

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the ^{11th} ~~03rd~~ day of July 2001.

Original Application 15 of 2001. (U)

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman
Hon'ble Maj Gen KK Srivastava, Administrative Member

Dr. DP Juyal, S/o Late Shri DR Jauyal,
R/o 3/A, Mohini Road Dehradun.

... Applicant.

C/A Shri UR Uniyal

Versus

1. The Union of India through Scientific Advisor/
Secretary, Department of Defence R & D/ Director
General Defence R & D Organization, South Block
D.H.Q. P.O.
NEW DELHI.
2. Director (Personnel) D.R.D.O. B-Wingh Sena Bhawan
D.h.Q. P.O.
NEW DELHI.
3. Sri J.A.R. Krishna Murthy Scientist "G" I.R.D.E.,
Dehradun.

... Respondents


C/Rs Shri P. Mathur

ORDER

Hon'ble Maj Gen KK Srivastava, Member-J.

By this OA filed under section 19 of the
A.T. Act, 1985, the applicant Dr. DP Juyal has challenged
the order dated 26.3.2001 passed by the Respondent no. 2

...2/-



2.

Director (Personnel) DRDO, New Delhi appointing Dr. JAR Krishnamurti as Director IRDE, Dehradun, and has prayed for following reliefs :-

- a. Issue a writ order or direction in the nature of certiorari quashing the Order dated 26.3.2001 passed by respondents.
- b. Issue a writ order or direction in the nature of mandamus commanding the respondents to appoint the applicant as Director IRDE, Dehradun.
- c. Issue any ^{other} writ order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the present case.
- d. To award the Cost of present writ petition in favour of the applicant.

2. The facts in brief are that, on the retirement of Dr. OP Nijhawan the applicant had earlier filed an OA in this Tribunal ie. OA no. 444 of 2000. By the order dated 28.02.2001 the OA was allowed. The operative ^{part} order of the order runs as follows :-

"For the reasons stated above this Original Application is allowed. The impugned order dated 17.4.2000 appointing respondent no. 3 as Director of I.R.D.E. ⁱⁿ Raipur, Dehradun is quashed. The Respondents no. 1 and 2 are directed to consider the appointment of Director of IRDE afresh and pass order in accordance with law and in the light of the observation made above. As the Establishment like IRDE cannot be kept without a regularly appointed Director, for long it is also directed

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that the exercise of consideration afresh shall be completed within a month from the date of copy of this order is filed before Respondent no. 1 and for this period of one month Respondents 1 & 2 may make temporary arrangement."

3. The Opposite party was directed to consider the matter afresh for the appointment of Director IRDE, Dehradun. In compliance to the order of this Tribunal, matter for the appointment of Director IRDE, Dehradun was considered afresh and Dr. JAR Krishna Murty was again appointed to the post of Director IRDE, Dehradun. The petitioner has, therefore, challenged the order dated 26.3.2001 by which Dr JAR Krishna Murty was appointed as Director IRDE, Dehradun.

4. Heard Shri LP Nathani and Shri UK Uniyal counsel for the applicant and Shri RD Agarwal, senior advocate, Shri P. Mathur and Shri A. Sthalekar counsel for the respondents.

5. Learned counsel for the applicant made the following submissions :-

i. The post of Director IRDE, a unit of DRDO, is promotional post. The applicant is the senior most ~~amongst Director~~ in the hierarchy of scientist 'G' and is the only person with back ground of physics. In IRDE the policy with regard to the appointment of Director has consistently been seniority with Physics background but in the present case it has not been followed.

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Respondent no. 3 is not only junior to the applicant but also not a scientist with the background of Physics and optics. ^{he} while the activity of IRDE unit is ^{confirmed in} confirmed to undertaking Research and Development in the field of optics and opto Electronics Instruments System and devices. Therefore, the action of the respondents has been that of partiality and malafide.

ii. The applicant has officiated as Director on ^{he} various occasions. Therefore, ^{he} he is fully competent to hold the post of Director IRDE Dehradun.

iii. Scant respect was paid to the order dated 28.02.2000 of this Tribunal as Shri JAR Krishna Murthy has not ^{been} removed even for a day though the order dated 17.4.2000 appointing respondent no. 3 ie. Sri JAR Krishna Murthy as Director of IRDE Dehradun was quashed. Contrary to it Respondent no. 3 continued to function as Director IRDE Dehradun.

6. The learned counsel for the respondents strongly controverted the arguments advanced by the learned counsel for the applicant. The learned counsel for the respondents made the following submissions.

1. That in compliance to the directions dated 28.2.2001 of this Tribunal the matter was considered afresh and on the basis of recommendations of Defence Research Council (in short DRC) the competent authority Respondent no. 1 approved the appointment of Sri JAR Krishna Mourty as Director IRDE, Dehradun vide order dated 26.2.2001 issued by Director (Personnel)

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DRDO New Delhi. It has been contended that DRC is a body headed by DGR & D himself ^{who is} responsible for taking major decisions of the organisation for the entire country. The post of Director is not a promotion post as the scales of pay of Director and Scientist 'G' are the same. The appointment to the post of Director is a deployment and as per Rule 10 of DRDS which are statutory in nature, DGR & D (Respondent no. 1) as head of service is authorised to make such deployments.

ii. It was also submitted that although Respondent no. 3 (Sri JAR Krishna Moorthy) joined DRDO 5 years 10 months later than the applicant but due to his meritorious performance he caught up the applicant at the level ^{of Scientist E} of ~~SC~~ 'E' in the year 1985. Both of them became ~~SC~~ 'F' & 'G' together on the same date. The DRC considered the comparative merits of both and recommended Respondent no. 3 for the post of Director IRDE which has been accepted by the Head of Service ie. DG DRDO. Thus the direction dated 28.02.2001 of this Tribunal have been followed in letter and spirit.

