

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A./TXX. No 2973 of 1992

Decided on: 21/4/98

Shri I.S. ParmarApplicant(s)

(By Shri None Advocate)

Versus

Council of Scientific & Industrial & AnotherRespondent(s)

(By Shri N.S. Mehta Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A. VEDAVALLI, MEMBER (J)

1. Whether to be referred to the Reporter or not? *yes*
2. Whether to be circulated to the other Benches of the Tribunal?

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(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2973 of 1992

New Delhi this the 21st day of April, 1998

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri I.S. Parmar
R/o House No. 652, Gali No.7,
Govindpuri,
P.O. Kalkaji
New Delhi-110 019.

...Applicant

None for the applicant.

Versus

1. Council of Scientific &
Industrial Research
"Anusandhan Bhavan",
Rafi Marg,
New Delhi-110 001.
through its Joint Secretary (Admn.)

2. Director,
Central Road Research Institute,
P.O. C.R.R.I.,
New Delhi-110 020.

...Respondents

By Advocate Shri N.S. Mehta.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant is aggrieved by the respondents letter dated October 28, 1992 informing him that he had become eligible for second chance assessment with effect from 20.6.1981 to the next higher grade under the bye-laws of the respondents. The applicant's plea is that the respondents had not disclosed how he was rejected by the respondent No.2 against the earlier assessment-promotion to the next higher grade of Mechanical Engineer Group 'A' with effect from 20.6.80 in the interview held on 12.2.1992. The applicant alleges that the respondents have lost all the Confidential Reports of the applicant for the relevant periods and he also superannuated from service on 30.4.1987. He submits that he was entitled to his legitimate promotion on 20.6.1980 itself



and also to the further promotion of Mechanical Engineer Group 'B' from 20.6.85. His grievance is that the respondent No.2 after having assessed him for the Mechanical Engineer Group 'A' w.e.f. 20.6.80 after a lapse of almost 5 years decided to reassess him, that too from a later dated, i.e. 20.6.81. The applicant alleges that the respondents are trying to cover up their omissions and the loss of the Confidential Reports. He claims that he has been given outstanding reports during those years and, therefore, the attempt on the part of respondent No.2 to now further assess the applicant for the second chance w.e.f. 20.6.81 is nothing but to reject him again by the so called Expert Committee, which is not provided with the Confidential Reports.

2. Briefly stated the facts are that the applicant joined the service of the respondent No.2 as a Mechanic on 14.4.1950. He subsequently gained several promotions and was promoted to the next higher grade of Senior Foreman in the pre-revised scale of Rs550-900 w.e.f. 20.6.1975. Subsequently on the basis of the New Recruitment and Assessment Scheme (NRAS for short), he was assessed and promoted to the next higher grade of Senior Foreman in the pre-revised scale of Rs.550-900 with effect from 1.2.1981 vide respondent No.2's O.M. dated 15.3.1982 (Annexure A-2). He was again assessed for the same post for Senior Mechanical Foreman in the pre-revised scale Rs.550-900 (revised scale Rs.1640-2900) as late as on 23rd April, 1987 just before the applicant's retirement on 30.4.1987. This reassessment was done by the respondents under the old scheme without withdrawing their earlier assessment in the same grade w.e.f.

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1.2.1981 under the NRAS. He submits that he was due to be assessed for the next higher grade of Mechanical Engineer Group 'A' w.e.f. 20.6.80 and further grade of Mechanical Engineer Group 'B' w.e.f. 20.6.85. He filed an earlier petition - O.A. No. 1308/1992 for revising his pension in the revised pay scale as the respondent No.2 had fixed his pension in the old scale. In that O.A. direction was issued only on the question of issue of revised pension and the O.A. was suitably directed to be amended in respect of assessment-promotion. When this O.A. was pending, respondents had sought to re-assess the alleged second chance with effect from 20.6.81. Further, after the filing of the present petition, the earlier OA was disposed of by the order dated 26.3.1983, to which we shall advert later.

