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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No.127/1987.

Date of decision: August 18, 1992

Shri Tara Nand Singh ... Petitioner.

vs.

Director General,
C.S.I.R. & Others ... Respondents.

CGRAM :

HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.

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

For the petitioner ... Shri K.K.Rai, counse

For the respondents ... Shri A.K.Sikri, counse
with Shri V.K. Rao
and Shri Sanjay
Sandhu, counsel.

JUDGMENT (ORAL)

(BY HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN)

The petitioner, Shri Tara Nand Singh, is working as scientist 'C' in the Central Mining Research Station, Dhanbad. He has challenged in this petition order No.17(65)/83-PPS(CMRS) dated 18.11.1986 (Annexure A-4) in so far ^{as} it pertains to Group IV (2) as it distinguishes and discriminates against other grades without any reasonable differentia, and offends Articles 14 and 16 of the Constitution. He also challenges the same on the ground that it ^{is} also opposed to Thyagarajan Committee recommendations. He has also prayed for quashing of Order No.1(5)/86-VCR/

✓ Assess/Gr.IV dated 10.8.1986 (Annexure 'A') passed

by respondent No.2. That is an order which says that the persons mentioned therein have opted for V.C.R./ deemed to have come over to New Recruitment & Assessment Scheme and have completed the minimum number of years of service needed for assessment in their respective Group/Grade upto 31.3.1986. In the said order respondent No.3, Shri M.L.Gupta is at Sl.No.13, and the name of the petitioner is also shown at Sl.No.12. There is one more person Shri M.N. Das who is at Sl.No.11 in the said order.

2. It is not disputed that a Committee called 'Thyagarajan Sub Committee' was constituted to make an assessment of the procedure for implementation of the Core/Vardarajan/Valluri Committee recommendations for recruitment and assessment of scientific and technical staff. It is in the light of the recommendations of the said Thyagarajan Sub committee report that a scheme was promulgated called the New Recruitment and Assessment Scheme in respect of scientific and technical staff in the C.S.I.R. and its National Laboratories/Institutes. The same was introduced as per Annexure R-I by respondents 1 and 2. The relevant Table pertaining to the scientists in Group IV is Table IV which is at page 63 of the paper book. We are concerned basically with Group IV (2) thereof. As arguments were advanced with reference to Group IV (1) also, we consider it appropriate to extract the relevant clauses of the scheme pertaining to these two Groups as follows:

" NEW RECRUITMENT AND ASSESSMENT SCHEME FOR
SCIENTISTS BELONGING TO A GROUP OF GRADES.

Total No. of Assessment chances As indicated
in each of the first four Grades against each grade.

Group & Grade	Scale of Pay (Rs.)	Designation	Minimum Qualifi- cations for direct recruit- ment.	No. of years of service needed for assess- ment	Maximum of eligible persons who could be promot- ed from one grade to the next higher grade
1	2	3	4	5	6
IV (1)	Rs.700-40- 900-EB-40- 1100-50- 1300.	Scientist 'B'	Ist Class M.Sc./ Ist class B.E., or M.Tech./ ME/MBBS/ M.V.Sc./ M.Pharm/ Ph.D (Science)	5,6,7 and after remaining for one year at the top of the scale.	No percent- age Limitation.
IV (2)	Rs.1100-50- 1600.	Scientist 'C'	Ist Class M.Sc./ Ist class BE with 6 years experience/ ME with 4 years experience/ Ph.D. (science) with 2 years experience/ Ph.D.(Engg.) Minimum years of experience relaxable only in exceptional cases.	6,7,8, and/or after remaining for one year at the top of the scale.	75.

