

12

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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 R.A/C.P No.
 E.P/M.A No. 80/06 & 60/07

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SECTION OFFICER (Judl.)

Sahib
 08/11/17

(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 172/05

Misc. Petition No.

Contempt Petition No.

Review Application No.

Applicants:

Respondents

Advocates for the Applicant

Advocates of the Respondent

Notes of the Registry

Date

Order of the Tribunal

29.6.2005

present : Hon'ble Sri Justice G. Sivarajan, Vice-Chairman.

Heard Mr. B.C. Pathak, learned counsel for the applicant and also Mr. U. Das, learned Addl. C.G.S.C.2 for the respondents.

Admit. Issue notice to the respondents. Returnable on 29.7.

post on 29.7.2005.

Vice-Chairman

Ms. U. Das learned Addl. C.G.S.C. seeks for adjournment. Post the matter on 31.8.05. Written statement if any, in the meantime.

Member

Vice-Chairman

lm

31.8.2005

Counsel for the applicant is present. Mr. G. Baishya, learned Sr. C.G.S.C. appearing on behalf of Ms. U. Das, learned Addl. C.G.S.C. submits that some more time is required for filing written statement. Post on 23.9.2005.

Vice-Chairman

The application is in form
is filed/C.F. No. 10,2
deposited vide P.D.
No. 206/134471
Dated 28.6.05

Dy. Registrar

Steps taken with
envelops

mb

29.8.05

Notice & order sent
to D/section for
issuing to resp.
Nos. 1, 2 & 3 by regd.
A/D post.

ST/105 D/No = 1072 to 1074.

DT = 8/7/05.

Service report are
still awaited.

29.7.05

23.9.05.

Mr.B.Baruah learned counsel for the applicant is present. Ms.U.Das learned Addl.C.G.S.C. submits that the written statement has already been filed to-day, in which a preliminary objection has been raised regarding jurisdiction.

Post the matter before the next available Division Bench.

[Signature]
Vice-Chairman

No written statement
has been filed.

[Signature]
30.8.05

No written statement
has been filed.

lm

6.3.2006

[Signature]
22.9.05

23.9.05

Reply filed by the
respondents.

[Signature]
Vice-Chairman(J)

[Signature]
Vice-Chairman(A)

bb

06.03.2006

Learned counsel for the applicant Mr. B.C. Pathak is said to be not in station and submitted a letter of absence. Therefore, the case is adjourned to 23.3.2006.

[Signature]
Vice-Chairman (J)

[Signature]
Vice-Chairman (A)

23.3.2006

Mr.B.Pathak, learned counsel for the applicant submits that he would like to file rejoinder. Let it be done. Post on 28.4.2006.

[Signature]
Vice-Chairman

W/S has been
filed.

[Signature]
3.3.06

W/S has been filed.

[Signature]
22.3.06

No Rejoinder has
been filed.

[Signature]
27.4.06

O.A. 172 of 2005

28.4.06.

Post the matter before the next available
Division Bench.

Vice-Chairman

lm

31.07.2006 Present : Hon'ble Sri K. V.
Sachidanandan, Vice-Chairman.

Hon'ble Sri Gautam Ray,
Administrative Member.

Post on 07.08.2006.

Member (A)

Vice-Chairman

mb

07.08.2006

Mr B.C. Pathak, learned counsel for
the Applicant submitted that he has filed
amendment application seeking amendment
of the O.A. Ms U. Das, learned Addl. C.G.S.
C. for the respondents submitted that she
would like to take instructions.

Post on 01.09.2006.

Wks have been
billed.

31.8.06.

4.9.06

Rejoinder filed by
the Applicant. and
affidavit in reply
also filed by Respondents

Member

Vice-Chairman

mb

01.09.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

Ms. U. Das, learned Addl. C.G.S.C.
for the Respondents submitted that she
has filed reply affidavit in the Misc.
Application and copy of the same has also
served to the learned Counsel, who
represented the Opposite Party. Let the
case be posted on 19.09.2006 for hearing
of the Misc. Application.

Vice-Chairman

/mb/

O.A. 172/2006

19.09.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

Post on 03.11.2006.

Vice-Chairman

3.11.06

post on 10.11.06 for hearing as prayed
for by the counsel for the parties.

Vice-Chairman

The case is ready
for hearing.

by
9.11.06.

pg

10.11.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

14.11.06

Post on 13.12.2006 for hearing.

Vice-Chairman

For information is received from
the P.B. (Flagged) that the Applicant
moved an application for transfer
in P.B. and filed on 8.12.06
for hearing.

/mb/

13.12.06.

Post the matter before the next
available Division Bench.

Vice-Chairman

The case is ready
for hearing.

by
12.12.06.

lm

19.1.2007

Plag 'A' may kindly be 15.2.07
petition for transfer of the Bench.
was filed before the P.B. and
has been ~~not~~ dismissed
vide order D. 5-10.07.

Post before the next available Division

Vice-Chairman

Therefore, the OA will be
heard in this Bench before
the P.B. when available.

16.3.2007

On behalf of Mr. B.C. Pathak
adjournment is sought. post on 21.3.
2007.

Member

Vice-Chairman

The case is ready
for hearing.

bb

Notings
19.1.07

by
19.1.07

21.3.2007

post the matter for hearing on
26.4.2007.

25-4-07

⑤ Wls and rejoinder
filed by the parties.

Vice-Chairman

bb

Lm

26.4.07 Mr .B. C. Pathak, learned counsel for the
applicant has sought for time to file amended
O.A. on the ground that the applicant is not in
the country, immediately he will return from the
Foreign. Request of the learned counsel for the
applicant is considered. Three weeks time is
granted to carry out ^{amendment and to file} the amended of the O.A.
Four weeks' time is granted to file additional
written statement after filing of the amended
O.A. Post the matter on 29.5.07 for orders.

Member(A)

Member(J)

Lm

29.5.07.

Mr. B. C. Pathak, learned counsel
for the applicant has submitted that he
wants to file amendment petition and the
applicant is not in the Station, therefore
he prays for adjournment. Prayer is
allowed. Post the matter on 02.7.07.

Vice-Chairman

lm

20.7.07

Mr .B. C. Pathak, learned counsel for the

No amendment petition
filed by the applicant.

29

29.6.07

SA. 172/05

2.7.2007

3.7.07.

Amendment petition
has been filed by
the Applicant.

Res.

/bb/

2.8.07

~~Res.~~

no reply on
amendment filed
by

3.8.07

Four weeks time granted to the
respondents to file written statement.

Post on 18.9.07 for order.

Vice-Chairman

Wls not filed.

pg

17.9.07.

18.9.2007

Ms.U.Das, learned Addl. C.G.S.C. has
filed reply to the amended petition. Let the
case be posted on 11.10.2007. In the
meantime, Applicant is at liberty to file
rejoinder, if any.

Vice-Chairman

Vice-Chairman

/bb/

24.9.07

Reply in Consolidated
Amendment petition has
been filed by respondents.
Copy served

Res.

~~Wls and rejoinder
filed by the parties.~~

~~10.10.07~~
Rejoinder not filed.

10.10.07.

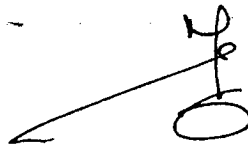
11.10.2007

The Applicant has filed Misc. Petition No.60/2007 in this O.A. No.172/2005 to give a direction to the Respondents to cause production of several documents as specified at page - 4 of the Misc. Petition No.60/2007.

The Respondents have filed an objection to this Misc. Petition No.60/2007. We have heard Mr.B.C.Pathak, learned counsel for the Applicant and Ms. U. Das, learned Addl. Standing counsel for the Central Government. Let the Respondents make available of these records (as specified at page-4 of the Misc. Petition No.60/2007) with the learned Addl. Standing counsel representing the Respondent Department, to be produced at the time of hearing of the O.A. No.172/2005. If it will be needed, at the final hearing of O.A. No.172/2005, then those documents shall be referred to.

Call this matter on 26.11.2007 for final hearing. The Respondents should, well before that date, make available of those records with the learned Addl. Standing counsel to be kept ready at the time of hearing. Additional rejoinder, if any, may be filed by the Applicant well before the date fixed.


(Khushiram)
Member (A)


(M.R.Mohanty)
Vice-Chairman

/bb/

DA 172/05

19.11.07

Rejoinder filed
by the Applicant.
Copy not served
Service copy kept in
'e' file. Copy stored.

[Signature]

26.11.2007

Mr.B.C.Pathak, learned, 'learned
counsel for the Applicant has filed a letter
of absence.

Call this matter on 09.01.2008 for
hearing.

[Signature]
(Khushiram)
Member (A)

/bb/

The case is ready
for hearing.

[Signature]
8.1.08.

09.01.2008

Ms.U.Das, learned Addl. Standing counsel
for the Union of India, has filed a reply to the
rejoinder in Court today, after serving a copy
thereof on Mr.B.C.Pathak, learned counsel for
the Applicant. Mr.Pathak seeks adjournment to
take instruction from the Applicant on the
points raised in the reply that has been filed
today.

Call this matter on 13.02.2008 for hearing.

[Signature]
(Khushiram)
Member (A)

[Signature]
(M.R.Mohanty)
Vice-Chairman

/bb/

16.1.08
Reply to the
rejoinder filed
by Respondent.
Copy served.

[Signature]

The case is ready
for hearing.

[Signature]
12.2.08.

13.02.2008

None appears for either of the
parties. The Advocate for the Applicant,
Mr. B. C. Pathak, has filed a leave note.
Ms. Usha Das, learned Addl. Standing
Counsel appearing for the Union of India,
is also remain absent for the reason of the
ailment of her mother.

Call this matter on 26.03.2008.

[Signature]
(Khushiram)
Member (A)

[Signature]
(M.R.Mohanty)
Vice-Chairman

Lm


The case is ready
for hearing.

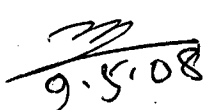
[Signature]
25.3.08.

-9-
O.A. 172/05

26.03.2008 Call this mater on 12.05.2008.


The case is ready
for hearing.



(M.R. Mohanty)
Vice-Chairman


9.5.08. im

12.05.08


Call this matter on 03.06.2008.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

pg

The case is ready
for hearing.


2.6.08

~~08.05.2008~~

~~Call this matter for hearing on
04.06.2008 along with O.A. 82/06.~~

03.06.2008 On the prayer of Mr. G. Baish
learned Sr. Standing Counsel appearing
the Union of India (made in presence
Mr. N.K. Gogoi, representing the Applica
this case stands adjourned and to be tak
up for hearing on 18.06.2008.

(Khushiram
Member(A)

(M.R. Mohan
Vice-Chairman


lm

03.06.2008

On the prayer of Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Union of India (made in presence of Mr. H. K. Gogoi, representing the Applicant) this case stands adjourned and to be taken up for hearing on 18.06.2008.

The case is ready for hearing.

27.6.08


(Khushiram
Member(A))


(M.R. Mohanty)
Vice-Chairman

lm

~~18.06.2008~~

~~Mr. B. C. Pathak, learned~~
appearing

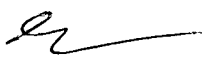
18.06.2008

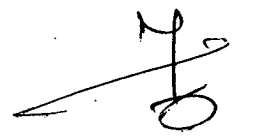
Mr. B. C. Pathak, learned counsel appearing for the Applicant is present. Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Respondents is also present. A Petition M.P.No.60 of 2007 has been filed by the Applicant to call for certain documents/records to be produced at the hearing. Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Respondents seeks an adjournment of hearing of this case. Accordingly, matter is adjourned to be taken up on 30th July, 2008 for hearing; when the Respondents/Sr. Standing Counsel for the Respondents should keep ready all the documents/records (specified in M.P.No.60 of 2007) to be produced at the hearing.

Call this matter on 30th July, 2008.

The case is ready for hearing.

29.7.08


(Khushiram
Member(A))


(M.R. Mohanty)
Vice-Chairman


lm


O.A.-172/08

30.07.2008

Heard Mr B.C. Pathak, learned Counsel appearing for the Applicant and Mr G. Baishya, learned Counsel appearing for the Respondents/Department; who has produced materials in support of the case of the Department. Mr S. Nair, Assistant Personnel Officer of AMD, Shillong assisted the learned Sr. Standing Counsel in Court in course of hearing.

Hearing concluded. Orders reserved.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman


nkmm

19.08.2008

Judgment pronounced in open court, kept in separate sheets.

The O.A. is dismissed in terms of the order.
No cost.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/bb/

28.8.08

Copy of the Judgment
sent to the Dy Sec
for issue the same
to the applicant and
a copy to the Dy
C.G.S.C. for the
respondents.

TH

Received by
G. B. Singh
28.8.08

15.1.09

Wale
S/no. 382/09
1.9.09
Hh

6

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....

Original Application No. 172/05.

DATE OF DECISION : 19-08-2008

Dr. Shaikh Quamrul Hoda

.....Applicant/s

Mr B.C. Pathak

.....Advocate for the
Applicant/s

-Versus -

Union of India & Ors.

.....Respondent/s

Mr G.Baishya, Sr.C.G.S.C

.....Advocate for the
Respondent/s

CORAM

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the judgment ? Yes/~~No~~
2. Whether to be referred to the Reporter or not ? Yes/~~No~~
3. Whether their Lordships wish to see the fair copy of the judgment ? Yes/~~No~~

Vice-Chairman/Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 172/2005.

Date of Order : This the Day of August, 2008.

THE HON'BLE MR MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE MR KHUSHIRAM, ADMINISTRATIVE MEMBER

Dr. Shaikh Quamrul Hoda
 Scientific Officer 'G' and Regional Director of
 North Eastern Region of Atomic Minerals
 Directorate for Exploration and Research (AMD)
 Deptt. of Atomic Energy, Shillong, Meghalaya
 (Since retired) C/o Jishnu Duta Goswami,
 "Kanta", Chenikuthi Hillside,
 Guwahati-781003 (Assam) Applicant

By Advocate Mr B.C.Pathak

-Versus -

1. Union of India,
 represented by the Chairman,
 Atomic Energy Commission and
 Secretary, Govt. of India, Department of Atomic
 Energy, C.S.Marg, Anushakti Bhavan,
 Mumbai-400 039.
2. The Director,
 Atomic Minerals Directorate for Exploration &
 Research (AMD), AMD Complex, 1-10-153-156,
 Begumpet, Hyderabad - 500 016.
3. Shri A.K.Pande,
 Regional Director, Western Region,
 52/496 AMD Flats, Sector-5, Pratap Nagar,
 Jaipur-303906, Rajasthan. Respondents

By Mr G. Baishya, Sr.C.G.S.C.

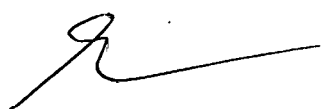
ORDERKHUSHIRAM (MEMBER-A)

The Applicant was initially appointed as Scientific Officer
 Grade SC-1 (Geology) after obtaining M.Sc. degree in Applied Geology



from Indian School of Mines at Dhanbad. After his promotion to SO-G, in August 1998, he was posted in the North Eastern Region/Shillong/Meghalaya (in November 1998) on transfer from Hyderabad. The Applicant was working as Regional Director in the office of the Atomic Minerals Directorate(AMD) for Exploration and Research of Department of Atomic Energy at Shillong/Meghalaya and superannuated on 28.02.2005. The Applicant claims that he was entitled to be promoted to the post of SO-H after completion of five years in the feeder grade of SO-G with effect from 01.08.2003. But his case was not considered for promotion; while (Shri A.K.Pande, the Respondent No.3) a junior to the Applicant was promoted to SO-H grade with effect from 01.08.2004 superseding the Applicant. It is the case of Applicant that his seniority, merit, performance and academic excellence (and more particularly the extra weightage earned by the Applicant for his posting in the North Eastern Region) was not at all considered. He had also filed representation dated 24.09.2004; which was rejected by letter dated 25.02.2005. Hence this Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- (i) To direct the Respondent No.1 & 2 to produce the full text of the promotion rules/scheme/policy of the SO-G grade to SO-H grade of the AMD (DME) and to show if there is any such provisions that the employee in SO-G Grade cannot be considered for promotion and/or can not be promoted to SO-H Grade if such employee applies for any outside job irrespective of the fact whether such employee is selected/offered for appointment in outside job or not, for the judicial scrutiny by this Hon'ble Tribunal and to declare the same as unconstitutional, illegal and ultra vires.



- (ii) To declare the circular dated 28/29th May, 1971, Office Memon dated 18th April, 1980 and 30th December, 1985 as ultra vires, unconstitutional, illegal, arbitrary and violative of the provisions of the fundamental right under Article 14, 16 and 21 of the Constitution of India.
- (iii) To direct the respondent No.1 and 2 to consider the case of promotion of the Applicant and to promote him with effect from 01.08.2003, the date on which the applicant became eligible for promotion to the SO-H grade and/or with effect from 01.08.2004, the date on which his junior, the respondent No.3 has been promoted to the SO-H grade with all consequential benefits.
- (iv) To direct the respondent No.1 and 2 to pay all such consequential benefits of promotion with retrospective effect from 01.08.2003 or from 01.08.2004 and to pay the arrear dues as admissible/entitled to including the monetary benefits.
- (v) To refix and recalculate the quantum of pension/gratuity and to pay the pension at such enhanced rate.
- (vi) To pay any or all such benefits that becomes admissible and payable to the applicant from time to time and for any other such accrued/entitled relief or reliefs."

2. The Respondents have filed their written statement and submitted that Applicant was given promotion from time to time as per the Merit Promotion Scheme; that according to the Merit Promotion Scheme (a) a screening committee takes into account, besides the number of years that an individual has spent in his present grade, the relevance and excellence of the work carried out by the individual as reported by him in the self assessment section of the Annual Confidential Report and that those who get screened are further assessed for by a Selection Committee and (b) that the persons, whose applications for employment are forwarded to outside organizations, becomes ineligible for grant of additional increments/promotion for a



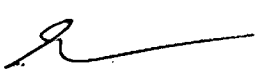
period of one year from the date of application; that the case of the Applicant could have been considered for promotion from SO-G to SO-H but since the Applicant applied for employment outside DAE units (and his said application was forwarded) he rendered himself ineligible for consideration (for one year) with effect from 01.08.2004 in terms of para 4.3(d) of the Merit Promotion Scheme. Apart from this reason the Applicant was also not recommended by the Screening Committee and also was not recommended by the Selection Committee constituted for the purpose; as he was not meeting the eligibility criteria for promotion to the higher grade of SO-H. The Merit Promotion Scheme for scientific and technical personnel in the Department of Atomic Energy has been a primary factor in the success of atomic energy programme and sustaining excellence in science and technology in the country. Respondents pointed out that there are number of judgments of the Central Administrative Tribunal (of Mumbai and of Hyderabad Benches) upholding the validity of the promotion cases resorted to under the Merit Promotion Scheme. The clause for applying outside posts has been incorporated to discourage the efficient/trained scientists from going outside the Department and in order to achieve the goal/targets of the Department of Atomic Energy within the time schedule as such condition does not apply in the case of applicants for posts in response to any circular or advertisement either within BARC or to units under the administrative control of the DAE. Even though Department of Atomic Energy, Government of India is a designated member of the Board of Governors of the International Atomic Energy



Agency (IAEA) it is an international organization and not under the administrative control of the DAE and hence the action of the Respondents cannot be termed as ultra vires, illegal and unconstitutional. They have prayed for dismissal of the application.

3. Heard Mr B.C.Pathak, learned counsel appearing for the Applicant and Mr G.Baishya, learned Sr. Standing Counsel appearing for the Respondents and perused the materials placed on record.

Learned counsel for the Applicant argued that the promotion in the Respondent organization is governed by Merit Promotion Scheme and that, under this scheme, on completion of eligibility period of 5 years in the feeder cadre the Applicant was eligible to be considered on the basis of performance and academic qualification for extra weightage for being posted in North Eastern Region. He argued further that the Applicant, on representation against his supersession, given the fact that there was nothing adverse record against him nor any adverse ACR was ever communicated to him and that the promotion has been denied to the Applicant on the ground that he applied for outside job. The Applicant was also made a mention about the promotion scheme known as "Flexible Complementing Scheme". The Applicant has sought direction to the Respondents to produce a copy of the above mentioned scheme. Though the Applicant applied for the post of Environmental Specialist and Uranium Resources Specialist available in the International Atomic Energy Agency (IAEA), Vienna, Austria and his application was forwarded but he was never selected for the same. The Respondent had



never intimated the applicant about the condition that if he applies for outside job his case for promotion would not be considered and thus, the Respondents unjustly rejected his case for promotion to the grade of SO-H by promoting his juniors.

Learned Sr. Standing counsel appearing for the official Respondents, on the other hand, justified the action of the Respondents in not promoting the Applicant to the higher grade. Learned Sr. Standing counsel stated that Applicant's case was duly considered along with other eligible candidates by the Screening Committee and Selection Committee and had found him not eligible for promotion to the grade of SO-H; for the Applicant had applied for outside job during the year 1984 and his case could not be considered in terms of clause (b) of DAE/OM dated 28/29.05.1971, 18.04.1980 and 30.12.1985 and that the Applicant was not recommended by the Screening Committee and Selection Committee constituted for the purpose; as he was not meeting the eligibility criteria for promotion to the higher grade of SO-H.

Learned counsel for the Applicant Mr Pathak reiterated the grounds mentioned in the O.A. He laid stress in the fact that Circular dated 28/29th May 1971, O.M. dated 18.4.1980 and 30.12.1985 regarding forwarding of application for outside appointment were modified/clarified by the Circular 20.6.1991 that the employee will not forfeit his right of promotion in the parent department merely he applies for foreign job. Only in case the employee is selected for that job he is required to resign or take retirement from Government service on selection. The Applicant's selection process was cancelled and no such



appointment was made, which was communicated vide message dated 14.01.2005 and 23.03.2006. The learned counsel also argued that those circulars were never circulated to the Applicant nor he was aware about those circulars at the time of sending his application for outside job. Therefore, denying promotion to the Applicant under the Circulars for having applied for outside job is violative of ^{the principles of} natural justice and thus the circulars cannot be held sustainable for consideration of the Applicant for further promotion under Merit Promotion Scheme. Regarding jurisdiction point of this Bench, the learned counsel for the Applicant invited attention to the decision of the Chairman, CAT in P.T.251/2006 in O.A.172/2005 dated 05.01.2007. Hon'ble Chairman had decided that "the applicant is presently residing at Guwahati and after settlement of his claim he proposes to go back to Orissa. In no event, he is going to Hyderabad. In that view of the matter, it would cause very much inconvenience and disadvantage to the respondent, if his case is transferred from Guwahati Bench to Hyderabad Bench. Accordingly, there is no merit in the PT, It is dismissed."

The learned Sr. Standing counsel on the other hand argued that those circulars have been in existence since 1971 and they are not confidential in nature. Therefore, the claim of the Applicant that the circulars were not within the knowledge of the Applicant has no substance and cannot be accepted. He stated that the applications for outside job are forwarded (in alternative job) stipulating the conditions for appointment in organizations outside the Department of Atomic



Energy (DAE), wherein for scientific & technical staff at para 1(b) of the letter, it has been mentioned that –

“(b) The persons whose applications are forwarded to outside organizations will become ineligible for grant of additional increments/promotion for a period of one year from the date of application. This condition does not apply in the case of applicants for posts in response to any circular or advertisement either within BARC or to units under the administrative control of the DAE.”

The application of the Applicant was forwarded with a separate form that forwarding of application for post advertised/circulated under the head ‘Forward of Application’ under condition No.13 reads as under :

“I am aware that in the event of my application being forwarded I will not be eligible for promotion for a period of one year from the date of Application applicable to all Scientific and Technical staff, if application is for a post outside the BARC unit. In the event of my selection for the post applied for I undertake to resign from my post.”

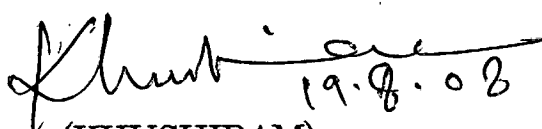
Thus, the Applicant (who was head of a Region) was fully well aware of the conditions for applying outside jobs and as a Regional Director he must have signed the forwarding letter of his application. Therefore, the contention made on behalf of the Applicant that he was not aware of these conditions are not sustainable.

4. We have considered the contentions of the learned counsel appearing for both the parties and have perused the records placed before us. Admittedly the Applicant was Regional Director in charge of North Eastern Region; when he applied for outside job under IAEA, Vienna. Any application for outside job has to be forwarded under the prescribed form & circulars which contains condition No.13 and under the head “Scientific and Technical Staff”. The Circulars dated 28/29



May 1971, dated 18.04.1980 and 30.12.1985 are general circulars and that everybody has the knowledge for such circulars. In the conspectus facts and circumstances, the Applicant was considered by the Screening and Selection Committee which found him ineligible for promotional benefit as he had applied for outside job knowing fully well about the special provision of DAE that he will not be considered for next promotion for the reason of his applying for outside job. It is well settled law that a special provision always over-rides the general provision.

5. In view of the above discussion we find that the case of the Applicant, under the 'Merit Promotion Scheme', rightly placed him out and, therefore, this case is liable to be dismissed. Accordingly this case is dismissed. No costs.


(KHUSHIRAM)
ADMINISTRATIVE MEMBER


(MANORANJAN MOHANTY)
VICE CHAIRMAN

//pg//

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

3 JUL 2007
[CONSOLIDATED AMENDED APPLICATION]

Guwahati Bench

23
Filed by:-
Shaikh Quamrul Hoda
through: B.C. Pathak
Advocate 2/9/07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 172 OF 2005

Dr. Shaikh Quamrul Hoda,
S/O Shaikh Kalimuddin, aged about 60 years,
Scientific Officer 'G' and Regional Director of
North Eastern Region of Atomic Minerals
Directorate for Exploration and Research (AMD),
Dept. of Atomic Energy, Shillong
Meghalaya (SINCE RETIRED) C/o Jishnu Dutta
Goswami, "Kanta", Chenikuthi Hillside,
Guwahati-781003 (Assam)

....APPLICANT

-VERSUS-

- 1) Union of India,
Represented by the Chairman,
Atomic Energy Commission and
Secretary, Govt. of India, Department of Atomic
Energy, C.S. Marg, Anushakti Bhavan, Mumbai -
400 039.

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- 2) The Director,
Atomic Minerals Directorate for Exploration &
Research (AMD), AMD Complex, 1-10-153-156,
Begumpet, Hyderabad – 500 016.
- 3) Shri A.K.Pande
Regional Director, Western Region
52/496 AMD Flats, Sector-5, Pratap Nagar
Jaipur-303906, Rajasthan.

....RESPONDENTS

DETAILS OF APPLICATION:

1. Particulars of the order against which the application is made:

- (A) This application is directed against the order No. 12/6(8)/2002-I&M(AMD)/1741 dated 25.2.2005 passed by the respondents denying promotion to the applicant without any legal basis and on a frivolous ground. The applicant is approaching the Hon'ble Tribunal for seeking direction to the respondents to promote him in the Grade of Scientific Officer-H (referred to as SO-H) from 1.8.2003, the date of on which the applicant completed 5 years in the feeder grade and became eligible for promotion to the SO-H Grade and / or on 1.8.2004, the date on which his junior, the respondent No.3 has been promoted and for setting aside and quashing the reply dated 25.2.2005 (received on 1.3.2005 i.e. one day later of applicant's retirement on superannuation) issued by the respondent No.1 and to pay him all the consequential benefits as admissible to the applicant as per law.
- (B) The legality and validity and the constitutionality of the circular letter (i) Ref. No.1 (2)/68-O&M-325 dated 28/29th May, 1971 issued by the Bhabha Atomic Research Centre (personnel Division), Trombay, Bombay; (ii) Office Memorandum No.3/1(23)/80-Adm.11

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dated 18th April, 1980 issued by the Dy. Secretary to the Govt. of India, Department of Atomic Energy, Bombay and the (iii) Office Memorandum No.5/63/85-R dated 30th December, 1985 issued by the Govt. of India, Department of Atomic Energy, Bombay.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation:

This applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act 1985.

4. FACTS OF THE CASE:

- 4.1. The Atomic Minerals Division, later renamed as Atomic Minerals Directorate for Exploration and Research [referred to as the "AMD"] under the aegis of Department of Atomic Energy (referred to as the "DAE") with its Headquarter at Hyderabad and seven regional centers including one at Shillong aims at survey and exploration for atomic minerals required for nuclear power generation and research activities. The Regional Office is headed by the Regional Director, with the Director as head of the Directorate with headquarter at Hyderabad.
- 4.2. The applicant after obtaining M.Sc. degree in Applied Geology from Indian School of Mines, Dhanbad was initially appointed as Scientific Officer Grade SC-1 (Geology), a Class I Gazatted post in AMD on 3.11.1971. He further improved his professional qualification during the service tenure which were found suitable and relevant as follows:

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<u>Sl.No.</u>	<u>Degree</u>	<u>Institute</u>	<u>Year</u>
i)	Post Graduate Diploma in Mineral Engineering	Indian School of Mines, Dhanbad	1983
ii)	Post Graduate Diploma in Environmental Studies.	Andhra University, Waltair	1995
iii)	M.Tech. Degree in Mineral Engineering	Indian School of Mines, Dhanbad	1996
iv)	Ph.D in Geology	Osmania University, Hyderabad	2003

4.3. That from time to time the applicant was promoted and the last promotion he got in the grade of SO-G with effect from 10.09.1998. While promotion in grade SO-C to SO-G are based on the performance of the candidate through interview before a Selection Committee constituted by the DAE, the same for grade SO-H and above are assessed by a Committee without the interview. The class I scientific posts in the Directorate held by the applicant since his joining with the grade structure and scale of pay are shown as below:

<u>Sl.No.</u>	<u>Grade</u>	<u>Scale of Pay</u>	<u>*Date of appointment/Promotion</u>
*i)	Scientific Officer SC-1	400 – 950	03.11.1971 (Date of 1 st appointment)
ii)	Scientific Officer – SD	1100 – 1600	01.03.1979
iii)	Scientific Officer – SE	1500 – 2000	01.02.1985
iv)	Scientific Officer – F	4500 – 5700	01.08.1991
v)	Scientific Officer – G	16400 – 20000	10.09.1998
vi)	Scientific Officer – H	18400 – 22400	Promotion has been denied and his junior is promoted with effect from 1.8.2004

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- 4.4. That besides the wide spectrum of educational and professional qualifications of the applicant, which speaks for itself, the applicant is counted as one among the few of the scientists in the Directorate. He has also published around twenty-six scientific and research papers. These papers are not the volume of words but they are touching to the requirements of the Directorate.

The list of publications is attached as
Annexure-I.

- 4.5. That it is further submitted that as a geo-scientist in the Directorate, the job of the applicant was to survey and explore for atomic minerals such as uranium, thorium, niobium, beryllium, yttrium, etc., their evaluation to ascertain the quantity and quality and preparation of appraisal and feasibility reports for further investigation. In this respect, the applicant has worked in almost all the survey and exploration units under the directorate in different parts of the country and made large contributions towards the augmentation of raw material resources required for the nuclear power program of the country. The most significant among these are summarized in a separate sheet showing as publications and achievements at the credit of the applicant.

The copies of such sheets are annexed as
Annexure-II.

- 4.6 That after the last promotion as SO-G in August 1998, the applicant was transferred and posted to the North Eastern Region, Shillong [Meghalaya] in November 1998 from the headquarter, Hyderabad where he was holding the overall charge of the Drilling Group of AMD and was entrusted with the task of overseeing and ensuring the drilling target of about forty eight rigs with nearly 700 scientific & technical man-power spread all over the country. During the period from November 1998 until his superannuation on 28th February 2005, he held the post of Deputy Regional Director and Regional Director of North Eastern Region with regional office at Shillong which is a very sensitive, inaccessible and logistically

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difficult terrain to administer and execute works. During the above period over nearly six years, the applicant had steered the performance of the region to a level far exceeding all the other regions of AMD under his untiring efforts. A brief account of his achievements in North Eastern Region between 1998 to 2005 is highlighted in a separate sheet.

The copy of the sheet highlighting the performance in the N.E.Region is annexed as Annexure-III.

- 4.7. That having achieved excellent performance under most difficult, hostile and challenging conditions in the North-eastern Region, the applicant had a genuine expectation that his contributions shall be recognized and he shall be promoted to the grade of SO-H in the scale Rs.18400 – 500 – 22400/-, after completion of five years in the feeder grade of SO-G with effect from 01.08.2003 as has been done for other scientists in the Directorate in the past.
- 4.8 That certain incentives / benefits are also admissible to officers posted to North Eastern Region on satisfactory performance of duties for the prescribed tenure as per Govt. of India, Ministry of Finance, Department of Expenditure, Office Memorandum No.20013/3/83-E.IV dated 14.12.1983, as amended from time to time. According to the provisions of the said OM dated 14.12.1983, an officer posted in the North-eastern Region and on satisfactory performance of duties for the said prescribed tenure in the North Eastern Region, shall be given due recognition in the case of eligible officers in the matter of (a) promotion in the cadre posts; (b) deputation to Central tenure posts; and (c) Courses of training abroad. In addition to the above, a specific entry shall be made in the CR of all the employees who rendered a full tenure of service in the North Eastern Region to that effect would be entitled to be considered for certain benefits/incentives amongst other the following:

- a) Promotion in cadre posts;

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- b) Deputation to central tenure posts; and
- c) Courses of training abroad.

Even by serving in NER for nearly six years, the weightage in promotion which the applicant deserved were denied to him in a most discriminatory manner.

