

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/01337/2014

HYDERABAD, this the 15th day of February, 2021

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



Jalal Shavali S/o Late Amir Ali Baig,
Aged about 62 years,
Occ : Retired Technical Officer, DMRL,
Hyderabad, R/o 102, H.No.16-11-11-1/3,
Saleemnagar Colony, Malakpet, Hyderabad.

...Applicant

(By Advocate : Mr. A. S. B. Shankar)

Vs.

1. The Union of India, Rep by its Under Secretary,
Ministry of Defence, Government of India,
South Block, New Delhi.
2. The Director General,
Department of Defence Research & Development,
DRDO HQs, DHQ (PO),
DRDO Bhavan, Rajaji Marg, New Delhi-110 011.
3. The Director, HRD,
Directorate of Human Resource Development,
Department of Defence Research & Development,
B Block, DRDO Bhavan, New Delhi- 110 011.
4. The Chairman, DRDO, Centre for Personnel Talent,
Management (CEPTAM), Matcalfe House, Delhi : 110054.
5. The Director, DRDO, Centre for Personnel Talent,
Management (CEPTAM), Matcalfe House, Delhi : 110054.
6. The Director, Defence Metallurgical Research
Lab, Department of Defence Research & Development,
(PO) Kanchanbagh, Hyderabad : 500 058.
7. The Controller General of Defence Accounts,
Ulan Batar Road, Palam, Delhi Contt : 110 010.
8. The Controller of Defence Accounts (R&D),
(PO) Kanchanbagh, Hyderabad : 500 058.Respondents

(By Advocate : Mr. A. Radha Krishna , Sr. PC for CG)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed aggrieved by the inaction of the respondents in not considering the representation of the applicant dt. 13.02.2013 for promoting him to the post of Technical Officer “ B” in PB-3 Rs.15600-39100 + GP of Rs.5400/- from the post of Technical Officer (PB-2 with GP Rs.4600/-) and also aggrieved by the action of downgrading his GP from Rs.4800/- to Rs.4600/- attached to the post of Technical Officer and affecting recovery proceedings.

3. Brief facts are that the applicant joined the respondents organization as a Photostat Operator in 1979 and rose in the career up to the rank of Technical Assistant-C (TA-C) in 2003, which was re-designated as Technical Officer (TO) on implementation of 6th CPC with Grade Pay of Rs.4800. Respondents downgraded the grade pay of TO from Rs.4800 to Rs.4600 and recovery ordered with retrospective effect from 1.1.2006. Applicant retired from service on 31.5.2013. Applicant was included in the eligibility list for promotion as TO for the years 2011, 2012 and 2013. Further, in regard to promotion from TO to TO (B), applicant was not considered but juniors were promoted. Respondents denied prayer of the applicant for promotion despite several representations. Further, recovery was ordered after reducing the grade pay from Rs.4800 to Rs.4600. Aggrieved, the OA is filed.

4. The contentions of the applicant are that the order of recovery dated 30.5.2013 consequent to reduction of the grade pay from Rs.4800 to Rs.4600 is violative of Articles 14, 16 & 21 of the Constitution. Not considering the applicant for promotion to the post of TO (B) is against the Principles of Natural Justice. The action of the 6th respondent in not conducting the special review boards in 2011 & 2012 and assessment board in 2013 for promotion from TO to TO (B) is violative of the instructions contained in DRDO letters dated 9.9.2013 & 10.12.2013. Applicant cited the judgments of the Hon'ble Supreme Court to contend that employees should not be penalised if additional payments are made for no fault of the employee.

5. Respondents confirm that the applicant was promoted to the cadre of TA-C in 2003 and on completion of 5 years of service in the said cadre, though he was considered for promotion to the post of TO from 2008 onwards under Limited flexible complementing scheme, he was not recommended for reasons of lack of relative merit. Applicant retired as TA-C on 31.5.2013. With the recommendation of the 6th CPC, the post of TA (C), in which the applicant was working with pre-revised scale of Rs.6500-10,500/- and which was feeder cadre of TO post, was granted the upgrade pay scale with grade pay of Rs 4600. The post TA (C) was merged with TO, which was in the pre-revised pay scale of Rs.7450-11500 vide order dt. 30.5.2013 with retrospective effect from 1.1.2006. Consequently, applicant was considered for the post of TO(B) by the assessment board for the years 2011 & 2012 after completing 5 years of service as TO w.e.f.

