

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.742/1999

New Delhi, this 4th day of March, 2001

Hon'ble Shri Kuldeep Singh, Member(J)
Hon'ble Shri M.P.Singh, Member(A)

J.P.S. Saroha
583, Sector IV
R.K.Puram, New Delhi-110022

.. Applicant

(By Dr.M.P. Raju, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Defence
South Block, New Delhi

2. Director General
Defence Research Development Organisation
Ministry of Defence
Sena Bhawan, New Delhi

.. Respondents

(By Shri K.C.D.Gangwani, Advocate)

ORDER

By Shri M.P. Singh

The applicant is before us in a second round of limitation; his earlier OA No.173/1986 (filed alongwith another person) seeking reversion to his parent organisation, ^{ie,} Defence Research & Development Organisation (DRDO, for short) and granting seniority, promotion etc. to him having been dismissed by this Tribunal by order dated 30.5.1986 and the SLP filed by against this order also having been dismissed by the Hon'ble Supreme Court vide its order dated 10.4.97; aggrieved by the order dated 22.4.98 by which his claim to consider him for promotion to the grade of Junior Scientific Officer (JSO, for short) in DRDO was not acceded to. While dismissing the SLP, the apex court has held as under:



"The appeal is accordingly dismissed. If there are any rights given to them and the personnel similarly situated have given accelerated, that would be a different cause of action. The appellants would be free to avail of remedy as is available under the law"

On the strength of the above observation, the applicant has approached us seeking to quash the order dated 22.4.98 and directions to the respondents to promote him to the post of JSO in DRDO with effect from 26.6.82 i.e. the date when his juniors were promoted as such.

2. For a proper appreciation of the issues involved in the present OA, it would be appropriate to describe the facts of the case, which are as follows. The applicant joined service as JSA Grade II on 30.10.67 under DRDO and is presently working as Senior Scientific Assistant (SSA, for short) with effect from 8.1.74. As per the applicant he still belongs to DRDO though working in one of the Technical Committees. By order dated 13.1.76 respondents brought the Chairmanship of the Technical Committee (Engineering Stores) under the Director of Production and Inspection (Engg. Equipment) in the Directorate General of Inspection (DGI, for short. By order dated 17.4.76 three SSAs including the applicant were transferred to DGI w.e.f. 1.2.76. At the time of transfer a common roster was being maintained by DG/CCR&D for DRDO, DGI and DTD&P(AIR) to the post of JSO. Applicant claims he had no apprehension in regard to his chances of promotion inspite of being transferred to DGI and the cadre of SSA has been the same for DRO, DGI and DTD&P. The cohesive nature of three organisations was evident in the seniority list of SSAs, Fireman (feeder cadre for JSO) which was always an integrated common roster on all-India basis for the

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three organisations for promotion to the post of JSO.

The revised SP Rolls of non-gazetted staff of DRDO was prepared on 15.3.77 adopting this principle. While names of S.Devarajan and A.N.Kharnevis working in DGI, J.S.Dham and A.V.Ketkar working in DRDO appeared in the SP roll dated 15.3.77, the name of applicant was not included in it. Respondents published DRD Service Rules, 1978 by notification dated 13.1.79. While one A.N.Kharnevis, who was transferred along with the applicant in 1976 was promoted by DRDO as JSO in 1979, applicant belonging to DRDO was not promoted as such.

4. In a combined seniority rolls of non-gazetted staff of different categories including the JSA-I published on 25.2.80, name of applicant figured at Sl.No.1 showing him as SSA from 8.1.74 and he was placed for consideration for promotion to the post of JSO. Applicant claims that as DRDO's letter dated 5.3.80, he continued to have lien from a permanent post held by him in DRDO. However in the promotion list dated 1.3.80 published by DRDO to the post of JSO, the name of the applicant was not included though his juniors/colleagues working under DGI were included.

5. Recruitment Rules for the post of JSO were published in the gazette dated 8.3.80 and circulated on 3.5.80. Rule 3(3b) of the R/Rules lays down that those persons like the applicant who are still continuing under different organisation such as DGI shall be deemed to have been appointed in the said cadre under DRDO. Again by Rule 5(b) it was provided that recruitment would be done through promotion from SSAs, Foreman or Chief Draftsman with 5 years service in their respective



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grade. Since the applicant has completed 5 years service on 13.1.79 he ought to have been considered and promoted as JSO even prior to the aforesaid R/Rules published on 8.3.80, especially when there were 662 vacancies and juniors to the applicant were promoted by order dated 15.5.80 passed by DRDO. Two such juniors namely M. Vasu and A.J.Pawar were recommended by the DPC held by DRDO in December, 78 and they assumed their charge as JSO on 26.6.80.

