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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 230 OF 1998
Cuttack, this the 14th day of October, 1999

Sri Bimalendu Sekhar Senapati and others....applicants
Vrs.

Union of India and othersRespondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No .

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(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
14.10.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

1. Sri Bimalendu Sekhar Senapati, aged about 30 years, son of Sri Bhudhar Chandra Senapati, At-Suelpur, Motiganj, Balasore.
2. Sk.Sharafat Ali, aged about 29 years, son of Sk.Shaukat Ali.
3. Sri Fagu Hembra, aged about 29 years
4. Sri Ram Krishna Sethi, aged 27 years
5. Sri Manas Ranjan Sahu, aged 27 years
6. Sri Chittaranjan Das, aged about 32 years

All at present working as Technical Assistant, Grade-A, Proof & Experimental Establishment, Chandipur, Balasore

Applicants

Advocates for applicants - M/s Rajen
Mohapatra
R.N.Naik
K.K.Rath

Vrs.

1. Union of India, represented by its Secretary, Ministry of Defence, Government of India, Sena Bhawan, New Delhi-110 011.
2. Under Secretary, Defence Research Development Organisation, Government of India, Sena Bhawan, New Delhi-110 011.
3. Director &Commandant, Proof & Experimental Establishment, Chandipur, Balasore.
4. Sri Laxmidhar Sahu, aged about 32 years, at present working as Technical Assistant-A, Proof & Experimental Establishment, Chandipur, Balasore

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Respondents

Advocate for respondents - Mr.S.B.Jena
A.C.G.S.C.

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the six applicants have prayed for a direction to respondent nos. 1 and 2

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to reconcile Defence Research Development Organisation Technical Cadre Recruitment Rules, 1995 and 1997 so as to ensure that the seniority of the applicants is safeguarded. The second prayer is for a direction to respondent no.3 to delete the name of respondent no.4 while carrying out local assessment for promotion to the post of Technical Assistant-B by declaring him ineligible. The third prayer is for a direction to the respondents to consider the applicants for their local assessment before respondent no.4 is assessed for promotion to the post of Technical Assistant-B.

2. The case of the applicants is that the six applicants were appointed as Junior Scientific Assistant, Grade-II (JSA-II) in the supervisor cadre on dates ranging between February 1994 and 6.3.1995. Pursuant to the circular dated 25.8.1995 they were redesignated as Technical Assistant-A. Respondent no.4 joined Proof & Experimental Establishment, Chandipur, in the post of Tradesman, Grade-B in February 1990 and was promoted to the post of Tradesman Grade-A on 2.5.1990. Thereafter he appeared at the Limited Departmental Competitive Examination in the year 1995 for the post of Junior Scientific Assistant, Grade-II. The examination took place on 18.3.1995 and pursuant to that respondent no.4 joined as JSA-II (Supervisor Grade) on 2.5.1995. On that date applicant nos. 1 to 6 were senior to respondent no.4. It is stated that promotion of respondent no.4 as JSA-II was in violation of the order dated 25.1.1995 according to which only those employees who have rendered at least five years of service in the cadre would be eligible to appear at the

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examination. Respondent no.4 having been promoted as Tradesman Grade-A on 2.5.1990 would have become eligible to appear at LDCE only after May 1995 whereas he appeared at the Examination on 18.3.1995. It is further stated that the postsof Tradesman Grade-B and Tradesman Grade-A are separate cadres and according to the relevant orders, to become eligible to appear at the examination for the post of JSA-II the employees must have rendered at least five years service in the cadre. Therefore it is stated that promotion of respondent no.4 to the post of JSA-II is in violation of the order dated 25.1.1995 which is at Annexure-2. But as the applicants were not immediately affected by the promotion of respondent no.4, they were oblivious of the illegality committed by respondent nos. 1 to 3 in promoting respondent no.4 to the post of JSA-II. Amended DRDO Technical Cadre Recruitment Rules, 1995, particularly Rule 8(1) came into force on 26.8.1995. According to this Rule, promotion from one grade to another grade shall be made under the limited flexible complementing system. Employees in each grade who have rendered a minimum of five years regular service in the grade as on 1st Septmber of the year of assessment including the service rendered by them in a post included in Schedule I and held by them immediately before the date of commencement of these rules shall become eligible. There is provision for relaxation of the period of five years of qualifying service upto three months in certain cases. It is further provided that if a junior is eligible for assessment, having completed minimum residency period, all individuals senior to him shall also be eligible for assessment. It is stated that as

