

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH; JAIPUR.

10th Day of December two thousand three

O.A.No. 197/2000

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

Harsh Nath Tiwari
S/o Shri Bansi Dhar Tiwari,
R/o S2/11, Mansarovar
JAIPUR. : Applicant..

Mr. Prahlad Singh: Counsel for the applicant.

Versus

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

Mr. S.S. Hassan proxy counsel to
Mr. S.M. Khan : Counsel for the respondents.

[Handwritten signature]

candidates up to the serial number of 45 have been considered. Dr. M.N. Khan, and Shri I.K. Sharma have filed O.A. No. 60/96 claiming ante-dated promotion to the post of Scientist 'B' and considered their case for promotion to the next higher post, which was allowed and their date of promotion has been changed to 25.10.95, from which date the other persons were promoted. The said persons were promoted as Scientist C with effect from 01.01.94 by order dated 17.09.2001 on the vacancies arose after promotion of 16 Assistant Hydrogeologists to the post of Junior Hydrogeologists. Hence there is no doubt that promotion of these two persons and that of Shri S.K. Gupta (O.A. No. 57/99 -decided on 9.11.2000), have been ante dated from 25.10.95 as Assistant Hydrogeologists. In sum and substance the case of the applicant is that since three persons have been granted ante dated promotion from 1995 and therefore the applicant's case ought to have been considered on the vacancies for the year 1995, which may be aptly be termed as resultant vacancies. But the respondents have not found it expedient to review the position in respect of the applicant, with the result the applicant's case has been adversely affected and his further promotion has been denied.

4. Both the learned counsel have reiterated their pleadings. The learned counsel for the applicant has relied on the following judgements in support of his contentions.



Dr. D.S. Mishra vs. UOI and others (O.A. No.234/99-decided on 31.12.2002; - Jaipur Bench) **SK. Saigal vs. UOI and others** (O.A. No. 422-CH of 2002- decided on 30.10.2002- Chandigarh Bench) **S.K. Gupta vs. UOI and others** (O.A. No. 57/99 - decided on 09.11.2000- Jaipur Bench) **Dr. M.N. Khan and another vs. UOI and others** (O.A. No. 60/1996- decided on 12.02.98- Jaipur Bench).

5. We have perused those judgements and there is hardly any quarrel on the law laid down in the said judgements. However, the learned counsel for the respondents has submitted that the applicant is not senior most enough for consideration against the vacancies which arose due to ante dated promotion of three persons mentioned in the O.A and even if a direction is given to the respondents to consider the case of the applicant, he cannot get anything since the promotional post is also a selection post. He has also submitted that no junior has been promoted on the next higher post.

6. From the pleadings and arguments it is admitted that three persons namely, Dr. M.N. Khan, I.K. Sharma and S.K. Gupta, were seniors to the applicant and after they had been promoted, the promotional posts fell vacant. We are aware of the law position that one has fundamental right of consideration and not promotion itself. The Government can also choose not to fill up the vacant posts even if the clear vacancies are available. But in the instant case, we find that the Government had filled

[Signature]

up the vacant posts and the judgements of this Tribunal cited above had been implemented in case of applicants therein. In this view of the matter, once the government already implemented the judgements, the only question remains for consideration is whether the applicant has any right against the vacancies which had arisen due to the promotion of persons cited above. Admittedly, the vacancies have arisen in the year 1995, when the said three persons were promoted, neither the applicant nor any other eligible person has been considered for promotion against those vacancies. The post may be selection post, but there can be no deviation from the fundamental rule. Further when the Government chooses to fill up the posts, the case of eligible persons within the consideration zone is required to be considered. If the applicant is senior enough and come into zone of consideration, his case ought to have been considered by the respondents.

7. We are concerned here primarily with the infringement of the fundamental rules, which has been claimed by the applicant. Since the vacancies, which became available in the year 1995 and the applicant otherwise got the promotion in the year 1996, the respondents ought to have considered the case of the applicant for ante dating his promotion. i.e. after promotion of the said three persons to the still higher post. The natural consequence should follow as regards the consideration for promotion of the applicant to the still higher post.

L

ORDER**Per Mr. J.K. Kaushik, Judicial Member.**

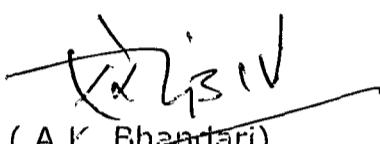
We have heard the learned counsel for the parties and have carefully perused the records of the case. Shri Harsh Nath Tiwari, has filed this O.A with the prayer that the respondents may be directed to give him ante dated promotion to the post of Assistant Hydrogeologist against the vacancies of the year 1988 with effect from 01.10.1988 and to modify the order dated 29.03.1996 accordingly. He has also claimed other consequential relief including consideration of promotion to the next higher post.

2. The admitted and relevant facts of the case are that the applicant was initially appointed on the post of S.T.A (Hydrogeology) in the Central Ground Water Board, in the year 1985 after passing the requisite selection held on 26.04.85. He joined his duties 21.05.85. He has been assigned seniority at Sl. No. 2 in the seniority list of STA as on 01.09.95. He was promoted to the post of Assistant Hydrogeologist (Group-B) Gazetted on the basis of recommendations of DPC vide order dated 29.03.96. and his name figured at Sl. No. 1 in the said order he being the senior most Hydrogeologist.

3. The further facts of the case are that his name is placed at Sl. No. 49 of the Seniority list of Assistant Hydrogeologist as on 01.01.2002. For the next promotional post of Scientist 'C'

[Signature]

8. In the premise, the application is partly allowed. The official respondents are directed to consider the case of the applicant for promotion to the post of Assistant Hydrogeologists along with other eligible candidates who may be within the consideration zone for same against three vacancies which fell vacant on 25.10.95. They shall also ^{be} entitled to other consequential benefits except monetary benefits, in case their promotion is ante dated. No costs.


(A.K. Bhandari)

Administrative Member


(J.K. Kaushik)

Judicial Member.

Jsv.