

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.No.553/2000

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

New Delhi, this the 13th day of July, 2001

Shri P.S.Randhawa
s/o late Subedar Shri Assa Singh Randhawa
Local Address:

B-56, Nanak Pura, Moti Bagh
New Delhi.

Permanent Address:
Village & P.O. Dharowali
Distt: Gurdas Pur, Punjab.

Place of Employment:
Employed as Senior Administrative Officer-I
Solid State Physics Laboratory
Govt. of India
Ministry of Defence (Research and Development
Organisation), Lucknow Road,
Delhi - 110 054. Applicant

(By Advocate: Shri Y.R.Malhotra)

vs.

1. Union of India service through Secretary to the Govt. of India Ministry of Defence Defence Research & Development Organisation D.H.Q., P.O., New Delhi - 110 011.
 2. Grievance Committee, R&D Organisation through its Chairman Ministry of Defence B Wingh, Sena Bhawan New Delhi - 110 011.
 3. Director, Solid State Physics Labouratory Ministry of Defence Lucknow Road Delhi - 110 054.
 4. Director Defence Science Centre Ministry of Defence Metcalfe House Delhi - 110 054.
 5. Secretary to the Govt. of India Department of Personnel and Training Ministry of Personnel Public Grievances and Pensions, New Delhi.
 6. Union Public Service Commission through its Secretary Dholpur House Shahjahan Road New Delhi.

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7. Shri P.C.Sharma, (now CAO)
c/o Director, Defence Electronics
Applications Laboratory
Raipur Road
Dehradun (UP).
8. Shri M.N.Borkar, SAO-I
c/o Director
Defence Research & Development Laboratory
Kanchan Bagh
Hyderabad - 500 058 (AP).
9. Shri Y.D.Garg, SAO-I
c/o Director
CEES, Matcalfe House
Delhi - 110 054.
10. Shri P.P.Waghmare, SAO-I
c/o Director
Defence Research and Development Estt.
Gwalior (MP).
11. Shri D.R.Joshi, SAO-I
c/o Director
Defence Research & Development Laboratory
Kanchan Bagh
Hyderabad - 500 058.
12. Deleted from the array parties.
13. Shri K.K.Mishra, SAO-I
Defence Institute of Technological Management
Landour Cantt.
Mussoorie (UP). ... Respondents
(By Advocate: Shri R.P.Agarwall)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant who has been working as Senior Administrative Officer (in short 'SAO') Gr.I w.e.f. 1.12.1997 has assailed an order passed by the respondents dated 10.2.1995 whereby a panel of SAO Gr.II for officiating promotion to SAO Gr.I Officer has been prepared without including the name of the applicant. The applicant has sought a direction to the respondents to convene a review Departmental Promotion Committee (in short 'DPC') pertaining to the years 1991, 1992 and 1993 separately under the provisions of SRO 288/85 and further consider the case of the applicant under 50% of the vacancies year

marked for promotion of SAO Gr.I and further accord of proper seniority and promotion with all consequential benefits since 1995 when Respondents No.7 to 13 were accorded the same after selection.

2. Brief facts of the case are that under SRO 288/85 dated 6.11.1985 regarding method of recruitment to the post of SAO Gr.I 50% of the vacancies are to be filled up by promotion from feeder cadre of SAO Gr.II. On 1.1.1991 on account of bifurcation and constitution of separate cadre of Defence Research and Development Organisation (in short 'DRDO') and Director General of Quality Assurance (in short 'DGQA'), it was decided not to fill up the vacancies from 1.1.1991. Another SRO 70/93 dated 10.7.1993 inter-alia providing 33 1/3% of the vacancies of SAO Gr.I to be filled up by promotion. After October, 1990 first DPC met in February, 1995 and thereafter a panel of SAO Gr.II Officers was prepared and published. Wherein Respondents No.7 to 13 have figured and later on promoted as SAO Gr.I on 10.2.1995 in accordance with the SRO 70/93. The applicant contends that the post of SAO Gr.I prior to the bifurcation in the Store and Administrative Cadre of DRDO, DGQA and DTD&PA(Air) and even after the date of bifurcation i.e. from 1.1.1991 to the date of application of SRO 70/93, i.e., till 9.7.1993 were governed by SRO 288/85 in the cadres of DRDO and DGQA and the same law has to be applied from October, 1990 and January, 1995 while giving adhoc promotion from SAO-Gr.II to the post of SAO Gr.I and not in accordance with SRO 70/93 as the same was not in existence. It is contended that the vacancies of SAO Gr.I which arose from October, 1990 to October,

