

A.F.R.

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 28th DAY OF FEBRUARY, 2001

Original Application No.444 of 2000

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.DAYAL, MEMBER(A)

Dr.D.P.Juyal, Son of Late
Shri Dr.D.R.Juyal, R/o
3/A, Mohini Road, Dehradun.

... Applicant

(By Advs:S/Shri L.P.Nathani, R.K.Pandey
and Shri U.K.Uniyal)

Versus

1. Union of India through
The Scientific Advisor/Secretary
Department of Defence R & D/
Director General, Defence R & D
Organization, South Block
DHQ-P-O, New Delhi.
2. Director(Personnel) DRDO
B Wing, Sona Bhawan, D.H.C
P.O. New Delhi.
3. Dr.J.A.R Krishna Murthy,
Sc.'3' IRDS, Raipur
Dehradun.

... Respondents

(By Adv: Shri Prashant Mathur)

O R D E R (Reserved)

JUSTICE R.R.K.TRIVEDI,V.C.

By this application u/s 19 of Central
Administrative Tribunals Act 1985 Dr.D.P.Juyal has
challenged order dated 17.4.2000(Annexure 1) by which
Respondent No.3 Dr.J.A.R.Krishna Murthy has been
appointed Director of Instruments Research and
Development Establishment(I.R.D.E) Raipur, Dehradun.
The claim of the applicant is that he is senior most
Scientist of Group 'G' and being next to

Dr.O.P.Nijhawan who retired on 30.4.2000,he should have been appointed Director of the Laboratory/Establishment The claim of the applicant has been ignored in an illegal and arbitrary manner and Respondent no.3 has been appointed. It is claimed that in over all seniority list in D.R.D.O applicant is placed at Sl.No.101,whereas Dr.J.A.R.Krishna Murthy is placed at Sl.No.106. It has been further stated that applicant has put in about 34 years of service in the Establishment as he joined by Direct Recruitment in February 1966. As against it Respondent no.3 joined the Establishment in 1974. It is also claimed that applicant is a Scientist of Physics and possesses Doctorate Degree in Physics. He has also completed Post Doctoral Fellowship(Laser Technology) from Southampton University,U.K.he is best suited for appointment as Director of the Establishment which mainly undertakes in Research / field of Optics and Opto Electronic Instruments Systems and Devices for the Armed Forces which is a subject totally related to Physics. The applicant having consistently an Excellent Academic Record and being senior most Scientist of 'G' Grade could not be ignored. It is stated that Dr.J.A.R.Krishna Murthy holds a Master of Engineering Degree. Realising the fact that the main focus of I.R.D.E remains Optics and Opto Electronics, a subject related to Physics, it has been the practice right from the beginning to appoint personnel with Physics back ground as Director of I.R.D.E. The earlier Directors

who were permanently appointed possessed qualification experience and expertise in the fields of Physics and there has never been any aberration to this policy in appointment/selection of Director of I.R.D.E. It has been further stated that the applicant has a brilliant academic record, he was selected Nehru Fellow by the Jawahar Lal Memorial Trust, U.K. during 1972-1974 carrying out post doctoral work at University of Southampton and he is also a Scientist of Proven Credences of International repute. He has had an impeccable service record. It has been submitted that by appointment of a Junior Scientist as Director of the Establishment applicant had been put to face humiliation and embarrassment. He also claimed that applicant has been discharging the duties of Director during the period Dr.Nijhawan was on leave. It is also claimed that it cannot be left to the whims of Respondents to pick and choose persons for appointment as Director which is a sensitive assignment. By Unrestricted and unchannelised exercise of power under which Respondent no.3 has been selected for appointment is violative of Article 14 of the Constitution of India. It has been stated that the legitimate claim of the applicant based on 34 years devoted service had been sacrificed to give favour to Respondent no.3. The appointment is illegal,arbitrary and liable to be quashed.

