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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 87/2000

New Delhi this the 19th day of September 2001

Hon'ble Shri Kuldeep Singh, Member (J)
Hon'ble Sh. Govindan S. Tampi, Member (A)

1. J.K. Gohri,
2. N.K. Bhandari
3. Tansen
4. Ramkishan
5. R.L. Sachdeva
6. S.C. Sharma
7. Smt Sarojini Gurnani
8. Smt Santosh Chopra
9. M.D. Dahiya
10. Joginder Singh
11. S.K. Roy
12. Kaushal Kumar Bholia
13. R.C. Jain

(All working as Technical Assistants 'C' (TA-C) in the
Office of Solidstate Physics Laboratory, Defence
Research & Development Organisation, Ministry of
Defence, Lucknow Road, Timarpur, Delhi-110054)

.... Applicants

(By Advocate : Shri G.D. Bhandari)

Versus

Union of India

1. The Secretary, Ministry of Defence,
Govt. of India, South Block,
New Delhi
2. The Scientific Adviser to Minister of Defence &
Director General Research Development
Ministry of Defence (DRDO), South Block
New Delhi-11
3. The Director
Solidstate Physics Laboratory,
Ministry of Defence (DRDO)
Lucknow Road, Delhi-54

4. The Director, Institute of Nuclear Medicines And Allied Sciences (INMAS), (Ministry of Defence (DRDO) Lucknow Road, Timarpur, Delhi-110054
(By Advocate : Shri S.M. Arif)

O R D E R
BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Applicants in this OA - J.K. Gohri and 12 others - are challenging the alleged discrimination meted out to them vis-a-vis their erstwhile colleagues by respondents order dated 20.1.1999 revising the pay scales of DRTC posts.

2. Heard S/Shri G.D. Bhandari and S.M. Arif, learned counsel for the applicants and the respondents respectively.

3. Briefly stated the facts are that all the applicants are Chargeman-II in the pre-revised grade of Rs.1400-2300/-, earlier governed by Defence Research & Development Organisation Group 'C' non-gazetted (Technical Scientific and other non-Ministerial) Posts Recruitment Rules, 1968, replaced by DRDO Technical Cadre Recruitment Rules, 1995. Schedule-III to the Rules prescribed qualifications for certain posts, from which ^{condition} the applicants with more than 20 years of service were exempted by Rule 11. Category of Chargeman-II consisted of diploma holders and others, direct recruits and promotees, who were kept in the same seniority list, reckoning their seniority from their respective dates of entry. Following the adoption of the new rules of 1995 and restructuring, those with diploma were called Technical Assistant-B (TA-B), and others were called Technical Assistant (TA), but both were kept in the same pay scale of Rs.1400-2300/-. No changes were made with regard to

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Chargeman-I, who remained in the grade of Rs.1640-2900/-.
Thereafter, TA-Bs became Sr. Technical Assistant (STA) and
TAs became TA -'Cs', but both were placed in the ^{same} scale of
Rs.1640-2000/- On revision of pay following adoption of 5th
Pay Commission's recommendations, both were placed on
Rs.5500-9000/- though later by the impugned order Sr.TAs were
granted the higher scale of Rs.6,500-10500/- which was denied
to TA-Cs, thus starting the discrimination among those who
belonged to the same category and same channel of promotion.
This discrimination was totally unjustified as both TA-Bs and
TAs had faced "common assessment" for their promotion to
become Sr. TAs and TA-Cs in the same grade and were in the
same seniority list. This was also coming in the way of
their promotion as TOs as a new grade of STA-C has also been
created for promotion as TO-A and T.O. in the grade of
Rs.2375-3500 ^(Prerevised) feeder grades remained to be STA and TA-Cs of
Rs.1640-2900/-, with the result equals have become unequal,
inspite of Rule 11 of the DRDO Rules of 1995, which had
exempted the requirement of educational qualification for
those in position with long service like the applicants and
they have been given the lower replacement scale of
Rs.5500-9000/-. Even if technical qualifications can be made
the basis of the grant of different scales, it cannot be done
by changing the service conditions of the existing employees,
mid way in their career, giving rise to hostile
discrimination. This was all the more improper as this
distinction has been made only in ^{the grade of 1} Chargeman-II and not in the
grade of Chargeman-I. In fact, prior to the revision both
TAs and TA-Bs had got their promotions by common assessment
and were placed in the same scale of Rs.1640-2900/- and this
arrangement has been upset and it amounted to reversion and
was thus incorrect. Applicants plead that the directions
contained in the impugned order dated 20.1.1999 bringing

