

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO.981/95

OA NO.922/95

HON. SHRI R.K. AHOOJA, MEMBER (A)

NEW DELHI, THIS *2nd* DAY OF JANUARY, 1997

OA NO.981/95

SHRI V.K. RUSTAGI
S/o Lt. Shri K.C. Rustagi
R/o TRSA 74 N.P.L. Colony
New Pajinder Nagar
NEW DELHI-60

... APPLICANT

'By Advocate - Shri M.K. Gupta'

VERSUS

1. Council of Scientific & Indl. Research
through its Director General
Rafi Marg, New Delhi - 1.
2. National Physical Laboratory
through its Director
3. National Physical Laboratory
through its Sr. Controller of Administration
4. National Physical Laboratory
through its Controller of Administration
Dr. K.S. Krishnan Road
NEW DELHI -12.

... RESPONDENTS

'By Advocate - Shri A.K. Sikri
with Shri V.K. Rao'

~ OA NO.922/95

DR. R.V. REDDI
R/o DRH-2, NPL Colony
NEW DELHI-60.

Office : National Physical Laboratory
K.S. Krishnan Road
NEW DELHI - 12.

... APPLICANT

'Applicant in person'

VERSUS

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- (18)
1. Director
National Physical Laboratory
Dr. K.S. Krishnan Road
NEW DELHI -12.
 2. Controller of Administration
National Physical Laboratory
NEW DELHI.
 3. Director General
Council of Scientific & Indl. Research
Rafi Marg
NEW DELHI.

..RESPONDENTS

'By Advocate - Shri A.K. Sikri
with Shri V.K. Rao'

ORDER

Even though the reliefs sought for in the two O.A.s are not exactly similar, these have been taken up together at the request of the counsel in both the cases, since they have a bearing on each other and arise out of a dispute over allotment to the same Three Room Scientific Apartment 'TRSA' in National Physical Laboratory 'NPL' Colony.

DA NO.981/95

The applicant in this case, Shri V.K. Rustagi, submits that CEERI, Pilani, and NPL are laboratories under the Council of Scientific and Industrial Research 'CSIR' and are therefore for all material purposes sister institutions. He joined CEERI, Pilani, as Senior Scientific Assistant on 18.2.1971 and was promoted to the post of Scientist 'A' in that Institute w.e.f. 18.2.1976. He then applied against an advertisement for the post of Scientist 'B' in NPL. He was selected and appointed on 7.10.1977. According to him, his services were transferred from CEERI, Pilani, to NPL and that like all similarly placed candidates

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he was treated as an internal candidate at the time of interview and his selection in NPL was treated as promotion as if he was from the same Laboratory. The CSIR introduced a New Recruitment and Assessment Scheme (NRAS) of 1981. As a result of this Scheme, certain persons promoted to the grade of Scientist 'B' later in day and date than the applicant started drawing more salary. To remove this anomaly, an order dated 27.6.1986 (Annexure F) was issued. The applicant was promoted as Scientist 'C' w.e.f. 7.10.1982. He was further promoted as Scientist E-1 w.e.f. 1.4.1988. The applicant submits that certain other persons drawing less pay than the applicant in the pre-revised scale got their date of increment shifted to that of the applicant. The applicant had got the stepping up of his pay on the basis of the 1986 order vis-a-vis his junior Shri Mithan Lal and the other senior Scientists claimed their stepping up of pay on the basis of the applicant's higher pay fixation. The applicant is aggrieved that while turning down the request of his seniors who were not entitled to stepping up of pay, the CSIR also, vide the impugned order dated 3.5.1994 (Annexure A), took away this benefit from him also and reduced his pay. He submits that he was informed of the reduction in pay vide letter dated 10.5.1994 Ann. B and simultaneously a show cause notice was issued to him as to why the over-payments made to him on the basis of the alleged erroneous decision should not be withdrawn. His representation to reconsider the case was refused as per letter dated 18.1.1995 (Annexure C).

2. The applicant is aggrieved that as a result of the illegal and arbitrary action in reducing his pay, the respondents have started withdrawing all the benefits given to him pursuant to stepping up of his pay; and though his claim was at the top and he was allotted TRSA No.74 and

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(20) had possession of it, the respondents vide the show cause notice 'Annexure 'X'' seek to cancel this allotment and to make him vacate this accommodation.

