

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,  
NEW DELHI.

O.A.No.82 of 1988 Date of Decision. 25.8.1993

Dr.H.S.Thakral .....Applicant.

Versus

Union of India & another .....Respondents.

CORAM:

Hon'ble Mr.V.S.Malimath,Chairman.

Hon'ble Mr.S.R.Adige,Member(A)

For the applicant: Mr.B.B.Rawal,Counsel.

For the respondents: Mr.P.P.Khurana,counsel.

JUDGMENT

(By Hon'ble Mr.S.R.Adige,Member(A).)

In this application, Dr. H.S.Thakral, presently posted as Director, Research and Analysis Wing (RAW), Cabinet Secretariate, New Delhi, has prayed for the following reliefs:

- i) to quash as void ab-initio the illegal absorption and confirmation of Shri S.K. Gupta in a non-existent cadre;
- ii) To direct the DPC proceedings to declared void ab-initio, to the extent that it considered an ineligible officer not fitting the bill ;
- iii ) to direct the respondents to accord the applicant confirmation from due date and promotion as per the provisions of TR Cadre now applied by the respondents, as the applicant is the only officer duly approved by the DPC belonging to the SI discipline in which the vacancy occurred, and which the Department decided to fill up from that very discipline;
- iv) to direct the respondents to pay within a reasonable time, all the monetary benefits accruing to the applicant, flowing from the

relief requested above.

2. The applicant's case is that he was initially selected to the Intelligence Bureau (IB) in 1961 and was officially sponsored in 1962 to compete for selection to one year's training course as a Class-I Officer in the Atomic Energy Establishment Training School (AEETS) now part of Bhabha Atomic Research Centre (BARC) Trombay. He successfully competed in the selection and also qualified for a Class-I post in the said organisation in August, 1963. After completing the one year training course, he was allotted the Nuclear Physics Division in AEETS and worked for three years at BARC as Scientific Officer (Class-I) from August, 1963 onwards. However, while working as a Class-I officer at AEETS, he continued to receive a Class-III officers pay and allowances from the IB. Thereafter, he was recalled to the IB and was called upon to work on certain ultra-sensitive projects. In 1965, he was promoted to gazetted rank and worked for four years as a Class-I officer, during which tenure he continued to work on certain sensitive projects. Thereafter, he was sponsored by the IB to compete in the open market for admission to the Saha Institute of Nuclear Physics (SINP) and after securing admission, he went on to obtain a Ph.D in Nuclear Physics after four years research there. Meanwhile, he was recalled by RAW, to which he was allotted after bifurcation of IB in 1968, and in view of his knowledge, skills and expertise, he was appointed as Senior Scientific Officer Grade-I w.e.f. 5th June, 1973. On 18.2.80, the applicant represented for his confirmation as SSO Grade-I, and followed it up with two reminders. Ultimately, on 27.5.81, the respondents informed him that

confirmation in that rank would be done only when the initial constitution of the Scientific and Technology (S&T) Cadre was finalised.

3. Soonafter in July, 1981, the then Deputy Director (Scientific Intelligence) Shri Kondiah retired and the then Joint Deputy Director (Scientific Production) took over additional charge of the S.I. Branch. Both these officers were deputationists from BARC and the applicant alleges that they imparted their personal and professional rivalry into RAW. As the applicant was a student of, and had worked with Shri Kondiah, Shri Santhanam adopted a vindictive attitude towards him and blocked his promotion prospects. The applicant brought this to the notice of the higher authorities but without result. In 1982, Shri Santhanam was promoted as Deputy Director and the post of Joint Deputy Director fell vacant but the applicant was not considered for promotion to that post, although he had completed nine years service in the next lower post of SSO Grade I, and another deputationist Shri Krishanan was brought in.

4. Again in 1986, the post of Joint Deputy Director (SI) fell vacant consequent to Shri Krishnan's repatriation to BARC. The applicant alleges that instead of promoting him atleast this time, the respondents took various steps to favour one Shri S.K. Gupta (respondent No. 3). According to the applicant, Shri Gupta, who was ten years younger than the applicant, came on deputation to RAW as SSO Grade-II on 16.2.74. Not only was Shri Gupta junior to the applicant, but the latter enjoyed far superior educational qualification, work experience and professional

