

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

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JAIPUR

OA No.60/1996 & MA No.24/98 Date of order: 10.2.1998

1. Dr. M.N.Khan, aged about 35 years, resident of 20, Subhash Colony, Shastri Nagar, Jaipur
2. I.K.Sharma, aged about 38 years, presently posted on tour at Jodhpur under the Central Ground Water Board, State Unit at Jodhpur.

.. Applicants

Versus

1. Union of India through the Secretary, Ministry of Water Resources, Shram Shakti Bhawan, New Delhi.
2. Central Ground Water Board through its Chairman, Ministry of Water Resources, CGO Complex, N.H. 4, Faridabad.

.. Respondents

Mr. Manish Bhandari, counsel for the applicants

Mr. V.S.Gurjar, counsel for the respondents

CORAM:

Hon'ble Mr. O.P.Sharma, Administrative Member

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

For Hon'ble Mr. O.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, Dr. M.N.Khan and Shri I.K.Sharma have prayed that the eligibility list for appointment to the post of Scientist 'C' published on 25.10.1995 which does not include the names of the applicants be declared illegal or alternatively the respondents may be directed to include the names of the applicants by treating them eligible to the post of Scientist 'C'. It has been further prayed that the

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respondents may be directed to issue necessary order correlating the order of promotion dated 30.6.95 to the posts of Scientist 'B' to the years to which the vacancies relate against which such promotions have been made and thereby not only should seniority be assigned from the said date but also the applicants should be treated in service on the post of Scientist 'B' against vacancies on which the applicants have been promoted. It has, further, been prayed that the rules which prescribe the eligibility criteria for the purpose of promotion to the post of Scientist 'C' be declared as discriminatory and illegal, inasmuch as these prescribe different criteria for in service candidates and for deputationists. Finally, it has been prayed that the respondents may be directed to prescribe the same yardstick for in service Scientist 'B' candidates as applicable for deputationists and if it is not done the rules may be declared as ultra vires and unconstitutional. The applicants have also sought the consequential benefits arising out of the prayers made.

2. The relevant facts of the case as briefly culled out from the OA are that the applicants were appointed on the post of Assistant Hydrogeologists in scale Rs. 2000-3500 by direct recruitment on selection by the UPSC, in the year 1983. Thereafter they became eligible for promotion to the post of Scientist 'B' (Junior Hydrogeologist), a group-A post in scale Rs. 3200-4000 on completion of three years service. However, the DPC for promotion to the posts of Scientist 'B' which met in 1987 made recommendations for promotion against vacancies for the years up to 1985. Thereafter, no DPC met. The applicants made representations to the respondents praying that they should act in accordance with the rules and hold DPC every year for filling up the vacancies arising in each year. The

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representations, made at Annexures-A3 and A4, however failed to evoke any response from the respondents. Thereafter, the DPC met in 1993 and its recommendations were implemented by passing the order of promotion on 30.6.95 by which the applicants were granted promotion to the post of Scientist 'B' (Ann.A2). However, the respondents failed to indicate against which year of the vacancies promotions were granted to the applicants.

3. Further according to the applicants, the respondents published an eligibility list for promotions to the post of Scientist 'C' but they failed to include the names of the applicants in the eligibility list apparently on the ground that the applicants had not completed 5 years service in the grade of Scientist 'B'. Aggrieved by such exclusion, the applicants made a representation to the respondents (Ann.A5 dated 6.11.95). The respondents, however, still did not publish a seniority list as prayed for in the representation nor did they treat the applicants as eligible for promotion to the post of Scientist 'C'. If promotions would have been granted to the applicants to the post of Scientist 'B' against the vacancies of the years 1987 or 1988 or 1989 then they could also become eligible for promotion to the post of Scientist 'C'. The applicants are entitled to the benefits of seniority and other consequential benefits on the post of Scientist 'B' with reference to the vacancies against which they become eligible for promotion and have been granted promotion vide order dated 30.6.95. They should be, therefore, treated as eligible for promotion to the post of Scientist 'C'. The applicants have also not been granted benefits of circulars dated 18.5.87 and 28.6.95. (What these circulars are; has not been clarified). The respondents committed a grave illegality in not publishing the seniority list of the post

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of Scientist 'B' immediately prior to notifying the eligibility list of candidates for promotion to the post of Scientist 'C'. Promotion to the post of Scientist 'C' is to be given under the Flexible Complementary Scheme (FCS) and the applicants have to be treated as promoted on the post of Scientist 'B' in the year 1987 and they deserve to be assigned seniority accordingly after passing of the promotion order dated 30.6.95. The applicants have also challenged the recruitment rules published on 18.5.87 as illegal and unconstitutional to the extent that these prescribe five years regular service on the post of Scientist 'B' without adding the service on the lower post i.e. in scale Rs. 2000-3500, though deputationists from other Departments are granted this benefit. If the respondents had taken note of the position that the applicants were due for promotion to the post of Scientist 'B' in 1987 itself, the applicants would be treated as having attained 8 years of regular service in scale Rs. 2200-4000. Thus in any view of the matter, the applicants would be eligible for promotion to the post of Scientist 'C'. They are, therefore, aggrieved by the various actions of the respondents including non-inclusion of their names in the eligibility list for promotion to the post of Scientist 'C'.

