

Central Administrative Tribunal, Principal Bench

(9)

Original Application No.102 of 1999

New Delhi, this the 1st day of ~~May~~, 2000

Hon'ble Mr. V.K. Majotra, Member (A)  
Hon'ble Mr. Kuldip Singh, Member (J)

Nishit Kumar Jain  
S/o Shri G.K. Jain  
R/o 48, Raman Hotel.  
DRDO Residential Complex,  
Probnn Road, Timarpur,  
Delhi-110 054.

- Applicant

(By Advocate - Shri G.K. Jain)

Versus

1. SA to R.M., Secy. Defence (R&D) & DGR&D  
Defence Research & Development Organisation,  
Ministry of Defence,  
137, South Block, P.O. DHQ,  
New Delhi.
2. Chairman  
(Grievance Cell)  
Directorate of Personnel,  
B-Wing, Sena Bhawan,  
New Delhi-110 011. - Respondents

(Represented by Shri Harish Chander, ACSO)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this case has prayed for an appropriate direction to the respondents directing them not to apply their order No. DRDO/76025/RD/MPD-2 25.3.96 for promotion of Scientists from lower grade to higher grade. It is alleged that vide this impugned order, the respondents have changed their rules for promotion and want to implement the same with retrospective effect which is against the principles of natural justice and contrary to existing law. It is also prayed that applicant should be assessed for promotion under the previous rules.

2. Facts in brief are that the respondents

*[Signature]*

have in their establishment post of Scientists in the following grades:-

Scientist 'B'	Rs.8000-13500
Scientist 'C'	Rs.10000-15200
Scientist 'D'	Rs.12000-16500
Scientist 'E'	Rs.14300-18300
Scientist 'F'	Rs.16400-20000
Scientist 'G'	Rs.18400-22400
Chief Controller	Rs.18400-22400
SA to RM & DGRD	As decided by the Govt. from time to time.

3. The applicant had joined the service with respondents as Scientist 'B' in the year 1987. Thereafter he was promoted to Scientist 'C' w.e.f. 1.7.93. The eligibility criteria for promotion to various groups of Scientists was as under upto 25.3.96:-

Eligibility in Years/Grades	3	4	5	6	7	Remarks
Sc. 'B'	82	77	70	60	--	
Sc. 'C'	90*	85	77	70	60	
Sc. 'D'	90*	85	77	70	60	
Sc. 'E'	90*	85	77	70	60	

4. The eligibility criteria was amended vide impugned order No.DRDO/76025/RD/MPD-2 dated 25.3.96.

l.m.

After the issue of the amended rules, the criteria has been changed and the changed criteria is as follows:-

Eligibility in Years/Grades	3	4	5	6	7	8	9
( Average Marks obtained in C-PAR, % )							
Sc. 'B'	82	77	70	65	60	--	--
Sc. 'C'	90*	85	80	75	70	65	60
Sc. 'D'	90*	85	80	75	70	65	--
Sc. 'E'	90*	85	80	75	70	--	--

5. The grievance of the applicant is that as per the unamended rules, after rendering a service of 5 years and having obtained 77% of marks in the Confidential Performance Appraisal Reports (in short "CPAR"), he was entitled to be called for appearing before the assessment Board in the year 1998 for being promoted from Scientist 'C' to Scientist 'D' but because of the amended criteria, the applicant did not receive the call despite the fact that he had earned 77% of marks.

6. It was further pleaded that amended criteria had been applied in his case with retrospective effect. It is submitted that the raising of the minimum average of 77% marks to a minimum average of 80% marks resulted in the backlog of 18 marks which was required to be recovered in the following two years of 1996-97 by when the applicant would have completed five years of service whereas the other officers had to recover backlog of marks for varying periods of 4-0 years. Thus the application of amended rules is stated to be

kr

12

discriminatory in nature and unjustifiable. It is claimed that the sanctity and validity of the marks obtained by the applicant in CPAR for the years 1993, 1994 and 1995 should not have been disturbed subsequently by a mere executive order with retrospective effect by changing the criteria on which CPAR was formulated.

7. The applicant further submitted that had he been awarded marks in the CPAR for 5 years period from 1993 to 1997 as per the table given below, then he could not have been denied the opportunity to appear before the selection committee in the year 1998 for promotion w.e.f. 1.7.1998.

