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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

O.A.No. 580 of 2013

Date of Order: 21/06/2016

PRESENT:

THE HON'BLE MR.JUSTICE V.C.GUPTA, JUDICIAL MEMBER
THE HON'BLE MR.JAYA DAS GUPTA, ADMN. MEMBER

Shri Bikash Patra, Son of Shri Khagendra Nath Patra, aged about 50 years, working for gain as Senior Scientific Assistant (Toxicology) under the Director, Central Forensic Science Laboratory, 30, Gorachand Road, Kolkata-700014 and residing at Flat No. 2A, 106/E, Narkeldanga North Road, Kolkata-700011.
.....Applicant

-VERSUS-

1. The Union of India service through the Secretary, Ministry of Home Affairs, North Block, New Delhi-110001.
2. The Chief Forensic Scientist, Directorate of Forensic Science Services, Block 9, 8th Floor, CGO Complex, Lodhi Road, New Delhi-110003.
3. The Secretary, Union Public Service Commission, Dholpur House, Sahjahan Road, New Delhi-110011.
4. The Director, Central Forensic Science Laboratory, Directorate of Forensic Science Service, 30, Gorachand Road, Kolkata-700014.
.....Respondents

Counsel for Applicant :Mr.T.Das, Advocate
Counsel for Respondents :Mr.B.P.Manna, Advocate

ORDERJUSTICE V.C.GUPTA, JM:

Heard Mr.N.P.Biswas, Learned Counsel for the Applicant and Ms.RBasu, Learned Counsel appearing for the Respondents assisted by Mr.Yogender Kumar, Administrative Officer, Office of the

Directorate of Forensic Science Services, New Delhi and perused the records.

2. The Applicant, namely, Shri Bikash Patra, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- (i) An order/direction may be issued to cancel, withdraw and/or rescind the impugned Advertisement No.06/2013, relating to direct recruitment to the two posts of Junior Scientific Officer in the Central Forensic Science Laboratory, as notified in the Employment New dated 11-17 May, 2013 and as contained at Annexure-A/6;
- (ii) An order/direction be issued to the respondents and each of them their subordinates and/or their agents/associates to immediately hold DPC ad prepare year wise panel since 2009-2010 and consider the applicant for promotion to the post of Junior Scientific Officer (Toxicology) and issue order promoting the applicant to the higher post;
- (iii) To direct the respondents, all their subordinated and/or agents to make pay fixation consequent upon such promotion and pay all the arrears of pay and allowances with interest;
- (iv) Costs pertaining to this application;
- (v) And to pass such further or other order or orders as this Hon'ble Tribunal may kindly consider fit and proper."

3. The facts, in brief, are that the applicant was appointed as a Laboratory assistant under the Director of Central Forensic Laboratory "in short CFL", Chandigarh with effect from 16.12.1991 and, thereafter transferred and posted to Central Forensic Laboratory, Kolkata with effect from 01.12.1996. It is the case of the Applicant that subsequently, he was promoted to the post of Scientific Assistant with effect from 11.06.2001 vide Office Order No. 122/95 dated 15.06.2001 and against to the post of Senior Scientific Assistant (Toxicology) with

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effect from 02.04.2007 vide Office Order No. 42 dated 04.04.2007. Consequent upon implementation of the recommendations of the 6th CPC, the posts of Scientific Assistant and Senior Scientific Assistant were merged together. It has been stated that he is an Orthopedically Handicapped person, with 40% disability, even prior to entry into the government service. But he entered into service as a general category against general quota vacancy and, did not avail of the benefit of reservation of PH candidate. According to him, he has passed the Associateship Examination in the year 2010 and thus, has acquired the necessary educational qualification for the post of Junior Scientific Officer (Toxicology) as per the Recruitment Rules. It is the case of the Applicant that for promotion to the post of Junior Scientific Officer, three years service as Senior Scientific Assistant or eight years service as Scientific Assistant and Senior Scientific Assistant taken together including at least one year service in the grade of Senior Scientific Assistant is required and, thus, according to the Rules, he is having all requisite years of service and educational qualification for promotion to the post of Junior Scientific Officer but, he has not been given chance for such promotion by the Respondent Department. According to the Applicant, there are thirty eight sanctioned posts of Junior Scientific Officer in the Central Forensic Science Laboratories under seven distinct categories, the details of which are given in paragraph 4.6. of the OA which are extracted herein below:

Junior Scientific Officer (Ballistics)	-6	-Category-I
-do- (Biology)	-6	-Category-II
-do- (Chemistry)	-6	-Category-III
-do- (Explosive)	-6	-Category-IV
-do- (NAA)	-6	-Category-V

