

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/632/2016

Date of Reserve:29.07.2019

Date of Order:24.10.2019

CORAM:

HON'BLR MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

1. Hrushikesha Sahoo, aged about 52 years, S/o. Of Sri Mayadhar Sahoo, resident of H. No.N-3/167, IRC Village, Bhubaneswar-751 015, presently working as Superintending Geologist in the office of SU:Odisha , Eastern Region, Geological Survey of India, nit-VIII, Nayapalli, Bhubaneswar-651 012.
2. Jaydip Mukherjee, aged about 51 years, S/o. Of Sri Nirmal Chandra Mukherjee, resident of Type V/5, Geosurvey Enclave, Bhubaneswar-751 013, presently working a Superintending Geologist in the office of SU:Odisha, Eastern Region, Geological Survey of India, Unit-VIII, Nayapalli, Bhubaneswar-751 012.

...Applicants

By the Advocate(s)-M/s.C.P.Sahani
D.K.Mohanty
P.C.Behera

-VERSUS-

1. Union of India representing through the Secretary, Ministry of Mines (Department of Mines), Shastri Bhawan, New Delhi-110 001.
2. Director General, Geological Survey of India, 27, Jawahar Lal Nehru Road, Kolkata-700 016.
3. Deputy Director General (P&A), Geological Survey of India, Headquarters at 27-Jawahar lal Nehru Road, Kolkata, PIN-700 016.
4. Deputy Director Genral, Eastern Region, Geological Survey of India, At-Unit-8, Nayapalli, Bhubaneswar-751 012.
5. Sailendra Singh, Dirctor, Vasundhara, GSI Complex, Sector-E, Aliganj, Lucknow-226 024.
7. Snigha Banerjee, Director, NC-II Block, Pushpa Bhawan, 2nd Floor, Madangir Road, New Delhi-110 062.
8. Harish Bahuguna, Geologist (Jr.)Project-EG-1, Geological Survey of India, 251/II, Vasanta Vihar, Dehradun-248 006.
9. Anindya Bhattacharya, Director, 15, A & B Kyd Street, Kolkata-700 016.
10. Pankaj Jaiswal, Director, 15, A & B, Kyd. Street, Kolkata – 700 016.
11. Miss Anuradha Mohanty, Geologist (Jr.), Operation, Orissa, Unit-VIII, Geological Survey of India, Nayapalli, Bhubajneswar-751 012.
12. Sri Maneesh Khar, Director, Khanij Bhawan, GSI Complex, 15-16, Jhalana Dungri, Jaipur-302 004, Rajasthan.
13. Sri Pramod Kumar Singh, Directorasundhara, GSI Complex, Sector-E, Aliganj, Lucknow-226 024.

