

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 616/2003

WITH

O.A. NO. 2506/2003

New Delhi, this the 13th day of January, 2004

HON'BLE MR. SHANKER RAJU, MEMBER (J)

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

OA 616/2003 :

Srideba Nanda,
S/o Narayana Nanda,
Deputy Stores & Purchase Officer,
Council of Scientific and Industrial Research,

Presently on deputation to

Ministry of Steel,
Government of India,
Room No. 193
Udyog Bhawan,
New Delhi-110011

..... Applicant

(By Advocate : None)

V e r s u s

1. Council of Scientific and
Industrial Research (CSIR),
Through its Director General,
Anusandhan Bhawan,
Rafi Marg,
New Delhi

.... Respondent No.1

2. Shri Nalin Kumar Singh,
Deputy Stores & Purchase Officer,
CSIR, New Delhi

Presently posted at

Central Mining Research Institute (CMRI),
Dhanbad

.... Respondent No.2

(By Advocate : None)

OA 2506/2003 :

Srideba Nanda,
S/o Narayana Nanda,
Deputy Stores & Purchase Officer,
Council of Scientific and Industrial Research,

Presently on deputation to

Ministry of Steel,
Government of India,
Room No. 193
Udyog Bhawan,
New Delhi-110011

..... Applicant

(By Advocate : None)

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V e r s u s

1. Union of India Through its Secretary,
Department of Scientific &
Industrial Research
Technology Bhavan,
New Mehruuli Road,
New Delhi - 110 016 Respondent No.1
2. Council of Scientific and
Industrial Research (CSIR)
Through its Director General,
Anusandhan Bhawan,
Rafi Marg,
New Delhi - 110 001 Respondent No.2
(By Advocate : None)

O R D E R

BY SARWESHWAR JHA, MEMBER (A) :

As the cause of action and the reliefs sought in both the above mentioned OAs are linked with each other and are broadly identical, these are being disposed of by this common order.

2. The applicant has impugned the decision of the respondent No.1 allowing respondent No.2 to appear before the Departmental Promotion Committee (DPC) for the reason that the said respondent No.2 has completed 8 years of service by virtue of his having joined the post of Deputy Stores & Purchase Officer earlier and denying the same opportunity to the applicant, who is senior to respondent No.2.

3. On perusal of the facts submitted by the applicant, it is observed that both he as well as respondent No.2 appeared at the same examination held by the CSIR, i.e., Combined Administrative Services Examination, 1993 and which both of them passed, the applicant having been placed at the

Sarveshwar Jha

top of the list of successful candidates and the respondent No.2 having been placed at serial No.2 of the said list. While respondent No.2 joined the post on the 19th December, 1994, the applicant joined the said post on the 30th May, 1995 after resigning from his previous post. It is also observed that the letter of appointment in the case of the applicant had been issued only on 1.3.1995. There was, therefore, no question or possibility of the applicant having joined along with respondent No.2. The applicant has claimed that he, being number 1 in the list of successful candidates prepared on the basis of the examination held for selection/recruitment to the posts of Deputy Stores and Purchase Officer in the CSIR in the year 1993, is the senior-most Deputy Stores and Purchase Officer from his batch and that respondent No.2 is junior to him.

4. In his opinion, therefore, he should have been called for consideration in the DPC meeting held on 21.3.2003 for promotion from the post of Deputy Stores and Purchase Officer to the next higher grade, i.e., Stores & Purchase Officer. According to him, the Recruitment Rules for the post of SPO do not specify the cut off date from which the length of service is to be computed. He has argued that in the absence of any specific provision in the Recruitment Rules, the action of the respondents in having calculated the length of service from the date of joining and not from the date of declaration of the result on the basis of which he as well as respondent No.2 were appointed as Deputy Stores and Purchase Officer is arbitrary and also violative of Articles 14 and 16 of the Constitution of India. He has, in this context, referred to the general

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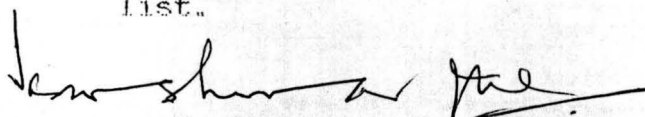
practice being followed in the different Departments/Services of the Govt. of India of computing the length of service with reference to the date of examination or the date of declaration of the result of the said examination so that a common date is adopted for such a calculation for the entire batch of officers/recruits on a particular date. The applicant has alleged that this action of the respondent is likely to result in his supersession by junior colleagues for no fault of his. He has, therefore, prayed that the length of service should be computed from the date of declaration of the result on the basis of which both he as well as respondent No.2 were recruited as Deputy Stores & Purchase Officers and not the dates of their joining on the basis of the said examination.

5. The respondents have, however, insisted on the requirement of 8 years of service having been rendered by the Deputy Stores & Purchase Officers being fulfilled from the date of their joining the said post as the basic condition for determining the eligibility and consideration of such officers for their promotion to the post of Stores & Purchase Officer. Accordingly, they considered only Shri Nalin Kumar Singh (respondent No.2) who had joined the CSIR as Deputy Stores & Purchase Officer on 19.12.1994 eligible for consideration by the DPC for promotion to the next higher post of Stores & Purchase Officer. While they have referred to the principles upheld by the Hon'ble Supreme Court regarding the eligibility conditions/criteria being followed meticulously, though they have not cited any specific case in this regard, they have contended that the incumbent cannot claim consideration for promotion to the

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said post simply on the ground that his junior was promoted. They have maintained that the applicant will have to satisfy the requirement of 8 years of service before he is considered eligible for promotion to the said post. If his services are counted from the date he joined the post of Dy. SP0, he appears to have fallen short of the required 8 years of service by five months. While the respondents have admitted that the applicant was selected/appointed as Dy. SP0 together with respondent No.2 on the basis of the same examination, they have denied that the applicant was on the top of the merit list prepared on the basis of the said examination; but they have not refuted the claim of the applicant that he is senior to respondent No.2. They have further submitted that the crucial date for calculating 8 years of approved service was 1.1.2003 and accordingly respondent No.2 was rightly called for consideration by the DPC for promotion to SP0.