The challenge on the ground of violation of Articles 14 and 16
of the Constitution is only in respect of the clause under
which the scientist who has remained for one year at the top
of the scale is rendered eligible for assessment on the
ground that scientists 'C' are treated differently from

scientists 'B'. It is necessary to point out that 4 chances are provided for scientists in Group IV (1) as well as in group IV (2) for offering themselves for assessment for promotion to the next higher group and grade. So far as Group IV (1) is concerned, persons who have put in 5,6,7 years of service and who have remained for one year at the top of the scale of scientist 'B' are eligible for assessment for promotion to the next higher grade. It is obvious from the scheme that eligibility for assessment is determined on the basis of number of years of service rendered in the group IV(1), i.e., 5,6 and 7 years in respect of the first 3 chances and for the fourth chance after remaining for one year at the top of the scale. The sequence and the use of the word 'and' makes it clear that eligibility can be claimed by being for more than a year at the top of the scale so far as the fourth chance contemplated by Group IV(1) is concerned. So far as Group IV (2) is concerned, the number of years of service prescribed is slightly higher, that is 6,7,8 years. So far as eligibility of a scientist who has put in one year at the top of the scale in Group IV (2) is concerned, the expression used is "6,7,8 and/or after remaining for one year at the top of the scale." The use of the word 'or' after the word 'and' is significant. In the context, it indicates, that the scientist 'C' fulfilling this condition could avail of the chance either before or after putting in 6,7 or 8 years of service depending upon whether the condition is fulfilled

before completing 6 years of service or thereafter.

Shri Rai is, therefore, right in pointing out that there is a vital difference between the clauses governing scientists 'B' and 'C'. He, therefore, contends that unless this classification is justified by valid consideration the clause would be violative of Articles 14 and 16 of the Constitution.

3. Shri A.K. Sikri appearing for the respondents firstly submitted that the discrimination complained of, if any, is in favour of scientists 'C' falling in Group IV(2) and is not a discrimination against them. He, therefore, submits that it is not a fit case for the Tribunal to examine the vires of the impugned clause.

If we accept the contention of Shri Rai, it is possible to eliminate discrimination by striking down the word 'or' occurring in column 5 pertaining to Group IV (2) in which event the scheme would be on par with that pertaining to scientist 'B' falling in Group IV (1). Shri Rai pointed out that in such an event, the petitioner would be benefited by eliminating competition from those who may become eligible before serving for the minimum of 6 years of service. Respondent No.3 Shri M.L.Gupta, has been declared as having become qualified for assessment not because he has put in the minimum of 6 years of service in the group but because he has remained for one year at the top of the scale of the group. We, therefore, consider it necessary to examine the justification for the difference in the

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pattern noticed above.

4. It is necessary to notice that Group IV deals with the scientists. The first group in the cadre of scientists is scientist 'B' falling in Group IV (1). So far as this group is concerned, they would become eligible for assessment for promotion to Group IV (2) only after they have put in minimum 5 years of service. The Thyagarajan Sub Committee has said that minimum number of years ^{of} service ought to be prescribed at the entry cadre of scientist 'B' falling in Group IV (1). It would be too early to assess the merits of scientists 'B' in the entry cadre unless they put in a reasonable number of years of service in Group IV (1). We are, therefore, inclined to agree with the contention of Shri Sikri that prescription of minimum number of 5 years of service as the eligibility criteria for assessment cannot be regarded as unreasonable. Hence not promoting a person who reaches the top of the scale and remains there for more than one year before he puts in 5 years service cannot be regarded as unreasonable. There is a scheme for providing advance increments on the basis of merit. Hence, it is possible for scientist 'C' reaching the top of the scale well before he completes the minimum period of 6 years of service in that grade. Preferential treatment

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given to such a person who is relatively of a better merit cannot be regarded as arbitrary and violative of Articles 14 and 16 of the Constitution. It is obvious that the object of the promotional scheme is to give an incentive to those persons who are more meritorious. We, therefore, have no hesitation in taking the view that the provision which enables persons who have remained for one year at the top of the scale, eligible for assessment in group IV (2) cannot be regarded as arbitrary and violative of Articles 14 and 16 of the Constitution. Hence the first challenge of the petitioner to the scheme fails.