Counter affidavit has been filed resisting the claim of the applicant and justifying appointment of

:: 4 ::

Respondent no.3 as Director of I.R.D.E. It has been stated that the grounds on which the appointment of Respondent no.3 has been assailed are not tenable as seniority alone does not entitle a person to a position of the Director which is not a promotional post. It has also been stated that the post of Director does not involve any financial gain and in no way effects the seniority of the individual as determined in the grade of Scientist 'G'. It is further stated that the criterion for selection has been the Leadership quality, Vision, Managerial skills, Future Potentiality for and Competence etc. It is also claimed that/making such an appointment long term view is an important factor for consideration. It is stated that Director which, in fact, is a functional post does not involve any financial gain and the seniority of the applicant will not be effected no prejudice has been caused to him. It is also claimed that the short term arrangement and officiating arrangement under which the applicant discharged the functions of Director would not be of any gain to the applicant for selection on permanent basis. It has also been stated that the claim of the applicant has no legs to stand as/his own showing that he stands at Sl.No101 in the over all seniority list of Scientists Grade 'G' of D.R.D.O which means that there are 100 Scientists senior to the applicant, all of them could not be appointed as Directors.

..p5

:: 5 ::

We have heard Shri L.P.Nathani, Senior Advocate and Advocate General of Uttarakhand State assisted by Shri U.K.Uniyal learned counsel for the applicant and Shri Prashant Mathur learned counsel appearing for the respondents. We have also perused the material filed by the parties.

Instruments Research and Development Establishment is (in short mentioned hereinafter as I.R.D.E.)/a Unit of Research and Development Organization(hereinafter referred to as D.R.D.O) under Ministry of Defence of Union of India. I.R.D.E undertakes Research and Development work in the field of Optics and Opto Electronics Instrument Systems and Devices for the Armed Forces which is a subject related to Physics.

As the activity of the unit is connected with Defence of the Country, ~~and~~ the appointment of the person to head such Units is very sensitive and is also of great importance to the Nation, Normally Courts should not interfere with the appointments in such Establishments/ D.R.D.O and I.R.D.E unless there are compelling reasons for the interference. In order to appreciate the rival contentions of the parties before us it shall be necessary to have a look of the Rules which govern the services of Scientists serving under D.R.D.O and I.R.D.E. President of India in exercise of powers conferred by the Proviso to Article 309 of the Constitution of India made Rules for the services of Scientists known as 'Defence Research & Development Service Rules 1979(hereinafter referred to as Rules).

Rule 3 of the Rules provides that there shall be constituted a Service known as 'Defence Research & Development Service consisting of persons appointed to the Service under Rule 7 & 8. All Posts included in the service shall be specified as Group 'A' posts. Rule 6 provides for method of Recruitment. Rule 7 contains Provision for Initial Constitution of Service. Rule 8 contains Provisions for Future Maintenance of Service which is very important and relevant for the controversy before us. Group 'A' Service of Scientists have been further classified as Scientists Group 'B', 'C', 'D', 'E', 'F' & 'G'. Sub Rule(2)(a) of Rule 8 provides as under:-

"Promotion from one grade to the next higher grade in the service shall be made under Flexible Complemental Scheme from amongst the Officers possessing the Broad Educational Qualifications as given in Schedule III. Promotion upto the level of Scientist 'F' shall be made on the basis of Evaluation of Confidential Performance, Appraisal Reports and Assessment Interview and for Scientist 'F to G' on the basis of Evaluation of Confidential Performance, Appraisal Reports and Assessment by a Peer Committee. The Internal Screening Committees constituted and specified in Schedule 1A and 1B, shall review the Confidential Performance, Appraisal Reports of Scientists ^{✓ 'B' ✓} and on completion of minimum residency period of three years and of Scientists 'C', 'D' and 'E' on completion

of minimum residency period of four years
on
and of Scientists 'F' /completion of minimum
residency period of five years as on 30th June
of the year to which the Assessment Board
pertain. The Internal Screening Committees
shall evolve its own criteria for deciding
the eligibility of Scientists in consideration
by the Assessment Boards and award average marks
Scientists for the Scientists while deciding eligibility of
for assessment. The Internal Screening Committee
shall
/follow the criteria enumerated below:-

