

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2403/2000
M.A.No.2855/2001
M.A.No.1427/2001

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 31st day of August, 2001

1. The Defence Marine Engineering Technical Staff Welfare Association represented by: Sh. Sewa Singh General Secretary 64, Sector-3, Sadiq Nagar Delhi.
2. Sh. V.K.Chawla Senior Technical Assistant-I A-32, West Patel Nagar New Delhi - 110 008. ... Applicants

(By Advocate: Shri S.C.Luthra)

Vs.

1. Union of India through Secretary Ministry of Defence (Defence Production) New Delhi - 110 011.
2. The Director General of Quality Assurance South Block, Ministry of Defence New Delhi - 110 011. ... Respondents

(By Advocate: Shri S.Mohd. Arif)

O R D E R

By Mr. Shanker Raju, Member (J):

MA 2855/2001 for joining together is allowed.

2. MA 1427/2001 for bringing the document dated 25.6.2001, whereby the applicants have been accorded the higher pay scale w.e.f. 1.1.1986 along with others, is also allowed.

3. The applicants in this case have assailed an order passed on 8.11.2000 whereby a penal has been drawn with regard to the promotion to the grade of Junior Scientific Officer, Gr.-B Gazetted in the pay

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scale of Rs.7500-250-12000 for the year 2000-2001 in Directorate General of Quality Assurance Organisation (hereinafter called as 'DGQA.') Organisation in the Engineering Discipline. The applicants have also assailed another order dated 21.3.2000 issued by the respondents whereby a DPC has been convened as per the amended Recruitment Rules notified on 8.4.2000. The applicants have sought to quash the order dated 8.11.2000 and also direct them to prepare afresh panel maintaining the seniority and ratio of STAs as per 20 point roster.

4. Briefly stated that Applicant No.1 is a General Secretary represented by the Defence Marine Engineering Technical Staff Welfare Association whereas Applicant No.2 is working as Senior Technical Assistant (in short 'STA'). As per the unamended Recruitment Rules notified on 20.2.1982, the feeder categories for the same were Foremen/ Senior Scientific Assistant/Senior Technical Assistant/Chief Draughtsmen. As per the Recruitment Rules, 20 point roster was followed in the chronological order of Foremen, SSA, STA and Chief Draughtsmen. Vide Office Memorandum, dated 16.6.1998, on the recommendations of the Board of Arbitration, Respondent No.1 has allowed 41% of STAs placed in the pay scale of Rs.2375-3500 w.e.f. 1.1.1988 but, according to the applicants, this was only a placement and did not amount to promotion as the benefit of FR 22(1) (a) was not extended. Consequent upon the recommendations of the Fifth Central Pay Commission, STAs have been redesignated as STA-I in the higher grade and STA-II in the lower grade. Vide SRO 84, dated 21.3.2000 and

notified on 8.4.2000, i.e., the amended Recruitment Rules, the promotion to the grade of JSO was to the feeder cadre of Foreman/SSA/Chief Draughtsman/STA-I in the respective disciplines. The respondents have not held any DPC from 1994 to 2000 with the result vacancies are accumulated. While preparing the panel, Annexure-A1 all the vacancies are clubbed and the panel has been formed on the basis of the preamended Recruitment Rules with the result 15 STAs would have been empanelled, only 9 STAs have been included. Prior to amendment there was no distinction between STA-I and STA-II and the panel is to be drawn on the basis of 20 point roster which stipulate that 1st vacancy has to go to Foremen 2nd vacancy has to go to SSA 3rd to Chief Draughtsman and 4th to STA. On filling up of 20 vacancies, the roster is to be started afresh, which is progressive one. In the panel impugned, STAs have been placed enbloc junior to Foreman, Chief Draftsman and SSAs, which is not permissible as per law, for which a representation was made by the applicants but without any avail. The applicants contend that they have (41% SSAs) already been accorded an higher pay scale on the basis of the award of the Board of Arbitration w.e.f. 1.1.1988 by the respondents vide their letter dated 16.6.1996. The learned counsel of the applicants states that the respondents have failed to follow the 20 point roster under the unamended recruitment rules and with the result less number of posts have been allotted to STAs. According to him the Recruitment Rules amended on 8.4.2000 have no retrospective effect and vacancies occurred prior to the amendment should have been filled as per the unamended recruitment rules. It is

