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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 427 of 1986.

K.K. Vadera & others

....

Applicants.

Versus

Union of India & others

....

Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this application received under Section 19 of the Administrative Tribunals Act XIII of 1985 K.K. Vadera & 20 others all of whom are working as Scientist 'B' in the Defence Material Stores Research & Development Establishment (DMSRDE), Kanpur have challenged the order dated 16.10.1985 issued by R&D Headquarters (R&D HQ) giving effect to the promotion of the applicants to the post of Scientist 'B' with effect from 16.10.1985, i.e. the date of issue of the promotion order and not from 1.7.1984. ^{34/ao} They alleged it should have been ^{34/ao} and ^{34/ao} for holding that the promotions of the applicants from the post of Junior Scientific Officers (JSO) to Scientist 'B' have been made against existing vacancies and not on the basis of flexible complementing thus denying their promotion from 1.7.1984. ^{34/ao} They also alleged ^{34/ao} that JSOs' post are not covered under DRDS Rules.

2. The facts of the case, as narrated by the applicants, are that they became JSOs. with effect from 31.1.1979 and became entitled to be promoted as Scientist 'B' on completion of 5 years' qualifying service on 31.12.1983. Their promotions were to be made on the basis of the recommendations of the Assessment Board (AB) which are convened once a year or at such intervals as may be

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necessary. Under the unamended rules these recommendations were ~~to be~~ implemented after approval of the Union Public Service Commission (UPSC) from the date which was arrived at in consultation with the Commission. This date was treated as the date of selection for purposes of determining the seniority of the promotees. DRDS Rules, 1978-79 came into effect on 13.1.1979 and the applicants who were earlier governed by the Defence Science Service Rules (DSS Rules), 1967 were automatically brought on to these new rules. Assessments were made by the respondents from the year 1980 onwards and promotions during the years 1980, 1981, 1982 and 1983 were made with effect from 1st July of those years. When they became eligible for consideration in December, 1983 they were also assessed for being promoted against the vacancies of 1984 as the order indicated but no assessment was made in 1984 and their assessment which was made in 1985 cleared them for promotion ~~not~~ ^{3/4} not from 1.7.1984 but from 16.10.1985. Thus a departure was made from the earlier practice. By this departure the applicants have been adversely effected not only because promotion as Scientist 'B' ^{3/4 has been} delayed by more than a year ^{or but} ^{3/4} their future promotions have also been postponed accordingly. DRDS Rules, 1979 were amended in 1985 by which consultation with UPSC was no more required but according to the applicants it should not ~~not~~ ^{3/4 have} made any quantitative change in regard to determination of the date of implementation of the recommendation for promotion. According to DRDS Rules total vacancies of the post of Scientist 'B' were required to be filled by promotion upto 50 per cent from the existing JSOs. and, therefore, they were entitled to be promoted in accordance with the provisions of the rules from 1.7.1984. They have also challenged this deviation in the date of promotion ^{3/4 on the ground that it is} ~~not~~ violative of Articles 14 and 16 of the Constitution ^{3/4 as} ~~on the ground that~~ similarly situated persons, ^{3/4} ~~who~~ were earlier promoted on the 1st of July on the particular year ^{3/4 but} ~~and~~ they have been denied the same privilege.

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3. The respondents' case is that DRDS Rules governed only class I services from Scientist 'B' and above. They do not cover JSOs, who are in the class II service. In DRDS Rules a scheme of flexible complementing is provided for promotion of Scientist 'B' and above. The post of ~~one~~ Scientist held by promoted officer is automatically upgraded to the next grade in this scheme. Since JSOs are not governed by DRDS Rules the scheme of flexible complementing is also not applicable to them. They can, therefore, be promoted only when vacancies are available in the grade of Scientist 'B' because their promotions are purely vacancy based. However, to provide for those JSOs, who were already in service at the time of promulgation of DRDS Rules a provision was made that all those who have been recruited before the promulgation of the rules as JSOs on regular basis and possess the educational qualifications and experience of direct recruits shall be eligible till they are wasted out for promotion to the post of Scientist 'B' upto 50 percent of the vacancies in the grade. There was a total number of 512 posts available in the grade of Scientist 'B' in 1979, thus a total of 256 posts could only be occupied by the promotees according to the above stipulations. These 256 posts were utilised between the period 1979 and 1983 and such of those who were promoted during this period were given the promotion from 1st July of the corresponding year. In 1984 there was no vacancy available and when vacancies became available later on the applicants were considered for promotion on the basis of the availability of vacancies. The respondents have further said that DMSRDE at present is holding about 50 excess Scientists in addition to their authorised strength. Thus, according to them, the promotion of JSOs is now vacancy based and can be made only if vacancies are available and not otherwise and the promotion takes effect from the date of promotion order or from the date of assumption of charge. The respondents have further said that 256 JSOs had already been

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promoted before 1983 and the applicants were considered for promotion as a special case. There was no vacancy available in July, 1984. They were considered for promotion against vacancies ³⁴ which were to be created or that became available by the time the results are published. There is no rule to consider JSOs for promotion to the next higher grade every year even when vacancies are not available.