The applicant craves the leave of this Hon'ble Tribunal to direct the respondent No.1 and 2 to produce the copies of ACRs pertaining to the period November, 1998 to 28.2.2005 during the course of hearing of the case.

A copy of the said OM dated 14.12.1983 is annexed as **ANNEXURE-IV**

- 4.9 That it is submitted that to his utter shock and disappointment, the applicant was not only denied promotion to SO-H grade with effect from 01.08.2003, on which he completed 5 years in the feeder grade with all other eligibility criteria but also his case was not considered for promotion even after completion of six years in the SO-G grade, while Shri A.K.Pande, the respondent No.3 junior to applicant in SO-G grade by one year has been promoted to SO-H grade with effect from 01.08.2004 on completion of five years in SO-G grade overlooking the seniority, merit, performance and academic excellence of the applicant and more particularly considering the extra-weightage earned by the applicant for his posting in the North-eastern Region, a region which is not only geographically hostile but also an area infested and devastated by terrorist activities, for more than six years exceeding the limit of tenure of posting fixed as 2 years. Although promotion is not a right, but to be considered for promotion is a fundamental right protected by Article 14 and 16 of the Constitution of India and the same can not be denied to the applicant.

- 4.10. Therefore, being highly aggrieved by the denial of promotion even after completing six years in the S.O-G grade, denial of weightage

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in promotion for serving in NER and promotion of his junior Shri A.K.Pande to higher grade, the applicant submitted representation for consideration of his promotion to the Chairman, AEC and Secretary, DAE, Govt. of India, the respondent No.1 on 24.09.2004. By the said representation the applicant has shown and justified as to how he is entitled to get the promotion to the SO-H.

A copy of the representation dated 24.9.2004 is annexed as Annexure-V.

- 4.11. That ultimately the applicant have received a reply on 1.3.2005, exactly on the next day after his retirement and after a lapse of long five months and the same was communicated vide letter No. 12/6(8)/2002-I&M (AMD)/1741 dated 25.02.2005 from the office of the Chairman, AEC and Secretary DAE, Mumbai. By the said communication the applicant has been informed that the representation of the applicant was carefully examined by the respondent No.1 in consultation with the respondent No.2 and the promotion of the applicant to the S.O-H grade has not been considered on the ground that the applicant applied for outside post, during the previous one year. Apparently the promotion has not at all been considered and same has been denied to the applicant solely on the ground that he applied for outside job and there has been no other ground for refusing the promotion. There has been no whisper as to the ACR grading or merit. It is pertinent to state here that although the applicant applied for outside job that was done through proper channel and with approval of the respondents without any condition. It is also pertinent to state here that although the applicant applied for outside job through proper channel, the applicant was neither selected nor offered any such outside job at any point of time. Moreover, there is no such provision of law in existence under the Govt. of India to prohibit departmental promotion that has accrued to an officer in service, on the ground that the employee has applied for outside job. The law is well settled that such accrued right can not be taken away by even any amending rules or otherwise. If there is any such

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provisions in the recruitment/ promotion rules / merit promotion scheme or circular/guidelines, such provisions of rules, scheme, circular or guidelines cannot stand and operate as it is ultra vires, illegal, unconstitutional and violative of the provisions of Article 14, 16, 21 and 309 of the Constitution of India. The applicant has no knowledge if there is any such "merit promotion scheme" in existence and operation in the department of the respondents and such promotion scheme has any such provision to prohibit promotion if some one simply applies for outside job. The applicant, however, knows that there is another promotion scheme known as "Flexible Complementing Scheme". The applicant craves the leave of this Hon'ble Tribunal to direct the respondents to produce the copy of such "merit promotion scheme" and also the "Flexible Complementing Scheme" if any in full texts. It is also stated that the respondent caused inordinate delay and nothing has been explained as to why they took so long time to reply to the representation and the reply has been issued just 3 days before the date of superannuation. But Govt. of India, Ministry of Personnel, Public Grievances and Pension vide D.O. No. K11011/5/2003-PG dated 3.5.2003 provides that normally a grievance should be redressed within a period of three months of the receipt.

Copy of the impugned reply letter dated 25.02.2005 and the DO letter dated 3.5.2003 are enclosed as **Annexure-VI & VII respectively.**

- 4.12. That in the above context, it is to be stated here that Planning and Management Services Group (PMSG), under I.D note from DAE, Mumbai and instruction from Director, AMD, Hyderabad, had communicated two office circulars dated February 4, 2004 and February 19, 2004 intimating availability of vacancy for the posts of "Environmental Specialist" (P-4 post under vacancy notice No.2003/608) and "Uranium Resources Specialist" (P-4 post under vacancy notice No.2004/007) available at the International Atomic Energy Agency (IAEA), Vienna, Austria.

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In response to the above letters/advertisements, the applicant submitted two separate applications in the prescribed format to the office of Director, AMD, Hyderabad against the above two referred vacancies. The said applications were forwarded by the Director, AMD to the Deputy Secretary, DAE, Mumbai vide AMD I.D. Note dated February 17, 2004 and March 3, 2004.

- 4.13 That the above applications having received in the office of the Chairman, ACE and Secretary DAE, Mumbai, were forwarded to the Counselor (AE), Indian Embassy, Vienna, Austria on March 19 and March 25, 2004 for onward submission to International Atomic Energy Commission (IAEA). After submission of the said applications, there were no further development except the fact that the Head of the Recruitment Unit, IAEA informed that no appointment will be made to fill up the vacancy of "Uranium Resource Specialist". It is made clear here that the applicant though applied for outside job, he has neither been selected nor offered appointment in such outside job and he was doing his normal duties to the satisfaction of his superiors in the department. It is also pertinent to state here that there was no such condition precedent imposed that one who applies for outside job, he would not be entitled to be considered for promotion in the parent department and his chance for promotion within the parent department would stand forfeited irrespective of the fact as to whether he is selected/appointed or not.

In this context it is further stated that the International Atomic Energy Agency (IAEA) was established in 1957 as an autonomous organization under the United Nations. It is the world's foremost inter-governmental forum for scientific and technical cooperation in the peaceful uses of nuclear technology. It maintains its Headquarter in Vienna, Austria and is headed by the Director General. The Department of Atomic Energy, Govt. of India is a designated member of the board of Governors of the IAEA since its inception in 1957.

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4.14. That the applicant came to know about the vacancy position in IAEA through internal departmental circulars only and responded to the said circulars as there was no such condition attached to the circulars debarring those applying for such posts to international body in matter of promotion. Further, no such conditions were attached when the same applications were forwarded by Director, AMD to DAE, Mumbai and in turn by DAE, Mumbai to IAEA, Vienna. Therefore, the applicant was not given a reasonable opportunity of being informed/heard about the consequences so that he could have taken decision to withdraw the applications or he would have not applied for the said posts at all. There is absolutely now such law/rules to debar the applicant from his right to be considered for the promotion in Grade SO-H and therefore the non-consideration of his promotion is illegal, arbitrary, discriminatory, unreasonable and unfair in the eye of law and as such the same can not sustain in law. The respondents acted in clear violation of the Article 14, 16 and 21 of the Constitution of India, rules of natural justice while considered the case of promotion of his junior without considering the case of the applicant on certain baseless and illegal ground without any notice and or by giving him a notice or chance to defend his case.

4.15. The Govt. of India in the OM dated 14.12. 1983, which is a Presidential Office Memorandum having the force law, among other things has clearly specified service benefits in training abroad in which case the above matter shall also come under the purview of the said provision. In contrast, instead of reward the applicant has been punished for responding to the call of the respondents which had a hidden trap behind it. Thus the respondents have acted like judges of their own cause, acting against the principles of natural justice. Moreover, the applicant was not even selected or offered the said outside job assignment at all and as such it is not know as to under what provisions of law his promotion has been denied and his junior has been promoted to the SO-H Grade. In this connection the applicant respectfully submit that the promotion of the applicant is regulated by the Rules of the respondents which are statutory in nature and there can not

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be any promotion scheme or policy in vacuum. Such statutory rules can only be abrogated or taken away only by another such statutory rules framed by the competent rule making authority and not otherwise. The applicant having come to know about the circular and office memo as stated above imposing bar on promotion during the pendency of the OA, it has become necessary to amend the OA and accordingly, this amended application has been filed with the leave of this Hon'ble Tribunal.

- 4.16 That it is pertinent to state here that while the applicant submitted the above noted OA in this Hon'ble Tribunal, the respondents submitted their written statements in the form of affidavit and also affidavit-in-reply to Misc. petition. By the said affidavit-in-reply, the respondents submitted copies of one circular allegedly issued by the Bhabha Atomic Research Center, Trombay, Bombay vide No.1 (2)/68-O&M-325 dated 28/29th May, 1971 and the Office Memorandum issued by the Govt. of India vide No.3/1(23)/80-Adm.II dated 18th April, 1980 and No.5/63/85-R dated 30th December, 1985. The respondents also submitted the so-called "salient features" of the "Merit Promotion Scheme" supported by an affidavit as in Misc. Petition No.30/06 (Annexure-R/6). From the said salient features, it is clear that the full text of the "merit promotion scheme" has not been submitted by the respondents by suppressing certain material facts. The said merit promotion scheme is not a classified documents / secret documents that it cannot be produced before the court / Tribunal. The applicant also respectfully states that the said circular letter dated 28/29th May, 1971, OM Dated 18th April, 1980 and 30th December, 1985 are illegal, arbitrary, unconstitutional and violative of the provisions of Article 14, 16 and 21 of the Constitution of India and the same are liable to be set aside and quashed as oppose/ derogatory to the Constitution of India. The so called "merit promotion scheme" is illegal, arbitrary, unconstitutional and without any authority or power and the same being oppose to the provisions of fundamental rights under Article 14, 16 and 21 of the

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Constitution of India is liable to be declared unconstitutional and set aside.

The copies of the said circular dated 28/29th May, 1971, OM dated 18th April, 1980, 30th December, 1985 and the salient features of the Merit promotion scheme are annexed as **ANNEXURE-VIII, IX, X and XI** respectively.

- 4.17 That the so called merit promotion scheme, inter alia, provides for scientific promotion. This category of promotion is shown to have been based on the confidential report. As shown in that scheme, on the basis of the confidential report, a Standing Screening Committee recommends the cases for promotion on the basis of standards and guidelines prescribed and it is ensured that no deserving person has been overlooked. Confidential dossiers are made available to the Screening Committee for assessing the outstanding abilities, achievements and managerial experience. Based on the recommendations of the Screening Committee, a selection Committee interviews the individuals and during interview detailed assessment of the candidates is made and suitable recommendations made. But the case of the applicant was never placed before any such committees nor his confidential reports / dossiers were placed nor he was ever interviewed by any such committee as required by this merit promotion scheme. The merit of the applicant was never taken up for consideration as his case was rejected at the very initiation of the process on the ground that the applicant applied for outside job. The applicant was ousted from the zone of consideration for the promotion although he fulfilled all the eligibility criteria like seniority, ACR for promotion to the SO-H Grade. This is explicit and clear on the face of the impugned order dated 25.2.2005, particularly at para 3. This action of the respondents are highly illegal, arbitrary, unconstitutional, ultra vires and violative of the provisions of fundamental rights given by the Constitution of India.
- 4.18 That the aforesaid circular dated 28/29th May, 1971 and the OM dated 18th April, 1980 and 30th December, 1985 also cannot operate

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and /or has been superseded as the Govt. of India, vide Department of Personnel and Training circular letter No. F.18/10/91-FA (UN) dated 20th June, 1991 has brought out a clear guidelines under the headings "Application from serving employees (experts) to foreign assignment against open advertisement". According to the said guidelines, there is nothing to show that an employee will forfeit his right of promotion in the parent department if he merely applies for foreign job irrespective of the fact whether he is selected and /or appointed for such job. But in case such employee is selected for foreign job, requires to resign or take retirement from Government service on selection. In the case of the applicant, he only applied for such foreign job by two separate applications and he has been subsequently communicated that both the applications Vide No. VN 2003/608 and VN 2004/007 went in vein as decision have been taken by the said foreign authorities to not to make appointment against those posts. That was communicated vide message dated 14.1.2005 and 23.3.2006.

The copies of the said circular letter dated 20th June, 1991 and the communications dated 14.1.2005 and 23.3.2006 are annexed as **ANNEXURE-XII, XIII and XIV** respectively.

- 4.19 That the applicant could maintain his ACR grading upto the satisfaction of the higher authorities from the beginning of his service career upto the position in SO-G Grade and his all prior promotions were considered as per provisions of the merit promotion scheme only as asserted by the respondents themselves. Now all on a sudden, the ACR of the applicant can not be down-graded or can not be bad without any whisper in that regard. Hence, the applicant craves the leave of this Hon'ble Tribunal to direct the respondents to produce all the relevant dossiers (ACRs) of the applicant and also of the respondent No.3 and all the relevant records of the selection process of the promotion of Sri A.K.Pande, the respondent No.3 before this Hon'ble Tribunal at the time of hearing of the case.

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- 4.20 That the applicant having a clear, unblemished service career at his credit to the satisfaction of the higher authorities, demanded justice which has been denied to him in a most illegal, arbitrary and discriminatory manner and in violation of rules of natural justice and fundamental right guaranteed by the Constitution of India.
- 4.21 That this application has been made bonafide and for the ends of justice.

5. Grounds for relief with legal provisions:

- 5.1 For that the respondents erred both facts and in law in not considering the case of the applicant for promotion, which is a fundamental right of the applicant and denying the promotion to the applicant from the post of SO-G to SO-H grade.
- 5.2 For that the respondent No.1 and 2 while did not consider the case of promotion of the applicant and promoted his junior violated the provisions of the Article 14,16 and 21 of the Constitution of India, and also the rules of natural justice, legitimate expectation and administrative fairplay.
- 5.3 For that the non-consideration of the case of promotion of the applicant and the promotion of the respondent No.3 is illegal and derogatory to the provisions of the OM dated 14.12.1983, which has the force of law and against the principles of service jurisprudence and ration laid down by the Hon'ble Supreme Court.
- 5.4 For that there can not be any rider to the provisions of the OM dated 14.12.1983 and as such the impugned order dated 25.2.2005 can not be allowed to stand as the same is illegal and violative of those provisions.
- 5.5 For that the rules/scheme/policy relating to the promotion being Statutory in nature as provided under Article 309, such rules can

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not be overridden by any executive order like the impugned order dated 25.2.2005 or any such other executive order laying down conditions of service that one who applies for outside job shall not be considered for promotion to the next higher grade irrespective of the fact whether such officer is selected / appointed or not.

- 5.6 For that the applicant has a right to be considered for promotion as a matter of fundamental rights from the Grade SO-G to SO-H which been denied to him without assigning any legally valid reason.
- 5.7 For that although the service jurisprudence permits alteration / amendment / modification of existing conditions of service, but such alteration/ amendment / modification must ensure or safeguard rights or benefits already earned, acquired or accrued to the employee at a particular point of time. In the instant case the hard earned and accrued benefit and legal rights are even taken away in non-considering his right to be considered for promotion.
- 5.8 For that there can be no such provisions of law that one who applies for outside job shall not be eligible or shall not be considered for promotion in the department even if he is not selected or offered any such appointment in outside job; and hence the Circular dated 28/29th May, 1971, O. M dated 18th April and 30th December, 1985 are liable to be struck down as unconstitutional, violative of fundamental rights, ultra vires, illegal and antithesis of service jurisprudence and derogatory /inconsistent with the provisions of Article 14 and 16 of the Constitution of India and more so on the face of the Government of India guidelines dated 20.6.1991.
- 5.9 For that the impugned order dated 25.2.2005 can not sustain in law as the same has been passed in violation of the principles of natural justice, legitimate expectation and the same being unreasonable, unfair, biased and unjust and not supported by any law.

Shaikh Qamrul Hoda

- 5.10 For that the impugned order dated 25.2.2005 is untenable in law as the same has been passed in a very cryptic manner and the same is not a speaking order as required by law and the same having been passed in contravention of the so called merit promotion scheme of their own showing.
- 5.11 For that the "merit promotion scheme" being illegal, unconstitutional, ultra vires, violative of the provisions of fundamental right as enshrined in the Constitution of India under Article 14, 16 and 21, is liable to be set aside and quashed.
- 5.12 For that in any view of the matter and the law, the applicant is eligible for consideration for promotion to the SO-H grade under any scheme whatsoever and for due promotion.

6. Details of the remedies exhausted:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules. The applicant submitted his representation detailing his all about the claims and the same has been rejected by the impugned order dated 25.2.2005.

7. Matters not previously filed or pending with any other court:

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Relief(s) Sought:

In view of the facts and circumstances of the case and the provisions of law as stated in this application as mentioned in para 4 and 5 above the applicant prays for the following relief(s):

Shaikh Quamrul Hoda

- 8.1. To direct the respondent No.1 and 2 to produce the full text of the promotion rules/ scheme/policy of the SO-G grade to SO-H grade of the AMD (DME) and to show if there is any such provisions that the employee in SO-G Grade cannot be considered for promotion and / or can not be promoted to SO-H Grade if such employee applies for any outside job irrespective of the fact whether such employee is selected/ offered for appointment in outside job or not, for the judicial scrutiny by this Hon'ble Tribunal and to declare the same as unconstitutional, illegal and ultra vires.
- 8.2. To declare the circular dated 28/29th May, 1971, Office Memo dated 18th April, 1980 and 30th December, 1985 as ultra vires, unconstitutional, illegal, arbitrary and violative of the provisions of the fundamental rights under Article 14, 16 and 21 of the Constitution of India.
- 8.3. To direct the respondent No.1 and 2 to consider the case of promotion of the applicant and to promote him with effect from 1.8.2003, the date on which the applicant became eligible for promotion to the SO-H grade and / or with effect from 1.8.2004, the date on which his junior, the respondent No.3 has been promoted to the SO-H grade with all consequential benefits.
- 8.4. To direct the respondent No.1 and 2 to pay all such consequential benefits of promotion with retrospective effect from 1.8.2003 or from 1.8.2004 and to pay the arrear dues as admissible / entitled to including the monetary benefits.
- 8.5. To refix and recalculate the quantum of pension/gratuity and to pay the pension at such enhanced rate.
- 8.6. To pay any or all such benefits that becomes admissible and payable to the applicant from time to time and for any other such accrued /entitled relief or reliefs.

Shaikh Quamrul Hoda

9. **Interim order, if any prayed for:**

Pending final decision, the applicant has not made any interim prayer at this stage of the case. However, the applicant craves the leave of this Hon'ble Tribunal to allow him to file any such application /petition if so warranted to be filed seeking interim relief(s) in the matter pending final disposal of the application.

10. **APPLICATION IS FILED THROUGH THE ADVOCATE.**

11. **PARTICULARS OF IPO :**

I.P.O. No. :

Date of issue :

Issued from:

Payable at :

12. **LIST OF ENCLOSURES :**

As stated in the Index.

Verification.....

Shaikh Qamrul Hoda

Verification

I Dr. Shaikh Quamrul Hoda, S/o Shaikh Kalimuddin, aged about 62 years, occupation Regional Director (since retired), North astern Region, Atomic Mineral Directorate for Exploration and Research (AMD), Department of Atomic Energy, C/o Jisnu Dutta Goswami, "Kanta" Chenikuthi Hillside, Guwahati-3 do hereby solemnly affirm and declare that the statements made in the application in para 1, 2, 3, 4.1, 4.2, 4.3, 4.7, ~~4.8~~, 4.9, 4.12, 4.13, 4.14, 4.15, 4.17, 4.20, 4.21 and 5, 6, 7 and 8 are true to my knowledge and belief, those made in para 4.4, 4.5, 4.6, ^{4.8} 4.10, 4.11, 4.16, 4.18 being matter of records, are true to my information derived therefrom and the rest are my humble submission and legal advice. I have not suppressed any material fact of the case.

Profoundly

And in sign this verification on this 2nd day of July 2007 at Guwahati.

Shaikh Quamrul Hoda

Deponent

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List of Publications

ANNEXURE : I

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- 1.* **Hoda, S.Q.** (2004) : "Exploration For uranium in Meghalaya and the Environmental Monitoring Strategies".
- 2.* **M.P.Chougankar, I.M.Walling, A.H.Khan, S.Q.Hoda and V.D.Puranik** (2004) : "Preliminary Results of the Pre-operational Radiation Survey carried out in the Environs of Domiasiat, Meghalaya (India) using LT Dosimetric Techniques".
- 3.* **A.N.Shaikh, T.V.Ramachandran, K.P.Eappen, Y.S.Mayya, A.H.Khan, V.D.Puranik and S.Q.Hoda** (2004) : "A case study of Radon-Thoron concentrations in dwellings around uranium deposit sites in Meghalaya".
*Thirteenth National Symposium on Environment; Mining of Energy Resources - Environmental Management, Shillong organized by NEHU & BARC; June 5 - 7, 2004.
4. **Hoda, S.Q.** (2003) : "Geothermal Energy; its Exploration and Exploitation in the Indian Context". All India Seminar on 'Renewable Energy' organized by the Institute of Engineers (India) Shillong, 26 - 27 Sept., 2003.
5. **Mahendra Kumar, K; Bhattacharjee, P; Ranganath, N; Upadhyay, L.D and Hoda, S.Q.** (2003) : "Uranium Mineralisation in the Lower Mahadek Sandstones of Laitduh area, East Khasi Hills District, Meghalaya" (Approved for publication in JOAMS).
6. **Yadav, G.S, Rakesh Mohan, Sabot, H.K; Nagendra Kumar, M and Hoda, S.Q.** (2003) : "Discovery of Uranium Mineralisation in the Mahadek Formation in Balpakram area, South Garo Hills district, Meghalaya" (Approved for Publication in "Current Science").
7. **Hoda, S.Q.** (2003) : "Radiation in the Environment with reference to specific areas in Meghalaya". National Seminar on Environmental and Sociological Implications of Minerals & Oil Exploration in NE-India. June 5 - 6, Shillong.
8. **Hoda, S.Q.** (2003) : "Uranium from Rocks to Reactors : A Simplified Account". National Seminar on Environmental and Sociological Implications of Minerals & Oil Exploration in NE-India. June 5 - 6, Shillong.
9. **Hoda, S.Q. and Lyngdoh, C.F** (2002) : "Facts and Myths about Radiation". Science Column, The Meghalaya Guardian, 3rd October, 2002.
10. **Hoda, S.Q.** (2002) : "Uranium Exploration in the Proterozoic Shillong Basin of Meghalaya and Assam: Prospects and Constraints". Workshop on Geophysical Techniques for Exploration of Concealed Uranium Deposits. 28-29 August, Hyderabad.
11. **Das, B; Hoda, S.Q. and Ansari, I.M** (2001) : "Characterisation and Beneficiation as studies of the Titaniferous Hematite Deposit of Samchampi Complex, Mikir Hills, Assam, India". International Mineral Processing Technology, 16-17 February, Hyderabad.
12. **Hoda, S.Q; Vishwa Mohan, K and Sinha R.P.** (2001) : "Niobium in the Soils of Samchampi Carbonatite Complex, Mikir Hills, Assam; Characterisation and Possible Recovery Processes". International Seminar on Mineral Processing Technology, 15-17 February, Hyderabad.
13. **Kak, S.N and Hoda, S.Q.** (2000) : "Radiological and Environmental Safety Aspects of Uranium Exploration, Mining and Processing in India with special reference to Domiasiat Uranium Deposit, Meghalaya". Institute of Engineers (India) Magazine, Shillong Chapter, Meghalaya.
14. **Hoda, S.Q.** (1999) : "Mineral Potential of North Eastern India - An Economic Appraisal". Workshop on "Application of Radioisotopes and Radioactivity in Society NAARRI, 26-27 November, Shillong.

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H.K. Ganga
Advocate

15. **Hoda, S.Q.** and Raghav Saran (1999) : "Waste Management in Nuclear Industry, An Overview". National Conference in Pollution, Man and Environment, Shillong College Management, June 15-16, Shillong.
16. **Hoda, S.Q.** (1999) : "Trace Element Characterisation in Mineral Exploration". Regional Symposium on Preconcentration and characterization of trace constituents; An Essentiality". ISAS, May 26-27, Shillong.
17. **Hoda S.Q.** and Krishnamurthy P. (1997) : "Titano-hematite Rock from Samchampi Carbonatite Complex, Mikir Hills, Assam, India". Journal of Indian Academy of Geo-science, Vol.40, No.2, pp.1-4.
18. **Hoda S.Q.**, Rawat T.P.S., Krishnamurthy P. and Dwivedy K.K. (1997) : "Geology and the Economic Resources of the Samchampi Alkaline Carbonatite Complex, Mikir Hills, Assam, India". Exploration and Research for Atomic Minerals, Vol.10, pp.79-86.
19. Krishnamurthy P., **Hoda S.Q.**, Sinha R.P., Banerjee D.C. and Dwivedy K.K. (1996): "Carbonatites of India, An Evaluation of their Economic Potential and Ore Genesis". International Carbonatite Workshop - Gujarat Mineral Development Corporation, Science & Research Centre, Ambadonger, India, December 5 - 11.
20. **Hoda S.Q.** and Dwivedy K.K. (1996) : "Effect of Flocculants on the Settling Behaviour of Uranium Ore from Jajawal, Madhya Pradesh, (India)". National Seminar on Solid-Liquid Separation in Mineral and Metallurgical Industries, Regional Research Laboratory, Bhubaneswar, November 27 - 28.
21. **Hoda S.Q.**, Rawat T.P.S., Deshpande M.S.M. and Sharma R.S. (1996) : "Economic Evaluation of Niobium, Tantalum and Yttrium in the soils of Samchampi Alkaline Complex, Mikir Hills, Assam". Workshop on Geology and Exploration of Platinum Group, Raremetal and Rare Earth Elements, Calcutta, Feb. 6 - 7.
22. **Hoda S.Q.** and Dwivedy K.K. (1995) : "Study on Liberation Characteristics using Grindability Tests and its influence in Uranium Extraction from Granite Ore of Jajawal, Sarguja District, Madhya Pradesh (India)". National Seminar on Energy, Environment and Resource Development for Mineral Industry, Bhubaneswar, January 18 - 19.
23. Krishnan S., Chandrasekharan S., Anil Kumar V., Rajagopal N. and **Hoda S.Q.** (1994) : "Delineation of Heavy Mineral Provinces in the Beach Placers and Inland Terisands of Tamil Nadu". Journal of Atomic Mineral Science, Vol.2, pp.57 - 71.
24. **Hoda S.Q.** (1992) : "Characterisation of Yttrium Bearing Xenotime Placers of Deo River, Gumla District, Bihar, India and its Bearing on Beneficiation". National Seminar on Research and Process Development in Mineral Preparation. April 14 - 15, Jamshedpur (India).
25. Ramesh Babu P.V., **Hoda S.Q.**, Parthasarathy T.N. and Ravi Kaul (1990) : "REE Distribution and its relation to the evolution of Paliam granite in Bastar District, Madhya Pradesh, India". 2nd Indo-U.S.S.R. Symposium on Rare Earth Materials Research, November 5 - 7, Trivandrum (India).
26. Rai S.D., **Hoda S.Q.** and Parthasarathy T.N. (1990) : "Xenotime Bearing Radioactive Alluvial Placers of Deo River, Gumla District, Bihar". 2nd Indo-U.S.S.R. Symposium on Rare Earth Materials Research, November 5 - 7, Trivandrum (India).

**Highlights of some significant achievements since joining AMD
(1971 to 1998) before being transferred to North Eastern Region, Shillong**

- Discovery of first pegmatite-hosted paleo-channel type colluvial & alluvial Niobium-Tantalum deposit at Neropahari and Goriadih, Hazenbagh district (Jharkhand) which produced nearly 10 tonnes of the mineral.
- The first beryllium deposit in homogeneous pegmatites in Kulukera area, Gumla district (Jharkhand) with a resource of nearly 200 tonnes of beryl.
- The second yttrium deposit in India in riverine placer of Deo river in Gumla district (Jharkhand), which later went into departmental production.
- Reporting for the first time a 8km long belt of radioactive arkosic sandstone in Jakaram, Pakhal basin, Warangal district (A.P).
- Reporting for the first time anomalous concentration of yttrium over large extent in the owk phosphorite, Kurnool district (A.P).
- Associated with the evaluation of polymetallic tin-tantalum deposit in pegmatites of Bastar district (Jharkhand).
- Associated with the development of process flow sheets for beneficiation of columbite-tantalite and xenotime from ores.
- Characterisation, processing and optimisation of process flow sheets for extraction of uranium from ores of Jajawal mine, Sarguja district (M.P) as part of M.Tech thesis.
- Locating and evaluation of shoreline garnet rich sand deposits over 10km long Ovari-Navaladi coast, Tinneveli district (Tamil Nadu) which is presently exported, earning valuable foreign exchange.
- A large tonnage of ilmenite-rich eolian sand deposits in parts of Tamil Nadu (Ovari) and Kerala (Vikkalur).
- Re-evaluation of Nindakara, Chavara (Kerala) and Vikkalur, Midalam mining blocks (Tamil Nadu) of IRE Ltd., for immediate exploitation.
- Evaluation of the first and only carbonatite hosted multi-metal niobium-yttrium-uranium-iron and phosphate deposits in Samchampi Complex, Karbi-Anglong district (Assam) with reserves of nearly 12,000 te Nb, 1,800 te Y, 4,300 te U_3O_8 contained in 15 million te of high grade phosphatic ore and nearly 300 million te of iron ore with 0.1% Nb and 3% TiO_2 . This also formed my Ph.D Thesis.
- Planning and coordinating the exploratory drilling programme of the Directorate for five years (1993 – 1998) with 48 rigs and around 35,000m of annual target covering seven regions.
- Streamlining material procurement process, enforcing quality assurance and performance evaluation in drill bits, casings, rods, etc.
- Overseeing successful execution of earthquake related NGRI-DST drilling project at Khilari (Maharashtra), BARC sponsored repository drilling project at Kalpakam and NPCIL sponsored drilling in engineered RCC structure in reactor building at Kaiga (Karnataka).

Date:

Dr. S.Q.Hoda

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H. K. Garg
Advocate

Highlights of some significant achievements of last six years (1998 to 2004)**in the Northeastern Region, Shillong**

- Proving nearly 2020 tonnes of uranium oxide from Wahkyn area in Meghalaya accounting for 32% of the total reserves proved in AMD during that period.
- Discovery of uranium mineralisation for the first time in Balpakhrum plateau, South Garo Hills, Meghalaya in a most difficult terrain.
- Developing geologically several thrust areas at Umthalene, Laitduh, Phlangsynnei, Rangsookham in Mahadek basin, Meghalaya warranting sub-surface exploration by drilling.
- Successfully executing 8000m of contract drilling at Laitduh and Phlangsynnei in Meghalaya under constant threats from militants and NGO's, recently in 2004, which was once abandoned by AMD under similar situation.
- Expanding AMD's activities into Assam, Arunachal Pradesh, Garo Hills and now in Mizoram, which was confined to Meghalaya only, at the time of my joining NER in 1998.
- Providing logistic and infrastructural supports in setting-up of VSAT-ANUNET, Indian Environmental Radiation Monitoring Network (IERMON), Emergency Response System (ERS) and Seismic Station in AMD Complex in collaboration with DAE/BARC, Mumbai.
- Initiating and organising baseline radiological surveys in collaboration with Environmental Assessment Division, BARC, Mumbai around Domiasiat, Wahkyn and other thrust areas in Meghalaya.
- Logistic and technical supports to the ongoing DST-DAE-NEIU Project on "Baseline Environmental Studies of Meghalaya with special reference to Domiasiat Uranium Deposit" as the active local member of the monitoring committee, representing DAE.
- Organising awareness campaign through seminars, public debate, print media in favour of Domiasiat uranium mining project in Meghalaya in collaboration with local NGO, UCIL, BARC & DAE.
- Guiding and supervising in the preparation of STATUS REPORTS on uranium investigation in Wahkyn, Mahadek basin (Meghalaya), Arunachal Pradesh and Proterozoic Shillong Basin.

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H.K. Gugn' Advocate

The general requirement of at least three years service in a cadre post between two Central tenure deputations may also be relaxed to two years in deserving cases of meritorious service in the North-East.

A specific entry shall be made in the CR of all employees who rendered a full tenure of service in the North-Eastern Region to that effect.

Cadre authorities are advised to give due weightage for satisfactory performance of duties for the prescribed tenure in the North-East in the matter of promotion in the cadre posts, deputation to Central tenure post and courses of training abroad.

(iii) Special (Duty) Allowance:

Central Government civilian employees who have All India transfer liability will be granted Special (Duty) Allowance at the rate of 12 1/2 % of basic pay on posting to any station in the North-Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or deputation (duty) allowance already being drawn without any ceiling on its quantum. The condition that the aggregate of the Special (Duty) Allowance plus Special Pay/Deputation (Duty) Allowance, if any, will not exceed Rs. 1,000 per month shall also be dispensed with from 1-8-1997. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

The Central Government civilian employees who are members of Scheduled Tribes and are otherwise eligible for the grant of Special (Duty) Allowance under this para, and are exempted from payment of Income Tax under the Income Tax Act will also draw Special (Duty) Allowance.

NOTE 1.—Special duty allowance will not be admissible during periods of leave/training beyond 15 days at a time and beyond 30 days in a year. The allowance is also not admissible during suspension and joining time.

NOTE 2.—Central Government civilian employees, having 'All India Transfer Liability' on their posting to Andaman & Nicobar Islands and Lakshadweep Islands are, with effect from 24th May, 1982, granted 'Island Special Allowance' in lieu of 'Special (Duty) Allowance'. See Orders in Section V of this Appendix.

