

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/000431/2013

Pronounced on : 11.03.2019
(Reserved on : 05.03.2019)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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Ashok Kumar Gehlot, S/o Shri G.S. Gehlot, aged about 56 years, R/o Imratiya Bera 56 B Paota 'C' Road Jodhpur. Presently working on the post of T-6 in the office of Director CAZRI, Jodhpur.

...APPLICANT

BY ADVOCATE : Mr. S.K. Malik.

VERSUS

1. The Indian Council of Agriculture Research through its Secretary, Krishi Bhawan, New Delhi.
2. The Director Central Arid Zone Research Institute, Jodhpur.

RESPONDENTS

BY ADVOCATE: Mr. Ashok Kumar Gehlot, for R1 & R2.

ORDER

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Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- "i) By an appropriate writ order or direction impugned order dated 24.09.2013 at Annexure A1, be declared illegal and be quashed and set aside as if it was never issued against the applicant.
- ii) By an order or direction respondents may be directed to continue the applicant on the post of T-6 with all consequential benefits."

2. This OA has been made against the impugned office order No.2-783/79-ADM I, dated 24.09.2013 (Annexure A1) passed by respondent no.2 wherein the applicant has been reverted.

3. The factual matrix of the case is that the applicant is possessing the qualification of Higher Secondary and two years Certificate in Draftsman Civil from ITI, Jodhpur. After due selection from the employment exchange, the applicant was offered the post of Tracer vide Memo dated 27.02.1980. The applicant joined on the post of Trace in the pay scale of Rs.260-430/- with effect from 28.02.1980, vide memorandum dated 27.02.1980 (Annexure A2). Thereafter, he was promoted on the post of T-2 vide office order dated 19.08.1986 (Annexure A3) in the pay scale of Rs.330-560/- with effect from 01.01.1986. Since the applicant is possessing the qualifications of Higher Secondary and two years Certificate in Draftsman Civil from ITI, the qualification for appointment on the post of T-II-3 (Draftsman) after due selection he was offered the post of T-II-3 Draftsman, vide Memo dated 08.08.1989 (Annexure A4). Thereafter, vide office order dated 23.08.1989 (Annexure A5), he was appointed on the post of T-II-3 (Draftsman) in the pay scale of Rs.1400-2300/- with effect from 08.08.1989. Thereafter, under rules of Technical Service Rules of ICAR for career advancement scheme of technical employees on the basis of assessment, the applicant was promoted on the post of T-4 in the pay scale of Rs.1640-2900/- with effect from 01.01.1995, vide office order dated 31.08.1995 (Annexure A6).

4. It is further stated in the OA that again under the Career Advancement Scheme on the basis of assessment by the Committee, the applicant was promoted on the post of T-5 in the pay scale of Rs.6500-10500/- with effect from 01.01.2000, vide office order dated 16.01.2001 (Annexure A7). At last under the career advancement Scheme of

Technical personnel as amended from time to time and upon the recommendations of the assessment committee approved the grant of assessment benefits. The applicant was promoted on the post of T-6 in the Pay Band-3 of Rs.15,600-39,100/- with Grade Pay of Rs.5400/- by respondent no.2 with effect from 01.01.2010 after completion of 10 years of service from the date of promotion on the post of T-5 as he is possessing the qualification of Higher Secondary with two years Certificate in Draftsman Civil from ITI which is the requisite qualifications for the post of T-II-3, vide office order dated 12.07.2011 (Annexure A8). After a period of two years, respondents issued OM dated 02.08.2013 to the applicant to show cause as to why office order dated 12.07.2011 may not be withdrawn showing that office order dated 12.07.2011 was issued for giving merit promotion on erroneous assessment whereas the applicant was given promotion for career advancement scheme of technical personnel after completion of 10 years of service in the lower post vide OM dated 02.08.2013 (Annexure A9).

5. The applicant further stated in the OA that he submitted detailed reply dated 16.08.2013 to the show cause notice giving the full detail that he was appointed on the post of T-II-3 by way of direct recruitment having fulfilled the required qualifications for entry grade as per TSR under Category II (Group III workshop staff) and further promoted on the post of T-4 and T-5 cadre. Lastly, he was promoted to T-6 grade having completed 10 years of service in T-5 grade though duly constituted assessment committee as per circular issued by the Council from time to time and further stated that his case was placed before the assessment committee, as such he is not aware that under which rule or scheme, his case was placed before the said Committee and after recommendations, finally his case was approved and thereafter promoted on the post of T-6. Hence further monetary benefits of pay fixation etc were granted and he is

given due increments etc. vide reply to show cause notice dated 16.08.2013 (Annexure A10).

6. Heard Shri S.K. Malik, learned counsel for the applicant and Shri Ashok Chhangani, learned counsel for respondents no.1 & 2.

7. The applicant drew our attention to the fact that without considering the reply of the applicant and without any application of mind by a non speaking impugned office order dated 24.09.2013 (Annexure A1), respondent no.2 withdrawn the office order dated 12.07.2011 wherein the applicant was promoted on the post of T-6, hence reverted to lower post of T-5.

