



2024 :DHC:5829-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 31st July, 2024+ W.P.(C) 10508/2024 and CAV 343/2024, CM APPL. 43196/2024,
CM APPL. 43197/2024

THE UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Syed Abdul Haseeb,
CGSC.

versus

VITTAL RATHLA & ORS.

.....Respondents

Through:

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T** (oral)

1. The present petition has been filed against the judgment and final order dated 01.05.2024 passed by learned Central Administrative Tribunal ('Tribunal'), Principal Bench, New Delhi in Original Application No.2010/2022, wherein the learned Tribunal has directed that the claim for promotion to the post of Superintendent Chemist of the Respondents (the applicants before the Tribunal) be considered against the vacancies of the year on which they attained such eligibility in terms of the recruitment rules, including placing the entire matter before the DPC, without adjudicating on the issue of limitation and also without appreciating that a Cadre Review exercise is already under process.

2. The case of the petitioners is that the respondents' had joined the Geological Survey of India ('GSI') as Chemists in the year 2010 and were promoted as Senior Chemists in the year 2015. Pursuant to Cadre Review

W.P.(C) 10508/2024

Page 1 of 7

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Signing Date: 06.08.2024
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Exercise, the cadre strength has been reduced from 80 to 50 by the Department and subsequent upon recommendation of the Cadre Review Committee and as advised by DoPT vide Estt. (RR) ID Note Dy. No.1433953/20/CR dated 18.12.2020, conveyed by Ministry of Mines letter no.1/2/2020-Mines- II dated 16.11.2021, the revised sanctioned strength in the grade of Director + Superintending Chemist in GSI stood at 50 which was earlier 80 vide DoPT CRC Letter No. 11011/05/2019-CRD dated 19.01.2021.

3. The respondents, after completing five years of residency period in the feeder post as per the extant service rules, 2013, claimed to be promoted from January, 2020. In November, 2022, the respondent preferred O.A.No.2010/2022 before the learned Tribunal seeking promotion on being eligible to the post of Senior Chemist.

4. Learned Tribunal vide order dated 01.05.2024 disposed of O.A.No.2010/2022 holding as under:

“18. We find that on earlier occasions when this OA came up for consideration, interim direction has been issued on 18.03.2023 as also on 24.04.2023 to obtain instructions on the issue of cadre review specifically an answer to the query whether notification after obtaining the approval of competent authority has been issued or not for reduction of the cadre strength from 80 to 50. It has been more than one year but clarification on the issue is not forthcoming. Therefore, we are not inclined to give more time by way of adjourning the matter especially since it is a part-heard matter and extensive arguments have been heard and recorded on 06.03.2024. Moreover, we find that the name of the applicants figures in the gradation list of officers in



the grade of Senior Chemist who are eligible in terms of recruitment rules for Superintending Chemist.

19. Therefore, the present OA is disposed of with a direction to the competent authority amongst the respondents that the claim of the applicants for promotion to the post of Superintending Chemist be considered against the vacancies of the year on which they attained such eligibility in terms of the recruitment rules in accordance with the rules including placing the entire matter before the appropriate DPC. We would like to add that our direction is for consideration at the relevant time when they attained eligibility, however, the competent authority, including the DPC, is obliged to consider the claim in accordance with the extant rules and after ascertaining the fitness of each of the applicants for such a promotion.”

5. The challenge to the aforesaid order dated 01.05.2024 passed by the learned Tribunal is on the ground that the learned Tribunal has erred in allowing the application filed by the respondents, whereby they were seeking promotion to the post of Superintend Chemist in January, 2020 in respect of which O.A. was filed in November, 2022 which is barred by limitation.

6. Reliance was placed upon a decision rendered by the Supreme Court in ***Hukum Raj Khinvasra Vs. UOI & Ors*** reported as (1997) 4 SCC 284.

7. The learned Tribunal failed to consider that the Ministry had approached DoPT on 19.10.2020 seeking advice upon receipt of DPC proposals from GSI as the Cadre Review Process was under consideration and DoPT vide notice dated 18.12.2020 advised the Ministry of Mines to

W.P.(C) 10508/2024



follow decision of Cadre Review Committee and after decision of Cadre Review Committee, as per advice of DoPT, the proposal was submitted to UPSC for reduction of strength of Superintending Chemist which was reduced from 80 to 50.

8. During the course of hearing, learned counsel for the petitioners submitted that since there was stagnation in Group – A services at top level and with the adoption of latest technologies in exploration and geo-scientific studies, the strength was required to be reduced and since the Cadre Review is a policy issue, which is dealt at the highest level, the delay in holding DPC was not intentional. Learned counsel submitted that the respondents are already in Non-functional upgradation in terms of OM No. AB 14017/64/2008-Estt.(RR) dated 24.04.2009 and so they have no financial loss.