status. In spite of Shri Gupta's lack-lustre performance he was illegally retained on deputation, absorbed in RAW and even promoted as SSO Grade I w.e.f. 5.10.81. Although the applicant was refused confirmation in 1981 against a permanent post of SSO Grade-I (which was available since 1979) on the ground that the ST Cadre had not been constituted, all of a sudden, without any change in the situation, and without the constitution of the ST Cadre or related recruitment rules, the respondents issued memo dated 6.1.86 confirming the applicant along with Shri Gupta as SSO Grade I w.e.f. 1.9.85. The applicant alleges that Shri Gupta's confirmation was done illegally <sup>and</sup> arbitrarily, and with malafide motive in a non-existent cadre, just prior to a DPC meeting which was scheduled in February, 1986 to enable him to be considered for promotion to the post of Joint Deputy Director. Because of the arbitrary and illegal action of the respondents, Shri Gupta, though not eligible, was considered by the DPC for promotion as Joint Deputy Director and ultimately was promoted as Joint Deputy Director, which deprived the applicant of his own chance for promotion to that post. The applicant alleges that Shri Gupta got a further benefit inasmuch as owing to the Fourth Pay Commission's recommendation effective from 1.1.86, the post of Joint Deputy Director was merged with the higher post of D.D. and redesignated as Director while the next lower post of SSO Grade I held by the applicant since 5.6.73 was only redesignated as Under Secretary. He states that various representations were filed against the illegal and arbitrary action of the respondents, but as he received no satisfactory response he was compelled to file this O.A.

5. The respondents have contested this application and aver that the applicant joined the IB in May, 1961. In order to meet the IB's functional requirement, he was sent to BARC to be trained in nuclear research along with the direct recruit trainees of BARC. He continued to draw his salary from IB, and his ACR was also recorded in the prescribed format of IB. Hence, at no stage was he appointed formally to any post in BARC. In 1965, he was recalled to IB and was given assignments of a technical nature like his other colleagues. His performance was rated as 'Above average'. In November, 1965, he was promoted as Deputy CIO, and later, in 1969, his services were transferred to RAW as SFO. He was awarded Ph.D degree by SINP in July, 1973 and meanwhile he had been appointed as SO Grade I on 5.6.73 and worked in the Scientific Wing of RAW under two Senior Officers; one of the rank of JDD and the other of the rank of DD. This post of S.O. Grade I was later on re-designated as SSO Grade I.

6. It has further been averred that the Science & Technology Division of RAW which functions under the overall control of Direction, S&T Division has been given two different nomenclatures of Scientific unit Production(S.P.)/and Scientific Intelligence (SI) unit, according to the work distribution to facilitate its functions, but it is not mandatory that officers functioning in one particular unit shall get their further advancement in that unit alone. Officers in one particular rank are considered for promotion/appointment against the overall vacancies in the next higher grade irrespective of the work distribution, and the procedure has been

kept intentionally flexible in the interest of functional output.

7. The R &AW(RC&S) Rules notified in October, 1975 did not cover the S&T Division. For the above reasons, and as none of the cadres included in these rules were constituted in 1981, no confirmation took place in any of the cadres, except in individual cases where an officer had to be given pensionary benefits. Under the circumstances, the confirmation of S&T Officers against the posts held by them was also not taken up, and it was made clear to the applicant that as and when the initial constitution of the S&T Cadre took place, the cases of confirmation of Officers serving in that Cadre would be taken up. The initial constitution of various cadres of R&AW was initiated in 1984 and finalised in 1985. Meanwhile officers were brought on deputation and as there were no rules which debar - consideration of a deputationist for appointment to the higher grade in the borrowing department, such promotion/ appointments were made on adhoc basis and thereafter extended periodically subject to the lending authority's concurrence.

8. As regards Shri S.K.Gupta, the respondents state that he came on deputation as SSO Grade II on 16.2.74 and while on deputation, was promoted as SSO Grade I, on 5.10.81 on the basis of the recommendations of a duly constituted DPC and after obtaining the concurrence of his parent department. On the recommendations of a duly constituted Selection Board, Shri S.K.Gupta was confirmed as SSO Grade I w.e.f. 1985 along with the applicant vide Memo dated 6.1.86 (supra) but even after confirmation he ranked junior to the

applicant as SSO Grade I.