6. In the combined seniority roll dated 9.12.80 of Foreman/Chief Draftsmen/SSAs for promotion to the grade of JSO in DRDO, the name of the applicant did not figure while those of his juniors were included. DRDO on 4.6.84 wrote to DPIE/DGQA asking him to confirm whether the applicant has been substantively absorbed in the present post on which he had been working and to forward his ACR dossiers, which was replied on 10.7.84 to the contrary; however his ACR dossiers were sent to DRDO. Applicant claims that he has never been confirmed under the DGQA but has been confirmed only by DRDO, whereas his other colleagues had been confirmed into DGQA terminating their lien from DRDO and only thereafter they were treated as excluded from the cadre of DRDO. For example, A.N.Kharnevis who was similarly placed and was confirmed under DRDO on 5.7.69 has been transferred together with the applicant to DGI but was subsequently promoted by DRDO and confirmed into DGQA terminating his lien from DRDO as on 1.6.84. Similarly another junior R.P. Sharma who was confirmed w.e.f. 1.4.75 in DRDO, while the applicant was confirmed from 1.4.71, was also promoted as JSO in 1982.



7. Pursuant to the observation of the apex court (supra) applicant made a representation on 23.8.97 followed by several reminders. This was rejected by the impugned letter dated 22.4.98. Applicant again represented his case to the Hon'ble Minister of Defence through Hon'ble Minister of State for Agriculture which met with a similar fate to the effect that his grievance does not appear to be resting on sound footing, vide letter dated 9.10.98. That is how the applicant is before us seeking the aforementioned reliefs.

8. Respondents have contested the case in their counter. They have taken the preliminary objection that the OA is barred by limitation as per law laid down in the case of S.S.Rathore Vs. State of MP (AIR 1990 SC 10) inasmuch as that the case of the applicant pertains to 1979, i.e. the time of trifurcation of DRDO, DGI and DTD&P(AIR) and contending that the applicant has been in the habit of making repeated representations and that these cannot extend the period of limitation.

9. Respondents contend that prior to 1979, the gazetted scientific/technical posts in DRDO, DGI and DTD&P were a common cadre known as Defence Science Services (DSS); in 1979, the said service was trifurcated among the above three organisations and the post of JSO which was a part of DSS was also trifurcated. Consequently the DPC for promotion to the rank of JSO was to be conducted separately by DGQA and DRDO in respect of SSAs held by each Hqrs. The applicant was posted in DRDO well before trifurcation. In 1976 he was posted to the Technical Committee. With the promulgation of DRDS Rules 1978 w.e.f. 13.1.79, the common seniority roll ceased to



exist and for filling the posts of JSO, DRDO (JSO) Rules, 1980 were promulgated restricting eligibility for promotion to JSO to SSAs in DRDO only. Since the applicant was borne on the strength of the DGI w.e.f. 1976, he was not eligible for promotion as JSO in DRDO. No similarly placed persons have ben promoted as alleged by the applicant. Applicant is an employee of DGQA as there is no post of SSA in DRDO at present. With the trifurcation after 1979, DRDO and DGQA have become two independent and separate organisations and therefore the concerned organisation has to look after the interests of the individual. The seniority list cited by the applicant pertains to the period prior to trifurcation after which no person of other organisation has been promoted in DRDO. Applicant has been transferred to DGI permanently and as such he is borne on the strength of DGI for all purposes. Seniority roll of SSA dated 13.3.77 clearly states that it reflects the names of individuals who reckon seniority upto and including 31.12.72 whereas the applicant had been promoted as SSA on 8.1.74 and therefore he should have no grievance of the seniority roll of 1977. The individuals cited by him were SSAs prior to 31.12.72.

