

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00261/15

Reserved on: 25.02.2019
Pronounced on: 06.03.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. Ravindra Kumar Sinha, Son of Late B.K.P. Sinha, Ex- Director, resident of A-22, Magistrate Colony, PO- Ashiana Nagar, Patna, (Bihar)- 800025.
2. Binod Kumar, Son of Late Raj Banshi Das, Deputy Director General (Retired), resident of Flat No. B2, Dayal Enclave, A/8, Patrakar Nagar, Kankarbagh, Patna (Bihar)- 800020.
3. Hari Prakash Saxena, son of Late Chandra Babu Saxena, Deputy Director General (Retired), resident of C/o Sri Aditya Swaroop, B/2, New PHED Colony, Hinoo, Ranchi- 834002.
4. Dr. T. Rajesham, son of Late T. Shankaraiah, resident of Ramnagiri, PO- Ashiana Nagar, Patna (Bihar) -800025.

.... Applicants.

By Advocate: - Mr. M.P. Dixit.

-Versus-

1. The Union of India through the Secretary, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training (DOPT), Government of India, 3rd Floor, Lok Nayak Bhawan, Khan Market, North Block, New Delhi-110003.
2. The Director General, Geological Survey of India, 27, J.L. Nehru Road, Kolkata- 700016.
3. The Secretary, Ministry of Mines, Government of India 3rd Floor, 'A' Wing, Shastri Bhawan, New Delhi- 110001.

..... Respondents.

By Advocate: - Mr. M.D. Dwivedi

O R D E R

Per Dinesh Sharma, A.M:- Briefly put, the Applicants have claimed, on the basis of O.M. No. AB 14017/64/2008-Estt.(RR), Dt. 24.4.2009, Non Functional Upgradation (NFU) to a scale (SAG/HAG) w.e.f. from a date at

which officers of IAS from a batch 2 years junior to them got posted at the centre to that scale (hereinafter quoted as “the 2 year rule”). According to them, this should be done without looking at the eligibility criteria and promotion norms (introduced at Sl. 3 in the Annex-I of the DoP&T OM dated 24.4.2009) such as residency period etc., since it would defeat the purpose of the OM (supra) that was intended to breach stagnation. Applicants belong to the Geology stream of the GSI, which they allege, is an organised Central Service since July 1982, as affirmed by Hon’ble Supreme Court of India in SLP No (C) (CC) 16461/2014 vide order dated 17.10.2014 in the case of UOI & Ors. Vs. M.N. Ramachandra Rao.

2. The respondents have denied the claims. According to them, the Geology stream of GSI was notified as organised service w.e.f. 29.9.2010. The Grant of NFU w.e.f 1.1.06 (date since the VI CPC was implemented) will be admissible to them on their meeting the eligibility requirement prescribed in the Recruitment Rules notified on 29.9.2010. They have already granted NFU (to SAG, Joint Secretary level) to applicant No. 1 w.e.f 1.1.2011. They have also alleged that it is not feasible to strictly apply “batch concept” since the Geology stream was regulated, prior to 29.9.2010, by the provision of General Central Service, and that created disparity amongst the officers of the same batches due to reasons such as reservations/ eligibility criteria including benchmarks for upgradation, etc. They have also given NFU to applicant no 3 w.e.f. 1.4.2008 and the demands of a large number of candidates not considered earlier were also being considered after receipt of fresh instructions from the DoPT. They have however,

categorically denied the application of batch concept, as claimed by the applicants in the OA, due to considerations of eligibility criteria and other factors arising out of this not being an organised Central Service, ab initio.

3. We have gone through the pleadings and heard the learned counsels of both the parties. The two main issues that need to be decided on, before any of the reliefs claimed by the applicants can be granted, are:

(a) Whether the applicants belong to an organised Central Service, since July 1982, as claimed by them.

(b) Whether the benefit of the 2 years rule can be given to the applicant without looking into their meeting other eligibility criteria including 'Bench Mark' etc. for such upgradation.

4. The counsel for the applicants have cited the decisions of CAT, Bangalore Bench in 404/2009 (which was (part) confirmed by the Hon'ble High Court of Karnataka in WP No 45591 of 2012, dated 21.4.2014, and the SLP against it rejected by the Hon'ble Apex Court on 17.10.2014) and of CAT Ernakulam Bench in OA 283/2013 (decided on 26.10.16) to support their claim. These decisions are, hereinafter, referred to as Bangalore and Ernakulam decisions, respectively. Very briefly put, the Bangalore decision is quoted to support applicant's claim regarding them being organised service since long [issue (a) above]. The Ernakulam decision, the applicant's claim, supports their claim on the issue (b) stated above. The Counsel for the applicant also brought to our notice a judgment of the Hon'ble Apex court in G.L. Batra vs. State of Haryana and Ors. (reported in 2013(4) PLJR, page 404) wherein the Hon'ble Apex court has found overruling, by a

Division Bench of High Court, of a single bench judgment confirmed by another co-ordinate Division Bench of the same High Court, incorrect.

