

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 317/87 198
T.A. No.

DATE OF DECISION 23.3.1990

Dr. Vijai Kumar Agrawal & ors. Applicants.
Petitioner

Shri S.C.Luthra, Advocate for the Petitioner(s)

Versus

Union of India & ors. Respondents

Shri A.K.Sikri & Sh.N.S.Mehta, Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B.S. SEKHON, VICE CHAIRMAN

The Hon'ble Mr. D.K.CHAKRAVORTY, 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?
4. Whether it needs to be circulated to other Benches of the Tribunal?

No

MGIPRRND-12 CAT/86-3-12-86-15,000

Declar
(D.K.CHAKRAVORTY)
MEMBER
23-3-90

S. Sekhon
(B.S.SEKHON)
VICE CHAIRMAN
23-3-90

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PRINCIPAL BENCH, NEW DELHI

OA 317/87

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Dr. Vijai Kumar Agrawal & Ors.

.. Applicants

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Union of India & Others

.. Respondents

CORAM:

Hon'ble SHRI B.S. SEKHON, VICE CHAIRMAN (J)

Hon'ble SHRI D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

For the Applicants Shri S.C. Luthra, Counsel

For Respondents 1 & 2 Shri A.K. Sikri, Counsel

For Respondents 3 & 4 Shri N.S. Mehta, Counsel

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Shri D.K. Chakravorty, Member).

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985, by the applicants, who are Scientists EI in the National Physical Laboratory (NPL for short) praying for quashing of the Council of Scientific and Industrial Research (CSIR for short) order No.17(92)/84-EII dated 2-8-1984 vide which double benefit of Scheme Service period have been granted to Respondent 3 for his next promotion from Scientist EI to Scientist EII. Quashing of order granting similar benefit to Respondent 4 has also been sought. It has also been prayed that the order granting merit increment benefit to Respondent 3 be quashed, and that Respondents 1 & 2 be directed to restore due seniority of the applicants for their next assessment promotion from Scientist EI to Scientist EII.

contd..

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2. The brief facts of the case are that the applicants while working as Scientist 'C' in the NPL were all seniors to Respondent 3 & 4 as per the particulars of seniority given in Annexure 'F' at page 28 of the paper book. Scientist 'Cs' are eligible for promotion to Scientist EI after completing a minimum period of 6 years of service. Respondent 3 was regularly promoted to Scientist EI with effect from 4-12-81 as per rules. Subsequently, the CSIR issued the impugned letter dated 2-8-1984 in which, it is stated that the service rendered by Respondent 3 in Electronics Commission Scheme as Scientist EI will in, accordance with CSIR Orders conveyed vide letter No.16(150)/68-E.II(Pt.II) dated 13-1-1981, count towards his assessment for promotion to the grade of Scientist EI in the NPL. The applicants contend that this impugned order wrongly brings forward the date of seniority as SC EI of Respondent 3 from 4-12-81 to 16-5-80 enabling him to become senior to all the applicants. They have also challenged the applicability of the CSIR order dated 13-1-1981 to Respondents 3 & 4 in view of the provisions of clause 5 thereof which reads as under:-

"The regular staff applying for posts in such sponsored projects/schemes, if selected could function in that position, which may be higher, but purely temporarily, and revert to their substantive (regular) post on completion of the project."

Further, clause 8 of the said order is also not applicable to Respondent 3 as he has put in less than 5 months' service till 1.10.1980. Accordingly, the decision to allow the double benefit of the Scheme Service period to Respondent 3 is contrary to the existing rules.

For the above reasons, respondent 4, who was regularly promoted to SC EI with effect from 3-2-1982 as per rules, cannot also be given double benefit of the Scheme Service

in which he worked as SCEI from 3-2-1981.

The merit increments given to respondent 3 have been assailed on the grounds that as per CSIR rules, any person who has gone through the assessment is not entitled to consideration of merit promotion/increment in the same year or in the previous year. Respondent 3, having been interviewed for promotion from SC "C" to SC EI in May, 1983, was not entitled to consideration for merit promotion/increment in 1983 or even in 1982. Further, the merit promotion/increment scheme being applicable only for regular staff, he was not entitled to it in the year 1982 while working as Scientist 'EI' in scheme/project on purely temporary basis. In case he was recommended for the work in the scheme, then the award should have been limited to scheme post only and not carried over to regular post which he got by assessment in May, 1983.