(iv) Special Compensatory Allowance:

The recommendations of the Fifth Pay Commission have been accepted by the Government and Special Compensatory Allowance at the revised rates have been made effective from 1-8-1997.

For orders regarding current rates of Special Compensatory allowance—See Part V of this Compilation - HRA and CCA

(v) Travelling Allowance on first appointment:

In relaxation of the present rules (SR 105) that travelling allowance is not admissible for journeys undertaken in connection with initial appointment, in

APPENDIX - 9

INCENTIVES FOR SERVING IN REMOTE AREAS

[G.I. M.F., O.M. No. 20014/3/83-E, IV, dated the 14th December, 1983, read with O.M. No. 20014/3/83-E, IV, dated the 30th March, 1984, 27th July, 1984, G.I. M.F., U.O. No. 3943-E, IV/84, dated the 17th October, 1984, O.M. No. F. 20014/3/83-E, IV, dated the 31st January, 1985, 25th September, 1985, U.O. No. 824-E, IV/86, dated the 1st April, 1986, O.M. No. 20014/3/83-E, IV, dated the 29th October, 1986, O.M. No. 20014/3/83-E, IV/E, II (B), dated the 11th May, 1987, 28th July, 1987, 15th July, 1988 and O.M. No. F. 20014/16/86-E, IV/E, II (B), dated the 1st December, 1988 and O.M. No. 11 (2)/97-E, II (B), dated the 22nd July, 1998.]

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Allowances and facilities admissible to various categories of civilian Central Government employees serving in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram, Andaman and Nicobar Islands and Lakshadweep Islands. These orders also apply *mutatis mutandis* to officers posted to N-E Council, when they are stationed in the N-E Region and to the civilian Central Government employees including officers of All India Services posted to Sikkim.

(i) Tenure of posting/deputation:

There will be a fixed tenure of posting 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with 10 years of service. Periods of leave, training, etc., in excess of 15 days per year will be excluded in counting the tenure period 3rd years. Officers, on completion of the fixed tenure of service mentioned above may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North-Eastern Region, will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(iii) Weightage for Central deputation/training abroad and special mention in Confidential Reports:

Satisfactory performance of duties for the prescribed tenure in the North-East shall be given due recognition in the case of eligible officers in the matter of—

- promotion in cadre posts;
- deputation to Central tenure posts; and
- courses of training abroad.

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M. K. Garg
Advocate

(IV)

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ANNEXURE - IV

Government of India
Department of Atomic Energy
Atomic Minerals Directorate for Exploration & Research
North Eastern Region

To

The Hon'ble Chairman,
Atomic Energy Commission & Secretary
Department of Atomic Energy, Govt. of India,
Chatrapati Shivaji Maharaj Marg,
Mumbai-400 001

AMD Complex,
Nongmynsong,
P.O. Assam Rifles,
Shillong-793 011,
Meghalaya.

Dated : 24.09.2004

Through :

The Director,
Atomic Minerals Directorate for
Exploration & Research,
Dept. of Atomic Energy, AMD Complex,
Begumpet, Hyderabad - 500 016.

Sub : Redressal of grievances for denial of promotion from Scientific Officer-G to Scientific Officer-H and request for reviewing the same; regarding.

Hon'ble Chairman Sir,

With due respect and with reference to the subject cited above, I would like to place this representation before you for favour of your kind review and redressal thereof, amongst others, on the following grounds:

(1) That the undersigned with nearly 33 years of professional field and research experience behind in uranium exploration and related activities with appropriate M.Sc degree in Applied Geology, M.Tech in Mineral Engineering, P.G.Diploma in Environmental Sciences and Ph.D in Geology has been serving the Atomic Minerals Directorate for exploration and Research (AMD) with utmost devotion and sincerity since 1971. A brief account of my personal history is annexed hereto as Annex-A.

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H. R. Garg
Advocate

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(2) That I have a modest publication of twenty six scientific papers in diverse topics and of which sixteen have been contributed since my last promotion in 1998 to the grade SO/G. The list of such publications and areas of research are indicated in the Annex-B, annexed hereto.

(3) That over these years, I carried out survey and exploration in diverse geological environments of the country and have made large contributions towards the augmentation of raw material resources such as uranium, thorium & beach placer minerals, niobium, tantalum, beryllium, yttrium and geo-drilling required for the nuclear power programme of the country. The most significant among these are summarised in the Annex-C; annexed hereto.

(4) That upon my joining North Eastern Region (NER), Shillong in November 1998 as **Deputy Regional Director** and subsequently taking over as **Regional Director** in April, 2001, which happens to be a most difficult, sensitive and challenging region to administer logistically and politically, I humbly wish to highlight some of the most significant contributions of the region achieved under my planning, guidance and leadership over the last six years.

- Proving nearly 2020 tonnes of uranium oxide from Wakhyn area in Meghalaya accounting for 32% of the total reserves proved in AMD during that period.
- Discovery of uranium mineralisation for the first time in Balpakhrum plateau, South Garo Hills, Meghalaya in a most difficult terrain.
- Developing geologically several thrust areas at Umthalene, Laitduh, Phlangsynnei, Rangsohram in Mahadek basin, Meghalaya warranting sub-surface exploration by drilling.
- Successfully executing 8000m of contract drilling at Laitduh and Phlangsynnei in Meghalaya under constant threats from militants and NGO's, recently in 2004, which was once abandoned by AMD under similar situation.
- Expanding AMD's activities into Assam, Arunachal Pradesh, Garo Hills and now in Mizoram, which was confined to Meghalaya only, at the time of my joining NER in 1998.
- Providing logistic and infrastructural supports in setting-up of VSAT-ANUNET, Indian Environmental Radiation Monitoring Network (IERMON), Emergency Response System

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H. K. Goga.
Advocate

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(ERS) and Seismic Station in AMD Complex in collaboration with DAE/BARC, Mumbai.

- Initiating and organising baseline radiological surveys in collaboration with Environmental Assessment Division, BARC, Mumbai around Domiasiat, Wahkyn and other thrust areas in Meghalaya.
- Logistic and technical supports to the ongoing DST-DAE-NEHU Project on "Baseline Environmental Studies of Meghalaya with special reference to Domiasiat Uranium Deposit" as the active local member of the monitoring committee, representing DAE.
- Organising awareness campaign through seminars, public debate, print media in favour of Domiasiat uranium mining project in Meghalaya in collaboration with local NGO, UCIL, BARC & DAE.
- Guiding and supervising in the preparation of STATUS REPORTS on uranium investigation in Wahkyn, Mahadek basin (Meghalaya), Arunachal Pradesh and Proterozoic Shillong Basin.

(5) That having achieved more than the desired results compared to any of the six regions of AMD under most challenging situation, I had a genuine expectation that my contributions shall be recognised and I will be promoted to Scientific Officer-II at least at the fag end of my dedicated service career, when I am going to retire from active service in February, 2005 on completion of 60 years. It is extremely painful and demoralising to find that I have been denied the promotion even after completing six years in the grade of Scientific Officer-G in August 2004, that too in the most hazardous and difficult areas of North Eastern States, whereas my colleague Shri A.K.Pande, who was junior to me in SO/G grade has been promoted to SO/H grade with effect from August 2004. It is pertinent to mention here that Shri Pande, took nine years time to be promoted to SO/G grade in 1999 from SO/F grade, while I was promoted to SO/G grade in seven years in the year 1998. But surprisingly and without any visible reason, the said Shri Pande has been considered and promoted to SO/H grade by superseding me, overlooking my seniority, merit, academic excellence and performance. Therefore, I sincerely believe that I have not been given justice and have been deprived of my accrued right of promotion in a very discriminatory manner.

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H. K. Gaur
Advocate

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(6) That during the period 1998 to till date, I served under three Directors of AMD viz. S/Shri D.C.Banerjee, R.K.Gupta (both retired) and R.M.Sinha, present director. It is a fact that some of these persons in power and authority could not accept my straightforwardness and honest opinion in right spirit. I have reasons to believe that my annual confidential reports (ACR) have been either tampered or tainted with ulterior motives without any basis to a level deliberately, so as to deny me the promotion by not fulfilling the minimum requirements of grading in the ACR during the last five/six years. From the outcome of the promotion results for 2004, I have also reasons to believe that my merit in service has been wrongly assessed by any of these directors, which is questionable, subject to scrutiny and therefore requires review and reassessment. In all fairness, considering my contributions, achievements and merit, I should have been promoted when I completed five years in SO/G grade in August 2003 itself, as has been done for others on completion of five years in SO/G grade, including Shri A.K.Pande.

(7) That it is learnt, Shri A.K.Pande did not submit his Annual Confidential Reports (ACR) consecutively for two / or three years during the Directorship of Shri R.K.Gupta (2001 - 2003) and the same were submitted together to the next director, after his retirement. If this has been done with some ulterior motive to gain benefit in matter of promotion, it becomes relevant to this case and therefore, warrants scrutiny.

(8) That certain incentives and service benefits are admissible to offices transferred to North Eastern Region as per G.O.I. O.M No.20014/3/83-E IV dated 14.12.1983. These are:

- (i) Posting to a station of choice after completion of fixed tenure; which is two years in my case and
- (ii) Weightage in matter of promotion, besides few other benefits. A copy of the O.M dated 14.12.1983 is annexed as Annex-D hereto.

It is a pity to note that AMD authority did not consider my request for transfer to Hyderabad when the post of Regional Director, South Central Region at Hyderabad fell vacant in February 2003 and again in June 2004, violating the above tenure rule as enunciated in the said OM dated 14.12.1983. This clearly point towards partisan and biased attitude of the authority. A copy of the letter requesting for transfer dated 27.01.2003 is enclosed as Annex-E hereto.

Certified to be true Copy,
H. K. Ganga
Advocate

-27-30-

(9) That by serving in NER for nearly six years, I also deserve weightage as fixed by the OM dated 14.12.1983 in the matter of promotion. I do not know as to whether this provision of benefit has been considered or not in selection to the SO/H grade. If required, the matter may be referred to D.O.P.T for clarification.

(10) That every official in his service career has a legitimate expectation of getting recognition through promotion for which he has dedicated his whole life and energy. The Cabinet Secretary to the Govt. of India vide D.O. letter No.502/2/3/04-CAV dated 22.07.2004 has brought out the policy decision of the Govt. of India to review the cases of genuine grievances in matter of foregoing promotion despite merit through a 'Standing Committee' consisting of the Cabinet Secretary, the Principal Secretary to the Prime Minister and Secretary, DOPT. I feel that my case of non-consideration of promotion and also grievances related there to, falls within the scope of the said D.O. letter and within the scope of review by the Standing Committee. Therefore, I earnestly request the Secretary, DOPT to place my case before the said high power standing committee for kind review and redressal. Incidentally, Atomic Minerals Directorate for Exploration & Research (AMD) a constituent unit under the Department of Atomic Energy is placed directly under the Hon'ble Prime Minister himself. A copy of the said D.O. letter dated 22.07.2004 is annexed as Annuxure-F, hereto.

Therefore, I humbly request your kindness for the following:

- (i) To call for the relevant documents and review / re-evaluate my annual confidential reports (ACR) in totality and without any bias, beginning from Scientific Officer-F grade (1991) to Scientific Officer-G grade (2003) along with Shri A.K.Pande (1991 - 2003) and have a comparative assessment of qualification, scientific publication, achievements and responsibility of both of us.
- (ii) To examine the service benefits in the matter of promotion for serving in NER as per D.O.P.T Office Memo dated 14.12.1983.
- (iii) To review the matter by the Standing Committee and redress my grievances.
- (iv) And after review and re-assessment as stated above, your honour would also be pleased to pass a speaking / reasoned order in the matter as per the guidelines and for

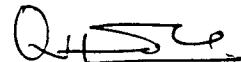
Certified to be true Copy.
H. K. Gagan
Advocate

- 28-31 -

11/53

which act I shall remain ever grateful to you. In this connection, a copy of the D.O letter dated 03.05.2003 addressed to the Chairman, AEC from Secretary, Ministry of Personnel, Public Grievances and Pension, Govt. of India is annexed as Annexure-G hereto.

Yours faithfully,



*Dr. Shaikh Qamrul Hoda
Regional Director
Atomic Minerals Directorate
for Exploration & Research,
Department of Atomic Energy P.O. Assam Rifles
Shillong, Meghalaya*

Dated : 24th Sept., 2004

Advance copy submitted to :

Chairman, Atomic Energy Commission &
Secretary, Department of Atomic Energy,
Government of India, Anushakti Bhavan,
Chatrapati Shivaji Maharaj Marg, Mumbai-400 001.

Certified to be true Copy.

M. R. Gogoi
Advocate

3229-

ANNEXURE : VI 54

01-MAR-2005 11:44 FROM:AMD DAE HYD

04027762940

0023642534855

P.1/2

FEB-25-2005 10:32 FROM:DAE MUMBAI

+022 22546111

T-081 P 001/001 P-077

1-AX

12/20/ ✓

Government of India
Department of Atomic Energy

Anushakti Bhavan,
C.S.M. Marg,
Mumbai 400 001.

No. 12/6(8)/2002 I&M(AMD)/

February , 2005

Sub : Redressal of grievances for denial of promotion from SO/G to the grade of SO/H and request for reviewing the same - representation from Dr. S.Q. Hoda.

Reference is invited to the letter dated 24.9.2004 from Dr. S.Q. Hoda, Regional Director, NER, AMD, Shillong addressed to the Hon'ble Chairman, AEC and Secretary, DAE through Director, AMD on the captioned subject.

2. The grievances raised by Dr. Hoda have been carefully examined in the department in consultation with Director, AMD especially with regard to his contention of non-promotion to the next grade of SO/H w.e.f. 1.8.2004 and non-transfer to the South Central Region.

3. Shri Hoda joined AMD on 3.11.1971 in the grade of SO/SC and has been promoted from time to time under the merit promotion scheme and is presently in the grade of SO/G w.e.f. 10.9.98. His case for promotion to grade SO/H w.e.f. 1.8.2004 could not be considered, as he had applied for outside posts during the previous one year.

4. As regards his request dated 27.1.2003 for posting to SCR, Hyderabad the case was considered consequent on retirement of RD (SCR) on 30.6.2004. However, the posting had to be made keeping in view of exigencies of various requirements. As such his request could not be accommodated at that point of time.

5. This issues with the approval of Chairman, AEC and Secretary, DAE.

[Signature]
25/2/05
(G.M. Nair)

Under Secretary (I&M)

Dr. S.Q. Hoda,
Regional Director,
AMD (NER),
Shillong.

(Through Director, AMD, Hyderabad)

It may be faxed to the Regional Director, NER, Shillong for his attention.

Certified to be true Copy.
[Signature]
Advocate



S.S.DAWRA

सचिव
SECRETARY

Tel. : 3094848
Fax : 3092432

Dear Shri Kakodkar,

As you may be aware, instructions have been issued by Department of Administrative Reforms and Public Grievances (DAR&PG) from time to time to ensure that an effective institutional mechanism is established for attending to public grievances promptly. I feel that the system would be failing in its primary purpose if the barest minimum courtesy, that is, acknowledgement of the letter received from a complainant is not sent in time. The acknowledgement should go immediately or at the most within three days of the receipt of the grievance.

2. ~~Every grievance should be redressed within a period of three months of the receipt.~~ Instructions on the subject of 'Directors of Grievances' envisage that if a grievance is not redressed within a period of three months, Director of Grievances of the concerned Ministry/Department should call for the documents of the case and take decision with the approval of the Secretary of the Ministry/Department or Head of the Department/Organisation. The petitioner should be informed of the progress of his/her grievance.

3. I hope that the above time limits in processing of the grievances are followed in your Ministry/Department. This would go a long way in establishing public confidence in the effectiveness of the grievance redressal mechanism of the Government.

With regards,

Dr. Anil Kakodkar,
Chairman,
Department of Atomic Energy
Room No. 145-A, South Block
New Delhi.

Certified to be true Copy
Advocate

Certified to be true Copy.
H. K. Gogoi
Advocate

ANNEXURE : VI

12.02.No.K-11011/5/2003-PC.

भारत सरकार

कार्यका, लोक शिकायत तथा पेशा मंत्रालय

नई दिल्ली-110001

GOVERNMENT OF INDIA

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES

AND PENSIONS

NEW DELHI-110001

May 3, 2003

Ref: 1(2)/CA-C&P-325

May 28/20, 1971

Sub: Forwarding of applications for
outside appointments.

The number of applications which can be forwarded for outside appointment in a calendar year, and the conditions on which they may be forwarded are as under:-

1. Scientific & Technical Staff:

- (a) Two application-one for appointment in outside organisations and the other in any of the units under the administrative control of the DAE - may be forwarded in each calendar year.
- (b) The persons whose applications are forwarded to outside organisations will become ineligible for grant of additional increments/promotion for a period of one year from the date of application. This condition does not apply in the case of applicants for posts in response to any circular or advertisement either within DARC or to units under the administrative control of the DAE (including TIFR, ISRO, SSGC, UCIL etc.)
- (c) Before forwarding any application, the Head of the Division should satisfy himself that the candidate fulfils the qualification advertised and that if selected the applicant can be availed for taking up the appointment.
- (d) In the case of newly appointed officers or those who are promoted to higher grades, application will not be forwarded for one year from the date of such appointment or promotion.
- (e) Applications will not be forwarded from persons who are under bond to serve the department. Exceptions can, however, be made in the case of persons who desire to leave Government

... 2 ...

Certified to be true Copy.
H.K. Garg
Advocate

service to secure employment under a State Government, a public sector undertaking or under a quasi-Govt. organisation such as University etc. provided they execute a fresh bond to serve the new employer for a specified period as determined by the Deptt.

2. Administrative and Auxiliary Staff:

In respect of administrative and auxiliary staff, as their services are on par with the other employees of Government of India, the orders of the Ministry of Home Affairs may be followed. It is not necessary to stipulate in their cases, the condition that they will not be eligible for promotion for one year from the date of application.

According to Home Ministry's orders, in the case of permanent Government servants four opportunities in a year may be given to apply in response to U.P.S.C. advertisements or advertisements/Notices of Government Departments/Public Sector undertakings and autonomous bodies except where withholding of any such application is considered by the competent authority concerned to be justified in the public interest. As regards temporary Government servants the administrative authorities should not ordinarily refuse to forward applications for employment elsewhere, which are in response to advertisements issued by the U.P.S.C. or requests from other Departments or where the applicant is likely to obtain a permanent employment elsewhere. They should, however, as a matter of rule, be asked to resign from the parent Department/Office, in the event of their appointment in the new office.

sd/-28/5/71

(H. Janakiraman)
Dy. Establishment Officer

Dy. Establishment Officers

A.I.O in Personnel Division

Copy to : Head, Personnel Division
Establishment Officer
AOs III/Secretary, TC & TSC
APOs in Divisions/Sections.

Certified to be true Copy.
H. K. Gogoi
Advocate

36
Government of India
Department of Atomic Energy
.....

Annexure 14 58
~~Annexure R/3~~
C.S.M. Marg,
Bombay - 400 019.

April 18, 1980.

No.3/1(23)/80-Adm.II

OFFICE MEMORANDUM

Subject:- Forwarding of applications for outside appointments - Scientific and Technical Staff - Procedure for.
.....

In partial modification of the various orders issued by the Units to regulate forwarding of applications for outside appointments by the Scientific and technical staff of the Department, it has been decided that the number of applications to be forwarded per year in respect of scientific/technical staff may be increased to four - two applications for appointments in outside organisations and the other two for appointments in any of the Units under the administrative control of the Department of Atomic Energy.

2. The other conditions for forwarding of applications shall remain unchanged.

Sd/-
(T. Sethumadhavan)
Deputy Secretary to the Govt. of India.

All Heads of Units

All Officers/Sections of the Secretariat.

Certified to be true Copy
H. K. Ganga
Advocate

C.S.M. Marg,
Bombay-400 039.
December 30, 1985.

Sub: Forwarding of applications for outside appointments.

5. AO

- 21
6-1-86
Egner/ENR
CC/16/1

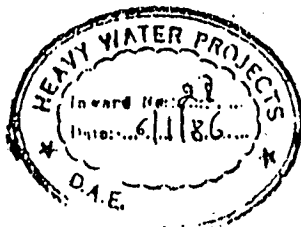
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~~24. D-N 10/11~~

- H. Anderson
his to
all with
officer.
Patterson

1486 ~~Expenditure Director (S.A.)~~

PVK
 5
 21/1



Certified to be true Copy.
H. K. Garg
Advocate

MERIT PROMOTION SCHEME

DAE, being a Scientific Department, has from its inception followed a policy in promotion of officers in scientific and technical grades based on the need to develop a cadre of competent scientists and technologists. This scheme is known as Merit Promotion Scheme. The success of the scheme in identifying and ensuring promotion of talented scientists at a faster rate to reach the top at the shortest possible time has been proved during the last 25-30 years.

Promotions are made in DAE from one grade to the other higher grade not on the basis of vacancies but on the basis of development and work of the individual Scientific-research/technical personnel. Under the Scheme, a Scientific Officer/Engineer or a technical personnel deserving promotion because of the merit of his work is never denied for want of vacancy. A suitable post will always be created at the level required for accommodating the promotion. While creating such posts, the lower posts vacated by the personnel concerned are abolished.

Normal increments and promotions of scientific and technical personnel in this Department, take place on fixed dates in a year, either on the 1st February or 1st August in the case of Scientific category and on the 1st May or 1st November in the case of technical staff.

SCIENTIFIC PROMOTIONS

There are several checks and balances built into the system to ensure that evaluations and recommendations for promotions are done in a systematic and balanced manner. For example, there is a system of confidential report, originating from the candidate assessed by the immediate superior, reviewed and countersigned by the Head of the Division or Director of the Group. In the assessment form there is enough scope to reflect on the work carried out by the officer as well as his individual qualities.

On the basis of the confidential report, a Standing Screening Committee recommends the cases for promotion on the basis of standards and guidelines prescribed and it is ensured that no deserving person has been overlooked. Confidential dossiers are made available to the Screening Committee for assessing the outstanding abilities, achievements and managerial experience. The Screening Committee will be composed of immediate supervisors and balancing member from other Divisions/Units of the Department so that a uniformity exists in the entire Department.

Based on the recommendations of the Screening Committee, a selection Committee interviews the individuals and during interview detailed assessment of the candidates is made and suitable recommendations made.

TECHNICAL

Procedure for promotion of technical staff is more or less similar to the scientific personnel.

Recommendations for promotion of technical staff are screened by the Screening Committee on the basis of norms prescribed and recommendations are made on the basis of Confidential reports of the individuals. Each case is assessed on its merits taking into account factors like qualification, length of service, his ability, record of work, amenability to discipline, devotion to duty, relations with colleagues etc and only those considered deserving of promotion on an overall assessment are recommended for promotion. Technical personnel recommended for

39 I

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DEPARTMENT OF ATOMIC ENERGY

promotion are given trade tests before they are interviewed. Based on the outcome of the trade tests and personal interview, promotions are considered.

Approval of the recommendation for promotion both under scientific/technical categories are required to be approved by the appropriate authority who has been delegated with powers. While processing these cases, it is necessary to ascertain whether:

- a) the candidates were on duty on the dates from which they are recommended for promotion.
- b) there is no disciplinary action pending or contemplated against them.

One important aspect of the Merit Promotion Scheme is that seniority of an individual officer is not a criterion. Generally a list of all those candidates arranged with respect to the number of years they have spent in a particular grade is made available to the Screening Committee. Based on the gradings obtained in CA and personal interview, the brighter candidates pass through every grade in the shortest possible time to reach higher levels much before his colleagues who may have joined before him or along with him. This has been accepted by the scientific and technical community in this Department. Therefore the normal definition of seniority and inter-se seniority do not apply to the promotion policy for Scientists, Engineers and Technical personnel in this Department.

accordance with the guidelines laid down. This scheme, tested and found to have been appropriate by more than four decades of experience, has

1

Certified to be true Copy
H. K. G. *[Signature]*
Advocate

4. Where Government servants apply directly to UPSC as in the case of direct recruit, they must immediately inform the Head of their Office/Department giving details of the examination/post for which they have applied, requesting him to communicate his permission to the Commission directly. If, however, the Head of the Office/Department considers it necessary to withhold the requisite permission, he should inform the Commission accordingly within forty-five days of the date of closing for receipt of applications. In case any situation mentioned in Para. 2 above is obtaining, the requisite permission should not be granted and UPSC should be immediately informed accordingly. In case a situation mentioned in Para. 3 is obtaining, action may be taken to inform UPSC of this fact as also the nature of allegations against the Government servant. It should also be made clear that in the event of actual selection of Government servant, he would not be relieved for taking up the appointment, if the charge-sheet/prosecution sanction is issued or a charge-sheet is filed in a Court for criminal prosecution, or if the Government servant is placed under suspension.

5. It may be noted that in case of direct recruitment by selection, i.e., "selection by interview", it is the responsibility of the requisitioning Ministry/Department to bring to the notice of the Commission any point regarding unsuitability of the candidate (Government servant) from the vigilance angle and that the appropriate stage for doing so would be the consultation at the time of preliminary scrutiny, i.e., when the case is referred by the Commission to the Ministry/Departments for the comments of the Ministry's representatives on the provisional selection of the candidate for interview by the Commission.

[G.I., Dept. of Per. & Trg., O.M. No. AB 14017/101/92-Estt. (RR), dated the 14th July, 1993.]

* ✓ 7. Applications from serving employees (experts) to foreign assignment against open advertisement.— The Government employees may apply in response to the open or public advertisement of vacancies by the International Organizations and foreign Governments with the prior permission of the cadre controlling authorities concerned. In rare cases, when the time available for submitting the application is short, an officer may send his application to the concerned agency in advance with a copy to his cadre controlling authority and this may be confirmed or withdrawn subsequently depending on the decision of the authority. The cadre controlling authorities would consider each case only from the point of view of whether the officer could be spared or not; no other general considerations should be applied in taking a decision in the case. An officer may be permitted to apply in response to a public advertisement even if he has completed the permitted number of years he can spend on International assignments in his career. However, in such a case, he would have to resign or take retirement from Government service on selection. A Government employee applying for an International assignment in response to public advertisement will not be given the status of "official nominee" for the assignment. Correspondence relating to the grant or denial

Certified to be true Copy-

H. R. Gargi

Advocate

of permission will be between the officer concerned and the cadre controlling authority, Government and the latter will not correspond with the International Organization on the subject.

[G.I., Dept. of Per. & Trg., Letter No. F. 18/10/91-FA (UN), dated the 20th June, 1991.]

8. Registration of serving employees for foreign assignments and terms therefor.— 1. The question as to what procedures should be followed in the case of Government servants working in various departments/offices of the Government of India who apply for registration for foreign assignment and are selected for assignment in a foreign country on Government-to-Government basis has been under consideration of the Government. It has been decided that—

- (i) deputation to the developing countries of Asia, Africa and Latin America on Government-to-Government basis arranged through the Foreign Assignment Division of this Department may be treated in the public interest.
- (ii) the lien, as defined in Fundamental Rules, of all permanent Government servants deputed to any one of the countries cited in (i) above may be retained initially for a period of two years extendable to five years whereafter the Government servant will either revert back to his parent post under the Government of India or resign his post in India, subject to the instructions as have been/may be issued by the Foreign Assignment Division of this Department and/or the Ministry of External Affairs in the matter;
- (iii) as regards quasi-permanent and temporary Government servants deputed abroad under these orders, they would remain eligible for being considered for confirmation/quasi-permanency, etc. and the service rendered by them in the developing countries will be taken into account for determining the total continuous service, for a maximum period of five years.
- (iv) in the case of Government servants who seek/secure employment in a foreign country through open advertisements/through their own sources the existing instructions as a.e applicable to those who seek employment in the private sector within the country will continue to apply.

2. ***

3. These instructions are applicable to the employees in all the departments/offices of the Government of India (including the Ministry of Railways and Civilians in Defence Services, the members of the Central Secretariat Service/Central Secretariat Stenographers Service, etc.).

[G.I., M.H.A. (D.P. & A.R.), O.M. No. 28017/1/81-Estt. (C), dated the 1st April, 1981.]

The above instructions also govern the conditions of service of Indian Experts deputed to foreign countries on Government to Government basis.

Certified to be true Copy.

H. K. Gagan
Advocate

42 -
Subject: IAEA Application for VN 2004/007
Date: Fri, 14 Jan 2005 11:15:16 +0100
From: S.P.O'Brien@iaea.org Add to Address Book
To: hoda_sq@yahoo.com

64
Annexure X(11)

Ref: Pers/SL 41

Vacancy Notice:

2004/007

Uranium Resource Specialist

Division of Nuclear Fuel Cycle and Waste Technology

Department of Nuclear Energy

Dear Mr. Shaikh,

With reference to your application for the above post, I regret to inform you that a decision was taken to make no appointment against this vacancy.

I regret any inconvenience caused and I should like to take this opportunity to thank you for your interest in the activities of the Agency.

Kind regards,

Sean O'Brien

Recruitment Unit

on behalf of:

J.C. Hoek

A/Head

Recruitment Unit

Division of Personnel

Certified to be true Copy.

H. R. Garg

Advocate

43 -
Annexure XIV 65
Subject: IAEA Application: VN 2003/608
Date: Thu, 23 Mar 2006 15:39:56 +0100
From: S.P.O'Brien@iaea.org
To: hoda_sq@yahoo.com

Dear Mr. Shaikh,

With reference to your application for the above post, I regret to inform you that a decision was taken to make no appointment against this vacancy.

I apologize for any inconvenience caused and I should like to take this opportunity to thank you for your interest in the activities of the IAEA.

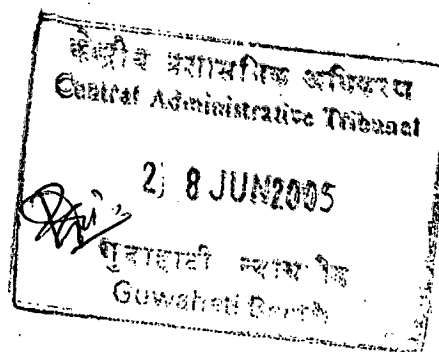
Yours sincerely,

Sean O'Brien

Division of Personnel
International Atomic Energy Agency
Wagramer Strasse 5, P.O. Box 100
A-1400 Vienna, Austria

Certified to be true Copy:

Hema K. Gm.
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : AT GUWAHATI

O.A. No. 172/2005

Dr. Shaikh Quamrul HodaApplicant
-versus-
Union of India & others Respondents

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6.	Annexure IV	OM dated 14.12.1983	22
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Filed by:

Bibhash Pathak
Advocate
Date: 27.6.2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI

O.A. No. 172 /2005

Dr. Shaikh Quamrul Hoda Applicant
-versus-
Union of India & others Respondents

SYNOPSIS OF THE CASE:

Date	Particulars	Annexure
1.11.71	<p>The applicant after obtaining M.Sc. degree in Applied Geology from Indian School of Mines, Dhanbad was initially appointed as Scientific Officer Grade SC-1 (Geology), a Class I Gazetted post in AMD on 3.11.1971. He further improved his professional qualification during the service tenure and also obtained Ph.D Degree in Geology. The applicant has also published around 26 scientific and research papers touching to the requirements of the Directorate.</p> <p>From time to time under the merit promotion scheme, the applicant was promoted and the last promotion he got in the grade of SO-G w.e.f. 10.09.1998.</p> <p>After the last promotion as SO-G in August 1998, the applicant was transferred and posted to the North Eastern Region, Shillong in November 1998 from the headquarter, Hyderabad During the period from November 1998 until his superannuation on 28th February 2005, he held the post of Deputy Regional Director and Regional Director of North Eastern Region with Regional Office at Shillong which is a very sensitive.</p>	<p>Para 4.2, 4.3, 4.5 and 4.5,</p> <p>Annexure I, II and III</p>
1.8.03	<p>Applicant had a genuine expectation that his contributions shall be recognized and he shall be promoted to the grade of SO-H in the scale 18400 – 500 – 22400, after completion of five years in the feeder grade of SO-G w.e.f. 01.08.2003.</p>	

1.8.04 The Applicant was not only denied promotion to SO-H grade w.e.f. 01.08.2003, on which he completed 5 years in the feeder grade with all other eligibility criteria but also his case was not considered for promotion even after completion of six years in the SO-G grade, while Shri A.K.Pande, the respondent No.3 junior to applicant in SO-G grade by one year has been promoted to SO-H grade w.e.f 01.08.2004 on completion of five years in SO-G grade overlooking the seniority, merit, performance and academic excellence of the applicant and more particularly considering the extra-weightage earned by the applicant for his posting in the North-eastern Region.

24.9.04 The applicant made a representation on
25.2.05 24.9.2004 which was replied in negative by the respondents vide letter dated 25.2.2005. Hence this application.

Annexure V
and VI

Grounds for challenging:

a) The applicant is eligible for promotion from post of SO-G to SO-H grade but the respondent No.1 and 2 did not consider the case of promotion of the applicant and promoted his junior violating the provisions of the Article 14,16 and 21 of the Constitution of India and also the rules of natural justice

b) The non-consideration of the case of promotion of the applicant and the promotion of the respondent No.3 is illegal and derogatory to the provisions of the OM dated 14.12.1983.

c) The rules/scheme/policy relating to the promotion being Statutory in nature as provided under Article 309, such rules can not be overridden by any executive order like the impugned order dated 25.2.2005.

d) The applicant has a right to be considered for promotion as a matter of fundamental rights from the Grade SO-G to SO-H.