4. The applicants have also sought certain interim directions. The respondents have filed reply to the prayer for interim relief . No interim relief was, however, granted to the applicants.

5. A detailed reply has also been filed by the respondents. In this reply, they have taken a preliminary objection to the effect that the application is barred by limitation. According to them, the applicants submitted representations at Annexures-A3 and A4. Annx. A3 is dated

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1.3.1993. Therefore, the limitation for preferring the Original Application ended on 1st August, 1994, whereas the OA has been filed on 11.1.1996.

6. As to the facts of the case of the applicants, the respondents have stated that officers in the grade of Scientist 'B' with 5 years regular service in the grade are eligible for in situ promotion to the grade of Scientist 'C'. Since the applicants joined the post of Scientist 'B' on 25.9.95 and 27.7.95 respectively, on promotion from the post of Assistant Hidrogeologists, they did not fulfil the eligibility criteria and, therefore, their names were not included in the eligibility list for Scientist 'C' prepared on 25.10.1995 (Ann.A1). The DPC for considering promotion to the post of Scientist 'B' was held on 5.11.1993 and consequently promotion orders were issued on 30.6.95. As regards delay in holding the DPCs etc., the respondents have stated that the applicants were appointed as Assistant Hidrogeologists w.e.f. 30.11.1983 and 15.6.84 respectively. A DPC was held in 1987 which considered promotions against vacancies pertaining to the years 1983, 1984 and 1985. The applicants did not have the required service of 3 years in the grade at that time and, therefore, they were not considered eligible for promotion by the DPC held in 1987. The eligibility list for promotion to the post of Scientist 'C' issued on 25.10.95 (Ann.A1) includes names of those officers who have completed requisite 5 years of regular service in the grade of Scientist 'B' and since the applicants had joined the post of Scientist 'B' only in 1995, they were not eligible for promotion to the post of Scientist 'C'. The FCS is applicable to Group-A officers only. Since the applicants have joined Group-A post of Scientist 'B' in 1995 only they would be governed by the said scheme hereafter. The representations made by the

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applicants were uncalled for because they had been granted promotion from the date of taking over charge on the post of Scientist 'B'. There are various formalities to be completed before a DFC is held and the averments of the applicants regarding delay in holding the DFC are not justified. The DFC for promotion to the post of Scientist 'B' could be held only on 5.11.1993 after completing the necessary formalities including the recommendations from the Ministry of Water Resources, which is the cadre controlling authority for Group-A posts. The respondents have denied that the recruitment rules are discriminatory in any manner.

7. The applicants have also filed a rejoinder to the reply filed by the respondents, which is on record.

8. During the arguments the learned counsel for the applicants drew our attention to the Central Ground Water Board (Scientific Group 'A' Posts) Recruitment Rules, 1995 contained in the Notification dated 28th June, 1995 at Ann.R2. Rule 2 of the Notification contains definitions. Regular service in the said Notification has been defined as under:

"(f) ""Regular Service" in relation to any grade means the period or periods of service in that grade rendered after selection and appointment thereto under these rules and includes any period or periods -

- (i) taken into account for the purpose of seniority in the case of those appointed at the initial constitution of the service;
- (ii) during which an officer would have held a duty post in that grade but for being on leave or otherwise not being available for holding such post; "

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Sub-rule 1 of rule 5 contains⁷ provisions for the initial constitution of the service and sub-rule 2 of Rule 5 provides as under:

"2. The regular continuous service of officers referred to in sub-rule (1), prior to their appointment to the newly designated posts of Scientist 'B', Scientist 'C' and Scientist 'D', shall count for the purpose of probation period, qualifying service for promotion, confirmation and pension."

