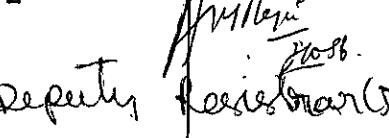

H. RAJENDRA PRASAD
MEMBER (A)


M.G. CHAUDHARI, J
Vice-Chairman.

Date: September 25, 1996.

Pronounced in open Court.

sk/ss.


Deputy Commissioner

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O.A. 1128 /96

O.A. 1129/96.

To

1. The Secretary,
Ministry of Mines, Dept. of Mines,
Shastry Bhavan, Union of India,
New Delhi-11.
2. The Chairman, U.P.S.C.
Dholpur House, Shajahan Road,
New Delhi-1.
3. The Director General, Geological Survey of India,
27, Jawaharlal Nehru Road, Calcutta-16.
4. One copy to Mr. V. Venkateswar Rao, Advocate, CAT. Hyd.
5. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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9/29/96
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CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

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

Dated: 25-9-1996

ORDER / JUDGMENT

M.A/R.A./C.A. No.

in

O.A.No. 1128/96

T.A.No.

(w.p.)

Admitted and Interim Directions

Issued

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn.

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

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