

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 043/00412 of 2015

Date of Order: This, the 10th day of December 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. N. NEHSIAL, ADMINISTRATIVE MEMBER

1. Rafique Uddin Barbhuiya
S/o Late Burhan Ali Barbhuiya
Upper Nongrim Hills
Laitumkhrach, Shillong, Meghalaya – 793003.
2. Sri Shankar Pandey
S/o Late Harilal Upadhyay
Lower Barapather (Mawbah)
Shillong, Meghalaya – 793002.
3. Sri Rabindra Nath Boro
S/o Late Samber Boro
Village – Bullarpur, P.O. – Airport
Guwahati – 781015.
4. Md. Sikander Ali (GSI)
S/o Late Md. Muzaffar Ali
Circular Road, River Belt Colony
H/No. 196, Dimapur, Nagaland – 797113.
5. Sri Prasanta Kumar Das
Late P.C. Das, Forest Colony, Polo Hills
Shillong, Meghalaya – 793001.

... Applicants

By Advocate: Mr. D. Borah

-Versus-

- 1 The Union of India
Represented by the Secretary to the Government of India
Ministry of Mines, Shastri Bhawan, New Delhi – 110001.

2. The Director General
Geological Survey of India
27, Jawaharlal Nehru Road
Kolkata – 700016.
3. The Additional Director General & HOD
Geological Survey of India
North Eastern Region
Lower Motinagar, Lumsohphoh
Shillong – 793014.
4. The Deputy Director General
Geological Survey of India
Guwahati Region, R.G. Baruah Road
Guwahati – 781005, Assam.
5. The Deputy Director General
Geological Survey of India
SU: MMN: DIMAPUR, Region
Dimapur – 797113, Nagaland.

... Respondents

By Advocate: Mr. S.K. Ghosh, Addl. CGSC

ORDER

N. NEIHSIAL, MEMBER (A):

By this O.A., applicants make a prayer to quash and set aside the impugne order No. 5501/2/32/80 Rectt dated 02.03.2015 and direct the respondents to hold Review DPC w.e.f. 01.01.2001 in order to consider the case of the applicants for being promoted to the next promotional post of Assistant Store Keeper (Technical) together with all consequential benefits including arrears of pay and other consequential benefits.

2. Brief facts as narrated by the applicants are that they are presently working as Store Keeper at different offices of GSI of the Northeastern Region. As per the Stores Recruitment Rules, 1987 (Hereinafter referred to as 'Old Recruitment Rules'), the minimum residency period for being considered to the next promotional post of Assistant Store Keeper (Technical) was 03 (Three) years depending upon ones position in the seniority list. The same residency period applies for one being considered to the next promotional post of Store Keeper (Technical) which is also 03 (three) years. The applicants completed the minimum residency period of 03 (Three) years by August 2000 and hence all of them became eligible for being considered for promotion to the next promotional post of Assistant Store Keeper (Technical) [ASK(T)], provided there were vacant posts of Assistant Store Keeper (Technical) [ASK(T)]. However, the respondents did not promote the applicants till 01.11.2003 and subsequent years, although there were more than 05 (five) posts of Assistant Store Keeper (Technical) [ASK(T)] lying vacant as on the date of completion of their residency period i.e. 01.01.2001. All the applicants on completion of their residency period should have been promoted as on 01.01.2001 to the next promotional post of Assistant Store Keeper (Technical) [ASK(T)] and subsequently to the next promotional post of Store Keeper (Technical) [ASK(T)] by

01.01.2003, but were completely overlooked by the respondents thereby impeding their career progression and advancement.

3. The respondents vide their written statement filed on 17.05.2016 admitted that the applicants who are recruited in 1997 did completed residency period in the year 2000 and became eligible for promotion w.e.f. 01.01.2001. However, four numbers of vacancies that occurred in the grade of ASK(T) on 23.07.1998, 24.07.1998, 24.07.1998 and 02.09.1998 could not be filled up by the applicants as they did not complete the residency period/eligibility. As such all these vacant posts deemed to be abolished as per the provision of Ministry of Finance, Department of Expenditure's O.M. No. 7(7)/E.(Coord)/93 dated 03.05.1993. The respondents also submits that this O.A. for promotion is debarred by limitation.

4. The applicants however, do not accept the aforesaid contention of the respondents. The instructions of Ministry of Finance as quoted above was in regard to the vacancies for Direct Recruitment which were not filled up on the date of the instruction issued by the Govt. of India. This was also amply clarified by the Govt. of India, Department of Personnel and Training vide Office Memorandum No. 2/8/2001-PIC dated 16.05.2001 wherein it was also clarified at para 3 of the said Office Memorandum that abolition of the post as instructed by the Ministry of Finance pertains to Direct

Recruitment and not for promotion post. As regards to the promotion post, they shall continue to be adhered to as per the provisions of the notified recruitment Rules/Service Rules.

5. After hearing the pleadings of both parties, the records submitted by them have been carefully perused. The instructions of Ministry of Finance vide Office Memorandum dated 03.05.1993 is indeed found to be for abolition of Direct Recruitment posts which could not be filled up for one year or more. However, in case there are other posts which are required to be abolished or keep in abeyance, a formal order notifying abolition of such post/held in abeyance for a period of one year is to be notified in terms of clarification issued by the Ministry of Finance, Department of Expenditure's Office Memorandum No. 7(7)-E(Coord)/93 dated 03.05.1993. The need of issuing such formal orders abolishing of the posts or have been kept abeyance for a period of one year is further reiterated by the Ministry of Finance, Department of Expenditure's O.M. No. 7(4)/E.Coord(I)/2001 dated 27.03.2001.

6. In this connection, it has to be appreciated that the intention of Govt. of India was not basically to abolish the promoted posts where there could be certain number of individuals in the feeder cadre. If the promoted post is abolished, these individuals who are in the feeder cadre would be adversely affected. However,

there could be certain numbers of posts for Direct Recruitment which remained unfilled for a number of years. If departments could manage without filling up these vacant Direct Recruitment posts without adversely affecting its functioning, there is no justification for subsequent recruitments. This idea was clearly elaborated in para 2.4 of the Office Memorandum issued by the Department of Personnel & Training on 16th May 2001. The contention of the respondents that demand of the applicants for promotion is debarred by limitation. However, they have not quoted any specific law or Governments' order in this regard.

7. Considering the above position, it is felt that the respondent authorities have not correctly understood the instructions of the Ministry of Finance. Further as elaborated by the Department of Personnel the abolition of posts in various departments at different levels/categories is with regards to the posts of Direct Recruitment. It also has been elaborated by them that in case any posts other than Direct Recruitment is required to be kept in abeyance for a period of one year a formal order has to be issued by the department. As such, these posts of Assistant Storekeeper (Technical) sought to be filled up by the applicants on promotion from the lower posts, obviously do not come under the category for abolition of post as instructed by the Govt. of India. Moreover, the department also has

not issued any formal order for keeping these posts in abeyance for certain period as mandated by instructions of the Ministry of Finance vide their clarifications dated 03.05.1993 (Annexure-C) and reiterated by them again vide Office Memorandum dated 27.03.2001.

8. Considering the above facts, it is considered that the applicants have justified merit for acceding to their demand for promotion to the higher post i.e. Assistant Storekeeper (Technical) from the date of their completion of residency period in the lower post provided they are found fit. Accordingly, we hereby direct the respondent authorities to hold DPC in respect of the present applicants and promote them from the date they are entitled for promotion to the post as demanded by them with all consequential benefits.

9. With the above observations and direction, O.A. stands disposed of. No order as to costs.

(N. NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)