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e) The impugned order dated 25.2.2005 is untenable in law as the same has been passed in a very cryptic manner and the same is not a speaking order as required by law.

Relief Sought for:

i) To direct the respondent No.1 and 2 to produce the full text of the promotion rules/scheme/policy of the SO-G grade to SO-H grade of the AMD (DME) and the rules/circular/guidelines showing the provisions that the SO-G Grade can not be considered for promotion and / or can not be promoted to SO-H Grade if such officer applies for any outside job irrespective of the fact whether such officer is selected/ offered for appointment in outside job or not for the judicial scrutiny by this Hon'ble Tribunal;

ii) To direct the respondent No.1 and 2 to promote the applicant with effect from 1.8.2003, the date on which the applicant became eligible for promotion to the SO-H grade and / or with effect from 1.8.2004, the date on which his junior, the respondent No.3 has been promoted to the SO-H grade;

iii) direct the respondent No.1 and 2 to pay all such consequential benefits of promotion with retrospective effect from 1.8.2003 or from 1.8.2004 and to pay the arrear dues as entitled to including the monetary benefits and to refix and recalculate the quantum of pension/gratuity and to pay the pension at such enhanced rate.

Filed by:

Bibhash Pathak

Advocate

Date: 27.6.2005

30
Filed by
the applicant through
Bibhash Pathak
Advocate
23/1/2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 172 OF 2005

Dr. Shaikh Quamrul Hoda,
S/O Shaikh Kalimuddin, aged about 60 years,
Scientific Officer 'G' and Regional Director of
North Eastern Region of Atomic Minerals
Directorate for Exploration and Research
(AMD), Dept. of Atomic Energy, Shillong
Meghalaya (SINCE RETIRED) C/o Jishnu Dutta
Goswami, "Kanta", Chenikuthi Hillside,
Guwahati-781003 (Assam)

....APPLICANT

-VERSUS-

- 1) Union of India,
Represented by the Chairman,
Atomic Energy Commission and
Secretary, Govt. of India, Department of
Atomic Energy, C.S. Marg, Anushakti Bhavan,
Mumbai – 400 039.
- 2) The Director,
Atomic Minerals Directorate for Exploration &
Research (AMD), AMD Complex, 1-10-153-
156, Begumpet, Hyderabad – 500 016.

Shaikh Quamrul Hoda.

- 3) Shri A.K.Pande
Regional Director, Western Region
52/496 AMD Flats, Sector-5, Pratap Nagar
Jaipur-303906, Rajasthan.

....RESPONDENTS

DETAILS OF APPLICATION:

1. **Particulars of the order against which the application is made:**

This application is directed against the order No. 12/6(8)/2002-I&M(AMD)/1741 dated 25.2.2005 passed by the respondents denying promotion to the applicant without any legal basis and on a frivolous ground. The applicant is approaching the Hon'ble Tribunal for seeking direction to the respondents to promote him in the Grade of Scientific Officer-H (referred to as SO-H) from 1.8.2003, the date of on which the applicant completed 5 years in the feeder grade and became eligible for promotion to the SO-H Grade and / or on 1.8.2004, the date on which his junior, the respondent No.3 has been promoted and for setting aside and quashing the reply dated 25.2.2005 (received on 1.3.2005 i.e. one day later of applicant's retirement on superannuation) issued by the respondent No.1 and to pay him all the consequential benefits as admissible to the applicant.

2. **Jurisdiction of the Tribunal:**

The applicant declares that the subject matter is within the jurisdiction of the Hon'ble Tribunal.

3. **Limitation:**

This applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act 1985.

4. FACTS OF THE CASE:

- 4.1. The Atomic Minerals Division, later renamed as Atomic Minerals Directorate for Exploration and Research [referred to as the "AMD"] under the aegis of Department of Atomic Energy (referred to as the "DAE") with its Headquarter at Hyderabad and seven regional centers including one at Shillong aims at survey and exploration for atomic minerals required for nuclear power generation and research activities. The Regional Office is headed by the Regional Director, with the Director as head of the Directorate with headquarter at Hyderabad.
- 4.2. The applicant after obtaining M.Sc. degree in Applied Geology from Indian School of Mines, Dhanbad was initially appointed as Scientific Officer Grade SC-1 (Geology), a Class I Gazatted post in AMD on 3.11.1971. He further improved his professional qualification during the service tenure which were found suitable and relevant as follows:

<u>Sl.No.</u>	<u>Degree</u>	<u>Institute</u>	<u>Year</u>
i).	Post Graduate Diploma in Mineral Engineering	Indian School of Mines, Dhanbad	1983
ii)	Post Graduate Diploma in Environmental Studies.	Andhra University, Waltair	1995
iii)	M.Tech. Degree in Mineral Engineering	Indian School of Mines, Dhanbad	1996
iv)	Ph.D in Geology	Osmania University, Hyderabad	2003

- 4.3. That from time to time under the merit promotion scheme, the applicant was promoted and the last promotion he got in the grade of SO-G w.e.f. 10.09.1998. While promotion in grade SO-

C to SO-G are based on the performance of the candidate through interview before a Selection Committee constituted by the DAE, the same for grade SO-H and above are assessed by a Committee without the interview. The class I scientific posts in the Directorate held by the applicant since his joining with the grade structure and scale of pay are shown as below.

<u>Sl.No.</u>	<u>Grade</u>	<u>Scale of Pay</u>	<u>*Date of appointment/Promotion</u>
*i)	Scientific Officer SC-1	400 – 950	03.11.1971 (Date of 1 st appointment)
ii)	Scientific Officer – SD	1100 – 1600	01.03.1979
iii)	Scientific Officer – SE	1500 – 2000	01.02.1985
iv)	Scientific Officer – F	4500 – 5700	01.08.1991
v)	Scientific Officer – G	16400 – 20000	10.09.1998
vi)	Scientific Officer – H	18400 – 22400	Promotion has been denied and his junior is promoted with effect from 1.8.2004

- 4.4. That besides the wide spectrum of educational and professional qualifications of the applicant, which speaks for itself, the applicant is counted as one among the few of the scientists in the Directorate. He has also published around twenty-six scientific and research papers. These papers are not the volume of words but they are touching to the requirements of the Directorate.

The list of publications is attached as
Annexure-I.

- 4.5. That it is further submitted that as a geo-scientist in the Directorate, the job of the applicant was to survey and explore

Shaikh Qasim Hadda

for atomic minerals such as uranium, thorium, niobium, beryllium, yttrium, etc., their evaluation to ascertain the quantity and quality and preparation of appraisal and feasibility reports for further investigation. In this respect, the applicant has worked in almost all the survey and exploration units under the directorate in different parts of the country and made large contributions towards the augmentation of raw material resources required for the nuclear power program of the country. The most significant among these are summarized in a separate sheet showing as publications and achievements at the credit of the applicant.

The copies of such sheets are annexed as as
Annexure-II.

- 4.6 That after the last promotion as SO-G in August 1998, the applicant was transferred and posted to the North Eastern Region, Shillong in November 1998 from the headquarter, Hyderabad where he was holding the overall charge of the Drilling Group of AMD and was entrusted with the task of overseeing and ensuring the drilling target of about forty eight rigs with nearly 700 scientific & technical man power spread all over the country. During the period from November 1998 until his superannuation on 28th February 2005, he held the post of Deputy Regional Director and Regional Director of North Eastern Region with regional office at Shillong which is a very sensitive, inaccessible and logistically difficult terrain to administer and execute works. During the above period over nearly six years, the applicant had steered the performance of the region to a level far exceeding all the other regions of AMD under his untiring efforts. A brief account of his achievements in North Eastern Region between 1998 to 2005 is highlighted in a separate sheet.

The copy of the sheet highlighting the performance in the N.E.Region is annexed as
Annexure-III.

- 4.7. That having achieved excellent performance under most difficult, hostile and challenging conditions in the North-eastern Region, the applicant had a genuine expectation that his contributions shall be recognized and he shall be promoted to the grade of SO-H in the scale 18400 – 500 – 22400, after completion of five years in the feeder grade of SO-G w.e.f. 01.08.2003 as has been done for other scientists in the Directorate in the past.
- 4.8 That certain incentives /benefits are also admissible to officers posted to North Eastern Region on satisfactory performance of duties for the prescribed tenure as per Govt. of India, Ministry of Finance, Department of Expenditure, Office Memorandum No.20013/3/83-E.IV dated 14.12.1983, as amended from time to time. According to the provisions of the said OM dated 14.12.1983, an officer posted in the North-eastern Region and on satisfactory performance of duties for the said prescribed tenure in the North Eastern Region, shall be given due recognition in the case of eligible officers in the matter of (a) promotion in the cadre posts; (b) deputation to Central tenure posts; and (c) Courses of training abroad. In addition to the above, a specific entry shall be made in the CR of all the employees who rendered a full tenure of service in the North Eastern Region to that effect would be entitled to be considered for certain benefits/incentives amongst other the following:

- a) Promotion in cadre posts;
- b) Deputation to central tenure posts; and
- c) Courses of training abroad.

Even by serving in NER for nearly six years, the weightage in promotion which the applicant deserved were denied to him in a most discriminatory manner.

The applicant craves the leave of this Hon'ble Tribunal to direct the respondent No.1 and 2 to produce the copies of ACRs pertaining to the period November, 1998 to 28.2.2005.

A copy of the said OM dated 14.12.1983 is annexed as ANNEXURE-IV

4.9 That it is submitted that to his utter shock and disappointment, the applicant was not only denied promotion to SO-H grade w.e.f. 01.08.2003, on which he completed 5 years in the feeder grade with all other eligibility criteria but also his case was not considered for promotion even after completion of six years in the SO-G grade, while Shri A.K.Pande, the respondent No.3 junior to applicant in SO-G grade by one year has been promoted to SO-H grade w.e.f 01.08.2004 on completion of five years in SO-G grade overlooking the seniority, merit, performance and academic excellence of the applicant and more particularly considering the extra-weightage earned by the applicant for his posting in the North-eastern Region, a region which is not only geographically hostile but also an area infested and devastated by terrorist activities, for more than six years exceeding the limit of tenure of posting fixed as 2 years. Although promotion is not a right, but to be considered for promotion is a fundamental right protected by Article 14 and 16 of the Constitution of India and the same can not be denied to the applicant.

4.10. Therefore, being highly aggrieved by the denial of promotion even after completing six years in the S.O-G grade, denial of weightage in promotion for serving in NER and promotion of his junior Shri A.K.Pande to higher grade, the applicant submitted representation for consideration of his promotion to the Chairman, AEC and Secretary, DAE, Govt. of India, the respondent No.1 on 24.09.2004. By the said representation the applicant has shown and justified as to how he is entitled to get a promotion to the SO-H.

A copy of the representation dated 24.9.2004 is annexed as Annexure-V.

4.11. That ultimately the applicant have received a reply on 1.3.2005, exactly on the next day after his retirement and after a lapse of long five months and the same was communicated vide letter No. 12/6(8)/2002-I&M(AMD)/1741 dated 25.02.2005 from the office of the Chairman, AEC and Secretary DAE, Mumbai. By the said communication the applicant has been informed that the representation of the applicant was carefully examined by the respondent No.1 in consultation with the respondent No.2 and the promotion of the applicant to the S.O-H grade has not been considered on the ground that the applicant applied for outside post, during the previous one year. Apparently the promotion has been denied to the applicant solely on the ground that he applied for outside job and there has been no other ground for refusing the promotion. It is pertinent to state here that although the applicant applied for outside job that was done through proper channel and with approval of the respondents without any condition. It is also pertinent to state here that although the applicant applied for outside job through proper channel, the applicant was neither selected nor offered any such outside job at any point of time as alleged. Moreover, there is no such provision of law in existence under the Govt. of India to prohibit departmental promotion that has accrued to an officer in service. The law is well settled that such accrued right can not be taken away by even any amending rules or otherwise. In there is any such provisions in the recruitment/ promotion rules/ merit promotion scheme or circular/guidelines, such provisions of rules, scheme, circular or guidelines can stand and operate as it is ultra vires, illegal, unconstitutional and violative of the provisions of Article 14,16, 309 of the Constitution of India. The applicant has no knowledge if there is any such "merit promotion scheme" in existence and operation in the department of the respondents. The applicant craves the leave of this Hon'ble Tribunal to direct the respondents to produce the copy of such "merit promotion scheme" if any in full text. The applicant also craves the leave of this Hon'ble Tribunal to challenge the "vires" of any such "merit promotion scheme" or circular/ guidelines etc.

as illegal, unconstitutional, arbitrary and as ultra vires and beyond the scope of Article 309 of the Constitution of India.

Copy of the impugned reply letter dated 25.02.2005 is enclosed as Annexure-VI.

- 4.12. That in the above context, it is to be stated here that Planning and Management Services Group (PMSG), under I.D note from DAE, Mumbai and instruction from Director, AMD, Hyderabad, had communicated two office circulars dated February 4, 2004 and February 19, 2004 intimating availability of vacancy for the posts of "Environmental Specialist" (P-4 post under vacancy notice No.2003/608) and "Uranium Resources Specialist" (P-4 post under vacancy notice No.2004/007) available at the International Atomic Energy Agency (IAEA), Vienna, Austria.

In response to the above letters, the applicant submitted two separate applications in the prescribed format to the office of Director, AMD, Hyderabad against the above two referred vacancies. The said applications were forwarded by the Director, AMD to the Deputy Secretary, DAE, Mumbai vide AMD I.D. Note dated February 17, 2004 and March 3, 2004.

That the above applications having received in the office of the Chairman, ACE and Secretary DAE, Mumbai, were forwarded to the Counselor (AE), Indian Embassy, Vienna, Austria on March 19 and March 25, 2004 for onward submission to International Atomic Energy Commission (IAEA). After submission of the said applications, there were no further development except the fact that the Head of the Recruitment Unit, IAEA informed that no appointment will be made to fill up the vacancy of "Uranium Resource Specialist". It is made clear here that the applicant though applied for outside job, he has neither been selected nor offered appointment in such outside job and he was doing his normal duties to the satisfaction of his superiors. It is also pertinent to state here that there was no such condition precedent imposed that one who applies for outside job, he

would not be entitled to be considered for promotion in the parent department and his chance for promotion within the parent department would stand forfeited irrespective of the fact as to whether he is selected/appointed or not.

In this context it is further stated that the International Atomic Energy Agency (IAEA) was established in 1957 as an autonomous organization under the United Nations. It is the world's foremost inter-governmental forum for scientific and technical cooperation in the peaceful uses of nuclear technology. It maintains its Headquarter in Vienna, Austria and is headed by the Director General. The Department of Atomic Energy, Govt. of India is a designated member of the board of Governors of the IAEA since its inception in 1957.

- 4.14. That the applicant came to know about the vacancy position in IAEA through internal departmental circulars only and responded to the said circulars as there was no such condition attached to the circulars debarring those applying for such posts to international body in matter of promotion. Further, no such conditions were attached when the same applications were forwarded by Director, AMD to DAE, Mumbai and in turn by DAE, Mumbai to IAEA, Vienna. Therefore, the applicant was not given a reasonable opportunity of being informed/heard about the consequences so that he could have taken decision to withdraw the applications or he would have not applied for the said posts at all. There is absolutely now such law/rules to debar the applicant from his right to be considered for the promotion in Grade SO-H and therefore the non-consideration of his promotion is illegal, arbitrary, discriminatory, unreasonable and unfair in the eye of law and as such the same can not sustain in law. The respondents acted in clear violation of the Article 14, 16 and 21 of the Constitution of India, rules of natural justice while considered the case of promotion of his junior without considering the case of the applicant on certain baseless and illegal ground without any notice and or by giving him a notice or chance to defend his case.

4.15. The Govt. of India in the OM dated 14.12. 1983, which is a Presidential Office Memorandum having the force law, among other things has clearly specified service benefits in training abroad in which case the above matter shall also come under the purview of the said provision. In contrast, instead of reward the applicant has been punished for responding to the call of the respondents which had a hidden trap behind it. Thus the respondents have acted like judges of their own cause, acting against the principles of natural justice. Moreover, the applicant was not even selected or offered the said outside job assignment at all and as such it is not known as to under what provisions of law his promotion has been denied and his junior has been promoted to the SO-H Grade. In this connection the applicant respectfully submit that the promotion of the applicant is regulated by the Rules of the respondents which are statutory in nature and there can not be any promotion scheme or policy in vacuum. Such statutory rules can only be abrogated or taken away only by another such statutory rules framed by the competent rule making authority and not otherwise. The applicant has not heard or seen any such statutory rules framed so far imposing as a rider over any such promotion rules, scheme or policy as the case may. If there is any such executive order / instruction imposing such condition that an officer who applies for outside job, shall not be entitled to promotion in the department irrespective of the fact whether he has been selected and appointed in such outside job or not, such executive order / instruction can not interfere or take away the provisions of any statutory rules and the fundamental rights of the applicant to be considered for promotion. The applicant states that the law in this regard is well settled.

The applicant craves the leave of this Hon'ble Tribunal to direct the respondents produce the full text of the promotion Rules from the SO-G grade to SO-H grade and the rule, regulation, order or instruction if there are any with regard to the matter that one who applies for outside job is debarred from promotion in

the department. If such rules, order or instruction are there and the same are produced, in that case the applicant further craves the leave of this Hon'ble Tribunal to allow him to amend the present application so that he may challenge the vires of such rules, order or instruction etc. as the case may be.

4.16 That the applicant having a clear, unblemished service career at his credit to the satisfaction of the higher authorities, demanded justice which has been denied to him in a most illegal, arbitrary and discriminatory manner and in violation of rules of natural justice and fundamental right guaranteed by the Constitution of India.

4.17 That this application has been made bonafide and for the ends of justice.

5. Grounds for relief with legal provisions:

5.1 For that the respondents erred both facts and in law in not considering and denying the promotion of the applicant from the post of SO-G to SO-H grade.

5.2 For that the respondent No.1 and 2 while did not consider the case of promotion of the applicant and promoted his junior violated the provisions of the Article 14, 16 and 21 of the Constitution of India and also the rules of natural justice, legitimate expectation and administrative fairplay.

5.3 For that the non-consideration of the case of promotion of the applicant and the promotion of the respondent No.3 is illegal and derogatory to the provisions of the OM dated 14.12.1983, which has the force of law and against the principles of service jurisprudence and ration laid down by the Hon'ble Supreme Court.

- 5.4 For that there can not be any rider to the provisions of the OM dated 14.12.1983 and as such the impugned order dated 25.2.2005 can not be allowed to stand as the same is illegal and violative of those provisions.
- 5.5 For that the rules/scheme/policy relating to the promotion being Statutory in nature as provided under Article 309, such rules can not be overridden by any executive order like the impugned order dated 25.2.2005 or any such other executive order laying down conditions of service that one who applies for outside job shall not be considered for promotion to the next higher grade irrespective of the fact whether such officer is selected / appointed or not.
- 5.6 For that the applicant has a right to be considered for promotion as a matter of fundamental rights from the Grade SO-G to SO-H which been denied to him without assigning any legally valid reason.
- 5.7 For that although the service jurisprudence permits alteration / amendment / modification of existing conditions of service, but such alteration/ amendment / modification must ensure or safeguard rights or benefits already earned, acquired or accrued to the employee at a particular point of time. In the instant case the hard earned and accrued benefit and legal rights are even taken away in non-considering his right to be considered for promotion.
- 5.8 For that there can be no such provisions of law that one who applies for outside job shall not be eligible or shall not be considered for promotion in the department even if he is not selected or offered any such appointment in outside job; if there is any such law, that is liable to be struck down as unconstitutional, violative of fundamental rights, ultra vires, illegal and antithesis of service jurisprudence.

5.9 For that the impugned order dated 25.2.2005 can not sustain in law as the same has been passed in violation of the principles of natural justice, legitimate expectation and the same being unreasonable, unfair, biased and unjust.

5.10 For that the impugned order dated 25.2.2005 is untenable in law as the same has been passed in a very cryptic manner and the same is not a speaking order as required by law.

6. Details of the remedies exhausted:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules. The applicant submitted his representation detailing his all about the claims and the same has been rejected by the impugned order dated 25.2.2005.

7. Matters not previously filed or pending with any other court:

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs Sought:

In view of the facts and circumstances of the case and the provisions of law as stated in this application as mentioned in para 4 and 6 above the applicant prays for the following relief(s):-

Shailch Quamrul Hossain

- 8.1. To direct the respondent No.1 and 2 to produce the full text of the promotion rules/ scheme/policy of the SO-G grade to SO-H grade of the AMD (DME) and the rules/circular/guidelines showing the provisions that the SO-G Grade can not be considered for promotion and / or can not be promoted to SO-H Grade if such officer applies for any outside job irrespective of the fact whether such officer is selected/ offered for appointment in outside job or not for the judicial scrutiny by this Hon'ble Tribunal.
- 8.2. To direct the respondent No.1 and 2 to promote the applicant with effect from 1.8.2003, the date on which the applicant became eligible for promotion to the SO-H grade and / or with effect from 1.8.2004, the date on which his junior, the respondent No.3 has been promoted to the SO-H grade.
- 8.3. To direct the respondent No.1 and 2 to pay all such consequential benefits of promotion with retrospective effect from 1.8.2003 or from 1.8.2004 and to pay the arrear dues as entitled to including the monetary benefits.
- 8.4. To refix and recalculate the quantum of pension/gratuity and to pay the pension at such enhanced rate.
- 8.5. To pay any or all such benefits that becomes admissible and payable to the applicant from time to time and for any other such accrued /entitled relief or reliefs.
9. Interim order, if any prayed for:

Pending final decision, the applicant has not made any interim prayer at this stage of the case. However, the applicant craves the leave of this Hon'ble Tribunal to allow him to file any such application /petition if so warranted to be filed seeking interim relief(s) in the matter pending final disposal of the application.

10. APPLICATION IS FILED THROUGH THE ADVOCATE.

11. PARTICULARS OF IPO :

I.P.O. No. : 26, G 134471.
Date of issue : 28/6/05
Issued from : G.P.O.
Payable at : Guwahati

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification.....

VERIFICATION

I Dr. Shaikh Quamrul Hoda, S/O Shaikh Kalimuddin aged about 60 years, occupation Regional Director (since Retired), North Eastern Region, Atomic Minerals Directorate for Exploration and Research (AMD), Dept. of Atomic Energy, C/o Jisnu Dutta Goswami, "Kanta", Chenikuthi Hillside, Guwahati- 3 do hereby solemnly affirm and state that the statements made in the application in para 1.2, 2.4, 3.1, 4.1, 7.4, 12.4, 14.1, 15.4, 16.5, 6.7, 8 & 9 are true to my knowledge and belief, those made in para 4.2, 4.3, 4.4, 4.5, 4.6, 4.8, 4.9, 4.10, 4.11 & 4.12 being matter of records, are true to my information derived therefrom and the rest are my humble submission and legal advice. I have not suppressed any material fact of the case.

And I sign this verification on this 1st day of June, 2005 at Guwahati.

Shaikh Quamrul Hoda
Deponent

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- 2.* **M.P.Chougankar, I.M.Walling, A.H.Khan, S.Q.Hoda and V.D.Puranik** (2004) : "Preliminary Results of the Pre-operational Radiation Survey carried out in the Environs of Domiasiat, Meghalaya (India) using LT Dosimetric Techniques".
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5. **Mahendra Kumar, K; Bhattacharjee, P; Ranganath, N; Upadhyay, L.D and Hoda, S.Q.** (2003) : "Uranium Mineralisation in the Lower Mahadek Sandstones of Laitduh area, East Khasi Hills District, Meghalaya" (Approved for publication in JOAMS).
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8. **Hoda, S.Q.** (2003) : "Uranium from Rocks to Reactors : A Simplified Account". National Seminar on Environmental and Sociological Implications of Minerals & Oil Exploration in NE-India. June 5 – 6, Shillong.
9. **Hoda, S.Q. and Lyngdoh, C.F** (2002) : "Facts and Myths about Radiation". Science Column, The Meghalaya Guardian, 3rd October, 2002.
10. **Hoda, S.Q.** (2002) : "Uranium Exploration in the Proterozoic Shillong Basin of Meghalaya and Assam: Prospects and Constraints". Workshop on Geophysical Techniques for Exploration of Concealed Uranium Deposits. 28-29 August, Hyderabad.
11. **Das, B; Hoda, S.Q. and Ansari, I.M** (2001) : "Characterisation and Beneficiation as studies of the Titaniferous Hematite Deposit of Samchampi Complex, Mikir Hills, Assam, India". International Mineral Processing Technology, 16-17 February, Hyderabad.
12. **Hoda, S.Q; Vishwa Mohan, K and Sinha R.P.** (2001) : "Niobium in the Soils of Samchampi Carbonatite Complex, Mikir Hills, Assam; Characterisation and Possible Recovery Processes'. International Seminar on Mineral Processing Technology; 15-17 February, Hyderabad.
13. **Kak, S.N and Hoda, S.Q.** (2000) : "Radiological and Environmental Safety Aspects of Uranium Exploration, Mining and Processing in India with special reference to Domiasiat Uranium Deposit, Meghalaya". Institute of Engineers (India) Magazine, Shillong Chapter, Meghalaya.
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Certified to be true Copy

Bibhash Pathak

Advocate

15. **Hoda, S.Q.** and Raghav Saran (1999) : "Waste Management in Nuclear Industry, An Overview". National Conference in Pollution, Man and Environment, Shillong College Management, June 15-16, Shillong.
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23. Krishnan S., Chandrasekharan S., Anil Kumar V., Rajagopal N. and **Hoda S.Q.** (1994) : "Delineation of Heavy Mineral Provinces in the Beach Placers and Inland Terisands of Tamil Nadu". Journal of Atomic Mineral Science, Vol.2, pp.57 – 71.
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25. Ramesh Babu P.V., **Hoda S.Q.,** Parthasarathy T.N. and Ravi Kaul (1990) : "REE Distribution and its relation to the evolution of Paliyam granite in Bastar District, Madhya Pradesh, India". 2nd Indo-U.S.S.R. Symposium on Rare Earth Materials Research, November 5 – 7, Trivandrum (India).
26. Rai S.D., **Hoda S.Q.** and Parthasarathy T.N. (1990) : "Xenotime Bearing Radioactive Alluvial Placers of Deo River, Gumla District, Bihar". 2nd Indo-U.S.S.R. Symposium on Rare Earth Materials Research, November 5 – 7, Trivandrum (India).

**Highlights of some significant achievements since joining AMD
(1971 to 1998) before being transferred to North Eastern Region, Shillong**

- Discovery of first pegmatite-hosted paleo-channel type colluvial & alluvial Niobium-Tantalum deposit at Neropahari and Goriadih, Hazenbagh district (Jharkhand) which produced nearly 10 tonnes of the mineral.
- The first beryllium deposit in homogeneous pegmatites in Kulukera area, Gumla district (Jharkhand) with a resource of nearly 200 tonnes of beryl.
- The second yttrium deposit in India in riverine placer of Deo river in Gumla district (Jharkhand), which later went into departmental production.
- Reporting for the first time a 8km long belt of radioactive arkosic sandstone in Jakaram, Pakhal basin, Warangal district (A.P).
- Reporting for the first time anomalous concentration of yttrium over large extent in the owk phosphorite, Kurnool district (A.P).
- Associated with the evaluation of polymetallic tin-tantalum deposit in pegmatites of Bastar district (Jharkhand).
- Associated with the development of process flow sheets for beneficiation of columbite-tantalite and xenotime from ores and production in mobile pilot plant scale.
- Characterisation, processing and optimisation of process flow sheets for extraction of uranium from ores of Jajawal mine, Sarguja district (M.P) as part of M.Tech thesis.
- Locating and evaluation of shoreline garnet rich sand deposits over 10km long Ovari-Navaladi coast, Tinneveli district (Tamil Nadu) which is presently exported, earning valuable foreign exchange.
- A large tonnage of ilmenite-rich eolian sand deposits in parts of Tamil Nadu (Ovari) and Kerala (Vikkalur).
- Re-evaluation of Nindakara, Chavara (Kerala) and Vikkalur, Midalam mining blocks (Tamil Nadu) of IRE Ltd., for immediate exploitation.
- Evaluation of the first and only carbonatite hosted multi-metal niobium-yttrium-uranium-iron and phosphate deposits in Samchampi Complex, Karbi-Anglong district (Assam) with reserves of nearly 12,000 te Nb, 1,800 te Y, 4,300 te U_3O_8 contained in 15 million te of high grade phosphatic ore and nearly 300 million te of iron ore with 0.1% Nb and 3% TiO_2 . This also formed my Ph.D Thesis.
- Planning and coordinating the exploratory drilling programme of the Directorate for five years (1993 – 1998) with 48 rigs and around 35,000m of annual target covering seven regions.
- Streamlining material procurement process, enforcing quality assurance and performance evaluation in drill bits, casings, rods, etc.
- Overseeing successful execution of earthquake related NGRI-DST drilling project at Khilari (Maharashtra), BARC sponsored repository drilling project at Kalpakam and NPCIL sponsored drilling in engineered RCC structure in reactor building at Kaiga (Karnataka).

Certified to be true Copy.

Date :

Bibhash Pathak

Advocate

Dr. S.Q.Hoda

Highlights of some significant achievements of last six years (1998 to 2004)

in the Northeastern Region, Shillong

- Proving nearly 2020 tonnes of uranium oxide from Wahkyn area in Meghalaya accounting for 32% of the total reserves proved in AMD during that period.
- Discovery of uranium mineralisation for the first time in Balpakhrum plateau, South Garo Hills, Meghalaya in a most difficult terrain.
- Developing geologically several thrust areas at Umthallene, Laitduh, Phlangsynnei, Rangsookham in Mahadek basin, Meghalaya warranting sub-surface exploration by drilling.
- Successfully executing 8000m of contract drilling at Laitduh and Phlangsynnei in Meghalaya under constant threats from militants and NGO's, recently in 2004, which was once abandoned by AMD under similar situation.
- Expanding AMD's activities into Assam, Arunachal Pradesh, Garo Hills and now in Mizoram, which was confined to Meghalaya only, at the time of my joining NER in 1998.
- Providing logistic and infrastructural supports in setting-up of VSAT-ANUNET, Indian Environmental Radiation Monitoring Network (IERMON), Emergency Response System (ERS) and Seismic Station in AMD Complex in collaboration with DAE/BARC, Mumbai.
- Initiating and organising baseline radiological surveys in collaboration with Environmental Assessment Division, BARC, Mumbai around Domiasiat, Wahkyn and other thrust areas in Meghalaya.
- Logistic and technical supports to the ongoing DST-DAE-NEHU Project on "Baseline Environmental Studies of Meghalaya with special reference to Domiasiat Uranium Deposit" as the active local member of the monitoring committee, representing DAE.
- Organising awareness campaign through seminars, public debate, print media in favour of Domiasiat uranium mining project in Meghalaya in collaboration with local NGO, UCIL, BARC & DAE.
- Guiding and supervising in the preparation of STATUS REPORTS on uranium investigation in Wahkyn, Mahadek basin (Meghalaya), Arunachal Pradesh and Proterozoic Shillong Basin.

Certified to be true Copy.

Bibhash Pathak
Advocate

APPENDIX - 9

INCENTIVES FOR SERVING IN REMOTE AREAS

[G.I., M.F., O.M. No. 20014/3/83-E, IV, dated the 14th December, 1983, read with O.M. No. 20014/3/83-E, IV, dated the 30th March, 1984, 27th July, 1984, G.I., M.F., U.O. No. 3943-E, IV/84, dated the 17th October, 1984, O.M. No. F. 20014/3/83-E, IV, dated the 31st January, 1985, 25th September, 1985, U.O. No. 824-E, IV/86, dated the 1st April, 1986, O.M. No. 20014/3/83-E, IV, dated the 29th October, 1986, O.M. No. 20014/3/83-E, IV/E, II (B), dated the 11th May, 1987, 28th July, 1987, 15th July, 1988 and O.M. No. F. 20014/16/86-E, IV/E, II (B), dated the 1st December, 1988 and O.M. No. 11 (2)/97-E, II (B), dated the 22nd July, 1998.]

I

Allowances and facilities admissible to various categories of civilian Central Government employees serving in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram, Andaman and Nicobar Islands and Lakshadweep Islands. These orders also apply *mutatis mutandis* to officers posted to N-E Council, when they are stationed in the N-E Region and to the civilian Central Government employees including officers of All India Services posted to Sikkim.

(i) Tenure of posting/deputation:

There will be a fixed tenure of posting 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc., in excess of 15 days per year will be excluded in counting the tenure period $\frac{2}{3}$ rd years. Officers, on completion of the fixed tenure of service mentioned above may be considered for posting to a station of their choice as far as possible.

The period of deputation of the Central Government employees to the States/Union Territories of the North-Eastern Region, will generally be for 3 years which can be extended in exceptional cases in exigencies of public service as well as when the employee concerned is prepared to stay longer. The admissible deputation allowance will also continue to be paid during the period of deputation so extended.

(ii) Weightage for Central deputation/training abroad and special mention in Confidential Reports:

Satisfactory performance of duties for the prescribed tenure in the North-East shall be given due recognition in the case of eligible officers in the matter of—

- (a) promotion in cadre posts;
- (b) deputation to Central tenure posts; and
- (c) courses of training abroad.

Certified to be true Copy,

Bibhesh Parthak
Advocate

The general requirement of at least three years service in a cadre post between two Central tenure deputations may also be relaxed to two years in deserving cases of meritorious service in the North-East.

