

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/021/1452/2013

Dated: 30/10/2019

Between

Ala Ramesh, S/o. Late A. Kondaiah,
Hindu, aged 48 years,
Working as UDC in GSI, AMSE Wingh,
South Zone, Hyderabad.
R/o. H.No.5-5-551/P-36,
Abhidayanagar, L.B. Nagar Post,
Hyderabad 6 500 074.

... Applicant

AND

1. Union of India,
Ministry of Mines rep. by its
Secretary,
Dept. of Mines, Shastri Bhavan,
New Delhi 6 110 001.
2. The Deputy Director General & HOD,
R.S. & A.S., (AMSE Wing),
Geological Survey of India,
Vasudha Bhavan,
Kumaraswamy Layout,
Bangalore 6 560 078.
3. Sri Kanthraj, working as UDC,
O/o the Deputy Director General & HOD,
R.S. & A.S., (AMSE Wing),
Geological Survey of India,
Vasudha Bhavan, Kumaraswamy Layout,
Bangalore 6 560 078.

... Respondents

Counsel for the Applicant : Mr. T.P. Acharya

Counsel for the Respondents : Mrs. K. Rajitha, Sr. CGSC
(for R-1 & R-2)
Mr. M.C. Jacob (for R-3)

CORAM :

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

(Per Hon'ble Mr. Justice L. Narasimha Reddy, Chairman)

The applicant and the 3rd respondent were working as UDCs in the Geological Survey of India, the 2nd respondent herein. Promotion from that post is to that of Assistant. Earlier, there used to be separate cadres for the posts of Assistant and Superintendent and appointment to both of them was 100% by promotion. In the year 2013, the Recruitment Rules were amended in such a way that the posts of Superintendent are merged with that of Assistant, increasing the strength to 24 and the appointment to that post is 50% by way of direct recruitment and remaining 50% by way of promotion. A roster is also prepared and promotions are to be post based.

2. It is stated that the applicant figured at Sl.No.3 in the seniority list of UDCs whereas the 3rd respondent was at Sl.No.6. The UDCs at Sl.No.1 & 2 in the said seniority list were promoted as Assistants and that the next vacancy was earmarked for UR category in the roster. However, through an order dated 02.12.2013, the 2nd respondent promoted the 3rd respondent, superseding the applicant and two others. This O.A. is filed challenging the order dated 02.12.2013 through which the 3rd respondent was promoted as Assistant and with a further prayer to set aside the same and to promote the applicant as Assistant w.e.f. 02.12.2013. The applicant contends that once the

post based roster is in operation for the posts of Assistant with cadre strength of 24, there is absolutely no basis for the 2nd respondent to violate the same and to promote the 3rd respondent out of turn.

4. The Respondents No.1 & 2 and Respondent No.3 filed separate counters. According to them, the merger of posts of Assistant & Superintendent brought about a situation for operation of post based appointment/ reservation and accordingly the 3rd respondent was promoted to make good the deficiency of the representation for Schedules Castes. Various contentions urged by the applicant are denied.

5. We heard Sri T.P. Acharya, learned counsel for the applicant, Smt. K. Rajitha, learned Senior Standing Counsel appearing for Respondents No.1 & 2 and Sri M.C. Jacob, learned counsel for Respondent No.3.

6. The basic facts are not in dispute. The applicant figured at Sl.No.3 in the seniority list of UDCs in the 2nd respondent organization whereas the 3rd respondent was at Sl.No.6. It is also not in dispute that post based reservation is in operation in the 2nd respondent organization. In other words, a roster of 24 is operated in such a manner that 50% posts are earmarked for direct recruitment, by interpolating them at appropriate places and the remaining are earmarked for the respective categories, such as UR, SC & ST. Smt. Kamala, who is at Sl.No.1 in the seniority list of UDCs was promoted as Assistant on 03.06.2013. Thereafter, three vacancies arose. Though they were distributed equally among direct recruitment and promotes, the administration thought it

appropriate to earmark two vacancies for promotion and one for direct recruitment. The two vacancies according to the post were meant for UR. However, in the name of balancing the so called deficiency, which is said to have arisen on account of merger of posts of Assistants and Superintendents, the applicant, who was otherwise entitled to be promoted, was superseded, and the 3rd respondent was chosen for promotion.

7. Had it been a case where the second vacancy for promotion was earmarked for SCs, there would have been justification for promoting the 3rd respondent notwithstanding the fact that the applicant is senior to him. The 2nd respondent does not dispute that the two vacancies which have been earmarked for promotion in November/ December, 2013 were meant for UR category and that a post based roster was in operation. It is axiomatic that when post based roster is in operation, the vacancy caused on account of retirement/ promotion of the employee of a particular category has to be filled only through an employee of that category and not otherwise. It is not the case of the 2nd respondent that on account of the merger of two posts, necessity has arisen to re-fix the roster points. The reservation in promotion would have the effect of superseding the seniority of the other employees in the same cadre. That can be done only when there exists provision on legal and factual basis. It cannot be worked out on the basis of guess work and without there being any notification, changing the roster points. It is a matter of record that even when the cadre strength of Assistants was 18, the roster

was implemented in four cycles. At no point of time, there was any complaint that there was any under representation for any particular category.

8. Viewed from any angle, we do not find any justification for the supersession of the seniority of the applicant in promotion to the post of Assistant and consequential promotion of the 3rd respondent to that very post out of turn. During the pendency of the O.A., the applicant was also promoted as Assistant w.e.f. 2015. Now, what remains is only the question of re-fixation of the seniority of the applicant on the one hand and that of the 3rd respondent on the other hand in the post of Assistant.

9. We, therefore, allow the O.A. and direct that the applicant shall be treated as senior to the 3rd respondent in all respects in the post of Assistant in the 2nd respondent organization. We, however, direct that the applicant shall not be paid any arrears nor any amount shall be recovered from the 3rd respondent. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

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