1993 were to be filled as per SRO 70/93 and thereafter governed by the provisions of the SRO 70/93. According to the applicant from January, 1995 to February, 1995, there were 24 vacancies of SAO Gr.I existed but SRO 288/85 pertaining to the vacancies of October, 1990 till 9.7.1993 was ignored and no promotion was made and the vacancies have been filled under the provisions of SRO 70/93. According to the applicant, had DPC applied SRO 288/85 in respect of vacancies pertaining to the above period, 50% of 24 vacancies, i.e., 12 vacancies of SAO Gr.I would have been filled under the provisions of SRO 288/85 instead of 7 vacancies and the applicant would have been promoted as SAO Gr.I w.e.f. 10.2.1995 along with Respondents No.7 to 13. The applicant has stated that the representation has been filed against the illegal action of the respondents but on reply, it has been stated that after bifurcation on 1.1.1991 it was decided not to fill up the vacancies under SRO 288/85 and the old Rule remained operative only upto 31.12.1990 before the bifurcation and the provisions of SRO 70/93 have been applied is not legal. The applicant's grievance is that year-wise panel should have been drawn and the recruitment rules in effect there in should have been made applicable to promote the candidates under 50% of quota of vacancies for promotion and from 9.7.1993 the new SRO should have been applied. It is the contention of the applicant that despite making so many representations the respondents have not corrected their mistake/illegality. The applicant by drawing attention to 8 posts of SAO Gr.I were advertised under SRO 70/93 contended that there were 24 posts on the

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date of DPC as such 12 posts by promotion should have been filled in February, 1995 in terms of SRO 288/85 upto 9.7.1993 and thereafter in accordance with the SRO 70/93. Placing reliance on the ratio of Hon'ble Apex Court in Y.V.Rangaiah Vs. J.Sreenivasa Rao, 1983(3) SCC 264 dated 10.3.1989 regarding procedure to be adopted, it is contended that the action of the respondents was neither in accordance with the rules of the DPC and it is inconsistent with the ratio of the Hon'ble Apex Court. It is also contended that SRO 70/93 which is applicable only from 10.7.1993 in absence of any provision mentioned therein for its retrospective operation, cannot be applied with effect from 1.1.1991 and would only w.e.f. 10.7.1993. Placing reliance on decision of Hon'ble Apex Court in Civil Appeal No.4721/95 dated 25.4.1995 - 48 Swamy's CL Digest 1995/2 page 50, in Vinod Kumar Sangal Vs. Union of India and Others, it is contended that where the DPC is unable to meet on regular intervals for reasons beyond its control, year wise panel is to be drawn. Because of clubbing of vacancies in one year in the subsequent years depriving chances of promotion of eligible persons. It is also stated that vacancies accrued prior to the amendment of the recruitment rules would be governed by the Recruitment Rules prior to the amendment. The grievance of the applicant is that the SRO 70/93 has reduced the promotion quota by 17% which is against the service interests of the persons in the feeder cadre for promotion as SAO Gr.I. It is also contended that SRO 70/93 has never been notified and there was no panel prepared for promotion to the post of SAO Gr.I w.e.f 1991, 1992 and 1993.

3. Official Respondents No.1 to 6 took preliminary objection inter-alia contending that the impugned order dated 10.2.1995 has been challenged after the rejection of the representation of the applicant on 7.11.1996. Mere repeated representations would not extend the limitation period and as such the OA is hopelessly time barred by limitation as it was filed beyond the prescribed statutory limitation of one year as envisaged under Section 21 of the Administrative Tribunals Act, 1985 and has placed reliance to substantiate his plea on a Constitutional Bench decision of the Hon'ble Supreme Court in S.S.Rathore Vs. State of M.P., 1989(4) SCC 582. It is also contended that now the promotees have been accorded seniority it would be unjust to unsettle the settled position after a delay of about five years. Further subsequent DPCs were also held in 1996, 1999, 1999 and 2000, the applicant has not put any grievance against the same and as such he is estoppel for challenging the same. On merits, it is contended that after bifurcation old rules of 1985 have become redundant as such it has been decided not to fill up the vacancies accruing to the promotion quota in the bifurcated cadre from 1.1.1991 to 9.7.1993 and the same were kept pending and were filled up in accordance with the new Recruitment Rules published by SRO 70/93. The learned counsel for the respondents have also placed reliance on the ratio of Hon'ble Apex Court in Dr. K.Ramulu and Anr. Vs. Dr.S.Suryaprakash Rao and Others, 1997(3) SCC 59 to contend that if Government decides and take a conscious decision not to fill up any vacancies till the amendment of the recruitment rules then omission