- (i) Internal Screening shall be based on not
more than last five years' Confidential
performance, Appraisal Reports in the grade
and Scientists securing less than 60% average
marks in the Confidential Performance Appraisal
Reports shall not be eligible for assessment.
- (ii) Relaxation upto three months in the qualifying
service for eligibility for assessment shall
be given to direct recruits or promotees
who join after 1st July for reasons beyond
their control.
- iii) All kinds of leave availed except extra
ordinary leave on personal grounds shall count
as qualifying service for eligibility for
promotion.
- iv) In case of permanent absorption of a Scientist
on deputation in the same grade in Defence
Research and Development Service from other
Scientific Departments where Flexible
Complementing Scheme is applicable, the
entire service of that Scientist in the same
grade including in the parent department
shall be counted towards residency period
If an officer comes on deputation on a higher
grade into the service and later permanently
absorbed in the same grade in the service
the period spent on deputation shall be

counted for residency period for consideration for promotion to next higher grade.....

- v) On regular appointment in the service of a Scientist in continuation of adhoc appointment, the period of service rendered in adhoc capacity in the grade shall count towards residency period provided that the officer is selected for regular appointment at the first attempt.
.....
- vi) Notwithstanding anything contained in these rules a relaxation of one year in the minimum residency period can be granted to a Scientist 'C'/'D'/'E' provided that he earns consistently 90% and above marks in three successive Confidential Performance Appraisal Reports in the grade.....
- vii) Notwithstanding anything contained in these rules, a relaxation of one year in the minimum residency period can be granted to a Scientist 'F' provided that he earns consistently 90% or above marks in four successive Confidential Performance Appraisal Reports in the grade.....
- viii) Relaxation in the minimum prescribed residency period in terms of clauses (vi) and (vii) above shall be limited to two times in the entire career of any scientist in the service.....

b) (i) The Assessment Board for Interviewing can for promotion from the level of Scientist upto the level of Scientist 'F' shall be constituted specified in Schedule 1C. More than one Assessment Boards may be constituted at any one time in one stations.

(ii) A Peer Committee Constituted as specified in Schedule 1D shall assess

those Scientists 'F' who have completed the prescribed minimum residency period and recommended by the Internal Screening Committee Assessment for promotion to the next higher grade.

c) Assessment Boards or Peer Committee shall be constituted at least once in a year or at such intervals as may be specified by the Director General Research and Development.

d) In assessing the suitability of Scientists for promotion upto the level of Scientist 'F' the Assessment Board shall give equal weightage to marks obtained in the Assessment Interview and to the Confidential Performance Appraisal Reports marks awarded by Internal Screening Committee. Based on the total marks obtained the Assessment Board shall recommend Scientists as 'FIT' or 'NOT YET FIT' for promotion or defer the Fitness for promotion by one year.

e) Recommendations for promotion of Scientists who have been declared eligible by the Internal Screening Committee to Scientists 'G' shall be made by the Peer Committee taking into consideration by achievements, personality, leadership and managerial qualities etc. There shall be no Assessment Interview.

f) Recommendations of the Assessment Board on Peer Committee shall be implemented from first July of the year to which the Assessment Board or Committee pertains

except in those cases where special recommendations are made by the Assessment Board/Peer Committee regarding effective date of promotion. This date shall be treated as the date of selection for the purposes of determining their seniority in the grade in respect of all Scientists cleared for promotion they are on duty on that date. However, Scientists are away on leave on that date, shall assume charge in grade to which they are promoted with effect from date they resume duty but this shall not affect 'l' date of selection' or their inter-se seniority into higher grade vis-a-vis the other scientists cleared for promotion by same Assessment Board. In so far as Scientists undergoing training abroad (Under Fundamental Rule 51), they shall be promoted to the next higher grade with effect from the date they would have been so promoted had they not proceeded on training.

Schedule 1A of the Rules provides for Constitution of Internal Screening Committee to review Confidential performance, Appraisal Reports of Scientists 'B' to Scientists 'E'. Schedule 1B of the Rules provides for Constitution of Internal Screening Committee to review Confidential Performance, Appraisal Reports of Scientists 'F'. Schedule 1C provides for Constitution of the Assessment Board for assessing suitability of Scientists for promotion upto Scientists 'F' level in the Defence Research and Development Service. Schedule 1D contains provision for Constitution of the Peer Committee for assessing suitability of Scientists 'F'

:: 11 ::

for promotion to Scientists 'G' in Defence Research & Development Service. Schedule 1D reads as under:-

SCHEDULE 1 D
(See Rule 8(2))

The Peer Committee for assessing suitability of Scientists 'F' for promotion to Scientists 'G' in Research & Development Service.