Over the period of almost two years, the applicants submitted several representations to the Director, NPL (Respondent 2) and the Director General, CSIR (Respondent 1) which were either not replied to or given only vague replies. Their grievances have not been redressed even after personal meetings with the Director/Director General.

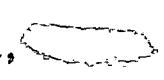
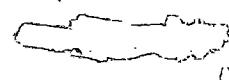
3. In the reply filed on behalf of respondents 1 & 2 a preliminary objection has been taken that the application is time barred as per Section 21 of the Administrative Tribunals Act, 1985. This objection has already been considered by the Tribunal vide its order dated 27-5-1987 when it was observed that "on the date of constitution of the Tribunal the application is within time and the same is admitted."

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It has been submitted that besides research work on regular basis, the NPL also undertakes special research projects as sponsored schemes. The regular staff/Scientists are sometimes assigned to undertake such externally funded schemes/projects for specific periods and after the scheme is over they revert back to their original positions. Earlier, the benefit of service rendered by regular staff working on these projects/schemes was not given to the Scientists but the policy in this regard was revised under letter dated 13.1.1981. It is stated that the staff earlier appointed in the sponsored projects, on absorption on regular basis, will be entitled to count their scheme service in an identical post for the purpose of assessment for promotion to the next higher grade with effect from 1.10.1980 or the date of completing the prescribed qualifying service for assessment, whichever is later. The respondents contend that in terms of the above circular, Respondent 3, having been appointed as Scientist EI in the project "Development of Electro-Chromic Displays & Devices" with effect from 16-5-80 and in view of his appointment on regular basis to the post of Scientist EI with effect from 4.12.81, he is entitled to count his eligibility for the next higher grade, from 16.5.80 itself. There is no question of double benefit as alleged. The same is true in respect of Respondent 4, who was appointed as Scientist EI in the project "Carbon Fibre" with effect from 3.2.81 and later on got regular promotion as Scientist EI with effect from 2.2.82.

It has been further contended that in terms of the recruitment rules for appointment to the post of Scientist EII, which is enclosed at Annexure H, pages 42 to 49 of the paper book,  no distinction is to be made between the  

service rendered in a grade while working in a scheme post or in the regular line. Accordingly, the counting of seniority from the date of promotion of respondents 3 & 4 in the scheme posts is in order.

As regards merit promotion/increment to Respondent 3, it has been stated that the same was recommended for the year 1982 by the NPL and the order granting two advance increments under FR 27 was issued by CSIR on 30-4-1984. There has been no violation of the rules.

4. In the counter affidavit filed on behalf of Respondents 3 & 4 it is averred that the application is without any cause of action, the applicants have no locus standi and [] Dr. B.N. Srivastava, applicant No.3 herein, is not at all eligible for consideration as per rules. Dr. Subhash Chandra, Respondent 3 was initially appointed as regular Scientist 'C' on 4-12-1975 and after being selected through open competition, he had been appointed as Scientist EI under the project 'Development of Electrochromic Displays & Devices' on 16-5-1980. Similarly Dr. O.P. Behl, Respondent 4, was appointed as Scientist 'C' on 3-2-1976 and Scientist 'E' on 3-2-1981 in the project 'Carbon Fibre'. The service benefits provided to them are as per circular dated 13-1-1981.

5. In Misc. Petition No. 604/87 the applicants had sought issuance of directions to the respondents for production of certain documents to enable them to file the rejoinder to the counter-affidavit filed by the respondents. The Misc. Petition was allowed and the respondents were directed vide order dated 15-7-1987 to allow inspection of the documents listed at (a), (b) and (f) of the aforesaid Misc. Petition. In the rejoinder filed by the applicants copies of several letters, office memoranda

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and notings from the files etc. of the NPL and CSIR have been enclosed as Annexures HH/1 to HH/9, II/1&2 and JJ/1.