3. The respondents in their reply submit that after NRAS was introduced, there was no concept of seniority or juniority amongst the scientists in a particular grade, and further that promotions to next higher grade are based on merit only subject to entry level qualifications. Thus, a person who joined later but was considered more meritorious could steal a march over his seniors. As a consequence, he could get more salary than the former. Similarly, a more meritorious scientist could be recommended advance increments by the Assessment Promotion Committee at the time of his promotion. Hence, the senior person could not on that basis seek stepping up of pay under FR 27(C). However, the CSIR issued a circular dated 27.6.1986 for giving protection of pay to scientists promoted earlier in point of time as Scientist B/B-1 from the grade of Scientist A/A-1, if this was earlier than 6.10.1978. The benefit of the circular has to be read in terms of earlier circulars issued in 1982 (R-1 and R-2), in 1983 (R-3 and R-4) and later circular issued in 1991 (R-6). For applying 1986 circular in any case, it was necessary that three conditions should be satisfied, namely:-

- (i) a junior person is promoted as Scientist B/B-1 on 6.10.1978 or later;
- (ii) he starts drawing higher pay than the senior promoted as Scientist B/B-1 from the grade of Scientist A/A-1 from a date earlier than 6.10.78:

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'iii' that the higher pay has resulted on grant of two advance increments other than increments granted on consideration of merit.

In terms of these, the applicant was not entitled to the benefit of stepping up of pay as he was not promoted as Scientist 'B' in NPL from the post of Scientist A/A-1, as he was directly recruited. Shri Mithan Lal, on account of whom the applicant claimed stepping up of pay was throughout working in NPL and was there itself promoted from Scientist A/A-1 to Scientist B/R-1 w.e.f. 1.2.1981 through implementation of NRAS and given two advance increments. The applicant, however, had worked as Scientist 'A' in CEERI Pilani and the two cases were therefore not connected, and the applicant could not get stepping up of his pay on the basis of Shri Mithan Lal's pay. As regards the allotment of quarter, the respondents submit that as per allotment rules, seniority is to be counted from the earliest date from which officer desirous of allotment is working in the relevant eligible grade and when that date is the same for a number of officers, then those with higher pay will take precedence. Initially because of the wrong fixation of pay of the applicant, the tentative priority list showed him at the top. However Dr. Reddy and some others made a representation against pay fixation of some Scientists including the applicant. The matter was examined and revised fixation of pay was done vide the impugned order dated 3.5.1994. Accordingly, the priority list had to be redrawn on 16.5.1994 and the applicant's name came down to S.No.10. In February 1995, Director NPL took a decision for maintaining the tentative priority list as on 1.1.1994 in which the applicant's name was at top and accordingly he was allotted TRSA No.74

22 on 24.3.1995 erroneously. The CSIR then cancelled the allotment and a show cause notice for cancellation was issued on 28.4.1995.

4. I have heard the counsel on both sides and have also gone through the pleadings on record. The ld. counsel for the applicant has raised a token objection that the impugned order at Annexure 'A' referred in preamble to the pay fixation of certain 44 Scientists vide notification dated 8.2.1988 but the applicant was not one of these 44 officers. However, this does not materially alter the legality of the action taken, as argued by Shri Sikri, ld. counsel for the ^{respondent} applicants, because of the explanation given in respect of the applicant at S.No.34 of that order. The main question which needs adjudication is whether the applicant was entitled to stepping up of his pay, as compared to Shri Mithan Lal on the ground that he had been promoted from the level of Scientist 'A' to Scientist B/B-1 prior to 6.10.1978. The respondents' case is that this was not a case of promotion but direct recruitment against an advertisement, because the applicant was working as Scientist 'A' in CEERI, Pilani. The applicant's case is that CEERI Pilani and NPL are sister concerns and part of the CSIR and persons working in one Laboratory, when they apply for jobs in other Laboratories, are treated as internal candidates and are transferred on selection from one Laboratory to the other as if they are going on promotion. The ld. counsel for the applicant argues that this has been the procedure followed in other cases also and cites certain examples. Be that as it may, I find that the plea taken by the applicant has not been properly considered by the respondents. The pay of the applicant had been fixed at a certain level and by the

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impugned order it has been reduced. It is fairly conceded by the ld. counsel for the respondents that show cause notice was not given before issuing this order, though a show cause notice was given in respect of recoveries of the so called overpayments. The two are entirely different. It could be argued that while representing against the recovery of the excess amount paid to him, the applicant had an opportunity to represent against the reduction in the pay also and thus he had an opportunity to be heard and to present his case. Indeed, as it was pointed out, the show cause notice in respect of the excess payments made in respect of another officer Shri Ravi Mehrotra resulted in an order of stay in respect of his reduction in pay. This argument would, however, be fallacious as it would be a post-decisional opportunity and in such cases the person against whom action is taken is placed at a disadvantage as the tendency of the authorities is to justify their action which has already been taken.