3. The respondents have taken objection on the grounds of res judicata and also on limitation. They have pointed that in the earlier application the Tribunal had rejected the claim of the applicant for assessment in the higher grades of Rs.2000-3500 w.e.f. 1.6.80 and further Rs.2200-4000 w.e.f. 1.6.85 and revision of the pension accordingly after assessing him lastly in the pay scale of Rs.2200-4000. Only his other relief for fixing the pension in the revised pay scale of Rs.1640-2900 on his last pay drawn at Rs.2825/- instead of provisionally fixing his pension in the old scale was only considered by the Tribunal in the aforesaid O.A. It is admitted by the respondents that on the basis of the option of the applicant for assessment in the erstwhile bye-law 71(b), the applicant was assessed by a duly constituted Assessment Committee for assessment to the higher

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grade of Rs.550-900 and he was promoted as Foreman-B with effect from 20.6.75. Later on, he was assessed in the NRAS w.e.f. 1.2.1981 and subsequently w.e.f. 20.6.75 under the Old Assessment Scheme in view of the option exercised by him to come-over to the old Assessment Scheme under erstwhile bye-law 71(b) in toto. He also opted to forego the benefit already drawn by him under the provisions of NRAS. Since the applicant opted for the old Assessment Scheme, he was assessed for promotion to the next higher grade of Rs.550-900 w.e.f. 20.6.75 and the earlier benefit given under the NRAS was withdrawn and his pay was fixed as Sr. Foreman (Mechanical) w.e.f. 20.6.75. The respondents further submit that as per the Old Assessment Scheme, five yearly assessment is to be done. However, the applicant in the meanwhile, retired on 30.4.1987. In the earlier O.A., the applicant had prayed that he should have been assessed for the next promotion w.e.f. 1.6.80 and 1.6.85 respectively and sought the direction to that effect. But this relief, as already stated, was not considered. However, the respondents on their own decided to make assessment of persons who had opted under the Old Assessment Scheme. The applicant was accordingly assessed by the respondents on 20.6.80 for the next higher promotion but the Assessment Committee did not recommend the case of the applicant. His representation was also rejected. As he was not recommended for promotion by that particular Committee, he was to be assessed next year and, therefore, it was decided that his case should be taken up for next higher grade with effect from 20.6.81. In the light of this, the respondents maintain that their action for consideration of the applicant for assessment w.e.f. 20.6.81

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was quite valid and proper. The applicant was assessed by the Assessment Committee which met on 28.1.93 and on the recommendations of the said Committee, he was promoted to the next higher grade of Rs.650-1200 w.e.f. 20.6.81 and he would be entitled to next assessment to next higher grade of Rs.2200-4000 w.e.f. 20.6.86 under bye-law 71-b. For this purpose, they have issued a letter dated 2.2.93 requesting the applicant to submit 15 copies of his work-report. The applicant has neither challenged the assessment done w.e.f. 20.6.81 nor the letter dated 2.2.93 by which it was requested that he should submit the 15 copies of work-report for further assessment. In regard to his Confidential Reports, the respondents have averred that the concerned folder for earlier years could not be traced and, therefore, it was essential to process his assessment on the basis of available Confidential Reports. In the light of this, the respondents maintain that the applicant has no case.

4. Although the case came up on 1st January, 1998 under 'Regular Matters', no one appeared for the applicant. It was made clear that as this was a 1992 matter, no indefinite adjournment was possible. Later on the case was again listed for hearing on 6.1.98. Even on that day, no one appeared for the applicant. Counsel for the respondents was, however, present and was heard and the matter was closed for orders.

5. In the previous O.A. 1308 of 1992, paras 2 and 3 of the order reads as follows:-

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"2 The applicant has prayed for the grant of the following reliefs:

(a) A direction to respondent No.2 to fix the pension of the applicant in the revised pay scale of Rs.1640-2900 instead of provisionally fixing the same in the old scale and also a consequential relief to make the payment of the difference of gratuity, commuted value of pension, leave encashment etc. to the applicant in the revised pay scale at Rs.2875/-.