14. Sri Pankaj Kumar, Sanjivani Nagar, PO-Garaha Road, Jabalpur, Madhya Pradesh-482 003.
15. Deepak Hazra, Director, 27, Jawaharlal Nehru Road, Kolkata-700 016.
16. Bibhas Sen, Suptd. Geologist, GSI Office, Shylla Building, Shillong-793 003.
17. Mrignka Ghatak, Suptd., Geologist, NC-II Block, Pushpa Bhavan, 2nd Floor, Madangir Road, New Delhi-110 062.
18. Rathindra Lal Sarkar, Suptd. Geologist, GSI OFFICE, Shylla Building, Shillong-793 003.
19. Miss Srimati Dasgupta, Suptd. Geologist, NC-II Block, Pushpa Bhavan, 2nd Floor, Madangir Road, New Delhi-110 062.
20. K.Basudev Rao Murthy, Suptg. Geologist, Circular Road, Dimapur, Nagaland-797 112.
21. K.Raju, Suptd. Geologist, Vasudha Bhavan, GSI Complex, Kumarswamy Layout, Bangalore-560 078.
22. Sandeep Kumar Roy, Suptd. Geologist, N.H.-5p, N.I.T., Faridabad-121 001.
23. P.Praveen Kumar Suptd. Geologist, Mangia Devi Road, Pandeshwar, Mangalore-575 001.
24. Basudev Dutta, Suptd. Geologist, Bhubijnan Bhavan, DK-6, Sector-II, Salt Lake, Kolkata-700 091.
25. Sudipt Bhattacharya, Suptd. Geologist, Bhubijanan Bhavan, DK-6, Sector-II, Salt Lake, Kolkata-700 091.
26. Sujit Kumar Tripathy, Suptd. Geologist, GIS Office, Shylla Building, Shillong-793 003.
27. Akhouri Biswapriya, Lohianagar, Kanakarbagh, Patna-800 020.
28. Dr.S.K.Rezaul Basir, Suptd. Geologist, Bhubijnan Bhavan, DK-6, Sector-II, Salt Lake, Kolkata-700 091.
29. M.N.Praveen, Suptd. Geologist, GSI Complex, Bandalaguda, Hyderabad-500 068.
30. Chanam Debojit, Suptd. Geologist, Circular Road, Dimapur, Nagaland-797 112.
31. R.Vijay Kumar, Suptd. Geologist, GSI Building, Innder Road, Guindy Industrial Estate, Chennai, Tamilnadu-600 032.
32. M.Lachhana Dora, Suptd. Geologist, GSI Complex, Seminary Hills, Nagpur-440 006.
33. Hemant Kumar, Suptd. Geologist, Plot No.3, Dekshin Marg, Sector-33B, Chandigarh-160 033.
34. Kallol Kumar Behera, Suptd. Geologist, GIS Complex, Bandalaguda, Hyderabad-500 068.

...Respondents

By the Advocate(s)-Mr.C.M.Singh

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Both the applicants in this O.A. are presently working as Superintending Geologists under the Respondent-Department. They have approached this Tribunal seeking for the following reliefs.

- i) To quash the order dated 22.08.2014 under Annexure-A/6, order dated 09.07.2015 under Annexure-11 series and order dated 25.01.2016 under Annexure-A/13 series.
- ii) To direct the Respondents the gradation list order dated 06.09.2005 under Annexure-A/3 and impugned amended gradation list dated 09.04.2015 vide Annexure-A/9 be withdrawn and revised gradation list dated 10.02.2015 under Annexure-A/8 be upheld and accepted, which has been prepared on the basis of Hon'ble CAT, Lucknow Bench, Lucknow vide order dated 25.02.2014 passed in O.A.No.221/2006.
- iii) To direct the respondents to allow the promotion of Geologist (Junior) w.e.f. date of eligibility of the applicants against the DPC posts available at that time with all the consequential benefits and seniority may be fixed inter se with the UPSC batch of 1997-98 as per the rule of 50% from direct recruitment and 50% from DPC candidates.
- iv) To implement the gradation list dated 10.02.2015 under Annexure-A/8 being the final gradation list of Geologist (Junior) by giving notional promotions and financial benefits to the applicants and the seniority of the applicants be maintained in the said gradation list accordingly as per the seniority shown in the revised gradation list dated 10.02.2015.
- iv) Pass any other order/orders giving complete relief to the applicants in the interest of justice and equity.

2. The facts in brief are that Applicant No.1 joined as Assistant Geologist under the Respondent-Department, as a Direct Recruit through the UPSC on 31.07.1991, whereas applicant No.2 joined as such as a Direct Recruit on 23.05.1994. In the provisional Gradation List in the post of Assistant Geologist (Gr.I) published as on 31.12.1999 vide A/1, the name of Applicant No.1 finds place at Sl.No.6 whereas the name of Applicant No.2 finds place at Sl.No.38.

3. According to applicants, the next promotion of the Assistant Geologist is to the grade of Geologist (Junior) and as per the Recruitment (Amendment) Rules, 1979, 50% of the posts in the grade of Geologist (Junior) is to be filled by Direct Recruitment and 50% by promotion from

amongst the Assistant Geologists, who have completed three years continuous service in the grade. In the circumstances, the applicant no.1 was due promotion to the post of Geologist (Junior) with effect from 31.07.1994 and similarly, the applicant no.2 with effect from 23.05.1997.