A specific entry shall be made in the CR of all employees who rendered a full tenure of service in the North-Eastern Region to that effect.

Cadre authorities are advised to give due weightage for satisfactory performance of duties for the prescribed tenure in the North-East in the matter of promotion in the cadre posts, deputation to Central tenure post and courses of training abroad.

(iii) Special (Duty) Allowance:

Central Government civilian employees who have All India transfer liability will be granted Special (Duty) Allowance at the rate of $12\frac{1}{2}\%$ of basic pay on posting to any station in the North-Eastern Region. Special (Duty) Allowance will be in addition to any special pay and/or deputation (duty) allowance already being drawn without any ceiling on its quantum. The condition that the aggregate of the Special (Duty) Allowance *plus* Special Pay/Deputation (Duty) Allowance, if any, will not exceed Rs. 1,000 per month shall also be dispensed with from 1-8-1997. Special Allowances like Special Compensatory (Remote Locality) Allowance, Construction Allowance and Project Allowance will be drawn separately.

The Central Government civilian employees who are members of Scheduled Tribes and are otherwise eligible for the grant of Special (Duty) Allowance under this para. and are exempted from payment of Income Tax under the Income Tax Act will also draw Special (Duty) Allowance.

NOTE 1.— Special duty allowance will not be admissible during periods of leave/training beyond 15 days at a time and beyond 30 days in a year. The allowance is also not admissible during suspension and joining time.

NOTE 2.— Central Government civilian employees, having 'All India Transfer Liability' on their posting to Andaman & Nicobar Islands and Lakshadweep Islands are, with effect from 24th May, 1982, granted 'Island Special Allowance' in lieu of 'Special (Duty) Allowance'. See Orders in Section V of this Appendix.

(iv) Special Compensatory Allowance:

The recommendations of the Fifth Pay Commission have been accepted by the Government and Special Compensatory Allowance at the revised rates have been made effective from 1-8-1997.

For orders regarding current rates of Special Compensatory allowance—See Part V of this Compilation - HRA and CCA

(v) Travelling Allowance on first appointment:

In relaxation of the present rules (SR 105) that travelling allowance is not admissible for journeys undertaken in connection with initial appointment, in

CONFIDENTIAL

Government of India
Department of Atomic Energy
Atomic Minerals Directorate for Exploration & Research
North Eastern Region

AMD Complex,
Nongmynsong,
P.O. Assam Rifles,
Shillong-793 011,
Meghalaya.

To

The Hon'ble Chairman,
Atomic Energy Commission & Secretary
Department of Atomic Energy, Govt. of India,
Chatrapati Shivaji Maharaj Marg,
Mumbai-400 001

Dated : 24.09.2004

Through :

The Director,
Atomic Minerals Directorate for
Exploration & Research,
Dept. of Atomic Energy, AMD Complex,
Begumpet, Hyderabad - 500 016.

Sub : Redressal of grievances for denial of promotion from Scientific Officer-G to Scientific Officer-H and request for reviewing the same; regarding.

Hon'ble Chairman Sir,

With due respect and with reference to the subject cited above, I would like to place this representation before you for favour of your kind review and redressal thereof, amongst others, on the following grounds:

(1) That the undersigned with nearly 33 years of professional field and research experience behind in uranium exploration and related activities with appropriate M.Sc degree in Applied Geology, M.Tech in Mineral Engineering, P.G.Diploma in Environmental Sciences and Ph.D in Geology has been serving the Atomic Minerals Directorate for exploration and Research (AMD) with utmost devotion and sincerity since 1971. A brief account of my personal history is annexed hereto as Annex-A.

(2) That I have a modest publication of twenty six scientific papers in diverse topics and of which sixteen have been contributed since my last promotion in 1998 to the grade SO/G. The list of such publications and areas of research are indicated in the Annex-B, annexed hereto.

(3) That over these years, I carried out survey and exploration in diverse geological environments of the country and have made large contributions towards the augmentation of raw material resources such as uranium, thorium & beach placer minerals, niobium, tantalum, beryllium, yttrium and geo-drilling required for the nuclear power programme of the country. The most significant among these are summarised in the Annex-C; annexed hereto.

(4) That upon my joining North Eastern Region (NER), Shillong in November 1998 as **Deputy Regional Director** and subsequently taking over as **Regional Director** in April, 2001, which happens to be a most difficult, sensitive and challenging region to administer logistically and politically, I humbly wish to highlight some of the most significant contributions of the region achieved under my planning, guidance and leadership over the last six years.

- Proving nearly 2020 tonnes of uranium oxide from Wakhyn area in Meghalaya accounting for 32% of the total reserves proved in AMD during that period.
- Discovery of uranium mineralisation for the first time in Balpakhrum plateau, South Garo Hills, Meghalaya in a most difficult terrain.
- Developing geologically several thrust areas at Umthalene, Laitduh, Phlangsynnei, Rangsookham in Mahadek basin, Meghalaya warranting sub-surface exploration by drilling.
- Successfully executing 8000m of contract drilling at Laitduh and Phlangsynnei in Meghalaya under constant threats from militants and NGO's, recently in 2004, which was once abandoned by AMD under similar situation.
- Expanding AMD's activities into Assam, Arunachal Pradesh, Garo Hills and now in Mizoram, which was confined to Meghalaya only, at the time of my joining NER in 1998.
- Providing logistic and infrastructural supports in setting-up of VSAT-ANUNET, Indian Environmental Radiation Monitoring Network (IERMON), Emergency Response System

(ERS) and Seismic Station in AMD Complex in collaboration with DAE/BARC, Mumbai.

- Initiating and organising baseline radiological surveys in collaboration with Environmental Assessment Division, BARC, Mumbai around Domiasiat, Wahkyn and other thrust areas in Meghalaya.
- Logistic and technical supports to the ongoing DST-DAE-NEHU Project on "Baseline Environmental Studies of Meghalaya with special reference to Domiasiat Uranium Deposit" as the active local member of the monitoring committee, representing DAE.
- Organising awareness campaign through seminars, public debate, print media in favour of Domiasiat uranium mining project in Meghalaya in collaboration with local NGO, UCIL, BARC & DAE.
- Guiding and supervising in the preparation of STATUS REPORTS on uranium investigation in Wahkyn, Mahadek basin (Meghalaya), Arunachal Pradesh and Proterozoic Shillong Basin.

(5) That having achieved more than the desired results compared to any of the six regions of AMD under most challenging situation, I had a genuine expectation that my contributions shall be recognised and I will be promoted to Scientific Officer-H at least at the fag end of my dedicated service career, when I am going to retire from active service in February, 2005 on completion of 60 years. It is extremely painful and demoralising to find that I have been denied the promotion even after completing six years in the grade of Scientific Officer-G in August 2004, that too in the most hazardous and difficult areas of North Eastern States, whereas my colleague Shri A.K.Pande, who was junior to me in SO/G grade has been promoted to SO/H grade with effect from August 2004. It is pertinent to mention here that Shri Pande, took nine years time to be promoted to SO/G grade in 1999 from SO/F grade, while I was promoted to SO/G grade in seven years in the year 1998. But surprisingly and without any visible reason, the said Shri Pande has been considered and promoted to SO/H grade by superseding me, overlooking my seniority, merit, academic excellence and performance. Therefore, I sincerely belief that I have not been given justice and have been deprived of my accrued right of promotion in a very discriminatory manner.

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(6) That during the period 1998 to till date, I served under three Directors of AMD viz. S/Shri D.C.Banerjee, R.K.Gupta (both retired) and R.M.Sinha, present director. It is a fact that some of these persons in power and authority could not accept my straightforwardness and honest opinion in right spirit. I have reasons to believe that my annual confidential reports (ACR) have been either tampered or tainted with ulterior motives without any basis to a level deliberately, so as to deny me the promotion by not fulfilling the minimum requirements of grading in the ACR during the last five/six years. From the outcome of the promotion results for 2004, I have also reasons to believe that my merit in service has been wrongly assessed by any of these directors, which is questionable, subject to scrutiny and therefore requires review and reassessment. In all fairness, considering my contributions, achievements and merit, I should have been promoted when I completed five years in SO/G grade in August 2003 itself, as has been done for others on completion of five years in SO/G grade, including Shri A.K.Pande.

(7) That it is learnt, Shri A.K.Pande did not submit his Annual Confidential Reports (ACR) consecutively for two / or three years during the Directorship of Shri R.K.Gupta (2001 – 2003) and the same were submitted together to the next director, after his retirement. If this has been done with some ulterior motive to gain benefit in matter of promotion, it becomes relevant to this case and therefore, warrants scrutiny.

(8) That certain incentives and service benefits are admissible to offices transferred to North Eastern Region as per G.O.I. O.M No.20014/3/83-E IV dated 14.12.1983. These are:

- (i) Posting to a station of choice after completion of fixed tenure; which is two years in my case and
- (ii) Weightage in matter of promotion, besides few other benefits. A copy of the O.M dated 14.12.1983 is annexed as Annex-D hereto.

It is a pity to note that AMD authority did not consider my request for transfer to Hyderabad when the post of Regional Director, South Central Region at Hyderabad fell vacant in February 2003 and again in June 2004, violating the above tenure rule as enunciated in the said OM dated 14.12.1983. This clearly point towards partisan and biased attitude of the authority. A copy of the letter requesting for transfer dated 27.01.2003 is enclosed as Annex-E hereto.

(9) That by serving in NER for nearly six years, I also deserve weightage as fixed by the OM dated 14.12.1983 in the matter of promotion. I do not know as to whether this provision of benefit has been considered or not in selection to the SO/H grade. If required, the matter may be referred to D.O.P.T for clarification.

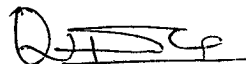
(10) That every official in his service career has a legitimate expectation of getting recognition through promotion for which he has dedicated his whole life and energy. The Cabinet Secretary to the Govt. of India vide D.O. letter No.502/2/3/04-CAV dated 22.07.2004 has brought out the policy decision of the Govt. of India to review the cases of genuine grievances in matter of foregoing promotion despite merit through a 'Standing Committee' consisting of the Cabinet Secretary, the Principal Secretary to the Prime Minister and Secretary, DOPT. I feel that my case of non-consideration of promotion and also grievances related there to, falls within the scope of the said D.O letter and within the scope of review by the Standing Committee. Therefore, I earnestly request the Secretary, DOPT to place my case before the said high power standing committee for kind review and redressal. Incidentally, Atomic Minerals Directorate for Exploration & Research (AMD) a constituent unit under the Department of Atomic Energy is placed directly under the Hon'ble Prime Minister himself. A copy of the said D.O. letter dated 22.07.2004 is annexed as Annuxure-F, hereto.

Therefore, I humbly request your kindness for the following:

- (i) To call for the relevant documents and review / re-evaluate my annual confidential reports (ACR) in totality and without any bias, beginning from Scientific Officer-F grade (1991) to Scientific Officer-G grade (2003) along with Shri A.K.Pande (1991 – 2003) and have a comparative assessment of qualification, scientific publication, achievements and responsibility of both of us.
- (ii) To examine the service benefits in the matter of promotion for serving in NER as per D.O.P.T Office Memo dated 14.12.1983.
- (iii) To review the matter by the Standing Committee and redress my grievances.
- (iv) And after review and re-assessment as stated above, your honour would also be pleased to pass a speaking / reasoned order in the matter as per the guidelines and for

which act I shall remain ever grateful to you. In this connection, a copy of the D.O. letter dated 03.05.2003 addressed to the Chairman, AEC from Secretary, Ministry of Personnel, Public Grievances and Pension, Govt. of India is annexed as Annexure-G hereto.

Yours faithfully,

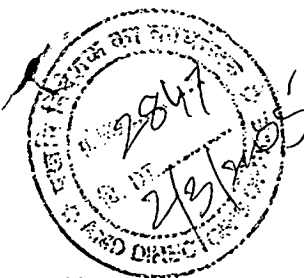


Dated : 24th Sept., 2004

Dr. Shaikh Quamrul Hoda
Regional Director
Atomic Minerals Directorate
for Exploration & Research,
Department of Atomic Energy P.O. Assam Rifles
Shillong, Meghalaya

Also copy submitted to:

Hon'ble Chairman, National Commission for Minorities, 5th Floor Lok-nayak Bhavan, Khan Market, New Delhi-110092 - with a humble prayer to take up the matter as per law for dispensation of justice, necessary scrutiny of the matter and pass such order as the Hon'ble Commission may feel deem fit and proper.



Government of India
Department of Atomic Energy

Anushakti Bhavan,
C.S.M. Marg,
Mumbai 400 001.

No. 12/6(8)/2002-I&M(AMD)/1741

February 25 2005

Sub : Redressal of grievances for denial of promotion from SO/G to the grade of SO/H and request for reviewing the same - representation from Dr. S.Q. Hoda.

Reference is invited to the letter dated 24.9.2004 from Dr. S.Q. Hoda, Regional Director, NER, AMD, Shillong addressed to the Hon'ble Chairman, AEC and Secretary, DAE through Director, AMD on the captioned subject.

2. The grievances raised by Dr. Hoda have been carefully examined in the department in consultation with Director, AMD especially with regard to his contention of non-promotion to the next grade of SO/H w.e.f. 1.8.2004 and non-transfer to the South Central Region.

3. Shri Hoda joined AMD on 3.11.1971 in the grade of SO/SC and has been promoted from time to time under the merit promotion scheme and is presently in the grade of SO/G w.e.f. 10.9.98. His case for promotion to grade SO/H w.e.f. 1.8.2004 could not be considered, as he had applied for outside posts during the previous one year.

4. As regards his request dated 27.1.2003 for posting to SCR, Hyderabad the case was considered consequent on retirement of RD (SCR) on 30.6.2004. However, the posting had to be made keeping in view of exigencies of various requirements. As such his request could not be accommodated at that point of time.

5. This issues with the approval of Chairman, AEC and Secretary, DAE.

Mudri
25/2/05
(G.M. Nair)
Under Secretary (I&M)

✓ Dr. S.Q. Hoda,
Regional Director,
AMD (NER),
Shillong.

(Through Director, AMD, Hyderabad)

To : Dr. S.Q. Hoda, SO/G (Ex Regional Director)
→ through the Regional Director, NER

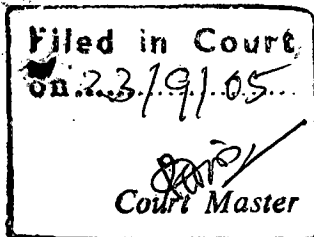
By Speed Post

AM Gaithe
23/3/2005

Forwarded to Dr. S.Q. Hoda.

11.3.05

certified to be true Copy.
Bibhashi Pathak
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

ORIGINAL APPLICATION NO.172 OF 2005

Filed by
The Respondents through
Alsha Das
Addl CISE
23/9/05

Dr. Shaikh Quamrul Hoda,
S/o Shaikh Kalimuddin, aged about 60 years,
Scientific Officer 'G' and Regional Director (Retired)
North Eastern Region,
Atomic Minerals Directorate
for Exploration & Research (AMD),
Department of Atomic Energy,
Shillong, Meghalaya,
C/o Jishnu Dulta Goswami,
"Kanta", Chenikuthi Hillside,
Guwahati - 781 003 (Assam).

..... APPLICANT

VERSUS

1. Union of India,
Represented by the Chairman,
Atomic Energy Commission and
Secretary, Government of India,
Department of Atomic Energy,
C.S.M. Marg, Anushakti Bhavan,
Mumbai - 400 039.
2. The Director,
Atomic Minerals Directorate
for Exploration & Research (AMD),
AMD Complex, 1-10-153-156,
Begumpet, Hyderabad - 500 016.
3. Shri A.K. Pande,
Regional Director,
Western Region,
52/496 AMD Flats,
Sector-5, Pratap Nagar,
Jaipur - 302 030 (Rajasthan).

..... RESPONDENTS

AFFIDAVIT-IN-REPLY FILED ON BEHALF OF THE RESPONDENTS

I, K. Umamaheswar, son of late K.Ramanna resident of Type V Quarter No.1,
AMD, Residential Complex, Nongmynsong, P.O.Assam Rifles, Shillong, presently
holding the post of the Regional Director, Atomic Minerals Directorate for Exploration &
Research, North Eastern Region, Shillong, being duly authorised and competent to sign
this Affidavit-in-Reply on behalf of the Respondents, do hereby solemnly affirm and
state as follows:

1. That a copy of the O.A.No.172/2005 has been served on me. I have gone
through the same and understood the contents thereof. ***I am accordingly conversant***

with the facts and circumstances of the case and able to depose to the same. I am filing this counter affidavit on behalf of the respondents for the limited purpose of opposing the admission of the application while reserving the right to file a more detailed reply if considered necessary. Save as expressly admitted herein and save what are matters of record, each and every allegation and contention made in the said Application shall be deemed to have been specifically and emphatically denied and disputed herewith.

2. That the statements made in the O.A., which are not specifically admitted, are hereby denied.

3. That **at the outset it is submitted** that the instant O.A., is not maintainable as the same does not come within the jurisdiction of the Hon'ble Central Administrative Tribunal, Guwahati Bench, as the Applicant is permanent resident of Hyderabad after retirement on attaining the age of superannuation w.e.f. 28.02.2005 and he is drawing his pension from the State Bank of India, Public School Branch, Begumpet, Hyderabad w.e.f. 1.3.2005 (Annexure R/1).

BRIEF HISTORY OF THE CASE :

4. That before traversing the statements made in various paragraphs of the O.A., a brief history of the case is given below for better understanding of the facts of the case:

4.1 That the Applicant was appointed as Scientific Officer SC in the erstwhile Atomic Minerals Division (AMD) of the Department of Atomic Energy [the Atomic Minerals Division has since been re-named as Atomic Minerals Directorate for Exploration & Research (the acronym AMD continues)] on 03.11.1971 and subsequently promoted to the post of Scientific Officer / SD w.e.f. 01.03.1979 and then to the post of Scientific Officer / SE w.e.f. 1.2.1985 and thereafter to the post of Scientific Officer SF w.e.f. 01.08.1991, which was subsequently changed (re-designated) to Scientific Officer / F w.e.f. 1.1.1996 on implementation of V Central Pay Commission. Subsequently he was promoted to the post of Scientific Officer / G w.e.f. 10.09.1998. This Department follows

◀ "Merit Promotion Scheme" in respect of promotions of Scientific & Technical personnel.

The main feature of this Scheme is that the promotions are not "vacancy" based and it is far more advantageous as compared to promotions of other Central Government employees who are (excluding those in Scientific Departments) governed by vacancy based promotions.

4.2 That the Applicant being a scientific personnel is governed by the said "Merit Promotion Scheme" and accordingly he has been getting promotions from time to time as per the said **Merit Promotion Scheme** right from his entry into this Department till his retirement. The salient features of this Scheme are indicated at para 4.3 below for kind perusal. The Applicant was posted to **North Eastern Region**, Shillong during November 1998 and he has been functioning as Regional Director, North Eastern Region w.e.f. 09.04.2001. The Applicant retired from service on attaining the age of superannuation on 28.02.2005.

4.3 That it is submitted that all the promotions in respect of the scientific and technical personnel of the Department are effected in accordance with the guidelines laid down in the 'Merit Promotion Scheme'. This scheme is not vacancy based and the salient features of the 'Merit Promotion Scheme' are detailed below.

MERIT PROMOTION SCHEME

// 4.3 (a) **Dr. H.J. Bhabha, the founder of the Indian Nuclear Programme, had foreseen, more than four decades ago, the need to identify and nurture the scientific and technological capabilities of the young scientists and engineers in this country in order to be self-reliant and ensure that when the need arises to implement the national programme connected with atomic energy, it would not be necessary to look for competent people elsewhere, but it would be possible to find them ready within the country. This concept of self-reliance was the foundation of Dr. Bhabha's architecture for constructing the edifice of the Indian national nuclear programme, an achievement of which the country is justifiably proud of. Any policy for growth of science in the country is organically linked to**

the promotion policy that would govern the growth of scientific personnel. Realising this, Dr. Bhabha had formulated the 'Merit Promotion Scheme' to apply to the Scientific and Technical personnel of the Department. This scheme, time tested and found to have been appropriate by more than four decades of experience, has been by and large adopted in the succeeding years by other agencies of the Government of India responsible for pursuing research and development in frontier areas of science and technology, like Space and Defence oriented institutions. The outstanding feature of this scheme, which makes it basically different from the concept of vacancy based promotion in other departments of the Government, relates to creating positions at higher levels for the growth of an individual through an upgradation system rather than selecting a person by making him compete with other individuals to rise and occupy an available/vacant higher position. DUE TO THE AFORESAID BASIC DIFFERENCE, ANY GRIEVANCE OF AN INDIVIDUAL GOVERNED BY THE SCHEME CAN ONLY BE ON THE BASIS THAT WORK OF A SCIENTIFIC/TECHNOLOGICAL SIGNIFICANCE DONE BY THE INDIVIDUAL, HAS BEEN IGNORED OR OVERLOOKED IN THE PROCESS OF ASSESSING THE MERIT OF THAT INDIVIDUAL.

4.3 (b) That having pointed out the basic difference between the 'Merit Promotion Scheme' of the Department of Atomic Energy and the vacancy-based promotion system, applicable elsewhere in the Government of India, it must be clarified that there are guidelines under the 'Merit Promotion Scheme' to regulate and guide the process of assessment of performance of the individuals. According to these guidelines a screening committee takes into account besides the number of years that an individual has spent in his present grade, the relevance and excellence of the work carried out by the individual and reported by him in the self-assessment section of the Annual Confidential Report and those who get screened are further assessed for by a Selection Committee. It is pertinent to mention here that the cases are decided mainly on the basis of individuals' merit in the relevant areas and overall contribution of the individual in achieving the goal of the

organization. *It would be seen that seniority in a given grade, by mere residency in the same grade, does not by itself place the individual ahead of his peers in the same grade and make him eligible for consideration for promotion to the next higher grade. The lower the level of grading of an individual in the confidential report, the longer he/she serves in that grade before being eligible for consideration to the next higher grade.*

4.3 (c) Thus, it would be apparent that the purpose of this type of assessment is to provide for rapid growth of people with higher competence and performance, while at the same time ensuring a regulated advancement for those who are not endowed with the highest levels of competence, performance and/or motivation.

4.3(d) That in addition to the above, a policy decision has been taken vide letter No.1/(2)/68-O&M/325, dated 28/29.05.1971(**Annexure R/2**), as amended by DAE OM No. 3/1(23)/80-Adm.II dated 18.4.1980(**Annexure R/3**) and No. 5/63/85-R dated 30.12.85 (**Annexure R/4**) stipulating conditions while forwarding of applications for appointment in organizations outside the Department of Atomic Energy (DAE), wherein for Scientific & Technical Staff at para 1(b) of the letter, it has been mentioned that –

"(b) The persons whose applications are forwarded to outside organizations will become ineligible for grant of additional increments / promotion for a period of one year from the date of application. This condition does not apply in the case of applicants for posts in response to any circular or advertisement either within BARC or to units under the administrative control of the DAE."

The said condition is still in force.

5. That having discussed about the salient features of the Merit Promotion Scheme as above, the reasons for non-promotion of Dr. Hoda w.e.f. 1.8.2003 & 1.8.2004 are detailed below:

5.1 That the cases of all officers in the grade of SO-G on completion of 5 years of service in that grade are perused taking into account various factors including the CR gradings, number of publications, special achievement and the individual's overall contributions, to the organization and only those who are found deserving promotion to the post of Scientific Officer-H are recommended. Accordingly earlier, the case of the Applicant alongwith other Scientific Officers / G who were in the zone of consideration for promotion to the post of Scientific Officer / H with effect from 1st August, 2003 was considered by the Competent Authority and he was not recommended.

5.2 That it is pertinent to note here that during the crucial period (2004) when the Applicant's case could be considered for promotion from SO-G to SO-H, the Applicant applied for employment outside DAE units and his application was forwarded, thus rendering himself ineligible for consideration with effect from 1.8.2004, ***on the sole condition indicated in para 4.3 (d) above. alone.*** The Applicant applied for the following posts in response to Vacancy Notices issued by International Atomic Energy Agency as detailed below:

S.No.	IAEA vacancy Notice No.	For the post of	Period
1.	2003/608	Environmental Assessment Specialist (P-4) in Dischargeable Waste Unit, Waste Safety Section, Division of Radiation and Waste Safety, Department of Nuclear Safety and Security, Vienna.	February 2004
2.	2004/007	Uranium Resources Specialist (P-4), IAEA	March 2004

It may be reiterated that in the year 2004 also the Screening Committee and the Selection Committee had perused the records of all those who were within the zone of consideration (viz. those who had completed 5 years of service in the grade G) including that of Dr. Hoda and the Committees had found him not eligible for promotion to grade H.

5.2.1 That aggrieved with denial of the promotion from the post of SO / G to SO / H, the Applicant made a representation dated 24.09.2004, to the Respondent No.1, i.e., Secretary, DAE, Mumbai who is the ex-officio Chairman of Atomic Energy Commission. The representation of the Applicant was carefully examined in the department in consultation with Director, AMD, especially with regard to his contention of non-promotion to the next grade of SO/ H w.e.f. 1.8.2004 and with the approval of Chairman, AEC and Secretary DAE. ***In response to the said representation vide letter No.12/6(8)/2002-I&M(AMD)/1741, dated 25.2.2005 the Applicant Dr.Hoda was informed suitably about his ineligibility for promotion to the grade of SO/H w.e.f. 1.8.2004, as he had applied for outside posts during that year.*** It is pertinent to reiterate here that for promotion from SO-G to SO-H grade, interviews are not held and the cases are decided mainly on the basis of overall contribution of the individual in achieving the goal of the organization ***and the CR gradings obtained by the officials.*** ***For the objective selection of the deserving candidates a grade list of all officers in the feeder grade is forwarded to be put up to the Committee for screening.*** ***Since the promotion is non-vacancy based all the officials in each grade falling in the zone of consideration are included in the service list put up to the Screening Committee. This list is prepared also taking into account the date of appointment to the appropriate grade. The Committee reviews all cases based on number of years spent in the present grade, relevance and excellence of work carried out by the individual, impact of the work on programmes of the organisation, leadership quality, assessments in the confidential reports etc. In the circumstances the seniority in a given grade, by mere residency in the same grade, does not by itself place the individual ahead of his peers in the same grade and make him eligible for consideration for promotion to the next higher grade as per the Merit Promotion Scheme. The lower the level of grading of an individual in the confidential report, the longer he/ she serves in that grade before being eligible for consideration to the next higher grade.***

PARAWISE REPLY

6. That parawise reply to the contentions made by the Applicant is furnished as under :

Paras 1 to 3 : That the present application is barred on the ground of jurisdiction as this case does not come within the jurisdiction of this Hon'ble Tribunal, as the Applicant is a permanent resident of Hyderabad having settled down there after his retirement on attaining the age of superannuation and he is drawing his pension from the State Bank of India, Public School Branch, Begumpet, Hyderabad w.e.f. 1.3.2005 (**Annexure R/1**). On this ground alone the present O.A. may please be dismissed in limini.

Para 4.1 to 4.3 : That with regard to the averments made in paras 4.1 to 4.3 of the application, it is stated that the contents therein are matters of record. As intimated to him vide letter No.12/6(8)/2002-I&M(AMD)/1741, dated 25.2.2005 he was ineligible for promotion to grade of SO / H.w.e.f. 1.8.2004 as he had applied for posts outside DAE during that year. Apart from this reason the Applicant was also not recommended by the Screening Committee and also was not recommended by the Selection Committee constituted for the purpose as he was not meeting the eligibility criteria for promotion to the higher grade of SO/H

Para 4.4 & 4.5: That with regard to the averments made in paras 4.4. & 4.5 of the application, it is submitted that these are based on records. Further it is submitted that, out of 26 (twenty six) publications, the Applicant was a co-author in 18 papers and his independent papers are 8 (eight) only and that too mostly on general topics.

Para 4.6: That with regard to the averments made in para 4.6 of the application, it is submitted that the arguments made in this para that "The applicant had steered the performance of the (Northeastern) Region to a level far exceeding all other regions of AMD" are not based on facts, but on the contrary, the data on the progress of drilling in the Northeastern Region (NER) since 2000-2001 Field Season clearly indicate that the

achievements in drilling as well as the percentage of drilling days has consistently been on the decline since the time Dr. Hoda assumed charge of the Regional Director.

PROGRESS OF DRILLING IN NER SINCE 2000-2001

FIELD SEASON	NO. OF RIGS	@TARGET (M)	ACHIEVEMENT (M) AND (%)	# DRILLING DAYS (%)	NON-DRILLING DAYS (%)
2000-2001	4	1750	1474 (84%)	24.93	75.07
2001-2002	4	2000	1324 (66%)	19.79	80.21
2002-2003	4	2000	1132 (57%)	16.32	83.68
2003-2004 (UPTO AUG/04)	4	1667*	688 (41%)	15.43	84.57

@ TARGET FOR OTHER AREAS – 750 M PER RIG PER FIELD SEASON

EXPECTED DRILLING DAYS – ABOVE 55%

* PROPORTIONATE TARGET UP TO AUGUST, 2004

It may also be noted from this record that targets of drilling in the NER were already reduced to 500 m., as compared to 750 m., per rig per year in other Regions of the country. It is pertinent to mention that there is a direct link between proving of uranium reserves and the progress of evaluation drilling.

Para 4.7 : That with regard to the averments made in para 4.7 of the application, it is submitted that his case for promotion to the grade of SO / H w.e.f. 1.8.2003 was ***considered by the respective Screening Committee and Selection Committee along with other eligible candidates and based on the assessment of the work and after perusal of the confidential reports of the officer, Dr. Hoda was not recommended for promotion w.e.f. 1.8.2003. //***

Para 4.8 : That with regard to the averments made in para 4.8 of the application, it is submitted that, the Office Memorandum No.20013/3/83-E.IV, dated 13.12.1983 has extended certain benefits for the personnel serving in North Eastern Region as stated by the Applicant in the said O.A. as given below :

(a) promotion in cadre posts;

(b) deputation to Central tenure posts; and

(c) courses of training abroad.

The Applicant being a Scientist in the Department of Atomic Energy and the promotions of Scientific & Technical personnel in this Department being governed by "Merit Promotion Scheme" (under which he got his promotions in this Department), the scheme which is more advantageous to the scientific & technical personnel for it is delinked to vacant posts and the above referred memorandum is not applicable in his case.

Para 4.9 : That with regard to the averments made in para 4.9 of the application, it is submitted that his case was **considered** for promotion w.e.f. 1.8.2003. **However, he was not recommended for promotion by the respective Screening Committee as well as the Selection Committee.** It is submitted that mere residency in the feeder grade is not the sole criteria for consideration for promotion to grade, Scientific Officer-H. As has been mentioned above, on completion of 5 years in the grade of SO-G, the promotion cases are considered after taking into account various factors like CR grading, relevance and technical excellence of the work done, overall contribution of the individual in achieving the goal of the organization, achievement of the individual in various aspects of exploration, etc. **As the Applicant did not meet the norms for promotion in that year he was not recommended for promotion for the said year.** The Applicant also agrees that promotion is not a right. Further, the averment that his case was not considered for promotion with effect from 1.8.2004 is **also** not based on fact **as his case was considered by the respective Screening Committee and Selection Committee as indicated ibid. He was not eligible for promotion to grade SO/H w.e.f. 1.8.2004 for the reason that he had applied for outside posts during the previous one year.** Thus it can be seen that his case was considered by the respective Screening Committee, Selection Committee and competent authority for promotion w.e.f. 1.8.2003 and 1.8.2004 but he was found ineligible for promotion w.e.f. 1.8.2003 and also 1.8.2004, as explained above. It is further submitted that the Applicant got promotion

to higher posts at varying intervals, which shows that his performance has not been consistent throughout.

Paras 4.10 to 4.14: That with regard to the averments made in paras 4.10 to 4.14 of the application, it is submitted that the Applicant had submitted a representation dated 24.9.2004 (Annexure – V to the O.A.) to the Chairman, AEC and Secretary, DAE, through Director, AMD, Hyderabad. The grievances raised by the Applicant have been carefully examined in the department in consultation with Director, AMD especially with regard to his contention of non-promotion to the next grade of SO/H w.e.f. 1.8.2004 and non-transfer to the South Central Region. *In response to the said representation vide letter No.12/6(8)/2002-I&M(AMD)/1741, dated 25.2.2005 the Applicant Dr.Hoda was informed suitably about his ineligibility for promotion to the grade of SO/H w.e.f. 1.8.2004, as he had applied for outside posts during that year.*

As submitted in the para supra, his promotion could not be considered as per the guidelines on the subject. **The said clause has been incorporated to discourage the efficient / trained scientists from going outside the Department and in order to achieve the goal / targets of the Department of Atomic Energy within the time schedule, as such condition does not apply in the case of applicants for posts in response to any circular or advertisement either within BARC or to units under the administrative control of the DAE. Even though Department of Atomic Energy, Government of India, is a designated member of the Board of Governors of the IAEA it is an international organisation and not under the administrative control of the DAE.** Hence, the guidelines issued in this regard and action taken by the Respondent's department in denying the promotion are not ultra vires, illegal, unconstitutional and violative of the provisions of Article 14, 16, 21 & 309 of the Constitution of India. In fact this condition applies for promotions to those holding lower scientific posts also. It has been upheld in a number of judgments of the Apex Court that reasonable restrictions are permissible.