also stated that the DPCs to be held year-wise and the respondents have wrongly placed STAs enbloc juniors to all other categories. The learned counsel of the applicants has stated that it has been admitted by the respondents that DPC could not be held as per the general instructions of the DoPT whereas the statutory rules have not been followed as such the action of the respondents is not justifiable. By drawing our attention to the decision of the Apex Court in P.Mohan Reddy Vs. E.A.A.Charles and Others, 2001(2) Scale 105, it is contended that the panel is to be formed, when the vacancies had arisen for different years, in accordance with the rules. For this, the learned counsel for the applicants have also placed reliance on the decision of Apex Court in Y.V.Rangaiah Vs. J.Sreenivasa Rao, AIR 1983 SC 852. The learned counsel for the applicants states that the rules have been amended by the respondents only on 8.4.2000 and before that statutory rules, i.e., unamended RRs, which are in force of 1982 should have been resorted to while drawing up the panel in the vacancies which have admittedly occurred prior to 8.4.2000 and in absence of any retrospective amended rules the same would not be applicable to the vacancies arised prior to the amendment. While drawing our attention to the DoPT guide-lines, on holding of DPC, of 10.3.1989, it is contended that in case the DPC has not been held for number of years, the vacancies arose during that period should be filled separately and as per the recruitment rules in force at the time the vacancies have arisen. It is stated that the DPC should be convened at regular intervals and should not be postponed on the ground that the Recruitment Rules are

being reviewed or amended. Also placing reliance on the decision of the Apex Court in Vinod Kumar Sehgal vs. Union of India, 1995(4) SCC 246, it is stated that the separate selection for vacancies of each year ought to have been made as per the instructions. It is also stated that DoPT decision not to hold the DPC would ever go way to the recruitment rules which are statutory in nature in view of the Article 309 of the Constitution of India. The learned counsel for the applicants further contends that due to not following the 20 point roster and adoption of amended recruitment rules, the applicants have been deprived of their legitimate right of empanelment and further promotion.

5. Strongly rebutting the contentions of the applicants, the learned counsel for the respondents contended that after 1.1.1988, on the basis of the award of Board of Arbitration, 41% of posts each in the grades of SSAs and CDMs were accorded higher revised pay scale of Rs.2375-3500, whereas the post of STAs and CDMs continued in group 'C', which was revised in May, 1994 to Group 'B' Gazetted. As such while Group 'B' Gazetted promotion post of JSO was in the pay scale of Rs.2000-3500 few category of Foreman, SSA(HS) and CDM(HS) have also been placed in Group 'B' Gazetted at an higher pay scale of Rs.2375-3500. According to the respondents, DoPT is nodal authority in the matters of promotion. On consent, the DoPT advised the respondents not to hold the DPC for promotion to the post of JSO as holding of DPC was not feasible and the DoPT further suggested for rationalisation of cadre structure, which has been

attained on implementation of the recommendations of the 5th CPC in respect of the post of JSO and the post of JSO was fixed in the upgrade scale of Rs.7500-12000 instead of the normal replacement scale of Rs.6500-10500. As regards the cadre of STAs, the upgraded scale of Rs.6500-10500 has been accorded, instead of normal replacement scale of Rs.5500-9000, w.e.f. 1.1.1996 and the cadre was restructured into two separate grades of STA Grade-I and STA Gr.II. Subsequently, in June, 1996, for operating of 41% of the posts of STAs and CDMs in each cadre, granted higher scale of Rs. 2375-3500 (pre-revised) retrospectively w.e.f. 1.1.1988. Again DoPT was consented which decided to defer the filling up of cadre of post of JSO unless the relevant recruitment rules are revised and amended. The O.M. dated 25.5.1998 issued by the DoPT providing inter-alia that in the case of posts granted higher pay scale and not the equated revised scale, the existing recruitment rules were not to be operated pending revision of the rules. According to them, rules were amended vide SRO 84, dated 21.3.2000 which had come in effect from 8.4.2000. The DPC had met for all the available vacancies of JSO as available on 31.3.2001 and drawn the panel. According to the respondents 1982 recruitment rules for the post of JSO had become in-operative after May, 1994 and as such upon the advise of the DoPT the DPC had not been held from the year 1994 to 2000. After restructuring cadre of STAs in terms of orders dated 12.2.1998, the persons holding the erstwhile posts of STA are now designated either STA-II in the upgraded revised pay scale of Rs.6500-10500 or STA-I in the still higher scale of



