

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No. 367/2003

New Delhi, this the 14<sup>th</sup> day of November, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shri S.A. Singh, Member (A)

Shri B.S. Ahuja,  
S/o Shri Kartar Singh Ahuja,  
Working as Chief Engineer (CMO)  
Central Mechanical Organisation,  
Central Water Commission,  
Sewa Bhawan, R.K. Puram,  
New Delhi-66  
Resident of : B-51, Sector-10,  
R.K. Puram, New Delhi-22

(Shri M.L. Ohri with Shri K.L. Bhandula, Advocates)

## versus

1. Union of India, through  
The Secretary  
Ministry of Water Resources,  
Shram Shakti Bhawan,  
New Delhi-1.
2. The Secretary,  
Dept. of Personnel & Training,  
New Delhi-1
3. Secretary,  
Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi-3
4. Shri A.K.Mahana
5. Shri S.K.Agarwal
6. Shri V.R.Sastry
7. Shri A.Sekhar

... Respondents

(Ms. Richen O. Bhutia, Advocate for official respondents  
None for private respondents)

## ORDER

Justice V.S. Aggarwal

The applicant (B.S.Ahuja) joined as Assistant Engineer as a direct recruit in the year 1971. He was promoted as Director Superintending Engineer on personal promotion basis in 1986 and thereafter on regular basis in the year 1990. In 1989, he was posted as Director

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(Technical) with the Secretary, Ministry of Water Resources and subsequently as Joint Commissioner in 1992. In 1994, he made a representation and requested the authorities for posting him to field duty. He was posted to Shimla on 11.1.1995 and thereafter he was transferred to Guwahati as Superintending Engineer in July 1996.

2. Under the recruitment rules called Ministry of Water Resources, the Central Water Engineering Group 'A' Service Rules, 1995 (for short, the Rules), an officer in the Junior Administrative Grade with 8 years service or 17 years service in Group 'A' posts having field experience or experience of investigation for 2 years is eligible for promotion to the Senior Administrative Grade. On 6.2.1998, the applicant along with several other officials based on the recommendations of the Departmental Promotion Committee had been promoted to the Senior Administrative Grade wherein his name figures at Serial No.10. The names of his juniors have been shown above him.

3. Aggrieved by the said order, the applicant submitted the representation which was rejected. He had preferred OA No.1465/1999. On 1.3.2002, the same was disposed of with a direction to the respondents to examine the circumstances under which the applicant was not granted a field posting soon after receipt of his representation in 1994. By virtue of the present

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application, the applicant seeks quashing sub-rule (6) to Rule 6 of the Rules and to direct that it should be suitably modified to protect the interests of senior officers by relaxing the prescribed field experience. He also prays that the respondents' action in superseding him in the promotional grade of Senior Administrative Grade should be declared as illegal and arbitrary. His seniority in this process should be restored.

4. In the reply filed, the application has been contested. The respondents contend that the proposal for convening the Departmental Promotion Committee meeting for selection of suitable officers for promotion to the Senior Administrative Grade of the service against 9 vacancies for the year 1996-97 and 13 vacancies for the year 1997-98 had been sent to the Union Public Service Commission. The Departmental Promotion Committee meeting took place in November 1997. A consolidated panel of 20 officers which included 9 vacancies of 1996-97 and 11 vacancies of 1997-98 had been prepared. As there were no eligible officers, the Departmental Promotion Committee could not recommend any name for the two left over vacancies of 1997-98. The name of the applicant was recommended at Sl.No.10 of the consolidated panel. His name was not included in the panel of 1996-97. He did not have two years' field experience or experience of investigation. The crucial date for determining the eligibility of officers for promotion against vacancies of any particular year was 1st July of the year in cases

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where Annual Confidential Reports (ACRs) are written calendar year-wise whereas 1st October of the year where Annual Confidential Reports are written financial year-wise. It was pointed that it was deemed inappropriate to relax the said condition.

5. We have heard the parties' learned counsel.

6. The learned counsel for the respondents took up a preliminary objection that the present application is barred by the principles of res judicata. According to the learned counsel, this question had been raised in the earlier OA No.1465/1999 which was decided on 1.3.2002.

7. To appreciate the said controversy, it becomes necessary to refer to the abovesaid application. A perusal of the said order passed by this Tribunal clearly shows that the applicant had challenged the seniority list that had been prepared. Pleas taken were identical. The application was contested with similar plea as in the present case that the applicant did not have two years field experience or experience of investigation in the Junior Administrative Grade. This Tribunal had considered the controversy and passed the following order:-

"Under the circumstance we dispose of this OA with a direction to respondents to examine the circumstances under which applicant was not granted

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a field posting soonafter receipt of his representation of July, 1994 and why it took them nearly 6 months to locate a field posting for him. If upon such examination, which should be by means of a detailed, speaking and reasoned order under intimation to applicant, respondents conclude that the delay in granting applicant a field posting was avoidable, they should consider whether applicant can be deemed to have completed the 2 years field experience on 1.10.96 and accordingly proceed in accordance with law thereafter. These directions should be implemented within 3 months from the date of receipt of a copy of this order."

However, it must be stated that in para 9 of the order, this Tribunal had considered the fact that the Rules had been framed under Article 309 of the Constitution. The prescribed period of field/investigation experience means that the length of qualifying service and field/investigation experience have to be treated as separate entities and a candidate has to satisfy both the requirements. The field experience cannot be treated as qualifying service to give a person, the benefit of sub-rule (6) to Rule 6 of the Rules.

