

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH  
HYDERABAD**

O.A. No.611 of 2012

Date of CAV:21.02.2018.

Date of Order :05.04.2018.

Between :

Dr.A.S.Senthi Vadivel, s/o Shri A.Seetharaman,  
aged about 47 yrs, Occ:Regional Administrative  
Officer O/o Geological Survey of India,  
Training Institute, r/o H.No.3-9-61/1, Saradha  
Nagar Colony, Ramanthapur, Hyderabad-13. ... Applicant

And

1. Union of India, rep., by its Secretary,  
M/o Mines, Shastri Bhavan,  
New Delhi-110 001.

2. The Secretary,  
Department of Personnel & Training,  
M/o Personel, Public Grievances & Pensions,  
North Block, New Delhi 110 00.

3. The Director General, Geological Survey of India,  
27, Jawaharlal Nehru Riad, Kolkata-700 016.

4. The Deputy Director General,  
Southern Region, Geological Survey O of India,  
GSI Complex, Bandlaguda, Hyderabad.

5. The Deputy Director General, Training Institute,  
Geological Survey of India,  
GSI Complex, Bandlaguda, Hyderabad. ... Respondents

Counsel for the Applicant ... Mr.K.Phani Raju  
Counsel for the Respondents .. Mrs.K.Rajitha, Sr.CGSC

**CORAM:**

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)  
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

**ORDER**

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The facts of the case are that the applicant who was appointed as Administrative Officer (AO) in Geological Survey of India (GSI) in 1993, was promoted to the post of Senior Administrative Officer (SAO) in the pay scale of Rs.10,000-15,200/- with effect from 26.12.2007, and was further promoted to the post of Regional Administrative Officer (RAO) with effect from 12.08.2011. As per the Recruitment Rules, which were in force as on 04.10.2002, an AO with 8 years of regular service in the grade was eligible for promotion to the post of SAO. As such, the applicant who had completed the requisite period of 8 years of service on 03.05.2001 was eligible for consideration for promotion to the post of SAO from the vacancy year 2001-2002.

2. While so, a restructuring of the administrative cadre in GSI was done after V CPC. As a result of the restructuring, 26 of the existing 112 posts of AO were upgraded to AO Grade-I in the pay scale of Rs.8000-13500/-. The remaining 86 posts of AO in the revised scale of pay of Rs.6500-10500/- were re-designated as AO Grade-II. One post each of RAO in the pay scale of Rs.12,000-16,500/- and SAO in the pay scale of Rs.10,000-15,000/- was downgraded to the scale of Rs.8000-13,500/- as AO Grade-I. Pursuant to the restructuring, the Recruitment Rules were amended and notified on 05.10.2002 for the posts of SAO, AO Grade-I and AO Grade-II. As per the new Recruitment Rules, AO Grade-II (erstwhile AO) will require a residency period of 5 years for promotion to the post of AO Grade-I. Likewise, AO Grade-I, which became the new feeder grade for the post of SAO will require a further residency period of 5 years for promotion to the post of SAO. During 2002-2003 there was only one vacancy in the post of SAO and the zone of consideration included the persons placed at Serial Nos. 1 to 4. The applicant was placed at Serial No.6. After the

new Recruitment Rules came into force, the applicant was offered the post of AO Grade-I on promotion vide order dated 30.07.2002, whereas he had already completed 8 years required residency period in the grade of AO for promotion to the grade of SAO as per the earlier Recruitment Rules. Further, as per the amended Recruitment Rules, the first DPC for promotion to the post of SAO was held on 18.12.2007 for filling up of 11 vacancies. The applicant was one among the persons who were found fit for promotion. Accordingly, he was promoted as SAO with effect from 26.12.2007.