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to prepare and operate such panel under the old rules and failing which on the basis of the new rules would not be an illegality. According to the respondents while processing DPC proposal for promotion to the grade of Chief Administrative Officer, the matter was explained to the UPSC that consequent upon bifurcation of the combined cadre w.e.f. 1.1.1991 into separate cadres of DRDO including DTD&P (Air) and DGQA, it was not possible to fill vacancies under the provisions of the old recruitment rules because there the vacancies could be filled in the combined cadre only as there was no recruitment rules in the year 1991, 1992 and 1993 to regulate the filling up of the vacancies in the bifurcated cadre, it was not possible to approach the UPSC to draw panels for promotion.

4. Consequent upon the publication of new recruitment rules into force w.e.f. 10.7.1993 and on allocation of officers to newly constituted cadres the commission was approached to draw a panel to fill up the vacancies by referring to the letter of UPSC dated 17.1.1994. Our attention has been drawn to the fact that the rules promulgated under SRO 70/93 would not be made applicable on the vacancies accruing on 1.1.1991 and would be treated as vacancies for the year 1993.

5. As regards the calculation of vacancies during the period 1.1.1991 to 9.7.1993, 12 vacancies (including two unfilled vacancies from previous DPC) became available in the SAO Gr.I and on completion of new RRs four vacancies were filled to promoted quota of 33 1/3% treating them as vacancies for 1993 as

during 1991 there were no RRs, for the bifurcated cadre. In addition, three more vacancies became available after in the promotion quota between 9.7.1993 and December, 1994. Accordingly, seven officers were empanelled for the year 1993-94 by UPSC upto 30.1.1995. It is also contended that even assuming without admitting that old RRs were to be applied six vacancies were taken into account by 50% quota in promotion till 9.7.1993, nine vacancies including 3 arising after 9.7.1993 are to be filled by the UPSC. The applicant figuring at Sl. No.11 of the seniority list of SAO Gr.II in respect of assessment done by the UPSC to first 11 officers including the applicant, the applicant could not have been empanelled and promoted even against 9 vacancies, since the assessment of all the ten officers senior to the applicant was either better than or equal to him. As such, even taking into account the contention of the applicant for the sake of arguments he would not have made it as SAO Gr.I in the DPC held in the year 1995.

6. It is also stated that as the last representation of the applicant was rejected on 7.11.1996 his case is barred by limitation. As regards the ad hoc promotion, made during this period, the same have never been challenged or questioned by the applicant and the respondents have denied that there were 24 vacancies available of SAO Gr.I between 1.1.1991 to 9.7.1993. According to them 19 vacancies existing upto December, 1994 and 8 deputaionist vacancies were advertised vide circular dated 28.6.1995. The DPC held on 30.1.1995 accounted for

promotion quota vacancies upto December, 1994 including advertisement dated 28.6.1995. Further two more deputationists quota vacancies arising after December, 1994 were included as such, it is contended that what has been stated by the applicant regarding the existence of 24 vacancies is not correct.

7. Respondent No.12 has already withdrawn from the array of parties and Respondents No.7 to 13 have not filed their reply as such proceeded ex parte.

