

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**O.A. No.21/1255/2013 & MA 21/972/2013
&
OA. No. 20/87/2014**

Reserved on: 22.10.2019

Pronounced on: 14.11.2019

OA No. 1255/2013

Between:

1. Syed Taquiddin, S/o. late Sri Syed Nayeemuddin,
Aged about 59 years,
Occ: Assistant (Erstwhile Superintendent),
Geological Survey of India, Southern Region,
Bandlaguda, Hyderabad.
2. S.S. Kameshwar, S/o. late Sri S.S.K. Shastry,
Aged about 55 years,
Occ: Assistant (Erstwhile Superintendent),
Geological Survey of India, Southern Region,
Bandlaguda, Hyderabad.
3. W. Jaipal Das, S/o. W. Narayana Das,
Aged about 57 years,
Occ: Assistant (Erstwhile Superintendent),
Geological Survey of India, Southern Region,
Bandlaguda, Hyderabad.
4. Vinodsingh, S/o. Manpalsingh,
Aged about 56 years,
Occ: Assistant (Erstwhile Superintendent),
Geological Survey of India, Southern Region,
Bandlaguda, Hyderabad.
5. Vallinath S S, S/o. late Sri S.S.K. Shastry,
Aged about 54 years,
Occ: Assistant (Erstwhile Superintendent),
O/o. GSI TI Geological Survey of India, Southern Region,
Bandlaguda, Hyderabad.
6. J. Venkata Ramana, S/o. J. Lakshmana Rao,
Aged about 54 years,
Occ: Assistant (Erstwhile Superintendent),
Geological Survey of India, Southern Region,
Bandlaguda, Hyderabad.

7. Sri Ram V, S/o. K. Venkata Raman,
Aged about 52 years,
Occ: Assistant (Erstwhile Superintendent),
Geological Survey of India, Southern Region,
Bandlaguda, Hyderabad.
8. J. Murali Krishna, S/o. J.V.P. Sharma,
Aged about 50 years,
Occ: Assistant (Erstwhile Superintendent),
Geological Survey of India, Southern Region,
Bandlaguda, Hyderabad.
9. S.J. Kennedy, S/o. late Sri S. Krupa Rao,
Aged about 50 years,
Occ: Assistant (Erstwhile Superintendent),
Geological Survey of India, Southern Region,
Bandlaguda, Hyderabad.
10. Smt. B. Vijaya Lakshmi, W/o. S. Shankar,
Aged about 48 years,
Occ: Assistant (Erstwhile Superintendent),
Geological Survey of India, Southern Region,
Bandlaguda, Hyderabad.

... Applicants

And

1. Union of India, Rep. by its Secretary,
Ministry of Mines, Dept. of Mines,
Shashtri Bhavan, New Delhi – 110 001.
2. Department of Personnel & Training,
Represented by its Secretary, North Block,
New Delhi.
3. The Director General,
Geological Survey of India (CHQ),
27, J.N. Nehru Road,
Kolkata – 700 016.
4. The Deputy Director General (P),
Geological Survey of India (CHQ),
27, J.N. Nehru Road,
Kolkata – 700 016.

... Respondents

Counsel for the Applicants ... Mr. K. Phani Raju

Counsel for the Respondents ... Mr. K. Laxman, Advocate representing
Mrs. K. Rajitha, Sr. CGSC

OA No. 87/2014

Between:

Y. Surya Kumari, W/o. late Sri Y. Maruthi Prasad,
Occ: Assistant (Erstwhile Superintendent),
Geological Survey of India, Southern Region,
Bandlaguda, Hyderabad.

... Applicant

And

1. Union of India, Rep. by its Secretary,
Ministry of Mines, Dept. of Mines,
Shashtri Bhavan, New Delhi – 110 001.
2. Department of Personnel & Training,
Represented by its Secretary,
New Delhi.
3. The Director General,
Geological Survey of India (CHQ),
27, J.N. Nehru Road,
Kolkata – 700 016.
4. The Deputy Director General (P),
Geological Survey of India (CHQ),
27, J.N. Nehru Road, Kolkata – 700 016.

... Respondents

Counsel for the Applicant ... Mr. K. Phani Raju

Counsel for the Respondents ... Mr. K. Laxman, Advocate representing
Mrs. K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Ms. Manjula Das, Judicial Member

Hon'ble Mr. B.V. Sudhakar, Administrative Member

COMMON ORDER
{As per B.V. Sudhakar, Administrative Member}

2. The OAs are filed aggrieved by the action of the respondents in downgrading the applicants from the post of Superintendent to the Post of Assistant thereby adversely effecting the service conditions. The cause of action, relief sought and the respondents being one and the same, a common order is issued.