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-do-	(Physics) -6	-Category-VI
-do-	(Toxicology)-6	-Category-VII

It is the case of the Applicant that as per the Rules 66 1/3% of the posts are to be filled up b y way of direct recruitment and 33 1/3& by way of promotion failing which by transfer on deputation (including short term contract) basis. The Respondents issued advertisement bearing No. 06/2013 in the Employment News dated 11-17 May, 2013 inviting application for filling up of two posts of Junior Scientific Officer (Toxicology) by way of direct recruitment in the Central Forensic Science Laboratory. But no step was taken to fill up the vacancies in the grade of Junior Scientific Officer falling under Departmental Promotion Quota (DPQ) and, as such, the applicant sought for cancellation of the advertisement issued for filling up of two posts of Junior Scientific Officer under Direct Recruitment Quota (DRQ). Thus, he has filed the instant OA seeking the aforesaid reliefs.

4. The Respondents have filed their reply contesting the stand taken by the applicant in his pleadings. Further, an affidavit has been filed by the Respondents on 31st March, 2016 giving the details of the queries made by this Tribunal vide order dated 23.2.2016 which is, in extensor, being re produced herein below:

AFFIDAVIT SUBMITTING PARTICULARS RELATING TO THE POST OF JUNIOR SCIENTIFIC OFFICER AS PER ORDER OF THIS HON'BLE TRIBUNAL DATED 23-2-2016.

I, Priyankan Ghosh son of Late Kshetranath Ghosh aged about 58 years working as Director, CFSL, 30, Gora Chand Road, Kolkata-700014 do hereby solemnly affirm and state as follows:-

1. That I am the respondent no.4 and I am well conversant with the facts and circumstances of the case and that I am competent to swear this affidavit;

2. I submit the following particulars as directed by the Hon'ble Tribunal vide paragraph 5 of the order dated 23.2.2016:

- (i) No. of posts in the cadre of Junior Scientific Officer (JSO) is 33;
- (ii) No. of posts of JSO filled by promotion quota (after the creation of DFSS on 31.12.2002) is 15;
- (iii) No. of posts of JSO filled by direct recruitment (after the creation of DFSS on 31.12.2002) is 16;
- (iv) No. of posts of JSO lying vacant as on 10.3.2016 is 11;
- (v) The last direct recruitment was finalized by the UPSC in January, 2016 for 02 posts of JSO in Ballistics Division;
- (vi) 14 No of direct recruits and 08 No. of promotes are working as JSO as on 10.3.2016;
The Division wise break up of JSO is furnished in the Annexure-A-1;
- (vii) The last DPC was held on 19.11.2015 for 01 posts of JSO in Explosives Division;
- (viii) All the available vacancies of JSO falling under promotion quota in all the Streams/Divisions are considered by the DPC in one meeting as prescribed in the Recruitment Rules;

The said RR is annexed and marked as A-2;

- (ix) Yes, the rule of rota quota is applied for fixing the seniority to the extent of available direct recruits and promotes. The method is 33 1/3% by promotion failing which by transfer on deputation (including short term contract) and 66 2/3% by direct recruitment;

A copy of the Recruitment Roster for the post of JSO is annexed and marked as Annexure-3;



The statements made in the foregoing paragraphs 1 & 2 are true to my knowledge and rest is my humbly submission before this Hon'ble Tribunal. I have not suppressed any material facts."

From the above, it reveals that that there are 33 posts in the cadre of JSO and out of the said 33, 15 posts were filled up by way of promotion under DPQ, after the creation of DFSS on 31.12.2002 and 16 posts were filled up by way of DRQ after the creation of DFSS on 31.12.2002 and 11 posts are lying vacant. The last direct recruitment was finalized by the UPSC in January, 2016 for two posts of JSO in Ballistics Division and the last DPC was held on 19.11.2015 to fill up 01 posts of JSO in Explosive Division. Thus, 14 direct recruits and 08 promotes were working as JSO as on 10.03.2016. The breakup of 33 posts in the grade of JSOs, placed at Annexure-A/1 reads as under:

Sl.No.	Name of Division	Sanctioned Strength
1	Jr. Sc. Officer (Biology)	5
2	Jr. Sc Officer (Toxi)	5
3	Jr. Sc. Officer (Chemistry)	4
4	Jr. Sc. Officer (Explosive)	5
5	Jr. Sc. Officer (NAA)	2
6	Jr. Sc. Officer (Physics)	6
7	Jr. Sc. Officer (Ball)	6
	Total	33

