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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1067/86
T.A. No.

1988

DATE OF DECISION 29.1.1988

Dr. Ashok Kumar & Others

Petitioner

Shri B.B. Srivastava

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri A.K. Sikri

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

Ch. Ramakrishna Rao
(Ch. Ramakrishna Rao)
Judicial Member

S.P. Mukerji
(S.P. Mukerji)
Administrative Member

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Central Administrative Tribunal
Principal Bench, Delhi

Regn. No. OA-1067/86

Dated: 29.1.1988.

Dr. Ashok Kumar & Others Applicants

Versus

Union of India & Others Respondents

For the Applicants Shri B.B. Srivastava,
Advocate.

For the Respondents Shri A.K. Sikri,

CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member.
Hon'ble Shri Ch. Ramakrishna Rao, Judicial Member.

(Judgement of the Bench delivered by Shri S.P.
Mukerji, Administrative Member)

Dr. Ashok Kumar and other 8 applicants who were working as Senior Scientific Assistants (SSA)/Senior Technical Assistants (STA) and Senior Documentation Assistants (SDA) ^{in the scale of Rs. 550-900,} in the National Physical Laboratory under the Council of Scientific and Industrial Research, have by this application, dated 1.12.1986 prayed for quashing of the promotion of all their juniors who were allowed to cross to the next higher grade by ^{the} granting of advance increments. They have also prayed that the concerned respondents should be directed to promote the applicants to the next higher grade of Scientist (B) in the scale of Rs. 700-1300.

2. The material facts of the case are as follows. A scheme known as Faster Track Promotion Scheme was introduced w.e.f. 1.2.1981 by the C.S.I.R. for accelerated promotion of meritorious and over-qualified technical and scientific staff. This scheme lay more emphasis on educational and professional qualifications instead of length of service. The applicants were working in Group III grades with the following pay-scales:-

Grade III (1) : Rs. 425-15-500-EB-15-560-20-700

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Grade III (2) : Rs.550-25-750-EB-30-900
Grade III (3) : Rs.650-30-740-35-810-EB-35-880-
40-1000-EB-40-1200
Grade III (4) : Rs.700-40-900-EB-40-1100-50-1300.

The next higher grade was of Group IV the entry scale of which was Rs.700-1300. Under the new scheme, any person in Grade III who possessed minimum qualifications prescribed for Group IV posts and was assessed as fit for promotion to the next higher scale in Group III and his pay under the normal rules or by virtue of advance increments which the Promotion Committee could award, got ~~his pay~~ ^{from} fixed at Rs.700 or more, received a quantum jump ^{from} ~~from any of the pay-scales~~ ⁱⁿ in Group III to the entry scale of Group IV, i.e., Rs.700-1300. This was clarified in para. 3.11.1 of the scheme which reads as follows:-

"3.11.1

The staff members in this group of grades who have qualifications prescribed for entry level to the higher Group of Grades shall be assessed immediately for consideration for promotion to the next higher grade in the same Group of grades. They shall be given three assessment chances, the first one immediately. They did not get promoted the first time they will be eligible for assessment every year. If on such internal assessment promotion, their pay when fixed is equal to or higher than the entry level pay of the next group of grades, they shall be deemed to have crossed over to the next Group of grades. If their pay on such promotion is less than the entry level pay for the next group of grades, they shall remain in the newly promoted grade till such time their pay reaches the entry level pay of the next Group of grades or the minimum stipulated period in the newly promoted grade for assessment to the next higher grade or when their basic pay reaches the minimum of the next higher grade whichever is earlier. At that time they shall be assessed again as before for promotion to the next higher grade and be permitted to cross over to the next Group of grades if their pay reaches the entry level pay for the next group of grades."

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All the applicants, except applicants ^a 2 and ^a 3, on being given the option to join the new scheme, agreed to do so and got the promotion to the next higher grade of ..