Rs.7450-11500. Applicants, having accepted the said replacement, they cannot contend that they have adversely affected by the empanelment. The clubbing of vacancies have taken place on revision of 1982 Recruitment Rules. It is stated that as per the revised recruitment rules for the post of JSO, it is the STAa-I who along with Foremen, SSAa and CDMA were eligible for consideration for promotion and the criteria laid down in the case of promotion to JSO prescribed the Bench Mark of 'Good' and there is an arrangement in single select panel with reference to their dates of regular appointment in the respective feeder grade. It is also stated that the applicants are not contending that any of the persons included in the impugned promotion panel above the STAs-I were later than those of the STAs-I in their grade. As regards the availability of 20% roster, according to the respondents, the same was vogue and the earlier is no longer applicable and it is only STAs-I who are along with other feeder categories were eligible for consideration for promotion.

6. In the rejoinder, the applicants contended that, in pursuance of the Arbitration Award of 1985, Foreman's pay scale has been granted to 41% SSAs but inadvertently STAs were left out which later on has been restored to them to 41% STAs like SSAs w.e.f. 1.1.1988, i.e., retrospectively. All 100% STAs/SSAs continued to remain feeder category for JSO posts. All STAs and SSAs formed single and uniform categories of employees and there was no change in the recruitment rules of STAs/SSAs. Therefore, all are possessed identical nature of qualification and were

promoted from common feeder categories of TAs and JSA-I respectively. Despite notification of Pay scale of Rs.2375-3500 as Group 'B' Gazetted there were no amendment in the Recruitment Rules and working service conditions of Foreman, SSA, STA and JSO. All the incumbents were performing the same job and functions and were reporting to JSO as usual but the respondents abruptly stopped the convening of the DPC after 1994 till November, 2000 and was without any justification. Rota-Quota of STA remained unchanged. 78 STAs were placed in the higher pay scale of Rs.2375-3500 w.e.f. 1.1.1988 which were only a placement and not the promotion and without following the FR 22(1)(a). It is also stated that the respondents stand is not correct in calling STA-I scale as promotion and new post creation. Therefore, STA-II and STA-I have been calling as common single group. The bifurcation was against the statutory recruitment rules and as such STAs have been shown as feeder category in Recruitment Rules for JSO and not STA-I. The applicants have contended that the service condition of employee turned which is retrospectively.

7. We have carefully considered the rival contentions of the parties and perused the material on record. No doubt, the respondents have clubbed the vacancies pertaining to years 1994-2000 and have filled up the same according to the amended Recruitment Rules which had come in existence only on 21.3.2000. As per the guide-lines of DoPT regarding the procedure to be observed by DPC on 10.3.1989 it has been observed that holding of DPC meeting could not be delayed on the ground of review/amendment of

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the Recruitment Rules, the vacancy should be filled in accordance with the Recruitment Rules in force on the date of vacancy occurred. It is also provided that year-wise DPC is to be held and panel should be drawn. In this case, it is admitted by the respondents that no DPC was held from 1994-2000 and the only reason assigned is that the Recruitment Rules have become inoperative and following the general instructions of DoPT and their advise. They have resorted to preparation of panel under the amended rules which had come in existence only in 2001. The fact remain is that as the vacancy existed prior to 8.4.2000, the old recruitment rules which held the field should have been followed which interalia provided for 20 point roster with the result of the following the new rules approved posts have been reduced being allotted to STAs and the respondents have placed STAs enbloc junior to all feeder categories of quota to be maintained for fixing seniority.

