

1

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No.351/01733/2015
MA No. 350/00498/2015

Dated of order: 03.12.2015

PRESENT:

THE HON'BLE MR. JUSTICE G. RAJASURIA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

Dr. Narendra Shanker Pandey, son of R.S. Pandey, working for gain as Dy. Director, Central Forensic Science Laboratory (Ballistics), 30, Gora Chand Road, Kolkata-700 014 and residing at Flat No.4, Type V, MS Building, 21 Ritchie Road, Kolkata-700019.

.....Applicant

For the Applicant: Mr. S.K. Dutta, Counsel

-Versus-

1. Union of India service through the Secretary, Ministry of Home Affairs, North Block, New Delhi-110 001.
2. The Chief Forensic Scientist, Directorate of Forensic Science, Ministry of Home Affairs, Block No.9, 8th Floor, CGO Complex, Lodhi Road, New Delhi-110 001.
3. The Director, Central Forensic Science Laboratory (Ballistic), 30 Gora Chand Road, Kolkata-700 014.
4. The Secretary, Union Public Service Commission, Dholpur House, New Delhi-110 069.

MA No.30/00/498/2015

5. Dr. Sanjay Kumar Jain, S/o Sh. Kapoor Chand Jain, aged about 50 years, Deputy Director & Sciences D (Ballistics) & Coordinator Central Forensic Science Laboratory, Guwahati, R/O H. No. 703/1 Sector 36 B, Chandigarh-160 036.

6. Sh. K.P.Sudhakaran Kartha, S/o. Late Sh. KG Purushothaman Kartha, aged about 58 years, Deputy Director & Scientist D (Explosive) Central Forensic Science Laboratory, Hyderabad R/O H No. 5-3/23, Srisainagar Colony, Boduppal, Ranga Reddy, Dist. Hyderabad, PIN-500 092.
7. Sh. Krishna Murari Varshney, S/o. Late Sh. Pyarelal, aged about 56 years, Deputy Director & Scientist D (Chemistry) & Coordinator Central Forensic Science Laboratory, Pune.
8. Sh. B.Badoniya, S/o. Sh. Dhaniram Badoniya, aged about 49 years, Deputy Director & Scientist D (Physics), Central Forensic Science Laboratory, Bhopal R/o. H No. 372, Rohit Nagar, Phase 1, Bhopal-462 039.
9. Dr. Smt. Sukhminder Kaur, W/o. Rupinder Singh Walia, aged about 47 years, Deputy Director & Scientist D (Chemistry) Central Forensic Science Laboratory, Chandigarh, R/o H.No. 4320, Sector 68, Mohali (PB).

.....Respondents

For the Respondents: Ms.P.Goswami, Counsel.

Mr.A.Chakraborty, Counsel

ORDER

JUSTICE G.RAJASURIA, JM:

Heard all concerned at this admission stage itself.

2. This OA has been filed seeking the following reliefs:

“(a) To direct the respondent authorities to consider the case of the applicant along with other/juniors to face the Assessment Board of the Union Public Service Commission under Flexible Complementing Scheme for the post of Dy. Director (Ballistics) by relaxing the residency period of one year six months the deficit of which occurred due to the latches of the respondents without any fault of the applicant as such who was a candidate of the vacancy year 2008;



(b) To direct the respondent authorities to consider the appointment for FC Scheme for the post of Director under FC Scheme by treating him a candidate of 2008 in compliance of the ratio decided by the Hon'ble Apex Court of the Country in citation of (TC (E) No. 91 of 2006 Pritpal Singh & Ors Vs Union of India & Ors) and in violation of judgment of the Hon'ble Apex Court of the Country and DOP&T guidelines;

(c) To consider the representation dated 07.10.2015 in the light of the judgment of the Hon'ble Apex Court of the country and DOP&T Guidelines and allow the applicant to appear provisionally before the Assessment Board in UPSC for the post of Director, CFSL under F.C. Scheme which is to be held shortly and for which the process is going on during pendency of this matter before this Hon'ble Tribunal;

(d) To pass further order or orders, direction or directions as to this Hon'ble Tribunal may deem fit and proper for securing the ends of justice."