10. Respondents further contend that the applicant had never been on deputation to DGI but the unit in which he was working had been brought under DGI in 1976 and therefore he was not holding any lien in DRDO as claimed by him. Shri Kharnevis was recommended for promotion as JSO in DRDO the DPC held on 9.12.78 i.e. much prior to trifurcation which took place on 13.1.79. The letter dated 25.2.80 regarding combined seniority rolls pertains to JSA-I which is not a feeder post for



promotion to JSO. In so far as applicant's reference to R/Rules dated 8.3.80, respondents contend that these are for the post of JSO and not for SSA and other feeder grades. Rule 3(3)(b) does not apply to the applicant as he is SSA and not JSO and that mere completion of 5 years service does not mean that he should be considered for promotion. Regarding Rule 5, the prerogative lies with the DRDO to recruit personnel if there is any deficiency of personnel in JSO grade at the time of initial constitution. Regarding the promotion of M. Vasu and Pawar, they belong to SC/ST and that their names were recommended by the DPC held on 9.12.78 for the vacancies earmarked for SC/ST.

11. The seniority list of 9.12.80 pertains to promotion to the grade of JSO in DRDO which was circulated to only those working in DRDO Labs/Estt and since the applicant belonged to DGI, his name had rightly been excluded from the said list. The persons referred to by the applicant whose names figured in this list were holding lien in DRDO whereas the applicant came on the strength of DGI since 1976 and was not holding any lien with DRDO as claimed by him. His contention that he has lien in DRDO is not borne on the facts. Again in its judgement by this Tribunal in applicant's earlier OA (supra) it was held that the applicant who belonged to DGI had no legal right to ask for seniority vis-a-vis of persons serving under DRDO. The applicant had been transferred to DGI alongwith the post of SSA on 1.2.76 and thereafter there is no link with R & D Organisation. He had been confirmed as a permanent JSA-II w.e.f. 1.4.71. Subsequently, he signed the SP rolls of SSA dated 22.9.84.

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12. We have heard the learned counsel for the parties and perused voluminous material available on record.

13. Though the applicant has taken a variety of grounds in support of his claim, we would like to focus our attention only to those which are most important and vital for taking a decision in this case. They are discussed in seriatim.

(i) He joined DRDO and got promoted as SSA in DRDO cadre and continues to hold the lien in DRDO, which has not been terminated so far;

(ii) R/Rules for JSO under DRDO provide SSA as feeder cadre for promotion to JSO;

(iii) He was entitled to be considered for promotion in 1979 when his juniors were so promoted;

(iv) He has not been confirmed in any post in DGI and therefore has not acquired any lien in DGI till date;

14. Regarding (i), with the trifurcation of DSS from 13.1.79, there is no grade of SSA in DRDO. As has been held by this Tribunal in its order dated 30.5.86 in applicant's earlier OA (supra), SSAs who were eligible for promotion to JSO in all the three organisations became eligible to the post of JSO in the respective organisations to which they were allotted on 13.1.79, the applicant shall be eligible to be considered for promotion in his turn in DGI, where he has been transferred permanently from 8.1.76 and therefore there is no question of his holding lien in DRDO as there is no post of SSA available against which he can be adjusted. As regards (ii), since it has been held earlier that the applicant does not hold any lien in DRDO, reference to the R/Rules does not render him any assistance. Regarding (iii), the juniors mentioned by

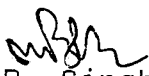


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the applicant were in fact senior to the applicant and they were recommended by the DPC held in 1978 having longer service in DRDO than the applicant and therefore there is no question of challenging their promotion at this belated stage. Again two of the persons belong to SC/ST who were rightly promoted against the quota earmarked for them. As far as (iv) is concerned, applicant has been transferred to DGI on 1.2.76 from DRDO alongwith the post and has been confirmed in DGI in his capacity as permanent JSA-II w.e.f. 1.4.71. Since as per Government instructions, confirmation in initial post is a one-time measure there is no need to issue separate confirmation orders for every promotion.

15. We are of the considered opinion that various other averments made by the applicant are not germane to the main issue and therefore we do not want to discuss about them.

16. For the detailed discussions above, we find no merit in the present OA and the same deserves to be dismissed. We do so accordingly. However, our decision shall not preclude the concerned respondents to consider the case of the applicant for promotion to the next higher grade of JSO in his turn as per rules on the subject.


(M.P. Singh)
Member(A)


(Kuldeep Singh)
Member(J)

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