(b) The applicant has also prayed for a direction to respondent No.2 to automatically assess the applicant under bye-law 71(b) in the higher grades of Rs.2000-3500 w.e.f. 1.6.1980 and further in the grade of Rs.2200-4000 w.e.f. 1.6.1985 to which the applicant was overdue before his superannuation on 30.4.1987, and as a consequence thereof to further revise the pension of the applicant after assessing the applicant lastly in the pay scale of Rs.2200-4000/-.

3. The application was placed before the Bench on 15.5.1992. It was admitted with respect to relief at para 8(a) and the applicant wanted to amend the relief at para 8(b). The applicant has since not amended the relief, though the scope of this application is confined only to the grant of relief at para 8(a), referred to above."

6. The application was finally disposed of with the following directions:-

"9. In view of the above facts and circumstances, the application becomes premature and is disposed of with the direction to the respondents that they shall, as per the statement of the learned counsel for the respondents, correctly fix the pay of the applicant after the proposed benefit of assessment under bye-law 71(b) in the higher grade of pay of Rs.650-1200 and Rs.700-1300, which have now been revised to Rs.2000-3500 and Rs.2200-4000 respectively. If the applicant is still aggrieved, then he can assail the same, if so advised, subject to the law of limitation. In the circumstances, the parties are left to bear their own costs."

7. It is stated by the respondents that the benefit of assessment under bye-law 71-b was, in fact, extended to the applicant on the basis of the respondents own decision to

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assess such persons who opted for Old Assessment. The applicant was assessed by the Expert Committee w.e.f. 20.6.80 for the next higher post. However, the Expert Committee did not recommend the case of the applicant and, therefore, he was informed about the same vide letter dated April 4, 1992 (Annexure R-3). However, his case was again taken up for assessment in the next year and he was assessed for the next higher grade Rs.650-1200 (revised as Rs.2000-3500) w.e.f. 20.6.81. He was accordingly assessed and promoted to the next higher grade with effect from 20.6.1981 as per Annexure R-4. He became entitled to the next assessment in the grade of Rs.2200-4000 with effect from 20.6.86 under bye-law 71-b and he was asked to submit his work-reports by the letter dated February, 1993, although in the meanwhile, he had retired on 30.4.87.

8. Prima facie, it appears to us that the application is time barred as in the present application his prayer is that he should be reassessed w.e.f. 20.6.80 and 20.6.85 respectively instead of 20.6.81 and 20.6.86. In the light of the averments made by the respondents as above and in the light of the facts and circumstances of the case and on the ground of limitation also, this prayer is rejected. We also note that these prayers did not succeed and were specifically excluded from adjudication. As per the respondents, the applicant is, no doubt, entitled to be reassessed for next promotion of Rs.2200-4000 w.e.f. 20.6.86. He had not submitted the necessary work-reports which were specifically **by their letter dated 2.2.93 (Annexure R.5)** called for from him. The respondents say that the applicant

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had become entitled to promotion to next higher grade of Rs.2200-4000 which could not be taken up for want of necessary work-reports, as called for them by earlier.

9. While we have rejected the prayer of the applicant for assessment w.e.f. 20.6.80 and 20.6.85, as mentioned in para 8 above, we consider it appropriate to dispose of this application with the following directions **in the facts and circumstances of the case as discussed supra:-**

a) As the applicant would be entitled for assessment in the grade of Rs.2200-4000 w.e.f. 20.6.86. The applicant is directed to submit 15 copies of the work-reports as called for by the respondents in their letter dated 2.2.1993 **(Annexure R.5)** within a period of one month from the date of receipt of a copy of this order by him.

b) On the receipt of the work-reports, the respondents are also directed to consider his case for assessment in the next higher grade of Rs.2200-4000 w.e.f. 20.6.1986 within a period of 3 months from the date of receipt of a copy of the work-reports from the applicant and in case he is assessed suitable for the aforesaid promotion, the respondents are directed to refix the pay of the applicant in the aforesaid scale within one month after such assessment and promotion and also revise his pension in accordance with the rules on the basis of the aforesaid refixation of pay.

There shall be no order as to costs.

A. Vedaiah
(DR. A. VEDAVALLI)
MEMBER (J)

K. Muthukumar
(K. MUTHUKUMAR)
MEMBER (A)