

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1358/88
T.A. No.

199

DATE OF DECISION 27.5.1991

<u>Shri C.P.S. Nambiar</u>	<u>Petitioner</u>
<u>Shri E.X. Joseph,</u>	<u>Advocate for the Petitioner(s)</u>
Versus	
<u>Union of India & Ors.</u>	<u>Respondent</u>
<u>Mrs. Sheela Sethi,</u>	<u>Advocate for the Respondent(s)</u>

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

(Amitav Banerji)
CHAIRMAN
27.5.91.

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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO. 1358/88

DATE OF DECISION: 27.5.1991.

SHRI C.P.S. NAMBIAR

APPLICANT

VERSUS

UNION OF INDIA&ORS

RESPONDENT

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A)

FOR THE APPLICANT

SHRI E.X. JOSEPH, COUNSEL

FOR THE RESPONDENTS

MS. SHEELA SETHI, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. I.K. RASGOTRA, MEMBER(A)

Shri C.P.S. Nambiar, Translation Officer 'C' in the Indian National Scientific Documentation Centre (INSDOC), New Delhi has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging order No. 2 (75)/86-Estt (CS) dated 21.3.1988 rejecting his representation against the procedure adopted by the Centralised Expert Assessment Committee, 1987, as it did not include an expert in Russian Language Translation.

The applicant is holding the post of Translation Officer 'C' INSDOC under Respondent No 1 and 2. INSDOC is one of the several specialised institute under the Council of Scientific and Industrial Research.(CSIR). One of the services provided by INSDOC is translation of scientific documents. The applicant was initially appointed in April, 1972 on a temporary basis and was inducted in the regular cadre of Translation Officer 'C' in the pay scale of Rs.1100-1600(pre-revised) on 31.10.1977. The service conditions of the employees of the CSIR and the laboratories/ institutes are governed by the bye-laws framed by the CSIR. Promotions are based on

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"Flexible Complementing System" as per assessment made by an expert committee. The applicant's claim that he was entitled to be assessed for promotion to the next higher grade, Translation Officer E-I in the pay scale of Rs. 1500-2000 (pre-revised) in terms of the assessment promotion scheme under the bye-law 71(b) which was introduced w.e.f. 1.1.1966. The relevant extract of the said byelaw is reproduced below:

71(b) "iii) the merit of officers of the rank of Senior Scientific Officer Grade I/Senior Technical Officer Grade I engaged in scientific work may be assessed for promotion to the next higher grade after every five years of the appointment of the officer concerned against that post provided the said officer is at the maximum of the scale of pay of his grade for at least one year;

iv) the assessment of the merit of officers arising under clauses (ii) and (iii) above shall be made by an expert Committee appointed, with the approval of the Vice-President, from amongst the members of the Executive Council and shall make recommendations for their promotion to the next higher grade for the approval of the competent authority;

v) in the Central Secretariat of the Society the assessment of officers arising under clauses (i), (ii) and (iii) above shall be made by an expert Committee constituted by the Vice-President."

As the applicant is in the rank of Senior Technical Officer Grade I, his case is regulated by

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bye-law 71(b) (iii) according to which he was liable to be promoted to the next higher grade by upgradation of the lower post after completing five years in the grade if assessed suitable for promotion to the next higher grade by a duly appointed committee. He was entitled to be assessed for promotion to the next higher grade in 1983 after having completed 5 years of service as on 31.10.1982 and having been at the maximum of the scale of pay of his grade for one year from that date. The said Expert Assessment Committee is appointed with the approval of the Vice President from amongst the members of the Council for the purpose.

The bye-law 71(b) was repealed by Respondent No.1 and an amended bye-law 71 (b) was introduced enabling the governing body to formulate a scheme or schemes on promotional system in the CSIR for all categories of staff. **The new scheme came into effect from 1.2.1981.** The new scheme categorises all technical/scientific staff into Group I, II, III & IV and the applicant came within the purview of Group III (Rs. 1100-1500/-). The major change introduced under the new scheme, is that these employees who possessed post graduate degree would be given assessment promotion even without stagnating at the maximum of the scale provided they had completed six years of service in grade of Rs. 1100-1600 (prerevised). Further the employees with M.Com; M.A. Economics; M.A. in foreign languages; M. Library Science were entitled to the benefits of the new scheme as these degrees were treated equivalent to post graduate degrees in science. The applicant, however, had post graduate degree in political science and therefore was not equated with post graduation in science. He contends that with his background in science, graduation in economics and post graduation in political science along

