

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 520/2002

New Delhi, this the 11th day of December, 2002

HON'BLE MR. S.A.T. RIZVI, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

1. Shri Rajender Shah Singh,
S/o Sh. Hargobind Shah Singh,
R/o EA-262, SFS Maya Enclave,
New Delhi - 110 064
2. Shri P.P. Kaura,
S/o Late Shri M.C. Kaura,
R/o 7-LF, Todar Mal Square,
Bengali Market, New Delhi
3. Ghanshyam Dass,
S/o Late Shri Mool Chand Lalawat,
R/o A-2/16, Sector 16, Rohini
Delhi - 85

...Applicants

(By Advocate : Shri S.K. Gupta)

Versus

1. Union of India,
Through Secretary,
Ministry of Defence,
South Block, New Delhi
2. Director General (Research & Development),
Defence Research Development Organization,
Dte of Admin (DP & RM)
Ministry of Defence DHQ New Delhi
3. Director,
D.I.F.R./CEES
Metcalf House,
Brig SK Mazumdar Road,
New Delhi

...Respondents

(By Advocate : Shri Bhaskar Bhardwaj and
Shri K.C.D. Gangwani, Senior Counsel)

O R D E R

BY S.A.T. RIZVI :

All the three applicants in the present OA who were working as Junior Scientific Officers (JSO) in the Defence Institute of Fire Research (DIFR) under the DRDO in 1993 are aggrieved by the respondents' act in not promoting them from the post/grade of Technical Officer 'A' (TO 'A') to

the post/grade of Technical Officer 'B' (TO 'B') and thereafter to the post/grade of TO 'C'. Accordingly they seek a direction to the respondents to hold a review DPC/Assessment to consider the applicants' case for promotion as above from the dates their juniors have been promoted.

2. The respondents dispute the claim of the applicants and have filed a reply. A rejoinder to the aforesaid reply has not been filed.

3. We have heard the learned counsel on either side at length and have perused the material placed on record as well as the departmental records produced for our perusal vide Confidential Note dated 02.12.2002.

4. It appears that each of the three applicants were charge sheeted in departmental proceedings vide respondents' Memorandum dated 25.10.1993 for making false LTC claims in respect of the block year 1978-81. The departmental proceedings concluded in the imposition of a penalty in each case of with-holding of two increments for a period of five years with cumulative effect vide orders passed on 02.01.1996. The departmental appeals preferred by the applicants were rejected on 06.03.1997. Thereupon, the applicants filed three separate OAs, being OA Nos. 608, 609 and 2287 of 1997, challenging the aforesaid penalty imposed in the departmental proceedings. Vide orders passed by this Tribunal on 28.06.2000 and 11.07.2000, the aforesaid penalty was quashed and set aside in the case of each of the applicants. *D*

5. While the applicants were being proceeded against in the aforesaid departmental proceedings, the Scientific, Technical etc. cadres in the DRDO were restructured in order to constitute the DRDO Technical Cadre w.e.f. 28.08.1995 under the SRO No.177/1999. Under the DRDO Technical Cadre Recruitment Rules, 1995, promotions could be made on merit basis and in accordance with the limited Flexible Complementing Scheme forming part of the said Rules. Employees with five years of regular service in the grade as on 1st September of the year of assessment have been made eligible under the said Rules for assessment for promotion to the next higher grade. The same rules also provide for the maximum number of employees who could be promoted to the next higher grade in a typical assessment year. In the case of promotion from TO 'A' to TO 'B', the aforesaid limit has been fixed at 30% of the total number of employees found eligible. The assessment, for the purposes of promotion, consists of an interview coupled with the Confidential Performance Assessment (CPA). Both the interview as well as the aforesaid CPA are given equal weightage.

6. In accordance with the aforesaid rule position, the three applicants herein who had been working as TO 'A' became eligible for promotion to the post/grade of TO 'B' w.e.f. 01.09.1995. They were accordingly invited for assessment for 1995 and subsequent years from time to time. The applicant No.1 (Shri R.S. Singh) could not figure in the merit list in 1995, 1996 and 1997. He absented in 1998 and in 1999 and thereafter again failed to figure in the merit list in 2000 and 2001. The applicant No.2 (Shri P.P.

Kaura) also did not figure in the merit list in 1995, 1996 and 1997. According to the respondents he was not cleared in 1998. However, he was included in the merit list and promoted in 1999. The applicant No.3 (Shri Ghanshyam Dass) did not figure in the merit list in 1995. He absented from the assessments relating to 1996, 1997, 1998 and 1999. Eventually this applicant (No.3) who had cleared the departmental examination for promotion as Scientist 'B' in another cadre way back in 1990, was promoted to the post of Scientist 'B' on 12.11.2002, w.e.f. 13.08.1991 by giving him notional seniority without arrears of pay and allowances.