01.01.2006 and found to be unfit. In order to maintain cadre hierarchy and avoid promotion within the same Grade Pay, for the post of TO/TO(A) higher grade pay of Rs.4800 was granted on 5.6.2009 with the approval of Ministry of Defence (Finance) and later, the same was rejected by Ministry of Finance vide UO Note dt. 10.7.2012. Hence, the withdrawal of grade pay of Rs.4800 on 10.5.2013 after consulting the staff unions. The order of 10.5.2013 was challenged in OA No. 3593/2013 in the Hon'ble Principal Bench which was dismissed on 21.3.2014 with a direction to recover the excess payment in 12 equal instalments. The said order was challenged in the Hon'ble High Court of Delhi in WP (C) No. 4110/2014, but later it was dismissed as withdrawn on 8.7.2014. The applicant was never promoted as TO but he got the said post only due to merger of his original post of TA(C) with TO, and he was not granted grade pay of Rs.4800 and hence, the question of recovery does not arise.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about not promoting the applicant to the post of TO (B) and recovery ordered on reduction of grade pay from Rs.4800 to Rs.4600 attached to the post of TO/TO (A).

II. On going through the records, we observe that respondents have implemented Limited Flexible Complimenting Scheme where in promotions are granted based on merit irrespective of the availability of the vacancies. Applicant, while working as TA 'C', was considered 5 times for the promotion to the post of Technical Officer, but was not recommended

for lack of relative merit by the competent committee. Later, when the TA (C) post was merged with TO w.e.f. 01.01.2006, vide letter dt. 30.05.2013, the applicant was considered for the post of TO (B) for the years 2011 & 2012 on completion of the required residency period of 5 years as TO reckoning from 01.01.2006 but was again found unfit based on relative merit. Promotion is based on merit and those who are meritorious would be promoted, even if they are juniors, provided they complete the residency period prescribed in the feeder cadre. It is well settled that the Tribunal cannot go into the recommendation of a committee unless there is a procedural lapse, patent illegality and the decision being malafide as observed by the Hon'ble Supreme Court in the following case:

CIVIL APPEAL NO.6057 OF 2010 : DR. BASAVAIAH V DR. H.L. RAMESH & ORS. *Decided on 29th July, 2010, the Apex Court has referred to the case of Dalpat Abasaheb Solunke & Others v. Dr. B.S. Mahajan & Others (1990) 1 SCC 305, and held as under:-*

37. In **Dalpat Abasaheb Solunke & Others v. Dr. B.S. Mahajan & Others (1990) 1 SCC 305**, the court in some what similar matter observed thus:

"...It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the

court, the High Court went wrong and exceeded its jurisdiction."

The applicant was not promoted due to lack of relative merit and not for any of the deficiencies pointed out in the above verdict. Hence, we find nothing wrong in the applicant not being promoted as TO (B) by the competent committee.



III. In regard to the reduction of the grade pay of Rs.4800 to Rs.4600 attached to the post of TO, the respondents have granted higher grade pay of Rs.4800 to the post of TO in order to maintain cadre hierarchy with TO 'A', which was not agreed to by the Ministry of Finance and hence, the reduction. The issue of reduction of grade pay and subsequent recovery fell for consideration before the Hon'ble Principal Bench in OA 3593/2013 and the relief sought was rejected. The said order was challenged in Hon'ble High Court of Delhi which was dismissed as withdrawn on 8.7.2014. The same issue was also dealt by this Tribunal in OA No.461 /2014 and the relief prayed for was not conceded to. Hence, the aspect of reduction of grade pay and recovery has attained finality as during the submissions it was not stated that the orders of the Hon'ble Principal Bench or that of this Bench have been stayed. The applicant was not granted the grade pay of Rs.4800 as stated in the reply statement, which was not refuted by the applicant by way of a rejoinder. Therefore, even in regard to recovery, the contention of the applicant that recovery has been ordered is incorrect.

IV. However, the only grievance left out is that the representation made on 13.2.2014 has not been disposed. Ld. Counsel for the applicant

repeatedly prayed for the disposal of the representation. Respondents need to have disposed the disposal to let know their decision in respect of the pleas made out in the representation. Although, we found no merit in the case, in the context of the judicial findings cited supra, it appears that the applicant has a flickering ray of hope in the representation submitted by him. Respondents have a duty to reply. Therefore, in the interest of justice, the respondents are directed to dispose of the representation dated 13.2.2014 by marshalling all the developments in regard to the issue and in accordance with law and rules, within a period of 8 weeks from the date of receipt of this order, by issuing a speaking and reasoned order.

V. With the above direction the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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