with his qualification in foreign languages, he was entitled to be treated as equivalent to a Science post graduation degree. The CSIR further partially modified the procedure for recruitment and assessment vide their letter dated 5th June, 1982 (Annexure AII) in terms of which all existing employees on 2.11.1981, who were governed by the erstwhile bye-law 71 (b) were allowed "to opt for the old scheme in toto." The option once exercised however was to be final. The applicant opted for the old scheme in toto and therefore claims that he was entitled to be considered for promotion under the erstwhile bye-law 71(b) in terms of the circular letter dated 5th June, 1982. The Expert Committee for assessment promotions, however, did not meet during the year 1983; 1984; 1985 and 1986 and in the meantime, CSIR issued circular letter No.9/2/86-P dated 9th April, 1986 introducing a centralised scheme for processing the cases of scientific and technical personnel who did not possess M.Sc or equivalent qualifications but possessed B.Sc./3 years diploma in Engineering or equivalent for promotion from the grade of Rs. 1100-1600. All the Laboratories/- Institutes were accordingly directed to send details in respect of the employees who had become due assessment promotion upto 31st March, 1986, in the prescribed proforma duly supported by individual particulars and recommendations of the Director of Laboratory/Institute.

The scientific and technical personnel who possessed post graduate qualifications/B.Sc/3 years Diploma in Engineering or equivalent up to the grade of Rs. 1100-1600 were however, allowed to be assessed by the Laboratories/Institutes for higher grades. The applicant contends that the classifications laid down in circular dated 9th April, 1986 is violative of the stipulation made

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in Circular dated 5th June, 1982 (Annexure A-II) which specifically provides that the new qualifications restrictions imposed by the Varadarajan/Valluri Committee did not apply to them". It was after new system of assessment as above was introduced that the respondent No.1 vide circular letter dated 4th June, 1987 (Annexure A-IV) decided to hold the assessment promotion to clear the backlog. The last paragraph of the said letter reads:

"The concerned staff will be assessed for promotion from the existing grade to the next higher grade and in case they are not recommended for promotion from the date of their eligibility they will be considered for subsequent chances falling due on the anniversary dates of their appointment in subsequent years till 31.3.1987. This has become necessary in order to cover up the backlog. The assessment will be done on the basis of information furnished in proforma II and the report of work as contained in their Annual Confidential reports for each year. This may be brought to the notice of the concerned staff."

The applicant was accordingly interviewed in July, 1987 under the Centralised scheme at the CSIR headquarters but he was not recommended for promotion to the next higher grade by the Expert Assessment Committee (Annexure A-V). He made a representation on 11.11.1987 pointing out that the Expert Committee that interviewed him did not have any expert in the Russian Language Translation as its member which was the specialisation of the applicant. Since he did not receive any response he submitted another representation on 3.1.1988. This too was of no

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avail. He made another representation on 21.3.1988 to which he received the response from the INSDOC vide impugned OM dated 21.3.1988 which is reproduced below:

"his case for assessment under the Centralised System was sent to CSIR for consideration. CSIR vide their letter No. 2(22)/88-R&A dated 16.3.1988 has since informed that after due consideration, it has been held that shri Nambiar was assessed by a duly constituted assessment Committee, as such there is no cause of grievance in his case."

By way of relief the applicant has prayed that:

- (i) the impugned OMs dated 21.3.1988 and 29.10.1987 be set aside;
- (ii) the decision of the respondent No.1 on the basis of the recommendation of the Expert Assessment Committee which met in July, 1987 rejecting the applicant for promotion to the next higher grade be quashed;
- (iii) that the respondent No.1 be directed to reconsider the applicant under the scheme of assessment as laid down in bye-law 71(b) by an Expert Assessment Committee which includes expert in Russian Translation with further direction to promote the applicant to next higher grade on the basis of recommendation of such an expert committee as referred to above with consequential benefits.

3. The facts of the case are not disputed by the respondents in their written statement. They, however, submit that the CSIR had considered ways and means to meet the career opportunities of its employees

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on the basis of rational personnel policies. Accordingly, they formulated the scheme to cover all categories of staff as envisaged in bye-law 71(b). The final scheme of assessment promotion was circulated under letter 17(65)/81-EII dated 2.11.1981 making it retroactive from 1.2.1981. In the meanwhile options were invited from the existing employees whether they would like to be assessed under the old system or under the new order. The applicant had given his option to retain the old scheme under erstwhile bye-law 71(b) as he did not possess the qualification prescribed for Group-IV under the new scheme. It is conceded that the applicant was due assessment promotion under the erstwhile bye-law 71(b) from 1983. However, 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 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. For those possessing qualifications as per recommendation of Varadarajan/-Valluri Committee the assessment was left at Laboratory/-Institute level. The Governing body also approved the composition of the Expert Committee at the centralised level for assessment of Scientists B/B1 and other Technical personnel in grade of Rs.700-1300. and above as under:

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1. DG, SIR	Chairman
2. Four Directors	Members
3. Two outside Experts	Members

