

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JATPUR BENCH, JATPUR.

OA No. 26/97

DATE OF ORDER: 21/2/2002

A.K. Sinha son of (Late) Shri Jainti Prasad, aged around 50 years resident of Jaipur. Presently working as Superintending Engineer, Central Ground Water Board, Western Region, 6A, Jhalana Doongari, Jaipur.

....Applicant.

VERSUS

1. Union of India through its Secretary, Ministry of Law, Government of India, New Delhi.
2. The Secretary, Government of India, Ministry of Water Resources, Shram Shakti Bhawan, New Delhi.
3. The Secretary to the Government, Department of Personnel & Training, New Delhi.
4. The Chairman, Central Ground Water Board, CGO Complex, Faridabad (Haryana).
5. The Chairman, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.

....Respondents.

Mr. R.N. Mathur, Counsel for the applicant.

None present for the respondents.

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Hon'ble Mr. A.P. Nagrath, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE)

When this OA was filed, the applicant was working as Superintending Engineer in Central Ground Water Board. Further advancement is to the post of Regional Director and there are two sanctioned posts in the Department for the Engineering stream. In the same way, there are 14 posts of Regional Director earmarked for Scientific stream. As per the recruitment rules, the post of Regional Director is to be filled up by selection. In respect of Scientists 'D', five



years regular service in the grade is a pre requisite condition. For two posts earmarked for engineering service, the following criteria has been prescribed.

Promotion /transfer on deputation (including short term contract)

Officers under the Central/State Governments/Union Territories/Universities/Recognised Research Institutions/Public Sector Undertakings/Semi Government/Autonomous and Statutory Organisations.

a(i) holding analogous post on regular basis or

(ii) with 3 years' regular service in post in the scale of Rs. 4000-5300/ or equivalent.

(iii) with 5 years' regular service in posts in the scale of Rs. 3700-5000 or equivalent and

b. Possessing a degree in Civil/Mechanical/Electrical/Agricultural Engineering/Petroleum Technology or equivalent; and having experience in the water drilling construction and equipment technology operation and maintenance of drilling rigs etc.

2. The departmental Superintending Engineer in the scale of Rs. 3700-5000/ in Central Ground Water Board with 5 years regular service in the grade shall also be considered alongwith outsiders and in case he is selected for appointment to the rest, it shall be considered as having been filled on by promotion.

2. The recruitment rules have been annexed as Annexure A/l alongwith the OA. The applicant has approached this Tribunal, assailing the said rules on the ground that Scientific stream posts are being filled up only by promotion of departmental candidates but against the posts in the Engineering stream, apart from considering promotion of departmental candidates i.e. Superintending Engineers in the

scale of Rs. 3700-5000/- with five years' regular service in the grade, the field is also open to the candidates, who can be brought on transfer on deputation, including short term contract. The applicant's case is that this is discriminatory in as much as in the Scientific stream, where the number of posts is more, filling up is done only by promotion of the departmental candidates whereas in the Engineering stream with only two posts, the avenue is also open for other than departmental candidates.

3. Another ground on which this OA has been filed is that a vacancy of Superintendent Engineer had occurred on 1.5.90 but the applicant was actually promoted against the vacancy on 30.4.1992 thereby depriving him of his seniority as Superintendent Engineer of almost two years and corresponding difference of pay & allowances for that period. The applicant seeks direction to the respondents to consider him as having been promoted from the date of occurrence of vacancy i.e. 1.5.1990.

4. Notice of this OA was sent to the respondents who have filed the detailed reply. We have heard the learned counsel for the applicant, Mr. R.N. Mathur. None appeared for the respondents.

5. We find from the proceedings of this case and as also confirmed by the learned counsel for the applicant, the applicant has already been promoted during the pendency of this OA to the post. This statement was earlier made at the Bar on behalf of the applicant on 25.3.1998. With this development, the apprehension of the applicant that because of the Recruitment Rules, he may be deprived of his promotion to the post of Regional Director, has been set at rest. This also establishes that his apprehension about recruitment rules was not well founded. Even otherwise, it is for the department/Ministry concerned to lay down the recruitment rules which essentially is a matter of policy. Govt. has



been vested with powers under Article 309 to frame service rules. It is not for the Court/Tribunal to interfere in this area unless these can be shown to be violation of Articles 14 & 16 of the Constitution. The comparision sought to be made by the applicants saying that the promotions in the Scientific Group are being made by following a different procedure is not open to scrutiny by this Tribunal as two streams are totally distinct. This distinction cannot be held to be violative of Articles 14 of the Constitution as the Superintending Engineers are a class distinct from Scientists. Their nature of job in relation to objectives of the department are not comparable. If there are 14 posts of Regional Director and then there are also a large number of scientists in the feeder grade who are to be considered for promotion. In the case of Engineering stream, there are only three posts of Superintending Engineer. There can also be eventualities that eligible candidates with five years of regular service in the grade of Superintending Engineer may not be available when the occassion arises to fill up the post of Regional Director under such circumstances, alternative method becomes unavoidable. Primarily it is a matter of policy in which the Tribunal would refrain from interfering and thus we do not propose to direct the respondents to review the recruitment rules.

6. In so far as assigning seniority to the applicant w.e.f. 1.5.90 is concerned, no rules have been brought to our notice by the applicant or the learned counsel on his behalf during the arguments under which it would be mandatory for the department to grant promotion to the post of Superintending Engineer from the date of occurrence of the vacancy. There are vagaries of administrative procedures and delays, which may not make it possible in every case to conduct a DPC in advance of the occurrence of the vacancy. Unless departmental rules so provide, like in the case of OTBT/ BCR Schemes or Restructuring Scheme in some departments where policy for giving promotion from specified dates and after specified periods are applicable, ordinarily the

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promotion is effected only from the date an individual actually comes to hold the post after issue of proper promotion order. There is no merit in the contention of the applicant that he should have been given promotion to the post of Superintending Engineer w.e.f. 1.5.90 irrespective of the date of his promotion orders, and this plea is liable to be rejected.

7. The applicant has not been able to establish any case for our interference either in respect of modification of the recruitment rules or for granting him seniority as Superintending Engineer w.e.f. 1.5.90. We, therefore, dismiss this OA but with no order as to costs.



(J.K. KAUSHIK)

MEMBER (J)



(A.P. NAGRATH)

MEMBER (A)

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