Year	Maximum Marks of CPAR	Min. Average Marks required for receiving call for Appearing before the Assessment Board after five years	Maximum Marks required
1993	200	77%	154
1994	200	77%	154
1995	200	77%	154
1996	200	80%	160
1997	200	80%	160
<b>Total</b>	<b>1000</b>		<b>782"</b>

8. The main thrust of the applicant is that the changed criteria for promotion from Scientist 'C' to Scientist 'D' is bad in law and is discriminatory and for the preceding three years, he should have been governed by the unamended eligibility criteria and for  
*law*

the subsequent 2 years under the changed criteria and should have been called for interview by the Assessment Board. As such, he has prayed that he is entitled for being called to appear before the selection committee for consideration for promotion from Scientist 'C' to Scientist 'D'.

9. The respondents have contested the petition. They have admitted the procedure being adopted by the department for consideration of upgradation of a Scientist 'C' to Scientist 'D' and also the criteria having been revised vide order dated 25.3.96 (Anneuxre R-111). Respondents have stated in their reply that the promotions of Scientists are not vacancy based and they are promoted in situ if found fit for promotion by the Assessment Board and for such purpose, Internal Screening Committee (in short ISC) under rule 8(2)(a) of DRDS Rules, 1979 and as amended by order dated 8.3.96, shall review the CPAR on completion of minimum residency period of three years. The ISC evolves its own criteria for deciding the eligibility of scientists for consideration by the Assessment Board and awards average marks to the scientists.

10. It is denied that the increase of marks in the eligibility criteria effected vide letter dated 25.3.96 has been applied retrospectively. It is stated that this criteria has been applied to Assessment Boards held only after March, 1996 and not

*hru*

by earlier Boards. Respondents have also denied that the marks are allotted to individuals on the basis of prevailing eligibility criteria. It is stated that marks in the CPAR are always based on the overall performance of the individuals during the year and not by any other considerations. It is further stated that the criteria promulgated from March, 1996 has been applied uniformly to all Scientists 'C' considered by the Assessment Board, 1996 and onwards without any discrimination. Since the promotions in DRDS governed by Flexible Complementing Scheme (in short FCS) are not vacancy based, therefore, all eligible scientists whosoever obtained the prescribed percentage of marks in his CPAR and interview, are assessed by the Assessment Board and promoted irrespective of availability of vacancy.

11. It is further stated that in the DRDS Rules, ISC is empowered to evolve eligibility criteria for assessment of scientists for promotion. Therefore, there is no question of nullifying the effect of earlier order dated 20.12.1991.

12. We have heard the learned counsel for the applicant and departmental representative Shri Harish Chander, who argued on behalf of the respondents.

13. Short question involved in this case is whether the amended criteria is applicable in case of

*lw*

the applicant or not. Counsel appearing for the applicant submitted that the assessment of CPAR was done as per the then prevailing criteria. As prior to 1996, the eligibility criteria for Scientist 'C' was 77% average marks with 5 years service, so upto the year 1996 if the applicant had obtained 77% of marks, that should be taken as if he had got the qualifying marks and should have been called for interview by the Assessment Board.

14. The learned counsel for the applicant also submitted that the amendment of rules cannot be applied with retrospective effect and in support of his contention, he also cited the case reported in Swamy's Case Law Digest - 1992 wherein it was observed as follows:-

" In this connection, a reference may be made to the case of Y.N. Rangaiah V. J. Srinivasa Rao (1983 (3) SCC 385). In the said judgment it was held that vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules."

15. Learned counsel for the applicant further submitted that a vested right cannot be taken away by a retrospective amendment of Statute or statutory rules arbitrarily and unreasonably. In this case since by securing 77% of marks for three years, a right had been vested in the applicant so by amending the eligibility criteria in the year 1996, a vested right of the applicant is being taken away. This is  
*km*

against the principles of natural justice. In support of his contention that amended rules should not be applied with retrospective effect, learned counsel for the applicant also relied upon a judgment of the Bombay Bench (CAT) in O.A. 472/98 reported in ATJ CAT (Bombay) Bhagwan Sirumal Latchandani Vs. U.O.I. & Others, wherein it was observed as follows:-

" Promotion - To the Post of General Manager, in Currency Note Press - Recruitment Rules amended - Applicant a Dy. G.M. claims promotion on the basis of old recruitment rules - Vacancy which occur prior to the existence of amended rules directed to be filled up in accordance with the old Rules".

