

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.340/2000

New Delhi this the 9th day of February, 2001.

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Sh. M.V.B. Rao & Others

...Applicants

(By Advocate Sh. K.K. Patel)

-Versus-

U.O.I. & Others

...Respondents

(By Advocates Sh. V.K. Rao & Ms. Anuradha)

1. To be referred to the Reporter or not? YES/NO

2. To be circulated to other Benches of
the Tribunal?

YES/NO

S. Raju

(Shanker Raju)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.340/2000

New Delhi this the 9th day of February, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. M.V.B. Rao,
CRRI, Staff Quarter No.V-8,
Maharani Bagh,
New Delhi.
2. Dr. P.K. Nanda,
R/o E-125,
Kalkaji, New Delhi.
3. Dr. Rupinder Gupta,
CRRI, Staff Quarter No.V-1,
Maharani Bagh,
New Delhi.

...Applicants

(By Advocate Shri K.K. Patel)

-Versus-

1. Council of Scientific and
Industrial Research,
a Society registered under the Societies
Regn. Act, 1860 through
its Joint Secretary (Admn.),
Rafi Marg, New Delhi.
2. Central Road Research Institute,
a Unit of CSIR, through its
Director, CRRI, Mathura Road,
New Delhi.

(By Advocates Shri V.K. Rao & Ms. Anuradha)

3. Sh. T.S. Reddy,
S/o Sh. T.T. Reddy,
Central Road Research Institute,
Mathura Road,
New Delhi.

...Respondents

(Respondent No.3 in person)

O R D E R

By Mr. Shanker Raju, Member (J):

MA-421/2000 for joining together in one
application is allowed.

2. The applicants, three in number have
challenged the implementation of order passed by this
Tribunal on 10.9.99 in OA-1644/93 by contending that with

✓ the implementation and grant of consequential benefits to R-3 Sh. T.S. Reddy their seniority would be adversely affected. The applicants have sought directions not to disturb their seniority while implementing the order dated 10.9.99 (supra) and also referring the matter to a Larger Bench for adjudication. In this OA the applicants have primarily questioned the ratio laid down by this Tribunal in OA-1644/93. The applicants place heavy reliance on the judgment of Apex Court in Gopabandhu Biswal v. Krishna Chandra Mohanty and Others, 1998 4 SCC 447 to contend that the only remedy before a person who is aggrieved by the orders of the Tribunal and not being a party therein to file a separate application before the Tribunal and persuade the Tribunal either to refer the question to a Larger Bench and if the Tribunal prefers to follow its earlier decision to file an appeal against the Tribunal's order.

3. The brief facts leading to filing of this OA are that according to the applicants respondent No.3 (R-3) Sh. T.S. Reddy has been given double benefit of assessment by counting the period from 2.3.82 to 15.4.83 towards counting of his eligibility period for assumption and promotion to the grade of Scientist E-II as per merit and normal assessment (MANAS) for the year 1986-87 counting eligibility from 2.3.87. Before that the same period has been counted towards the benefit of his posting in Scientist E-1 towards the Scheme post. The applicants have contented that the option given to R-3 was patently wrong as the circular giving option was meant for those who have been initially appointed in the Scheme or Project and not for regular employees. As the option was given mistakenly

the Scheme service would not count for assessment. The applicants had also questioned the order of the Tribunal (supra) on the ground that by allowing the promotion to R-3 in Scientist E-II from 2.3.92 onwards his period of 13 plus months has been counted twice for assessment. Another grievance of the applicants was that the benefits permissible under clauses 6 and 7 of the Scheme are applicable only to the persons recruited specifically for the Scheme from outside and not to the regular cadre employees like R-3. According to the applicants R-3 was not qualified under clause 8 as he had failed to render three years continuous service in the Scheme and was rendered only two years. According to the respondents the counting of Scheme service would amount to out of turn promotion as relatively junior persons would be conferred the right of seniority from the retrospective date. According to the applicants the benefit has not been accorded to other regular cadre staff in the Scheme post and thus were reverted back to their regular posts. The applicants vehemently contended that as in the higher post of Scientist E-II the applicants have already been promoted and if the consequential reliefs are accorded to R-3, that will upset the earlier promotions and this would also amount to regularising the Scheme post in violation of statutory instructions. The applicants further contended that R-3 on getting consequential relief benefits would be considered as Scientist E regular w.e.f. 2.3.82 and would become senior to the applicants in the regular cadre from March, 1982 onwards. R-3 would have marched over the applicant in the matter of seniority as after consequential benefits he would claim seniority from 2.3.87. The applicants have also challenged the order of

the Tribunal (supra) by contending that withdrawal of a benefit given mistakenly can be taken back and lastly contended that the applicants were not made necessary parties, though directly affected, by R-3 in OA-1644/93.