This decision was notified to all laboratories on 10.4.86. Since, however, a fairly good number of technical staff did not possess adequate scientific/technical qualifications their assessment under the old scheme was held in abeyance for review of the policy of assessment. Once the system for assessment was finalised and rationalised on the basis of the recommendations of the various expert committees e.g. Varadarajan/Valluri/-A.P. Mitra Committees the work to clear the back-log of assessment promotions was undertaken in a right earnest in 1987. The respondents submit that the expert assessment committees generally comprised experts in broad disciplines. The assessment Committee which considered the case of the applicant also had experts in broad disciplines and were competent enough to judge his merit. The applicant's merit was assessed by the duly constituted committee on the basis of his self-assessment report, annual confidential reports earned by him and his personal discussion with the members of the Committee. The respondents have filed composition of the Committee vide Annexure R-6 attached to the counter.

4. The applicant has filed a rejoinder to the counter filed by the respondents.

5. Shri E.X. Joseph, learned counsel for the applicant submitted that the Assessment Promotion Scheme under bye-law 71(b) was Laboratory/Institute based. Each laboratory/institute is a centre of excellence in its area of specialisation. Referring to byelaw 71(b) the learned counsel submitted that the Expert Assessment Committee had to include three outside experts. These

experts necessarily had to be specialists covering the specialisation of the laboratory/institute. The applicant opted for continuing under the old assessment scheme and the recommendations of Varadarajan/Valluri Committee regarding qualifications were not to be taken into account in his case. By subjecting the applicant to the centralised assessment scheme, the respondents have ignored the option which they had themselves invited from the applicant. Further Centralised Expert Committee which assessed the case of the applicant did not include an expert who had the knowledge of Russian language. The learned counsel further submitted that the applicant should have been assessed annually on the basis of preceding five years' record. On the other hand the assessment seems to have been held only once in 1987 for the years 1983, 1984, 1985 and 1986.

6. Ms. Sheela Sethi, appearing for the respondents submitted that the Centralised Expert Committee admittedly had no expert in Russian Language but included three outsiders. She justified the change in the procedure for assessment on the basis of Varadarajan/Valluri Committee recommendations and as reviewed by the A.P. Mitra Committee and submitted that the procedure had to be changed to avoid anomalies and to bring about uniformity in the system of promotion of those employees who did not possess post-graduate or higher qualifications. The applicant has been considered in accordance with the procedure as applicable to all falling in his category uniformly but he was not found suitable for promotion. She also submitted that having appeared in the assessment, it is not open to the applicant to question the said scheme. In support she cited **AIR 1986 SC 1043 – Om Prakash Shukla Vs. Akhilesh Kumar**.

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The learned counsel for the respondents also relied on the following judicial dicta:

1. AIR 1988 SC 1033 - **Raghunath Pratap Singh Vs. Secretary Home & Ors.**
2. AIR 1989 SC 1628 CSIR & Anr. Vs. K.G.S. Bhatt & Anr.

In the above cases their Lordships in the Supreme Court have observed that reasonable promotion opportunities should be available in every wing of public service. The respondents introduced the revised scheme of assessment promotion with a view to improve the promotional prospects of their employees.

The learned counsel also referred us to **AIR 1979 SC 1628 - R.D. Shetty Vs. International Airport Authority and Ors.**

While the facts of the above case are not comparable to the case before us, she has apparently relied on the well settled rule of administrative law that:

"an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them."

The learned counsel seems to contend that it was obligatory for the respondents to apply the rigorous standards scrupulously evolved in the interest of career progression of its employees and to improve the efficiency of the organisation rather than following the old system which apparently gave a go by to the selectivity. The following four cases were cited by the learned counsel to bring out the fact that Tribunal cannot act as an appellate authority over the DPC, nor could it interfere with the procedure followed by the DPC.

- i) (1990) 13 ATC 301 - **K. Somasundaram & Ors. Vs. Government of Pondicherry & Ors.**

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- ii) **1985(1) SLJ 254 Ajay Kaul Vs. UOI**
- iii) **ATR 1988 (1) CAT 74 - Piare Lal Tiwari Vs. UOI & Ors.**
- iv) **1988(4)SLR 424 B.K. Sardar Vs. UOI & Ors.**

We also consider that function of the assessment promotion committee and that of the departmental promotion committee are not identical and synonomous. The similarity between the assessment promotion committee and the departmental promotion committee ends with the fact that both perform the function of considering eligible candidates and recommending those found suitable for promotion. The procedure followed and the methodology adopted by the two committees are totally different. The expert assessment promotion committee makes assessment of the candidate on the basis of self assessment report of the candidate, the ACR for the relevant period and performance of the candidate in the course of the interview keeping in view the contribution made by the candidate in the field of his specialisation. The functions of the DPC are wellknown and we need not dessert upon them. The distinction between the two, therefore, cannot be but underscored. In summary the law covering the proceedings of the DPC is not automatically applicable to the Assessment Promotion Committee.

