

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

28.01.2013

OA No. 332/2009

Mr. P.P. Mathur, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondent nos. 1, 2 & 4.
None present for other respondents.

Heard learned counsel for the parties.

ORDER RESERVED.

Anil Kumar

(Anil Kumar)
Member (A)

K.S. Rathore

(Justice K.S. Rathore)
Member (J)

ahq

1/2/13.

order pronounced today
in the open^{court} by the aforesaid Bench.

Chunamp
01/2/13.
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 332/2009

Jaipur, Dated : 1.2.2013

CORAM :

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

D. Boopathi aged about 35 years, son of Late Shri M. Duraisamy,
resident of 137/Type-III, GSI Colony, Malviya Nagar, Jaipur.
Presently posted as Geologist (Jr.) at Jaipur.

... Applicant

(By Advocate: Mr. P.P. Mathur)

Versus

1. Union of India through the Secretary, Ministry of Mines, Central Secretariat, New Delhi.
2. The Director General, Geological Survey of India, Central Headquarter, 27, Jawaharlal Nehru Road, Kolkatta.
3. The Union Public Service Commission, Dholpur House, New Delhi.
4. The Department of Personnel & Training through its Secretary, Central Secretariat, New Delhi.
5. Shri Shasi Ranjan, Geologist (Junior), Operation Bihar, Eastern Region, G.S.I. Lohlanagar, Kankar Bagh, Patna.
6. Shri Pankaj Saini, Geologist (Junior), GSI Operation Rajasthan, 15-16, Jhalana Doongri, Western Region, Jaipur.
7. Shri Uttam Gaur Pradhan, Geologist (Junior), Southern Region, Operation Karnataka & Goa, Vasudha Bhawan, Kumarsami Layout, Bangalore.
8. Shri P. Rajesh Durai, Geologist (Junior), Operation TNPK, Chennai T.C. Bhawan, CGO Complex, A-2, B Wing, Basant Nagar, Chennai.

... Respondents

(By Advocate : Mr. Mukesh Agarwal – Respondent nos. 1, 2 & 4
None present for respondent nos. 3 and 5 to 8)

ORDER (ORAL)

The applicant has filed this OA praying for the following

reliefs:-

Anil Kumar

"It is, therefore, humbly prayed that this Hon'ble Tribunal may very graciously be pleased to allow this Original Application, call for entire record relating to the case and grant the following relief:-

- a) Quash and set aside the promotion order dated 25.09.2008 (Annexure-1) on the post of Geologist (Junior) in so far as his name has been shown at serial no. 26 below his erstwhile juniors. The respondents may be directed to include his name at Serial No. 14 and accordingly they may be directed to modify the promotion order dated 25.09.2008. The respondents may also be directed to grant all consequential benefits thereto. The Memorandum dated 12.06.2008 may also be quashed to the extent that his name has been shown below his juniors.
- b) The respondents may be directed to consider the provision regarding relaxation of the experience/residency period in case of a senior employee when the junior is found eligible as contained in DOPT Circular of 1988 and 1997 as binding.
- c) That in alternate, the retirement rules for recruitment on the post of Geologist (Junior) may be declared ultravires of the Constitution of India and may be quashed and declared not binding.
- d) That the date of appointment of the applicant may be antedated to the earliest date when any person lower in merit and belonging to the OBC community was appointed from the panel of successful candidates for recruitment on the post of Assistant Geologist Grade -I.
- e) That the respondents may be directed to grant the promotion to the applicant from the retrospective date when the vacancy had actually occurred. The consequential benefit may accordingly be granted to the applicant.
- f) Any other order or direction, which the Hon'ble Tribunal deem fit in the facts and circumstances of the case may also be allowed in favour of the applicant.

2. The learned counsel for the applicant submitted that the applicant belongs to OBC Community. That being eligible he applied for appearing in the Geologists Examination, 1998 held by the Union Public Service Commission (UPSC). He appeared in the examination and was declared successful. In the merit list issued by the UPSC, the name of the applicant, Shri D. Boopathi, appeared at sr. no. 101. The name of Shri Shashi Ranjan

Anil Kumar

appears at sr. no. 102, Shri Pankaj Saini at sr. no. 109, Shri C.V. Gopalan at sr. no. 107, Shri Harish Kumar at sr. no. 108 and Shri Uttam Kumar Pradhan at sr. no. 114. All the persons named above also belong to the OBC community (Annexure A/3).

