

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH; JAIPUR**

**Original Application No. 157/03**

**Date of decision: 31.5.2004**

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

**Hon'ble Mr. M.K. Misra, Administrative Member.**

Dr. Manish Shrivastava, S/o Shri L.K. Shrivastava, aged about 29 years, r/o 42/56/10, Mansarovar, Jaipur, presently working as Asstt. Hydrogeologist, in Central Ground Water Board, (W.R.) Jaipur.

Applicant.

Rep. By Mr. C.B. Sharma, Counsel for the applicant.

**VERSUS**

1. Union of India, through its Secretary to the Government of India, Ministry of Steel and Mines, Shastri Bhawan, New Delhi.
2. Union of India through its Secretary, Ministry of Water Resources, Government of India, Shram Shakti Bhavan, Rafi Marg, New Delhi.
3. Chairman, Central Ground Water Board, Central Head Quarter Office, C.G.O. complex, NH IV, Faridabad.
4. Chairman, Union Public Service Commission, Dholpur House, New Delhi.
5. Regional Director, Central Ground Water Board (WR) Jhalana Institutional Area, Jaipur.

Respondents.

Rep. By Mr. N.C. Goyal, Counsel for the respondents.

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

Dr Manish Srivastava has filed this Original Application for seeking a direction to the respondents to provide appointment to the applicant on the post of Junior Hydrologist Group A in pay scale of Rs. 8000-13500 instead of Assistant Hydrologist Group B in pay scale of Rs. 7400-12000 from date of joining on the later and also all the consequential benefits.

2. The indubitable facts, necessitating the applicant to undertake second journey to this Tribunal, as culled out from the pleading of the parties are that the applicant, being fully eligible, got an opportunity to undertake Examination, 1998 for the following posts:

**Category-I (for Geological Survey of India)**

- (i). Junior Geologist Group A scale of Rs. 8000-13500.
- (ii). Asst. Geologist Group B scale of Rs. 7500-12000

**Category-II (for Central Ground Water Board)**

- (i). Junior Hydrogeologist Group A scale of Rs. 8000-13500.
- (ii). Asst. Hydrogeologist Group B scale of Rs. 7500-12000.

The applicant's was placed at Sl. No. 54 and 28 on the merit list for the category II, and I respectively. A combined merit list for both the posts in each category was prepared. In category II, there were 22 and 62 vacancies for the post of Junior Hydrogeologist Group A scale of Rs. 8000-13500 and

Asst. Hydrogeologist Group B scale of Rs. 7500-12000, respectively, which panel was prepared.

3. The further facts of the case are that appointment was to be given on the basis of merit cum preference. The applicant gave preference in the following order:

- (i). Junior Geologist Group A scale of Rs. 8000-13500.
- (ii). Junior Hydrogeologist Group A scale of Rs. 8000-13500.
- (iii). Asst. Geologist Group B scale of Rs. 7500-12000
- (iv). Asst. Hydrogeologist Group B scale of Rs. 7500-12000.

He was offered appointment to the post of Asst. Hydrogeologist Group B on dated 20.12.2000 and he joined on the same. The offers of appointments were made for the post of Junior Hydrogeologist Group A upto the merit Sl. No. 25 of the combined merit list for category II. The name of the applicant was at Sl. No. 28 of the said list. Candidate at Sl. 27 of the merit did not give his preference for the post of Junior Hydrogeologist Group A. Three candidates at Sl. No. 10, 12, and 15 (i.e. Sh. A P Pradeep Kumar, Mridula Jha and M A Mohammed Aslam), gave their resignations which were accepted on dated 10.11.2000, 24.5.2001 and 10.11.2000, respectively.

4. The case of the applicant of that the respondents ought to have filled the three vacancies remaining unfilled due to resignation of the above three candidates who resigned within a period of six months of their appointments as per the rules in force. Had the respondents given three more appointment on

the said post of Junior Hydrogeologist Group A, the applicant would have got the same since he was 2<sup>nd</sup> person who would have been covered as per his merit and preference; candidate at Sl. No. 27 having not given preference for the said post.

5. As regards the variances, the respondents have averred that no general candidate beyond Sl. No. 26 has been considered for appointment to the post of Junior Hydrogeologist Group A. Before the date of resignation of three candidates, the result of Geologist's Examination 99 was declared and allocation of successful candidates was done on 16.11.2000; much prior to the date of joining of the applicant who joined on 20.12.2000. Hence his request for the appointment against the vacancies occurred for the year 2000 and 2001, could not be acceded to as per the OM dated 13.6.2000 referred to in para (B) of reply to grounds.

6. We have heard the learned counsel for both the parties at a considerable length and carefully perused the pleadings and records of this case.