We have heard the learned counsel of both the parties and considered the material on record as well as the judicial pronouncements cited. The crux of the matter is that the applicant had opted for assessment under the old scheme of assessment promotion in

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accordance with the then existing bye-law 71(b). According to this system the assessment was laboratory based and the Expert Committee was required to include three outside experts. Since the assessment was Laboratory/Institute based which are centres of excellence in their own specific field of specialisation it would be reasonable to assume that experts on the assessment committee would include an expert in the specialisation required for effectively assessing the candidates. This system possibly ensured that in the present case an expert in Russian Language would have been more likely than not been included in the Assessment Committee. Again in terms of the option exercised by the applicant at the instance of the respondents, the qualifications as prescribed on the basis of the recommendation of the Varadarajan/Valluri Committee had no relevance in the erstwhile system of assessment in terms of bye-law 71(b). The applicant, therefore, was entitled to be assessed according to the laboratory based procedure. On the other hand it appears that the recommendations made by the Varadarajan/Valluri Committee were further considered by Tyagarajan Committee with a view to ensure that a fair, just and uniform procedure is followed keeping in view the interest of sound and efficient personnel management policies for assessment promotions. As a result while the assessment promotions of the employees with B.E. or equivalent in all grades and personnel having B.Sc/3 years' Diploma in Engineering or equivalent upto the grade of Rs. 1100-1600 were left at the level of Laboratory/Institute, the assessment cases of those who possessed lower qualifications were to be assessed by a Centralised Expert Committee. The procedure introduced for assessment promotions cannot be faulted as powers for introduction of fair and just personnel policies etc. is vested in the Governing Body of the CSIR. We were also

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shown by the learned counsel for the respondents the assessment made by the Centralised Committee. We find that the assessment were made on annual basis taking into account the ACRs for the relevant years. The applicant, however, did not make the grade. Notwithstanding, in the course of hearing we could not get a satisfactory explanation as to why a Russian language expert was not included in the centralised expert committee which assessed the applicant. The applicants specialisation is in the translation to and from Russian language and it would have only been just and appropriate if such an expert had been included in the expert committee. The Centralised Expert Committee which assessed the applicant had besides DG, SIR co-opted experts in the various fields which were not covered by the specialisation of the members of the committee. Shri Baldev Singh was coopted to cover project monitoring/planning/information/explanation/liaison/laboratory/documentation/translation. Since there is a provision, for co-opting experts in the rules where the Committee did not cover any particular field of specialisation, non-co-option of a Russian language expert cannot be justified.

At the same time, the applicant cannot be allowed to question the new system implemented for Assessment Promotion Committee in 1987 after he had participated in the process of assessment. It is not open to him to challenge the validity of the very rules under which the test was held. It is obvious that he is now challenging the new system of assessment promotion, as he did not make the grade in the selection. To our mind the old system and the option exercised by him to be assessed under that system lost its validity after he had

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subjected himself willingly to the centralised assessment promotion scheme.

(AIR 1957 SC 397 M/s. Pannalal Binjraj & Ors. Vs. UOI & Ors.

AIR 1927 Madras 130 O.A.O.K. Latchmanan Chettiar V. Madras Corporation

AIR 1986 SC 1043 Om Prakash Vs. Akhilesh Kumar.)

In view of the above discussion and keeping in view the facts and circumstances of the case we are not inclined to grant any relief prayed for by the applicant except that he should be reassessed as in July, 1987 starting from 1983 when he became eligible for such assessment on annual basis by the Centralised Expert Assessment Committee which shall have a co-opted member with knowledge of Russian language.

Accordingly, we set aside the Office Memoranda NO 2(75)/86-Estt(CS) and OM No. 22(75)/86-Estt(CS) dated 21.3.1988 and 29.10.1987 and order and direct that the respondents shall have the applicant reassessed by the Centralised Expert Assessment promotion Committee by co-opting an expert in the Russian Language on the Committee. In case the applicant is found suitable for promotion by the duly constituted Assessment Committee as above, he shall be entitled to promotion from the due date to the next higher grade. He shall also be entitled to all consequential benefits e.g. backwages at the higher scale of pay as applicable viz. Rs. 1500-2000 (pre-revised.)

The above directions shall be implemented within 8 weeks from the date of communication of this order.

The OA is disposed of with the above directions with no orders as to costs.

Dilip
(I.K. RASGOTRA)
MEMBER(A)
27.5.91

AB
27.5.91
(AMITAV BANERJI)
CHAIRMAN