

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May 16/2002
AM(A). On

O.A. No. 234/99

199

XXXXXX

Aut 30/11/2002

DATE OF DECISION _____

Dr. D.S. Mishra and 5 others Petitioners

Mr. Prahlad Singh Advocate for the Petitioner (s)

Versus

Union of India and two others. Respondent

Mr. S.S. Hasan Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman.

The Hon'ble Mr. A.P. Nagrath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
- ✓ 4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*
On

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Original Application No. 234/99

1. Dr. D.S. Mishra
S/o Ram Sahehi Mishra
Plot No. 106/130, Agarwal Farm
Mansarovar
Jaipur.
2. M.K. Sharma
S/o Sudershan Sharma
No. 7/242, Vidhyadhar Nagar
Jaipur.
3. L.N. Mathur
S/o M.N. Mathur,
Plot No. 82/16, Mansarovar
Jaipur.
4. R.L. Gupta
S/o Shri Sunder Lal Gupta,
Plot No. 3/41, Vidhyadhar Nagar
Jaipur.
5. S.S. Yadav
S/o Shri Umrao Singh Yadav
Plot No. 53/81, Mansarovar
Jaipur.
6. D.D. Sharma
S/o Shri Rama Nand Sharma
Plot No. 61/171,
Pratap Nagar Housing Board
Jaipur.

: Applicants.

rep. by Mr. Prahlad Singh : Counsel for the applicant

- versus -

1. The Union of India through
the Secretary, Ministry of
Water Resources,
Government of India,
Shram Shakti Bhawan
New Delhi
2. The Union Public Service Commission
through its Secretary,
Dholpur House,
Shahjahan Road
New Delhi.
3. The Central Ground Water Board
through its Chairman,
Ministry of Water Resources,
C.G.W. Complex,
N.H. 4 Faridabad

Respondents.

LMS

rep. by Mr. S.S. Hasan : Counsel for the respondents.

CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman
The Hon'ble Mr. A.P. Nagrath, Administrative Member.

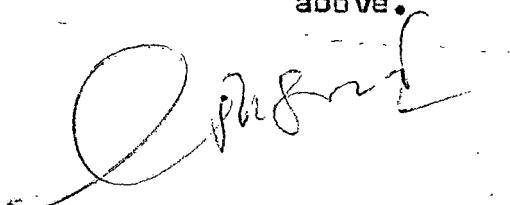
Date of the Order: 31.12.02

ORDER

Per Mr. Justice G.L.Gupta

All the applicants are working as Assistant Chemist/Assistant Hydrogeologist/Scientist 'B'. They seek the following reliefs:

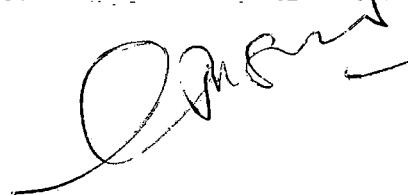
- i) an appropriate order or direction, the impugned eligibility list published on 26.3.99 (Annex. I) which does not include the name of the applicants be declared as illegal or in the alternative, the respondents may kindly be directed to include the name of the applicants in the said eligibility list treating them to be eligible for the post of Scientist 'C'
- ii) to issue an appropriate order or direction, the Hon'ble Tribunal may direct that the rules prescribes eligibility criteria for the purpose of promotion to the post of Scientist 'C' be declared as discriminatory and illegal, inasmuch as it prescribes different eligibilities for an inservice candidate then to a deputationist.
- iii) to issue an appropriate order or direction the Hon'ble Tribunal may direct the respondents to prescribe the same yardstick for inservice Scientist 'B' candidates as are applicable for deputationist, otherwise rules be declared as ultravires and unconstitutional.
- iv) to issue an appropriate order or direction the Hon'ble Tribunal may direct the respondents to give all consequential benefits out of the prayer made herein above.



v) any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case, may also kindly be passed in favour of the applicants.

vi) cost may also be awarded to the applicants."

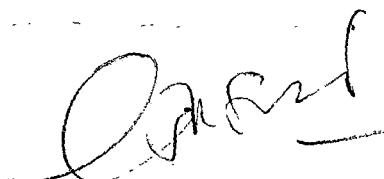
2. The relevant facts are these. Applicant No.1 Dr. D.S. Mishra was initially appointed as Senior Technical Assistant (STA for short) in the year 1973 and he was promoted as Assistant Chemist in the year 1980. Applicant No. 2 M.K. Sharma was appointed as STA in the year 1982 and was selected as Assistant Hydrogeologist in May 1986. Applicant No. 3 was directly selected on the post of Hydrogeologist in the year 1987. The other 3 applicants were initially recruited as STA in the years 1982, 1983 and 1984 and they were appointed as Assistant Hydrogeologist in the year 1990. The pay scale of Assistant Chemist/Assistant Hydrogeologist was Rs.650-1200 (pre-revised) and Rs.2000-3500(revised). Assistant Hydrogeologist and Assistant Chemist are known as Scientist 'B'. The Central Ground Water Board(Scientific Group 'A' Posts) Recruitment Rules, provide the method of recruitment to the various posts of Scientists in the Central Ground Water Board. Scientist 'C' is a selection post and it has to be filled up by promotion of Scientist 'B' with 5 years regular service and Transfer on deputation (including short-term contract) by Officers under the Central/ State Governments/Universities/Recognised Research Institutions/Public Sector Undertakings/Statutory or Autonomous Organisation holding analogous posts



on regular basis with 5 years regular service in the scale of pay of Rs.2200-4000 or with 8 years regular service in the scale of pay of Rs.2000-3500 or equivalent.

