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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.796 of 1994

This 7th day of June, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

Balbir Singh Yadav,
G-30, N.P.L. Colony,
New Delhi.

..... Applicant

By Advocate: Shri B.B. Raval

VERSUS

Union of India, through:
The Director General,
Council of Scientific and Industrial Research,
Anusandhan Bhavan,
Rafi Marg,
New Delhi.

..... Respondent

By Advocate: Shri A.K. Sikri

O R D E R

(By Hon'ble Mr. B.K. Singh, M(A)

The applicant is aggrieved by his not being appointed to the post of Technician Grade-VIII in the scale of pay of Rs.1400-2300 in Group-II consequent upon the O.M. No.3/72/92-E.III dated 20.7.1993 issued by the Senior Controller of Administration, National Physical Laboratory (NPL) asking for willingness of the non-teachnical employees for induction into the technical side in Group-II. A copy of this OM is marked as Annexure 'A' of the paper book). He is further aggrieved that in spite of his clearing the trade test held on 18.9.93 which he had taken in response to respondents O.M. No.3/73/90-E.III dated 10.9.93, he has not been appointed to the above mentioned post of Technical Grade-VIII. This Office Memo has been marked as annexure 'B' of the paper-book.

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2. The brief averments in the OA are these. The applicant was working in the National Physical Laboratory (NPL) under the Council of Scientific & Industrial Research (CSIR) registered under Registration of Societies Act, 1860. The applicant joined as Daftry on 9.4.1957. He was recruited as Lower Division Clerk in August 1960. He was promoted to the post of Upper Division Clerk in July 1979 and subsequently to the post of Assistant (Grade, Rs.1400-2600) in November 1987. The applicant has been made to superannuate on attaining the age of 58 years. It is stated that the CSIR had introduced a scheme vide their letter No.17(65)/(P-42)/90 - PPS dated 22.6.1990 (annexure A-I) whereby non-technical staff were taken on the technical side in group 'C' post. In this scheme it is envisaged that those who have completed 30 years service or have attained the age of 50 years or who posses or acquire technical qualification for Group-II posts or who have undergone atleast 6 months in-house training or training imparted by outside professional agencies in areas of computerisation, office automation etc., would be eligible for induction in the technical stream. A committee comprising heads of various Units was appointed in order to consider the cases of eligible candidates for induction from non-technical side to technical side. This enabled the employees brought on the technical side to superannuate after attaining the age of 60 years instead of 58 years.

3. It is stated that in the light of the above scheme the applicant underwent six months in-house training organised by the respondents themselves in the computer and word processing between March 1991 and October 1991 and a certificate was also awarded to him.

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In the light of O.M. No.3/72/92-E.III dated 10th Decembe, 1992 application from non-technical employees, who fulfilled the eligibility conditions and who were willing for induction into technical side, were invited. The applicant, who is stated to be fulfilling the eligibility conditions, applied for the said induction. No test was conducted and in the meanwhile another O.M. was issued by the NPL dated 20th July 1993 inviting application on similar lines for induction into technical side in Group-II and the applicant again submitted his application in the prescribed proforma on 5th August 1993 along with a certificate issued by the NPL for the in-house training in computer and Word Processing. Subsequently vide O.M. No.3/73/90-E.III dated 10.9.93 (annexure 'B') the NPL proposed to hold a trade test on 18.9.93 to consider the cases of the persons holding non-technical posts in the scale of pay of Rs.1400-2600, for induction into the technical side in group-II. The applicant participated in the trade test held on 18.9.93 and subsequently the expert committee recommended the case of the applicant for induction from non-technical side to technical side and the same was forwarded to the DG, CSIR for approval. While this was going on, the CSIR issued a letter to the NPL with reference to the letter of Director, NPL (annexure A-3) on the subject of induction of non-technical staff into technical side and stated therein that the case of the applicant will be considered after the Merit and Normal Assessment Scheme (MANAS) was revised and approved by the competent authority. In this connection a copy of the D.O. letter dated 12th September, 1990 from the Jt. Secretary (Admn.), CSIR to the Director, NPL (annexure A-4) has been referred to according to which the MANAS was to be made applicable for two years from 1.4.88 to 31.3.90.

Subsequently, the CSIR passed a resolution appraoving the revised scheme and conveyed its sanction vide letter dated 13th april, 1993 (annexure A-5) and this communication was sent to all Heads of NPLs/Institutes directing them to conduct the assessment test for the year 1991-92 according to the old scheme, sanction for which was given retrospectively for two years from 1.4.88 to 31.3.90.