4. Although there were number of vacancies available to be filled in the grade of Geologist (Junior) in the years 1995-96, 1996-97, 1997-98 and subsequent years, but no DPC meeting held in order to fill up 50% of those vacancies under Promotion Quota and on the other hand, steps were taken to fill up 50% of those vacancies through Direct Recruitment Quota. However, in order to fill up the promotion quota, the DPC was held on 18.02.2002 in which applicant along with 50 other eligible incumbents were promoted against the vacancies for the year 1997-98 vide order dated 22.03.2002 (A/2) and it was indicated therein that the effective date of such promotion would be with effect from the date of assumption of charge. According to applicants, since they were not given promotion as Geologist (Junior) with effect the date(s) when the vacancies had occurred and/or due for such promotion, they submitted representations to the respondent-authorities ventilating their grievance. However, the respondents without considering the same, issued a provisional gradation list of officers in the grade of Geologist (Junior) on 01.07.2005 vide letter dated 06.09.2005 (A/3) with an instructions that comments, if any, of the concerned officers as to the correctness of the entries and the inter-se seniority position, may be forwarded with necessary comments of the forwarding authority so as to reach this office within 30 days from the date of issue of the said letter. In the said Gradation List, the name of Applicant No.1 & 2 finds place at Sl.No.153 and 195, respectively. However, being not satisfied with the fixation of their seniority, the applicants submitted representation dated

03.10.2005 (A/4) to the respondent-authorities which was not at all considered by the authorities. In the meantime, some of the similarly situated aggrieved employees, namely, (1) Ramanand, (2) Sharad Prakash Srivsatava, (3) Mrs. Jaya Singh and (4) A.K. Talwar approached the CAT, Lucknow Bench in O.A.No.221 of 2006 praying for antedating their promotion as Geologist (Junior) on the basis of vacancies held in respective years under promotion quota of 50% and assign seniority in the gradation list of Geologist (Junior) dated 01.07.2005. Vide order dated 13.02.2014 (A/5), CAT, Lucknow Bench disposed of the said O.A. in the following terms:

“18. In view of the above, this O.A. is disposed of with a direction to the respondents to grant notional promotion to the applicants from the date of occurring of the vacancies in accordance with the seniority. The respondents are also directed to re-fix the impugned seniority list and grant all consequential benefits to the applicants within a period of three months from the date of receipt of the copy of this order. **Needless to say such order will be subject to outcome of SLP No.553/2006.** No order as to costs”.

5. In compliance with the aforesaid direction, the respondents revised the gradation list vide A/6 dated 22.8.2014 and granted benefits only to the applicants of O.A.No.221 of 2006 by leaving aside the claim of similarly situated persons like that of the applicants herein. Against this action, the applicants submitted their representations dated 08.09.2014 (A/7 series) and in consideration of this, the respondents issued a revised Gradation List dated 10.02.2015 (A/8) in which the names of the applicant Nos. 1 and 2 were found place at Sl.Nos. 100 and 126 respectively. While the matter stood thus, without any prior notice, the respondents again issued another amended gradation list dated 09.04.2015 (A/9) in which the applicant Nos. 1 and 2 are found place at Sl.Nos.126 and 157, respectively. Aggrieved

with this, the applicants submitted their representations dated 20.05.2015 and dated 21.05.2015(A/10 series) to the authorities concerned. In consideration of the same, Respondent No.2 although admitted that the applicants to be the similarly situated persons as the applicants in O.A.No.221/2006 of Lucknow Bench, but, indicated that no notional promotion could not be granted as because, the order passed by the CAT Lucknow Bench was in respect of the applicants therein only. Accordingly, vide order dated 0-9.07.2015 (A/11 series), the representations of the applicant were turned down. In the above backdrop, both the applicants sent to the Office of Respondent No.2 and filed written grievance dated 03.08.2015, which was rejected vide letter dated 25.01.2016 (A/12 series) by stating that the benefits will only be given to the applicants in O.A.No.221/2006. Hence, this Application with the aforementioned reliefs.