As regards his contention that he was unaware of the consequences of applying for an outside post, it is submitted that the Applicant retired from service after rendering about 33 years service in this Directorate and had held various positions including that of Dy. Regional Director and Regional Director. As Regional Director and in the capacity of Head of Office the applicant was required to discharge certain Administrative responsibilities also. This includes the responsibility to process the proposals for promotion of officers and staff working under him and he was expected to be conversant with the norms for promotion including the conditions regarding ineligibility for promotion in the event of applying for outside jobs. The condition about the one year bar on promotions in case of applying for jobs outside is applicable to those holding lower posts also and during the discharge of duties of Regional Director, the Applicant is expected to know of such conditions as part of his normal duties and hence cannot plead ignorance of existence of this condition in his own case.

Para 4.15 to 4.17 : That with regard to the averments made in paras 4.15 to 4.17 of the application, it is submitted that parawise comments given to para 4.9 and paras 4.10 to 4.14 are reiterated for the sake of brevity. Since the said guidelines are in operation ever since 1971 and widely accepted by the scientific community and the prime objective is to discourage the well trained scientist from going outside the Department and for the welfare of the country and to achieve the goals of the Department, ***This scheme which was first pioneered by DAE has withstood the test of time and its success is proven by the fact that over the years several other Scientific Departments of the Government have adopted similar schemes for their S&T personnel. Thus the Merit Promotion Schemes for scientific and technical personnel in the Department of Atomic Energy has been a primary factor in the success of atomic energy programme and sustaining excellence in science and technology in the country. There are a number of judgments of the Central Administrative Tribunals of Mumbai and Hyderabad upholding the validity of the promotion cases resorted to under the Merit Promotion Schemes. In view of the above position explained the*** Hon'ble Tribunal may in the interest of justice not to allow the Applicant to challenge the rules, order or instruction, etc., in vogue and

dismiss the O.A. in limini. The documents called for by the Applicant are classified in nature and the same could be produced before this Hon'ble Tribunal, if so desired at the time of hearing.

Para 5 : That with regard to the averments made in para 5 of the application, it is stated that the Applicant who is covered under the 'Merit Promotion Scheme' got benefited with four promotions from SO/SC to SO/SD on 1.3.1979; SO/SD to SO/SE on 1.2.1985; SO/SE to SF on 1.8.1991 and SO/F to SO/G on 10.9.1998. It is once again reiterated that promotions under Merit Promotion Scheme in the Respondent Department are effected by creating the post to accommodate the officers recommended for promotion by the Selection Committee in accordance with the performance of the candidates concerned and not by virtue of mere seniority or residency in a grade for a particular length of time. The Applicant became ineligible for promotion for a period of one year, as per the guidelines issued, as he applied for the post outside the organisation, i.e., IAEA during February, 2004 & March, 2004. The said guidelines are in operation ever since 1971 and widely accepted by the scientific community and the prime moto is to discourage the well trained scientist from going outside the Department in the larger interest and welfare of the country and to achieve the goals of the Department.

Para 6 & 7 : That with regard to averments made at paras 6 & 7 of the O.A., it is submitted that these are based on records and hence no comments are offered.

Para 8 : That with regard to the statement made in para 8 and 9 of the application, the Respondents state that in view of the facts and circumstances of the case and the provisions of law, the application is not maintainable and tenable in law and therefore the same is liable to be dismissed with costs as devoid of any merit ***as the applicant's case was considered by the competent authority for promotion w.e.f. 1.8.2003 and 1.8.2004 but he was found ineligible for promotion w.e.f. 1.8.2003 and also 1.8.2004 as explained above.***

In view of the foregoing it is humbly submitted that the application may be dismissed with cost to respondents.

DEPONENT
(K. UMAMAHESWAR)
क्षेत्रीय निदेशक
Regional Director
परमाणु खनिज अन्वेषण
Atomic Minerals Directorate
एव अनुसंधान निदेशालय
For Exploration & Research
परमाणु ऊर्जा विभाग
Department of Atomic Energy
शॉलॉन्ग क्षेत्र, शिलॉन्ग-793011
Shillong-793011

VERIFICATION

I, K. Umamaheswar S/o late K. Ramanna aged about 52 years, being Regional Director, North Eastern Region, Atomic Minerals Directorate for Exploration & Research, Department of Atomic Energy, Government of India, Shillong, do hereby declare that the facts stated in the aforesaid paras 1 to 8 are true to the best of my knowledge and correct as per the information derived from the official records of the Respondents believed to be true.

Hence verified and signed here at Shillong on this the 15th day of September, 2005.

(ON BEHALF OF THE RESPONDENTS)

(K. UMAMAHESWAR)
क्षेत्रीय निदेशक

Regional Director

परमाणु खनिज अन्वेषण
Atomic Minerals Directorate
एव अनुसंधान निदेशालय
For Exploration & Research
परमाणु ऊर्जा विभाग
Department of Atomic Energy
शॉलॉन्ग क्षेत्र, शिलॉन्ग-793011
Shillong-793011

Place : Guwahati

Date : September 15, 2005

LIST OF ANNEXURES TO THE COUNTER AFFIDAVIT

- | | |
|--------------|--|
| Annexure R-1 | -Letter No.AMD-Acts-III/Pen/1062/2005, dated 14.02.2005 giving details of Pension Payment Order of the Applicant. |
| Annexure R-2 | -Letter No.1/(2)/68-O&M/325, dated 28/29.05.1971 on conditions stipulating on forwarding of applications for outside appointment in a calendar year. |
| Annexure R-3 | -DAE OM No.3/1(23)/80-Adm.II dated 18.04.1980 on conditions stipulating on forwarding of applications for outside appointment in a calendar year. |
| Annexure R-4 | -DAE OM No.5/63/85-R dated 30.12.1985 on conditions stipulating on forwarding of applications for outside appointment in a calendar year. |

Annexure R1

By Speed Post

187

Government of India
Department of Atomic Energy
Atomic Minerals Directorate for Exploration and Research

AMD Complex, Begumpet
Hyderabad - 500 016
Dated: February 14, 2005

No. AMD-Acts-III/Per/1062/2005

To:
The Pay & Accounts Officer,
Central Pension Accounting Office,
Ministry of Finance, Govt. of India,
Trikoor II Complex, Bhikaji Cama Palace,
Behind Hotel Hyatt Regency,
NEW DELHI - 110 066.

Sir,

A Pension Payment Order in favour of Shri S.Q.Hoda, Scientific Officer/SC details of which are given below, is forwarded herewith for arranging payment.

- Details:
1. PPO No. & Date
2. Category of Pension

: 462280500038 dated 11.02.2005
: Superannuation Pension

3. (a) Amount of Basic Pension

: Rs. 14,359/- (Rupees Fourteen thousand three hundred and fifty nine only)

- (b) Family Pension in the event of death of the pensioner
Enhanced rate for seven years following the date of death or up to 24.02.2012 whichever is earlier.
Normal rate thereafter.

Rs. 14,359/- (Rupees Fourteen thousand three hundred and fifty nine only)

4. Date of commencement of Pension
5. Name of the Bank
Branch
Location & Code No.

Rs. 8,798/- (Rupees Eight Thousand Seven Hundred and Ninety Eighty only).
1.03.2005.
State Bank of India
PUBLIC SCHOOL BRANCH,
BEGUMPET, HYDERABAD-500 016 (A.P.)
Pin. 500016 BANK CODE NO. 2728

Account No.
Dist.
State
Pin

: 18075
: BEGUMPET,
: HYDERABAD-500 016 (A.P.),
: 500016.

6. Commutation is being paid by this office on 01.03.2005. Conditions attached to Pension may be made subject to the conditions specified in the PPO as well as under CCS (Pension) Treasury Rules.
7. Opted for Medical facilities under CISS Scheme.

Yours

(Sr. Accounts)

23937/05
21.2.05

AP 0 (E)

AN
19/2/05

2/03

MS
13/2
24/2

Encl:

1. PFO (Pensioner's & Disburser's portion) along with photos.
2. Specimen signature slip.
3. Option of the pensioner indicating the Name and full address of the authorized Public Bank.
4. Nomination for arrears of pension.
5. Pension calculation Sheet.

Copy to:

- ✓ 1. Chief Administrative & Accounts Officer, Atomic Minerals Division, Hyderabad - 500016.
2. Dy. Controller of Accounts, Principal Accounts Office, DAE, CSM Marg, Mumbai - 400081.
3. Shri S.Q.HODA, SO/G
9-B AERO VIEW TOWER,
At. Shamlat, P.O. Begumpet,
Hyderabad-500 016 (A.P)
PIN CODE- 500016.
4. The Manager, State Bank of India, Public School Branch, Begumpet, Hyderabad-500016.
5. Pension File.

"You may visit website
<http://cpao.nic.in>
to know the status of your
pension case"

Sr. Accountant

Asst. Personnel Officer

-17- -46- 115
Annexure R/2
62
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BARDA ATOMIC RESEARCH CENTRE
(Personnel Division)

Central Complex
Bombay, Bombay - 405

Ref: 1(2)/68-DM-325

May 28/29, 1971

Sub: Forwarding of applications for
outside appointments.

The number of applications which can be forwarded for outside appointment in a calendar year, and the conditions on which they may be forwarded are as under:-

1. Scientific & Technical Staff:

- (a) Two application-one for appointment in outside organisations and the other in any of the units under the administrative control of the DAE - may be forwarded in each calendar year.
- (b) The persons whose applications are forwarded to outside organisations will become ineligible for grant of additional increments/promotion for a period of one year from the date of application. This condition does not apply in the case of applicants for posts in response to any circular or advertisement either within BARC or to units under the administrative control of the DAE (including TIFR, ISRO, SSTC, UCIL etc.)
- (c) Before forwarding any application, the Head of the Division should satisfy himself that the candidate fulfils the qualification advertised and that if selected the applicant can be assured for taking up the appointment.
- (d) In the case of newly appointed officers or those who are promoted to higher grades, application will not be forwarded for one year from the date of such appointment or promotion.
- (e) Applications will not be forwarded from persons who are under bond to serve the department. Exceptions can, however, be made in the case of persons who desire to leave Government

service to secure employment under a State Government, a public sector undertaking or under a quasi-Govt. organisation such as University etc. provided they execute a fresh bond to serve the new employer for a specified period as determined by the Deptt.

2. Administrative and Auxiliary Staff:

In respect of administrative and auxiliary staff, as their services are on par with the other employees of Government of India, the orders of the Ministry of Home Affairs may be followed. It is not necessary to stipulate in their cases, the condition that they will not be eligible for promotion for one year from the date of application.

According to Home Ministry's orders, in the case of permanent Government servants four opportunities in a year may be given to apply in response to U.P.S.C. advertisements or advertisements/Notices of Government Departments/Public Sector undertakings and autonomous bodies except where withholding of any such application is considered by the competent authority concerned to be justified in the public interest. As regards temporary Government servants the administrative authorities should not ordinarily refuse to forward applications for employment elsewhere, which are in response to advertisements issued by the U.P.S.C. or requests from other Departments or where the applicant is likely to obtain a permanent employment elsewhere. They should, however, as a matter of rule, be asked to resign from the parent Department/Office, in the event of their appointment in the new office.

sd/-22/5/71

(H. Janakiraman)
Dy. Establishment Officer

Dy. Establishment Officer

A.I.O in Personnel Division

Copy to : Head, Personnel Division
Establishment Officer
AOs III/Secretary, TC & TSC
APOs in Divisions/Sections.

ly.

19- 48- M7
Annexure R/3
183
Government of India
Department of Atomic Energy
.....

C.S.M. Marg,
Bombay - 400 059.

April 18, 1980.

No.3/1(23)/80-Adm.II

OFFICE MEMORANDUM

Subject:- Forwarding of applications for outside
appointments - Scientific and Technical
Staff - Procedure for.
.....

In partial modification of the various orders issued by the Units to regulate forwarding of applications for outside appointments by the Scientific and technical staff of the Department, it has been decided that the number of applications to be forwarded per year in respect of scientific/technical staff may be increased to four - two applications for appointments in outside organisations and the other two for appointments in any of the Units under the administrative control of the Department of Atomic Energy.

2. The other conditions for forwarding of applications shall remain unchanged.

Sd/-
(T. Sethumadhavan)
Deputy Secretary to the Govt. of India.

All Heads of Units

All Officers/Sections of the Secretariat.

20 - 49 - 100 100
Annexure R/4
Government of India
Department of Atomic Energy

C.S.M. Marg,
Bombay-400 039.
December 30, 1983.

No: 5/63/83-R

OFFICE MEMORANDUM

Sub: Forwarding of applications for outside appointments.

.....

SAO
The Department was considering the question of liberalising the orders contained in BARC Circular No.1(2)/68-08M-325 dated May 28/29, 1971 and DAE O.M. 3/1(23)/80-Adm.II dated April 18, 1980 regarding forwarding of applications in the case of technical employees. On a detailed consideration of the issue and in consultation with the Staff Side members of the Departmental Council under JCM, it has been decided that the following procedure will be followed in respect of forwarding of applications of the technical (non-gazetted) employees in DAE and its Constituent Units:-

- 21
6.1.86
Eg/ENY
CC/16/1
1. The existing restriction, that employees whose applications have been forwarded to outside organisations, will not be entitled for promotion for a period of one year from the date of application, stands removed with immediate effect.
 2. The employees on promotion to higher posts will not be eligible to forward applications for outside employment for a period of two years from the date of promotion.

The other conditions for forwarding of applications shall remain unchanged in the case of technical (non-gazetted) employees.

R.B. Budhiraja
(R.B. Budhiraja)
Director

All Heads of Units of DAE

All officers in DAE

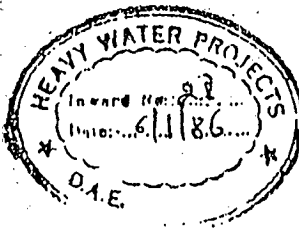
All Sections in DAE

Copy to Secretary, Departmental Council, DAE.

Chief Executive

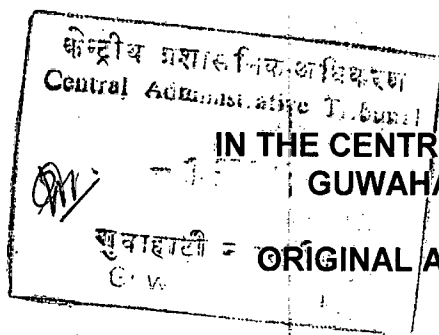
Heavy Water Projects.

CWC Building, B.B-1.



IYA. D.N. Natarajan
14/12/83
Executive Director (S.H.)

Executive Director (S.H.)



Filed by
the Respondents (w/o)
Alshar.
Addl. Secy.
11/9/06

Dr. Shaikh Quamrul Hoda,

..... APPLICANT

VERSUS

Union of India & Others

..... RESPONDENTS

**AFFIDAVIT-IN-REPLY TO REJOINDER FILED ON BEHALF OF THE
RESPONDENTS**

I, K. Umamaheswar, son of Late Shri K.Ramanna, aged about 53 years, resident of AMD Complex, Nongmynsong, P.O.Assam Rifles, Shillong-793 011, presently holding the post of the Regional Director, Atomic Minerals Directorate for Exploration & Research, North Eastern Region, Shillong, being duly authorised and competent to sign this Affidavit-in-Reply to Rejoinder on behalf of the Respondents, do hereby solemnly affirm and state as follows:

1. That a copy of the Rejoinder to O.A.No.172/2005 has been served on me. I have gone through the same and understood the contents thereof.
2. That the statements made in the Rejoinder to O.A., which are not specifically admitted, are hereby denied.
3. That the Rejoinder to the said O.A., is not maintainable. Parawise reply to the contentions made by the Applicant is furnished as under :

Paras 1 & 2 : With regard to the averments made in paras 1 & 2 of the Rejoinder to the Original Application, it is stated that the contents therein are based on facts hence no comments need to be offered.

- 2 -

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Para 3 : With regard to the averments made at para 3 of the Rejoinder to the Original Application, it is stated that the contents made at paras 1, 2 & 3 of Counter Affidavit to the said O.A. are reiterated for the sake of brevity. Further, it is to submit that the representation dated 24.9.2004 submitted by the Applicant was considered by this Respondent's Directorate Secretariat, Department of Atomic Energy (DAE), Mumbai. After careful examination in the Department and in consultation with Director, Atomic Minerals Directorate for Exploration & Research and with the approval of the Secretary, Department of Atomic Energy who is the ex-officio Chairman of Atomic Energy Commission (AEC) his representation dated 24.09.2004 was disposed of. In this process certain time was lapsed in giving reply to the Applicant, which is regretted. However, it is not intentional as alleged. Further, it is also to submit that since the Applicant is drawing his pension at Hyderabad and in view of the fact that the said O.A. is pending with Hon'ble C.A.T., Guwahati for the last 11 months for want of formation of the Division Bench, a request has been made with the Registrar, Central Administrative Tribunal, Principal Bench, New Delhi to transfer the said O.A. to Central Administrative Tribunal, Hyderabad Bench, Hyderabad, on the grounds that, the headquarters of this Directorate is at Hyderabad where the applicant is also stationed consequent upon his retirement. Being a Group 'A' Scientific Officer, his promotions were dealt at this Directorate's Secretariat i.e., Department of Atomic Energy at Mumbai and all his service details are available at Headquarters of this Directorate at Hyderabad / Mumbai.

The Applicant in the said para has stated that he is maintaining a transit accommodation at Guwahati to continue his research activity in the state of Meghalaya. It is not clear as to the field of research activity. In accordance with Rule 10 of Central Civil Services (Pension) Rules, 1972, If a pensioner whom, immediately before his retirement was a member of Central Service Group 'A' wishes to accept any commercial employment

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before the expiry of two years from the date of his retirement, he shall obtain the previous sanction of the Government to such acceptance. The Applicant retired on attaining the age of superannuation on 28.2.2005 and was holding Central Service Group 'A' post immediately before his retirement. And further as per sub-rule 3 of the said Rule, in granting or refusing permission to the pensioner for taking up any commercial employment, the Government shall, inter alia, have regard, whether his commercial duties will be such that his previous official position or knowledge or experience under Government could be used to give the proposed employer an unfair advantage. The Applicant may be directed to give the details of the field of research activities he is continuing in the state of Meghalaya and also to put to strict proof whether he has taken permission from the Department to continue his research activities in the State of Meghalaya. On the contrary, the Applicant has sought permission of the Competent Authority in this Directorate to act as Honorary Professor in Amina Institute of Technology, Hyderabad which is being processed by this Directorate. A copy of the Application dated 29.4.2006 of the Applicant to the effect is enclosed as **Annexure R/5**. Therefore, the Applicant's contention that he maintains a Transit accommodation at Guwahati and prosecuting the Research Activity in his Rejoinder is incorrect and baseless and untenable.

Para 4 : With regard to the contents made in this para, it is to submit that, the contents made at paras 4.1 to 4.3 of Counter Affidavit to this O.A. are reiterated for the sake of brevity. The Applicant alongwith other Scientific Officers / G who were in the zone of consideration for promotion to the post of Scientific Officer / H w.e.f. 1.8.2003 was considered by the Competent Authority and the applicant's case was not recommended. His case was considered from Scientific Officer / G to Scientific Officer / H during the year 2004. His case for promotion to the grade Scientific

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Officer / H w.e.f. 1.8.2004 could not be considered, as he had applied for outside post during the previous one year. The Applicant was apprised of the said position vide letter No.12/6(8)/2002-I&M(AMD)/1741, dated 25.2.2005 (Annexure VI to the O.A.). As regards producing copy of promotion scheme / guidelines these are classified documents, however, if called for by the Hon'ble Tribunal, they will be produced before the Hon'ble Tribunal at the time of hearing. Further it is to submit that an Appeal has been filed before Hon'ble High Court of Bombay at Nagpur against the case referred to by the Applicant in this para. The Hon'ble High Court vide its Interim order issued on 19.9.2002 granted stay on the point of grant of promotions on the basis of deemed dated promotions for the period from 1993 to 1999 and the case is still sub-judice.

Para 5 : With regard to the contents made in this para it is to submit that the averments made at para 4.3 (d) of the Counter Affidavit to the Original Application are reiterated for the sake of brevity. As alleged the Circular dated 28.5.1972 and O.M. dated 30.12.1985 are not unconstitutional as such a decision might have been probably taken to discourage trained / experienced personnel to leave the organisation and is appreciated by the scientific community to which the Applicant belongs.

Para 6 : With regard to the contents made in this para, it is to submit that the averments made at para 5.1, 5.2 and 4.8 of the Counter Affidavit to the O.A. are reiterated for the sake of brevity.

Para 7 : With regard to the contents made in this para, it is to submit that the averments made at para 6 of the Counter Affidavit to the O.A. are reiterated for the sake of brevity.

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Para 8 : With regard to the contents made in this para, it is to submit that these are formal and hence no comments are offered.

In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records, shall also be pleased to dismiss the present application with cost as devoid of merit.

Place: Shillong

Date: 30/08/2006.

30.8.06
DEPONENT
(K. UHAMAHESWAR)

क्षेत्रीय निदेशक
Regional Director

परमाणु खनिज अन्वेषण
Atomic Minerals Directorate

एव अनुसन्धान निदेशालय
For Exploration & Research

परमाणु ऊर्जा विभाग
Department of Atomic Energy

पूर्वोत्तर क्षेत्र, शिलांग-793011
NER/ Shillong-703011

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VERIFICATION

I, K. Umamaheswar, son of Late Shri K. Ramanna, aged about 53 years, being Regional Director, North Eastern Region, Atomic Minerals Directorate for Exploration & Research, Department of Atomic Energy, Government of India, Shillong, do hereby declare that the facts stated in the aforesaid paras 1 to 8 are true to the best of my knowledge and correct as per the information derived from the official records of the Respondents believed to be true.

Hence verified and signed here at Shillong on this the 30th day of August, 2006.

Place : Shillong

Date : 30/08/2006.

(ON BEHALF OF THE RESPONDENTS)

(K. UMAHAHESWAR)

क्षेत्रीय निदेशक

Regional Director

परमाणु खनिज अन्वेषण

Atomic Minerals Directorate

एव अनुसंधान निदेशालय

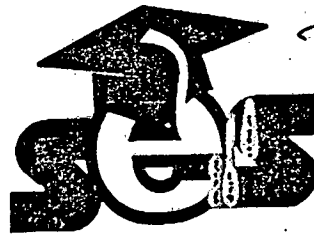
For Exploration & Research

परमाणु ऊर्जा विभाग

Department of Atomic Energy

पूर्वोत्तर क्षेत्र, शिलांग-793011

NER/ Shillong-703011



AMINA INSTITUTE OF TECHNOLOGY

Sponsored by Sana Educational Society

Date: 28th April, 2006

To

Dr. S.Q. Hoda
No.9B
Aero View Towers
Shamlal, Begumpet
Hyderabad – 500 016


Sir

Further to the discussion I had with you, I am pleased to offer you the post of Honorary Professor in the Department of Civil Engineering at the Amina Institute of Technology, Medchal, R.R. District, Hyderabad.

You will be provided with free conveyance, mobile phone and office accommodation to perform your duties.

Thanking you

Yours Truly


(ABID RASOOL KHAN)
Chairman.

From
Dr. S.Q. Hoda
No.9B, Aeroview Towers,
At: Shamlal, P.O., Begumpet,
Hyderabad - 500 016 (A.P).

Hyderabad
29.04.2006

Annexure 8/5
126

To
The Chief Administrative & Accounts Officer,
Atomic Minerals Directorate, AMD Complex, Begumpet,
Hyderabad-16.

Sub: - Request for permission for taking up employment, reg.

Sir,

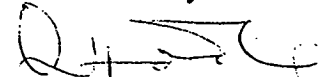
I have retired from active service on 28-2-2005 as the Regional Director of Northeastern Region and within the period of fourteen months since retirement, I have not taken any commercial employment (copy of office order enclosed).

I have recently been offered the post of Honorary Professor in the Dept. of Civil Engineering at Amina Institute of Technology, Hyderabad (Latter of offer enclosed).

I am there fore submitting the details in prescribe form no 25 for permission from the competent authority of D.A.E and request to communicate the same at the earliest.

Thanking you,

Yours faithfully


(Dr. S.Q. Hoda)

AO II
Pl. put up
3/5

APD/E)
pl. put up
DK
8/5/06
4/5/06

FORM 25

[See Rule 10 (1)]

Form of application for permission to Central Services Officers
to accept commercial employment within a period
of two years after retirement

Name of the Officer
(in BLOCK letters)

Dr. SHAIKH QUAMRUL HODA

Date of retirement

28-02-2005

Particulars of the Ministry/Deptt./Office in
which the officer served during the last 5
years preceding retirement (with duration):

Name of Ministry/ Department/Office	Post held	Duration	
		From	To
Atomic Energy/ D General Directorate Hyd. - Hyd.	Regional Director, Non-Governmental Hyd. - Hyd.	April 2001	Feb-2005
	Dy. Regional Director Hyd. - Hyd.	Nov 1998	March 2001

Post held at the time of retirement and period
for which held

Scientific Officer G
Sept. 1998 - Feb-2005

Pay scale of the post and pay drawn by the
Officer at the time of retirement

Rs 16400-450-20,000
Last pay drawn - Rs 19550/-

Pensionary benefits:

Pension expected/sanctioned (commutation if any, should be mentioned)	Gratuity, if any
1) Rs 14359/- Original Pension	Rs 3,50,000/-
2) Rs 8798/- Commuted Pension	

Details regarding commercial employment
proposed to be taken up—

(a) Name of the firm/company/Co-operative
Society, etc. ...

Amina Institute of Technology, Hyderabad.

(b) Products being manufactured by the
firm/type of business carried out by the
firm, etc. ...

Imparting Degree level Engineering Education

(c) Whether the official had during his official
career, any dealings with the firm, etc? ...

- NO.

(d) Duration and nature of the official
dealings with the firm ...

not applicable.

FORMS

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Honorary Professor in the Dept. of Civil Engineering

Personal Communication / discussion

Teaching (Engineering Geology, Environmental Sciences)

Nil

Not applicable

Nil.

(e) Name of the job/post offered

(f) Whether post was advertised, if not, how was offer made (attach newspaper cutting of the advertisement, and a copy of the offer of appointment, if any)?

(g) Description of the duties of the job/post.

(h) Remuneration offered for post/job

(i) If proposing to set up a practice, indicate—

(a) Professional qualification/in the field of practice

(b) Nature of proposed practice

8. Any information which the applicant desires to furnish in support of his request

9. Declaration:—

I hereby declare that—

(i) the employment which I propose to take up will not bring me into conflict with Government;

(ii) My commercial duties will not be such that my previous official position or knowledge or experience under Government could be used to give my proposed employer an unfair advantage;

(iii) my commercial duties will not involve liaison or contact with the Government departments.

Q. H. S. L. P.
(S. G. HODA)

Signature of the applicant

Address: No. 9-B, Aeroview Towers,
At: Shamla, P.O. Begumpet, Hyderabad-500016
(CA.P).

Dated : 29.04.2007

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भारत सरकार Government of India
परमाणु ऊर्जा विभाग Department of Atomic Energy
परमाणु खनिज अन्वेषण एवं अनुसंधान निदेशालय
Atomic Minerals Directorate for Exploration and Research

1-10-153-156, बेगमपेट, Begumpet,
हैदराबाद Hyderabad - 500 016

lo. AMD-5(9)/93-Dir / 117

फरवरी February 23, 2005

कार्यालय आदेश OFFICE ORDER

डा. शेख कमरुल होडा, वैज्ञानिक अधिकारी 'जी', क्षेत्रीय निदेशक, पूर्वोत्तर क्षेत्र, प.ख.नि., शिल्लोंग, के 28.2.2005 को सेवानिवृत्त होने के परिणाम स्वरूप श्री कोका उमामहेश्वर, वैज्ञानिक अधिकारी 'जी' को आगामी आदेशों तक क्षेत्रीय निदेशक, पूर्वोत्तर क्षेत्र घोषित किया जाता है।

Consequent upon retirement of Dr. S.Q. Hoda, Scientific Officer 'G', Regional Director, North Eastern Region, AMD, Shillong on superannuation on 28.2.2005, Shri K. Umamaheswar, Scientific Officer 'G' will take over as Regional Director, North Eastern Region until further orders.

श्री कोका उमामहेश्वर क्षेत्रीय निदेशकों को प्रत्यायोजित प्रशासनिक एवं वित्तीय शक्तियों का प्रयोग करें।

Shri K. Umamaheswar will exercise all administrative and financial powers delegated to Regional Directors.

(रमैन्द्र मोहन सिन्हा R.M. Sinha)

निदेशक Director

में / To:

डा. शेख कमरुल होडा, वैज्ञानिक अधिकारी 'जी', क्षेत्रीय निदेशक, पूर्वोत्तर क्षेत्र, प.ख.नि., शिल्लोंग
Dr. S.Q. Hoda, SO 'G', Regional Director, NER, AMD, Shillong.

श्री कोका उमामहेश्वर, वैज्ञानिक अधिकारी 'जी', पूर्वोत्तर क्षेत्र, प.ख.नि. शिल्लोंग

तिलिपि / Copy To:

प.ख.नि. परिषद के सभी सदस्य Members of AMD Council.

अध्यक्ष परमाणु ऊर्जा आयोग का कार्यालय, परमाणु ऊर्जा विभाग, मुम्बई.

Office of Chairman, AEC, DAE, Mumbai.

अपर निदेशक (प्रचालन-I / II), प.ख.नि., हैदराबाद.

Additional Director (Operations - I / II), AMD, Hyderabad.

क्षेत्रीय निदेशक, उत्तरी क्षेत्र / दक्षिणी क्षेत्र / पूर्वी क्षेत्र / पूर्वोत्तर क्षेत्र / पश्चिमी क्षेत्र / मध्यवर्ती क्षेत्र / दक्षिण मध्यवर्ती क्षेत्र, प.ख.नि. नई दिल्ली / बेंगलूर / जमशेदपुर / शिल्लोंग / जयपुर / नागपुर / हैदराबाद.

Regional Director, NR/SR/ER/NER/WR/CR/SCR, AMD, New Delhi / Bangalore / Jamshedpur / Shillong / Jaipur / Nagpur / Hyderabad.

प्रधान, अयस्क सज्जीकरण वर्ग / बी.एस.ओ.आई. वर्ग, प.ख.नि., हैदराबाद.

Head, Ore Dressing Group / BSOI Group, AMD, Hyderabad.

सभी वर्ग प्रमुख, पखनि, हैदराबाद All Incharges of the Groups, AMD, Hyderabad.

प्रभारी, बी.एस.ओ.आई., पखनि., वि शाखपटनम / तिरुवनंतपुरम

Incharge, BSOI, AMD, Visakhapatnam / Thiruvananthapuram.

मुख्य प्रशासनिक एवं लेखा अधिकारी, प.ख.नि., हैदराबाद.

CA & AO, AMD, Hyderabad.

उप लेखा नियंत्रक, प.ख.नि., हैदराबाद.

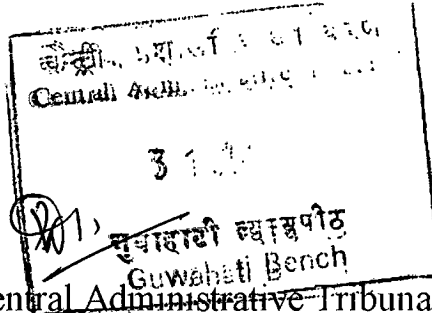
DCA, AMD, Hyderabad.

सभी संबंधित All concerned.

23/7/1985

(रमेश मोहन सिन्हा R.M. Sinha)

निदेशक Director



Filed by:
M. Bhasu Duttal
Advocate
31/7/2006

In the Central Administrative Tribunal
Guwahati Bench : At Guwahati

OA No. 172/2005

Dr. Shaikh Quamrul Hoda

....Applicant

-vs-

Union of India & others

.....Respondents

Rejoinder to the affidavit-in-reply filed by the respondents:

I, Shaikh Quamrul Hoda, Son of Shaikh Kalimuddin, aged about 61 years, Regional Director (since retired), North Eastern Region, Atomic Mineral Directorate for Exploration and Research (AMD), Department of Atomic Energy, C/o. Jisnu Dutta Goswami, "Kanta", Chenikuthi Hillside, Guwahati-3, do hereby solemnly affirm and state as follows:

1. That a copy of the affidavit-in-reply filed by the respondents has been served on me through my legal counsel. I have gone through the same and understood the contents thereof.
2. That save and except those statements made in the said affidavit-in-reply which are not specifically admitted by me, are hereby denied.
3. That with regard to the statements made in para 1, 2 and 3, I say that the cause of action arose within the jurisdiction of this Hon'ble tribunal as the applicant being dissatisfied and highly aggrieved for not considering his promotion and promoting his junior to the post of SOH. The applicant submitted his representation seeking redressal of his grievances on 24.9.2004 and the said representation was addressed to the Chairman, DAE thorough the Director, AMD. As per the guidelines of the Ministry of Personnel, Public Grievances and Pension, New Delhi, vide DO. Letter No. K-11011/5/2003PG dated 3.5.2003, addressed to the Chairman, AEC, the grievance should normally be redressed within a period of three months from the date of receipt of representation,

Shaikh Quamrul Hoda

however inspite of two reminders dated 13.1.2005 and 23.2.2005, the reply was issued on 25.2.2005 after a lapse of 5 months and delivered to me on 1.3.2005, the very next day of my superannuation on 28.2.2005. I believe that this has been done deliberately to prevent me from challenging the action in any court of law while in service. All these cause of action arose within the jurisdiction of this Hon'ble Tribunal.