3. Applicants in OA No. 1255/2013 joined the respondents Organisation as LDC and thereafter promoted to the post of Assistant from 1998 to 2002 with grade pay of Rs.4200 and thereafter, as Superintendent, a Group B non Gazetted post, from 2010 to 2012 with the same grade pay of Rs.4200. Most of them have completed 2 ½ years of service as Superintendent. Applicants would be considered for promotion to the next grade of Administrative Officer Grade-II, a Gazetted post, with grade pay of Rs.4600 after completing the residency period of 3 years in the Supdt. Grade as per old Recruitment Rules (for short "**RR**"). Applicants having completed 30 years of service have been granted the grade pay of Rs.4600, appended to the post of Administrative officer, under MACP though they are holding the post of Superintendent. Vacancies are available to promote the applicants as Administrative Officer Grade -II by applying old recruitment rules. However, respondents introduced new Recruitment Rules from 1.5.2013 by downgrading Supdt. post as Assistant having the Grade Pay of Rs.4200 with provision for promotion to Administrative Officer Grade – II through selection by earmarking 25% of posts for direct recruitment

and 75% by promotion wherein 37.5% of posts were identified to be filled by promotion and rest 37.5 % through departmental qualifying exam. As per the old recruitment rules, 75% of the posts were filled up on completion of residency period of 3 years in Supdt. grade. Respondents have in a letter issued on 13.2.2013 while re-designating the Group A, B, C posts have stated that the status of the post and the pay structure will not be changed and that this yardstick will be applicable from the date of issue of new recruitment rules. However, the action of respondents was violative of this order by re-designating higher grade post of Supdt. as Assistant which, in fact, is a Group C post. Applicants represented, but the 4th respondent has issued orders to make due entries in the service register, identity card, TA bills etc vide letter dated 14.8.2013. However, the same has not been implemented in respect of applicants. Applicants once again represented on 15.8.2013 to upgrade the post of Supdt. as Administrative Officer as a one-time exercise. Meanwhile, respondents have issued circular to fill up 42 posts of Administrative Officers Gr.II by conducting a Departmental qualifying exam on 9.11.2013 to the extent of 37.5% of posts, though the vacancies are to be filled up under old recruitment rules. Further seniority list has not been prepared in the cadre of Assistant after the down gradation of the Superintendent post. Despite representations being made, there being no relief the OAs have been filed.

Applicant in OA 87/2014 was initially appointed as LDC on 02.11.1981 and promoted as Assistant in 1998. She was further

promoted to the post of Superintendent in March 2010 and completed more than 3 ½ years of service in that grade.

4. The contentions of the applicants are that there is no proper application of mind in downgrading the Supdt. posts as Assistants. The Assistant post is not only a dealing post but is a feeder post to the Supdt. grade wherein one has to shoulder higher responsibilities. There would be no financial implications since applicants under MACP, have been granted Grade Pay of Rs.4600 prescribed for Administrative Officer Grade –II. Seniority list has not been properly drawn up in the Assistant Grade as juniors are shown over the seniors. Applicants apprehend that they may retire without further promotion. The new recruitment rules of 2013 will have prospective effect and that the applicants have to be considered for the available vacancies based on old recruitment rules and if need be, by creating supernumerary posts.

5. a) Respondents oppose the contentions of the applicants by stating that no post has been downgraded in status or by pay scale. The pay scale of the Assistant of Rs.5000-8000 and that of the Supdt. of Rs.5500-9000 have been merged into a single pay scale of Rs.9300-34,800 with the Grade Pay of Rs.4200 as per the recommendations of the 6th CPC. Applicants working as Superintendents will be enbloc senior to the Assistants in the merged cadre of Assistants and that after completing the residency period of 3 years as was existing in the old recruitment rules they would be eligible for promotion on getting qualified in the departmental exam. Financial up-gradation under MACP and regular promotion are two separate issues. Post of Asst and Supdt fall under

Group B cadre as per DOPT memo dated 9.4.2009 and both are dealing hands supervised by the Administrative Officer grade –II. Recruitment rules are modified depending on organisational requirements and not as per the convenience of the applicants. Writing the designation in TA bills, identity cards, salary bills is in no way related to MACP or promotion. There is no proposal to upgrade the post of Supdt as Administrative Officer. Merged seniority list has been notified and the departmental exam has been proposed to be conducted as per the new recruitment rules.