7. The learned counsel for the applicant has submitted that the case of the applicant has been under constant consideration with the respondents as is evident from communication-dated 17.7.2002 (A/1), and the applicant awaited for about six months and filed this OA. There is no delay on the part of applicant

since he immediately submitted his representation just before his joining on the lower post. He has next contended that the OM dated 13.6.2000 has no application to the instant case in as much as it applied to future examinations/recruitments and not to any examination held prior to the date of OM whereas the examination in which applicant passed was held in the year 1999. He has also contended that specific instructions existed for regulating the appointments in such contingency and the respondents have given good-bye to the same and the applicant was the victim of their negligence. He has next contended that even as per the new rules, the fresh panel was declared on dated 16.11.2000 and by that time two candidates had already resigned and their resignations were also accepted on dated 10.11.2000; on no fresh panel was available. The second vacancy thus arisen ought to have gone to the applicant. All the three candidates who resigned from the post of Junior Hydrogeologist Group A belonged to the same panel.

8. Per contra the learned counsel for the respondents has vociferously endeavoured to counter the submission made on behalf of the applicant. He has stressed the preliminary objection relating to limitation and submitted that the OA is hopelessly time barred as hit by law of limitation. The same cannot be sustained. It has been next contended that mere empanelment does give any right to a candidate and has placed reliance on the decision of Apex Court in case of **Shankarsan**

**Dash Vs. Union of India 1991 SCC (L&S) 800.** The respondents have acted in accordance with the instructions on the subject and no illegality has been done. The OA is misconceived and deserves dismissal.

9. We have considered the rival contentions raised on behalf of both the parties. As far as the material facts of this case are concerned, there is hardly any dispute. It is a fact that name of the applicant was placed at Sl. No. 28 and the candidates' upto 25 were given appointment. The person at Sl No. 27 did not give preference for the post of Junior Hydrogeologist Group A. Three of the candidates who were given appointment resigned within a period of six months of their appointment. Resignations of two of them were admittedly accepted on 10.11.2000. The OM dated 13.6.2000 had prospective application and did not apply to the examination in which the applicant has passed. It is also true that the case of the applicant remained under consideration. Had the respondents given appointment against even the two posts fell vacant due to the aforesaid resignation, one of it ought to have gone to the applicant.

10. Before advertiring the crux of the matter, we would dispose of the peripheral issue relating to the preliminary objection of limitation. As we have observed above that the matter has been under constant consideration within the respondents and the Annexure A/1 reflects this position, the delay if at all can be said

to be attributable to the respondents. The respondents cannot be permitted to raise such plea for which they themselves are responsible and we are supported of this view by a decision of a coordinate bench of the Tribunal at Bangalore in case of **G.N. Krishna V. The Accountant General ( A& E) Karnataka & Others [ SLJ 1989 (4) CAT 860.]** Thus the preliminary objection stands repelled.

11. Adverting to the main issue now, to appreciate the controversy involved in the case, we find expedient to refer to the relevant rules relation to the examination and the giving of appointment in case of resignations etc. Contents of para (ix) and (x) form the Direct Recruitment by Examination Rules (page 8 and 9 of paper book) are extracted as under:

- " (ix) If, however, some candidates recommended for appointment, do not turn up, the commission may be approached within a reasonable time for replacements from the reserves, if available.
- (x) The reserve panel is also operated in the event of the resignation or death of a candidate within six months of his appointment."

It is obvious from the bare perusal of the aforesaid provision that as per the rules in force, in cases of resignation within a period of six months of appointment of such persons, the vacancies falling vacant thereof were required to be filled in from the next person in the merit list. Thus the applicant

became entitled for appointment against one of such vacancy on the post of Junior Hydrogeologist Group A.

12. We have however one hesitation in accepting the aforesaid conclusion and that is regarding the applicability or otherwise of the judgment in **Shankarsan Dash' case supra**. The facts of that case were that on the basis of combined examination by the Union Public Service Commission for appointment to "civil services, the appellant name was kept in the select list for appointment as Group 'B' Police Service. The vacancies arose for subsequent year, though he was occupying higher rank in the general category, the Government did not appoint him. They implemented the policy, appointing candidates in the lower candidates belonging to reserved categories and the vacancies arose for general candidates were not filled up. Further the state in that case took a policy decision for not filling the vacant posts. There were no such rules applicable to the appointment to regulate such contingencies. But the facts of the said case are distinguishable in as much in the instant case, the vacancies are for the same years for which the panel was prepared and there are specific rules for filling up the post which fall vacant as a result of resignation of the candidates appointed with certain other condition enumerated in the aforesaid paras. Thus the same is of no help to the respondents. We may also note that it has also been observed in the said case that the state cannot act in an arbitrary manner and contrary to rules. It is required to

follow the rules in force and cannot act arbitrarily as has been done in the instant case. We are of the considered opinion that the learned counsel for the respondents has not been able to countenance his submissions.

13. The upshot of the aforesaid discussion is that there is ample merits and substance in this Original Application and the same is hereby allowed in part. The respondents are directed to give appointment to the applicant against the vacancy on the post of Junior Hydrogeologist Group A, which fell vacant on account of resignation of two/three candidates mentioned in para 3 above, with effect from the date the said post so fell vacant with all consequential benefits except that the monetary effect shall be given from the date he actually assumes the charge of the said post. This order shall be complied with within a period of three months from the date of communication of this order. No order as to costs.

**(M K Misra)**  
**Administrative Member**

**(J K Kaushik)**  
**Judicial Member**

**nlk**