The question of drawing pension at Hyderabad is a matter personal to me and for my convenience for the purpose of medical facility under the contributory health scheme, although I am maintaining a transit accommodation at Guwahati to continue my research activity in the state of Meghalaya.

The copy of the Letter dated 3.5.2003 is enclosed hereto as
Annexure VII.

4. That with regard to the statements made in para 4.1. to 4.3, I say that the contention of the respondents that I did not meet the eligibility criteria for promotion to the Grade SOH, apart from applying for outside post is an after thought which was not communicated in the impugned letter No. 12/6(8)/2002-I&M(AMD)/1741 dated 25.2.2005. In this connection, I would like to state here that there is no recruitment/promotion rule for promotion to grade of S.O.H. But it is said that there are some promotion scheme/guideline in the Department, which are said to be secret/classified documents. If is so, this is against the rule of the transparency. In one case this Hon'ble Tribunal, Mumbai Bench, held that – “The respondents by their averments had made it clear that they have thrown seniority to the wind on the strange plea that seniority is of no concern. Further they aver that the guidelines for promotion under the ‘Merit Promotion Scheme’ of the Department of Atomic Energy followed by AMD and other units of DAE are those framed by Trombay Council of BARC (which is the mother Institution of the Department) and approved by the Department. These norms being directly linked to the ACR grading of the candidates are strictly classified and are divulged only to officers who are required to deal with the cases. This provides a rather curious reading. The respondents hold that the norms for the guidelines of the promotions are classified and or divulged only to the officers required to deal with the cases. No more evidence of the absence of transparency and exhibition of nepotism need be cited. While ACRs are confidential documents, the norms of promotion and guidelines for the DPC are not secret and cannot be

Shaikh Quamrul Hoda

so. Department of Personnel have clearly laid down the guidelines for the promotions and the guidelines to be followed by the Departmental Promotion Committees and these provides transparency and open-ness in Administration. That the Scientific Organization are not under the purview of the UPSC, for the purpose of promotion, does not mean that they can be a law unto themselves and trample upon the rights of their employees. The circumstances of this case and the reply given by the respondents make us confirmed in our views that the applicant has not been dealt with properly by the respondents even by their own standards. We cannot, therefore, ignore the allegation of bias, which the applicant has made against organization, stating that those like him from the Minor Engineers Stream are discriminated.....” . I, therefore, crave the leave of this Hon’ble Tribunal to pray that the respondents may kindly be directed produce the said copy of promotion scheme/guidelines at the time of hearing of the case. I also may be permitted to produce of the copy of the judgment of the aforesaid Mumbai Bench at the time of hearing of the case.

5. That with regard to the statement made in para 4.3(d), I say that the post of Regional Director held by me is a Administrative post as provided under para 2 of the Annexure – R2 circular dated 28.5.1971. Moreover, the said provision of said circular dated 28.5.1971 has been relaxed by the O.M. dated 30.12.1985. Moreover, this office circular dated 28.5.1971 and O.M. Dated 30.12.1985 has nothing to do it the provisions of promotion scheme of the Department. The object as claim to be achieved by the said promotion scheme would certainly be defined if the said circular and O.M. are not declared as derogatory and violate of provision Article 14 and 15 Constitution of India. The said circular dated 28.5.1971 and O.M. dated 30.12.1985 are unconstitutional, discriminatory, arbitrary, illegal and the same are liable to set aside and quashed. This Hon’ble Tribunal has to jurisdiction and power to examine the vires of subordinate legislation as has been held by the Hon’ble Supreme Court L.Chandra Kumar – vs- Union of India [AIR1997 (SC) 1125, (1997) 3 SCC 261].
6. That with regard to the statement made in para 5.1 and 5.2, I say that the contention made in this paragraph are contrary to the provision of the promotion scheme of the Department. I represented to the competent authority and the competent authority in their reply (as in Annexure VI) clearly stated that my promotion could not be considered only for the sole ground that I applied for outside job. No other ground has been assigned for non-consideration of my

promotion to the SOH Grade. Hence, the plea taken in this paragraph are untenable and cannot sustain as the promotion scheme said to have been provide grounds for consideration of promotion. The ground as shown in Annexure VI in the Application therefore cannot be a ground for non consideration of my promotion. In this connection I also reiterate here that in addition to the promotion scheme I am entitled to get additional weithage for consideration of my promotion to the SOH Grade by virtue of the Govt. of India, Ministry of Finance OM No. 20014/3/83-E.IV dated 14.12.1983.

7. That with regard to the statements made in para 6, I reiterate and reassert the statements made in the Original Application and in this Affidavit and deny the contention of the respondents.
8. That the statements made in this affidavit in para 1, 2 and 6 are true to my knowledge and belief, those made in para 3, 4, 5 and 6 being matter of records are true to my information derived therefrom and the rest are my humble submission on legal advice made before this Hon'ble Court. I have not suppressed any material fact.

And I sign this affidavit on this 26th day of July, 2006 at Guwahati.

Identified by me

[Signature]
Advocate

Shaikh Quamrul Hossain
Deponent

Solemnly affirmed and signed before me by the deponent, who is identified by Shri... *B. C. Pathak* ..., Advocate on this 26th day of July, 2006 at Guwahati.

Bibhash Pathak
Advocate 26/7/06

S-1102 (1)

D.O. No. K-11011/5/2003-P.G.

भारत सरकार

मानविक, लोक शिकायत तथा पेंशन विभाग

नई दिल्ली-110001

GOVERNMENT OF INDIA

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES

AND PENSIONS

NEW DELHI-110001



S.S.DAWRA

सचिव

SECRETARY

Tel. : 3094840

Fax : 3092432

May 3, 2003

Dear Shri Kakodkar,

As you may be aware, instructions have been issued by Department of Administrative Reforms and Public Grievances (DAR&PG) from time to time to ensure that an effective institutional mechanism is established for attending to public grievances promptly. I feel that the system would be failing in its primary purpose if the barest minimum courtesy, that is, acknowledgement of the letter received from a complainant is not sent in time. The acknowledgement should go immediately or at the most within three days of the receipt of the grievance.

2. ~~Instructions on the subject of 'Directors of Grievances' envisage that if a grievance is not redressed within a period of three-months, Director of Grievances of the concerned Ministry/Department should call for the documents of the case and take decision with the approval of the Secretary of the Ministry/Department or Head of the Department/Organisation. The petitioner should be informed of the progress of his/her grievance.~~

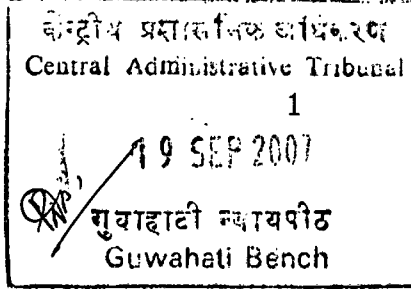
3. I hope that the above time limits in processing of the grievances are followed in your Ministry/Department. This would go a long way in establishing public confidence in the effectiveness of the grievance redressal mechanism of the Government.

With regards,

Certified to be true (10.5)
Arvind Pathak
 Advocate

Dr. Anil Kakodkar,
 Chairman,
 Department of Atomic Energy
 Room No. 145-A, South Block
 New Delhi.

S.C.S



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

CONSOLIDATED AMENDED APPLICATION IN
ORIGINAL APPLICATION NO.172 OF 2005

Filed by '38
The Respondents through
Alaha Das
Addl Cnsc
17/9/07
D. M. M.

Dr. Shaikh Quamrul Hoda,
S/o Shaikh Kalimuddin, aged about 60 years,
Scientific Officer 'G' and Regional Director (Retired)
North Eastern Region,
Atomic Minerals Directorate
for Exploration & Research (AMD),
Department of Atomic Energy,
Shillong, Meghalaya,
C/o Jishnu Dulta Goswami,
"Kanta", Chenikuthi Hillside,
Guwahati - 781 003 (Assam).

..... APPLICANT

VERSUS

1. Union of India,
Represented by the Chairman,
Atomic Energy Commission and
Secretary, Government of India,
Department of Atomic Energy,
C.S.M. Marg, Anushakti Bhavan,
Mumbai - 400 039.
2. The Director,
Atomic Minerals Directorate
for Exploration & Research (AMD),
AMD Complex, 1-10-153-156,
Begumpet, Hyderabad - 500 016.
3. Shri A.K. Pande,
Regional Director,
Western Region,
52/496 AMD Flats,
Sector-5, Pratap Nagar,
Jaipur - 302 030 (Rajasthan).

..... RESPONDENTS

AFFIDAVIT-IN-REPLY FILED ON BEHALF OF THE RESPONDENTS

I, Dr.Rajgopal Mohanty, son of Shri K.B. Mohanty, resident of AMD Complex, Nongmysong, P.O.Assam Rifles, Nongmynsong, Shillong-793 011, Meghalaya, presently holding the post of the Regional Director, Atomic Minerals Directorate for Exploration & Research, North Eastern Region, Shillong, being duly authorized and competent to sign this Affidavit-in-reply to Consolidated Amended Application on behalf of the Respondents, do hereby solemnly affirm and state as follows:

1. That a copy of the Consolidated Amended Application in O.A.No.172/2005 has been served on me. I have gone through the same and understood the contents thereof. I am accordingly conversant with the facts and circumstances of the case and able to depose to the same. I am filing this counter affidavit on behalf of the respondents for the limited purpose of opposing the admission of the application while reserving the right to file a more detailed reply if considered necessary. Save as expressly admitted herein and save what are matters of record, each and every allegation and contention made in the said Application shall be deemed to have been specifically and emphatically denied and disputed herewith.

2. That the statements made in the Consolidated O.A., which are not specifically admitted, are hereby denied.

3. At the outset it is submitted that the instant consolidated O.A., is not maintainable as the same does not come within the jurisdiction of the Hon'ble Central Administrative Tribunal, Guwahati Bench, as the Applicant is permanent resident of Hyderabad after retirement on attaining the age of superannuation w.e.f. 28.02.2005 and he is drawing

Dr. Rajgopal Mohanty

his pension from the State Bank of India, Public School Branch, Begumpet, Hyderabad w.e.f. 1.3.2005 (Annexure R/1). The applicant is also availing medical benefits under Contributory Health Services Scheme of the respondent's Directorate being administered by the Department of Atomic Energy at Hyderabad based on his declaration that the applicant is stationed at Hyderabad. On this ground alone the present O.A. may please be dismissed in limini.

BRIEF HISTORY OF THE CASE :

4. That before traversing the statements made in various paragraphs of the O.A., a brief history of the case is given below for better understanding of the facts of the case:

4.1 The Applicant was appointed as Scientific Officer SC in the erstwhile Atomic Minerals Division (AMD) of the Department of Atomic Energy [the Atomic Minerals Division has since been re-named as Atomic Minerals Directorate for Exploration & Research (the acronym AMD continues)] on 03.11.1971 and subsequently promoted to the post of Scientific Officer / SD w.e.f. 01.03.1979 and then to the post of Scientific Officer / SE w.e.f. 1.2.1985 and thereafter to the post of Scientific Officer SF w.e.f. 01.08.1991, which was subsequently changed (re-designated) to Scientific Officer / F w.e.f. 1.1.1996 on implementation of V Central Pay Commission. Subsequently he was promoted to the post of Scientific Officer / G w.e.f. 10.09.1998. All these promotions were made under the 'Merit Promotion Scheme' of the Department of Atomic Energy. This Department follows "Merit Promotion Scheme" in respect of promotions of Scientific & Technical personnel. The main feature of this Scheme is that the promotions are not "vacancy" based and it is far more advantageous as compared to

Dr. Manoj

promotions of other Central Government employees who are (excluding those in Scientific Departments) governed by vacancy based promotions.

4.2 The Applicant being a scientific personnel is governed by the said "Merit Promotion Scheme" and accordingly he has been getting promotions from time to time as per the said **Merit Promotion Scheme** right from his entry into this Department till his retirement. The salient features of this Scheme are indicated at para 4.3 below for kind perusal. The Applicant was posted to **North Eastern Region**, Shillong during November 1998 and he has been functioning as Regional Director, North Eastern Region w.e.f. 09.04.2001. The Applicant retired from service on attaining the age of superannuation on 28.02.2005.

4.3 That it is submitted that all the promotions in respect of the scientific and technical personnel of the Department are effected in accordance with the guidelines laid down in the 'Merit Promotion Scheme'. This scheme is not vacancy based and the salient features of the 'Merit Promotion Scheme' are detailed below.

4.3 (a) The outstanding feature of this scheme, which makes it basically different from the concept of vacancy based promotion in other departments of the Government, relates to creating positions at higher levels for the growth of an individual through an upgradation system rather than selecting a person by making him compete with other individuals to rise and occupy an available/vacant higher position.

4.3 (b) According to guidelines under the 'Merit Promotion Scheme' to regulate and guide the process of assessment of performance of the individuals. According to these guidelines a screening committee takes

D. K. G. M.

into account besides the number of years that an individual has spent in his present grade, the relevance and excellence of the work carried out by the individual and reported by him in the self-assessment section of the Annual Confidential Report and those who get screened in are further assessed for by a Selection Committee. It is pertinent to mention here that the cases are decided mainly on the basis of individuals' merit in the relevant areas and overall contribution of the individual in achieving the goal of the organization. It would be seen that seniority in a given grade, by mere residency in the same grade, does not by itself place the individual ahead of his peers in the same grade and make him eligible for consideration for promotion to the next higher grade. The lower the level of grading of an individual in the confidential report, the longer he/she serves in that grade before being eligible for consideration to the next higher grade. The above promotion norms for Scientific and Technical Grades have been duly approved by Department of Atomic Energy. The norms for promotion of Scientific Officers are classified since they are directly linked to the Annual Confidential Report gradings.

'Merit Promotion Scheme' of Department of Atomic Energy is implemented/applicable to other constituent units of Department of Atomic Energy so as to maintain uniformity.

4.3 (c) Thus, it would be apparent that the purpose of this type of assessment is to provide for rapid growth of people with higher competence and performance.

4.3(d) In addition to the above, a policy decision has been taken vide letter No.1/(2)/68-O&M/325, dated 28/29.05.1971(Annexure R/2), as amended by DAE OM No. 3/1(23)/80-Adm.II dated 18.4.1980(Annexure

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R/3) and No. 5/63/85-R dated 30.12.85 (Annexure R/4) stipulating conditions while forwarding of applications for appointment in organizations outside the Department of Atomic Energy (DAE), wherein for Scientific & Technical Staff at para 1(b) of the letter, it has been mentioned that -

"(b) The persons whose applications are forwarded to outside organizations will become ineligible for grant of additional increments / promotion for a period of one year from the date of application. This condition does not apply in the case of applicants for posts in response to any circular or advertisement either within BARC or to units under the administrative control of the DAE."

The said condition is still in force.

5. That having discussed about the salient features of the Merit Promotion Scheme as above, the reasons for non-promotion of Dr. Hoda w.e.f. 1.8.2003 & 1.8.2004 are detailed below:

5:1 That the cases of all officers in the grade of SO-G on completion of 5 years of service in that grade are perused taking into account various factors including the CR gradings, number of publications, special achievement and the individual's overall contributions, to the organization and only those who are found deserving promotion to the post of Scientific Officer-H are recommended. Accordingly earlier, the case of the Applicant alongwith other Scientific Officers / G who were in the zone of consideration for promotion to the post of Scientific Officer/H with effect from 1st August, 2003 was considered by the Competent Authority and he was not recommended.

D. Hoda

5.2 That it is pertinent to note here that during the crucial period (2004) when the Applicant's case could be considered for promotion from SO-G to SO-H, the Applicant applied for employment outside DAE units and his application was forwarded, thus rendering himself ineligible for consideration with effect from 1.8.2004, on the sole condition indicated in para 4.3 (d) above, alone. The Applicant applied for the following posts in response to Vacancy Notices issued by International Atomic Energy Agency as detailed below:

S.No.	IAEA vacancy Notice No.	For the post of	Period
1.	2003/608	Environmental Assessment Specialist (P-4) in Dischargeable Waste Unit, Waste Safety Section, Division of Radiation and Waste Safety, Department of Nuclear Safety and Security, Vienna.	February 2004
2.	2004/007	Uranium Resources Specialist (P-4), IAEA	March 2004

It may be reiterated that in the year 2004 also the Screening Committee and the Selection Committee had perused the records of all those who were within the zone of consideration (viz. those who had completed 5 years of service in the grade G) including that of Dr. Hoda and the Committees had found him not eligible for promotion to grade H.

5.2.1 That aggrieved with denial of the promotion from the post of SO / G to SO / H, the Applicant made a representation dated 24.09.2004, to the Respondent No.1, i.e., Secretary, DAE, Mumbai who is the ex-officio Chairman of Atomic Energy Commission. The representation of the Applicant was carefully examined in the department in consultation with Director, AMD, especially with regard to his contention of non-promotion

Dr. Hoda

to the next grade of SO/ H w.e.f. 1.8.2004 and with the approval of Chairman, AEC and Secretary DAE. In response to the said representation vide letter No.12/6(8)/2002-I&M(AMD)/1741, dated 25.2.2005 the Applicant Dr.Hoda was informed suitably about his ineligibility for promotion to the grade of SO/H w.e.f. 1.8.2004, as he had applied for outside posts during that year. It is pertinent to reiterate here that for promotion from SO-G to SO-H grade, interviews are not held and the cases are decided mainly on the basis of overall contribution of the individual in achieving the goal of the organization and the CR gradings obtained by the officials. For the objective selection of the deserving candidates a grade list of all officers in the feeder grade is forwarded to be put up to the Committee for screening. Since the promotion is non-vacancy based all the officials in each grade falling in the zone of consideration are included in the service list put up to the Screening Committee. This list is prepared also taking into account the date of appointment to the appropriate grade. The Committee reviews all cases based on number of years spent in the present grade, relevance and excellence of work carried out by the individual, impact of the work on programmes of the organisation, leadership quality, assessments in the confidential reports etc. In the circumstances the seniority in a given grade, by mere residency in the same grade, does not by itself place the individual ahead of his peers in the same grade and make him eligible for consideration for promotion to the next higher grade as per the Merit Promotion Scheme. The lower the level of grading of an individual in the confidential report, the longer he/ she serves in that grade before being eligible for consideration to the next higher grade.

D. M. M.

PARAWISE REPLY

6. That with regard to the statements made in paragraphs 1 to 3 of the present application, this case does not come within the jurisdiction of this Hon'ble Tribunal, as the Applicant is a permanent resident of Hyderabad having settled down there after his retirement on attaining the age of superannuation and he is drawing his pension from the State Bank of India, Public School Branch, Begumpet, Hyderabad w.e.f. 1.3.2005 (Annexure R/1). The applicant is also availing medical benefits under Contributory Health Services Scheme of the respondent's Directorate being administered by the Department of Atomic Energy at Hyderabad based on his declaration that the applicant is stationed at Hyderabad. On this ground alone the present O.A. may please be dismissed in limini.

7. That with regard to the statements made in paragraphs 4.1 to 4.3 of the application, it is stated that the contents therein are matters of record. As intimated to him vide letter No.12/6(8)/2002-I&M(AMD)/1741, dated 25.2.2005 he was ineligible for promotion to grade of SO / H w.e.f. 1.8.2004 as he had applied for posts outside DAE during that year. Apart from this reason the Applicant was also not recommended by the Screening Committee and also was not recommended by the Departmental Promotion Committee constituted for the purpose as he was not meeting the eligibility criteria for promotion to the higher grade of SO/H

8. That with regard to the averments made in paras 4.4 & 4.5 of the application, it is submitted that these are based on records. Further it is submitted that, out of 26 (twenty six) publications, the Applicant was

a co-author in 18 papers and his independent papers are 8 (eight) only and that too mostly on general topics.

9. That with regard to the averments made in para 4.6 of the application, it is submitted that the arguments made in this para that "The applicant had steered the performance of the (Northeastern) Region to a level far exceeding all other regions of AMD" are not based on facts, but on the contrary, the data on the progress of drilling in the Northeastern Region (NER) since 2000-2001 Field Season clearly indicate that the achievements in drilling as well as the percentage of drilling days has consistently been on the decline since the time Dr. Hoda assumed charge of the Regional Director.

PROGRESS OF DRILLING IN NER SINCE 2000-2001

FIELD SEASON	NO. OF RIGS	@TARGET (M)	ACHIEVEMENT (M) AND (%)	# DRILLING DAYS (%)	NON-DRILLING DAYS (%)
2000-2001	4	1750	1474 (84%)	24.93	75.07
2001-2002	4	2000	1324 (66%)	19.79	80.21
2002-2003	4	2000	1132 (57%)	16.32	83.68
2003-2004 (UPTO AUG/04)	4	1667*	688 (41%)	15.43	84.57

@ TARGET FOR OTHER AREAS - 750 M PER RIG PER FIELD SEASON

EXPECTED DRILLING DAYS - ABOVE 55%

* PROPORTIONATE TARGET UP TO AUGUST, 2004

It may also be noted from this record that targets of drilling in the NER were already reduced to 500 m., as compared to 750 m., per rig per year in other Regions of the country. It is pertinent to mention that there is a direct link between proving of uranium reserves and the progress of evaluation drilling.

Dr. Hoda

10) That with regard to the averments made in para 4.7 of the application, it is submitted that his case for promotion to the grade of SO / H w.e.f. 1.8.2003 was considered by the respective Screening Committee and Departmental Promotion Committee along with other eligible candidates and based on the assessment of the work and after perusal of the confidential reports of the officer, Dr. Hoda was not recommended for promotion w.e.f. 1.8.2003.

11) That with regard to the averments made in para 4.8 of the application, it is submitted that, the Office Memorandum No.20013/3/83-E.IV, dated 13.12.1983 has extended certain benefits for the personnel serving in North Eastern Region as stated by the Applicant in the said O.A. as given below :

- (a) promotion in cadre posts;
- (b) deputation to Central tenure posts; and
- (c) courses of training abroad.

The Applicant being a Scientist in the Department of Atomic Energy and the promotions of Scientific & Technical personnel in this Department being governed by "Merit Promotion Scheme" (under which he got his promotions in this Department), the scheme which is more advantageous to the scientific & technical personnel for it is delinked to vacant posts and the above referred memorandum is not applicable in his case.

12) That with regard to the averments made in para 4.9 of the application, it is submitted that his case was considered for promotion w.e.f. 1.8.2003. However, he was not recommended for promotion by the respective Screening Committee as well as the Departmental Promotion Committee. It is submitted that mere residency in the feeder

Dr. Hoda

grade is not the sole criteria for consideration for promotion to grade, Scientific Officer-H. As has been mentioned above, on completion of 5 years in the grade of SO-G, the promotion cases are considered after taking into account various factors like CR grading, relevance and technical excellence of the work done, overall contribution of the individual in achieving the goal of the organization, achievement of the individual in various aspects of exploration, etc. As the Applicant did not meet the norms for promotion in that year **he was not recommended for promotion for the said year.** The Applicant also agrees that promotion is not a right. Further, the averment that his case was not considered for promotion with effect from 1.8.2004 is also not based on fact as his case was considered by the respective Screening Committee and Departmental Promotion Committee as indicated *ibid*. He was not eligible for promotion to grade SO/H w.e.f. 1.8.2004 for the sole reason that he had applied for outside posts during the previous one year. Thus it can be seen that his case was considered by the respective Screening Committee, Departmental Promotion Committee and competent authority for promotion w.e.f. 1.8.2003 and 1.8.2004 but he was found ineligible for promotion w.e.f. 1.8.2003 and also 1.8.2004, as explained above. It is further submitted that the Applicant got promotion to higher posts at varying intervals, which shows that his performance has not been consistent throughout.

In this context, it is submitted that the Hon'ble Supreme Court in its judgement dated 12.02.2007 in the Appeal (Civil) No.689/2007 arising out of SLP(C) No.2410/2007 in the matter of UOI & Anr. VS S.K.Goel & Others has held that the evaluation made by an Expert Committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose. As such, in the matter of promotion, no judicial review of the

Dr. Anand

DPC proceedings, which are already conducted in accordance with the Standing Government instruction and rules is warranted. A copy of the DoPT OM No.22034/3/2007-Estt(D) dated 11.04.2007 is enclosed as Annexure R/5).

Dr. Hoda

13) That with regard to the averments made in paras 4.10 to 4.14 of the application, it is submitted that the Applicant had submitted a representation dated 24.9.2004 (Annexure - V to the O.A.) to the Chairman, AEC and Secretary, DAE, through Director, AMD, Hyderabad. The grievances raised by the Applicant have been carefully examined in the department in consultation with Director, AMD especially with regard to his contention of non-promotion to the next grade of SO/H w.e.f. 1.8.2004 and non-transfer to the South Central Region. In response to the said representation vide letter No.12/6(8)/2002-I&M(AMD)/1741, dated 25.2.2005 the Applicant Dr.Hoda was informed suitably about his ineligibility for promotion to the grade of SO/H w.e.f. 1.8.2004, as he had applied for outside posts during that year.

As submitted in the para supra, his promotion could not be considered as per the guidelines on the subject. The said clause has been incorporated to discourage the efficient / trained scientists from going outside the Department and in order to achieve the goal / targets of the Department of Atomic Energy within the time schedule, as such condition does not apply in the case of applicants for posts in response to any circular or advertisement either within BARC or to units under the administrative control of the DAE. Even though Department of Atomic Energy, Government of India, is a designated member of the Board of Governors of the IAEA it is an international organisation and not under the administrative control of the DAE. Hence, the guidelines issued in

this regard and action taken by the Respondent's department in denying the promotion are not ultra vires, illegal, unconstitutional and violative of the provisions of Article 14, 16, 21 & 309 of the Constitution of India. In fact this condition applies for promotions to those holding lower scientific posts also. It has been upheld in a number of judgments of the Apex Court that reasonable restrictions are permissible.

Dr. Mani

As regards his contention that he was unaware of the consequences of applying for an outside post, it is submitted that the Applicant retired from service after rendering about 33 years service in this Directorate and had held various positions including that of Dy. Regional Director and Regional Director. As Regional Director and in the capacity of Head of Office the applicant was required to discharge certain Administrative responsibilities also. This includes the responsibility to process the proposals for promotion of officers and staff working under him and he was expected to be conversant with the norms for promotion including the conditions regarding ineligibility for promotion in the event of applying for outside jobs. The condition about the one year bar on promotions in case of applying for jobs outside is applicable to those holding lower posts also and during the discharge of duties of Regional Director, the Applicant is expected to know of such conditions as part of his normal duties and hence cannot plead ignorance of existence of this condition in his own case.

As regards Flexible Complimenting Scheme, the Respondents respectfully submit that the 'Merit Promotion Scheme' is totally different from the 'Flexible Complimenting Scheme' referred to by the Third Central pay Commission. In Atomic Minerals Directorate for

Exploration & Research, the 'Merit Promotion Scheme came into effect in the year 1973.

14) That with regard to the averments made in paras 4.15 to 4.17 of the application, it is submitted that parawise comments given to para 4.9 and paras 4.10 to 4.14 are reiterated for the sake of brevity. The Department of Atomic Energy was established on August 3, 1954. The objectives of the Department of Atomic Energy are the generation of electrical power from atomic energy, and the development and promotion of the uses of Atomic Energy in Agriculture, Biology, Industry and Medicine for the benefit of the people. In order to achieve the above said objectives, the Department has constituted various units viz. Bhabha Atomic Research Centre, Nuclear Fuel Complex, Variable Energy Cyclotron Centre, Atomic Minerals Directorate for Exploration & Research etc. The above units are supported by Scientific, Technical, Administrative and Auxiliary personnel. The Scientific & Technical personnel are governed under "Merit Promotion Scheme" which is a non-vacancy based scheme. This scheme, time tested and found to have been appropriate by more than four decades of experience, has been by and large adopted in the succeeding years by other agencies of the Government of India responsible for pursuing research and development in frontier areas of science and technology, like Space and Defence oriented institutions.

The promotion norms for Scientific & Technical grades have been duly approved by the Department of Atomic Energy. The norms for promotion of Scientific Officers are classified since they are directly linked to the Annual Confidential Report gradings.

D. H. N. S.

Merit Promotion Scheme of Atomic Energy are implemented/applicable to other constituent units of Department of Atomic Energy, so as to maintain uniformity. Since the said guidelines are in operation ever since 1971 and widely accepted by the scientific community and the prime objective is to discourage the well trained scientist from going outside the Department and for the welfare of the country and to achieve the goals of the Department. This scheme which was first pioneered by DAE has withstood the test of time and its success is proven by the fact that over the years several other Scientific Departments of the Government have adopted similar schemes for their S&T personnel. Thus the Merit Promotion Schemes for scientific and technical personnel in the Department of Atomic Energy has been a primary factor in the success of atomic energy programme and sustaining excellence in science and technology in the country. There are a number of judgments of the Central Administrative Tribunals of Mumbai and Hyderabad upholding the validity of the promotion cases resorted to under the Merit Promotion Schemes.

Dr. Manoj

In view of the above position explained the Hon'ble Tribunal may in the interest of justice not allow the Applicant to challenge the rules, order or instruction, etc., in vogue and dismiss the O.A. in limini. The documents called for by the Applicant are classified in nature.

15 That with regard to the averments made in para 5 of the application, it is stated that the Applicant who is covered under the 'Merit Promotion Scheme' got benefited with four promotions from SO/SC to SO/SD on 1.3.1979; SO/SD to SO/SE on 1.2.1985; SO/SE to SF on 1.8.1991 and SO/F to SO/G on 10.9.1998. It is once again reiterated that promotions under Merit Promotion Scheme in the Respondent Department are effected by creating the post to accommodate the officers recommended for promotion by the Selection Committee in accordance

with the performance of the candidates concerned and not by virtue of mere seniority or residency in a grade for a particular length of time. The Applicant became ineligible for promotion for a period of one year, as per the guidelines issued, as he applied for the post outside the organisation, i.e., IAEA during February, 2004 & March, 2004. The said guidelines are in operation ever since 1971 and widely accepted by the scientific community and the prime moto is to discourage the well trained scientist from going outside the Department in the larger interest and welfare of the country and to achieve the goals of the Department.

16) That with regard to averments made at paras 6 & 7 of the O.A., it is submitted that these are based on records and hence no comments are offered.

17) That with regard to the statement made in para 8 and 9 of the application, the Respondents state that in view of the facts and circumstances of the case and the provisions of law, the application is not maintainable and tenable in law and therefore the same is liable to be dismissed with costs as devoid of any merit as the applicant's case was considered by the competent authority for promotion w.e.f. 1.8.2003 and 1.8.2004 but he was found ineligible for promotion w.e.f. 1.8.2003 and also 1.8.2004 as explained above.

In view of the foregoing it is humbly submitted that the application may be dismissed with cost to respondents.

Place: Guwahati

Date: 14/9/07

Identified by me :

Usha Das
(Ms. Usha Das, Addl C.G.S.C.)

Dr. R. Mohanty
डॉ. आर. मोहंती
DEPONENT
Dr. R. Mohanty
क्षेत्रीय निदेशक
Regional Director
पखनि, पूर्वोत्तर क्षेत्र, शिलांग
AMD, NER, Shillong

VERIFICATION

I, Dr.Rajgopal Mohanty, aged 51 years, being Regional Director, North Eastern Region, Atomic Minerals Directorate for Exploration & Research, Department of Atomic Energy, Government of India, Shillong, do hereby declare that the facts stated in the aforesaid paras 1 to 17 are true to the best of my knowledge and correct as per the information derived from the official records of the Respondents believed to be true.

Hence verified and signed here at Shillong on this the 14th day of Sept, 2007.

Dr. Rajgopal Mohanty

डॉ. आर. मोहंती

(ON BEHALF OF THE RESPONDENTS)

क्षेत्रीय निदेशक

Regional Director

पखनि, पूर्वोत्तर क्षेत्र, शिलांग

AMD, NER, Shillong

Place :

Date :

LIST OF ANNEXURES TO THE COUNTER AFFIDAVIT

- | | |
|--------------|--|
| Annexure R-1 | -Letter No.AMD-Acts-III/Pen/1062/2005, dated 14.02.2005 giving details of Pension Payment Order of the Applicant. |
| Annexure R-2 | -Letter No.1/(2)/68-O&M/325, dated 28/29.05.1971 on conditions stipulating on forwarding of applications for outside appointment in a calendar year. |
| Annexure R-3 | -DAE OM No.3/1(23)/80-Adm.II dated 18.04.1980 on conditions stipulating on forwarding of applications for outside appointment in a calendar year. |
| Annexure R-4 | -DAE OM No.5/63/85-R dated 30.12.1985 on conditions stipulating on forwarding of applications for outside appointment in a calendar year. |
| Annexure R-5 | -DoPT OM No.22034/3/2007-Estt(D) dated 11.04.2007 on DPC Guidelines -Appeal (Civil)No.689/2007(arising out of SLP© No.2410/2007 in the matter of UOI & Anr. Vs. S.K.Goel & Ors - Judgement dated 12.02.2007 of Supreme Court of India. |

Annexure R/1

By Speed Post

Government of India
Department of Atomic Energy
Atomic Minerals Directorate for Exploration and Research

AMD Complex, Begumpet
Hyderabad - 500 016
Dated: February 14, 2005

No. AMD-Acts-III/Per/1062/2005

To:
The Pay & Accounts Officer,
Central Pension Accounting Office,
Ministry of Finance, Govt. of India,
Trikoot II Complex, Bhikaji Cama Palace,
Behind Hotel Hyatt Regency,
NEW DELHI - 110 066.