4. It has been pointed out that though the applicant was similarly situated as one Shri T.D. Joshi, Assistant (G) who was inducted on 28.8.92, (just three days before the actual date of his retirement, i.e. 31.8.92, after attaining the age of 58 years) from ^{non-}technical side to technical side. This enabled him to get an extension of two years as a technical hand. The validity of MANAS had already expired on 31.3.1991 and he did not have any valid sanction onthe date of the order, i.e. 28.8.92. It is only in 1993 that this scheme was extended for another one year again retrospectively. Copy of O.M. dated 28.8.92 issued by the CSIR according approval to induct Shri TD Joshi into technical side with immediate effect, is appended as annexure A-6 to the OA.

5. Similarly, another Assistant (G), Shri C.P. Gaur working in the NPL along with the applicant, was also inducted on the technical side in group-II while he was also due to superannuate on attaining the age of 58 years on 31.8.92. In this connection also MANAS was not in existence and it was only subsequently that post-dated extension was given with retrospective effect. The OM dated 24.8.92 issued by the CSIR according approval to the induction of Shri CP Gaur into teachnical stream is available at annexure A-7 of the OA. Like Shri TD Joshi, this extension also enabled Shri Gaur to superannuate on attaining the age of 60 years, while performing the same

and similar duties which they were performing prior to their induction into technical side. The applicant filed a representation (annexure A-8) to the authorities dated 23.2.1994 (annexure A-8) submitting that over five months had passed since he appeared in the trade test on 18.9.93 but he had not heard anything from the respondents about his induction into the technical side. In this representation he further submitted that he was denied the benefit of the induction while two of his colleagues, named above, were given this benefit a few days before their actual date of superannuation from non-technical side. He stated therein that like his above-named two colleagues he was also eligible in all respects for induction into technical stream. He further stated therein that MANAS had nothing to do with this induction. The applicant filed the present application after he did not receive any response to his representation from the respondents.

6. The principal relief sought in this application is that the respondents be directed to issue orders of his induction into technical stream in Group-II effective from a date prior to his normal date of superannuation on reaching 58 years, i.e. 30-4-94 so as to enable him to serve upto the age of 60 years. He has also prayed for grant of cost of the application.

7. A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for. Heard the learned counsels, Shri B.B. Raval for the applicant and Shri A.K. Sikri for the respondents.



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8. The material averments in the counter affidavit are these. The present application is misconceived, untenable and without any legal right. It is admitted that the scheme of induction of non-technical staff into technical side was introduced under MANAS which is applicable only to scientific and technical staff. This scheme was initially sanctioned upto 31.3.90. It was subsequently extended upto 31.3.91 and again extended upto 31.3.92. With effect from 1.4.92 the MANAS was replaced by a new scheme and the new criteria/scheme was circulated vide letter dated 6th April, 1994 making it applicable from 1.4.92. This is annexure R-1 of the counter affidavit.

9. It was the Governing Body of the CSIR which revised the criteria for induction of non-technical staff into technical stream in its meeting held on 23rd April, 1993 and 18th May 1993. In view of this revised criteria the respondents have stated that the applicant became ineligible for induction into technical side. This new scheme withdrew the power from the Unit Heads and transferred it to the DG, CSIR and it further laid down that induction is permitted only before one attains the age of 50 years and the induction will be against the available vacancy in group-II and this would be filled up by an appropriate committee comprising 3 experts, ^{one} each from outside CSIR System/sister Laboratories and from within the NPL. The induction would be need based and in the area in which vacancies are required to be filled up. It was further laid down that persons with technical qualifications required for direct recruitment in Group-II notified vide letter No.2(Misc.)/Rectt./94-R&A



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dated 31.3.1994 will be given preference. In case of those who do not fulfil the requirements will be scrutinised thoroughly by the committee before they could be inducted into technical stream. Although it is admitted that the applicant was called for trade test which he had cleared also, but he cannot take any advantage of that. Even after passing the trade test when the matter was referred to the DG, CSIR, the CSIR wrote back to the Director NPL vide his letter dated 14.10.93 that the proposal for induction of the applicant into technical cadre will be considered after the MANAS is revised and approved by the competent authority. It is further stated that on the basis of the revised criteria. the applicant was not considered eligible since he did not fulfil the required qualifications and as such he could not be inducted into technical stream. The applicant remained on the non-technical side till he reached the age of superannuation on attaining the age of 58 years which is the normal age for retirement of persons on non-teachnical side.