6. The applicant has, however, questioned the premise taken by the respondents for computing 8 years of service as on 1.1.2003, as in his submission, there is no rule supporting this exercise and further that the respondents have taken the present position of computing the qualifying service of 8 years with reference to the joining date only taking advantage of absence of any specific rule on the subject. In his rejoinder he has also clarified that while his name appears at serial No.8 of the merit list, respondent No. 2 appears at serial No. 10 of the said list.



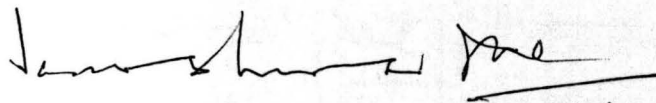
7. He has referred to DOP&T's guide-lines specifying that a senior has to be considered for promotion when a junior is considered for the said promotion and has submitted that the said instructions of the DOP&T were adopted by the respondents (respondent No.1) on 18.12.1996. However, the respondents reversed that position on 23.11.1998 in disregard of the guide-lines of 1989 of the DOP&T. The applicant has reiterated his allegation that in the absence of any provision in the Recruitment Rules in regard to the cut off date for calculating the length of service required for promotion to the next higher grade, i.e., SP0, the respondents have arbitrarily adopted a cut off date as on 1.1.2003. Accordingly, the applicant has filed the other OA as referred to above, namely, OA No. 2506 of 2003, seeking the said amendment carried out by the respondent No. 2 in that OA as on 23.11.1998 being declared as illegal and ultra vires the Constitution of India. To clarify the matter, the respondents have, vide their amendment dated 23.11.1998 (Annexure A-10 to the OA), deleted the "Note" in Part-I, General Section-I, Preliminary below sub-clause (viii) of point No.2 definitions of the CSIR Administrative Services (Recruitment & Promotion) Rules 1982, inserted vide CSIR letter No. 33 (113)/87-E.1 dated 18.12.1996. The 'Note' in question, which the respondents have deleted vide their said letter, read as under:

"Note : Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two year, whichever is less and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying/eligibility service."

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In the said OA, he has sought that directions being issued to respondent No.2 to follow their amendment dated 18.12.1996 in pursuance of DOP&T's OM dated 20.10.1989.

8. On closer examination of the facts submitted by the applicant and also the respondents, it is observed that some of the facts are categorically admitted by both of them. One, that the applicant is senior to respondent No.2 in OA No. 616/2003 is not disputed, the fact remaining that they belong to the same batch and the same examination on the basis of which they were recruited as Dy.SPO. It is not clear why, inspite of the fact that the applicant was higher than the respondent No.2 in the merit list, he was offered the post later than the respondent No.2 had been offered, resulting in the applicant joining the post only later, and finally leading to the present anomalous situation when the respondent N.2 completed 8 years of service as on 1.1.2003 whereas the applicant could not complete the said number of years as on that date, thereby facilitating consideration of respondent No.2 only for promotion to the post of SPO as on 21.3.2003. It has also not been clarified by the respondents as to what compelled them to do away with the amendment which had been brought about by them in the Recruitment Rules incorporating the guide-lines of the Department of Personnel & Training of 1989 necessitating consideration of seniors when their juniors were being considered in the event of the latter having completed the requisite period of service. Their order issued on 23.11.1998 (Annexure A-10 to the rejoinder) does not throw any light on this aspect of the matter nor is there any mention of the reasons for issuing the said order in their



reply to the OA. Obviously, their order dispensing with the guide-lines of the DOP&T as issued in the year 1989 appears to be unreasoned and arbitrary. Incidentally, they have no rationale to ignore the guide-lines issued by the nodal authority in the Govt. of India, i.e., the DOP&T, on the subject.

9. The respondents have filed some written submissions after the case was finally heard. Most of the points are in reiteration of their contention that they have followed the Recruitment Rules while not considering the applicant for promotion to the post of SPO. They have also reiterated some of their submissions already made in regard to the respondent No.2 having been considered for the said promotion. These submissions have been taken into account by us while taking a view in the matter.

10. The DPC having considered the name of the respondent No.2 (OA 616/2003) only for promotion to the post of SPO in their meeting held on 21.3.2003 in disregard of the guide-lines of DOP&T issued in the year 1989, thus appears to be arbitrary and not supported by any rationale or reasons. In terms of the instructions of the DOP&T, the applicant, by virtue of his being senior to respondent No.2, even though he had not completed 8 years of requisite service on the crucial date of 1.1.2003 should also have been considered if some one junior to him was considered. Accordingly, after considering the pleadings available on record and also in view of the provisions of Rules 15 and 16 of the Central Administrative Tribunal (Procedure) Rules, 1987, we set aside the impugned decision of the respondents



allowing respondent No.2 only to appear before the DPC which met on 21.3.2003 to consider promotion of the said respondent to the post of Stores & Purchase Officer on the basis of his having completed 8 years of service as Dy. SPO and denying the same opportunity to the applicant who is senior to respondent No.2

11. The above OAs are thus disposed of in the aforestated terms with no order as to costs.

(SARWESHWAR JHA)
MEMBER (A)

(SHANKER RAJU)
MEMBER (J)

/pkr/