Chairman - To be appointed by the Central Government.

Secretary, Deptt. of Research & Development - Member

Any two Secretaries from other Scientific Departments of the Central Govt. - Member

One eminent Scientist from any one of the National Laboratories or Academic Institutions - Member

management Specialist well versed in the Govt. Frame Work of the status of Joint Secretary to the Central Govt or its equivalent. - Member

Addl. Secretary (Defence Research & Development) or Chief Controller Research & Development. - Member

Note: The absence of any member of the Peer Committee other than the Chairperson shall not invalidate the proceedings of the Peer Committee.

Schedule 3 prescribed minimum educational and other qualification, experience and age limit for Direct Recruitment to various Group 'A' posts included in the Research and Development Service.

Ministry of Defence has constituted a D.R.D.O Council to oversee, guide and provide policy direction for ensuring smooth functioning of D.R.D.O and for achieving the said goals and objectives. This Council also makes recommendation on succession Plan for Key functionaries. The Rules do not contain any provision and procedure for selection and appointment of Director of I.R.D.E or Director General of D.R.D.O. From perusal of the Rules especially Rule 8 and the Schedules appended to the Rules it is clear that elaborate Procedure has been prescribed for promotion of Scientists from one grade to another grade. For promotion to Group 'G' Scientists it has been provided that recommendation for promotion of Scientists who have been declared eligible by Internal Screening Committee to Scientists 'G' shall be made by the Peer Committee taking into consideration the achievements, personality, leadership and managerial qualities etc. There shall be no Assessment Interview. Thus for promotion to the grade 'G' group of Scientists the eligibility is decided by the Internal Screening Committee and on the basis of the Assessment of the Report of the Internal Screening Committee recommendation is made by the Peer Committee. Before making the recommendation the committee is required to consider all round qualities including the Personality, Leadership and Managerial qualities. Thus it is

:: 13 ::

difficult to believe that any Scientist who has been selected for Grade 'G' may not possess the Leadership and Managerial qualities. Rules are silent thereafter for selection of the post of Director. A Scientist of group 'G' grade is also described as Director grade I when functioning on high post as provided in Schedule appended to the Rules.

In the set of Rules mentioned above, the practice followed by the respondents in appointing Directors may suggest the criterion followed upto now. On behalf of the applicant it has been vehemently pressed that rule of Seniority has been consistently followed in appointment of Directors right from the beginning of this unit was established. It has also been stated that only Scientists of Group 'G' grade with background of knowledge and experience in Physics were appointed Directors. The applicant has filed a list of Directors which is as under:-

LIST OF PAST DIRECTORS/OFFICIATING DIRECTORS
OF I.R.D.E., DEHRADUN

1. Dr.C.S.Rao, M.A,D.Sc., E Inst.P(London)
FPS., Most Maipdes
18 Feb.,06 to 28th Sept 1965
2. Shri A.N.Bhatta-
charya M.Sc,D.S.S 29 Sept.,05 to
2 March 1967
3. Dr.S.N.Singh M.Sc.,D.Sc,D.S.S
03 March 1967 to 5 March 68
4. Shri A.N.Bhatta-
charya M.Sc.D.S.S 6 March 1968
to 31 Oct.1969

:: 14 ::

5. Shri S.S.Bharmayya	- B.Sc.,(Hon.Physics) D.S.S 1st Nov.1969 to 14th Nov 1969
6. Dr.P.K. Katti	M.Sc.,PH.D.F Inst. P(London) D.S.S 15 Nov 1969 to 6July1975
7. Shri K.P.Singh	B.E.(Mech.Engg)D.S.S 6 Jul. to 26 Oct.1976
8. Dr.R.Hradayanath	M.Sc.,Dr.ING(Paris Sudd) DOSI FISS SMIEES MOSA MEPIR MAVS MEVRASPI DRDS 27.10.1976 to 30.4.1988 Distinguished Scientist 12.3.1987 to 30.4.1988
9. Dr.O.P.Nijhawan	BMIT MS Ph.D(Optics) RESPILE MOSA NIREE DRDS 1.5.2000 to 30.4.2000