3. The applicant's grievance is that in view of the amendment in the Recruitment Rules and the creation of a new post of AO Grade-I, all the 9 vacancies in the cadre of SAO, which arose from the vacancy year 2001 to 2007 were not filled up either by promotion or by deputation despite the first respondent's letter dated 14.10.2003 addressed to the 3<sup>rd</sup> respondent. According to the applicant, even though he was eligible for promotion to the post of SAO, he was promoted to the post of AO Grade-I only with effect from 28.10.2002 and was assigned the additional burden of discharging the duties of the post of SAO.

4. The applicant's case is that as per Para 3.1.3 of the Annexure.A-6 Hand Book of Recruitment Rules, "a safety note" as under should have been included while notifying the revised rules for the post of SAO:

*“RETENTION OF EXISTING ELIGIBILITY SERVICE:*

3. *Where the eligibility service for promotion prescribed in the existing rules is being enhanced (to in conformity with the guidelines issued by this department) and the change is likely to*

*affect adversely the persons holding the feeder grade posts on regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules, could be included in the revised rules.”*

In terms of these guidelines, the respondents ought to have included the following note in Column 12 of the Schedule:

*“The eligibility service shall continue to be 8 years combined service in the grade of AO/AO Grade-II and AO Grade-I on regular basis on the date of notification.”*

5. It is contended that this note is based on the principles of natural justice. As no such note was inserted in the amended Recruitment Rules for the post of SAO, his promotion to the post of SAO was delayed by about 5 years.

6. The applicant further points out that even though such a note was not included for the post of SAO, the respondents have incorporated a safety note in respect of the post of RAO and Director (Personnel and Administration), where also the eligibility of service was increased from 3 years to 5 years in the amended Recruitment Rules. It is also submitted that Column 12 (a ) (ii) of the amended Recruitment Rules for the post of SAO is discriminatory and against the principles of equality inasmuch as the officers in other departments in the scale of Rs.6500-10500 with 8 years of service in the pay scale were made eligible for consideration for appointment on deputation to the post of SAO, whereas the departmental officers in GSI with more than 8 years of service in the pay scale of Rs.6500-10500 were not considered as eligible for appointment on promotion. These lacunae have adversely affected his career progression and have come in the way of filling up the vacant posts of SAO.

7. The applicant had earlier filed OA.No.22/2009 for a direction to the respondents to consider his case for promotion to the post of SAO with retrospective effect. The same was disposed of by this Tribunal with a direction to him to submit a detailed representation to the respondents and further direction to the respondents to dispose of the said representation within one month. Thereafter, the respondents have passed the impugned order rejecting his representation for inclusion of a note in the draft Recruitment Rules in accordance with the provisions of Para 3 (I) (iii) of the Handbook on Recruitment Rules. As per the information obtained by the applicant under Right to Information Act, he learnt that the first respondent had sent a proposal for approval of a one time relaxation in eligibility period for considering the promotion of 8 SAOs to the post of RAOs as a special case and the said proposal was agreed to by the 2<sup>nd</sup> respondent. However, the first respondent did not initiate similar action for considering the combined service in the grade of AO Grade-II and AO Grade-I for promotion to the post of SAO.

8. In these circumstances, the applicant has challenged the impugned order rejecting his representation for retrospective promotion as SAO and RAO respectively from the date of availability of vacancies.

9. In their reply statement, the respondents admit that the applicant completed the requisite period of 8 years as on 01.01.2002 and became eligible for consideration for promotion to the post of Senior Administrative Officer (SAO) for the vacancy year 2002-2003 in terms of the old Recruitment Rules. However, when the new Recruitment Rules were notified, the applicant was not eligible for consideration for promotion to the post of SAO as he had not rendered 5 years of regular service in the

post of AO Grade-I, which is a new post created by the V Central Pay Commission in between the AO and SAO. Moreover, none of the juniors of the applicant was granted promotion before him. They also concede that 9 vacancies in the post of SAO had arisen from 2002-2003 and the same were not filled up by promotion. These vacancies were not filled up by alternative mode because the posts were vacant for one year and all the posts lapsed and required revival. After getting approval of the competent authority, the lapsed posts were revived and filled up during 2007.