(extracted as such)

3. The learned counsel for the applicant placing reliance on the records would put forth his argument, the gist and kernel of the same would run thus:

The Applicant was functioning as Assistant Director in CFSL. While so he applied for the post of Deputy Director under the Direct Recruitment Quota in respect of the Recruitment Year 2008. However, he was offered employment as Deputy Director in the year 2013; for no fault of him. The fact was that the UPSC issued offer to a person who was already in the post of Deputy Director on regular promotion, and subsequently it was revoked and once again offer of appointment was given to the same person and it was revoked and

thereafter only, the offer of appointment was issued to the applicant. In that process alone the delay occurred. Hence recognizing those facts, the authority concerned reckoned the applicant's seniority as Deputy Director with effect from 2008 even before his actual joining in the post of Deputy Director in the year 2013.

During the year 2009 and 2010 several others were given appointment as Deputy Directors. However, the applicant's seniority with effect from the year 2008 was recognised. Now, there is a proposal for conferring up gradation to the level of Director on eligible Deputy Directors who have put in four years of service. At this juncture, the learned counsel for the applicant would place reliance on the guidelines issued by the DoP&T in their circular dated 25.3.1996 and an excerpt from it is extracted hereunder for ready reference:

"Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service."

According to the above provision, when a junior is considered for being given non functional promotion or promotion, the senior who might not have put in the requisite number of years of service for being eligible for such promotion also should be considered. Here the learned counsel for the applicant would admit that in the recruitment rules there is no incorporation of the gist of part 3.1.2 of the OM dated 25.3.1996,



cited supra. The learned counsel for the applicant also would rely upon the decision of the Hon'ble Apex Court in Civil Appeal Nos. 7514-7515 of 2005 dated 27.11.2012 in the case of **Union of India & Ors v N.R.Parmar & Ors**. An excerpt from it would run thus:

"33. Having interpreted the effect of the OMs dated 7.2.1986 and 3.7.1986 (in paragraphs 20 and 21 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by the SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried forward vacancies, or vacancies which came to be filled up by a "later" examination/selection process. The facts only reveal, that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For this, the modification/amendment in the manner of determining the inter-se seniority between the direct recruits and promotees, carried out through the OM dated 7.2.1986, and the compilation of the instructions pertaining to seniority in the OM dated 3.7.1986, leave no room for any doubt, that the "rotation of quotas" principle, would be fully applicable to the direct recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year."

As such, he would pray for allowing this OA.

Per contra, the learned counsel for the Respondents would submit that if time is granted, her client would file a detailed reply. Subject to her submission, she would hasten to add that the applicant gave representation only on 7.10.2015 and without waiting for reply from the respondent authority concerned he hurriedly filed this OA. Accordingly, she would pray for the dismissal of this OA.




The Learned Counsel for the Applicants in the MA, which contains the following prayer:

".....to allow the present MA by impleading the present applicants as private respondents for proper adjudication of the matter and, thereafter, to hear the OA on merit and pass such other order or orders, direction or directions, as your lordships may deem fit and proper."

would submit that he is representing the Deputy Directors who have not been arrayed as proforma respondents. If, at the instance of the applicant, in this OA, the process of up gradation and conferment of Directorship on the applicants in the MA is stalled then their interest would be adversely prejudiced and as such highlighting and spotlighting the case of the applicants in MA, the MA was filed.

4. The short point, as of now, which falls for consideration is as to whether the applicant's case for conferment of up gradation as Director has to be considered by the appropriate authority on the ground that he is also one within the zone of consideration or not.

5. The Learned Counsel for the applicant would submit that his client filed RTI and in that reply was given that his case would not be considered. Whereupon, alone, the applicant was constrained to file this OA and he is not against the applicant in the MA. At present we are of the view that instead of this CAT deciding the substantive merit of the OA, we could very well give direction to the respondent authorities concerned to consider the representation of the applicant 07.10.2015 with reference to the decision of the Hon'ble Apex Court in the of **Union of India & Ors v N.R.Parmar & Ors**, and also the DoP&T



guidelines, cited supra by giving a personal hearing before passing a detailed speaking order. As such, the following direction is given:

The Respondent authorities concerned, within a period of one month from the date of receipt of a copy of this order, shall give a personal hearing to the applicant and consider his representation dated 07.10.2015 with reference to the decision of the Hon'ble Apex Court in the of **Union of India & Ors v N.R.Parmar & Ors**, and also the **DoP&T guidelines**, cited supra, and accordingly take a decision and communicate the same to the applicant immediately thereafter.

6. Accordingly, both OA and MA are disposed of. No costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice G. Rajasuria)
Member (Judl.)