

(RESERVED ON 18.06.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD
(CIRCUIT SITTING AT NAINITAL)

This the **21st** day of **JUNE 2018**.

ORIGINAL APPLICATION NO. 331/20/2015

HON'BLE DR. MURTAZA ALI, MEMBER (J).
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

1. Akhil Gairola, S/o Late Shri H P Gairola employed as Observatory Assistant Grade II, Geodetic & Research Branch, Survey of India, Dehradun, Uttarakhand.

.....Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Science and Technology, New Mehrauli Road, New Delhi.
2. The Surveyor General of India, Survey of India, Dehradun.
3. Director Geodetic & Research Branch, Survey of India, Dehradun.

.....Respondents

Advocate for the Applicant : Shri Ram Prasad
Shri Ashish Srivastava

Advocate for the Respondents : Shri L P Tiwari

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

The OA has been filed with the prayer for the following reliefs:-

"(a) Issue the directions commanding the respondents to incorporate the recruitment and promotion prospects of Observatory Assistant in C O 436 (Adm) dated 1st August 1950, corrected up to 31st March 1983.

(b) Issue the directions commanding the respondents to convene regular DPC from the post of Observatory Assistant Grade-II to the post of Survey Assistants for vacancies existing in the grade of Survey Assistants and consider the candidature of the applicant for said promotion, and if found fit then promote from the date vacancy arose in the grade of Survey Assistant & pay all the consequential benefits from that date.

(c) Issue the directions commanding the respondents to fix the pay of the applicant in accordance with corresponding pay scale of the Observatory Assistant as laid down in C O 436 (Adm) dated 1st August 1950, corrected up to 1st March 1963.

(d) Issue any Order which this Hon'ble Tribunal may deem fit and proper in the light of facts and circumstances of the present case.

(e) Award costs"

2. The facts of the case in brief are that the applicant was appointed on compassionate ground as Observatory Assistant Grade-III under the respondents on 27.9.1991 and although he was eligible for promotion to Grade-II, the respondents failed to conduct the required trade test for the same. No action was taken in spite of the representations submitted by the applicant. Finally, the applicant was promoted with effect from 12.08.2003. Thereafter, the applicant served a legal notice claiming promotion with retrospective effect from 1.1.1994 and then filed an OA No. 92/2007 which was disposed of by order dated 23.10.2009 (Annexure A-5 to the OA). In pursuance to the order dated 23.10.2009, the applicant was given promotion as Observatory Assistant Grade-II with effect from 1.1.1994 instead of 12.8.2003 as ordered earlier by the respondents.

3. The applicant submitted a representation dated 19.02.2013 (Annexure A-7) to the respondents for further promotion from the post of Observatory Assistant Grade-II. When no action was taken by the respondents, the applicant requested regarding the recruitment rules from the respondents under RTI Act. As stated in para 4.18 and 4.19 of the OA, the post of Observatory Assistant was shown under Division I post in the order C.O. 436 dated 1.8.1950 as corrected up to 1.3.1963 (Annexure A-13). But the said post was deleted from the C.O. 436 as corrected up to 31.3.1983 (Annexure A-15). It is stated in para 4.23 of the OA that no specific order was issued by the respondents while deleting the post of Observatory Assistant from Division I posts. It is the case of the applicant that the post of Observatory Assistant has been deleted from C.O. 436 which governs recruitment and promotion of Division I posts, without any basis or justifications, for which he is being deprived of further promotion. It is further stated that such action of the respondents violates the applicant's rights under the Articles 14 and 16 of the Constitution of India.