6. Contesting the claim of the applicant, the respondents have filed a detailed counter. According to respondents, in order to consider promotion to the post of Geologist [Erstwhile Geologist (Jr.)] for the years, 1995-96, 1996-97, 1997-98 and 1998-99, a DPC was held on 18.02.2002 in which, Smt.Jaya Singh, S/Shri S.P.Srivastave, Ramanand and A.K.Talwar were recommended against the vacancies of 1997-98. A Gradation List as on 01.07.2005 on the basis of their date of their date of joining on promotion was prepared and circulated on 20.06.2007 to all concerned. Aggrieved by their delay in promotion to the grade of Geologist, Smt.Jaya Singh, S/Shri S.P.Srivastave, Ramanand and A.K.Talwar approached the CAT, Lucknow Bench in O.A.No.221 of 2006 and as already quoted above, the Tribunal vide order dated 13.02.2014 disposed of the said O.A. However, it is the case of the respondents that the DOP&T opined that the judgment dated 13.02.2014 in O.A.No.221 of 2006 is contrary to the rules. However, the

said judgment is also subject to the outcome of SLP (Union of India vs. Murali & Ors.) pending in the Hon'ble Apex Court and in view of this, it cannot be extended to other similar cases. Accordingly, the gradation list uploaded on 10.02.2015 was again revised by interpolating the seniority position between the officers promoted vide DPC held on 18.02.2002 and the DR batch joined through Geologists Examination, 1998 on the basis of year-wise vacancies, as per the then existing RR at ratio of 1 : 1 and was uploaded in GSI Portal on 09.04.2015 wherein the date of joining in respect of the four applicants in OA No.221/2006 in JTS has been antedated according to the date of occurrence of vacancies against which they have been promoted in the grade. Further, the respondents in paragraphs-5 6 and 5.7 of the counter-reply, have submitted as under:

“5.6. Further, to implement the CAT order regarding consequential benefits a limited review DPC was held on 27.04.2015 on the basis of the gradation list revised and uploaded in GSI Portal on 09.04.2015, for the year 2007-08 vide which their immediate junior officers were promoted to the post of Sr. Geologist to consider the promotion of the four applicants to the post of Sr. Geologist under the purview of the then R/Rules exists. Before publishing of the existing R/Rules, i.e., 29.09.2010 there was no provision to consider the promotion of the officers having short of requisite residency period as and when their junior officers have completed the same. The promote officers whose seniority were interpolated without antedating their date of joining in the grade of JTS(Geologist) have not been considered by the DPC for promotion to the post of Senior Geologist.

5.7. ShriHrushikesh Sahoo is one of the promote officers whose seniority was interpolated as per the opinion of MoM/DoPT. Further, it is clarified that all the promote officers including Shri Sahoo raised their grievances for restoration of seniority in the grade of Geologist. Accordingly, the same has been done by the department as per advice conveyed by MoM/DoPT and the date of joining of the 4 (four) applicants of OA No.221/2006 were antedated in consequence upon the CAT judgement dated 13.02.2014 only. So, it is clear that the action taken by the department is justifiable and in order. Since they have not been considered for promotion to the post of

Senior Geologist vide Review DPC for the year 2007-08 as clarified in the foregoing sentences, the question of further consideration for promotion to the post of Senior Geologist does not arise”.