iii. It was further argued that selection of one person over another is not supersession ⁱⁿ and no reasons need ^{to be} recorded for non promotion. The learned counsel relied upon decision of their lordships of Supreme Court in UPSC Vs Hiranyalal Dev (SC) reported in 1988 (2) SLR 149 in which it was held that Selection Committee in the process of selection selected in preference to others, it does not amount to supersession ^{by} of a junior ^{by} a

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senior. Concept of supercession is relevant in the context of promotion and not in the context^{wh} of selection. Reasons are not required to be recorded for superceding those who were senior. Also in RS Dass Vs U.O.I. 1986 (4) SL 75 the Hon'ble Supreme Court decided that no reasons need^{wh} be recorded for non promotion. Principles of natural justice are not violated.

iv. It was also argued by the learned counsel for the respondents that the applicant cannot claim selection to the post of Director IRDE, Dehradun on the ground that he officiated on that post on number of occasions. Respondent no. 3 has also officiated as Director IRDE on more occasions than the petitioner. Not only this promotion cannot be claimed merely on seniority. In support of this Shri RD Agarwal relied on the decision of the apex court in State Bank of India and others Vs. Mohd. Mynuddin reported in 1987 (4) SLR 383 that promotion cannot be claimed as a matter of right by virtue of seniority. Method of evaluation of abilities should ordinarily be left to be done by the undivided or a committee of person having knowledge of the requirements of a given post. Shri Agarwal submitted that there are other cases in which a similar view has been taken by the Hon'ble Supreme Court.

v. Lastly the learned counsel for the respondents submitted that the action of the respondents is bonafide and not malafide. The contention of the applicant that the action is malafide has no legal basis as in case of malafide, allegations must be specific and not

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vague. In support of his argument, the learned counsel Shri Agarwal cited number of decisions of the Hon'ble Supreme Court in various ^{by} cases.

7. Shri Amit Sthalekar, learned counsel for the respondent no. 3 refuting the arguments advanced by the learned counsel for the applicant ^{by} and submitted that incumbent to the post of Director IRDE, have not been persons always necessarily with Physics background. Dr. Nijhawan who was director IRDE Dehradun for 12 years from 1.5.1986 to 30.4.2000 was not physicist, instead he was Engineer with MSc.

8. Shri LP Naithani, learned counsel for the applicant has pleaded that Rule 10 of DRDS ^{by} is regarding discretion of Head of Service in deployment is not applicable in this case. Order dated 28.2.2001 of this Tribunal is between parties and binding.

9. We have carefully considered the arguments advanced by the learned counsel for the parties and have perused the entire record. The ^{by} minutes of the DRC, which have been mentioned separately, were also presented before us for perusal. It is not disputed that the applicant is senior but for the post of Director IRDE, Dehradun the Competent Authority has to take into account various factors such as capacity to lead particular team of scientists ^{by} involving multiple disciplines, projects done by him, his vision, managerial skills, future potentiality etc etc. The DCR, the highest advisory body of the DG did consider the applicant for the post of Director IRDE but found

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respondent no. 3 more suitable for the post on the basis of comparison between the applicant and Respondents no. 3 purely on merit and attributes. Hence DRC recommended the DGR & D that respondent no. 3 be appointed as Director IRDE. Rule 10 of DRDS which is statutory in nature is reproduced below :-

"Rule 10 Head of Service : The DG shall be head of service & shall be responsible for the deployment of officials of the service to the best advantage of the government."

Perusal of Rule 10 leaves no doubt in our mind that DG R & D, as Head of Service is fully competent to deploy the officials to the best advantage of Government. Therefore, the competent authority i.e. respondent no. 1 took note of the recommendations made by DRC, the highest advisory body and approved the appointment of respondent no. 3 as Director IRDE Dehradun which is legal.

10. After going through the material on record and the submissions made before us, we are convinced that the directions dated 28.2.2001 of this Tribunal have been fully complied with. Applicant has been considered for appointment as Director IRDE, by the competent authority. This Tribunal is not expected to assume the role of DRC which is competent body for such selections. Rules applicable do not require that Director should be a person with background of Physics. Even if the submission on behalf of the applicant is accepted, ^{he} ~~that~~ in past this has been the practice, it could not have the force of statutory rule. Practice could be given up or changed according to needs. There is yet another fact which ^{goes} against the applicant

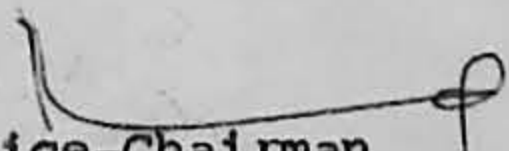
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i.e time factor. Applicant has only a few months to serve in IRDE, ^{his} leadership in such a body can be better provided with ^{his} continuity, by a person with long tenure, which the respondent no. 3 has. Findings in order dated 28.2.2001 that applicant is qualified for the post of Director IRDE, were not based on comparison with the merits of Respondent no. 3, as such no advantage can be claimed of these findings.. Comparative merits of the applicant and the respondent no. 3 have been taken into account ~~by~~ by DRC. The applicant has failed to prove that the action of the respondents is malafide. We do not find any fact which warrants our interference with the impugned order dated 26.3.2001 appointing Shri JAR Krishna Moorthy, respondent no. 3 as Director IRDE, Dehradun.

11. In view of the above observation the OA lacks merit and is dismissed.

12. There will be no order as to costs.


Member-A


Vice-Chairman

/pc/