Thus according to him, regular service as per the recruitment rules would include not only the actual service rendered at a particular post but also any period of service taken into account for the purpose of seniority in the case of those appointed at the initial constitution of the service. Further, for the purpose of promotion, regular continuous service as referred to above, prior to their appointment to the newly designated post, amongst others, of Scientist 'B' as per the constitution of the service, would also count as qualifying service for promotion etc. Further according to him, the schedule to the aforesaid recruitment rules of 1995 provides that Scientists 'B' with 5 years of regular service in posts in scale Rs. 2000-4000 or equivalent or with 8 years' regular service in the posts in scale of Rs. 2000-3500 or equivalent are eligible for promotion to the post of Scientist 'C'. Thus, the cumulative result of the aforesaid provisions would be that an officer who had rendered 5 years of actual service on the post of Scientist 'B' or who has rendered 8 years of regular service on the post of Scientist 'B' including the service which has been counted for the purpose of seniority on the post of Scientist 'B' or who has rendered a total of 8 years service in scale Rs. 2000-3500 would be treated as eligible for promotion to the post of Scientist 'C'. The respondents have subsequently published a seniority list which has been annexed to the MA, No. 24/92, filed by the applicants in

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which the applicants have been assigned seniority at Sl. Nos. 9 and 10, above some of those persons who have been appointed in the years 1990, 1991, 1992, 1993 and 1994. Thus, by virtue of the fact that the applicants have been treated as senior to a person at Sl. No. 23 who was appointed on the post of Scientist 'B' on 4.10.1990, the respondents have themselves considered that as per the recruitment rules, the applicants have rendered service of 5 years or more on the post of Scientist 'B'. Therefore, according to him, the applicants are eligible for being considered for promotion to the post of Scientist 'C'. In any case, according to him, the schedule to the aforesaid recruitment rules also provides that persons who have rendered 8 years' regular service in scale Rs. 2000-3500 or equivalent are also eligible for promotion to the post of Scientist 'C'. The applicants having been appointed to the post of Asstt. Hydrogeologist in 1983/1984 in scale Rs. 2000-3500 or equivalent scale, would have completed more than 8 years service in the said scale in 1995, when they were to be considered for the purpose of promotion to the post of Scientist 'C'. Thus, in either view of the matter, the applicants are eligible for promotion to the post of Scientist 'C' and therefore, their exclusion from the zone of consideration by the eligibility list is unwarranted.

9. He added during his arguments that the applicants have since been granted all other reliefs claimed in the OA except the one that they should be treated as having rendered the necessary regular service for the purpose of eligibility for promotion to the post of Scientist 'C'. Therefore, he added that he would not like to press the other reliefs claimed in the OA.

10. The learned counsel for the respondents mainly relied upon the averments made in the reply and added that the

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applicants have to render actual service of 5 years on the post of Scientist 'B' before they can be considered as eligible for promotion to the post of Scientist 'C'.

11. We have heard the learned counsel for the parties and have perused the material on record including the recruitment rules.

12. As to the preliminary objection of the respondents that the OA is barred by limitation, we are of the view that it has no force. The eligibility list for the post of Scientist 'C' was issued on 25.10.1995 (Ann.A1). The applicants are aggrieved by exclusion of their name from the said list. The OA was filed on 11.1.1996. Hence the OA is within the limitation period.

13. In view of the position of the rules to which attention has been drawn by the learned counsel for the applicants and which have been reproduced above, it is clear that regular service which is to be considered for the purpose of promotion would include not only the service actually rendered on the lower post but also the period of service treated as having been rendered on account of grant of seniority. By the seniority list published by the respondents on 1.1.97, which has been annexed to the MA No. 24/98, the applicants have been treated as senior to a persons which was appointed to the post of Scientist 'B' on 4.10.1990 (Shri Rana Chatterjee at Sl.No.23). Thus, when the eligibility list was published on 25.10.95, the applicants would have completed 5 years of service on the post of Scientist 'B' as per rules. Thus, in our view the applicants would be eligible for being considered for promotion to the post of Scientist 'C'. Further, as per the schedule to the aforesaid recruitment rules, officers who ~~have~~ ^{had} rendered a total of 3 years of service in scale Rs. 2000-3500 would also be eligible for

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promotion to the post of Scientist 'C'. The applicants joined the post in scale Rs. 3000-3500 in 1983/1984 and continued in this post till their promotion as Scientist 'B' in 1995. Thus they would have rendered more than 8 years service by the time the question arose whether they would be eligible for promotion to the post of Scientist 'C' as per the Notification dated 25.10.1995. Thus, either way, the applicants are eligible for being considered for promotion to the post of Scientist 'C'.

14. The respondents are accordingly directed to hold a review DPC/Board of Assessment in order to consider the cases of the applicants for promotion to the post of Scientist 'C' and if they are found suitable for promotion in accordance with the rules, grant them promotion w.e.f. the date from which other persons mentioned in the eligibility list dated 25.10.95 (Ann.A1) have been granted promotion and necessary consequential benefits shall be granted to the applicants. No other grounds/reliefs have been considered while disposing of the OA.

15. The OA is disposed of accordingly. No order as to costs.

16. Since the OA has been disposed of, the MA, No. 24/98, seeking interim direction has become infructuous. It is, therefore, dismissed.


(Ratan Prakash)

Judicial Member


(O.P. Sharma)

Administrative Member