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respondent no.4 joined the post of JSA-II on 2.5.1995 he could not have been considered for promotion to the post of Technical Assistant Grade-B till 2.5.2000. But respondent no.4 has been wrongly called for local assessment in letter dated 2.3.1998 for promotion from Technical Assistant-A to the post of Technical Assistant-B to be held on 4.3.1998. On receipt of the representation the local assessment was postponed in order dated 4.3.1998 at Annexure-5 indicating that fresh date for local assessment will be announced later. In an office note dated 17.4.1998 the applicants were informed that in view of amendment to Rule 8 of the Rules by SRO No.141/97, dated 11.8.1997, it has been decided that the entire service period rendered by respondent no.4 in the post of Tradesman Grade-A and Tradesman Grade-B would be taken into account for considering the eligible service period as stipulated in Rule 8(1). The amended rule is at Annexure-6 and the intimation to the applicants is at Annexure-7. In Annexure-7 the applicants were informed that seniors who have not completed the requisite qualifying service cannot be considered eligible for assessment as per the latest amendment which is at Annexure-6. In the context of the above facts, the applicants have come up with the prayers referred to earlier.

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3. By way of interim relief it was prayed that the local assessment of respondent no.4 should be stayed till the disposal of the OA. On 29.4.1998 by way of interim relief it was ordered that in case respondent no.4 is appointed to a higher post after his assessment under the flexible complementing scheme, then such appointment shall be subject to the result of this

application and this condition should be specifically mentioned in the appointment order of respondent no.4 to the higher post. On the second point for interim relief regarding consideration of applicant nos. 1 to 6 along with respondent no.4 being their junior, this came up while considering MA No. 779 of 1998 filed by the applicants seeking interim order of stay of local assessment of respondent no.4. After hearing the learned counsels of both sides it was directed that the departmental authorities may go ahead with the assessment but the order of selection and appointment of respondent no.4 should be issued only with the leave of the Tribunal.

4. Departmental respondents in their counter have stated that respondent no.4 was initially appointed as Tradesman Grade-B with effect from 15.12.1989 and not February 1990, as mentioned by the applicants. Respondent no.4 was thereafter appointed as Tradesman-A on 2.5.1990. He was not promoted to the post of Tradesman-A, as has been wrongly mentioned by the petitioners. Respondent no.4 was again appointed as Junior Scientific Assistant, Grade-II with effect from 2.5.1995. He was not promoted to JSA-II. It is stated that respondent no.4 has been called for local assessment as he is eligible for assessment consequent upon amendment of Rule 8 of Defence Research/Development Organisation Technical Cadre Recruitment (Amendment)Rules, 1997 which are at Annexure-R/1 and has also been enclosed by the applicant at Annexure-6. The departmental respondents have stated that applicant nos. 1 to 6 are senior to respondent no.4 in the grade of JSA-II/Technical Assistant-A and as per the original

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Rule 8 of Technical Cadre Recruitment Rules neither the applicants nor respondent no.4 were eligible for assessment for promotion to the post of Technical Assistant-B. But after the amendment to Rule 8, issued in SRO No.141, dated 11.8.1997, which was substituted with retrospective effect with effect from 26.8.1995, respondent no.4 became eligible for assessment for promotion, but applicant nos. 1 to 6 still remained ineligible for assessment for promotion. It is stated that no illegality has been committed by inviting respondent no.4 for local assessment. The departmental respondents have further stated that respondent no.4 was not promoted to the post of JSA-II as Tradesman-A is not a feeder grade for promotion to JSA-II. He was appointed as JSA-II on 2.5.1995, having qualified in LDCE as per SRO No.4 dated 19.2.1992, which is enclosed to the counter. It is stated that respondent no.4 had completed five years before being considered for appointment to the post of JSA-II. It is further stated that as the posts of Tradesman-A and JSA-II have been clubbed together into a single grade, respondent no.4 became eligible as he had rendered five years of service in the grade of Tradesman-A. But applicant nos. 1 to 6 could not be considered eligible for assessment for promotion to the post of Technical Assistant-B as they had not completed the minimum residency period of five years. It is also stated that the original rule that if a junior is called to local assessment, then all his seniors will also be so called is no longer applicable after the amendment of 11.8.1997 which provides that where juniors have got minimum residency period which includes posts clubbed together into a single grade but

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were not in the feeder grade, seniors will not be called for local assessment in such cases. On the above grounds, the departmental respondents have opposed the prayers of the applicants.

