

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

Regn.No. OA 2171/1989

Date of decision: 09.02.1993.

Shri M.L. Soni

...Applicant

Vs.

Central Building Research Institute

...Respondents

For the Applicant

...Shri B.S. Charya,
Counsel

For the Respondents

...Shri A.K. Sikri with
Shri V.K. Rao, Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman(J).

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. To be referred to the Reporters or not? *Yes*

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant while working as Foreman(B) in the Central Building Research Institute (CBRI) filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (a) To quash the impugned order of recovery dated 23.12.1988;
- (b) quash the impugned office memorandum dated 29.04.1986;
- (c) hold that the applicant is entitled to be promoted to the post of Technical Officer on the basis of the criteria and the conditions prevalent prior to 29.04.1986 and after having completed the requisite conditions of eligibility by 20.06.1980. Respondents should be called upon to consider the applicant for promotion on the

basis of the work-assessment report submitted by him and the consideration should be accorded by respondent No.1 and not by respondent No.2 in terms of the impugned Office Memorandum dated 29.04.1986 and consequently the applicant should be promoted to the post of Technical Officer and given benefits of pay, allowances etc. of the higher post and also benefits of further promotion;

(d) call upon the respondents to restore to the applicant the pay scale and proper fixation in the scale of Rs.1640-2900 so as not to cause him any monetary loss while treating that the impugned order dated 28.12.1988 is wholly untenable;

Any other appropriate order or direction may also be passed in order to fully protect the rights and interests of the applicant. Costs of the proceedings may also be awarded to the applicant.

2. We have gone through the records of the case carefully and have heard the learned counsel for both parties. The applicant joined^a service in the office of the CERI in 1964 as Foreman in the pay scale of Rs.180-380. The scale^a of his pay was subsequently revised w.e.f. 1.1.73 from Rs.180-380 to Rs.425-700. He was assessed for promotion to the next higher grade of Rs.550-900 and was promoted as Foreman 'B' in the scale of Rs.550-900 with effect from

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1.2.1981. This was done on the implementation of the New Recruitment and Assessment Scheme (NRAS for short) for Scientific/Technical staff with effect from 1.2.1981. He was given two advance increments on the basis of the recommendations of the Core/Assessment Committee. Later on, in 1984 he was asked to exercise option either in favour of assessment under the provision of erstwhile Bye-law 71(b) or continue to be governed by the NRAS. He opted in favour of assessment under the erstwhile Bye-law 71(b). He was again assessed by a duly constituted Assessment Committee for promotion to the next higher grade of Rs.550-900. The Committee which met on 26.6.1975 promoted him as Foreman 'B' with effect from 20.06.75 in the scale of Rs.550-900. He was also assessed by the same Assessment Committee along with other eligible employees for promotion to the next higher grade of Rs.650-1200 with effect from 20.06.1980 but was not recommended for such promotion.

3. By his option dated 5.4.1984, the applicant opted to forego the benefit already drawn by him under the provisions of the NRAS.

4. Cases of assessment under erstwhile Bye-law 71(b) were kept in abeyance till a decision was taken as a result of review of policy by the Governing Body of CSIR (Respondent No.2). These cases were processed on the receipt of CSIR's letter dated 9.4.1986 which, inter alia, provided that cases of those Scientific and Technical personnel who do not possess BSC/3 years Diploma in Engineering or equivalent for assessment beyond the

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grade of Rs.550-900 are to be processed at the CSIR Headquarters. Accordingly, the applicant was informed that his assessment for promotion to the next higher grade under erstwhile Bye-law 71(b) under the centralised system was likely to be held in CSIR and completed by July, 1987. He was also informed that in case he was not recommended for promotion from the date of his eligibility, he will be considered for subsequent chances falling due on the anniversary day of his appointment in subsequent years till 31.3.1987.

5. The applicant and others who were due for assessment under erstwhile Bye-law 71(b) upto 31.3.1987 were assessed by an Expert Committee which met at CSIR on 17.7.1987. The applicant was not recommended for promotion to the next higher grade upto 20.06.1987.

6. Thus, after the applicant exercised his option in 1984, he was assessed under the erstwhile Bye-law 71(b) to the next higher grade of Rs.550-900 and accordingly he was promoted to the said grade on 20.06.1975[✓] without any advance increments[✓]. The respondents have contended that this nullified his earlier promotion to the higher grade of Rs.550-900 with effect from 1.2.1981 with two advance increments under the NRAS. In view of this, they have sought to recover from the applicant a sum of Rs.15,332/- on account of overpayment made to him during the period from February 1981 to May 1987[✓] on account of two advance increments given to him[✓] and on the basis of the undertaking given by him in the option to forego the benefit already drawn by him under the provisions of the NRAS.

7. The applicant has contended that as he had opted for the old scheme under the erstwhile Bye-law 71(b), his assessment for promotion to the next higher grade should have been made by an Assessment Committee constituted by the Institute in which he had been working and not by the CSIR.

8. In OA 1358/1988 which was decided on 27.5.1991, the question arose whether the centralised system of assessment of persons who had opted for the old scheme would apply (C.P.S. Nambiar Vs. Union of India). The Tribunal noted that during the course of implementation of the assessment promotion under the old scheme, certain anomalies were noticed by the respondents as quite a large number of persons without adequate scientific/technical qualifications were assessed for promotion to the next higher grade. To obviate these anomalies, the Governing Body of CSIR based on the recommendations of Committee comprising Dr. A.P. Mitra, Dr. L.K. Doraiswamy and Joint Secretary (Administration) decided to have a centralised committee for assessment promotion for all those who did not possess post-graduate/B.Sc./3 years diploma in Engineering or equivalent at the centralised level for grades higher than Rs.550-900. The object was to bring about uniformity in the system of promotion of those employees who did not possess post-graduate or higher qualifications.

9. In our opinion, the assessment made for promotion to the next higher grade by the centralised Committee cannot be faulted

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in the facts and circumstances of the case.

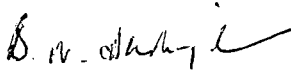
10. As already observed, in the instant ^{case,} ~~the~~ applicant was reassessed for promotion to the grade of Rs.550-900 retrospectively with effect from 20.06.1975 under the old assessment system and was promoted as Foreman 'B' with effect from 20.06.1975 in the grade of Rs.550-900 along with other eligible employees. His pay was fixed accordingly and was given increments from 1.6.1976 to 1.6.1984 in the scale of Rs.550-900.


11. What has been sought to be recovered from the applicant is the two advance increments given to him with effect from 1.2.1981 when he was assessed under the NRAS for promotion as Foreman 'B' and was actually promoted with effect from the said date in the grade of Rs.550-900. It is true that when he had exercised his option in 1984 to be governed by the old assessment scheme he had given an undertaking to forego the benefit already drawn by him under the NRAS. On 3.11.1987, the Tribunal passed an interim order restraining the respondents from effecting any further recovery under the impugned order dated 28.12.1988. In our considered opinion, it will not be fair, just and equitable to deprive him the benefit given to him in 1981 after the lapse of several years.

12. In the light of the above discussion, the application is disposed of with the direction to the respondents not to effect

any recovery from the applicant pursuant to their OM dated 28.12.1988. The applicant would not be entitled to any other relief.

There will be no order as to costs.


(B.N. DHOUNDIYAL)
MEMBER (A)
09.02.1993


(P.K. KARTHA)
VICE CHAIRMAN (J)
09.02.1993

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