The main point made in the rejoinder is that after considering the legal advice tendered by the Legal Adviser of the CSIR a final communication was sent by the respondents to Dr. Subhash Chandra under NPL OM No.2(3)/84-Vig/24-10-1986 informing him "that the benefit of service rendered by him as Scientist 'EI' in a scheme has already been extended to him for counting 6 years service in the grade of Scientist 'C' while assessing him for promotion from Scientist 'C' to Scientist 'EI' w.e.f. 4-12-1981. As such he will be eligible for assessment promotion from Scientist EI to Scientist 'EII' after completion of 5 years of service in the grade i.e. w.e.f. 4-12-1986." A similar Office Memorandum was sent to Dr. O.P. Behl. The applicants have stated that, strangely enough, neither the NPL nor the CSIR cared to communicate the decision contained in the above quoted Office Memoranda to the applicants on whose behalf the legal notice was given. Further, despite the communication of the decision to ~~the~~ Respondents 3 & 4, the NPL did not revise the list and proceeded with the assessment.

That the assignments in the schemes/projects are on foreign service terms have been made amply clear in the Office Order No.57 dated 19-6-80(Annexure HH/1 of the paper-book) which states that "Dr. Subhash Chandra will be treated on foreign service terms for 3 years from the date of his joining i.e. 16.5.1980." This is further highlighted by the fact that protection of pay was denied to Dr. Subhash Chandra under NPL letter dated 25/26-2-86(Annexure HH/8 of the

paper-book).

As regards merit promotion, it is reiterated that the case of Respondent 3 was sent in March/April 1983 although he was ineligible for advance increments in terms of the order dated 19.6.76(Annexure JJ/1 of the paper-book).

6. We have heard Shri S.C.Luthra, learned counsel for the applicants, Shri A.K.Sikri, learned counsel for respondents 1&2 and Shri N.S.Mehta, learned counsel for respondents 3 &4 and have also carefully gone through the records made available.

7. The learned counsel for the applicants argued that all the Government rules and regulations relating to service matters including seniority, promotion, deputation, foreign service, pay fixation etc. are applicable to CSIR. According to him, the CSIR order dated 13.1.1981 has been wrongly interpreted by the respondents. Essentially this order regulates initially the absorption of staff recruited for externally funded projects and schemes. The order clearly states that recruitment in sponsored projects should be on behalf of the sponsor for a fixed period for the duration of the Scheme only and that the appointment is not a CSIR appointment, temporary or otherwise, and does not entitle the incumbent to any claim implicit or explicit, on any CSIR posts. As regards the regular staff selected for sponsored projects, it is mentioned that they could function in that position which may be higher, but purely temporarily and revert to their substantive (regular) post on completion of the project. This aspect has in fact been taken care of in the sub-para 4(e) of the Office Memorandum dated 23/3/90

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9.1.81 appointing Dr.O.P.Behl to the post of Scientist EI in Carbon Fibre project. Strangely, however, no such condition finds mention in the copy of the Office Memorandum dated 15-5-80 relating to appointment of Dr. Subhash Chandra as Scientist EI in the project post.

The learned counsel alleged that the CSIR/NPL are quite well aware of the correct rules position in the matter but have chosen to conceal this aspect in the counter. He averred that this was quite obvious from an inspection of the documents made available which he had personally done. He made pointed reference to the Office Memorandum dated 24-10-1986 at pages 157 & 158 of the paper-book regarding counting of service only from the date of regular promotion and to the NPL letter dated 25/26-2-86 stating that " these guidelines are applicable only in those cases where the persons are initially appointed in the scheme/project." According to the learned counsel, this clinches the entire issue and highlights the arbitrary and contrary stands taken by the respondents in various documents at various points of time. The contradictions were brought into sharper focus by reference to Office Memorandum dated 30.5.83 (Annexure I at page 50), Office Memorandum dated 25-9-1984 (Annexure GG at page 126) and note dated 1-7-1985 (Annexure FF at page 125) in which correct dates of appointment of Respondents 3 & 4 as Scientist EI were given, whereas, soon thereafter in circular dated 20.3.1986 (Annexure J at page 52) suddenly Respondents 3 & 4 are shown as senior to

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all the applicants for counting the due date of assessment for the next promotion. This needed immediate revision after the respondents issued the order dated 24.10.1986 but this was not done. The assessment for promotion from Scientist EI to Scientist EII might have been held on the basis of the wrong list dated 20.3.1986 but for the interim stay order passed by the Tribunal.

As regards the advance increments, the learned counsel for the applicants emphasised the fact that Respondent 3 was not at all eligible as he was still on probation in 1982 and even if increments were given for his performance in the scheme, which was never given to any other Scientist employed in scheme projects, he cannot be permitted to bring back the same on his reversion to his parent cadre to steal a march over his seniors.