5. The applicants in their rejoinder have reiterated their averments made in the OA. The only new point made by them is that the amendment rule came into force admittedly with effect from 26.8.1995 and before this date the applicants being senior to respondent no.4 were also due to be called for local assessment if respondent no.4 was so called. This right of the applicants which was given to them under the second proviso to unamended rule 8(1) could not be taken away with retrospective effect. On the above grounds, the applicants have reiterated their prayers in the OA.

6. We have heard Shri Rajen Mohapatra, the learned counsel for the applicants and Shri S.B.Jena, the learned Additional Standing Counsel for respondent nos. 1 to 3. Notice has been served on respondent no.4 but he did not appear nor did he file counter.

7. From the above pleadings of the parties two points are very clear. Admittedly in the rank of JAS-II applicant nos. 1 to 6 are senior to respondent no.4. It is also admitted that under the second proviso to Rule 8(1) of the Technical Cadre Recruitment Rules, 1995, if a junior is eligible for assessment, having completed the minimum residency period, all individuals senior to him shall also be eligible for assessment. But this position has undergone a change by the amendment rule of 1997 which came into force with effect from 26.8.1995. Sub-rule (1) of Rule 8 was substituted and

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the second proviso was also substituted. The first proviso though substituted remained the same. Sub-rule (1) of Rule 8, as amended in 1997, is quoted below:

"(1) Promotions from one grade to another grade in the cadre shall be made under the limited flexible complementing system. Employees in each grade who have rendered a minimum of 5 years regular service in the grade as on 1st Sep. of the year of assessment including the service rendered by them in a post included in Schedule 1 and held by them immediately before the date of commencement of these rules including the service in the posts which have been clubbed together into a single grade but were not the feeder cadre to the posts getting clubbed, shall become eligible for assessment for promotion to the next higher grade."

Only the words underlined in sub-rule (1) have been added by the 1997 amendment. The substituted second proviso is also quoted below:

"Provided further that if a junior is eligible for assessment having completed minimum residency period, all individuals senior to him shall also be eligible for assessment. This will not be applicable in cases where juniors have got minimum residency period on account of transfer on compassionate grounds or where residency period includes the posts clubbed together into a single grade but were not in feeder grades to the post which have been clubbed."

In the amended second proviso only the portion underlined has been added. The rest portion was the same as was in the unamended second proviso. The effect of this amendment is that under sub-rule (1) the minimum period of residency of five years can now be considered as regular service in the grade as on 1st of September of the year of assessment including the service rendered in the posts clubbed together into a single grade but were not in feeder grades to the post which have been clubbed. In the instant case, respondent no.4 became

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Tradesman-A on 2.5.1990 and thereafter became JSA-II on 2.5.1995. The departmental respondents have pointed out that later on posts of Tradesman-A and JSA-II have been clubbed together into a single grade under DRTC Rules. Tradesman-A post is not also a feeder grade for promotion to the post of JSA-II. As such the case of respondent no.4 squarely falls under the amended sub-rule (1) of Rule 8, particularly the newly added portion underlined by us. By March 1998 taking into account his service as Tradesman-A and JSA-II together, because these two posts were later on clubbed together having the same scale of pay and Tradesman-A not being the feeder grade for JSA-II, his entire period of service as Tradesman-A and JSA-II was rightly taken into consideration to calculate his period of residency for five years. This has been correctly done by the respondents and therefore we hold that the prayer of the applicants to declare respondent no.4 ineligible for local assessment is without any merit and is rejected.