4. The respondents, in their Counter Affidavit have stated that the applicant was appointed in Division II cadre in Survey of India vide the order dated 4.2.1992 and his services are governed by C.O. 435 at the time of his appointment. He was allowed promotion to the post of Observatory Assistant Grade II with effect from 1.1.1994 after passing the trade test as per the provisions of C.O. No. 349 and in pursuance to the order dated 23.10.2009 of this Tribunal. It is also stated in the Counter that recruitment of Division II posts has been banned by the Government of India and there is no need for the respondents to include the post of Observatory Assistant in the C.O. 436 to improve their promotion prospects and that the said post is not a feeder post of Survey Assistant in Division I. Further, neither the C.O. 435 nor the C.O. 439 provides for promotion of the Observatory Assistant to Division I. The para 5 of the Counter also states that since the Observatory Assistant has no further promotion, the applicant was allowed higher scale of pay under Assured Career Progression Scheme (in short ACP Scheme).

5. It is further stated in the Counter that the applicant being the only Observatory Assistant under the respondents, the post of Observatory Assistant being an isolated post, was deleted from the revised C.O. 436 (corrected up to 31.3.1983) and the post was included in C.O. 435 (corrected up to 31.3.1983) for Division II posts. It is also stated that the example of an employee given by the applicant in para 4.25 of the OA is not applicable since it related to the rules applicable as on 1969 and by 1991 when the applicant was appointed, the said rules have been modified. Hence, the applicant was appointed in Division II under C.O. 435 under which there is no provision of promotion of Observatory Assistant Grade II. It is also contended that there is no violation of the Article 14 and 16 of the Constitution of India as the decision to transfer the post of

Observatory Assistant in the Department to Division II was taken by the competent authority due to administrative requirement.

6. The applicant has filed his Rejoinder Affidavit generally denying the contentions of the respondents in the Counter Affidavit and reiterating the contentions in the OA. With reference to the averments in para 1 and 2 of the Counter Affidavit that the applicant was appointed against a Division II post and further recruitment to Division II has been banned by Government have not been contradicted in the Rejoinder, which has tried to justify inclusion of Observatory Assistant post in C.O. 436 for Division I post. The contention in para 2 of the Counter that the post of Observatory Assistant is not the feeder post of Survey Assistant has been denied in para 6 of the Rejoinder, without quoting any rules to support the contention. The applicant has reiterated the example of Shri Bachan Singh Negi who was promoted from Observatory Assistant to Survey Assistant. This example furnished in para 4.25 of the OA has been countered by the respondents in para 14 of the Counter by stating that the example was based on the provisions of the rules and regulations of 1969 which were not applicable at the time of appointment of the applicant in 1991. Para 18 of the Rejoinder countered the averments in para 14 of the Counter by stating that the respondents have failed to furnish any authority for deletion of the post of Observatory Assistant from C.O. 436.

7. We have heard the learned counsels for both the parties who broadly reiterated the stand taken in their respective pleadings. We have carefully considered the submissions and the pleadings of both the parties. Relevant issues to be decided in this case are:-

- (a) Whether the applicant has been prejudiced by the decision of the respondents to include the post of Observatory Assistant as

Division II post under the C.O. 435 or by any other action of the respondents.

(b) Whether the prayer of the applicant in the OA to direct the respondents to incorporate the provisions for promotion of the applicant as per the C.O. 436 is acceptable as per law.

8. It is noted that in pursuance to the order dated 16.5.2017 of this Tribunal in this case, the applicant filed a Misc. Application attaching a copy of the Memorandum submitted for Seventh Pay Commission and a copy of the applicant's appointment order dated 4.2.1992. Perusal of the appointment order dated 4.2.1992 reveals that the appointment of the applicant in the post of Observatory Assistant was in Group 'C' in Division II, which has been accepted by the applicant and he joined in the post as per the said order. On the date of appointment of the applicant in Division II, the C.O. 436 and C.O. 435 as corrected up to 31.3.1983 were in force and as per these orders, the post of Observatory Assistant was included as Division II post which is governed by C.O. 435. By allowing the promotion to the applicant to the post of Observatory Assistant Grade II with effect from 1.1.1994, the provisions of the C.O. 435 have been complied by the respondents. Further, under C.O. 435 or any other rule, there is no provision for promotion from the post of Observatory Assistant Grade II to the posts of Division I as stated by the respondents in the Counter Affidavit. As stated in para 5 of the Counter, the applicant has been allowed higher pay scale as per the ACP Scheme. It is not the case of the applicant that there has been any violation of the provisions of the C.O. 435 or 436 or of any other rules relevant for the applicant by the respondents while dealing with the case of the applicant. The applicant has failed to furnish any evidence of any violation of any rules by the respondents and there is no evidence to show that the applicant has been

prejudiced by the decision of the respondents to include the post of Observatory Assistant as Division II post or by any other action. The issue at (a) of para 7 is answered accordingly.