Sir,

A Pension Payment Order in favour of Shri S.Q.Hoda, Scientific Officer/SG details of which are given below, is forwarded herewith for arranging payment.

Details:

1. PPO No. & Date
2. Category of Pension

: 462280500038 dated 11.02.2005
: Superannuation Pension

3. (a) Amount of Basic Pension

: Rs. 14,359/- (Rupees Fourteen thousand three hundred and fifty nine only)

- (b) Family Pension in the event of death of the pensioner
Enhanced rate for seven years following the date of death or up to 24.02.2012 whichever is earlier.
Normal rate thereafter.

: Rs. 14,359/- (Rupees Fourteen thousand three hundred and fifty nine only)

4. Date of commencement of Pension
5. Name of the Bank
Branch
Location & Code No.

: Rs. 8,798/- (Rupees Eight Thousand Seven Hundred and Ninety Eighty only).

: 1.03.2005.
: State Bank of India
: PUBLIC SCHOOL BRANCH,
: BEGUMPET, HYDERABAD-500 016 (A.P.)
: Pin. 500016 BANK CODE NO. 2728

Account No.
Dist.
State
Pin

: 18075
: BEGUMPET,
: HYDERABAD-500 016 (A.P.),
: 500016.

6. Commutation is being paid by this office on 01.03.2005. Conditions attached to Pension may be made subject to the conditions specified in the PPO as well as under CCS (Pension) Treasury Rules.
7. Opted for Medical facilities under CHSS Scheme.

Yours

(Sr. Accounts)

20

186 155

Encl:

1. PPO (Pensioner's & Disburser's portion) along with photos.
2. Specimen signature slip.
3. Option of the pensioner indicating the Name and full address of the authorized Public Bank.
4. Nomination for arrears of pension.
5. Pension calculation Sheet.

Copy to:

- ✓ 1. Chief Administrative & Accounts Officer, Atomic Minerals Division, Hyderabad - 500016.
2. Dy. Controller of Accounts, Principal Accounts Office, DAE, CSM Marg, Mumbai - 400081.
3. Shri S.Q.HODA, SO/C
9-B AERO VIEW TOWER,
At. Shamla, P.O. Begumpet,
Hyderabad-500 016 (A.P.)
PIN CODE- 500016.
4. The Manager, State Bank of India, Public School Branch, Begumpet, Hyderabad-500016.
5. Pension File.

"You may visit website
<http://cpao.nic.in>
to know the status of your
pension case"

Sr. Accountant

Asst. Personnel Officer

service to secure employment under a State Government, a public sector undertaking or under a quasi-Govt. organisation such as University etc. provided they execute a fresh bond to serve the new employer for a specified period as determined by the Deptt.

2. Administrative and Auxiliary Staff:

In respect of administrative and auxiliary staff, as their services are on par with the other employees of Government of India, the orders of the Ministry of Home Affairs may be followed. It is not necessary to stipulate in their cases, the condition that they will not be eligible for promotion for one year from the date of application.

According to Home Ministry's orders, in the case of permanent Government servants four opportunities in a year may be given to apply in response to U.P.S.C. advertisements or advertisements/Notices of Government Departments/Public Sector undertakings and autonomous bodies except where withholding of any such application is considered by the competent authority concerned to be justified in the public interest. As regards temporary Government servants the administrative authorities should not ordinarily refuse to forward applications for employment elsewhere, which are in response to advertisements issued by the U.P.S.C. or requests from other Departments or where the applicant is likely to obtain a permanent employment elsewhere. They should, however, as a matter of rule, be asked to resign from the parent Department/Office, in the event of their appointment in the new office.

sd/-28/5/71

(H. Janakiraman)
Dy. Establishment Officer

Dy. Establishment Officers

A.I.O in Personnel Division

Copy to : Head, Personnel Division
Establishment Officer
AOs III/Secretary, TC & TSC
APOs in Divisions/Sections.

Government of India
Department of Atomic Energy

C.S.M. Marg,
Bombay - 400 009.

April 18, 1980.

No. 3/1(23)/80-Adm.II

OFFICE MEMORANDUM

Subject:- Forwarding of applications for outside appointments - Scientific and Technical Staff - Procedure for.

In partial modification of the various orders issued by the Units to regulate forwarding of applications for outside appointments by the Scientific and technical staff of the Department, it has been decided that the number of applications to be forwarded per year in respect of scientific/technical staff may be increased to four - two applications for appointments in outside organisations and the other two for appointments in any of the Units under the administrative control of the Department of Atomic Energy.

2. The other conditions for forwarding of applications shall remain unchanged.

Sd/-
(T. Sethumadhavan)
Deputy Secretary to the Govt. of India.

All Heads of Units

All Officers/Sections of the Secretariat.

No: 5/63/85-R

C.S.M. Marg,
Bombay-400 039.
December 30, 1985.

OFFICE MEMORANDUM

Sub: Forwarding of applications for outside appointments.

.....

The Department was considering the question of liberalising the orders contained in BARC Circular No.1(2)/68-O&M-325 dated May 28/29, 1971 and DAE O.M. 3/1(23)/80-Adm.II dated April 18, 1980 regarding forwarding of applications in the case of technical employees. On a detailed consideration of the issue and in consultation with the Staff Side members of the Departmental Council under JCM, it has been decided that the following procedure will be followed in respect of forwarding of applications of the technical (non-gazetted) employees in DAE-constituent units:-

1. The existing restriction, that employees whose applications have been forwarded to outside organisations, will not be entitled for promotion for a period of one year from the date of application, stands removed with immediate effect.
2. The employees on promotion to higher posts will not be eligible to forward applications for outside employment for a period of two years from the date of promotion.

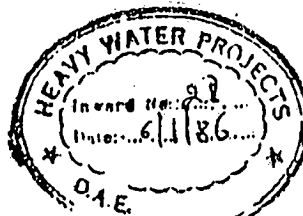
The other conditions for forwarding of applications shall remain unchanged in the case of technical (non-gazetted) employees.

R.B. Budhiraja
(R.B. Budhiraja)
Director

All Heads of Units of DAE
All officers in DAE
All Sections in DAE

Copy to Secretary, Departmental Council, DAE.

Chief Executive,
Heavy Water Projects,
C-10 Building, B.B-1.



Executive Director (HWP)

25 -
Annexure - R/5
168
No.22034/3/2007-Estt(D)

Government of India

Ministry of Personnel, Public Grievances and Pensions

Department of Personnel and Training

New Delhi, the 11th April, 2007

OFFICE MEMORANDUM

Subject:- DPC guidelines - Appeal (Civil) No. 689/2007(arising out of SLP(C) No 2410/2007 in the matter of UOI & Anr. vs. S.K.Goel & Ors - Judgment dated 12.2.2007 of Supreme Court of India.

The undersigned is directed to say that in its judgment dated 12.2.2007 in the Appeal (Civil) 689/2007(arising out of SLP(C) No 2410/2007 in the matter of UOI & Anr. vs. S.K.Goel & Ors, the Supreme Court of India has held that "the DPC enjoy full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it. Hence, the interference by the High court is not called for". The Bench has also noted that the DPC are not required to be guided merely by the over all grading, if any that may be recorded in the CRs but to make its own assessment on the basis of the entries in the CRs. While delivering the above judgment, the Division Bench of Hon'ble Justice Dr. A.R.Lakshmanan and Hon'ble Justice Mr. Altamas Kabir has observed that it is now more or less well settled that the evaluation made by an Expert Committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose. In fact Hon'ble Justice Dr. Laskhmanan has noted that no judicial review of the DPC proceedings, which are already conducted in accordance with the standing Government instructions and rules is warranted.)

2. The above judgment of the Hon'ble Supreme Court is brought to the notice of Ministries/Departments concerned so that they may ensure that any challenge to the existing DPC instructions of DoPT in any Court particularly with regard to role/authority of the duly constituted DPC on the issue of evaluation of candidates is properly defended keeping in view the directions of the Hon'ble Supreme Court in the matter of UOI & Anr. vs. S.K.Goel & Ors.

A.K. Srivastava
(A.K. Srivastava)

Under Secretary to the Govt. of India

All Ministries/Departments of Government of India.

- 26 -

-2-

Copy to:-

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
3. Cabinet Secretariat, New Delhi.
4. Rajya Sabha Secretariat/ Lok Sabha Secretariat, New Delhi.
5. The Registrar General, The Supreme Court of India.
6. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi.
7. The Comptroller and Audit General of India, New Delhi.
8. Secretary, Union Public Service Commission
9. The Secretary Staff Selection Commission, New Delhi.
10. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
11. National Commission for Scheduled Castes, New Delhi
12. National Commission for Scheduled Tribes, New Delhi
13. Secretary, National Council(JCM), 13, Ferozeshah Road, New Delhi.
14. Establishment Officer & A.S.
15. National Commission for OBCs, New Delhi.
16. All Officers and Sections in the Department of Personnel and Training.
17. Facilitation Center, DoP&T(20 copies).
18. NIC (DoP&T) for placing this Office Memorandum on the Website of DoP&T.
19. Establishment (D) Section (200 copies).

UB(scs)/8749
4/5/07

19 NOV 2007

गुवाहाटी न्यायापीठ

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI, TI

OA No. 172/2005

Dr. Shaikh Quamrul Hoda.....Applicant

-VS-

Union of India & others.....Respondents

SYNOPSIS OF THE REJOINDER filed by the
Applicant

This rejoinder affidavit is filed by the applicant to the affidavit-in-opposition filed by the respondents.

The issue of want of jurisdiction is settled by the Hon'ble Central Administrative Tribunal, Principal Bench in PT Case No. 251/2006. This Hon'ble Tribunal has the jurisdiction. (Para 4)

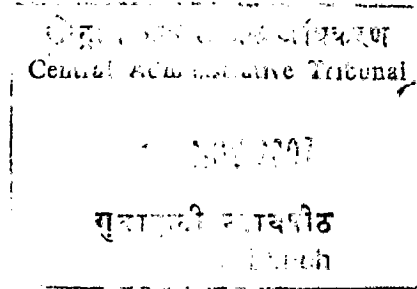
MP No. 60/2007 has been allowed directing the respondents to produce all the 5 categories of records in the Curt (Para 5)

25.2.2005- The Impugned order speaks about a sole ground for non-consideration of promotion of the applicant. Impugned order hits the provisions of Art. 14 and 16 of the Constitution of India (Para 6)

25.2.2005- The impugned order is silent about Screening Committee & DPC (Para 7)

Qualitative and quantitative assessment of eligibility criteria was not done. Respondent No.3, eo-nominie implicated, is silent about the mater. The affidavit contains derogatory remarks. (Para 8)

Filed by:
Proponent
Advocate
19/11/07



Provisions of incentive in OM dated 14.12.1983 denied to the applicant (Para 9)

Ratio laid down in "Union of India & ano -v-s Sk Goel" are in different footing and is not applicable to the instant case. (Para 10).

Circular dated 28/29.5.1971, OM dated 18.4.1980 and 30.12.1985 are derogatory to Art. 14 and 16 of the Constitution of India and are superseded by the OM dated 20.6.1991.

Hence, the impugned order dated 25.2.2005 is liable to be set aside and quashed and the application is prayed to be allowed with all consequential benefits to the applicant.

Filed by:

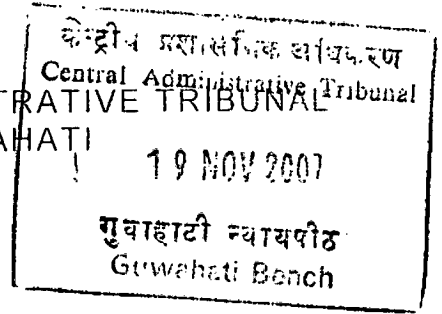
Deefairad
Advocate
19/11/07

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-3-

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI

OA No. 172/2005



Dr. Shaikh Quamrul Hoda.....Applicant

-vs-

Union of India & others.....Respondents

Counter Affidavit / Rejoinder filed by the
applicant to the Affidavit-in-reply filed by the
respondents:

I, Shri Shaikh Quamrul Hoda, son of Sri Shaikh Kalimuddin, aged about 62 years, Ex-Regional Director, AMD for Exploration and Research, Shillong, C/o. Jisnu Dutta Goswami, "Kanta", Chenikuthi Hillside, Guwahati – 3 do hereby solemnly affirm and state as follows:

1. That I am the applicant in the abovenoted OA No.172/2005 and as such I am fully acquainted to the facts and circumstances of the case.
2. That a copy of the affidavit-in-reply filed on behalf of the respondents has been served on me. I have gone through the same and understood the contents thereof.
3. That the statements made in the said affidavit-in-reply, which are not specifically admitted are hereby denied by me.
4. That with regard to the statements made in para 1 and 2 of the said affidavit I have no comment to make as the same are

Shaikh Quamrul Hoda

general statements. But with regard to the statements made in para 3 and para 6, I say that the said objection cannot sustain as the issue has been settled by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in PT Case No.251/2006 thereby rejecting the plea of jurisdiction. I crave the leave of this Hon'ble Court to allow me to produce the copy of the said order at the time of hearing if so warranted.

5. That with regard to the statements made in para 4.1 to 4.3 and 4.3 (a) to 4.3(d), I say that these are all matters pertaining to records and hence nothing is admitted in absence of such records. Moreover, this Hon'ble Tribunal while allowing the MP No.60/2007 filed by this applicant, has already issued the specific direction to produce all the relevant 5 different categories of records as prayed for in the said Misc. Petition.
6. That with regard to the statements made in para 5, 5.1, 5.2 and 5.2.1, I say that these averments made on affidavit are not in conformity with the impugned order dated 25.2.2005 (Annexure VI of the OA) as apparent on the face of records as in para 3 of the said impugned order dated 25.2.2005. It is very much clear on the face of the said impugned order that the case of promotion of the petitioner has not been considered by the respondents as he applied for outside post during the previous one year. If that was the only stand / ground for non consideration for promotion, the respondents cannot import any other such ground / reason which is not explicit on the face of the said impugned order. Moreover the right to be considered for promotion is a fundamental right covered by Article 14 and 16 of the Constitution of India and the said impugned order would directly hit the said Constitutional right of the applicant. I also deny all such other statements, which are not supported by records as the same are pertaining to records only unless such records are produced and testified.

7. That with regard to the statements made in para 7, I say that the impugned order dated 25.2.2005 is completely silent about the alleged non-recommendation by the Screening Committee and the DPC alleging that the applicant was not meeting the eligibility criteria for promotion. I strongly deny the correctness of those statements, as the impugned order dated 25.2.2005 is silent all about these and more so in absence of any such records of process of promotion by the Screening Committee of the DPC and the comparative statements of bio-data of the applicant and the respondent No.3.
8. That with regard to the statements made in para 8, I say that these are matter very personal to the respondent No.3, who is a party by name in this application. The qualitative and quantitative assessment of educational qualification and merit has to be countered / analysed by the said respondent No.3 to show that his works are materially superior to the standard of the applicant. The reply given on behalf of the respondents by Dr R Mohanty, who is not a higher authority cannot assess and or compare the quality and quantity as "general topics". This is highly objectionable as the same is not based on any expert evaluation / report. Therefore I deny the correctness of those statements and say that these are far from any truth. Moreover, such derogatory remarks by a junior officer are not warranted unless such remarks are supported by any such proven records and comparative statements showing the works and merits of the respondent No.3 and the applicant.
9. That with regard to the statement made in para 9, I directly deny the correctness of the assessment as the same are not based on any law or rules. Moreover, the respondents have totally ignored about the inaccessibility and difficult terrain of the North East region as emphasized by the Govt. of India, Ministry of Finance in OM dated 14.12.1983 as in Annexure IV of the OA. In addition to the said ground realities, the fact of terrorist activities

prevalent and the law and order situation in the region including the State of Meghalaya is a matter fact and fit for judicial notice and well known to the Govt. of India and the respondents. But the respondents have taken every steps to negate the legitimate claim of the applicant, but miserably failed to show in their reply as to how the respondent No.3 is more meritorious and superior to the applicant to be fit for promotion to the Grade SO-H by superseding his senior, the applicant. That being the position the said statements have no bearing with the right of the applicant to be considered for promotion of the applicant.

10. That with regard to the statements made para 10,11 and 12, I say that as apparent on the face of the impugned order dated 25.2.2007, the case of promotion of the petitioner to the Grade SO-H was not at all considered by the respondents on the plea that the applicant applied for outside job. That being the fact the question of non-consideration by Screening Committee or the DPC on the basis of so called Merit Promotion Scheme is an evasive twist to cover up the truth.. The case of the applicant was not considered at all and he was kept outside the zone of consideration as stated by the respondents themselves in the impugned order itself. The weightage to be given and considered under the OM dated 14.12.1983 was never taken into consideration, as the impugned order is silent in this regard. As such the averments made by the respondents cannot sustain in law and the case referred to in UOI & another -vs- S.K. Goel & ors has no factual and legal bearing with the present fact and situation so far as the case of the applicant is concerned. I also say that the case of the applicant was never considered by any such Screening committee/ DPC as per any standing Government instructions and rules. In this connection I further beg to submit that in a case of similar nature in OA No.1043/1999, the Hon'ble Division Bench Of Mumbai Bench of this Hon'ble Tribunal held that the question of seniority cannot be thrown to the wind. The guidelines of Merit Promotion

Shaikh Quamrul Huda

19 NOV 2007

गुवाहाटी न्यायपीठ

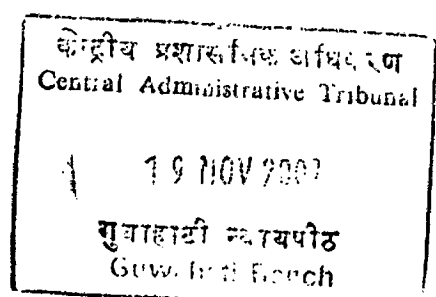
Guwahati Bench

Scheme directly linked to the ACR Grading and such guidelines cannot be secret or confidential. It is further added by the said Hon'ble Tribunal that the Scientific Organizations are not under the purview of the UPSC, for the purpose of promotion, does not mean that they can be a law unto themselves and trample upon the rights of their employees. Accordingly the said Hon'ble Tribunal while allowing the application further observed that the respondents to have re-thinking on their promotion scheme and to spell it out correctly for the sake of transparency and administration and to avoid charges of nepotism, which augurs bad for the fair name of the organization and its illustrious founder. The said Hon'ble Tribunal also further observed that the maintenance of seniority list is not at all relevant for promotion and that the guidelines and norms for promotion are classified and cannot be disclosed are anachronisms. In view of the said order of the Hon'ble Tribunal, Mumbai Bench, I do not admit anything, which are not supported by any such proof / evidence on record and provisions of law.

11. That with regard to the statements made in para 13 and 14 I reiterate and reassert the foregoing statements made in this affidavit and in the OA. Apparently it is now an admitted fact that the provisions of circular dated 28/29th May 1971, OM dated 18th April, 1980 and 30th December, 1985 are superseded by the Govt. of India general order dated 20.6.1991 as in Annexure XII of the OA. The law is also well settled that when there are two separate provisions of law and the said two different laws are inconsistent with each other, the later will prevail over the prior law. Therefore the provision of order dated 20.6.1991 would prevail upon the other circular and OMs as stated above and therefore the impugned order dated 25.2.2005 cannot sustain in law and the same is liable to be set aside and quashed.

12. That with regard to the statements made in para 15, 16 and 17 I reiterate and reassert the statements made in the OA and in this

Chaikh Quamrul Hoda



affidavit and say that the right to be considered for promotion is a fundamental right as provided under Article 14 and 16 of the Constitution of India. Any such law / guidelines / scheme made by any authority if comes in conflict or in derogation to those fundamental rights are to be declared unconstitutional and the same are liable to be struck off to the extent of their repugnancy or to the extent of said offending provision. Therefore the provisions contained in the circular dated 28/29th May 1971, OM dated 18th April 1980 and 30th December 1985 restricting and limiting the rights to be considered for promotion are directly offending and repugnant to the provisions of fundamental rights under the Article 14 and 16 of the Constitution of India and therefore the same are liable to be struck down and set aside to the extent of such offending / repugnant provisions and the present application be allowed directing the respondents to consider the case of the applicant for promotion from grade SO-G to SO-H as if the restriction imposed by the said circular / OM dated 28/29th May 1971, 18th April 1980 and 30th December 1985 never existed.

13. That I also respectfully submit that it is a fit case where this Hon'ble Tribunal be pleased to exercise its power and jurisdiction and also be pleased to allow the prayer of the applicant for upholding his right to be considered for promotion the grade SO-G to SO-H and if the applicant is found fit for such promotion then to give him all the consequential benefits with retrospective effect.
14. That in any view of the matter and under the facts and circumstances of the case and the provisions of law it is a fit case where this Hon'ble Tribunal may be pleased to uphold the accrued Constitutional right of the applicant and direct the respondents to hold a review Screening Committee / DPC for consideration of promotion of the applicant strictly as per established rules and procedure.

Shaikh Quamrul Hoda

19 NOV 2007

गुवाहाटी न्यायपीठ
Guwahati Bench

15. That the statements made in this affidavit in para.....1.....to 5,7,8,10 to 14 are true to my knowledge and belief. those made in para 6 & 9 tobeing matter of records are true to my information derived therefrom and the rest are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this affidavit on this 4th day of November 2007 at Guwahati.

Shaikh Quamrul Hoda

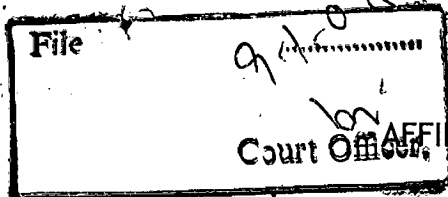
Deponent

Identified by me -

B. C. Pathak
Advocate

Solemnly affirmed and declared before me by
the deponent who is identified by
B. C. Pathak....., Advocate
on this the 4th day of November 2007.

Bishesh Pathak
Advocate

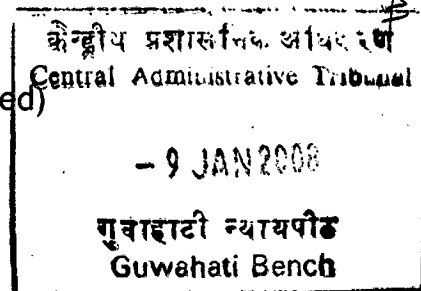


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

Court Officer

AFFIDAVIT-IN-REPLY TO THE REJOINDER FILED BY THE APPLICANT IN
ORIGINAL APPLICATION NO.172 OF 2005

Dr. Shaikh Quamrul Hoda,
S/o Shaikh Kalimuddin, aged about 60 years,
Scientific Officer 'G' and Regional Director (Retired)
North Eastern Region,
Atomic Minerals Directorate
for Exploration & Research (AMD),
Department of Atomic Energy,
Shillong, Meghalaya,
C/o Jishnu Dulta Goswami,
"Kanta", Chenikuthi Hillside,
Guwahati - 781 003 (Assam).



..... APPLICANT

VERSUS

1. Union of India,
Represented by the Chairman,
Atomic Energy Commission and
Secretary, Government of India,
Department of Atomic Energy,
C.S.M. Marg, Anushakti Bhavan,
Mumbai - 400 039.
2. The Director,
Atomic Minerals Directorate
for Exploration & Research (AMD),
AMD Complex, 1-10-153-156,
Begumpet, Hyderabad - 500 016.
3. Shri A.K. Pande,
Regional Director,
Western Region,
52/496 AMD Flats,
Sector-5, Pratap Nagar,
Jaipur - 302 030 (Rajasthan).

..... RESPONDENTS

AFFIDAVIT-IN-REPLY TO THE REJOINDER FILED BY THE APPLICANT
ON BEHALF OF RESPONDENTS

The Respondent named above respectfully submits as under: -

1. In view of the Rejoinder filed by the Applicant it has become necessary
for the answering Respondent to file Additional Submissions by way of reply
to the rejoinder which the answering respondent submits as under:-

Filed by
the respondents through
Shri Doo
Addl CMC
07/11/08

Dr. Hoda

2. As to Para-1 to 3 : The averments made in these paras are formal in nature and therefore no comments are made by the respondents.

3. As to Para-4 : No comments.

4. As to para.5 : Facts furnished in para 4.1 - 4.3 & 4.3 (A), 4.3(b) in reply to Consolidated Amended Application are reiterated for the sake of brevity.

5. As to Para.6 & 7: It is respectfully reiterated that a policy decision has been taken vide letter No.1/(2)/68-O&M/325, dated 28/29.05.1971 as amended by DAE OM No. 3/1(23)/80-Adm.II dated 18.4.1980 and No. 5/63/85-R dated 30.12.85 stipulating conditions while forwarding of applications for appointment in organizations outside the Department of Atomic Energy (DAE), wherein for Scientific & Technical Staff at para 1(b) of the letter, it has been mentioned that -

"(b) The persons whose applications are forwarded to outside organizations will become ineligible for grant of additional increments / promotion for a period of one year from the date of application. This condition does not apply in the case of applicants for posts in response to any circular or advertisement either within BARC or to units under the administrative control of the DAE."

The said condition is still in force.

The reasons for non-promotion of Dr. Hoda w.e.f. 1.8.2003 & 1.8.2004 are detailed below:

"That the cases of all officers in the grade of SO-G on completion of 5 years of service in that grade are perused taking into account various factors including the CR gradings, number of publications, special achievement and the individual's overall contributions, to the organization and only those who are found deserving promotion to the post of Scientific Officer-H are recommended. Accordingly earlier, the case of the Applicant alongwith other Scientific Officers / G who were in the zone of consideration for promotion to

File in Court on.....
Court Officer.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
- 9 JAN 2004
गुवाहाटी न्यायपीठ
Guwahati Bench

the post of Scientific Officer / H with effect from 1st August, 2003 was considered by the Competent Authority and he was not recommended. "

Hence this Department has not violated the Article 14 and 16 of the Constitution of India.

6. As to Para 8: It is respectfully submitted that the statements made in this para are hereby denied. It is submitted that Dr.R. Mohanty, has been declared as Head of Office. He is holding the post of Regional Director of North Eastern Region, AMD, Shillong and he is authorized to sign the documents on behalf of the Department.

7. As to Para.9: That with regard to the averments made in the said para it is submitted that the data on the progress of drilling in the Northeastern Region (NER) since 2000-2001 Field Season clearly indicate that the achievements in drilling as well as the percentage of drilling days has consistently been on the decline since the time Dr. Hoda assumed charge of the Regional Director.

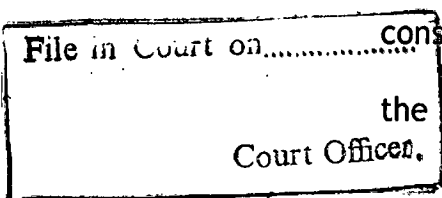
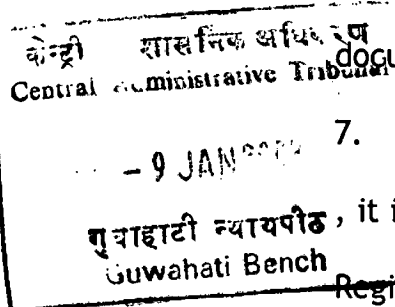
PROGRESS OF DRILLING IN NER SINCE 2000-2001

FIELD SEASON	NO. OF RIGS	@TARGET (M)	ACHIEVEMENT (M) AND (%)	# DRILLING DAYS (%)	NON-DRILLING DAYS (%)
2000-2001	4	1750	1474 (84%)	24.93	75.07
2001-2002	4	2000	1324 (66%)	19.79	80.21
2002-2003	4	2000	1132 (57%)	16.32	83.68
2003-2004 (UPTO AUG/04)	4	1667*	688 (41%)	15.43	84.57

@ TARGET FOR OTHER AREAS - 750 M PER RIG PER FIELD SEASON

EXPECTED DRILLING DAYS - ABOVE 55%

* PROPORTIONATE TARGET UP TO AUGUST, 2004



Dr. Mohanty

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It may also be noted from this record that targets of drilling in the NER were already reduced to 500 m., as compared to 750 m., per rig per year in other Regions of the country. It is pertinent to mention that there is a direct link between proving of uranium reserves and the progress of evaluation drilling. Hence the averments made by the applicant in this para are denied.

8. As to Para 10: That with regard to the averments made in this para of the rejoinder, it is submitted that his case was considered for promotion w.e.f. 1.8.2003. However, he was not recommended for promotion by the respective Screening Committee as well as the Departmental Promotion Committee. It is submitted that mere residency in the feeder grade is not the sole criteria for consideration for promotion to grade, Scientific Officer-H.

As has been mentioned above, on completion of 5 years in the grade of SO-G, the promotion cases are considered after taking into account various factors like CR grading, relevance and technical excellence of the work done, overall contribution of the individual in achieving the goal of the organization, achievement of the individual in various aspects of exploration, etc. As the

Applicant did not meet the norms for promotion in that year he was not recommended for promotion for the said year. The Applicant also agrees that promotion is not a right. Further, the averment that his case was not considered for promotion with effect from 1.8.2004 is also not based on fact as his case was considered by the respective Screening Committee and Departmental Promotion Committee as indicated *ibid*. He was not eligible for promotion to grade SO/H w.e.f. 1.8.2004 for the sole reason that he had applied for outside posts during the previous one year. Thus it can be seen that his case was considered by the respective Screening Committee, Departmental Promotion Committee and competent authority for promotion w.e.f. 1.8.2003 and 1.8.2004 but he was found ineligible for promotion w.e.f. 1.8.2003 and also 1.8.2004, as explained above. It is further submitted that the Applicant got promotion to higher posts at varying intervals, which shows that his performance has not been consistent throughout.

File in Court of.....

Court Office

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

- 9 JAN 2004

गुवाहाटी न्यायपीठ
Guwahati Bench

Dr. Manoj

In this context, it is submitted that the Hon'ble Supreme Court in its judgement dated 12.02.2007 in the Appeal (Civil) No.689/2007 arising out of SLP(C) No.2410/2007 in the matter of UOI & Anr. VS S.K.Goel & Others has held that the evaluation made by an Expert Committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose. As such, in the matter of promotion, no judicial review of the DPC proceedings, which are already conducted in accordance with the Standing Government instruction and rules, is warranted.

Dr. Anand

9. As to Para.11 & 12 : That with regard to the averments made in this para, it is stated that the Applicant who is covered under the 'Merit Promotion Scheme' got benefited with four promotions from SO/SC to SO/SD on 1.3.1979; SO/SD to SO/SE on 1.2.1985; SO/SE to SF on 1.8.1991 and SO/F to SO/G on 10.9.1998. It is once again reiterated that promotions under Merit Promotion Scheme in the Respondent Department are effected by creating the post to accommodate the officers recommended for promotion

Court Officer.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
- 9 JAN 2005
गुवाहाटी न्यायपट्ट
Guwahati Bench

by the Selection Committee in accordance with the performance of the candidates concerned and not by virtue of mere seniority or residency in a grade for a particular length of time. The Applicant became ineligible for promotion for a period of one year, as per the guidelines issued, as he applied for the post outside the organization, i.e., IAEA during February, 2004 & March, 2004. The said guidelines are in operation ever since 1971 and widely accepted by the scientific community and the prime moto is to discourage the well trained scientist from going outside the Department in the larger interest and welfare of the country and to achieve the goals of the Department.

It is further submitted that the Applicant being a Scientist in the Department of Atomic Energy received promotions under the Scientific & Technical category of Department, which is governed by "Merit Promotion Scheme" the scheme which is more advantageous to the scientific & technical

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personnel for it is delinked to vacant posts, cannot raise an objection about the various circulars at this stage.

10. As to Para 13 & 14 : Formal in nature and hence no comments are offered.

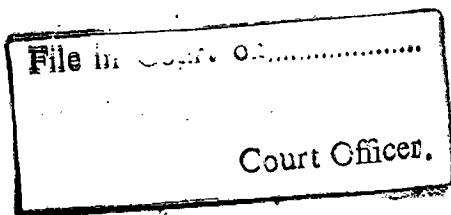
The application is therefore, not maintainable and tenable in law and therefore the same is liable to be dismissed with costs as devoid of any merit.

Shillong

DATED January -2008

Additional Central Govt. Standing Counsel

for Respondent No.2



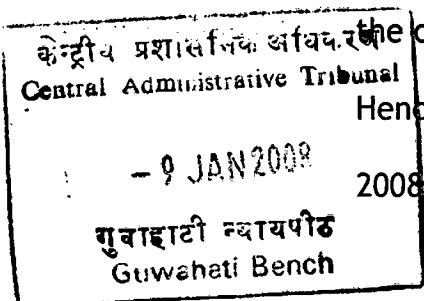
VERIFICATION

I, Dr.Rajgopal Mohanty, aged 51 years, being Regional Director, North Eastern Region, Atomic Minerals Directorate for Exploration & Research, Department of Atomic Energy, Government of India, Shillong, do hereby declare that the facts stated in the aforesaid paras 1 to 10 are true to the best of my knowledge and correct as per the information derived from

the official records of the Respondents believed to be true.

Hence verified and signed here at Shillong on this the second day of January,

2008.



(ON BEHALF OF THE RESPONDENTS)

(DR. R. MOHANTY)

Place : Shillong

Date : 2.1.2008

क्षेत्रीय निदेशक
Regional Director
परमाणु खनिज अन्वेषण
Atomic Minerals Directorate
एवं अनुसंधान निदेशालय
For Exploration & Research
परमाणु ऊर्जा विभाग
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