8. In our view, an administrative instructions, i.e., the advise of the DoPT, would not have superseded the statutory recruitment rules framed under Article 309 of the Constitution of India. The respondents should have held DPC year-wise and if held later on the rules which were in force at the time of vacancy are to be followed and admittedly the old rules wherein the 20 point roster system is to be adopted which stipulates ratio of Foremen/STA/CDM/SSA to the ratio of 11, 6, 2 and 1 respectively. The placement of 41% of STAs in the pay scale of Rs.2375/- will not amount to a promotion as benefit of FR-22(1) ibid was not extended. Apart from this the applicants

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have also been accorded the scale of Rs.2375-3500 w.e.f. 1.1.1988 by an order passed on 25.6.2001. The contention of the respondents that on the advice of the DoPT and on account of changed circumstances where feeder posts have been classified as Group 'C' only, and has been changed to Group 'B' Gazetted, the cadre structure was rationalised and as a result the cadre of STA the provision was made in June, 1998 for operating 41% of posts retrospectively w.e.f. 1.1.1988 on the lines of SSA, etc. and on revision of the recruitment rules the promotion has been made is not legally justifiable. The restructuring would not have taken away the right of the applicants for being considered against the vacancy pertaining to the year 1994 to 2000 and for that the amended rules which had come into force in April, 2000 would not have been applied retrospectively for the vacancies pertaining to the year 1994-2000. In this view of ours, we are fortified by the decision of the Apex Court, in P.Mohan Reddy's case supra wherein placing reliance on the case of Y.V.Rangaiah supra it has been held that the unamended rules have to be followed in absence of any provision to this regard, the amended rules would not be applied retrospectively. Further our view is fortified by the ratio of the Apex Court in Vinod Kumar Sehgal's case wherein it has been held that the DPC is to consider the incumbent against the vacancies occurring in the years according to the unamended rules. Further we find that the STAs/SSAs continued to remain in feeder of JSO post as they found single and uniform category and there was no change of Recruitment Rules and their duties, functions and qualifications are identical. Mere implementation of

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Fifth Central Pay Commission's recommendations cannot be treated as a rationalisation or upgradation because no new post has been created and the service conditions and job requirements were changed. The respondents have stopped convening of DPC after 1994 without any justification despite existence of recruitment rules holding the filed in this period. Mere placement in higher scale would not be treated as promotion, the action of the respondents treating STA-I as feeder post in the amended Recruitment Rules for JSO as STA-II and STA-I common single group thus as such the fabrication of STA in further classes for the purpose of feeder category of JSO was against the statutory rules. STA should have been shown as feeder in RRs of JSO and not STA, because the post was not created at that time. As held in P.Mohan Reddy's case supra the service condition cannot be changed till the employees are in service or on post and amended rules cannot have retrospective effect till the STAs are promoted they are not eligible only STAs are to be considered for promotion to JSO under the new rules. As such we are of the considered view that the strength of 190 STAs should have been counted for feeder posts for JSO and not STA-I and STA-II.

9. Having regard to the discussion made above, and reasons recorded, we allow this OA and quash the impugned order at Annexure-A/I dated 8.11.2000 as it pertains to Engineering Discipline Part-B as having been prepared not according to the unamended Recruitment Rules, and ratio of seniority of STAs properly not maintained as per 20 point roster. The respondents are directed to prepare a fresh panel

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maintaining the seniority of ratio of STAs as per 20 point roster and as per the unamended rules pertaining to the vacancies from 1994-2000 by holding a review DPC within three months from the date of receipt of a copy of this order. The applicants in case found fit should be accorded all the consequential benefits in accordance with law. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

(GOVINDAN S. TAMPI)
MEMBER(A)

/RAO/