8. The learned counsel for the respondents opposed the contentions raised by the learned counsel for the applicants. He quoted extensively from the Experts Committee's report which led to issuance of the circular dated 13.1.1981 to bring improvement in the system of assessment of personnel for appointment in the schemes and their eventual absorption on the regular side in the CSIR. As regards the decision conveyed through Office Memorandum dated 24.10.86 on which the applicants relied upon, the learned counsel for the respondents stated that the above decision has since been reversed under a subsequent order dated 22.12.1986.

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No copy of the [redacted] order dated 22.12.1986 is, however, available on record.

The learned counsel for the respondents vehemently denied the allegations of concealment of

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any facts or documents. He also placed reliance upon the judgement of the Supreme Court in V.T.Khanzode V.

Reserve Bank of India (AIR 1982 SC 917). The dictum of the Supreme Court in V.T. Khanzode (supra) upholding the powers of statutory corporation to issue administrative instructions or circulars for regulating service conditions of its employees does not improve the Respondents' case in any wise. This is so for the reason that the decision on the main issue falling for determination in this case turns on the scope of the relevant rules and circular dated 13.1.1981.

9. The learned counsel for respondents 3 &4 reiterated the stand taken by the learned counsel for respondents 1 &2.

10. The main issues for adjudication in this case are whether a regular Scientist in grade 'C' of the NPL who has worked in the grade of Scientist EI while on deputation on foreign service terms to an externally funded project is entitled to count that period of service to improve upon his erstwhile seniority on reversion to his parent cadre in the NPL and, if so, will that period spent on foreign service be counted once for computing the minimum period of service required for promotion from Scientist 'C' to Scientist EI and then again added to the eligible service for further promotion to the next higher grade of Scientist EII.

11. We are not impressed by the arguments advanced by the learned counsel for the respondents in support of giving the benefit of scheme service to respondents 3 &4. No rules or regulations of the CSIR or Government of India have been brought to our notice which permit counting of service rendered in an ex-cadre post or on deputation or on foreign service in a higher grade for purposes of reckoning seniority for regular

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promotion in the parent cadre. All that the Government of India rules allow is the counting of the period spent on deputation etc. towards seniority and promotion in the grade on which he is borne in the parent cadre during that period. The CSIR circular dated 13.1.1981 quoted by the respondents in this regard does not at all provide such protection to regular employees of NPL sent on foreign service to externally funded schemes/projects.

The second issue relates to the double counting of the period of service rendered under the scheme/project, the effect of which can be seen from the following:

		Respondent 3 Period of service <u>in the grade</u>
(i) Date of regular appointment as Sc. 'C' in the parent cadre.	4.12.75	
(ii) Date of foreign service in Sc.EI grade	15.5.80	Regular service- 4 yrs. 5½ months
(iii) Date of regular promotion as Sc.EI in the parent cadre	4.12.81	Scheme service- 1 yr. 6½ months
(iv) Completion of 5 years as Sc.EI including scheme service	15.5.85	Regular service- 4 yrs. 5½ months Scheme service- 1 yr. 6½ months
(v) Completion of 5 years of regular service as Sc.EII	4.12.86	Regular 5 years (from 4-12-1981)

It will be seen from the above that in terms of the impugned order, the period of 1 year and 6½ months in foreign service, which has already been correctly counted once towards eligibility for promotion from Sc. 'C' to the grade of Sc.EI will be counted once again towards eligibility for further promotion to the grade Scientist EII. This is obviously contrary to the rules of equity and fair play.

Accordingly, the CSIR order No.17(92)1/84-E.II dated 2.8.84 relating to respondent 3 is quashed. Similar order issued in respect of respondent 4 is also quashed. Respondents are directed to count the period

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of 5 years of service for eligibility for promotion from grade of Scientist EI to Scientist EII in respect of Respondent 3 with effect from 4.12.1981 and in respect of Respondent 4 with effect from 2.2.1982...