10. We have heard the learned counsels for the parties and have also perused the record of the case. It is admitted by both the parties that two of applicant's colleagues, S/Shri Joshi and / ^{Gaur} had been inducted from non-technical side to technical side on 28.8.92 and 24.8.93 respectively, i.e. just ^a few days before their actual date of superannuation. It is not controverted that the Governing Body is the competent authority for revising the rules and it is also competent to make the rules applicable retrospectively. The entire management of CSIR vests in the Governing Body which is competent to make reacrtument/promotion/induction rules and it is

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also competent to revise the same. It is evident that
not
MANAS was in existence on 1.4.92 since the last extension
had expired on 31.3.92. There was a vacuum from 1.4.92
till the revised circular containing the new criteria
was issued on 6.4.1994 declaring the new scheme effective
retrospectively from 1.4.92. By implication, since this
induction of non-technical staff into technical side was
also an integral part of that scheme, this would be
deemed to be non-functional during the period from
1.4.92 till the date the new scheme was introduced.

11. The case of S/Shri TD Joshi and CP Gaur for
purpose of induction were decided on 28.8.92 and 24.8.92
respectively and this is also admitted by both the
parties. It is not understood as to how these two cases
were decided when MANAS scheme had ceased to operate from
1.4.92. It is also not understood how they got the
benefit of the scheme and how and why the applicant was
not given this benefit eventhough he had qualified the
trade test held on 18.9.93. It is admitted by the
respondents that he cleared the trade test and that his
case was duly recommended for induction into technical
side by the NPL where he was employed. It is also true
that the case of the applicant was not approved by the
DG, CSIR and the Jt. Secretary (Admn.) sent a d.o. letter
saying therein that new criteria for induction into
technical side was before the Governing Body and as such
it was not possible to approve the case of the applicant.
It is not controverted that the old scheme was in force
till the year 1991-92 i.e. upto 31.3.1992. The order
dated 28.8.92, referred to above, stipulated that Shri TD

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Joshi will carry the post of Assistant (G) held by him in the non-technical cadre to the technical side till the date of his superannuation when this post will again revert back to the administrative side. The other letter dated 24.8.92, also referred to above, states that Shri C.P. Gaur will be appointed against a vacant post of Technician Group-II and that on his superannuation this post will be released to be filled up in normal course. In both these cases, it is clear that the respondents had made use of the scheme which was not in existence. It is also true that when the applicant took trade test the revised scheme had not been introduced and the said scheme came into force only from 6.4.1994 applying it retrospectively w.e.f. 1.4.1992.

12. While admitting the case of the respondents that the Governing Body was fully competent to revise the rules and to make it applicable with retrospective effect, we are absolutely clear in our mind that grave injustice has been done to the applicant in the sense that he had cleared the trade test on 18.9.93 and he was fully eligible for being inducted into technical cadre since he was similarly placed like his above-named two colleagues. Thus, Article 14 of the Constitution gets attracted. This is a case of clear discrimination against the applicant notwithstanding the competence of the Governing Body to revise the rules and to make those applicable with retrospective effect. Therefore, if S/Shri TD Joshi and CP Gaur could be inducted according to the old scheme, even when the same had ceased to be operative on the date of their induction and the new scheme had not come into force till then, the applicant should have also been given the benefit of the old scheme. It is another matter that the Governing Body had the competence to revise the rules and to apply the same

retrospectively. But if on the basis of the inoperative scheme (MANAS) S/Shri Joshi and Gaur could be given the benefit, it would be sheer discrimination and arbitrariness on the part of the respondents to deny the same benefit to the applicant who is similarly situated like his two colleagues.

13. We know that the applicant has been made to retire on 30.4.1994 but in the interest of equity and justice, it is absolutely necessary that he should be taken back in service and inducted into technical side on the basis of old inoperative scheme. Thus, he will superannuate at the age of 60 years like his above-mentioned two colleagues. He will not be entitled to any pay and allowances for the period he has not worked in the technical stream. He will draw his pay and allowances from the date he joins. If there is no vacancy, his own vacancy on the non-technical side will be transferred to the technical side as was permitted in the old scheme.

14. The application is allowed and the respondents are directed to comply with these orders within two months from the date of receipt of a certified copy of this order.

15. With these directions this O.A. is disposed of leaving the parties to bear their own costs.

(B.K. Singh)
Member (A)

J.P. Sharma
Member (J)