It has been submitted that the I.R.D.E mainly works in Optics and Opto Electronics, a subject which is related to Physics, only applicant who has a back ground of knowledge,experience and experties in the field of Physics could be suitable for the appointment. It has been submitted that the Scientist with the back ground of Physics only were appointed as permanent Directors. Those who lack this knowledge of Physics were given only Officiating and temporary chances. These material averments have not been denied or converted by the respondents. Their contention has been through out that the post of Director is not a promotional post but it is a functional post and the applicant has not suffered any financial loss. It has

..p15



also been stated that the criterion for selection was Leadership Quality, Vision, Managerial skills and Future Potentiality Competence.

We have given our serious and anxious consideration to the stands taken by the parties. Though seniority should not be and cannot be said to be the only criterion for selecting a person for purpose of promotion or for assigning greater and higher responsibilities, but nonetheless, seniority plays important role. In Service Jurisprudence the seniority is required to be given its due place and respect i.e. why the Rules governing various services though provide for consideration of merit but they do not suggest to ignore seniority altogether. In otherwords, it can be said that selection on the basis of seniority is a safe course which rules out the chances of 'Pick & Choose' and arbitrary exercise of power by the Authority concerned. But sticking to Seniority Rule/may not ultimately result in the best interest of the institution or the organization. In the circumstances, a balance has to be struck for selecting person for higher responsibilities on the basis of seniority coupled with merit required and necessary for manning the post. It is/ denied that in all previous appointments Rule of Seniority has been strictly followed. Thus for the deviation in present case there should have been ~~with~~ strong reasons for ignoring the claim of the applicant. In normal course on the basis of seniority the applicant could legitimately expect

for giving him chance to function as Director but it has been denied.

In short counter affidavit and in the Counter affidavit the stand on the part of the respondents has been that post of Director is a Functional post and promotion is not involved, as there are no financial gains. We are of the opinion that financial gain is not a sine qua non for deciding that selection and appointment is promotional. The higher post carries with it higher responsibility, control over the persons serving under him in awarding Confidential Reports representing Unit or Establishment in the activities of the main Organization. In the present case it is not disputed that Respondent no.3 is junior to the applicant. His appointment as Director I.R.D.E is bound to provide him ~~superior~~ ~~over~~ applicant within the Establishment on various aspects for example, in approval of the project suggested by him, grant of leave, as Reporting officer for awarding Annual Remarks and so many other day-today functions. Thus, it cannot be ruled out that though the appointment as Director does not involve any financial gain but it is a promotional post considering its nature and function and the applicant's legitimate claim could not be ignored.

The another submission on behalf of the respondents was that in over all seniority list position of the applicant is only 101 which means that atleast there are 100 Scientists of Group 'G' senior to

him who may be appointed as Directors and the applicant's claim cannot be accepted. It has also been stated that the applicant shall continue to be senior to Respondent no.3 in over all seniority. We are not impressed by this submission. If there were 100 Scientists senior to the applicant of the same grade, any one of them being suitable for post could have been appointed to save applicant and others from humiliation and embarrassment. We do not find from the record any such special or strong reason on which basis legitimate claim of the applicant could be ignored. From the Counter affidavit and short counter affidavit filed it does not appear that the claim of the applicant was taken into consideration by the Competent Authority while recommending the name of Respondent No.3 for appointment. The learned counsel for the respondents faced with this situation placed before us certain documents which though cannot and should not be relied on for recording any finding as the other side has not got opportunity to convert them, but they are being only referred to appreciate the submission made by respondents.

The first document dated 4.2.1999 says that Dr.Nijhawan has been there for a decade and it is appropriate to change the Director so that some fresh ideas and vision may come. It has been further stated that next senior most officers are Dr.D.P.Juyal, Dr.J.A.R.Krishna Murthy and Mrs.Jagat Bhushan. Dr.Juyal is a good Scientist but in our opinion is an average man Manager and Administrator.