5. The learned Counsel for the respondents has cited the decision of CAT, Mumbai Bench in OA Nos. 2270,2116,2114 of 2014, passed on 10.7.18. This is referred to as the Mumbai decision, hereinafter. This decision is contrary to Bangalore and Ernakulam decisions and does not support the applicant's case either on issues (a) or (b) mentioned above. They have also cited the decision of Patna Bench in OA 637/2010, decided on 28.8.2014, which, too categorically denies the claim of the applicants in the case therein, for treating them as organized service from a period earlier than 29.9.2010.

6. After going through the pleadings, hearing the learned counsels, and perusing the decisions cited above, we find that the facts and issues in this case, broadly speaking, are not materially very different from the facts and issues discussed and decided in the cases cited above. However, the finding of CAT, Patna and CAT Mumbai are different from the findings of CAT Bangalore and Ernakulam.

7. On our examination, we find that Mumbai Bench decision is definitely the most elaborate and most recent. It does discuss, at length, the earlier Bangalore and Ernakulam bench decisions and has made no bones about differing with them. The decision also discusses the doctrine of stare decisis at length and gives reasons why it would not be correct to follow the Bangalore decision and the Ernakulam decisions that followed it. According to this Mumbai decision, the Bangalore Bench was misled by one of the

applicants (before that bench) by not informing the Bench about another case by them before a different Bench seeking similar relief and about taking contradictory pleas. The Mumbai decision also goes on to impose cost on one of the applicants for such wilful forum hunting. Ignoring this decision only on ground that its finding is contrary to the Bangalore and Ernakulam decisions (following G.L. Batra's decision of the Apex Court) will not be correct in this case, since the Bangalore decision was itself modified by the Honourable High Court of Bangalore, limiting its application to the parties of that case only. The Hon'ble High Court found (in para 13 of the judgment in Writ petition against the Bangalore decision) "considerable force in the argument of the Learned Additional Solicitor General, because, the official memorandum as per Annexure-A1 is of the year 1982. Even after 32 years, if the parties have not approached the Union of India or the Tribunal, and when the learned Additional Solicitor General contends that the said official memorandum has not been given effect to, we are of the view that the tribunal, without application of mind, has directed the petitioners to reconsider the entire matter and to extend the benefit even to persons who have not approached the tribunal". The Honourable Apex court rejected the SLP against it and hence what the Apex Court confirmed was the decision of the Bangalore Bench as modified by the Honourable High Court. This decision, including the finding about the post belonging to organised service, was consciously limited to apply in personam and was specifically left open to questioning (on ground of delay and laches). Hence, the decision of the Mumbai bench, which after examining all the aspects

(including those of delay and laches), came to a different finding on the issue, cannot be ignored on ground of it being hit by the Batra judgment of the Hon. Apex Court. The Mumbai decision goes on to examine the genesis of the whole process by which the Geology stream finally came to be pronounced as an organised Central Service and concludes that this could be only prospective. Without repeating the detailed facts and arguments mentioned in that decision, suffice is to say here that, we agree, entirely, with those findings. It settles the issue (a), in paragraph 3 above, in the negative.

8. The Ernakulam decision does not find the condition (3) of Annexure I of A-3 DoP&T OM dated 24.4.2009 (by which it is made mandatory to fulfil the eligibility criteria including 'benchmark' before granting NFU) illegal. However, it suggests considering what is described as "paper prescription" (in para 25, line 16 of that decision) as actual residency, in order to "mould the relief so that the applicants can draw the benefit intended to relieve the stagnation". This prescription is based on finding the applicants to be in the organised service since 1982 (on the basis of the Bangalore decision discussed above). Since that finding of CAT, Bangalore was modified by the Hon'ble High Court of Bangalore to apply only to the parties of that case, and since it has been settled (as discussed in para 8 above) that this stream (Geology) became organised service only prospectively, such moulding of relief does not appear to be desirable. In the operative portion of this decision, the NFU is directed to be granted subject to fulfilment of both the conditions (the 2 year rule and also "subject

to all other conditions mentioned in Annexure I of A-3 of DoP&T OM cited above, *inclusive* of condition (3) of Annexure I of Annexure A-3 DoP&T dated 24.4.2009” (*emphasis added*). We agree with this conclusion. Thus, the applicability of 2 years rule is subject to fulfilling other conditions about eligibility and the issue (b), mentioned in para 3 above, is also decided in the negative.

9. Such being the findings on the legal issues involved in this matter, the claims of the applicants for the reliefs prayed under the OA do not stand. The OA is, therefore, dismissed. No costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member