

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA. 30 of 2011

Date of Order: 20.04.2018.

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Sri Sudhir Chandra Bhowmik, son of late Ananga Mohan Bhowmik, superannuated Draftsman of the office Geological Survey of India, 5th Floor- A Block M.S. O Building, C.G.O. Complex, Block DF, salt lake, Kolkata- 64, resident Of Village & P.O. Bansdroni, Mohespara, East, Kolkata- 70.

.....Applicant.



- versus
1. Union of India represented through the Secretary, Ministry of Bureau of Mines, Government of India, New Delhi.
 2. Director General, Geological Survey of India, 27, J.L. Nehru Road, Kolkata- 700016.
 3. Director (P&A), Geological Survey of India, 27, J.L. Nehru Road, Kolkata- 700016.
 4. Deputy Director General (Geol), Eastern Region, Geological Survey of India, C.G.O. Complex, 2nd Floor, DK-6, Sector II, Karunamoyee Salt Lake City, Kolkata- 700091.
 5. Administrative Officer (Admn Section) in the Office of Dy. Director General, Eastern Region, G.S.I, C.G.O. Complex, A Block, 5th Floor, Block DF, Salt lake, Kolkata – 64, now at CGO Complex 2nd Floor, DK-6, Sector II, Karunamoyee, Salt Lake City, Kolkata – 700091.
 6. Sri B.M. Orang, Liaison Officer, Geological Survey of India, Eastern Region, CGO Complex, A Block, 5th Floor, Block DF, Salt Lake Kolkata – 64.
 7. Sri Ananta Kumar Maity, Draftsman retired on Superannuating from the office of Geological

Survey of India, CGO Complex, A Block, 5th Floor,
Block DF, Salt Lake, Kolkata- 64.

8. Central Administrative Tribunal, Calcutta Bench,
Nizam Place, M.S.O. Building, Kolkata-

Respondent No. 1, 3,4,5,6 and 7 represented by
Respondent No. 3 in this matter

.....Respondents.

For the Applicant : Mr. AK Banerjee, Counsel
Mr. B.K. Das, Counsel

For the Respondents : Mr. A. Mondal, Counsel

ORDER

Per Ms. Bidisha Banerjee, Judicial Member:

This application has been filed seeking the following reliefs:

8(A) That this Hon'ble Tribunal may be graciously pleased direct the respondents to bring up to the Hon'ble Court the papers and documents of the records of the case

(B) That The Hon'ble Tribunal be pleased issue order and direction upon the Government Respondents to treat the promotion of the Applicant to the post of Draftsman with retrospective effect from 7/9/1992 instead of 04/01/2005 for administrative error and to pay all consequential differences of wages up to the date of his retirement on superannuating w.e.f. 29/02/2008 A. N. and to refix the higher pension with arrears;

(C) That this Hon'ble Tribunal may be graciously pleased quash the order refusing promotion to the Applicant under the cover of letter No. 331/R dated 30.4.2010/3.5.10 passed by respondent No.3, being Annexure A/6 to this Application.

(D) Further order or other order/orders including the order quashing the document which is derogatory to the provision of the Constitution of India, be issued upon the Respondent and their officers and agents as The Hon'ble Tribunal may seem fit and proper.

(E) Incidental costs and other costs of the case shall be paid by the respondents.

2. It transpired during the course of hearing that the applicant was aspiring

for promotion to the post of Draftsman against reserved point with effect from 29.11.93. This is his second round of litigation. Seeking identical benefits i.e. the promotion to the post of Draftsman with retrospective effect from 29.11.1993 with consequential benefits, the applicant had earlier preferred OA. 1036/1995. This Tribunal while deciding OA. 1036 of 1995 held as under: (emphasis supplied for clarity)

“ 6) We have carefully considered the relevant facts and submissions of the Learned Counsel for the parties. From the copy of the Recruitment Rules for the post of Draftsman which was submitted during the hearing by the Learned Counsel for the respondents, it is seen that there were as many as 421 posts of Draftsman out of which 10% was ear-marked for promotion quota and 90% for direct recruitment quota. Having regard to the provisions of Article 16(4) of the Constitution and catena of judgments of the Hon'ble Supreme Court (See for example Indra vs. UOI (AIR 1993 SC 477) denial of any reservation for the SC/ST candidates in the promotion quota cannot be accepted as this will be contrary to the law. No reference is made to the DOIPT's OM dated 25.4.1989 relied upon by the respondents nor is there any reasonable criteria put forward by the respondents for adopting 66-2/30% of 75%, as the case may be, in the Recruitment Rules, to deny reservation to SC/ST candidates. Besides it is also relevant to see the note below para 8 of the Recruitment Rules for the post of Draftsman where provision is also made that the qualification regarding experience is relaxable at the discretion of the competent authority in the case of candidates belonging to SC/STs. In the present case, the applicant admittedly completed 8 years experience in the grade of Map Mounter on 29.11.1993 and the post in question had fallen vacant against the roster point in 1992. Admittedly, the applicant is a SC candidate. It is also settled law that DOPT'S OM by way of guidelines/instructions provided for SC/STs cannot amend the statutory law/Rules and more so, the Constitutional mandate for reservation to be provided for SC/STs which is applicable to the facts of this case. We are unable to accept the contention of the Ld. Counsel for the respondents that there was no reservation in promotion for the SC/ST candidates in the post of Draftsmen which have fallen vacant since 1992. It is noticed that there are as many as 421 posts of Draftsmen in the cadre.