7. Heard learned counsels for both the sides and perused the records including the rejoinder filed by the applicants. During the course of hearing, learned counsel for the respondents furnished copy of judgment & order dated 14.02.2017 of the Hon'ble Supreme Court in Civil Appeal No.(s) 4256 of 2008 (Union of India & Ors. Vs. N.C.Murali & ors.). As already mentioned above, order dated 13.02.2014 passed by the CAT, Lucknow Bench in O.A.No.221 of 2006 is subject to SLP No.553/2006. Therefore, it goes without saying that the entire exercise undertaken in order to give effect to the orders of CAT, Lucknow Bench is conditional and hence, not final. In this connection, the relevant Paragraphs of the judgment of the Hon'ble Supreme Court in Appeal No.(s) 4256 of 2008 (Union of India & Ors. Vs. N.C.Murali & ors.) are quoted hereunder:

“9. From the materials brought on the record it is clear that there are no statutory rules governing the promotion at the relevant time. It is although desirable that the DPC should be convened at regular intervals to draw panels which could be utilized for making promotions against the vacancies. But neither any rules nor any circular have been referred to by which it can be held that the promotions whenever to be effected should be effected w.e.f. the date of the vacancy. The Circular dated 10.4.1989, Paragraphs 3.1 and 6.4.1 as reproduced above also do not indicate that in case DPC is not held by any reason in a year, promotions on the basis of subsequent DPC has to be retrospectively.

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13. In view of the law laid down in the above-mentioned cases, it is clear that unless there is specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy, the right of promotion does not crystallize on the date of occurrence of vacancy and the

promotion is to be extended on the date when it is actually effected.

14. However, there may be cases when the promotions have to be retrospectively made with or without financial benefits. A well known example of giving retrospective promotion is cases of sealed cover procedure when the recommendations are kept in sealed cover procedure awaiting the outcome of disciplinary proceedings. There may be other circumstances in which a person is entitled to be given the benefit of retrospective promotion including a case where statutory rules mandates effecting promotion by particular time or on occurrence of vacancy. The present is a case where admittedly DPC was not held from 1984 till October, 2001, although various reasons have been given by the appellants for not holding DPC, it is not necessary for us for the purpose of this case to enter into such reasons to find out as to whether there is any justification for not holding the DPC for the relevant years. ***Suffice it to say the promotions having been effected after the DPC was held and those who were entitled have been given promotions, the litigation initiated by the respondents before the Tribunal should have been closed. The directions of the Tribunal to give retrospective pro forma promotion and retrospective seniority w.e.f. the date of vacancy when they were eligible, ought not to have been issued.*** However, taking into consideration the fact that the said promotions were effect in 2001 and after the order of the Tribunal in 2003, the benefit of retrospective pro forma promotion was also extended by the Government in compliance of the order of the Tribunal, benefit of which order had been availed of by the respondents who were promoted and most of them having already been superannuated, at this distance of time, we are not inclined to interfere with the order of the Tribunal, as affirmed by the High Court.

15. With the observations as made above, the appeal is dismissed".

8. At the cost of repetition, we would like to mention that since the order dated 13.02.2014 passed by CAT, Lucknow Bench in O.A.No.221/2006 was subject to the outcome of SLP No.553/2006, the follow up action taken by the respondents in order to comply with the said order is expressly and impliedly conditional. It is not the case of either of the parties that after the decision was taken by the Hon'ble Supreme Court in above mentioned

SLP No.553/2006 (Civil Appeal No.4156 of 2008 on 14.02.2017, the respondents rose to the occasion to issue fresh orders. In view of this, we are of the considered opinion that the decision taken by the respondents in the instant case while rejecting the representations of the applicants vide A/11 series dated 09.07.2015 and A/12 series dated 15.01.2016 are not based on due consideration of facts and as such, the decision so arrived at is bad in law. In view of this, we quash the impugned communication dated 09.07.2015(A/11 series) and dated 15.01.2016(A/12 series) and direct Respondent No.2 to reconsider the matter in the light of the decision of the Hon'ble Supreme Court, cited supra and pass appropriate orders to be communicated to the applicants within a period of ninety days from the date of receipt of this order.

9. In the result, the OA is thus disposed of, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS

(GOKUL CHANDRA PATI)
MEMBER(A)