5. Another ground of attack is on the ground that the scheme is opposed to Thyagarajan Committee recommendations. We fail to see how a provision in the scheme can be struck down, even assuming for the sake of argument, that it is inconsistent with the recommendations of Thyagarajan Committee. The petition can succeed only by establishing that the scheme is arbitrary and violative of any statutory provision and not on the

ground that it is opposed to the recommendations of the expert committee like Thyagarajan Sub Committee. Hence, it is not possible to accept the second contention in this behalf.

6. Another argument of Shri Rai, learned counsel for the petitioner, is based on the communication from the Joint Secretary (Admn.), Council of Scientific & Industrial Research, to the Heads of all National Laboratories/Institutes sent vide letter No.17(65)/83-E.II (PPS)- Vol.II dated the 3rd December, 1983 which reads:

"Subject : New Recruitment and Assessment Scheme in respect of Scientific and Technical staff of CSIR - Number of Chances of Assessment - Clarification regarding.

...

Sir,

I am directed to state that in accordance with the provisions of paras 1.7, 2.7, 3.7, 4.7.1 to 4.7.3 of the Valluri Committee Report, the Scientific and Technical staff are allowed, inter-alia, a chance for assessment on remaining at the top of the grade for one year if the person does not get promoted on the earlier assessments admissible after completing the prescribed minimum years of service in the grade. A question was raised as to the number of chances to be allowed to a person who had completed one year of service on the top of the grade on or before 1.2.1981. This matter has been considered in the CSIR. The underlying principle in the revised scheme is to allow four chances of assessment to each and every individual irrespective of the fact that he had remained for one year at the top of the grade on 1.2.1981 before availing any other chances of the assessment. It may, therefore, please be noted that each person will have four chances of assessment scheme, one chance from 1.2.1981 and other three chances in the three succeeding assessment years.

/ in such cases

Yours faithfully,

Sd/-

(S.P. KAUSHIKA)
Senior Deputy Secretary."


7. At the outset, it is necessary to note that the interpretation given by the joint Secretary in the above letter is not binding on the Tribunal. It is stated that "in accordance with the provisions of paras 1.7, 2.7, 3.7, 4.7.1 to 4.7.3 of the Valluri Committee Report, the Scientific and Technical staff are allowed, inter alia, a chance for assessment on remaining at the top of the grade for one year if the person does not get promoted on the earlier assessments admissible after completing the prescribed minimum years of service in the grade." He submitted on the basis of this statement that a person who is at the top of the grade for more than one year would qualify for assessment only if he does not get promoted on assessment made after serving for the prescribed number of years. In other words, he submitted that a person who is at the top of the scale cannot claim eligibility for assessment before he completes the minimum of 6 years service required for scientist 'C' falling under Group IV (2). It is no doubt true that the statement in the first part of Annexure A-2 does support the submission of Shri Rai. It is, however, necessary to point out that it was only a casual statement and was not the considered opinion of the joint Secretary. We say so because that was not the question which he was required to examine and express his opinion. The next sentence in the said communication makes this position clear where it is stated that "A question was raised as

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to the number of chances to be allowed to a person who had completed one year of service on the top of the grade on or before 1.2.1981." What was required to be examined was as to the number of chances that would be available for a person who has completed one year of service on the top of the grade on or before 1.2.1981. This question was answered at the end of the said communication by stating that "each person will have four chances of assessment to the next higher grade under the new assessment scheme, one chance from 1.2.1981 and other three chances in the three succeeding assessment years." We, therefore, have no hesitation in taking the view that what has been stated in the first part of the letter Annexure A-2 was not the considered opinion of the joint Secretary. It is already stated that his opinion is not binding on the Tribunal.

8. We are also informed that some of the clauses which have been challenged in this petition stand replaced by another scheme which has come into force with effect from 1.4.1988. As we do not find any substance in any of the contentions raised by the petitioner, this petition is dismissed. No costs..


(I.K. RASGOTRA)
MEMBER (A)


(V.S. MALIMATH)
CHAIRMAN