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about the revision of scales was thus discriminatory, arbitrary and improper, and runs in the face of the specific exemption granted by Rule 11, more so as it sought to bring about the changes retrospectively from 1.1.1996. Hence this application seeking the following reliefs:-

- (i) set aside and quash Respondents' letter 20.1.99, A-1 whereby the applicants without diploma qualifications and direct recruit diploma holder so far having the same pay scale, given the different pay scale and a discrimination has been done in violation of Rule-11 of DRTC Rules, notified vide SRO-177 dt. 16.8.95,
- (ii) grant the pay scale of Rs.6500-10500 to the applicants at par with STAs w.e.f. 1.1.96 with all consequential benefits so,
- (iii) resultantly, grant the pay scale of (Rs.5500-9000) to the TAs at par with TA-Bs w.e.f. 1.1.96.
- (iv) declare that the applicants & other similar situated persons are entitled to be considered for promotion as Technical Officer 'A' at par with the Diploma Holder Chargeman-II without having to cross the hurdle of promotion as STA 'C' (Rs.65000-10500) and they should be considered for promotion under one and the same eligibility conditions so applicable to diploma holders as per the provisions of DRTC Rules; and
- (v) any other relief deemed fit and proper may also be granted in addition to the heavy costs, in favour of the applicants, in the interest of justice.

4. The pleas made by the applicants are strongly and vehemently rebutted by the respondents. They point out that before 26.8.1995 there were three streams in the DRDO - technical, scientific and draughtsman category which converged only at Jr. Scientific Officer level. The posts were re-organised and re-structured by SRO 177/95 dated 16.8.1995 whereunder 29 posts were brought down to eight grades and twelve scales were reduced to six and merit based promotion on Flexible Complementing Scheme was introduced.

Group 'A' posts were brought in. It also provided for promotion of the existing staff even without prescribed qualification. As category-I (TA and Technician 'C') and category II (TA 'A' & 'B') were in the same scales (Rs.1320-2000 and Rs.1400-23000/-) the placement was made in two categories based on educational qualifications which were different, but it was not done for TA-C and TO as well as S.T.A. and T.O.A as the qualification did not differ. Restructuring was accordingly done. In terms of Rule 6 (4)(a) of the SRO, Chargeman-II , Draughtsman-II etc. among others were placed in grade 2 of category-II provided they possessed qualifications prescribed for recruitment to the grade of TA 'A', failing which they were to be in grade 4 of category-I, both of which were in the scale of Rs.1400-2300/. Placement of an official thus depended on his educational qualification, either as Tech. Assistant 'B' in category II (qualified) or T.A in category I (not qualified). This was the correct step to be taken as the qualification differed distinctly and there was no comparison of posts. The applicants accordingly were placed in category I in the scale of Rs.1400-2300/- as they did not have the requisite qualification which they had also accepted. Once they reached the higher post in a particular category they could move to the appropriate grade in the next category, even without the necessary qualification as per *the special dispensation* provided under Rule 11. This was done keeping in mind the interests of the existing employees.

5. Respondents point out that the applicants (Chargeman-II) were on 26.8.1995 placed in Category I while those who were qualified were in Category-II. thus, ;they were in different groups as TAs and TA-Bs, though both had the same scale of pay of Rs.1400-2300/. And applicants

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thereafter were promoted as TA-Cs when the 5th Pay Commission recommendations were adopted, normal replacement scales of Rs.4500-7000 (for Rs.1400-2300/-) and Rs.5500-9000/- (for Rs.1640-2900/-) were granted. Subsequently by the order of 20.1.1999, the scale in category-I was retained at Rs.5000-8000/- in category-II, TA-B scale was revised to Rs.5500-9000/- and that of STA to Rs.6500-10500/- keeping in mind the difference in qualification. This was in consonance with the Pay Commission's recommendations and correctly done. This change over did not in any way violate Rule 11 as alleged by the applicants. That being the case, the applicants who were TAs w.e.f. 26.8.1995 and promoted thereafter as TA-Cs cannot claim the grade of Rs.6500-10500/- of Sr. T.A. nor that of T.A-B in Rs.5500-9000/- w.e.f. 1.1.1996, as the distinction based on qualification has been fixed by the expert body as the Pay Commission. It is settled law that the service conditions regarding seniority can be changed by the Govt. as a policy and subject to the protection of seniority already gained, the new rules will become operative for all in the service. In the instant case, promotions already earned have not been taken away but only re-categorisation has been done. This did not constitute any violation of administrative principles. Averments by the applicants that equals have been made unequal by the change over are wrong and incorrect, as TA and TA-B on the one hand and STA and TA 'C' on the other were not similar and, therefore, inspite of the pay scales being the same earlier, ;they had been re-categorised on the basis of their qualification. Thus, the TAs scale was revised to Rs.5000-8000/- and that of TAC to Rs.5500-9000/- (replacement scale of Rs.1640-2900). Similarly, TA-B's scale was revised to Rs.5500-9000/- and that of STA to Rs.6500-10500/-.. This did not involve any injustice or discrimination as it was in