16. In reply to this, departmental representative who appeared on behalf of respondents, submitted that as per the DRDS Rules, a scientist from group 'C' to group 'D' is not promoted on the basis of vacancies available rather promotion in DRDS is made on the basis of overall performance after having been adjudged by the ISC and having obtained prescribed percentage of marks in the CPAR. In this case since the ISC had not found the applicant upto the mark to be called for interview, so he cannot claim that he should have been promoted as Scientist 'D'.

17. Besides that, the departmental representative submitted that ISC alone is to evolve criteria for deciding the eligibility for consideration by the Assessment Board and award of average marks for the scientists. While deciding

h

12

eligibility of scientists for assessment, since the revised rules had been applied in their case, so applicant cannot claim that he had been discriminated or unfairly treated. He has no right to be considered for assessment since he has not obtained the requisite marks in the last 5 years of CPAR.

18. We have considered the rival contentions of the parties. Rule 8(2)(a) which governs the promotion of Scientists of different grades is reproduced below for ready reference:-

"2(a) Promotion from one grade to the next higher grade in the service shall be made under the Flexible Complementing Scheme from amongst the officers possessing the broad educational qualifications as given in Schedule III. Promotion upto the level of Scientist 'F' shall be made on the basis of evaluation of confidential performance appraisal reports and assessment interview and for Scientist 'F' to 'G' on the basis of the evaluation of confidential performance appraisal reports and assessment by a Peer Committee. The Internal Screening Committees constituted as specified in Schedule IA and IB shall review the confidential performance appraisal reports of Scientists 'B' on completion of minimum residency period of three years and of Scientists 'C', 'D' and 'E' on completion of minimum residency period of four years and of Scientists 'F' on completion of minimum residency period of five years as on 30th June of the year to which the assessment boards pertain. The Internal Screening Committees shall evolve its own criteria for deciding the eligibility of scientists for consideration by the Assessment Boards and award average marks for the scientists. While deciding eligibility of scientists for assessment, the Internal Screening Committee shall follow the criteria enumerated below:-

(i) Internal Screening shall be based on not more than last five years' confidential performance appraisal reports in the grade and scientists securing less

6

18

than 60% average marks in the confidential performance appraisal reports shall not be eligible for assessment." (emphasis supplied)

19. A careful perusal of the above rule shows that the promotion in the respondents department of a Scientist from one grade to another is not a promotion in the ordinary sense, rather it is a 'Flexible Complementing Scheme'. This rule clearly shows that the promotion in the respondents department is not vacancy based so the rulings cited by the applicant's counsel do not apply to his case because in those cases the court had directed that the vacancy arising in a particular year is to be filled by the then prevailing rules and not by amended rules whereas in the case in hand, the promotion in the respondents department are not vacancy based rather it is upgradation of status of an individual scientist on the basis of his individual performance.

20. The eligibility criteria of Scientists for promotion from Group 'C' has been changed and the changed criteria shows that it is the overall performance of a scientist which is to be adjudged at CPAR level and then at the ISC level and only thereafter, he is to be recommended for being interviewed by the Assessment Board for promotion to the next grade and he is not given promotion as given to the ordinary employees in the common parlance.

10

(19)

21. Promotion of a Scientist from Group 'C' to 'D' is not a promotion in the general sense rather it is a conferment of a higher status which as per rule is based on performance linked with experience. The tables shown in paras 3 & 4 above show that a Scientist with a performance of 82% can be conferred a higher status in shorter period and a Scientist with lesser percentage of marks in CPAR can take more years for being conferred a higher status. So it is a conferment of status or grade but not the promotion in the ordinary sense and to judge the performance, CPAR and <sup>Screening by Mr</sup> <sub>A</sub> ISC are the most important things and Assessment Board can evolve its own criteria.

22. The applicant has a right to be considered and he has been rightly considered but he cannot dictate that a particular criteria be applied in his case. Moreover, if the contentions of the applicant are accepted that upto a particular year a different criteria is to be applied and for the remaining period a different criteria is to be applied in each individual's case, then it will create chaotic conditions which may create discrimination amongst different Scientists of standing of different years. Hence we are of the considered opinion that respondents had rightly applied the amended rules w.e.f. 1996.

23. In view of the above, we are of the <sup>for</sup>

considered opinion that this O.A. has no merits and the same deserves to be dismissed. Accordingly the O.A. is dismissed but without any order as to costs.

*Kuldeep*  
(Kuldeep Singh)

Member (J)

*V.K. Majotra*  
(V.K. Majotra)  
Member (A)

Dkm