12. The applicant's contention that the grant of two advance increments for the year 1982 to Respondent 3 under the Merit Promotion/Advance Increment Scheme was irregular, has to be examined with reference to the relevant CSIR Scheme, Rules and Guidelines applicable at that point of time. We have seen the CSIR letter dated 19.6.1976 on the scheme for grant of Merit Promotion/Advance Increments to Scientists of National Laboratories/Institutes and letter dated 25-4-1985 on the procedure for the same(Annexures JJ/1 & JJ/2 of the paper-book). A perusal of the proceedings of the meeting of the Central Merit Promotion Committee held on 29.4.1984 indicates that " the guidelines were brought to the notice of the Committee" but neither these nor the other letter Nos.16(40)/74-EI dated 15-3-1974 & 5.9.1975 etc. are available in the records produced.

13. The factual date and data matrix relating to Respondent 3 is summed up below:-

(a) NPL Service as Sc.'C'	4-12-1975
(b) Scheme Service as Sc.EI	16-5-1980
(c) Probation period in Scheme service	16-5-80 to 15-5-82
(d) Regular promotion to Sc.EI	4-12-1981(Retrospectively)
(e) Period of probation in regular service as Sc.EI.	Presumably from 4-12-81 to 3-12-83
(f) Assessment held for regular promotion for(d) above	23/24-5-1983
(g) Merit increments for 1982 with effect from	30-4-1984

14. The applicants' counsel has asserted that Respondent 3 was not entitled to consideration for merit

increment in 1982 or even in 1983 in terms of the CSIR guidelines because he was assessed for regular promotion to Scientist EI in May 1983; and because he was on probation during 1982 and further because the Merit Scheme is not at all applicable to persons working in scheme/projects. The rules and procedure available on record are silent about the applicability of the Scheme to Scientists working under the externally funded scheme/projects or, if awarded, whether the benefit can be carried over to the regular post on reversion/promotion. It is, however, noted that the CSIR had informed the Directors of the Laboratories on 2nd March, 1984 that "in case any of the scientists has been promoted to the next higher grade, his case may not be considered for the year 1982" and further according to the clarification given at point No.4 of the Scheme dated 19.6.76 "the cases of those scientists who are on probation after promotion to the higher grades may not be considered for promotion/advance increments till they complete their probation period". Respondent 3 was certainly on probation for two years from 16-5-1980 while on foreign service but it is not clear whether and for how long he remained on probation after his regular assessment in 1983 and promotion to the grade of Scientist EI with retrospective effect from 4.12.81. These issues have also not been specifically answered or controverted in the counter or during the arguments at Bar.

In the absence of complete set of orders and guidelines relating to the grant of Merit Promotion/Advance Increments to Scientists in various grades, whether working in the regular posts in the CSIR or employed in the externally funded projects/schemes, applicable during the relevant period, we refrain from passing any order as regards eligibility or otherwise of Respondent 3 to the grant of advance increments sanctioned to him for 1982 but with effect from the date of issue of the CSIR letter dated 30.4.1984.

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We, however, direct the respondents to review afresh the case relating to grant of advance increments for the year 1982 to Respondent 3 and regulate the same strictly in the light of the then applicable Schemes/Rules and Guidelines.

16. In the light of the foregoing and keeping in view the facts and circumstances of the case, the application is disposed of with the following findings and directions:-

- (i) CSIR Order No.17(92)1/84-E.II dated 2.8.84 regarding allowing of counting of service rendered by Respondent 3 in the Electronics Commission Scheme as Scientist EI towards his assessment for promotion to the grade of Scientist EII in accordance with CSIR Order No.16(150)/68-E.II(Pt.II) dated 13.1.1981 is hereby quashed;
- (ii) similar order issued in the case of Respondent 4 for allowing the counting of service rendered as Scientist EI in the externally funded scheme towards assessment promotion to the grade of Scientist EII is also quashed;
- (iii) we direct the respondents to reckon the eligibility of respondents 3&4 for assessment for regular promotion to grade Scientist EII only from the dates of their regular promotion to grade Scientist EI viz. 4-12-1981 and 2.2.1982.respectively; and
- (iv) we also direct the respondents to review the order dated 30.4.84 granting advance increments to Respondent 3 and to regulate the same strictly in accordance with the then applicable Schemes/Rules and Guidelines on the subject.

These directions shall be complied with by the respondents within three months from the date of communication of this order.

There will be no order as to costs.

D.K.Chakravorty
(D.K.CHAKRAVORTY)
MEMBER

23rd March, 1990

B.S.Sekhon
(B.S.SEKHON)
VICE CHAIRMAN

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