3. The applicant received a communication dated 20.01.2000 from the office of the Deputy Director General (P), GSI that he should submit his OBC certificate in original for verification (Annexure A/4). The applicant sent the original OBC certificate on 28.01.2000 (Annexure A/5). That thereafter the applicant received the offer of appointment dated 08.01.2001 i.e. after almost one year of sending of the original certificate (Annexure A/6). The applicant sent his acceptance on 30.01.2001 (Annexure A/7). That the applicant joined on the post of Assistant Geologist Grade-I at Jaipur on 23.02.2001 (Annexure A/8).

4. That on 16.01.2007, the gradation list of Assistant Geologist Grade I dated 12.12.2006 was directed to be circulated by the competent authority. In this seniority list, the name of the applicant has been shown at sr. no. 16. The name of Shri Shashi Ranjan appears at sr. no. 17, Shri C.V. Gopalan at sr. no. 18, Shri Harish Kumar at sr. no. 19, Shri Pankaj Saini at sr. no. 20, and Shri Uttam Kumar Pradhan at sr. no. 23 (Annexure A/9).

Anil Kumar

5. The learned counsel for the applicant submitted that the DPC recommendations for promotion on the post of Geologist (Junior) was approved and notified vide Memorandum dated 12.06.2008. In this Memorandum, the name of the applicant has been shown at sr. no. 25 below the name of juniors like Shri Shashi Ranjan (No. 14), Shri C.V. Gopalan (No. 15), Shri Harish Kumar (No. 16), Shri Pankaj Saini (No. 17), Shri Uttam Kumar Pradhan (No. 18) (Annexure A/10). Under the Right to Information Act, the applicant was informed that the DPC made its recommendations yearwise for the year 2004-05, 2005-06, 2006-07 and 2007-08. The applicant was further informed that he was not considered for the vacancy year 2004-05 as he did not complete three years' period of residency on 01.01.2004. It was also informed that as per Government's orders, the crucial date for determining eligibility of officers for promotion in the case of financial year based vacancy year is the 1st January immediately preceding such vacancy year.

6. That the applicant immediately thereafter submitted a representation dated 22.12.2008. He referred to the Government of India, DOPT OM NO. AB-14017/12/97-Estt. (RR) dated 24.09.1997 as printed in Swamy's News January 1998 which provides that in case of shortfall in experience on the feeder post for promotion a senior should not be ignored if the junior is having such experience.

Anil Kumar

7. The DOPT has recognized the anomalous situation where the senior for some reason is unable to complete requisite number of service necessary for a promotion but the junior has. In such situation, it has been advised to relax the minimum period of qualification for the seniors. The DOPT has stressed to incorporate the provision in the recruitment rules to maintain the seniority amongst the cadre in the promotional post also and, therefore, in that sense it is a beneficial provision. It seems that the respondent department has not given any attention to the mandate of the DOPT instructions or it has chosen not to follow the above instruction issued by the DOPT. The learned counsel for the applicant also pointed out that the DOPT as back as on 18.03.1998 instructed the various Ministries to incorporate the rules regarding relaxation in qualification of the senior person in so far as actual working is concerned.

8. The learned counsel for the applicant further argued that the applicant cannot be made to suffer due to the administrative lapse in sending the offer of the appointment to the applicant. The case of the applicant is not isolated one. Others like Shri S. Dhanendran and 21 others have also suffered due to the administrative fault. If the respondents have delayed the appointment of the applicant then he cannot be allowed to suffer in his service career.

9. Learned counsel for the applicant submitted that the respondents have sought relaxation for the vacancy pertaining to

Anil Kumar

the year 2007-08 from amongst the Assistant Geologist Grade I promotion quota falling short of eligibility criteria in terms of required residency period for the post of Geologist (Junior) as on 01.01.2007 in respect of 52 officers and this relaxation was given by the DOPT but in the case of the applicant, the Department has not sought any such relaxation. Therefore, it is a case of discrimination between the applicant and those 52 officers, who were given relaxation by the respondents (Annexure A/21). Therefore, he argued that the OA be allowed and the promotion order dated 25.09.2008 and Memorandum dated 12.06.2008 be modified and the name of the applicant be shown in the order of seniority vis-à-vis his juniors.

10. The learned counsel for the applicant argued that the Department should have amended the draft recruitment rules as per the provisions of OM of the year 1988 and 1997 but they could manage only to frame the draft recruitment rules. The DPC should have considered the draft recruitment rules and the applicant could have been considered on the basis of the draft service rules.

11. The learned counsel for the applicant also argued that the Recruitment Rules of Geologist (Junior) are illegal and arbitrary, discriminatory and even ultra virus of the Constitution and deserves to be quashed and set aside.