b) Applicants have filed a rejoinder reiterating their stand that the post of Supdt. has been downgraded to that of Asst and the same is incorrect. Supdt. post is a Group B post with higher responsibilities for which the Assistant post is a feeder post. The issue is about degrading the status and not about scales. 6th CPC only spoke of merger of scales and usually the lower cadre is merged into the higher cadre. Besides, 6th CPC came into effect from 2006 whereas respondents effected the merger in 2013 and that too, when the 7th CPC was announced. Conducting the departmental exam for vacancies covered by the old recruitment rules by applying the new recruitment rules is irregular. In fact, India Bureau of Mines, which is another department under the aegis of the Ministry of Mines has merged the posts of Assistants with that of Supdt and not vice versa as done by the respondents. Merged seniority list drawn up has many mistakes like for eg. the name of the 6th applicant in OA 1255 of 2013 is missing, some names repeated and some others have been given wrong placements. Names of the Supdts are to be placed

enbloc above the Assistants in the seniority list but when this was not followed objections were raised which remain unsettled. Without finalising the merged seniority, respondents have conducted the departmental exam at Calcutta on 23.11.2013. The assertion of the respondents that they have not taken up the proposal for up-gradation of Supdt post as Administrative Officer is false as many promotions have been effected to the grade of Administrative Officer from 2006 till 2013. Due to MACP they are already drawing the grade pay of Rs.4600 of Administrative Officer and that they are not concerned about the scale but about the status. Recruitment Rules are to be applied prospectively and that the old recruitment rules are applicable to the posts which fell vacant before the advent of new recruitment rules as per Hon'ble Apex Court judgment in Y.V. Rangaiah's case. Filling up old vacancies by applying new recruitment rules (RR) is contrary to law. Further, as per DOPT guidelines dated 13.9.2012, Assistants promoted as Supdts prior to 29.8.2008 should be placed on the top of the merged seniority list and those who have been promoted after 30.9.2008, their seniority has to be recasted in the Assistant grade ignoring the promotion granted to the Supdt. grade. This was not done. Consequently, juniors to the applicants are being promoted as Administrative Officers which is irregular and illegal

c) Respondents have filed a sur-rejoinder, wherein they have stated that the departmental exam was conducted on 23.11.2013 with an intention to improve the career prospects of the employees and for giving due recognition to merit. Seniority is not the criteria to appear in the

exam but the eligibility to appear. Delay in conduct of the exam will be detrimental to employee's interest. Discrepancies in the seniority list have not been rectified since OAs are pending in the Hyderabad and Bombay benches of the Tribunal. Promotions are given as per the vacancies in the grade. MACP is a financial upgradation and not related to vacancies. Out of the 41 vacancies of Administrative Officers, 25 were earmarked for direct recruitment under old recruitment rules. However, as these posts were more than 3 years old, they were got revived after the new recruitment rules came into effect from 1.5.2013 and hence the decision to fill up the posts as per new recruitment rules. By applying old RR all the 25 posts would have to be filled up by direct recruitment whereas under new RR the vacancies of 2013-14 are to be filled by Deptl. Exam which is beneficial to the employees.

d) Applicants filed a further rejoinder wherein they claim that the respondents have admitted that till the new RR was grounded Assistants were promoted as Supdt. which makes it clear that Supdt. post is superior to that of the Assistant. No uniformity in merging the cadres under the same Ministry. There was delay of 10 years in promoting the applicants to the grade of Supdts, though the required residency period is only 4 years in the grade of Asst. Promotion opportunities of the applicants have been hampered. With the advent of the new RR, since the residency period is 3 years in Asst grade, there is scope for a junior to appear for the exam and on clearing it he would become superior to the applicants who were earlier senior to him in the Assistant grade. Respondents after admitting that the seniority list has discrepancies holding the department

exam is incorrect. Seniority is necessary to appear in the exam. Applicants plead new RR be applied prospectively and that they be promoted at least on adhoc basis as was done in the case of Asst. Directors since the applicants are shortly retiring.

e) Respondents filed an additional reply to the second rejoinder but it was a replica of the earlier additional reply filed.