9. It has further been averred that the posts of JDD and DD in the S&T Division were initially filled by deputationists, keeping in view the functional and operational requirements in the department. In 1982, when the post of D.D. fell vacant, the then JDD, who was a deputationist, was promoted as DD and the post of JDD was filled up by another deputationist. The applicant had represented against the induction of a deputationist and was formally explained the circumstances which necessitated this arrangement in January, 1984 by the Head of RAW himself. He was assured that his case for promotion would be considered as and when possible. In 1986, when the post of JDD again fell vacant, it was decided to fill up the post by eligible SSO's Grade I from within RAW itself. A DPC meeting was held in Feb., 1986 which considered the names of three officers including the applicant and Shri S.K.Gupta. Admittedly, the applicant was junior to Shri Gupta. The DPC, after assessing the suitability of the three officers on the basis of their records, including their qualifications and experience found Shri S.K.Gupta as the most deserving officer of the three for promotion to the post of JDD and accordingly he was promoted as JDD.

10. In the light of the above, the respondents deny any malafides in these actions and maintain that the action taken by them to promote Shri S.K.Gupta as J.D.D. (since merged with the post of DD and renamed as Director) is fully in accordance with rules, and this

application is fit to be dismissed, having absolutely no merit.

11. We have heard Shri B.B.Rawal, learned counsel for the applicant and Shri P.P.Khurana, learned counsel for the respondents and have also perused the material on record.

12. In his argument, apart from emphasizing the salient features of the applicant's case, referred to above, Shri Rawal has alleged that Shri Gupta was promoted to the post of JDD in 1986 ( since merged with the higher post of DD and redesignated as Director) purely on adhoc basis for a period of two years or till the finalisation of the recruitment rules for the S&T Cadre whichever was earlier. In May, 1988, the Personnel Division approached the Cabinet Secretariat to show Shri Gupta's appointment as Director on a regular basis and the Cabinet Secretariat issued orders in June, 1988 permitting Shri Gupta to officiate on a regular basis but laid down a condition that Shri Gupta's case should be reviewed when the recruitment rules for S&T Cadre were finalised. They were finalised in February, 1989 in which a minimum service of ten years as SSO Grade I was required for promotion to the rank of JDD but Shri Gupta's case was not reviewed in 1989. Had such a review been made, he could not have been allowed to continue on the promotional post as he did not possess the minimum ten years service in the lower post as he had been promoted to that post only in 1981. This was to a further ~~times~~ favour/Shri Gupta. Moreover, Shri Gupta was regularised on the promotional post without any reference to the appointment of the Committee, and much prior to framing of Cadre Rules in 1989. On the other hand, the applicant was



promoted to the post of Director only in September, 1991 after putting in 18 years of service in the lower post. The applicant was made to suffer as Shri Gupta's promotion was ab-initio in contravention of Government orders and instructions. The applicant's promotion to next higher post of Joint Secretary was also blocked because he did not possess the minimum requirement of five years service as Director. On the other hand, Shri Gupta had been considered for promotion last year but had not been found fit.

13. On behalf of the respondents Shri Khurana initially raised the objection that this application was filed with delay and was, therefore, hit by limitation. He emphasized the main points taken by the respondents in their counter affidavit and urged that the applicant has not been discriminated and the action taken by the respondents in the entire matter was fair and in accordance with law.

14. We have carefully considered the rival contentions of the two parties in the light to their contentions ~~and admissions~~ and the materials on record. The applicant, no doubt, feels that his seniority, educational qualifications, experience and record of service entitled him to promotion to the post of JDD as far back as in 1982, consequent upon the retirement of Shri Kondiah and the vacation of the post of JDD by Shri Santhanam, who was promoted vice Shri Kondiah. However, in the absence of any recruitment rules for filling up of that post at that point of time, the department had the discretion to fill up the post of JDD by deputation or by promotion.

Having regard to their functional and

operational requirements, they exercised their discretion in favour of deputation by inducting Shri Krishnan to that post. The petitioner has not shown that he has a right to insist that this post should be filled up by promotion only. In the absence of any specific rules mandating only promotion, the respondents, having regard to their requirements, could choose to fill up that post through deputation and not through promotion. That decision cannot be faulted. Again in 1986, the post of JDD fell vacant. This time as a measure of balancing their functional requirements with the need for meeting the aspirations of their employees for legitimate opportunities for career advancement, the respondents chose to fill-up the post internally. For this purpose in the absence of cadre rules for S&T Division, the rules in force in the Technical Research Cadre were adopted and it was decided to fill-up the post through selection to get the best candidate available within the zone of consideration. A DPC was regularly constituted which considered the names of three candidates including the applicant and Shri S.K.Gupta, all of whom were SSO Grade I. While considering these names, the DPC was not unaware that Shri Gupta was junior to the applicant. In spite of that, the DPC recommended Shri Gupta for promotion in preference to the applicant. The applicant has nowhere alleged malafides against the DPC and there is no reason to doubt that the DPC was prompted by entire objective consideration. Surely, if the service record of the applicant and performance was so very superior to that of Shri Gupta, the DPC would have recommended him for promotion instead of Gupta. Furthermore, it is on record that these senior appointments had to be approved by Head of RAW, earlier designated as Director and since re-designated as Secretary. During this entire period, more than one official held this post. The applicant has nowhere alleged

