

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

77 198 6

DATE OF DECISION 29.5.86

Dr. Ashok Mukerjee Petitioner

Shri G.K. Aggarwal, Attorney Advocate for the Petitioner(s)

Versus

Union of India & Others Respondent

Shri K.C. Mittal, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

* The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

JUDGEMENT

The applicant has come up under Section 19 of the Administrative Tribunals Act praying for the following reliefs :-

(6)

- (a) that he should be given the higher grade of Deputy Chief Scientific Officer(DCSO) from 1.9. 1979 to 29.8.1980 by being given ad hoc promotion as Deputy Chief Scientific Officer (DCSO).
- (b) he should be given ad hoc promotion as Director (Grade-II) from 2.8.1982 on completion of three years of service as DCSO.
- (c) that he should be given the benefit of five years of additional qualifying service under Rule 30 of the Central Civil Services (Pension) Rules, 1972, and consequential benefits of increased pension with interest at the rate of 18%.

The brief facts of the case which are not in dispute are as follows :-

2.0 The applicant entered service as Senior Scientific Officer in the Defence Service on 5.12.1961 as a lateral entrant through the UPSC with Post-Graduate, research and specialist qualifications. At that time with his date of birth as 1.8.1927 he was more than 34 years* old. He was promoted as Principal ~~Scientific~~ Scientific Officer in January, 1971 in the scale of Rs 1500-2000 and as Deputy Chief Scientific Officer in the scale of Rs 1800-2250 on an ad hoc basis from August, 1980 and on a regular basis from 5.11.80. However, between the 1st of September, 1979 and the 29th of August, 1980, being the senior-most ~~of~~ Principal Scientific Officer, he held the charge of Senior Inspector at Calcutta in the scale of Rs 1500-2000 but was not given the higher pay scale of Rs 1800-2250 attached to the post of Senior Inspector which was equivalent to DCSO. According to him, given the charge of Senior Inspector, he should have been regularly promoted to the higher scale from 1.9.1979 instead of 30.8.1980. His further grievance is that on 2.8.1982,

being the senior-most DCSO, he should have been promoted as Director (Grade III) but the post was given to a Service officer. He was not given even ad hoc promotion which should have increased his pension. He retired on 31.7.85 as D.C.S.O in the scale of Rs 1800-2250.

3. The applicant's further contention is that being a lateral entrant with post-graduate and research qualifications, under Rule 12 of the Defence Quality Assurance Service Rules (DQAS Rules) read with Rule 30 of the Central Civil Service (Pension) Rules, 1972 and Rule 12(5) of the Defence Research Development Service Rules, five years of service should be added to his qualifying service as he had Post-graduate research and specialist qualifications and had entered service at the age of more than 25 years.

4. According to the respondents, the post of Senior Inspector fell vacant on 31.8.1979 when the then incumbent retired and since new rules were promulgated on 6.10.1979 and no DPC was held, the applicant was asked to discharge the duties of Senior Inspector without any promotion. It is conceded that the applicant was the seniormost and that there was delay in holding the meeting of the Departmental Promotion Committee and the question of ad hoc promotion of the applicant could be approved by the competent authority only on 29.8.1980 and the order of promotion could be issued on 30.8.1980. No charge allowance was given to the applicant for discharging the current duties of Senior Inspector. The applicant was regularly promoted as DCSO on 30.8.1980 on an ad hoc basis and it was made clear to him that it would not confer to him any claim for seniority. He could not be promoted as Director (Gr.II) as he had not completed three years of approved service as DCSO in which grade his regular appointment could be reckoned from 5.11.1980. As regards, adding five years of qualifying service, the

respondents have indicated that unlike Defence Research Development Service Rules, there is no such provision in the DQAS Rules applicable to the applicant. It may be recalled that the applicant has stated in his application that he had given option to join the DRDS but there was no reply and he was finally admitted to DQAS with effect from 30.1.1979.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents closely. During the course of the arguments, the learned counsel for the applicant withdrew his prayers for the first two reliefs regarding higher pay as DCSO between 1979 and 1980 and ad hoc promotion from 2.8.1982 as Director, Grade II. The learned counsel for the respondents argued that since under Rule 30 of the CCS (Pension) Rules, a specific provision for adding five years of qualifying service is a pre-condition and no such specific rule is available for the DQAS the applicant is not entitled to this concession. In order to examine this point Rule 30 of the CCS (Pension) Rules may be quoted as follows :-

"30. ADDITION TO QUALIFYING SERVICE IN SPECIAL CIRCUMSTANCES

- (1) A Government servant appointed to a service or post after 31st March, 1960, shall be eligible to add to his service qualifying for super-annuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the Government servant is appointed is one -
 - (a) for which post-graduate research or specialist qualification or experience in scientific, technological or professional fields, is essential; and
 - (b) to which candidates of more than twenty-five years of age are normally recruited :

- 5 -

Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is not less than ten years :

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule."