3. The case for the applicants is that no timely DPC was held and that has deprived the applicants the opportunity of promotion. Their further case is that all the applicants have put in more than 8 years regular service in the scale of pay of Rs.2000-3500 and therefore their names ought to have been included in the list (Annex. A.1). It is stated that when the officers of other departments/offices are eligible on completing 8 years of regular service in the scale of pay of Rs.2000-3500 for the posts of Scientist 'C' there cannot be any justification for not considering the applicants working in the same department if they complete 8 years regular service in the scale of pay of Rs.2000-3500. It is also their case that the respondents have failed to give the benefit of Flexible Complementing Scheme(FCS for short) to the posts of Scientist 'B' and as such the action of the respondents is illegal.

4. In the counter, the respondents' version is that the applicants are not eligible to be considered for the posts of Scientist 'C' as they had not put in the requisite number of years of service as Scientist 'B'. It is further stated that FCS is applicable to employees of Group 'A' posts and as the applicants are in Group 'B' posts are not entitled to the FCS. It is further stated that the decision of this Bench of the Tribunal dated 12.2.9 (Dr. M.N.Khan and another vs. UOI -- O.A. No. 60/96) is



under challenge before the High Court and the applicants cannot succeed in this O.A on the ground of discrimination.

5. We have heard the learned counsel for the parties and perused the documents placed on record. Mr. Singh, Counsel for the applicant confined his argument to one ground only that the applicants have been discriminated. He relied on the decision of this Bench of the Tribunal in Dr. M.N. Khan's case (supra) and stated that the decision has been confirmed by the Hon'ble High Court.

6. The relevant provision for promotion in the Rules is as under:

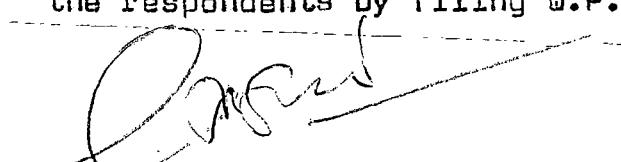
Promotion

Scientist 'B' with 5 years regular service in the grade.

The applicants had not put in 5 years regular service in Grade 'B'. Therefore under this provision they cannot succeed.

7. However, it is no more in dispute that all the applicants had put in more than 8 years of service in the scale of pay of Rs.2000-3500, when the eligibility list(Annex. A.1)was prepared.

8. In the case of Dr. M.N. Khan (supra) it was held that the applicants therein having rendered more than 8 years in the scale of pay of Rs.2000-3500 were eligible for promotion to the post of Scientist 'C'. In that case the applicants had also completed more than 5 years service in the post of Scientist 'B'. In any case the matter was decided on alternative grounds. The said decision of the Tribunal was challenged by the respondents by filing W.P. No. 4620/98 and the



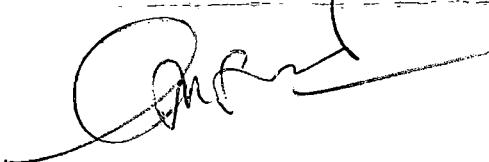
Writ Petition was dismissed by the Hon'ble High Court on 25.2.2000.

9. The Mumbai Bench of this Tribunal has also considered this point in the case of Smt. Pushpapata Jain and others vs. Union of India and others (decided on 18.1.2002- D.A. No. 2113/2001) It was held that Assistant Hydrogeologist in the scale of pay of Rs.2000-3500 were eligible to be considered for promotion as Scientist 'C' after they put in 8 years regular service.

10. The Bangalore Bench of this Tribunal in the case of Sri A. Suresha and others vs. Union of India and others (D.A. Nos. 193/2001 and batch decided on 3.6.2002) held the same view.

11. So also this Bench in the case of S.K. Gupta vs. Union of India (D.A. No. 57/99 decided on 9.11.2000) reiterated the view taken in Dr. M.K. Khan's case (supra).

12. The Chandigarh Bench of this Tribunal also took the same view in S.K. Sehgal and others vs. Union of India and others (D.A No. 477/CH of 2002 decided on 30.10.2002). It was held in the above case that the Rule prescribing different norms for departmental candidates and deputationists for promotion to Scientist 'C' is ultra vires the principles of equality before the law. The respondents therein were directed to consider the applicants therein for promotion to the rank of Scientist 'C' from the date they completed 8 years service in the pre-revised scale of Rs.2000-3500.



13. Keeping in view the consistent view of the various Benches of this Tribunal, it has to be held that even though the applicants had not put in 5 years regular service in the grade of Scientist 'B' yet they were eligible for consideration for promotion as Scientist 'C' on the ground that they had put in more than 8 years regular service in the scale of pay of Rs.2000-3500.

14. During the course of arguments it was pointed out by the learned counsel for the applicants that the aforesaid decisions of the various Benches have been implemented. If the applicants are held to be ineligible for inclusion in the list of eligible candidates for promotion to Scientist 'C', then it would amount to discrimination.

15. In view of the above discussion, the O.A is allowed. The respondents are directed to include the name of the applicants in the eligibility list (Annex. A.1). During the course of the argument it was brought to our notice that pursuant to the interim orders passed by this Court, the applicants have already been interviewed.

16. No order as to costs.

lmpd
(A.P. Negi)
Administrative Member

G.L.Gupta
(G.L.Gupta)
Vice Chairman

jsv.