8. We have carefully considered the rival contentions of the parties and perused the material on record including the DPC record. The issue for our determination is whether the decision of the respondents to apply the new RRs circulated under SRO 70/93 to the vacancies pertaining to year 1991, 1992 and 1993 is correct in view of the fact that implementation of the SRO 70/93 has been made effective from 10.7.1993. Another issue which is to be considered is whether the respondents are right in clubbing the vacancies and holding the selection during the vacancies available in the year 1991, 1992 and 1993 vacancies applying the RRs which were brought in force on 10.7.1993. The contention of the applicant that the respondents should have drawn year wise panels for 1991 and upto 9.7.1993 they should have calculated the vacancies under the 50% promotion quota as by applying SRO 288/85 and thereafter applying SRO 70/93 to the vacancies fall in after 9.7.1993 could have enhanced the consideration zone and applicant would have been considered for being promoted as SAO Gr.I w.e.f. the date his other

colleagues were accorded the same on holding DPC in the year 1995, is not legally tenable. We find that on bifurcation in the year 1991 and till the period 1993, during this interregnum the respondents have decided not to fill up the vacancies and this was not possible as either of the newly constituted separate cadres of DRDO and DGQA based on the old recruitment rules and the old SRO 288/85 could not have been applied as such in absence of any RRs in the year 1991, 1992 and 1993, i.e, upto 9.7.1993 to regulate filling up of posts and it was not possible to approach the UPSC to draw the panels. The Commission was approached and according to the communication the vacancies are to be filled up as per the new recruitment rules. The contention of the applicant that in view of the Y.V.Rangiah's case supra year wise panels should have to be drawn and rules as existed on the date of vacancies should have been applied for consideration of promotion. We do not agree with the learned counsel for the applicant on this contention. In K.Rmulu's case supra similar situation has arisen whereby the Government has decided to amend certain rules and not to fill up any vacancies till such amendments thereafter their action of not applying unamended rules to the vacancies existed prior to the commencement of the new rules the Hon'ble Apex Court was of the opinion that the respondents therein did not have any vested right for being considered for promotion in accordance with the unamended rules and also conscious decision of the Government not to fill up of the vacancies till the amendment of the existed rules, should not be challenged. Applying the above ratio, in the present case, we find that the reasons

accorded by the respondents for not filling up of the vacancies prior to 9.7.1993 under the old rules circulated vide SRO 288/85 are valid and legal. As on bifurcation of the combined cadre into two separate cadres, provisions of old RRs would not be applicable as it applies only to the combined cadre existing before 1991. As such the decision of the respondents whereby it is decided not to fill up the vacancies during the interregnum and thereafter decided to fill up the vacancies in accordance with new rules after bifurcation cannot be found fault with.

9. As regards the contention of the applicant that their existed 24 vacancies and by applying the old rules on 9.7.1993 and thereafter new rules on from 10.7.1993, the applicant would have put under select list and be given promotion as SAO Gr.I is not borne out from the records produced by the respondents. The contention of the respondents is absolutely correct when it refers to the calculation of the vacancies. We find that from 1.1.1991 to 9.7.1993 a total of 12 vacancies have became available and as per the new rules, by treating these vacancies for 1993, four vacancies filled in the promotion quota, three more vacancies had become available after 9.7.1993 and as such total seven vacancies were empanelled and applicant nowhere comes under the consideration zone and rightly he was not accorded the promotion as SAO Gr.I. Even presuming for the sake of arguments that these old RRs having 50% promoted is applied to the case of the applicant even then six vacancies filled till 9.7.1993 and three more vacancies are if at all added, even then the DPC held on 30.1.1995 could (not)

have promoted the applicant as the applicant's name stood at S1. No.11 of the seniority list and as the post in question is a selection post then the incumbents admittedly having placed equally or having better assessment than the applicant, would have been empanelled and not the applicant. In this way even assuming that the old RRs are made applicable upto 9.7.1993 the applicant could not have been accorded the promotion. We find no infirmity in the conduct of the DPC or in calculation of the vacancies by the respondents. As the applicant has failed to make out his legitimate claim for promotion to SAO Gr.I w.e.f. 1995. We find that the DPC has taken into consideration all the relevant guide-lines provided under the circular issued by the DoPT and there is no illegality or infirmity in the selection process. The calculation of vacancies has been rightly arrived at by the authorities.

10. Having regard to the discussion made above and reasons recorded, we do not find any merit in the present OA, the same is accordingly dismissed. No costs.

S.Raju
(SHANKER RAJU)
MEMBER(J)

V.K.Majotra
(V.K.MAJOTRA)
MEMBER(A)

/RAO/