6. It is admitted that in the DQAS Rules there is no provision for retirement benefits but these benefits are granted to the DQAS officers under Rule 12 of the DQAS Rules which reads as follows :-

"12. Other conditions of service :

(i) The conditions of service of the members of the Service in respect of matters not expressly provided for in these Rules, shall mutatis mutandis and subject of any special orders issued by the Government in respect of the Service, be the same as those applicable to officers (civilians) of corresponding status in similar scientific institutions/organisations under the Government of India."

7. It is clear that the retirement benefits of DQAS officers will be governed by officers of corresponding status in "similar scientific institutions/organisations under the Government of India". Since before 1979, when trifurcation of the Defence Science Service took place officers working in the Research and Development Organisation and Directorate General of Inspections were interchangeable and since the Defence Quality Assurance Service Rules provided that "there shall ~~not~~ be constituted a Scientific Service known as the Defence Quality Assurance Service consisting of persons appointed to the Service under Rules 7, 8 and 9". It is clear that the organisations where the DQAS officers work are scientific institutions/organisations under the Government of India. As regards their similarity with other scientific institutions, before 1979 the sister scientific institutions of the Defence Research and Development organisation and the DQAS institutions constituted one single family of scientific institution for the Defence Science Service officers and the

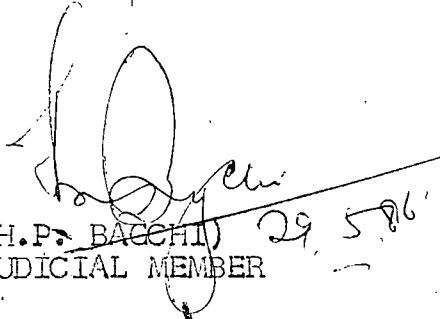
same rules applied to the scientists working in these institutions. We are, therefore, convinced that the retirement benefit rules of DQAS officers under Rule 12 as quoted above will be governed by the pension and retirement benefit rules applicable to the Defence Research Development scientists. These scientists are governed by DRDS rules, Rule 12(5) of which reads as follows :-

"12. Retirement benefits (5) Lateral entry candidates appointed to posts of Scientists 'C' and above shall be entitled to the benefits of added years of service for purposes of super-annuation pension admissible under Rule 30 of the Central Civil (Pension) Rules, 1972."

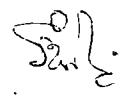
8. A harmonious reading of Rule 30 of the CCS (Pension) Rules, Rule 12 of the DQAS Rules and Rule 12(5) of DRDS rules as quoted above makes it crystal clear that the scientists working in the DQAS will automatically be entitled to the benefits of additional qualifying service to which DRDS scientists are entitled. The fact that even under the DQAS Rules, Senior Scientific Officers, Principal Scientific Officers, Deputy Chief Scientific officers are recruited with age limits of 35/45 years with academic post graduate and doctoral degrees and practical experience goes to show that they are at par with the lateral entrants to the Scientific cadres for which additional qualifying service has been prescribed. This is also admitted that the applicant whose date of birth is 1.8. 1927 entered service on 5.12.1961 when his age exceeded 25 years by more than nine years and that he holds Post Graduate qualifications. Prime facie therefore, under Rule 12(5) of DRDS Rules read with Rule 30 of the CCS (Pension) Rules (as incorporated), he is

entitled to add five years to his qualifying service. Subject to the verification of his age, qualifications etc., he should, therefore, be given such additional qualifying service as is permissible under Rule 30 of the CCS(Pension) Rules.

9. In the facts and circumstance of the case, we allow the application in part on the lines indicated above. His pension should be revised and retirement benefits sanctioned accordingly within two months. A copy of this order should be sent to Respondent 1 at the earliest.


(H.P. BAGCHI) 29.5.76

JUDICIAL MEMBER


(S.P. MUKERJI)
ADMINISTRATIVE MEMBER