8. The principles of res judicata are based on the principles which are well-known in jurisprudence in different civilized countries. A person whose rights have been decided cannot be allowed to re-agitate the same controversy. This is done so that the litigation comes to an end. Thus the question which we have referred to above has been decided and cannot be allowed to be re-agitated in this regard. However, this Tribunal has remitted the matter back regarding the controversy as to why the applicant was not given field posting. This

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question had not been decided and was left open. The questions which have not been agitated or which otherwise are purely questions of law can be agitated because there is no formal adjudication as yet by a court of competent jurisdiction. Therefore, the plea of the respondents only succeeds in part as referred to above.

9. The learned counsel further contended that the condition of two years' field experience is invalid and should be quashed. According to the learned counsel there is no logic in this regard.

10. We have no hesitation in rejecting the said contention. Reasons are obvious. This condition is imposed for the reason that the senior officer holding a responsible post should have the necessary field experience to understand the complexity in the working of a particular department. When such is the situation, in that event, it cannot be termed that any such condition so imposed can be taken to be arbitrary or illegal.

11. However, the immediate question that comes up for consideration is as to whether the respondents can defeat the provisions in this regard by not giving a person the posting for the necessary experience and, therefore, defeat his claim on the ground that he does not have necessary experience. In our considered opinion, to this particular question, the answer should be in the negative.

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12. Admittedly the applicant in the year 1994 had applied for the field posting. Despite his request, the said field posting was not granted and after the order passed by this Tribunal, on 25.10.2002, an order was passed by the Ministry of Water Resources. The relevant portion of the same reads:-

"4. On receipt of Shri Ahuja's representation, the same was examined by the Chairman, CWC. At that time, there were no vacancies in JAG level posts in any of the circle/field offices situated at Delhi/Faridabad/Sikkim and the North-East. Further, the field offices at NOIDA/Shimla/Dehradun/Jaipur/Bhopal were not in existence at the time of the receipt of the representation dated 26.7.1994. Thus, at the time of his representation there was no possibility of his immediate posting at any of the places indicated by him in his representation dated 26.7.1994 due to non-availability of vacancy in the then existing field offices.

5. The field offices at NOIDA/ Shimla/ Dehradun/ Jaipur/ Bhopal were opened in January, 1995 consequent upon implementation of the 3rd Cadre Review of the Central Water Engineering (Group 'A') Service. Shri Ahuja was considered for the field posting as and when first opportunity arose, i.e., in January, 1995, on opening of above mentioned new field offices and was posted in the field formation at Shimla, his first preferred place of posting indicated in the representation dated 27.6.1994, vide Central Water Commission's order dated 11.1.1995.

6. It is, thus, clearly evident from the above that there was no avoidable delay in locating a field posting of his choice for Shri Ahuja on receipt of the representation dated 26.7.1994. In fact, Shri Ahuja was granted a field posting as soon as a field post could be located for him."

13. It has to be remembered that no Government servant has a right to be posted at a particular place. At best, he can make his choice and indicate to the

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authority concerned that he would prefer to go at a particular place. When such preferences are given, the concerned authority still is not bound to post him at the said place.

14. In the order dated 25.10.2002, it has simply been mentioned that when the applicant requested for field posting, there was no vacancy available. We deem it necessary to mention that vacancies at a particular place may not be available, but the applicant could be posted at any other place. There were no compelling circumstances for the applicant not to be posted at any other place except the places indicated by him. On that ground, a Government servant cannot be allowed to suffer.

15. In this conclusion, we are fortified by the decision of the Supreme Court in the case of G. Deendayalan Ambedkar vs. Union of India and others, (1997) 2 SCC 638. In the said case, certain private respondents were selected in the same batch and rank. They were senior to the G. Deendayalan Ambedkar. They had not been sent for training and almost the same controversy as in the present case had arisen. The Supreme Court held that merely because G. Deendayalan Ambedkar had completed the training and joined the post earlier, he could not be given seniority over the respondents. It was held:-

"Under these circumstances, since they had not

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been sent for training, necessarily their ranking given in the list of candidates selected in the order of merit by the Recruitment Board cannot be given a go-by and they cannot be given accelerated seniority to the appellant and the like by picking and choosing the persons as per the whim of the authorities empowered to send them for training. It is settled legal position that the order of merit and ranking given by the Recruitment Board should be maintained when more than one person are selected, the same inter se seniority should be maintained for future promotions unless Rules prescribe passing of departmental test as a condition for confirmation but was not passed as on the date of determining of inter se seniority. Under these circumstances, the Tribunal was justified and right in not directing the respondent to give seniority to the appellant over the respondents. Therefore the order of the Tribunal does not warrant interference."

Almost identical is the position herein. The applicant was not sent for appropriate training when asked for it and at this stage, the respondents cannot take up the plea as referred to above. The respondents ordinarily must give posting to the appropriate persons and unless they forego their right to the promotion, the posting could be given at any place where the vacancies are available and the preferences of the employees in this regard have very little to say.

16. For these reasons, taking note of the totality of the facts and circumstances, we dispose of the present application by holding and directing as under:-

(a) that the relevant rule prescribing field experience or experience of investigation for two years in a post in the Junior Administrative Grade and/or Senior Time Scale of the service as referred to above is valid; and

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(b) that the applicant would be restored his seniority over private respondents who were otherwise junior to him.

No costs.



(S.A. Singh)  
Member (A)



(V.S. Aggarwal)  
Chairman

/sns/