10. It is submitted by the respondents that promotions/appointments to any post are based on the provisions of the existing Recruitment Rules, which are revised from time to time in accordance with the guidelines of the DOPT and Pay Commission. The applicant was not eligible in terms of the new Recruitment Rules issued on 05.10.2002. He was, however, considered for promotion when he became eligible.

9. The respondents also submit that in pursuance of the orders of this Tribunal in OA.No.22/2009, he was given a personal hearing by the first respondent taking into consideration the points put-forth by the applicant.

11. The respondents have denied the contention of the applicant that the DOPT had suggested to provide amendment in the Recruitment Rules to provide retrospective promotion to the applicant. They submit that the DOPT had only requested to insert the combined service clause for the grade of SAO and RAO and accordingly necessary amendment is under process. Further, the issue of insertion of a saving clause and retrospective promotion was earlier examined at length and a decision was taken that this plea is not acceptable as it is against the existing Government of India

policy according to which promotions are always prospective. A detailed speaking order dated 20.04.2010 was issued earlier rejecting the applicant's case and his further representation dated 01.12.2011 was rejected on the same lines as being against the existing Government of India policies and rules.

13. The applicant has filed a rejoinder stating that on 19.09.2001, the DOPT did not accept the proposal for combined service in the post of AO Grade-I and AO Grade-II on the ground that the AO Grade-II is in Group-B. However, in their note dated 29.11.2010, the DOPT agreed for having the combined service in the post of AO Grade-I and Grade-II, which has been notified but denied to the applicant.

14. The respondents have filed an additional reply statement stating that it was suggested from the Ministry of Mines to the DOPT to consider making a provision in the amended Recruitment Rules inserting a clause that AO Grade-II, who have already completed the requisite residency period for promotion for the post of SAO based on the old Recruitment Rules, will be eligible for promotion to the post of SAO. This proposal, however, was turned down by the DOPT on the ground that the AO Grade-II is in Group-B, whereas the post of SAO is a Senior Time Scale (STS) level post and that such clause would not be permissible after the introduction of Group-B level post in between AO Grade-II and SAO. Further, the vacancy against which the applicant is seeking retrospective promotion has occurred after the notification of the revised Recruitment Rules dated 05.10.2002 and the DOPT has not agreed to the proposal for promotion as per the earlier Recruitment Rules. Therefore, his claim for considering his promotion based on the old Recruitment Rules to the

grade of SAO is untenable and unjustified. They have also denied the applicant's contention that he was given charge of SAO post while holding the post of AO. They have also pointed out that the office order cited by him was only with regard to re-allocation of work.

15. Heard the learned counsel on both sides and perused the record.

16. The main grounds advanced by the applicant in support of his prayer for retrospective promotion to the post of SAO and RAO from the date of availability of vacancy are that –

(i) Failure of the respondents in inserting “a safety note” or exemption clause in terms of Para 3.1.3 of Handbook on Recruitment Rules in the amended Recruitment Rules for Senior Administrative Officer on 05.02.2002 so as to provide protection to the incumbents in the feeder category by retaining the existing residency period, has delayed the promotion due to him as SAO by about 5 years and has caused him serious prejudice.

(ii) Although a similar exemption clause was provided by the respondents for the post of RAO and Director (Personnel and Administration) while amending the Recruitment Rules and notifying the GSI ( Deputy Director General (Personnel), Director (Personnel & Administration) and Regional Administrative Officer Recruitment Rules on 27.04.2005, the authorities have failed to incorporate a similar clause while notifying the amended Recruitment Rules for Senior Administrative Officer.