Rs.650-1200. On this ^{the}petition applicants 2 and 3 also later opted to join the Faster Track Promotion Scheme. The details of the scheme were issued by the C.S.I.R. in November, 1981. The ^{Assessment}first Committee to select candidates met between the 3rd and 7th May, 1982. The Assessment Committee consisted of the Chairman and 12 other eminent scientists, including the four Core Members. The Committee assessed 58 candidates and allowed advance increments to 16 of them. As a result of the recommendations of the Committee, respondents 4 to 28 got promotion to the Group IV grade of Rs.700-1300. Of the 25 respondents since 18 were already drawing more than Rs.700, they would have got the promotion to Group IV even without advance increments. The remaining respondents got the promotion ^{to Group IV} because of the advance increments sanctioned by the Committee. The applicants who were senior to the respondents, could not get the quantum jump promotion to Group IV ^{scale}grade though they were promoted to the next higher ^{scale}grade of Rs.650-1200 in Group III itself. In the subsequent selections made in the following years, the petitioners were also promoted to Group IV grade ^{but}from later dates. The respondents had been promoted w.e.f. ^{1st February}1981. As a result, the applicants lost their seniority and got lesser pay in the Group IV grade. They made a number of representations between 12.7.1984 and 16.10.1986 and were finally informed on 27.10.1986 that since they were not found fit for advance increments ^{in 1982}, they could not have been promoted earlier to the Group IV scale.

3. The main contention of the applicants has been that the Assessment Committee did not assess the merits of the candidates properly by assigning marks on interview,

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confidential reports and record of work, that no guidelines had been issued when the Assessment Committee met in May, 1982 and that they could not have, contrary to the instructions and guidelines issued, given advance increments to the juniors enabling them to move to the next higher ^{Group IV} grade of Scientist (B). They have also challenged the liberal grant of advance increments. When further information about the assessments made by the Assessment Committee was given by the respondents, the applicants in their rejoinder tried to point out several further lapses on the part of the Assessment Committee. These lapses included failure to initial the marks or sign on the first page of the marks-sheet, giving wrong number of advance increments, ~~on~~ marks for qualifications, etc. The respondents refuted these lapses and also pointed out that the applicants had voluntarily opted for the new scheme, appeared before the First Assessment Committee and accepted the promotion to the next higher ^{scale} grade in Group III. The applicants appeared before the Second Assessment Committee ^{also} and got promotion to Group IV. Having appeared before ^{the} two Committees and enjoyed the fruits of the selection made by these Committees, according to the respondents, the applicants are estopped ^{from} challenging the validity of the assessment made by the Assessment Committee. They have also indicated that the application is time-barred as the selections and assessments made in May, 1982 cannot be challenged in 1986 by the application filed in December, 1986.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully.

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5. So far as the preliminary objection of the respondents that the application is time-barred is concerned, we see considerable force in the arguments of the learned counsel for the respondents. The impugned orders promoting the juniors were passed on 12.7.1982 (Annexure 'E' to the petition) and 8th September, 1982 (Annexure 'F' to the petition) and the applicants did not move any court challenging these orders. Their representations were limited to about the loss of their seniority and pay and in none of these representations were the promotions of their juniors on the grounds given in the application before us challenged. Therefore, the present application is time-barred so far as the promotions of the juniors in 1982 are concerned.

6. Apart from ~~the~~ limitation, the applicants cannot challenge the legality of the selections made in 1982 and the following year when they, without any protest, appeared in the tests and failed to get the advance increments which their juniors were given. In *Om Prakash Shukla Vs. Akhilesh Shukla*, AIR 1986, S.C.1043, it has been held by the Supreme Court that having appeared in a test, one cannot question its validity after one fails in the test or finds oneself unlikely to pass. In the instant case, not only did the applicants continue to appear in the tests under the Faster Track Promotion Scheme, but two of them who had not earlier opted for the scheme, later exercised their option to join the scheme and appeared in the tests. They accepted the results of the test, got promotion in the next higher pay-scale in Grade III and again appeared till they were promoted to the entry scale of the higher group. Their entire conduct ~~and~~ acts of estoppel for challenging the validity of these tests or these schemes under which the tests were held.