:: 18 ::

Dr.Krishna Murthy is a good Manager but he is an Electronic Engineer and I.R.D.E is mainly an Optical Physics Laboratory. Mrs.Bhushan in our opinion would not fit the bill. This was written by Shri V.K.Atre.

The second documents is of 24.3.2000. It only recommends the name of Dr.J.A.R.krishna Murthy as next Director but does not show that claim of applicant was considered. To over come this it appears that a letter dated 16.10.2000 has been written stating that claim of applicant was also considered and further stating that as sensitive issues related to defence are discussed in DRC meetings, it was decided not to keep Minutes of the meetings. Though we are not relying on the aforesaid documents for any other purposes but this much can be said that there was a serious objection against Respondent no.3 as he was not a man with the back ground of Physics. As I.R.D.E is mainly an Optical Physics Laboratory how this serious discrepancy possessed by the Respondent no.3 has been overcome by the Competent Authority has not been disclosed in the Counter affidavit. We also fail to understand, why the respondents mention these documents in their counter affidavit to counter the claim of applicant that he has not been considered.

D.R.D.O and I.R.D.E and other units are mainly Research and Development Establishments. For such institutions the academic eminence is of prime importance which has not been found lacking in applicant. He can provide leadership to the group of

Scientists working under him. What has been said is that he is not that good, as man manager as respondent no.3. In our opinion it can be assumed that applicant proved his personality leadership and managerial qualities while being promoted as Scientist Group 'G' in 1997 which is required under Rules. He further got experience by discharging functions as Director in long spells while Dr.Nijhawan was on leave on account of heart ailment. There is nothing on record to suggest that during absence of Dr.Nijhawan applicant could not function as Director properly and the interest of the Establishment was jeopardised in any way. Functioning of applicant as Director in absence of Dr.Nijhawan has been, it appears was not taken into account. It has been tried to be explained in the counter affidavit by saying that as he was senior most he was permitted officiating and temporary chances to work as Director. But nothing has been said about his performance during that period as Director. If it was satisfactory in temporary periods his capacity to head the Establishment stood well supported.

In the facts and circumstances narrated above, we are of the opinion that there are sufficient reasons warranting interference by this Tribunal in appointment of Director of I.R.D.E as ignoring claim of a senior Scientist of the level and calibre of the applicant may be counter productive and may not ultimately be in the best interest of the Country. Though we should not be misunderstood that we are suggesting the Seniority Rule is the only criterion for selection and appointment of

Director but we wish to say that there should be strong and cogent reasons for ignoring seniority which should be assessed in each case on the basis of the facts of that case. We also do not appreciate the practice of not recording the minutes of the meetings of DRC relating to appointments. It requires reconsideration on the part of respondents, as decisions on matters of appointment may not be that sensitive, as other decisions relating to planning and functioning of the DRDO and its units. But Minutes relating to selection and appointment may be maintained separately which may ensure transparacy, fairness ^{as well as confidentiality} and it shall be available as material for the judicial review if occasion so comes. In the present case we do not find material on which basis it may be said that the claim of the applicant has been considered by the Competent Authority and that there were strong and cogent reasons on which basis, though he was senior to respondent no.3, his claim in such circumstances does not appear to be justified and legal.

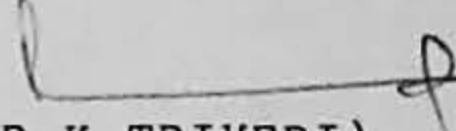
For the reasons stated above this Original Application is allowed. The impugned order dated 17.4.2000 appointing Respondent no.3 as Director of I.R.D.E, Raipur, Dehradun is quashed. The Respondents No.1 and 2 are directed to consider the appointment of Director of I.R.D.E afresh and pass order in accordance with law and in the light of the observations made above. As the Establishment like I.R.D.E, cannot be

:: 21 ::

kept without a regularly appointed Director, for long it is also directed that the exercise of consideration afresh shall be completed within a month from the date a copy of this order is filed before Respondent No.1 and for this period of one month Respondents 1 & 2 may make temporary arrangement.

However, there will be no order as to costs.


(S.DAYAL)
MEMBER(A)


(R.R.K. TRIVEDI)
VICE CHAIRMAN

Feb. 28th, 2001

UV/