

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO.615/2003.

DATE OF DECISION 11-11-2005

B.M.Galav.

Petitioner

Shri Rajendra Vaish

Advocate for  
the Petitioner(s)

Versus

Union of India & Ors.

Respondent


Shri Tej Prakash Sharma

Advocate for  
the Respondent(s)

CORAM :

Hon'ble Shri A.K.Agarwal, Vice-Chairman,  
Hon'ble Shri M.L.Chauhan, Member (J).

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

  
(A.K.AGARWAL)  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH.

ORIGINAL APPLICATION NO.615/2003.

Friday, THIS THE 11<sup>th</sup> DAY OF Nov 2005.

Hon'ble Shri A.K.Agarwal, Vice-Chairman,  
Hon'ble Shri M.L.Chauhan, Member (J).

B.M.Galav,  
10/287, Mansarovar,  
Jaipur. ...Applicant.  
(By Advocate Shri Rajendra Vaish)

v.

1. Union of India  
through Secretary to the  
Government of India,  
Ministry of Mines,  
New Delhi.
2. The Director General,  
Geological Survey of India,  
27, Jawaharlal Nehru Road,  
Kolkatta - 700016.
3. The Deputy Director General,  
Geological Survey of India,  
Western Region,  
Jaipur. ...Respondents  
(By Advocate Shri Tej Prakash Sharma)

: O R D E R :

{A.K.Agarwal, Vice-Chairman}

This O.A. Has been filed by the applicant seeking direction to the respondents for counting his service right from 2.5.1990 for the purpose of promotion to the post of Senior Administrative Officer.

2. The facts of the case, in brief, are as follows. The applicant joined the service as Administrative Officer in Geological Survey of India (GSI), Western Region on 14.3.1990 against a substantive post. As per the

Recruitment Rules, in force till 26.9.2002, for the next higher post of Senior Administrative Officer an Administrative Officer with eight years of service was eligible for consideration. The applicant has contended that keeping in view his date of joining, he became eligible for consideration for the post of Senior Administrative Officer on 2.5.1998.

3. The applicant has stated that on the basis of the recommendations of the Vth Central Pay Commission, out of 112 posts of Administrative Officers in the pay scale of Rs.6,500-10500, 26 posts were upgraded in the pay scale Rs.8,000-13,500 as Administrative Officer Gr.I and the remaining posts were to be re-designated as Administrative Officer Gr.II and orders to this effect were issued on 30.7.2002. However, in the Recruitment Rules notified on 26.9.2002, the eligibility for promotion to Senior Administrative Officer has been made five years regular service as Administrative Officer Gr.I. As a result, the applicant who was eligible for consideration for promotion as Senior Administrative Officer way back in 1998 has to wait for another five years after July, 2002. Hence, this O.A.

4. The learned counsel for the applicant

stated that based on the recommendations of Vth Pay Commission, the Government had upgraded 26 posts of existing 112 posts of Administrative Officers and two other posts of Administrative Officer Gr.I were made available by down-grading one post each of Regional Administrative Officer and Senior Administrative Officer. A general order in this regard was issued on 30.7.2002 and the applicant was given the pay scale of Administrative Officer Gr.I w.e.f. 31.7.2002. A proposal was sent by R-2 to R-1 for promotion of a number of Administrative Officer Gr.I to the post of Senior Administrative Officer vide letter dt. 1.8.2003. However, despite the recommendations of the DPC, the applicant has not been promoted on account of technical interpretation of the rules. The stand taken by the respondents is that since the new Recruitment Rules require continuous service of 5 years as Administrative Officer Gr.I for promotion to the post of Senior Administrative Officer and the applicant was promoted as Administrative Officer Gr.I only vide order dt. 30.7.2002 therefore he cannot be considered at this stage. The learned counsel contended that the applicant had a vested

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right under the old rules for consideration for promotion as Senior Administrative Officer in the year 1998 itself. It is a different matter that keeping in view the number of posts available and his seniority, he could not get promotion till the new Recruitment Rules were notified on 26.9.2002. However, his vested right cannot be taken away. The learned counsel submitted that there are necessary provisions in the rules for taking care of such contingencies. The learned counsel drew our attention towards Rule 5 of the Rules notified on 26.9.2002 under GSR 409, whereby the Central Government has the power for giving relaxation from the provisions of rules. He contended that relaxation of rules to make such category of Administrative Officer eligible for promotions as Senior Administrative Officer, who were eligible even before commencement of the rules, would have been a legitimate exercise of such powers. The learned counsel for the applicant has relied upon a verdict of Apex Court in the case of Uma Shankar Sharma v. Union of India & Ors. {(1980) 3 SCC 202}, wherein it was held that "The terms and conditions of service are intended to be construed reasonably, and too technical a view