6. Heard both the counsel and perused the pleadings on record.

7. I) Applicants are Supdts with grade pay of Rs.4200 who were due to be promoted as Administrative Officers with grade pay of Rs.4600 after rendering the residency period of 3 years in the Supdt grade. However, when they were about to be promoted, the new Recruitment Rules were introduced in May 2013 re-designating the Supdt. post with grade pay of Rs.4200 as Assistant with the same grade pay and allowing the officials in the Assistant grade with 3 years service to appear in the departmental exam for the Administrative Officer with grade pay of Rs.4600. Applicants claim that they should be promoted to the Administrative grade as per old Recruitment Rules wherein 75% of the posts are to be filled by departmental promotion after completing 3 years service in Superintendent cadre. Respondents counter the claim by stating that the posts available were of more than 3 years and hence, were revived after the new RR were introduced. Consequently, new RR are to be applied. Besides, the seniority list has to be finalized before the exam has to be considered, is one another major contention of the applicants. Respondents refute the contention by asserting that seniority has no role

in appearing at the exam and that only one has to become eligible by rendering 3 years service in Assistant grade. Applicants' concern is that juniors in the Assistant grade with 3 years experience on clearing the exam would become superior to them. Therefore, at least for the vacancies existing prior to new RR, applicants plead to be promoted as per old RR, which do not prescribe any exam. Therefore, the issue boils down to two main aspects namely, application of the relevant RR and the significance of seniority list in processing the promotions, which are analysed hereunder:

1. Application of Recruitment Rules (RR) with reference to the year of vacancy.

In the instant case, new RR were framed by the respondents in May 2013. Applicants claim that there were more than 40 vacancies in the Administrative Officer grade before the new RR were grounded. Applicants have cited the judgment of the Hon'ble Supreme Court in ***Y.V. Rangaiah And Ors. vs J. Sreenivasa Rao And Ors., AIR 1983 SC 852 : 1983 (1) SCALE 296 : (1983) 3 SCC 284*** in support of their cause.

The relevant portion is extracted here under:

“ 9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Register Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the

State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules. “

As is evident from the above observation, the panel has to be prepared annually and that the old Recruitment Rules would be applicable to the vacancies which existed prior to the introduction of the new Recruitment Rules. The Ld. Counsel for the applicants was questioned as to whether the panel was to be prepared annually as per RR of the respondents organisation. He did not answer the same despite being pressed. However, the recruitment rules on record do not specify any recruitment by promotion on an annual basis. Besides, respondents have submitted that the vacancies existing prior to the introduction of the new RR were revived after the introduction of the new RR in 2013. Hence, the new RR apply to the revived vacancies. Thus, the above observation of the Hon’ble Apex Court does not come to the rescue of the applicants as explained.

II) Further, in ***K. Ramulu (Dr) v. S. Suryaprakash Rao (Dr)***, (1997) 3 SCC 59, the law laid down by the Hon’ble Supreme Court in regard to application of recruitment rules is as under:-

“When the vacancies were not being filled up in accordance with the existing Rules, this Court had pointed out that prior to the amendment of the Rules, the vacancies were existing and that the eligible candidates were required to be considered in accordance with the prevailing Rules. Therefore, the mere fact of subsequent amendment does not take away the right to be considered in accordance with the existing Rules. As a proposition of law, there is no dispute and cannot be disputed. But the question is whether the ratio in Rangaiah case would apply to the facts of this case. The Government therein merely amended the Rules, applied the amended Rules without taking

any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the new Rules came into force. It is true, as contended by Mr H.S. Gururaja Rao, that this Court has followed the ratio therein in many a decision and those cited by him are P. Ganeshwar Rao v. State of A.P., P. Mahendran v. State of Karnataka, A.A. Calton v. Director of Education, N.T. Devin Katti v. Karnataka Public Service Commission, Ramesh Kumar Choudha v. State of M.P. In none of these decisions, a situation which has arisen in the present case had come up for consideration. Even Rule 3 of the General Rules is not of any help to the respondent for the reason that Rule 3 contemplates making of an appointment in accordance with the existing Rules.

13. It is seen that since the Government have taken a conscious decision not to make any appointment till the amendment of the Rules, Rule 3 of the General Rules is not of any help to the respondent. “

Thus, as per the verdict of Hon'ble Apex Court, in Ramulu case, respondents have taken a conscious decision to get the posts revived which happened after the new RR was introduced and hence application of new RR is proper and appropriate.

III) Now, we turn our attention of the seniority list. In this regard we have observed that the new recruitment rules provide for promotion to 25% of the Administrative Officer posts by direct recruitment and 75% by departmental promotion. Again in this 75%, posts to the extent of 37.5% are to be filled by promotion and the rest 37.5% on clearing the departmental exam. Therefore, to decide promotion based on seniority, it is essential that the seniority list be provisionally drawn and finalised after attending to objections that may crop up. Hence, seniority list is necessary to decide promotion based on seniority. Even for appearing in the exam the seniority list is prepared on the date of joining the service cadre etc which decides the eligibility of the employees to appear in the exam. Respondents admitted in the reply

statement that there are discrepancies in the merged seniority list which could not be rectified in view of OAs pending in the Hyderabad and Bombay benches of this Tribunal. Respondents need to note that the seniority has to be fixed as per the instructions contained in DOPT memo dated 13.9.2012 in regard to Superintendents promoted prior to 29.8.2008 and later to 30.9.2008. Therefore, the contention of the respondents that seniority is of no significance to appear in the exam is profoundly unreasonable.