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consonance with recommendations of the Pay Commission regarding nexus among pay, academic qualification and entry qualifications. As TA and TA-Bs on the one hand and TA-Cs and STAs belong to different categories, the creation of the post of STA-C was a normal and proper step to take and the same was not irregular. It is further urged by the respondents that Rule 11 related to promotions and not to placement. The fact that a distinction was made on the basis of educational qualification cannot be assailed as held by the Hon'ble Supreme Court in the case of K. Jagadasan Vs UOI & Others (AIR 1990 SC 1092). In view of the above, respondents urge that they have throughout acted correctly and there was no groundsto interfere in the order issued by them on 20.1.1999 which was legal and proper. The application therefore, deserved to be dismissed, they pray.

6. In their rejoinder, the applicants reiterate their pleas and point out that the change-over ordered by the impugned communication has affected the applicants adversely. According to them the various grades of TA and TA 'B', TA 'C' and STA and T.O. and T.O 'A' were all similar and the distinction has been brought about only with DRTC in 1995 Scheme. In fact, the post of STA-'C' was created only on 19.1.1999 to enhance the discrimination. They also point out that as they have already completed nearly 5 years in the respective cadre, retrospective notification in their status was unjustifiable. Finally the applicants refer to the decisions of the Bangalore Bench of the Tribunal in OA 1040/1998 as well as OA 1055-1109/1998, decided on 15.12.1999, dealing with the same scheme and holding that the qualification clause shall not be applied to those who were already Chargeman-II.

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7. Both sides reiterated their contentions during the oral submission. While the applicants pleaded that they have been discriminated against on the basis of qualification, that too retrospectively, the respondents argued that no discrimination has been caused and that the applicants were seeking ^{through} ~~through~~ ^{to} this time barred application to gain inadmissible advantages.

8. We have carefully considered the contention raised by the rival parties. The objection as to limitation will not be any avail as the OA filed on 11.1.2000 is primarily directed against the impugned communication dated 20.1.1999, even though it has origin in the ^{re} structuring ordered in 1995. However, those changes did not hurt the case of the applicants till the issue of the impugned order. The preliminary objection on limitation therefore has to fail.

9. Coming to the merits, we observe that the applicants are seeking to assail the revision of scales of pay in various technical grades in DRDO, communicated by the impugned order dated 20.1.2000, with specific reference to the erstwhile post of Chargeman Grade-II. Following the adoption of DRTC Rules in 1995, was restructured as Technical Asstt. B (TA-B) and Technical Asstts (TAs), with those having higher qualification of Graduation and / or diploma being TA -Bs and others being called TAs. Both remained in the same scale of Rs. 1400-2300. On promotion TA-Bs became Sr. TAs and TAs became TA - Cs but had the same scale of Rs. 1640-2900. The posts were placed on the same replacement scale of Rs. 5500-9000/- . It has however, been modified by the impugned order by granting the scale of Rs. 6500-10500/- to Sr. TAs leaving behind TA-Cs in the scale of Rs. 5500-9000/- . This has given rise to certain anomalies and