5. In view of the above, since the applicant was not given an opportunity to show cause as to why his pay should not be reduced, the respondent's action in issuing the impugned order reducing his pay is clearly bad in law and liable to be set aside. I order accordingly. The respondents, if they consider that the pay of the applicant requires to be refixed, must first give an opportunity to the applicant to be heard and present his case, and thereafter the respondents can take a decision by a proper speaking and reasoned order.

6. In view of the above order and direction in respect of reduction in pay, the applicant is also entitled to the related relief in regard to the allotment of TRSA

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(24) No.74 till his pay is refixed by a proper order by following proper procedure. His priority has to be determined on the basis of his pay as it was before the issue of the impugned orders. The respondents are directed to deal with his case of allotment on that basis. The order for cancellation of allotment and show cause notice for recovery are therefore also quashed.

OA NO.922/95

The applicant Dr. B.V. Reddy has also come before the Tribunal in regard to his grievance in respect of allotment of TRSA 74. He submits that he is a Scientist E-1 at NPL. A final priority list for allotment of TRSAs for the year 1994 'Annexure A' was circulated on 16.5.1994. This list was followed till November 1994 when the applicant became the next eligible person. In that list, the name of Shri V.K. Rustagi appeared at the 10th position. At that time, TRSA 74 fell vacant and the applicant should have been allotted this accommodation. However, as the respondents have ill will towards him because of his trade union activities as General Secretary of CSIR Scientific Workers' Association and as President of the NPL Scientific Workers' Association, they did not operate the priority list and instead illegally tampered with it and issued another priority list 'Annexure R-1' on 14/17.2.1995, pushing up Shri Rustagi to No.3 position from his original 10th position. The applicant states that he made representations against the revised priority list and though the Director General CSIR had issued directions on 22.3.1995 not to operate the revised seniority list, the Director NPL in order to illegally help Shri Rustagi issued him the allotment letter for TRSA 74 on 24.3.1995. This led to further representations from the applicant and he was

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assured vide Annexure E that the next available accommodation would be allotted to him. However, respondent No.1 approved and released a fresh tentative priority list for TRSA for the year 1994 (Annexure H) wherein the applicant's name has been brought down to the 14th position while Shri Rustagi who has already been allotted TRSA 74 again appears at the 10th position. It has also been noted therein that the reduction in priority number of the applicant is because the period from 1.12.1984 to 29.3.1987 of his service has been treated as dies-non since he was at that time working under RFC Ltd., Hyderabad.

2. The respondents have in their reply first explained the revision of pay of Shri Rustagi as well as of Dr. Ravi Mehrotra. They state that the first priority list was on the basis of pay as on 1.1.1994 in which Shri Rustagi was at the top of the waiting list. Later, because of reduction in pay, second priority list of 1994 was issued, which is the basis for the applicant Dr. Reddy's claim. Shri Rustagi and Dr. Ravi Mehrotra were issued a show cause notice (R-2) dated 10.5.1994 and they gave their replies. In February 1995, Director NPL took a decision for maintaining the tentative priority list issued on 1.1.1994 and on that basis Shri Rustagi was allotted TRSA 74 on 24.3.1995. However, as Shri Rustagi's pay had been reduced, show cause notice for cancellation of the said allotment was issued to him on 27.4.1995. He has given a reply dated 8.5.1995 and the matter is under consideration. The respondents state that the Director General CSIR had given directions that the priority list as drawn on 16.5.1994 should be operated but though this order was dated 22.3.1995, the allotment of Shri Rustagi has been made on 24.3.1995 as the order

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of Director General did not come to be known. The NPL then responded to the decision of the Director General dated 22.3.1995 by bringing certain additional facts to his notice and after reconsidering the whole matter, CSIR vide letter dated 26.4.1995 recommended cancellation of the apartment allotted to Shri Rustagi, directing that the 16.5.1994 list may be kept in abeyance, cancelled the decision of Director NPL to maintain the 1.1.1994 priority list and finally directed that a fresh tentative list be drawn. The respondents say the matter is pending at this stage. In the latest tentative seniority list, the priority of the applicant has come down to S.No.14 and therefore even if Shri Rustagi is asked to vacate the TRSA 74, the same will be allotted to a person higher in the list than Shri Rustagi and the applicant in any case would not be given this quarter, his name being at S.No.14.

3. In his rejoinder, the applicant has questioned the decision of the respondents in treating part of his service as dies non and on that score reducing his seniority in the priority list. He submits that he had gone to RPF Hyderabad with the consent of NPL. Later on, the former wanted to absorb him but permission was not given by the NPL and therefore he had to come back. His tenure with the RPF Hyderabad was on deputation from NPL and therefore this period could not be recorded as dies non. Further more, the respondents themselves had issued orders that the period of service with RPF Hyderabad would be taken into account for pensionary benefits.