IV) The other contention of the applicants that they may be put to disadvantage due to application of new RR, though understandable, but because of the facts stated supra and the law enunciated on the subject, they have to accept the reality and prepare for being selected as Administrative Officer under new RR. Coming to the aspect of India Bureau of Mines re-designating the posts as Supdts, it is of no consequence to the issue on hand since the grade pay of Rs.4200 remains the same when the re-designation is Assistant or Superintendent. Seniority being protected status of applicants as senior continues excepting for the label of Assistant or Superintendent since both cadres have been merged. Further, applicants vehemently argued that the Superintendent post is a non-gazetted group B post which is supervisory in nature, whereas Asst. grade is a group C post which is the feeder post to the Superintendent grade and is of dealing nature. Nevertheless, applicants admit that both the posts have grade pay of Rs.4200. However, respondents have submitted the DOPT memo dated 9.4.2009 wherein Asst and Superintendent posts were shown in Group B cadre and the

Administrative Officer being superior supervises the incumbents of these posts. Thereby the DOPT memo dated 13.2.2013 cited by the applicants is complied with in terms of grade and scale. Besides, financial up-gradation under MACP Scheme granted to the applicants has enabled them to obtain the grade pay of Rs.4600 of Administrative Officer, but their fight is all about obtaining the status of Administrative Officer (AO) with attended perks, if any. However, the ground reality is that they have to be promoted as AO by following the new RR. Moreover, applicants have alleged that the proposal for up-gradation of the Post of Superintendent has been taken up, which the respondents flatly denied. Applicants did not submit any document substantiating the assertion made and in the absence of such a document, the submission lacks validity.

Lastly, to promote the applicants on adhoc basis as Administrative Officer or by relaxation of rules as a one-time measure ignoring the prevailing RR is not an acceptable administrative practice and hence requires no consideration. The Tribunal cannot direct the department to relax the rules and accommodate any one as observed by the Hon'ble Apex Court in the case of *Govt. of Orissa v. Hanichal Roy, (1998) 6 SCC 626* as under:

“1. We need not dilate upon the facts in this appeal by special leave against an order of the Orissa Administrative Tribunal. Special leave, it may be mentioned, was granted only in regard to the two respondents herein. They had put in approximately one and a half years’ service, but on ad hoc basis. Taking into account the circumstances in which they had so served, the Tribunal held that it found no reason why there should not be a relaxation of the appropriate rule for regularization of their service and ordered accordingly.

2. *The Rule that is relevant reads thus:*

“14. Relaxation.—When the Government are of opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing, relax any of the provisions of these Rules in respect of any class or category of persons in public interest.”

3. The Rule requires the Government to form the opinion, for reasons to be recorded in writing, that it is necessary or expedient to relax any of the provisions of the Rules in public interest in respect of any class or category of persons. We assume for the purposes of this appeal that the case of the respondents herein falls within a “class or category or persons”, but we do not think that the Tribunal was right in, in effect, relaxing the appropriate rule itself. Having set out the facts, it should have left it to the Government to take the decision under the rule.

4. The appeal is allowed to the extent that the aforesaid direction by the Tribunal is set aside. The respondents’ case shall be examined by the State Government for the purposes of relaxation under Rule 14, having regard to what is stated in the order under appeal and the law as it stands. The decision thereof shall be taken within three months from today.

VI) Therefore, in view of the aforesaid circumstances, Tribunal is of the view that the dispute can be resolved by directing the respondents to consider as under:

i) To primarily finalise seniority list, after attending to any objections that may arise duly giving reasonable time, in the Assistant Grade consequent to the re-designation of the Superintendent post as Assistant, as per DOPT instructions on the subject and as per the extant rules and regulations in the respondents organisation;

ii) After the seniority list is finalised, as directed above, respondents may take a decision in announcing the results of the exam held in December 2013 in consonance with the finalised seniority list and as per the new Recruitment Rules.

iii) Time calendared to implement the judgment is 5 months from the date of receipt of this order.

iv) With the above directions, the OAs & MA 972/2013 are disposed, with no order as to costs.

(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

Dated, the 14th day of November, 2019

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