7. In the result for the reasons given above, the OA succeeds and is allowed. Accordingly, the impugned letters dated 24.02.1994 and 30.06.1995 are quashed and set aside and the DOIPT'S OM dated 25.04.1989 also quashed and set aside. We direct the respondents to consider the case of the applicant for promotion to the post of Draftsman which has fallen vacant since 1992 in accordance with law and rules. This shall be done within a period of 3(three) months from the date of receipt of a copy of this order. In case, the applicant is found eligible for such promotion, he shall be entitled to all consequential benefits including

difference in pay and allowances and other benefits in accordance with law.”

It is thus quite evident from the extract supra that this Tribunal had already noticed there was no provision for reservation in the Recruitment Rules for the post of Draftsman under the respondents. The order was affirmed by the Hon'ble High Court in WPCT No. 505/04 in the following manner: (extracted with supplied emphasis for clarity)

“We do not find any illegality and/or irregularity in the aforesaid direction of the Learned Tribunal as the authorities namely, the petitioners herein cannot refuse to consider the claims of a citizen in accordance with law and rules.

The petitioners herein are, therefore, directed to consider the claims of the respondent for promotion to the post of Draftsman in the light of our aforesaid observations and strictly in accordance with the Recruitment Rules and also adhering to the settled principles of law as laid down by the Supreme Court with regard to the reservation of posts for SC/ST without any further delay but positively within a period of three months from date after taking note of the fact that the reservation in the matters of promotion in the services in favour of the Scheduled Castes and Scheduled Tribes is permissible in terms of Article 16(4A) of the Constitution of India.

Needless to mention that the competent authorities of the petitioners will pass a reasoned order in the matter and communicate copies of the same to the respondents within the period mentioned hereinabove.....”

3. The consequent speaking order dated 30.04.2010 impugned in the present OA, is extracted verbatim below with supplied emphasis for clarity:

“It may be recorded that reservation in promotion was available in grades where component of Direct Recruitment did not exceed 66 2/3% as per DOP & AR OM No. 36021/7/75-Estt. dtd. 25.2.76, which was subsequently modified to the extent of 75% vide DOPT OM No. 36012/17/88-Estt.(SCT) dtd. 25.4.89. While changing the limit from time to time, due care and consideration was taken to ensure that the right of the SC &ST candidates are protected and at the same time, due care was also taken to protect the right of the candidates of other categories in a balanced and rational way, so that the provision of reservation does not result in any discrimination. As per the Recruitment Rules for the post of Draftsman, the element of Direct Recruitment is 90%, i.e. more than the

stipulated element of 75%, as specified in the DOPT OM No. 36012/17/89-Est.(SCT) dtd. 25-04-89. that reservation in promotion should be made applicable in all Grades, in which the element of Direct Recruitment, if any, does not exceed 75%. As the element of Direct Recruitment for the post of Draftsman is 90% as per Recruitment Rule, i.e. in excess of DOPT stipulated 75% hence, the applicability for reservation for promotion through DPC to the post of Draftsman does not arise in the case of Sh. S. C. Bhowmick.

Moreover, Shri S. C. Bhowmik joined the post of Map Mounter in GSI on 29-11-1985 and according to the provision of Recruitment Rules for the post of Draftsman, Shri Bhowmik was required to complete the residency period of 8 years, before the occurrence of the vacancy to which Shri Bhowmik has put his claim, i.e. prior to 1991. Shri Bhowmik completed 8 years of service in the feeder grade i.e. Map Mounter only on 28-11-1993. Hence, Shri Bhowmik was not only junior in the grade of Map Mounter, but was also far away from the stipulated eligibility criteria, when the vacant post was filled in 1992.

Thus it emerges that the promotion of Sh. S. C. Bhowmik to the post of Draftsman, as prayed for, could not be considered for two reasons- (1) that as per the Recruitment Rule framed by the Government of India, for the post of Draftsman in GSI, the element of Direct Recruitment was 90% against the stipulated limit of 75% as per the DOPT OM, 1989, where reservation in promotional quota does not arise and (2) that he did not complete the eight year residency period at the time of occurrence of the vacancy, for which his name did not come under the consideration zone and hence not considered for promotion.

It thus emerges that the prayer of Shri S. C. Bhowmik, already retired on superannuation, cannot be considered in the light of extant Govt. rules and Govt. policies as enumerated in the DOPT OM on reservation and as such his prayer for promotion cannot be acceded to.....”

4. Learned counsel for applicant would vociferously argue that the applicant ought not to be deprived of promotion on the ground of non-fulfillment of 8 years residency period, in as much as the respondents ought to have resorted to carry forward of the vacancy to the next recruitment/consideration instead of filling up the vacancy against the policy of reservation.

5. Learned counsel for respondents on the contrary would urge that since there was no element of reservation provided in the Recruitment Rules, in the

matter of promotion to the post of Draftsman and, since admittedly the applicant did not fulfill the requisite 8 years residency period in the feeder post, he did not deserve promotion to the post of Draftsman.

6. Both the Id. Counsels were heard and the materials on record and written notes were perused.

7. Having noted the facts recorded in the speaking order and the reason for not promoting the applicant to the post of Draftsman, we asked for the Recruitment Rules for the post of Draftsman under the respondents. Despite opportunity Recruitment Rules for the post of Draftsman was not produced.

Therefore, we decided to proceed on the basis of the facts recorded earlier, in its order by this Tribunal, as extracted supra.

8. In absence of any express provision in the Recruitment Rules for reservation in the matter of promotion to the post of Draftsman and in view of the ineligibility of the applicant to be promoted to Draftsman with effect from 1992, we hold that his claim as put forth in this OA, for retrospective promotion with effect from 07.09.1992, is not tenable.

9. Accordingly, the OA is dismissed. No costs.

(Jaya Das Gupta)
Member (A)

(Bidisha Banerjee)
Member (J)

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