Anil Kumar

12. To support his averments in the OA, the learned counsel for the applicant referred to the following case law :-

- (a) Dr. S.S. Abdul Khuddus Azmi vs. the Principal Secretary to Health and Family Welfare Department & Another Writ Petition No. 16309/2010 decided on 29.03.2011 by the High Court of Madras.
- (b) Ashok Kumar Uppal vs. State of J&K and Others 1998 (4) SCC 179
- (c) V. Udayaprasad vs. Union of India & Others CAT Ernakulam Bench, OA No. 621/2007 decided on 13.02.2009
- (d) Prem Kumar vs. Union of India & Others CAT Jodhpur Bench (OA No. 126/90 decided on 07.09.2001)
- (e) Rameshwar Sharma vs. Union of India & others CAT Jodhpur Bench (OA No. 418/94 decided on 19.03.1998)
- (f) MES No. 192694 Shri Harish Kumar Sharma vs. Union of India & Others CAT Jaipur Bench (OA No. 329/2002 decided on 08.07.2003)
- (g) A Balu vs. Union of India & Others CAT Madras Bench (OA No. 688/2005 decided on 28.04.2006).

13. On the contrary, learned counsel for respondents nos. 1 & 2 argued that the applicant has filed this OA seeking the relief of seniority against 11 persons shown at sr. 14 to 24 in the notification dated 25.09.2008 (Annexure A/1) whereas he has impleaded only four private respondents namely S/Shri Shashi Ranjan, Pankaj Saini, Uttam Gaur Pradhan and P. Rajesh Durai, Geologist (Junior). Therefore, the OA be dismissed for non joinder of necessary parties.

Anil Kumar

14. The learned counsel for the respondents further argued that the applicant joined on 23.02.2001 on the post of Assistant Geologist, (Group 'B' Officer). As per the DOPT guidelines, the DPC proposal is always financially year-wise i.e. 1st April to 31st March of next year based on available vacancy. To be eligible a candidate has to complete the residency period as on 01st January of the year under consideration. If the vacancy is for the year 2004-05, the candidate had to complete residency period by 01st January, 2004 for being eligible for the vacancy for the period 2004-05. Since the applicant had not completed the requisite residency period of three years prescribed under the Recruitment Rules for promotion on the post of Geologist (Junior), he was not considered for the vacancy period of the year 2004-05. However, he was considered for the vacancy period 2005-06 and he was promoted to the next higher post. Therefore, the OA has no merit.

15. With regard to the submission of the learned counsel for the applicant that the DOPT OM dated 24.09.1997 has not been followed by the respondent department, the learned counsel for the respondents submitted that the DOPT OM dated 24.09.1997 is not applicable in Geological Survey of India as Recruitment Rules of GSI are not as per Organized Service Format. If any organization requires modification by DOPT as 'Organized Service' its Recruitment Rules needs to be amended. In the case of GSI, the Recruitment Rules have not been amended. Therefore, the DOPT OM dated 24.09.1997 is not applicable. The

Anil Kumar

learned counsel for the respondents further submitted that Recruitment Rules are in no way illegal, arbitrary, discriminatory or ultra-virus of the Constitution, as claimed by the applicant.

16. With regard to the averments that the relaxation has been granted to 52 officers in the residency period, the learned counsel for the respondents submitted that it was due to the exigency of the situation because of the merger of two cadres and it was a one time relaxation to a group of Officers. However, the relaxation is not available to the applicant. Similarly situated other officers have not been given any relaxation because there is no provision under the Recruitment Rules to give any relaxation in residency period. He further submitted that even for the argument sake, it is admitted that those 52 officers were wrongly given relaxation; even then the applicant is not entitled for relaxation because if some wrong has been done then the applicant cannot claim the same to be applicable in his case. Therefore, even on this ground, there is no merit in this OA.

17. Respondent no. 3 i.e. UPSC in its written reply has stated that the DPC strictly followed the extant guidelines/instructions of the DOPT as contained in their OM No. 22011/5/86-Estt.(D) dated 10.04.1989 as amended from time to time. The DPC also followed the statutory Recruitment Rules prevailing at the time of DPC.

Anil Kumar

18. The UPSC in their reply has further stated that the applicant in the present OA though was senior enough to be in the zone of consideration for the vacancy year 2004-05, yet he was not included in the eligibility list for that year as he had not completed the requisite qualifying year of service of 3 years on the crucial date i.e. 01.01.2004. The Ministry had not amended the Recruitment Rules incorporating the Note of the DOPT OM No. AB.14017/12/88-Estt. (RR) dated 25.03.1996 relating to consideration of seniors who had not completed the requisite qualifying/eligibility service alongwith the juniors who had completed such qualifying/eligibility service. Officers junior to the applicant who had completed the requisite qualifying/eligibility service of 3 years were included in the eligibility list and considered for promotion. The applicant was, however, duly included in the eligibility list for the year 2005-06 at sr. no. 2 and recommended for inclusion in the panel for promotion in that year at sr. no. 1.