8. The second part of the prayer of the applicants is that as they were admittedly senior to respondent no.4 in the rank of JSA-II, under the unamended Second Proviso they were entitled to be called for local assessment and this right could not have been taken away by giving the amendment of 1997 retrospective operation with effect from 26.8.1995. In support of his contention, the learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the case of Wing Commander, J.Kumar v. Union of India and others, AIR 1982 SC 1064, which is a case relating to Defence Research & Development Organisation. For the purpose of present dispute it is not necessary to go

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into the facts of the case of **Wing Commander, J.Kumar (supra)**. It is only necessary to note that in that case the point at issue was the reckoning of the interse seniority among the service officers permanently seconded to the Defence Research & Development Organisation from Army, Navy and Air Force. The relevant rules came into force with effect from 23.11.1979. Rule 16 provided that seniority of all service officers permanently seconded to DRDO will continue to be based on their seniority in the substantive rank of Major/Sqn Leader/Lt.Commander subject to certain conditions. While challenging this rule, a point was taken by the appellant before the Hon'ble Supreme Court that the rule not having been specifically declared to be retrospective in operation, the provisions cannot be applied to the appellant inasmuch as he had been inducted to Research & Development Cadre on October 14, 1971 long prior to promulgation of the new Rules. Their Lordships of the Hon'ble Supreme Court held that even prior to promulgation of the 1979Rules seniority was being reckoned wih reference to date of attainment of the rank of substantive Major or equivalent rank. While considering this aspect, their Lordships have made the following observation:

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".....Even otherwise, when a statutory rule governing seniority is issued in respect of a service the said rule would govern the personnel in the service with effect from the date of its promulgation and in so giving effect to the rule in future, there is no element of retroactivity involved. Of course, the rules will not operate to deprive any person of promotions already earned in the past, but, for purposes of future promotions and seniority in the department, the principles laid down in

the impugned rule will necessarily govern all the personnel alike. This contention of the appellant has also to fail."

In the instant case the amendment rule has been specifically given retrospective operation. It is well settled that a rule making authority has the power to give a rule retrospective operation. In the observation of the Hon'ble Supreme Court, extracted by us above, it has been stated that even in such cases retrospective operation will not result in depriving any person of promotions already earned in the past. In the instant case, the applicants' grievance is not with regard to deprivation of promotions already earned by them but deprivation of consideration for promotion because of the amendment of the Recruitment Rules. In view of this, we hold that the retrospective operation of the 1997 amendment rules is not illegal and the applicants cannot make a grievance of this point because by such operation no promotion earned by them is going to be taken away from them. This contention also fails.

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9. There is another aspect which has to be noted in this connection even though no submission was made at the time of hearing of the Original Application. Respondent no.4 is being considered for promotion under limited flexible complementing scheme. This scheme differs largely from the normal scheme of promotion and is generally applicable to some of the more scientific and technical departments. In a normal promotion scheme there is a feeder cadre and there are certain persons in the feeder cadre. There is also a promotional grade to which persons from the feeder grade are promoted depending upon the number of vacancies in the

promotional grade. But under the flexible complementing scheme, on completion of the minimum period of residency and on a person being found suitable after assessment, he is upgraded to the next grade irrespective of availability of post in the higher grade. In other words, in such cases, promotions can be deemed to be insitu. Therefore, promotion of respondent no.4 does not in any way deprive the chances of promotion of the applicants because respondent no.4 does not occupy a promotional post to which the applicants can aspire and from which they are denied promotion because of occupation of higher post by respondent no.4. On completion of the minimum priod of residency and on being adjudged suitable the applicants will also be entitled for promotion under the flexible complementing scheme irrespective of the number of vacancies available in the promotional grade. The only point here is that respondent no.4 having completed the period of residency earlier because of clubbing together of the two grades, would get the higher grade earlier than the applicants who would be considered for that grade on their completing the minimum period of residency. As a matter of fact, after hearing in this matter was concluded and the matter was reserved for orders, the departmental respondents filed a petition (MA No.640/99) seeking permission to give promotion to the selected candidates and mentioning therein that the applicants have in the meantime completed their period of residency and are also entitled to be considered for promotion under the flexible complementing scheme. But in view of our order in this case, it is not necessary to pass any separate order on this petition filed by the respondents.

10. In the result, we hold that the applicants are not entitled to the reliefs claimed by them. The Original Application is therefore held to be without any merit and is rejected but, under the circumstances, without any order as to costs. The interim order is vacated.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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VICE-CHAIRMAN

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