4. The official respondents have taken exception to the contentions of the learned counsel for the applicants by stating that once the order is passed by the Tribunal the applicants in essence are seeking setting aside of the same order, it is not possible except by means of a review petition. According to them the Tribunal has not applied the ratio of order of Tribunal in OA 317/87 Dr. Vijay Aggarwal v. Union of India, to the case of R-3 in OA-1644/93. According to them in compliance of the order of the Tribunal in OA-1644/93 (supra) the respondents are taking necessary steps as non-compliance would invite a contempt of the Tribunal's order dated 10.9.99. On merits also it has been contended that the benefit of assessment during the period 1987-88 to the grade of Scientist C-II has been given to R-3 in pursuance of the directions of the Tribunal. According to the respondents the OM issued by the respondents to withdraw the benefits given to R-3 has been set aside by the Tribunal in OA-1644/93. As a consequence, the result of interview of R-3 had been declared and in view of the directions and as a consequence which flow from the declaration of the result the R-3 is entitled for the benefits. The respondents further contended that it is not open to the applicants to raise the grievance of upsetting their earlier promotion, as one of the applicants promotion will have to be deferred since the promotion was made subject to the outcome of the OA filed by R-3. According to the respondents the case of R-3

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was not covered under the percentage limit prescribed for Scientist E-1 for their promotion to the next higher grade as such he could not be promoted as Scientist E-II w.e.f. 2.3.87. It is further contended that the claim of the applicants regarding march of R-3 over the applicants of his claim to seniority from 2.3.87 is untenable.

5. R-3 had filed a detailed reply by taking recourse to the judgement passed by the Tribunal earlier in OA-1644/93 and contended that the issue of double benefit and other ancillary issues have already been discussed, considered and adjudicated by the Tribunal. According to him the ratio laid down by the Tribunal was perfectly legal and in accordance with rules and instructions as the applicants have not challenged it by way of review. They have no right to approach the Tribunal again for criticising and getting the order set aside. R-3 further contended that the show cause notice issued to the applicants for withdrawal of option has already been set aside by the Tribunal. According to him vide an interlocutory order passed by the Tribunal on 2.11.93 the interests of the applicants is being safeguarded by a clear statement at bar made by the learned counsel of official respondents with regard to the fact that if the respondents succeeds in the present application irrespective of any other promotion he shall be given due benefit of assessment and promotion w.e.f. 2.3.88 with all consequential reliefs. Drawing attention to this order R-3 claims that as the Tribunal had allowed his OA and left the respondents to implement the rest, the respondents respecting their own statement have granted him consequential benefits and this would not affect the interest of the applicants. R-3

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further contends that as regards making the applicants as affected parties in OA-1644/93 the applicants demonstrated that they are not the affected parties and as per their own statement in para 4.2 of the OA the applicants were aware of the conditional promotion orders issued on 14.5.95 and accepted the same. According to the respondents as regards the opportunity of option erroneously given to him which is contrary to the order of the Tribunal in OA-317/97 is concerned, it has been contended that the same has been contrary to the order of the Tribunal in OA-1644/99 (supra). According to him the question of double benefit of service rendered by R-3 has been critically considered in that order, referred to above. The respondents elaborated the facts in his counter to demonstrate that he was rightly accorded the promotion and benefit of Scheme which has not caused any prejudice to the applicants.

6. The applicants have reiterated their pleas by filing rejoinder to the reply of official respondents as well as R-3.

7. We have considered carefully the rival contentions of the parties and perused the available material on record. We have also carefully considered the order of this Tribunal dated 10.9.99 in OA-1644/93. We are in respectful agreement with the judgment of the Coordinate Bench regarding the claim of R-3. The Tribunal has rightly observed that the case of Dr. Vijay Kumar Aggarwal in OA-317/87 is totally distinguishable as right from beginning the official respondents have not acted upon Rule 5 and rather acted upon Rule 6, 7 and 8 as a policy decision and adopted an irrevocable course. The options

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have been asked and R-3 has not been reverted back and as such there was an abandonment of Rule 5 as such by going back to Rule 5 after such a long period would be inconsistent and impermissible. As regards the Rules 6, 7 and 8, it is nowhere stated that the option is not to be applied to the regular employees of the Institute. Once the reversion is not effected and the R-3 is continued for a period of three months thereafter clause 5 was not intended to be acted upon. As such we feel that the option was rightly given to R-3 and other regular staff and the same was exercised rightly. The selection procedure for regular staff and outsiders are the same. We are also in respectful agreement with our coordinate Bench that the double counting of the period of service rendered under the Scheme or Project is not applicable in the present case. The facts of both the cases are absolutely different.

8. As regards the consequential benefits are concerned, the Tribunal in OA-1644/93 directed the respondents to work out the consequential benefits of the result of selection and in view of the statement made by the learned counsel of official respondents before the Tribunal on 2.11.93 the consequential benefits are rightly being accorded to R-3. In the result, we are of the considered opinion that the ratio laid down by the Tribunal in its order dated 10.9.99 in OA-1644/93 is founded on legal principles and is correct. We respectfully follow the same. The applicants have failed to persuade us to take a different view what has been taken in OA-1644/93 (supra). As such we are of the considered opinion that the

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applicants are not legally entitled to claim the reliefs prayed for. The OA is dismissed, but without any order as to costs.

S. Raju

(Shanker Raju)
Member (J)

'San.'

V.K. Majotra

(V.K. Majotra)
Member(A)