9. Learned counsel submitted that the consideration of promotion also depends on many other factors like meeting benchmark in APAR, Vigilance clearance etc. which the learned Tribunal has ignored. Also that in the year 2020, the proposal for consideration of promotion to the post of Superintending Chemist was submitted by the Cadre Controlling Authority i.e. Ministry of Mines on 07.03.2020. However, approval could not be taken from the Ministry due to Cadre Review Process. Therefore, the DPC proposal for the vacancy year 2020 was not submitted to UPSC for convening DPC.

10. Pursuant to revision of cadre strength from 80 to 50, the Ministry of Mines directed the GSI to initiate process for filling up vacancies of Superintending Chemist for the vacancy year 2021-2022 against 43 and 02



vacancies respectively and the proposal was submitted to UPSC on 09.02.2022 which was approved by the Competent Authority on 26.07.2022.

11. Learned counsel submitted that the learned Tribunal did not take into consideration that every officer has to undergo promotion linked training in terms of guidelines laid down made by DoPT/MoM and GSITI Circular dated 21.9.2017 & 23.05.2019 and only upon successful completion of training, the promotion is granted. Hence, a prayer is made to set aside Tribunal order and judgment dated 01.05.2024.

12. Upon hearing learned counsel for the petitioners and on perusal of impugned order as well as other material placed on record, this Court finds that the respondents, who had joined the post of Chemist in the year 2010 were promoted to the post of Senior Chemist in the year 2015 vide O.M. dated 01.01.2015 at serial No. 47 to 65. The respondents became eligible for promotion to the post of Superintending Chemist w.e.f. 01.01.2020.

13. As per Recruitment Rules of the year 2013, the post of Senior Chemist and Superintending Chemist are selection posts, which are filled by way of promotion. Senior Chemists are those officers, who have completed four years of regular service in the grade and the respondents got eligible for the said post in the year 2014. However, since the DPC convened in the year 2015, they were promoted to the post of Senior Chemist in the year 2015. A senior Chemist having completed five years of regular service in the grade comes under considerable zone for promotion to the post of Superintending Chemist. The respondents having completed the requisite residency period in the grade of Senior Chemist by 01.01.2020 got eligible for promotion to the post of Senior Chemist.



2024:DHC:5829-DB



14. It is not in dispute that in the year 2020, the sanctioned strength for the post of Superintending Chemist was 80 as notified in the Recruitment Rules on 28.06.2013 and in the year 2020, the available vacancies were 69 in number.

15. As per final Gradation List dated 01.01.2020, the names of the respondents have been mentioned from serial No. 47 to 64. The grievance of the respondents before the learned Tribunal was that despite availability of the vacancies and respondents having completed their promotion linked training, DPC for the year 2020, 2021 and 2022 was not convened.

16. Furthermore, the Provisional Gradation list for the post of Director Chemist and Superintending Chemist in GSI as on 01.01.2022 issued on 05.08.2019 showed the cadre strength as 50 instead of 80, thereby reducing 30 posts at a time.

17. At the time of hearing before the learned Tribunal, learned counsel appearing on behalf of Union of India ('UOI') stated that the proposal for vacancy year 2021-2022 for total 45 vacancies was already submitted to UPSC for consideration on 09.02.2024. However, the Tribunal took note of the fact that the respondents herein were claiming promotion for the vacancy year 2020. Counsel for UOI could not inform the Tribunal the outcome in respect of the proposal submitted to the UPSC. In such circumstances, the learned Tribunal observed that since UOI was unable to obtain appropriate instructions in respect of cadre review approval despite clarifications being sought, no information was given.

18. The learned Tribunal also observed that despite interim directions issued on 18.03.2023 and also on 24.04.2023 to obtain instructions as to whether the cadre review was notified after due approval from the

W.P.(C) 10508/2024

Page 6 of 7



2024:DHC:5829-DB



competent authority thereby reducing the cadre strength from 80 to 50, UOI failed to furnish any reply before the learned Tribunal.

19. In such circumstances, learned Tribunal, in view of the fact that the names of the respondents appeared in the eligibility list of Superintending Chemist, directed the petitioner No. 1-UOI to grant them promotion on the date they attained eligibility in terms of the recruitment rules.

20. In our considered view, the services of the respondents were governed by Recruitment Rules pertaining to the year 2013 and having promoted to the post of Senior Chemist in the year 2015, they were eligible for promotion to the post of Superintending Chemist in the year 2020 as they had already undergone recruitment linked training and also the fact that the cadre strength at the relevant time was 80 and the vacancies available in the particular year was 45. Accordingly, the Tribunal has rightly directed the petitioners to convene DPC to grant them promotion from the date they became eligible.

21. In view of above, finding no error in the impugned judgment and order dated 01.05.2024 passed by the Tribunal, the present petition is dismissed.

22. Pending applications, if any, also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

JULY 31, 2024/uk/r

W.P.(C) 10508/2024

Page 7 of 7