4. In their rejoinder affidavit the applicants have said that DRDS Rules do not govern only class I services. They also provide for promotion of JSOs to the post of Scientist 'B' and that is why a provision was made that all those who had been recruited before the promulgation of DRDS Rules on regular basis and possesses the educational qualification and experience shall be eligible against 50 per cent of the vacancies till they are wasted out. All of them are governed by this proviso as they were already in service as JSOs on the crucial date. Therefore, as far as they are concerned, DRDS Rules, 1979 apply to them in respect of their promotion as Scientist 'B'. In DRDS Rules there is no scheme of flexible complementing, therefore, the reference made by the respondents is misconceived. The respondents have ³⁵ been following the pattern of promoting persons as Scientist 'B' from the post of JSO by giving them the benefit of promotion from 1st of July of the particular year. The only amendment that has been made is that the consultation with UPSC has been dispensed with. The rules clearly say that recommendations of AB shall be implemented from 1st of July of the year and the said date shall be treated as the date of selection for the purpose of determining seniority. They have further said that it may be that in 1979, 512 permanent posts existed but number of further vacancies have occurred as no post have been created in subsequent years and, therefore, the contention of the respondents that no further promotions could be made was erroneous and misleading. For the assessment year 1984 296 JSOs were cleared out of which promotion orders for only 131 have been issued. In 1986 a

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further 165 JSOs have also been promoted. Even before the amendment of the rules was made in 1985 the respondents had intimated to UPSC about the existence of 131 vacancies of Scientist 'B' for promotion from JSOs, but since the rule got amended UPSC did not participate in the assessment. In case there were no vacancy in 1984 there was no necessity of conducting the assessment for the year 1984 as the respondents have done. They have challenged the averment made by the respondents that their assessments were made against future vacancies. According to them the effect of the promotion of the Scientist 'B' does not involve the concept of charge assumption as the promotions are to be made in ^{SITU} ~~situ~~.
~~2~~ If promotions are made in ~~situ~~ SITU ² ~~and~~ ² ~~or~~ ² ~~vacancies are~~ ~~2~~
~~2~~ ~~2~~ ~~2~~ ~~2~~ retrospectively promotion can be given as already held by CGDA.

5. We have heard the learned counsel for the parties. We have also heard Dr. J.C. Madan, Assistant Director, DRDO, who briefed us in regard to the respondents case. According to the learned counsel for the applicants the applicants have been unnecessarily discriminated. The respondents have failed to obey their own instructions. They have been following these instructions upto the year 1983 but they have not followed it in the case of the applicants. The rules are very clear and they lay down that the promotions have to be made from the 1st of July of the concerned year. Since the promotions have been made in SITU there should have been no objection to give retrospective effect to the same. Dr. J.C. Madan on behalf of the respondents contended that the applicants were JSOs which is a class II post and the rules are not applicable to class II posts. They are meant only for class I post. They apply to the members of the service and since 50 per cent of the posts were already filled up by promotees and no more posts are left to be filled up, there was no quota available against the total of 512 posts of Scientist 'B' against which the

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promotees could be considered. They were promoted against new ³² creations from the date the posts become available. He further contended that in SITU promotion is not available to JSOs and such promotions are made only where the scheme of flexible complementing is applicable. Therefore, in view of the fact that 50 per cent of the posts were already occupied by promotees and there were no other posts available any promotions made against new creations had to be from the dates of availability of vacancies. These contentions were repelled by the learned counsel for the applicant on the grounds that DRDS Rules, 1979 were applicable to those JSOs who were occupying permanent posts at that time and, therefore, if posts are available and promotions are made those rules should be made applicable to them in terms of the proviso in para 8 of the rules. According to him till those who were already in position in 1979 when the new rules came into existence are wasted out the scheme of promoting them retrospectively from 1st July of that year should apply. We have perused the various documents filed along with application and subsequently and gone through the application and the replies etc. carefully.