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(2)

7. Even otherwise, on merits, the applicants have no case. The Assessment Committee consisted of 13 eminent scientists against none of whom have the applicants levelled any charge of prejudice or mala fides. Can this Tribunal question the collective wisdom and expertise of more than a dozen scientists in the assessment of the scientific and technical work performed by the applicants? The answer has to be in the negative. We have examined ^{proceedings of the Committee and the} the marks-sheets and we are satisfied on the following points:-

- (a) Dr. M. Pancholi who had retired from the National Physical Laboratory, can justifiably be deemed to be an external member as he was not on the pay-rolls of the N.P.L.
- (b) Dr. Subramaniam who has signed the proceedings as one of the Core Members was a representative of the Director, N.P.L.
- (c) Dr. A.K. Saha, who has signed the first page of the marks-sheet but whose name was omitted to be mentioned amongst those ^{present} ~~absent~~ in the proceedings, did participate in the proceedings. There was no significance in his signing the marks-sheet if he had not participated. His name occurred as one of the participants in an identical Assessment Committee for the higher group of promotions which met on these very dates.
- (d) The omission of the initials of Dr. V.P. Vij on the marks-sheet is not fatal to the proceedings of the Assessment Committee.
- (e) Similarly, failure ~~for~~ ^{of} other members of the Core Committee to sign the corrections on the marks-sheet which have been initialled by the Chairman, cannot be held to be fatal.

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- (f) Dr.(Mrs.) Raman was recommended for two increments instead of one. Since there is no other candidate with 80 per cent marks who was allowed only one increment instead of two, the grant of two increments to Mrs. Raman cannot be held to be discriminatory and fatal to the proceedings.
 - (g) As regards Ph.D. Degree of Shri R.K. Agarwal, the respondents have clarified that he got the degree much before the interview was held by the Assessment Committee.
 - (h) There is no fault committed if the Assessment Committee took into account the experience of Shri P. Mohan outside the NPL/CSIR so long as the experience is relevant to his scientific and professional background.
 - (i) Allotment of marks for qualifications irrespective of whether the same had been considered at the time of original entry into the grade, cannot be faulted, as all the candidates before the Assessment Committee have to be treated on an equal footing where there is only ^{one common} ~~single~~ competition. On the other hand, it would have been discriminatory if marks had been given to some for qualifications and denied to others holding the same qualifications.

8. Accordingly, we cannot accept the objections raised by the applicants against the Assessment Committee's proceedings on the aforesaid grounds.

9. The principal objection raised by the applicants against the Assessment Committee which met in May, 1982 is that it met before the guidelines were issued on 26.5.1982 and that they had taken into consideration matters falling outside the scope of specified items, namely, experience and qualifications. In that context, the applicants have referred to the following part of para. 0.4.5 of the booklet issued on 2nd November, 1981 by the C.S.I.R. giving the detailed procedure for recruitment and assessment of scientific and technical staff under the new scheme:-

quantification
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"The assessment committees, in especially meritorious cases, may recommend grant of advance increments over and above the normal fixation of pay. The Director of the Laboratory Institute is empowered to sanction advance increments upto three. Beyond three increments, the matter should be referred to CSIR. Since relative assessment of the incumbents now proposed calls for ⁵quantification by way of marks obtained based on performance at the interview/test, confidential reports and record of work, such increments in salary could be related to the marks obtained in the assessment. Guidelines on the method of qualification will follow."

The respondents have argued that the booklet itself gives the basic guidelines and if the guidelines and the method of quantification have not been issued, that does not mean that the Assessment Committee should not meet till today or they cannot delineate their own norms of assessment. We are inclined to accept this view. We cannot accept the plea of the applicants that by not observing the instructions of 26th May, 1982 (Annexure 'B' to the application), the Assessment Committee has committed a fatal error. A bare reading of the letter of the CSIR at Annexure 'B' dated 26th May, 1982 shows that the statement enclosed with that letter merely consolidates the orders and clarifications

B

which had already been issued. Therefore, it cannot be said that there were no orders or clarifications about the procedure to be followed in assessment before the letter of 26th May, 1982 was issued. Further, the orders were in the form of instructions and clarifications and not as "guidelines". Therefore, we feel that holding of the meeting of the Assessment Committee before 26th May, 1982 cannot be deemed to be fatally premature.