7. The suitability of an individual officer duly assessed by the Assessment Board is not notified but is kept in the sealed cover only in those cases in which a disciplinary/ vigilance case is found pending at the time of assessment by the Board. In the present case, however, the disciplinary proceedings initiated against the applicants had concluded and penalties as above had been imposed by the orders of the disciplinary authority on 12.01.1996, i.e., before they were assessed for promotion by the Board. In the circumstances, there was no occasion for keeping the recommendations of the Assessment Board in respect of applicants Nos. 1 and 2 in the sealed cover. The case of the applicant No.3 is different inasmuch as he appeared at a test (limited departmental competitive examination) way back in 1990 for promotion to the post of Scientist 'B' in the DRD Service constituted some time in 1979 under the 10% quota earmarked for the JSOs. The recommendations in respect of this applicant were, however,

d

kept in the sealed cover in view of the aforesaid disciplinary proceedings initiated in 1993 as he had not been appointed as Scientist 'B' by that time. Following the prescribed procedure, the sealed cover in respect of this applicant was opened after the penalty imposed was quashed and set aside by the Tribunal on 11.07.2000 and the Tribunal's order confirmed by the High Court on 24.01.2001.

8. Since the learned counsel appearing on behalf of the applicants had insisted that the applicants had not been properly and fairly assessed, we have had occasion to go through the file pertaining to the assessment for promotion from TO 'A' to TO 'B' for the year 1995-96. We have also perused the bio-data for central assessment prepared in respect of the applicants No. 1 and 2 for the years from 1995 upto 2002. The aforesaid bio-data is supposed to have been placed before the interview board. The details available in the aforesaid bio-data in respect of any of the years do not disclose the fact that either of the applicants were under penalty imposed in the departmental proceedings. On the other hand, the details contained in these bio-data prepared for central assessment include the details made available by the applicants themselves and simultaneously the comments on the work and conduct of the applicants have been briefly given. We are satisfied after a perusal of these documents that while the applicants have been given full liberty to bring out the worth of their work, the respondents have been objective and fair in adding their comments. We, therefore, rule out any possibility of bias having crept in at the time of interview. *sd*

9. We have also perused the C-PAR-Dossier in respect of the applicant Nos. 1 and 2. Here again we find that the work of the applicants has been objectively and fairly assessed throughout in each of the relevant years. Both the quantum of the work as well as the quality of work appear to have been fairly and objectively assessed. Similarly, there is no display of bias in granting marks in respect of various attributes either. In the C-PAR for 1996, however, there is a mention in the C-PAR-Dossier of applicant No.1 that he had been awarded a punishment for his involvement in preferring a false LTC claim and further that this applicant had filed an application before the Tribunal. There is no mention of the aforesaid punishment in the C-PAR of this applicant for 1997, 1998, 1999, 2000 and 2001. Likewise, in the case of the applicant No.2 also, the aforesaid penalty has been mentioned only in his C-PAR for 1996 and never thereafter. Along with the fact of the penalty imposed, the fact that the applicants have filed cases before the CAT for quashing and setting aside the penalty has also been mentioned in the C-PAR of each of the applicant Nos. 1 and 2 in their C-PAR of 1996. This, in our view, is a very objective method of dealing with an adverse circumstance coming to the notice of the respondents. After a careful perusal of the aforesaid C-PAR-Dossiers of these applicants, we have not come across any whisper of bias or prejudice against any of them so far as the assessment of their work is concerned.

10. We are, therefore, unable to persuade ourselves to believe that any kind of bias or prejudice has played any ~~role~~ ^{role} whatsoever in the assessments separately made on the basis of the C-PAR-Dossiers and at the time of interview.

d



11. On a perusal of the departmental file dealing with the assessment for promotion, we find that the only reason why these applicants, namely, applicant No.1 and applicant No.2, were left out was their inability to get included in the merit list prepared on the basis of interview and the assessment of C-PAR-Dossiers. Since we have not come across any bias at either stage, we are inclined to agree with the learned counsel appearing on behalf of the respondents that they have been rightly and in accordance with the rules, excluded from the merit list for various years mentioned in paragraph 6 above. Of these two applicants, applicant No.1 is yet to be included in the merit list and has, therefore, not been promoted. The applicant No.2 has been promoted from 1999 in which year he stood included in the merit list. The order of penalty which was finally set aside as above has not been allowed to stand in his way. The same is true of the third applicant, namely, applicant No.3, the DPC's recommendations in respect of whom had been kept in the sealed cover. The penalty imposed on him was quashed and set aside on 11.07.2000. Accordingly, he (applicant No.3) has been promoted after opening the sealed cover from 2000. We find nothing wrong in the way the applicants have been left out or promoted. It is only proper as well as in order to grant only notional seniority in such cases without the benefit of arrears of pay and allowances.

12. In the aforesated facts and circumstances, we find no ground for ordering holding of review DPC meetings for considering the claims of the applicants for promotion with retrospective effect from the date their juniors were

24

promoted. Applicant No.1 has not been promoted yet, while the other two have been promoted by giving them notional seniority without the benefit of arrears of pay and allowances. We find the same in order.

13. In the light of the foregoing, the OA is found to be devoid of merit and is accordingly dismissed. 2

S. Raju
(SHANKER RAJU)
Member (J)

S.A.T. Rizvi
(S.A.T. RIZVI)
Member (A)

/pkr/