19. It was further stated that there was no provision in the Recruitment Rules for the post for consideration of seniors who have not completed the requisite qualifying/eligibility service alongwith the juniors who have already completed such qualifying/eligibility service. As the Recruitment Rules are statutory in nature, the applicant could not be included in the eligibility list and considered for promotion in the year 2004-05 in the absence of the Note enabling his consideration alongwith

Anil Kumar

his juniors who had completed the requisite qualifying/eligibility service.

20. The UPSC has also mentioned in their reply that the Hon'ble Supreme Court while deciding the Civil Appeal No. 6332 of 2005 filed by Government of Pondicherry and another vs. Shri V. Ramakrishnan and others has held that a rule does not become inoperative even if it has become unworkable and continues to be in force unless repealed or replaced by another rule or amended. In the light of the ruling of the Hon'ble Supreme Court as above also, the non incorporation of the Senior-Junior clause in the Recruitment Rules for the post of Geologist (Junior), does not make the Recruitment Rules illegal or unworkable as contended by the applicant. Thus there is no infirmity in the proceedings of the DPC held from 28th to 30th May, 2008.

21. Heard the learned counsel for the parties, perused the documents on record and the case law, as referred to by the learned counsel for the applicant. The learned counsel for the applicant also submitted written submissions.

22. It is not disputed between the parties that the applicant joined on 23.02.2001 on the post of Assistant Geologist Grade I at Jaipur. It is also not disputed that the applicant was higher in merit than S/Shri Shashi Ranjan, C.V. Gopalan, Harish Kumar, Pankaj Saini and Uttam Kumar Pradhan but these private

Anil Kumar

respondents joined the service prior to the applicant. This is also not disputed that the residency period of 3 years is prescribed under the Recruitment Rules on the post of Geologist (Junior) as on 01st January of the year for which the promotion is being made. In the present case, the vacancies for the year 2004-05 were to be filled. Therefore, the candidate to qualify for promotion had to complete residency period by 01st January, 2004 for being eligible to be consider for promotion on the post of Geologist (Junior). The applicant did not complete the residency period of three years on the 01st January, 2004. He joined the post of Assistant Geologist Grade I on 23.02.2001, therefore, he was not considered for promotion to the post of Geologist (Junior). According to his own submission, he is not the only one who was not considered for promotion because he did not fulfill the requirement of residency period but there are several other officers who were not considered on the same ground. He himself admitted in Para 4(xv) that the case of the applicant is not the isolated one but others like S. Dhanendran and 21 others have also suffered due to the administrative fault. The UPSC in their reply have categorically stated that the DPC strictly followed the extant guidelines/instructions of the DOPT as contained in their OM No. 22011/5/86-Estt.(D) dated 10.04.1989 as amended from time to time and the statutory Recruitment Rules in force at the time of the DPC. The officers junior to the applicant who had completed the requisite qualifying/eligibility service of 3 years were included in the eligibility list and considered for promotion. The UPSC has

Anil Kumar

further stated that the applicant was duly included in the eligibility list for the year 2005-06 at sr. no. 2 and recommended for inclusion in the panel for promotion in that year at sr. no. 1. The fact that the applicant has been recommended for promotion for the year 2005-06 has not been disputed by the learned counsel for the applicant.

23. The UPSC has also clearly stated that there was no provision in the Recruitment Rules for the post for consideration of seniors who have not completed such qualifying/eligibility service alongwith the juniors who have already completed such qualifying/eligibility service. As the Recruitment Rules are statutory in nature, the applicant could not included in the eligibility list and was not considered for promotion in the year 2004-05. Therefore, we are of the considered opinion that the action of the respondents in not including the name of the applicant in the list of eligible candidate for promotion for the vacancy 2004-05 cannot be said to be arbitrary and illegal. On the contrary, the action of the respondents is according to the rules prevailing at that point of time.