10. The other major objection raised by the applicants is that instead of assessing the candidates on the basis of (a) performance at the interview/test, (b) confidential reports, and (c) the record of work, ~~as contemplated in~~ para. 0.4.5 of the booklet quoted above, the Assessment Committee allotted marks on (a) experience, (b) confidential reports, (c) qualifications, and (d) interview. Their argument is that by introducing extraneous elements of experience and qualification and omitting the relevant item of record of work, the Assessment Committee has committed fatal error by transgressing their mandate on the one hand and by omitting to take into account the prescribed items on the other. From a perusal of the record and the documents placed before the Assessment Committee, we are satisfied that while assessing the candidates on the basis of experience and qualifications, they have also gone by the number of publications, etc., and all the ~~work~~ ^{items} combined, i.e., experience, qualifications, and publications, can cover the assessment of "record of work" contemplated in the aforesaid para of the booklet. We are also satisfied that by giving marks out of a total of 40 for interview to those who have been given additional marks out of 20 for confidential reports, and giving marks

for interview out of 60 to those who did not have any confidential report, the Assessment Committee has adopted the right procedure. If those candidates for whom there were no confidential reports had been assigned no marks under confidential reports and marks out of 40 for the interview, they would have been grossly handicapped for no fault of theirs in comparison to those who were given marks out of 20 for their confidential reports ^{in addition to marks for} ~~interviews.~~ ^h

11. The contention of the applicants that the Committee had been over-liberal in giving advance increments to their juniors, cannot be accepted if the collective wisdom and judgement of the members of the Assessment Committee cannot be questioned. We cannot persuade ourselves to accept the interpretation given by the applicants to the various instructions issued to conclude that these instructions debarred the Committee from giving promotion and advance increments to the juniors where their pay increased beyond the pay of their seniors in the grade from where promotion is made. If that were so, then the entire scheme would have had to be scrapped. The very concept of Faster Track Promotion and advance increments presumes that the pay and seniority of the juniors who superseded their seniors, will be higher than the latter. Once a junior supersedes his senior for promotion to the higher grade, the superseded seniors cannot thereafter on subsequent promotion reclaim their seniority in the lower grade for 'historical' reasons. That will also be derogatory to the concept of merit promotion by selection.

12. Having discussed at length the status of the assessment made by the Committee in May, 1982, we have ^{however,} ~~grave~~ ^h reservations about assigning the same stamp of

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validity to the proceedings of the Core Assessment Committee which met on 23.3.1984. The Record of proceedings of this Committee produced by the respondents as Annexure R-II to their counter affidavit, dated 30.12.1986, make a very dismal reading. It does not indicate the names of those who were present. It does not indicate at all whether the Committee assigned any marks or norms for the various parameters of selection process, nor does it indicate the marks allotted to each candidate. Para o.4.5 of the booklet quoted above enjoins upon the Assessment Committee to quantify by way of marks the relative assessment of the candidates based on interview, confidential reports, and record of work. On the other hand, the respondents have admitted that the Second Assessment Committee did not follow the same procedure of allotting marks on paper and "the applicants cannot challenge the mental process of the Assessment Committee". Thus, it is clear that the Second Assessment Committee of 1984 did not discharge its obligations properly and in a manner which will bear judicial scrutiny.

13. In the conspectus of facts and circumstances, we allow the application to the extent of setting aside the proceedings No.6 of the Core Assessment Committee, dated 23.3.1984 and also the impugned O.M., dated 28th March, 1984 (Annexure I to the petition) so far as scientists (8) (9) and (10)

thereof are concerned. We direct the respondents No.1, 2 and 3 to reconvene a Review Core Assessment Committee as in March, 1984 and get the assessment of these three scientists completed in accordance with the relevant rules and instructions with all consequential benefits of promotion, pay and seniority w.e.f. the dates they are so promoted with retrospective effect. The application is disposed of on the above lines. There will be no order as to costs.

Ch. Ramakrishna Rao
29.1.88
(Ch. Ramakrishna Rao)
Judicial Member

S.P. Mukerji
29.1.88
(S. P. Mukerji)
Administrative Member

The corrections made in the 12th line from the top and third line from the bottom of page 2 and in the quotation in the middle of page 8 of the judgment, are in pursuance of our order dated 19.7.88 passed on Revision Application no 29/88.

S.P. Mukerji
19.7.88
(S.P. MUKERJI)
Administrative Member

P.K. Kartha
13/7/88
(P.K. KARTHA)
Vice-Chairman