(iii) Likewise, while notifying the amended Recruitment Rules, deputationists with 8 years of service in the pay scale of Rs.6500-10500/- were made eligible for consideration for appointment on deputation to the post of Senior Administrative Officer. However, departmental officers in the administration stream with more than 8 years of service as Administrative Officer in pay scale of Rs.6500-10500/- were not considered eligible for promotion as SAO. This is not only discriminatory but against the principles of equity before law.

17. The respondents in their reply statement have contended that promotions are always based on the provisions of the existing Recruitment Rules and that they are prospective in nature. The vacancy against which the applicant is seeking retrospective promotion has occurred after the notification of the new Recruitment Rules. Further, the first respondent requested the DOPT to insert a clause that Administrative Officer Grade-II who have already completed the requisite residency period for promotion to the post of SAO based on the old Recruitment Rules would be declared eligible for promotion to the post of SAO. However, this proposal was turned down by the DOPT stating that Administrative Officer Grade-II is in Group-B Gazette post, whereas the post of SAO is a Senior Time Scale (STS) level post and in between these posts a new post of Administrative Officer Grade-I, which is a Group-A Junior Time Scale post has come into existence. Therefore, directly allowing promotion to the Senior Time Scale post from Group-B Gazetted post at that juncture was not permissible in the eye of law.

18. The admitted facts of the case are that the applicant completed the requisite 8 years of service as Administrative Officer on 1.1.2002 and became eligible for

promotion to the post of SAO in the 2002-2003 vacancy year in terms of the old Recruitment Rules. However, when the Recruitment Rules were amended and notified on 05.10.2002, a new post of AO Grade-I was created in the pay scale of Rs.8000-13500/- and AO Grade-I with residency period of 5 years were only eligible for promotion as SAO. Thus, in terms of the amended Recruitment Rules, the applicant was rendered ineligible for promotion to the post of SAO as he did not have 5 years regular service in the post of AO Grade-I, which was newly created after the V CPC. When a new post of AO Grade-I is created for the first time in 2002 and when that post has been made as feeder category for promotion to SAO and when a residency period of 5 years in the newly created post has been stipulated, the respondent-authorities should have realized that the amended rules would have led to a situation where there would be no eligible persons for consideration to the post of SAO.

19. In fact, the material on record shows that although 9 vacancies of SAO arose from 2002-03 to 2006-2007 vacancy years, the same were not filled up by promotion as there were no eligible candidates with the requisite 5 years residency in the grade of AO Grade-I. . After the creation of the AO Grade-I post in 2002, the earliest period by which the residency period would be completed would be 2007. In these circumstances, it would have been proper for the authorities to insert an exemption clause so as to protect the interest of the incumbents who had already completed the requisite 8 years of service in the grade of AO so that the existing incumbents are not prejudiced and the administrative interests are also not affected by the non-filling up of important posts in the administrative cadre. In fact, realizing this the first respondent had actually recommended to the DOPT to incorporate a note in accordance with

Para 3.1.3 of the Brochure on Recruitment Rules in the interest of the present incumbents of AOs who had more than 10 years of service in the grade. The DOPT, however, without considering the proposal of the administrative Ministry have merely stated in their note dated 19.09.2001 that “a proposal for taking into account the combined service in the AO Grade-I and AO Grade-II for promotion cannot be accepted separately as the post of AO Grade-II is in Group-B. Thus, without considering the request of the Administrative Ministry for inserting clause for protection of the Administrative Officers who are already in the line of promotion as SAO as per the old Recruitment Rules, the DOPT has held that the Administrative Officer Grade-II is a Group-B (Gazetted), whereas the post of SAO is a Senior Time Scale (STS) level post and direct promotion to the STS level post from Group-B Gazetted was not permissible.

20. In our view this is neither sufficient nor sound reasoning. The DOPT has not shown the basis of any rule for non-acceptance of the recommendations of the administrative Ministry for inserting the exemption clause for protecting the interests of those Administrative Officers who had already completed the residency period for promotion to the post of SAO as per the old Recruitment Rules. Further, it is a well recognised principle that the existing incumbents in a feeder category are protected whenever Recruitment Rules are amended. This principle has therefore been correctly followed by the respondents in respect of other posts involved in the restructuring process as observed in Para 21 below.