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malafides against any of them. Under the circumstances, it must be held that they took their decision in a bonafide and objective manner.

15. Before concluding, we would discuss specifically some of the points raised by the applicant in his O.A. and referred to by Shri Raval during the course of argument. Firstly, the applicant alleges that he was refused confirmation in 1981 and against a permanent post which was available since 1979 and was asked to await the initial constitution of the S&T Cadre and suddenly in 1986 he was confirmed along with Shri S.K.Gupta in the absence of constitution of the S & T Cadre (and related recruitment rules) which took birth only in February, 1989. This, he alleges, was done to favour Shri S.K.Gupta.

16. The reply of the respondents to this is that the initial constitution of various cadres of RAW was initiated in 1984 and was finalised in 1985. It would have been incongruous to confirm people without notifying the initial constitution and hence the applicant was not confirmed in 1981. After constitution of various cadres keeping in view the assurance given to the applicant in 1981, the question of confirmation of departmental and deputationist officers serving in S&T Division was taken up and the orders of confirmation were issued on 6.1.86 effective from 1.9.85. Shri Gupta's confirmation has no bearing on the eligibility conditions for promotion to SSO Grade I, but had a bearing only on the interse seniority of the officers of that grade. Shri Gupta was admittedly junior to the applicant and his non-confirmation

would not have altered the picture so far as the DPC is concerned. Five years service as SSO Grade I was prescribed for consideration for promotion to JDD. The S& T Unit did not have any laid down rules in this regard and the minimum length of 5 years service was borrowed from the provisions for an equivalent post in the analogous T.R. Cadre to ensure uniformity and fairness. There is merit in this reply of the respondents, because in the absence of their own rules on the subject, the respondents could do no better than to adopt the provisions of the analogous T.R. Cadre and this cannot be termed as an attempt to favour a particular individual.

17. Secondly, it has been alleged that the Scientific Production and Scientific Intelligence Units are water-tight units and those in one discipline cannot be promoted to the other. This is denied by the respondents who point out that the work of two units is largely the same and these nomenclatures have been given only to facilitate functioning and those working in S.P. Division can function in S.I. Division and vice-a-verse. We have no reasons to disbelieve the respondents and this allegation appears to have no merit .

18. Thirdly, it has been alleged that after the recruitment rules came into operation in 1989, Shri Gupta's case should have been reviewed but the same had not been done; instead Shri Gupta had been regularised without referring the matter to the Department of Personnel & Training and the Personnel Division of Cabinet Secretariate. Had the mandatory review been conducted in Feb., 1989, Shri Gupta would have been demoted because the recruitment rules which came into force in February, 1989 prescribe a qualifying

service of ten years in the rank of Under Secretary (SSO Grade I) for promotion as Director(JDD) while Shri Gupta had five years in the rank in 1986 and 8 years only in 1989. Be that as it may, we are now in 1993 and even by the qualifying service of ten years prescribed, Shri Gupta would have completed the same. Hence, this objection is now only academic.

19. In view of all that has been stated above, we are unable to grant any of the reliefs prayed for by the applicant. We hold that Shri Gupta was validly absorbed in RAW and was confirmed against the substantive post of SSO Grade I w.e.f. 1.9.85. A properly constituted DPC considered the applicant's name along with Shri Gupta for promotion to the post of JDD since redesignated as Director, and on objective criteria recommended Shri Gupta's name for promotion in preference to that of the applicant. Hence, the question of declaring the proceedings of DPC as void does not arise. Furthermore, the applicant, could be confirmed only after the initial constitution of the cadre in RAW and as the same was finalised in 1985, he could not be confirmed prior to 1.9.85.

20. This application is accordingly dismissed leaving the parties to bear their own costs.

  
(S.R. ADIGE)  
MEMBER(A)

  
(V.S. MALIMATH)  
CHAIRMAN.

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