

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. DR. JOSE P. VERGHESE, VICE-CHAIRMAN
HON. SHRI R.K. AHOOJA, MEMBER 'A'

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O.A. NO.1293/89

NEW DELHI, THIS 24th DAY OF FEBRUARY 1997

PRAN NATH SONI
s/o Shri K.N. Soni
Scientist B, Defence Science Centre
Metcalf House
NEW DELHI-54.

r/o 100-AD, Shalimar Bagh
NEW DELHI-52

...APPLICANT

'By Advocate - Shri G.K. Aggarwal'

VERSUS

1. Union of India, though
D/o Defence Research Development
& SA to DM & DGDR&D
South Block
NEW DELHI

2. The DRDS - Assessment Board-1988
from St. - B to St. - C
through its Chairman
Recruitment and Assessment Centre
Lucknow Road
DELHI-9

3. DR. KAILASH CHANDRA
St-Directors Grade
National Physical Laboratory
Hillside Road
NEW DELHI

4. DR. S. KRISHNAMURTHY
Ex-Chief Controller R&D
C/o Secretary
DRDS Assessment Board
Recruitment & Assessment Centre
Lucknow Road
DELHI-9

..RESPONDENTS

'By Advocate - Shri Madhav Panicker'

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ORDER

R.K. AHOOJA, MEMBER 'A'

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The applicant is aggrieved by his non-promotion from the level of Scientist 'B' in Defence Research and Development Service to the next higher grade of Scientist 'C'. Earlier, he had been promoted from Junior Scientific Officer to Scientist 'B' w.e.f. 1.7.1983 though he reported as such on 22.11.1984 due to the pendency of disciplinary proceedings. The applicant alleges that he was not called for assessment for promotion from Scientist 'B' to Scientist 'C' in 1987 though the cut off date was 1.7.1987 on completion of four years service as Scientist 'B'. He was considered for assessment by the 1988 Board presided over by Dr. S. Krishnamoorthy. He was assessed in the Electronics discipline though he should have been assessed for the Physics speciality. He complains that the composition of the Board was not proper as the Chairman had not been appointed as per rules. He was assessed for the wrong discipline. The substantial part of his work was classified as top secret and could not be disclosed in the interview, the assessment interview was not conducted properly and though the Board did recommend his promotion, its recommendations were modified later by an unauthorised committee. The applicant also alleges that the respondents gave relaxation in educational qualification to a large number of Scientists 'B' who were promoted to Scientist 'C'. This he asserts was not called for since eligibles like him with appropriate educational qualifications were available. Finally, he claims that the respondents followed the "selection" method while as per rules the promotion was to be made on the basis of "seniority subject to fitness".

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2. The respondents deny the allegations. They state that the Board was properly constituted. The rules provided for selection are not seniority subject to fitness. The applicant could not be considered in the 1987 selection because the rules provided for consideration after five years service unless the officer had three outstanding reports, in which case the qualifying period was three years service, or very good reports in which case the qualifying service was four years, and that was not the position in respect of the applicant. They also maintain that the assessment interview was conducted properly, that the applicant had to be assessed for the Electronics discipline and that relaxation had to be given to a class of people due to special circumstances arising out of the constitution of a new service in Defence Research and Development Organisation.

3. When this O.A. was filed in June 1989, reliance was placed by the applicant on the decision of this Tribunal in the case of U.P. DWIVEDI VS. UOI & ANR. OA NO.2738/1990. In that O.A., appointment of Prof. S. Sampath as Chairman of the Board was challenged on the ground that he was barred to so act having been earlier a Member of Union Public Service Commission under Article 319(c) of the Constitution. The O.A. was allowed and the impugned selection made by the assessment Board under the chairmanship of Prof. Sampath was set aside. The Union of India filed an SLP No.1477 of 1992 in the Supreme Court and in its order dated 3.3.1992, the Supreme Court directed an ex parte stay of the operation of the impugned order of this Tribunal. On that basis, in its order dated 8.1.1995, the Tribunal directed that the final decision may be awaited and this O.A. be placed in

the sine die list. When the matter came up again on 17.1.1997, Shri G.K. Aggarwal, 1d. counsel for the applicant, submitted that the applicant does not wish to press the first relief which was to have his non-promotion set aside at Assessment Board 1988. after declaring the said Board proceedings as unconstitutional. In other words, the applicant did not wish to pursue the allegation regarding the improper constitution of the assessment board. On that basis, and the ground regarding the constitution of the assessment Board having been given up, the 1d. counsel for the applicant also gave up reliance on the orders of this Tribunal in U.P. DWIVEDI's case. This being so, the final orders of the Supreme Court in SLP No.1477/92 would also have no bearing on the case of the applicant. On that understanding, we have proceeded to hear the arguments on both sides in respect of the remaining reliefs, which are reproduced below:-

- 'B' Declare that the applicant is entitled to be promoted from St-B to St-C effective 1.7.88 with all retrospective benefits and arrears with interest, subject to no disability under law and subject only to 'fitness' and not comparative merit, and.
- 'C' Direct respondents-1,2. to give effect to the declaration 'B', within a specified period, and
- 'D' Grant any other relief, and
- 'E' Allow this application with cost
- 'F' Call for complete records of Assessment/Promotion.