21. As regards the second ground mentioned in Para 16 (supra), it is observed that while the proposal of the Administrative Ministry for insertion of an exemption clause for the persons in the feeder category was not accepted by the DOPT, a similar

exemption clause has been provided in the Annexure.A-7 notification for the post of Director (Personnel & Administration) and Regional Administrative Officer. The exemption clause for promotion to the post of Director (Personnel & Administration) for promotion to the post of Director, Personnel reads as follows:

*“Exemption Clause: The incumbent holding the post of Regional Administrative Officer on regular basis on the date of notification of the revised rules will continue to be eligible for promotion to the post of Director (Personnel & Administration) with 3 years' service.*

Thus, as against the 5 years of regular service in the grade which is prescribed in the amended Recruitment Rules for promotion of Regional Administrative Officer to the post of Director (Personnel & Administration), existing incumbents in the feeder category are required to have only 3 years. A similar exemption has also been provided to the SAO for promotion to the post of RAO by holding that -

*“the incumbent holding the post of SAO on regular basis on the date of notification of the revised rules will continue to be eligible for promotion to the post of RAO with 3 years regular service”.*

Thus, against the revised norm of 5 years regular service in the grade of SAO for being eligible for promotion as RAO, existing incumbents with 3 years regular service will continue to be eligible for promotion.

22. Thus, the exemption clause has been denied only to the Administrative Officers, who were in the line of promotion for SAO and the failure of the respondents in incorporating a similar clause for the Administrative Officers, who were holding the post on regular basis on the date of notification of the revised rules, is clearly an omission which is both discriminatory and detrimental to the interest of the applicant.

23. We have also considered the amended Recruitment Rules for the post of Senior Administrative Officer which has been notified on 05.10.2002. The amended Rules which stipulated that "Administrative Officer Grade-I (in the pay scale of Rs.8000-13500/-) with 5 years service in the grade rendered after appointment thereto on a regular basis will be eligible for promotion as SAO, also provides for deputation from among persons with 8 years service in the grade rendered after appointment thereto on a regular basis in the scale of pay of Rs.6500-10500/- or equivalent in the parent cadre/department.

24. In the respondent-Organization, prior to the amended Recruitment Rules, the post of AO was in the scale of pay of Rs.6500-10500/- and persons with 8 years of regular service were eligible for promotion as SAO. By denying the AOs in the department ( with 8 years regular service) eligibility for promotion as SAO and at the same time permitting persons in the scale of Rs.6500-10500/- and having 8 years of service to come on deputation to the post of Senior Administrative Officer, there has been clear discrimination against the departmental officers. The inequity and disparity in the Recruitment Rules between the departmental officers and the deputationists is clearly unjustified. We may also observe in passing that deputationists in the pay scale of Rs.6500-10500/- are being permitted to aspire for the post of SAO in Rs.10,000-15200/- , which is two levels above their existing scale, while denying the benefit to the departmental officers, who are similarly situated. As pointed out by the applicant, the departmental officers have been discriminated against.

25. In the result, we hold that the applicant has succeeded in establishing his case. Accordingly, the impugned order dated 15.03.2012 is quashed and set aside. The respondents are directed to grant a one time relaxation in the residency period for promotion to the post of Senior Administrative Officer against a vacancy, which occurred in 2002-2003 and promote the applicant to the said post, if he is otherwise eligible with consequential benefits. However, the promotion shall be on a notional basis without any arrears of pay. Three months time from the date of receipt of a copy of this order is granted for compliance.

26. The OA is allowed accordingly. There shall be no order as to costs.

**(MINNIE MATHEW)**  
**MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO )**  
**MEMBER (JUDL.)**

Dated: this the 05th day of April, 2018

Dsn.