can defeat the essential spirit and intent embodied in them". The learned counsel for the applicant has also relied upon another verdict of the Apex Court in the case of Union of India v. V.K. Sirothia {1999 SCC (L&S) 938}, wherein it was held that "Upgradation is not a promotion". He contended that to treat giving of higher pay scale as a promotion is contrary to the law laid down by the Apex Court. The learned counsel concluding his submissions pleaded that the respondents be given suitable directions for considering the applicant for promotion to the post of Senior Administrative Officer.

5. The learned counsel for respondents submitted that on the basis of the recommendations of Vth Pay Commission, the Government had agreed to upgrade 26 posts of existing Administrative Officer from the pay scale of Rs.6,500-10,500 to the pay scale of Rs.8,000-13,500. The upgraded posts were re-designated as Administrative Officer Gr.I. Two additional posts were also made available to the cadre of Administrative Officer Gr.I making the total to 28. The learned counsel for the respondents stated that based on the acceptance of the recommendations of the Vth

Pay Commission the Government initiated the action for promoting the Administrative Officers to higher scale. The UPSC held a DPC meeting on 22.7.2002 and the approval of the Government to promote 20 Administrative Officers to the higher pay scale was conveyed to GSI vide letter dt. 30.7.2002. The applicant has taken over charge as Administrative Officer Gr.I on 31.7.2002. There was some procedural delay in finalising Recruitment Rules and they were notified on 26.9.2002. However, the initial constitution of Administrative Officer Gr.I has been protected by Rule 7 and the persons promoted vide order dt. 30.7.2002 shall be deemed to have been appointed as Administrative Officer Gr.I under the new rules. The learned counsel submitted that the new Recruitment Rules which came into force w.e.f. 26.9.2002 clearly provide that Administrative Officer Gr.I having five years regular service will be eligible for promotion to the post of Senior Administrative Officer. He contended that the applicant was promoted as Administrative Officer Gr.I in the pay scale of Rs.8,000-13,500, after the recommendations of DPC only vide order dt. 30.7.2002. He can therefore not be considered for further promotion till

he completes 5 years in this grade. The learned counsel for the respondents stated that the applicant is eligible for promotion for consideration against the vacancies existing before the amendment of the Recruitment Rules.


6. We have heard both the learned counsel and have gone through the material placed on record. It is an accepted fact that as per the provisions of the new Recruitment Rules the applicant is not eligible for consideration for the post of Senior Administrative Officer since he has not put in 5 years regular service as Administrative Officer Gr.I. The main contention of the learned counsel for the applicant is that keeping in view facts of the case, the authority should have granted relaxation from the rules in the interest of natural justice. The judgment of the Supreme Court in the case of Uma Shankar Sharma (supra) is distinguishable since the facts of that case essentially related to selection for a tournament; while the present case relates to promotion based on the provisions of Recruitment Rules. Hence, the verdict of the Apex Court relied upon by the learned counsel for the applicant is of no help in this case.




Another verdict of the Apex Court in the case of Union of India v. V.K. Sirothia (supra) relates to applicability of the provisions of reservation in promotion. While in the present case the moot question is eligibility for promotion based upon a specific provision in the Recruitment Rules. Hence, this ruling of the Apex Court also ~~also~~ is of no help to the applicant.

7. We observe from the facts of the present case that the applicant has been promoted to pay scale of Rs.8,000-13,500 from the pay scale of Rs.6,500-10,500 vide order dt. 30.7.2002 based on the recommendations of a DPC. The applicant has neither pleaded nor has produced anything on the record to show that any one similarly placed or junior to him has been considered for promotion by the respondents for the post of Senior Administrative Officer. As far as the power of relaxing Recruitment Rules is concerned it can be done only when the Central Government is of the opinion that it is necessary or expedient to do so and that too after consultation with the UPSC. We do not find any convincing material on record for giving any direction to the Central Government in this regard.

8. In view of the analysis of facts heretofore, we are of the considered opinion that the applicant has no right as such to claim relaxation to the Recruitment Rules for the purpose of promotion before completing the requisite period of regular service. The O.A. is therefore dismissed. No orders as to costs.



(M.L. CHAUHAN)  
MEMBER (J)



(A.K. AGARWAL)  
VICE-CHAIRMAN

B.