9. Regarding the issue at (b) of para 7, it is noted that an Observatory Assistant was included in C.O. 436 as corrected up to 1.3.1963 (Annexure A-13) and was being promoted to posts under Division I as per the C.O. 436. As stated in para 1, 11 and 19 of the Counter Affidavit, after ban of further recruitment of the posts in Division II, the post of Observatory Assistant was deleted from the purview of the C.O. 436 and it was brought under the C.O. 435, which is due to administrative requirement. The appointment order dated 4.2.1992 of the applicant clearly mentioned that his appointment was for a Division II post. It is not the case of the applicant that on the date of appointment of the applicant, the post of Observatory Assistant was included in the C.O. 436 as corrected up to 31.3.1983 and that he has been deprived from promotion as per the rules applicable to him.

10. In the case of **DDA v. Joint Action Committee, Allottee of SFS Flats, reported in (2008) 2 SCC 672**, Hon'ble Apex Court has held as under:-

"59. An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall like its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of

the superior court would not be without jurisdiction as it is subject to judicial review.

60. Broadly, a policy decision is subject to judicial review on the following grounds :

(a) if it is unconstitutional;

(b) if it is de hors the provisions of the Act and the Regulations;

(c) if the delegatee has acted beyond its power of delegation;

(d) if the executive policy is contrary to the statutory or a larger policy."

As per the ratio of the judgment cited above, a policy decision will be subject to judicial review on the grounds as stated above. In the present OA, the decision of the respondents to delete the post of Observatory Assistant from C.O. 436 prior to appointment of the applicant is a policy decision and the Courts cannot interfere with the said policy decision unless the grounds as specified in the case of DDA (supra) are clearly made out. We are of the view that no such ground has been brought out in the pleadings of the applicant to justify any interference with the decision to delete the post of Observatory Assistant from C.O. 436. Moreover, the applicant has not been prejudiced by action of the respondents to delete the post of Observatory Assistant from the C.O. 436 as discussed in para 7 above. Hence, we are of the considered view that no direction can be given by this Tribunal to the respondents to restore the post of Observatory Assistant in the C.O. 436 or to provide for promotions for the applicant, who has been promoted and financially upgraded as per the extant rules applicable to him. The issue at (b) of para 7 is answered accordingly.

11. As discussed above, the prayer of the applicant to direct the respondents to incorporate the provision for promotion of the applicant from the post of Observatory Assistant Grade II in the C.O. 436 dated 1.8.1950 as corrected up to 31.3.1983 cannot be accepted, since it will involve modification of the promotion criteria as per rules, which is within the domain of the executive authority. At the time of the appointment of the applicant as Observatory Assistant in 1991, he was appointed on compassionate ground in Division II as stated in the Counter Affidavit and at that point of time there was no provision under the rules for promotion beyond the post of Observatory Assistant Grade II and this promotion has been allowed to the applicant with effect from 01.01.1994. Thereafter, the applicant has also been allowed the benefit of higher pay scale under the ACP Scheme as stated in para 5 of the Counter Affidavit. Hence, the averment of the applicant that there is no provision for his promotion is not acceptable. The applicant has also failed to furnish any evidence to show that he has been prejudiced by any action of the respondents or there has been any violation of the existing rules in his case.

12. In view of the above, the OA being devoid of merit is liable to be dismissed. Accordingly, the OA is dismissed. There is no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(DR. MURTAZA ALI)
MEMBER-J

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