The Annexure-A/1 enclosed to the affidavit further reveals that as on 10.03.2016, 14 direct recruits and 08 promotes working in different streams as Junior Scientific Officer as under:

Sl.No.	Name of Division	No. of posts filled by direct recruitment	No of Posts filled by way of promotion
1	Jr. Sc. Officer (Biology)	02	02
2	Jr. Sc Officer (Toxi)	04	00
3	Jr. Sc. Officer (Chemistry)	01	01
4	Jr. Sc. Officer (Explosive)	02	02
5	Jr. Sc. Officer (NAA)	00	01

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6	Jr. Sc. Officer (Physics)	03	00
7	Jr. Sc. Officer (Ball)	02	02
	TOTAL	14	08

The Recruitment Rule is also produced at Annexure-A/2 of the Affidavit wherein it has been clarified that Rule of rota quota is applicable for fixation of seniority between the direct recruits and promotes. Copy of the Recruitment Roster for the post of JSO in CFSLS has been annexed as Annexure-A/3 to the affidavit which shows that the first and second points of roster had been given to the person belonging to DPQ. The roster produced at Annexure-A/3 also reveals that point Nos.1 to 11 has been given to DPQ and point Nos. 12 to 33 has been given to DRQ. However, roster of 112 point has been attached though the total sanctioned strength in the cadre of JSO is only 33.

5. The Applicant by filing a supplementary affidavit on 29.01.2015 has brought on record the recruitment roster for the post of JSO, CSFL which is almost similar to the roster filed by the Respondents, as discussed herein above.

6. Written note has also been placed on record by the Learned Counsel for the Applicant in which he has also filed a hand written 109 point roster and on the basis of which it has been alleged that all the times vacancies in the cadre of JSO (Toxicology) are being filled up by way of DRQ and not by DPQ.

During the course of arguments, OM dated 28th May, 2014 of the Government of India, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training), New Delhi has been placed in to service wherein it has been provided that the crucial



date of eligibility shall be 1st April of the vacancy year in case where the Annual Performance Appraisal Reports are written financial year wise and in case of calendar year based vacancy year where the APARs are written calendar year wise, the crucial date of eligibility shall remain as 1st January of the vacancy year. There is nothing on record to demonstrate that whenever the recruitment has taken place either by way of DRQ or DPQ, the date of eligibility as per this circular was adhered to by the Respondents. There is nothing on record that in any advertisements made for filling up of the posts, simultaneous recruitment process was initiated.

7. It is seen that at one point of time 15 promote officers were working against 33 posts of JSO before promotion of 7 officers to higher grades of JSO and at that time 16 Direct Recruits and 15 promote officers were working in the cadre. After 7 promotions were made to higher grade 14 direct recruits and 10 promotes were said to have been working which shows that quota rota rule has been violated. The grievance of the applicant is thus cannot said to be baseless. However, it is not in dispute that the process of recruitment in pursuance of the advertisement under challenge has been completed and persons have already joined. Therefore, we are not inclined to interfere in that process and this OA to that extent in our opinion has become infructuous.

8. So far as the second relief of the Applicant is concerned, we find sufficient force and for that we are of the opinion that appropriate direction can be issued to the Respondents that they shall determine the existing vacancies on the date of eligibility and the

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expected vacancies for the next one year on account of retirement death etc and then initiate the process of recruitment to fill up the vacancies in the grade of JSOs. Hence, the following directions are issued:

- (i) The vacancies available for recruitment shall be distributed according to the quota rule i.e. 66 1/3% and 33 1/3%.
- (ii) The authorities concerned shall ensure that at no point of time the DRQ and DPQ shall exceed against the sanctioned strength of the particular cadre.
- (iii) Recruitment shall be made for both the streams simultaneously;
- (iv) The entire exercise of initiating the process of selection shall necessarily be made by 31.08.2016 by determining the vacancies and then shall complete the process of recruitment within four months thereafter for both the streams.
- (v) Seniority shall be fixed according to rota quota rule by making the appointment of the successful candidates under both the streams by putting them at the appropriate roster point;
- (vi) The roster shall be prepared by the authorities according to the ratio 2:1 in between the DRQ & DPQ and the existing JSOs shall be placed at the appropriate places and thereafter persons to be recruited shall be placed against the year of vacancies;



(vii) The Direct recruitments/promotes against the vacancies of 2016 shall be junior to all the existing persons working in the grade of JSO, as per existing Recruitment Rules.

9. With the aforesaid observations and directions, this OA stands disposed of. There shall be no order as to costs.

(Ms.Jaya Das Gupta)
Administrative Member

(Justice V.C.Gupta)
Judicial Member

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