4. The first question that arises is whether the rules for promotion provide for "selection" or "seniority subject to fitness". The 1d. counsel for the applicant in this

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context drew our attention to the rules notified in the Gazette of India, January 15, 1979, copy annexed with the O.A. These rules ^{are} called the Defence Research and Development Service Rules 1978. The 1d. counsel drew attention to Rule 8/2(f), which reads as follows:-

"In regard to promotion of officers to the grades of Scientists 'C', Scientists 'D' and Scientists 'E', officers promoted from one grade to the next higher grade on the recommendation of the Assessment Board shall as far as possible, be granted in situ promotion in the same Establishments, Laboratories or Headquarters....."

The 1d. counsel submitted that on promotion to Scientist 'C', the officers are to continue in the same job as they were doing earlier and it was only a matter of in situ promotion. There was thus no question of selection to a higher job and the only relevant criteria in such a case would be "fitness", and not comparative merit. We are unable to agree with this reasoning. Rule 8/2(c) 'reproduced below' clearly gives the criteria for promotion.

"In evaluating the suitability of the officers for promotion, the Assessment Board shall take into consideration their qualifications, performance, merit, seniority etc. The selection shall be on the basis of Confidential Reports and interview. However, the Assessment Board may, at their discretion, consider in absentia the candidature of such officers who are unable to present themselves for the interview. The Assessment Board shall draw up a list of officers who are assessed as fit for promotion to the next higher grade."

5. The above sub-rule provides for consideration of CRs and an interview and the crucial word used is "SELECTION" and not "fitness". Once the criteria for promotion is

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specifically provided, there is no need to infer any other meaning on the reading of Rule 8'2'(f) on the ground that as the nature of job performed does not change, the whole purpose of promotion is to remove stagnation and the criteria thus is only of 'fitness'. We hold therefore that the criteria for promotion was selection and not fitness as claimed by the applicant and on this score he has thus no case.

6. The applicant has also alleged that he should have been considered for the 1987 Assessment Board. Here again the rule position is clear, that the qualifying period could be reduced to four years in case of Very Good CRs or three years in case of 'Outstanding'. The respondents have stated that this was not so in respect of the applicant and therefore he could only be considered after five years of service. Having been promoted to the grade of Scientist 'B' in 1983, he became eligible only in 1988. The applicant thus can have no ground for any grievance on this score. The applicant has also alleged that his main line was Physics and not Electronics and therefore he was wrongly evaluated by the selection Board. The respondents say that the subject of the applicant is Electronics and he was accordingly assessed. A change of the subject could be allowed by the competent authority if a specific request is made under rules. No such request was made by the applicant and hence the question of applicant's being assessed in Physics did not arise. The applicant in his rejoinder states that he had worked under one Dr. C.L. Garg, Scientist 'D' in Laser Optics and Dr. Garg was assessed by a Physics speciality Board. Since the applicant was working under Dr. Garg, he should also have been similarly assessed by Physics Board. The applicant has not denied that his subject is Electronics. As to whether he was to be considered for his own speciality or for a

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different speciality considering the speciality of his immediate boss is a matter in which the Tribunal cannot go. In any case, there is no claim that the applicant had made a request at the appropriate time to be considered for the Physics speciality.

7. We are also inclined to agree with the reply of the respondents that the actual conduct of the interview by the Assessment Board is not an issue to be gone into by this Tribunal.

8. The applicant has made an allegation that the respondents have given a whole-sale relaxation in educational qualifications to persons who were then promoted. The respondents have explained the position that when the DRDS was set up in 1979, officers from the parent service, i.e., Defence Science Service, were encadered in the appropriate grades in the new service. In the parent service, there was no condition of eligibility in terms of educational qualifications for purpose of promotion to the next higher grade. For that reason, a number of officers inducted in the DRDS did not fulfill the conditions of eligibility though they were stagnating having rendered five years service in the grade. It was in this background that relaxation in educational qualification for promotion to the higher grades was allowed by the competent authority under rule 15 of the DRDS rules. We notice that the applicant has not challenged the promotion of these persons nor has made them a party. We are also satisfied that the relaxation was given to a class of persons for a well considered reason, viz., that such persons were transferred to a new service en bloc and their

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conditions of service regarding eligibility for promotion were being modified. Such relaxations in the short term quite often become unavoidable. We do not consider that the applicant can blame his non-promotion on this ground.

9. In the light of the above discussion, we find no ground for interference ^{in respect} ~~to~~ the reliefs now sought for by the applicant. The O.A. is accordingly dismissed. No costs.

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'R.K. AHDUJA'
MEMBER 'A'

'DR. JOSE P. VERGHESE'
VICE-CHAIRMAN

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