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imbalances as at the stage of Chargeman-II, a combined seniority was being maintained for all, depending on their respective dates of entry into the grade, irrespective of the difference in their qualification. This also had the sanction of Rule 11 of the DRTC Rules 1995. Accordingly promotion to the next grades - TA -Bs to Sr., TAs and TAs to TA-Cs - was by common assessment. It is also observed that a few of the TA - Bs, who did not make to the higher grade of STAs in the Common Assessment by which some of the TAs like the applicant became TA-Cs, but made it only in the subsequent year have got the advantage of the higher scale of pay of Rs.6500-10500/- while the applicants were left behind at Rs. 5500-9000/- . However, according to the respondents there was no discrimination in this arrangement as the Govt. was competent to bring in changes in the conditions of service in all categories of employees subject only to the condition that the same would not be at the cost of those who are already enjoying a position. It is also their plea that the Government was correct in distinguishing between the categories of technical staff on the basis of qualification. We find force in this plea of the respondents. Government can, in the interest of maintenance of greater efficiency direct that persons holding certain posts, especially technical posts, should have specified qualifications and that only those with such specified qualifications can have career advancement in that line. But in our view, the position in law is that when such changes are ordered it cannot be at the cost or detriment of those who are already occupying positions, on account of their long experience and specific protection granted by law. It is in this context that the decision of the Bangalore Bench of the Tribunal dated 15.12.1999 passed in OAs 1040 and 1055/1998 becomes relevant. In those applications, validity of Rule 6 (4) (a) of the

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Defence Research and Development Organisation Technical Cadre Recruitment Rules, 1995, as a sequel to which impugned order in this has been issued, was under challenge. The applicants in those OAs were similarly placed as the applicants before us being technical staff, of the category of Chargeman-II. They had challenged their being discriminated on the basis of qualification and being denied the advancement in career vis-a-vis their colleagues, who were qualified, though they all belonged to the same category. Respondents had tried to justify their stand citing it as a policy prescription which was unassailable. The same was repelled by the Bangalore Bench in view of Rule 11 of the Rules which gave specific exemption to existing personnel and the fact that Rule 6(4)(a) insisted on qualification only for certain categories while higher categories enjoyed better promotional prospects even though they did not have the educational qualification as insisted for. While allowing the OAs, the Tribunal/Bench directed the respondents not to apply the qualification clause for those who were already chargemen grade-II but to place all the applicants in the same category as those "placed in the higher group on the basis of qualification from the date of implementation of the Recruitment Rules 1995 and give them all further benefits to which they are entitled in the usual course of their service tenure as per rules. In other words, the respondents are directed to implement RRs 95 prospectively in its strict sense." The above order of the Tribunal is not as yet found to have been challenged, set aside or even stayed. We respectfully agree with the same, and it is in consonance with our view as well. Logical corollary therefore is that the impugned orders dated 20.1.1999, issued revising the pay scales of staff, created on re-structuring and re-organising the cadre following the adoption of DRDO Technical Rules, 1995 would warrant

modification, keeping in view the above decision. It is an admitted fact that the post of Chargeman Grade-II was restructured as TA - Bs and TAs following the adoption of Recruitment Rules 1995 and that they were continued to be on the same scale of Rs. 1400-2300/- and same level , in deference to Rule 11 which stated that those in "position at the commencement of these rules shall be exempt from requirements of qualifications prescribed in Schedule III for promotion from one grade to another and from one category to another." Consequent on their promotion to the next grade as S.T.As and T.A.Cs. by common assessment also the same scale of pay was continued. That being the case, restricting the higher scale to only one group was not legal and was discriminatory. All those who were chargemen II would be correctly entitled to the benefit. This would not however, available to those who became TAs subsequent to the adoption of the RRs 1995, as the condition qualification is very much applicable to them and they would not be covered by the protection granted by Rule 11.

10. In the above view of the matter the application succeeds to a substantial extent and is accordingly disposed of. The respondents are directed to place such of those applicants who were already in position as Chargeman Grade II at the time of restructuring and re-organisation of the Technical Cadre following the implementation of the DRDO Technical Cadre Recruitment Rules 1995 and became Technical Assistants (T.As.) and thereafter on promotion became T.A.Cs. and who were originally at the same scale of pay of TA-Bs and STAs, in the higher grade of Rs.6500-10500/-~~at~~ par with STAs from the date on which STAs were given the higher grade with ^{benefit} _{arrears} of pay and allowances. Similarly such of those applicants who were already in position

as Chargeman Grade II and became TAs in 1995 following the restructuring should be granted the scale of ~~Rs. 6000~~⁵⁵⁰⁰ - 9000/- at par with TA'B's from the date of which they were placed on the same scale with full consequential benefits. It is further clarified that the above benefit (s) would not be applicable to those of the applicants if any, if he/she was not already in the Grade of Chargeman II on 26th August 1995 the date from which the DRDO TC Recruitment Rules were given effect to.

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No costs.

(Govindan S. Tampi)

Member (A)

Patwal


(Kuldeep Singh)
Member (J)