

27
14-7-2011

Mr. C.B. Sharma, Counsel for
applicant.

Mr. Hemant Mathur, Counsel
for respondents.

Heard learned Counsel for the
parties.

The OA stands disposed of, by
a separate order.

Anil Kumar
(Anil Kumar)
M(A)

K. S. Rattan
(Justice K. S. Rattan)
M(J)

Sum

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 14th day of July, 2011

ORIGINAL APPLICATION NO. 35/2008

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Badri Narayan Meena son of Shri Sheo Narayan Meena aged about 33 years, resident of Mandiya Ki Dhani, Village Gator, Malviya Nagar, Jaipur and presently working as Upper Division Clerk, Office of Dy. Director General, Geological Survey of India, Western Region, Jhalana Doongari, Jaipur.

.....Applicant

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through its Secretary, Ministry of Mines, Government of India, Department of Geological Survey of India, New Delhi.
2. Director General, Geological Survey of India, 27, Jawahar Lal Nehru Road, Kolkatta.
3. Dy. Director General, Geological Survey of India, Western Region, Jhalana Doongari, Jaipur.

.....Respondents

(By Advocate: Mr. Hemant Mathur)

ORDER (ORAL)

Learned counsel for the respondents submits that the controversy involved in this OA is squarely covered by the judgment rendered by this Tribunal in OA No. 228/2007 decided on 04.11.2008 [Asim Kumar Chatterjee vs. Union of India & Others]. The same has been opposed by the learned counsel for the applicant and submitted that the facts & circumstances of the present case are altogether different. We have heard the rival submissions of the respective



parties and have carefully perused the order passed in OA 228/2007 dated 04.11.2008 relied upon by the respondents.

2. In this OA, the relief claimed by the applicant is that the respondents may be directed to treat him as appointee/promotee in the cadre of UDC, scale Rs.4000-6000/-, with effect from 18.10.2002 as ordered vide Annexure A/5 and Annexure A/6 instead of 01.06.2004 by quashing the order dated 29.01.2008 (Annexure A/1) with all consequential benefits including arrears of pay allowances and due seniority. The applicant further prayed that the respondents be directed to consider his candidature for promotion to the cadre of Assistant scale Rs.5000-8000 taking into consideration of date of appointment/promotion as UDC on 18.10.2002.

3. Brief facts of the case are that the applicant was initially appointed as LDC on 25.08.1995. Respondent no. 3 called for applications to appear in the Departmental Competitive Examination for promotion to the cadre of UDC by notifying two posts of UDC vide circular dated 12.03.2002 and in response to that applicant submitted an application 13.03.2002 and appeared in the departmental examination and was declared successful and approved for appointment to the post of UDC vide letter dated 18.10.2002 and pursuant to the appointment letter, the applicant joined the post of UDC on 18.10.2002. The controversy arose when respondents in the year 2006 on the recommendations of the Review DPC changed promotion date of certain official in the cadre of Assistant scale, Rs.5000-8000/-, due to revision of seniority list in the grade of UDC



for the year 1994 onwards circulated in the year 2003 vide order dated 13.10.2006. The action of the respondents has been challenged by way of submitting the present OA on the ground that the reversion of the applicant from the post of UDC to the post of LDC with effect from 18.10.2002 to 31.05.2004 is arbitrary, illegal and unjustified as the applicant appointed/promoted in the cadre of UDC under examination quota after passing the departmental examination on the basis of merit.

4. Per contra, learned counsel for the respondents submitted that due to revision of seniority list in the grade of UDC for the year 1994, 1995, 1996 and 1999, which were circulated vide letter dated 02.09.2003, the promotions made to the post of Assistant on the basis of the pre-revised seniority list in the grade of UDC for the above mentioned year have become necessitated to be reviewed. Further Shri B.S. Chauhan, Assistant, had filed an OA No. 726/2005 & MA No. 757/2005 before the Ahmedabad Bench of the Central Administrative Tribunal for retrospective promotion in the grade of Assistant on the basis of said revised seniority in the grade of UDC.