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4. I have heard the applicant who was present in person, and Shri A.K. Sikri, counsel for the respondents. The applicant while presenting his case, pointed out that all the actions of the respondents, if viewed in the sequence they have been taken, would clearly establish malafide, ill will and malice towards the applicant. He pointed out that the priority list prepared on 18.5.1994 was operated right up to November 1994 and the respondents suddenly decided to operate ~~the~~^{an} tentative priority list of 1.1.1994 just when the applicant's number came up for allotment. The Director NPL had no authority whatsoever to suddenly operate an old tentative priority list when a final priority list was already there. Further, the pay of Shri Rustagi had been reduced and the Director NPL could not on his own give priority to Shri Rustagi on the basis of his pre-revised pay. The applicant submitted that all this had happened because there was a change in the incumbency of Director NPL and that the new Director wanted to favour Shri Rustagi who was his old student. The Director General, CSIR, on representation being made against the order of the Director NPL on 22.3.95 ordered to quash the action of Director NPL, but the latter very conveniently kept the communication of the Director General aside and pretending ignorance issued the allotment in favour of Shri Rustagi on 24.3.1995. The office of the Director General is also in Delhi and everyone knew of the decision of the Director General. When agitation was raised against this malafide action of the Director, vide Annexure E an assurance was given to the applicant that he would be given the next available quarter. Instead the Director NPL raised the bogee of dies non and got

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this new tentative priority list issued whereby the seniority of the applicant has been depressed to No.14. All this has been done, according to the applicant, to teach him a lesson and to punish him on account of his trade union activities.

5. I have given careful consideration to the submissions made by the applicant. It would appear on the face of it that the Director NPL took a decision to operate the 1.1.1994 list when there was a final priority list of 16.5.1994 and further that he issued an allotment letter in favour of Shri Rustagi when the Director General, CSIR, had already decided earlier that Director NPL could not operate the priority list of 1.1.1994. The conduct of Director NPL in this respect therefore does raise a doubt about his bonafides. The question however is, irrespective of the conduct of the Director NPL, whether the applicant has any right for allotment of TRSA 74. I have already held in OA No.981/95 that the order reducing the pay of Shri Rustagi is to be set aside. In view of this, Shri Rustagi would have his entitlement as per his original pay, which was reflected in the 1.1.1994 priority list. In that, his position was in any case above that of the applicant in this OA. Thus, the applicant has at present no better claim than that of Shri Rustagi.

6. The applicant is also aggrieved that in the new tentative priority list, he is being shown at S.No.14 and his priority has been depressed by the respondents by treating his service with RPF Hyderabad as dies non. The legal counsel for the respondents points out that the decision in regard to this had been taken as far back

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as on 10.8.1993 and was communicated to the applicant, who had not chosen to challenge that decision. The respondents admit to a mistake while preparing the priority list of 16.5.1994 but say that when the latest tentative priority list was being prepared, the concerned Section had given an endorsement dated 8.3.1995 intimating that the period from 1.12.1984 to 29.3.1987 was treated as dies non and therefore could not be counted for purposes of seniority for allotment of the accommodation.

7. In the light of the above discussion, it is clear that so far as the question of TRSA 74 is concerned, even if the allotment was issued in favour of Shri Rustagi in somewhat questionable circumstances, in view of the fact that Shri Rustagi's pay had been reduced wrongly in as much as it was done without giving due opportunity to show cause, he maintained his priority higher than the applicant and therefore the relief sought for by the applicant in regard to allotment of accommodation in preference to Shri Rustagi cannot be granted.

8. In view of the fact that the respondents have now drawn up another tentative priority list and have invited objections, it is open to the applicant to make his representations to the respondents in case he feels that his name has been wrongly placed in the tentative priority list. The issue of allotment of accommodation cannot be made a cover for agitating the decision of the respondents for treating some period of his previous service as dies non. This is a separate issue and the applicant has to take it up separately in accordance with

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law, in case he has any cause for action and the same is within limitation. In the present proceedings, I do not consider that the Tribunal is called upon to adjudicate on this issue.

The O.A. is accordingly dismissed. The parties will suffer their own costs in both the O.A.s.

R.K. Ahooja
'R.K. AHOOJA'
MEMBER 'A'

Attested

Bimla Devi
(बिमला देवी)

(BIMLA DEVI)

कोर्ट अधिकारी/Court Officer

केन्द्रीय प्रशासनिक अधिकरण

Central Administrative Tribunal

प्रधान न्यायाधीश, फरीदकोट हाऊस

Principal Bench, Faridkot House

नई दिल्ली/New Delhi-110001

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