8. He also sought to highlight that as per the existing TSR wherein it has been provided that T-5 technical personnel who do not possess essential qualifications for direct recruitment shall be eligible for assessment promotion to fix his grade after completion 10 years of service in T-5 grade provided that such technical personnel are possessing the qualifications prescribed under this order for direct recruitment to Cat II (T-3). He drew our attention to the TSR circular dated 03.02.2000 placed at Annexure A2. The assessment Board after considering these qualifications of the applicant and 10 years of service in T-5 grade recommended the case of the applicant which was duly approved by the competent authority. It was only subsequent to this that he was promoted to the post of T-6 vide office order dated 12.07.2011 (Annexure A8). It is, therefore, shocking that the respondents have turned back on that promotion stating that it was given erroneously. The respondents as highlighted are stopped on the principle of equitable promissory estoppel to withdraw the promotion order, now withdrawing the promotion order after a period of two years without any cogent reason. He has also submitted that the applicant had never concealed any material fact or

provided any fraudulent data and all promotions granted to him were done from time to time after due assessment.

9. The applicant also drew our attention to the Hon'ble High Court's order of the Delhi, dated 31.07.2017 in the case of Indian Council of Agricultural Research & Anr. Vs. Shri Laxmi Narayan Meena in WP (C) No.4431/2014 and CM No.8855/2014. He also drew our attention to the fact that the TSR provides for eligibility for assessment promotion to T-3 grade only after 10 years service in T-2 grade. The relevant paragraphs of the order dated 31.07.2017 is quoted herein below:-

"9. After the promulgation of the amended Rules on 3 rd February, 2000, all the existing employees were given option to opt for the old rules and in case of default, they were to be covered by the new service rules as amended on 3 rd February, 2000. It may be relevant to note that after the removal of the category bar, all the respondents earned further promotions to higher grades from time to time and no issue was raised during this period regarding their not fulfilling the qualification for direct recruitment to T-2, Category II, or regarding their performance.

23. The respondent department has also failed to give any justification as to why the benefit of clarification issued on 19th August, 2016 is being denied to the applicant and, therefore, it is apparent that the action of the respondents is wholly arbitrary and illegal."

10. The respondents countering this, the respondents counsel mentioned that the High Court decision that has been quoted was not relevant as in that case, the applicant has suffered a delay of 20 to 25 years. He also referred to TSR rules dated 03.02.2000 and drew our attention to the Caveat in the rules which provide that while the 10 years service is essential, the rules also stipulate the educational qualification. The provisions relating to Category barrier for assessment promotions from T-5 grade of Category II to T-6 grade of Cat.III has been revised as under:

"a) The technical personnel in T-5 grade (Rs.6,500-10,500) and possessing the essential qualifications prescribed as hereinfurther under this order for Category III for direct recruitment, shall be eligible for assessment promotion to T-6 (Rs.8,000-13,500) grade after completing five years of service in T-5 grade while:

b) The T-5 technical personnel who do not possess the essential qualifications as for direct recruitment prescribed hereinafter under this order for Cat.III shall be eligible for assessment promotion to T-6 grade after completing 10 years of service in T-5 grade provided such technical personnel are possessing the qualifications prescribed under this order for direct recruitment to Category II (T-3). However, such technical personnel in T-5 grade who do not possess the qualifications prescribed under this order for direct recruitment to Category II (T-3) shall not be eligible for further assessment promotion to Category III for further assessment promotion to Category III of the Technical Services."

The minimum essential qualifications for direct recruitment of technical personnel in Category I, II and III at the entry grades thereto would be as per the following model qualifications irrespective of the functional group.

The relevant educational qualification stipulated for the applicant are that:-

"(c) Category III, master's degree in the relevant field or equivalent qualifications from a recognized university. Based upon the above minimum essential model qualifications prescribed for different categories, the specific qualifications covering the relevant fields. Location-specialization wherever required in case of posts of different functional groups should be finalized in case of direct recruitment in consultation with the concerned subject-matter divisions."

11. Learned counsel for the respondents also drew our attention to the Hon'ble Supreme Court judgment in Indian Council of Agricultural Research and Anr. Vs. T.K. Suryanarayan and Ors., in Civil Appeals No.5502 and 5504 of 1997 with SLPs (C) Nos. 18567 and 19103 of 1995, decided on August 5, 1997, on the matter of erroneous promotion given departmentally by misleading of rules on account of wrong application of rules. In this case, the operative portion of the judgment is reproduced below:-

"Even it is some cases, erroneous promotions had been given contrary to the service rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim in law courts for promotion contrary to the statutory service rules. Incorrect promotion either given erroneously by the department by misreading of the service rules or such promotion given pursuant to judicial orders contrary to service rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules. In a court of law, the respondents cannot be permitted to contend that the service rules should not be adhered to because in some cases erroneous

promotions had been given. The statutory service rules must be applied strictly.

The question of unmerited hardships, if any, and need for amendment of rules to remove such hardship are matters for consideration of the rule-making authority. It is reasonably expected that the authority concerned will be sensitive to unmerited hardship to a large number of its employees, if occasioned by introduction of service rules so that appropriate remedial measures may be taken.”

12. In view of the position regarding minimum essential qualification as provided for in the TSR and as enunciated in the Supreme Court judgment quoted above, the relief sought by the applicant is not tenable. Therefore, there is no merit in the present OA and the same deserves to be dismissed.

13. Original Application is accordingly dismissed in view of the observations made above. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

Dated: 11.03.2019
Place: Jodhpur

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