5. In view of the judgment of CAT, Ahmedabad Bench, the review DPC for the post of Assistant was met on 12.10.2006 for consideration of promotion cases in the grade of Assistant as per said revised seniority list of UDCs and reviewed the relevant recommendations of the earlier DPC and on the recommendations of the said Review DPC and on approval of the competent authority i.e. Deputy Director General, WR, GSI, Jaipur, respondent no. 3, Shri H.A. Alvi, Assistant,



was reverted to the post of UDC for the period from 24.07.2001 to 31.05.2004 and promoted as Assistant w.e.f. 01.06.2004 vide order dated 13.10.2006. Thus the applicant who was promoted to the post of UDC w.e.f. 18.10.2002 on the basis of result/merit of the Departmental competitive Examination 2002 for promotion to the post of UDC against the one vacancy under examination quota in the grade of UDC which was available due to promotion of H.A. Alvi as Assistant w.e.f. 24.07.2001. Consequently, upon reversion of Shri Alvi, Assistant, to the post of UDC for the period from 24.07.2001 to 31.05.2004 and his promotion w.e.f. 01.06.2004 as Assistant vide order dated 13.10.2006, the said vacancy under examination quota in the grade of UDC does not exist on 18.10.2002, as such the applicant was reverted to the post of LDC from the post of UDC w.e.f. 18.10.2002 and order dated 25.11.2002 was partly modified/revised vide order dated 29.01.2008 and the applicant shall be deemed to be UDC with effect from 01.06.2004 as has been done in other similar cases vide order dated 13.10.2006.

6. Now the question which arises whether the judgment rendered by this Tribunal is squarely covers the present controversy or not. Upon careful examination, it reveals that the same controversy was before the Tribunal in the case of Asim Kumar Chatterjee (OA No. 228/2007) and the same stand has been taken by the respondents before this Tribunal and stated that the order of reversion and pay fixation of the applicant was due to revision of seniority of UDC and on the recommendation of the Review DPC, one Shri Ram Gopal Meena, Assistant, was reverted to the post of UDC for the period with effect



from 01.09.2000 to 31.05.2004. The applicant was promoted as UDC w.e.f. 30.04.2003 due to vacancy occurred after promotion of Shri Ram Gopal Meena to the post of Assistant and when he was reverted for the period 01.09.2000 to 31.05.2004 as UDC, no vacancy was available for that in Examination quota, therefore, the applicant was reverted for that period as LDC. In that case the applicant does not dispute but apprehend that the respondents may recover the excess amount for the period 01.09.2000 to 31.05.2004 when he had worked on the post as UDC and prayed that directions may be given to the respondents not to recover the excess amount for the aforesaid period. Having considered the submission made by the learned counsel for the applicant, the Tribunal observed as under:-

"We see considerable force in the submission made by learned counsel for the applicant. Since the applicant has worked on the post of UDC w.e.f. 30.04.2003 to 31.05.2004, as such it is not legally permissible for the respondents to recover the excess amount for the aforesaid period. However, it will be permissible for the respondents to refix the pay of the applicant."

7. The same set of facts is in the present OA. After revision of seniority list, Review DPC for the post of Assistant was held on 12.10.2006 and Shri H.A. Alvi, Assistant, was reverted to the post of UDC for the period with effect from 24.07.2001 to 31.05.2004, as such the applicant was reverted from the post of UDC to LDC from 18.10.2002 to 31.05.2004 and was deemed to be UDC with effect from 01.06.2004. Thus reversion of the applicant from the post of UDC with effect from 18.10.2002 to 31.05.2004 is justified for want of vacancy and we see no infirmity in the action of the respondents in



passing the impugned order and no interference is made out has held by this Tribunal vide its order dated 04.11.2008 in the case of Asim Kumar Chatterjee (supra). However, the respondents are directed not to recover the excess amount paid to the applicant for the period with effect from 18.10.2002 to 31.05.2004. It will be permissible for the respondents to refix the pay of the applicant.

8. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K.S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

AHQ