6. Rule 8 of DRDS Rules, 1979 is on the future maintenance of the service. It says that after the initial constitution of the service by appointment of officers in accordance with Rule 7 which talks about the absorption of all Group 'A' officers in DSS on the date of promulgation of these Rules, the vacancies shall be filled in the manner as provided in this rule. The rule says that the post of Scientist 'B' should be generally filled by direct recruitment through an open competitive examination. It goes on to say that all those who have been recruited before the promulgation of the rules as JSO in DRDO on regular basis and possess the educational qualifications and experience shall be eligible till they are wasted out for promotion to the post of Scientist 'B' upto 50 per cent of the vacancies in the grade. This rule makes it clear that the first charge on the constitution of service was the absorption of

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Group 'A' officers already available in DSS. Thereafter the ~~xx~~ remainder of the post were to be filled by JSOs upto the extent of 50 per cent of the vacancies. Vacancies could be in the permanent cadre. Vacancies could also be on creation of certain new posts. The rules do not say that this proviso is limited to only remaining 50 per cent vacancies which are left unfilled after the absorption of Group 'A' officers in the permanent cadre. No doubt it applies to the permanent cadre but the provision does not specifically bar further promotion of JSOs who are already available on the crucial date upto the extent of 50 per cent of vacancies that may become available in the grade. This rule further goes on to say that the selection for such promotion shall be made on the recommendation of AB. For the permanent vacancies, however, it limits the promotion to 50 per cent of the total sanctioned strength on the date of promulgation of these rules. It is also laid down in these rules that the recommendation of AB after approval by the Commission shall be implemented from the date to be arrived at in consultation with the Commission and this date shall be treated as the date of selection for purposes of determining their seniority in the grade. It was subsequently fixed that this date will be 1st July of the year except in the case of promotion to the grade of Scientist 'F' and Scientist 'G'. Rule 8(2) evidently applies to the grades which were covered in Schedule III of these rules. Schedule III gives the minimum educational and other qualifications, experience and age limit for direct recruitment to various group 'A' posts included in DRDS. Against Scientist 'B' it has been mentioned that the age limit of 28 years is relaxable for 5 years for the Government servants in accordance with the instructions and orders issued by the Central Government from time to time. Thus it would be evident that ~~xx~~ for filling up the posts of Scientist 'B' the provision made in Rule 8(2)(c), regarding treating the date of selection for purposes of

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determining the seniority in the grade as 1st July of the year, would ~~also~~ be applicable and if JSOs are competent to be considered for filling up the post of Scientist 'B' there is no reason why this proviso should not apply to them. However, there is no provision for in SITU promotion of those who are promoted to Scientist 'B' because para 8(2)(f) which deals with in SITU promotion only applies for promotion to the grade of Scientists 'C', 'D' & 'E'.

7. A plea has been taken by the applicants that since their promotion was also ordered in SITU the date of their promotion should also be 1st July of that year because it will be immaterial from what date they are promoted because they continued to do the same work. Only their grade is changed. This analogy will be incorrect to apply in the case of promotion from JSOs to Scientist 'B'. A promotion cannot be made unless there is a vacancy available. If there was no vacancy available in 1984 and the vacancy only became available when certain new posts were sanctioned the promotion can only be claimed from either the date on which the assessment was finalised or if it does not involve shouldering of higher responsibility from the date the post became available. It can be understood that at the formation of the service when 512 posts of Scientist 'B' were available only certain number of vacancies were left to be filled 50 per cent by promotion and 50 per cent by direct recruitment after providing the existing Group 'A' officers. The respondents have averred that all such vacancies got filled up by 1983 and, therefore, nothing more remained to be filled up from amongst the post of permanent cadre and, therefore, no promotion could be made in 1984. We do not find anything wrong in this explanation. However, we also do not agree with the stand taken by the respondents that after 1983 the rules have been changed and the promotions will be made only from the date of issue of the orders or the date the selected persons takes over. Though this would be a normal rule for any promotion but on their own

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showing the respondents have followed a date of 1st July while making promotions against the regular vacancies, ³¹ in the years 1980, 1981, 1982 and 1983 and, therefore, if these rules existed for JSOs the very fact that they were not followed and the date of 1st July was kept as the date of promotion for each corresponding year they cannot now say that even for the permanent posts such provision will not apply. It is another matter if the posts were not available and new posts have to be created. ³¹ In that case also we feel that benefit should go to the applicants of a promotion from the date the post got created as they have been promoted in SITU ³¹ in line with the provisions promotions made in the earlier years, ³¹ and Evidently it has been considered that the post that they occupied will not mean shouldering of extra responsibility ³¹ by promoting them IN SITU. ³¹

8. On the above considerations while we reject the prayer made by the applicants that their promotions should be considered from 1st July, 1984 we order that for posts which have been created newly beyond the number of 512 the promotion should be made not from the date of the orders of promotion but from the date the posts were created. The respondents will carry out an exercise and fix up the date of promotion of these applicants and those ³¹ who were JSOs prior to 1979 similarly situated in accordance with these orders within a period of three months from the date of receipt of these orders.

9. The application is disposed of in the above terms. Parties will bear their own costs.

S. Bhargava
MEMBER (J).

Dated: May 31st, 1988.

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MEMBER (A).