24. With regard to the submission of the learned counsel for the applicant that respondent department should have incorporated the provisions of Government of India, DOPT OM NO. AB-14017/12/97-Estt(RR) dated 24.09.1997 in the Recruitment Rules, the learned counsel for the respondent stated that this OM is not applicable in Geological Survey of India as

Anil Kumar

Recruitment Rules of GSI are not as per "Organized Service" format. He further argued that even if the plea of the applicant is accepted that the respondent department has initiated the action to revise/amend the Recruitment Rules but since they were not amended on the date of the meeting of the DPC, therefore, no selection could have been taken place on the basis of the draft service rules. The UPSC in Para No. 8.6 of their reply have also stated that non incorporation of the senior/junior clause in the Recruitment Rules for the post of Geologist (Junior) does not make the Recruitment Rules as illegal or unworkable as contended by the applicant and, therefore, there is no infirmity in the proceedings of the DPC held from 28th to 30th May, 2008. We are inclined to agree with the averment made by the learned counsel for the respondents and the submission made by the UPSC in their written reply. We are of the opinion that unless Recruitment Rules are amended, the selection has to be made on the basis of the existing Recruitment Rules. The selection cannot be made on the basis of the draft Service rules. Therefore, even on this count, no relief can be given to the applicant in the present OA.

25. With regard to the submission of the learned counsel for the applicant that there is discrimination between the applicant and those 52 officers, who were given relaxation by the respondents, the learned counsel for the respondents submitted that 52 officers were given relaxation because of merger of the cadres and it was a one time relaxation. This relaxation cannot

Anil Kumar

be applied to the applicant. He also submitted that there is no discrimination between the applicant and those 52 officers who were given relaxation by the respondents because the facts & circumstances of giving relaxation to 52 officers were quite different than the facts & circumstances of the case of the applicant. They are not on the equal footing. He also submitted that even for the sake of arguments it is accepted that 52 officers were wrongly given relaxation even then the applicant cannot claim the benefit because if the wrong has been done in one case, it cannot be justified in another. Therefore, the applicant cannot claim that relaxation be given to him. We have carefully gone through the judgment of the Hon'ble Supreme Court in the case of Ashok Kumar Uppal vs. State of J&K and Others, 1998 (4) SCC 179, the judgment of the Hon'ble High Court of Madras in the case of Dr. S.S. Abdul Khuddus Azmi vs. the Principal Secretary to Health and Family Welfare Department & Another, Writ Petition No. 16309/2010 decided on 29.03.2011 and order of the CAT Ernakulam Bench in the case of V. Udayaprasad vs. Union of India & Others (OA No. 621/2007 decided on 13.02.2009) and we are of the view that the ratio decided in these cases are not applicable under the facts & circumstances of the present case. We are of the view that there is no discrimination between the applicant and the 52 Officers, who were given relaxation because the applicant is not on equal footing with these 52 officers.

26. We have also perused the following judgments/orders:-

Anil Kumar

- (i) Prem Kumar vs. Union of India & Others
CAT Jodhpur Bench (OA No. 126/90 decided on 07.09.2001)
- (ii) Rameshwar Sharma vs. Union of India & others
CAT Jodhpur Bench (OA No. 418/94 decided on 19.03.1998)
- (iii) MES No. 192694 Shri Harish Kumar Sharma vs. Union of India & Others
CAT Jaipur Bench (OA No. 329/2002 decided on 08.07.2003)
- (iv) A Balu vs. Union of India & Others
CAT Madras Bench (OA No. 688/2005 decided on 28.04.2006).

The question for consideration in these OAs was with regard to the fixation of seniority and not with regard to the period of residency for promotion. Whereas in the present OA, the applicant has not been promoted on the post of Geologist (Junior) because of lack of his residency period. Therefore, the ratio decided by the Hon'ble CAT in the above cases is not applicable to the facts of the present case.

27. It was stated at Bar by the learned counsel for the respondents that the initial seniority of the applicant is maintained as it was as per the merit list of UPSC. This fact was not disputed by the learned counsel for the applicant.


28. With regard to the submission made by the learned counsel for the applicant that the existing Recruitment Rules for promotion to the post of Geologist (Junior) are illegal, arbitrary, discriminatory and ultra-virus of the Constitution, the learned counsel for the respondents argued that these rules are in no way illegal, arbitrary, discriminatory or ultra-virus of the

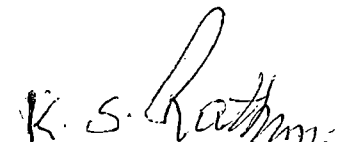
Anil Kumar

Constitution. We are inclined to agree with the averment made by the learned counsel for the respondents on this point. Thus in our considered view, the applicant is not entitled for any relief even on this count.

29. Thus looking from any angle, we are of the view that the applicant is not entitled for any relief in the present OA. The present OA has no merit.

30. Consequently, the OA being devoid of merit is dismissed with no order as to costs.


(Anil Kumar)
Member (A)


(Justice K.S. Rathore)
Member (J)

AHQ