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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH,CUTTACK

O.A.No.260/00493 of 2014
Cuttack this the ~~21ST~~ day of June, 2017

T.SairamPatro&Ors. ...Applicants

-VERSUS-

Union of India &Ors....Respondents

FOR INSTRUCTIONS

1. *Whether it be referred to reporters or not ?* ✓
2. *Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ?* ✓


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH,CUTTACK

O.A.No.206/00493 of 2014

Cuttack this the 21ST day of June, 2017

CORAM

*HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)*

1. Sri T.SairamPatro, aged about 46 years, S/o. late T.RaghunathPatro, presently working as Technical Officer-A, Integrated Test Range, Chandipur and residing at Qr.No.P/110/6, ITR Colony, Balasore, PS/Dist-Balasore-756 001.
2. Sri NilamaniSahoo, aged about 53 years, S/o. Harihar Sahoo presently working as Technical Officer-A, Integrated Test Range, Chandipur and residing at Qr.No.P/115/8, ITR Colony, Balasore, PS/Dist-Balasore-756 001.
3. Sri Asit Kumar Dash, aged about 50 years, S/o. late Sankarsan Dash, presently working as Technical Officer-A, Integrated Test Range, Chandipur and residing at Qr.No.P/224/4, ITR Colony, Balasore, PS/Dist-Balasore-756 001.
4. Sri BaburamDey, aged about 42 years, S/o. late BhagabanCh.Dey, presently working as Technical Officer-A, Integrated Test Range, Chandipur and residing at Qr.No.P/225/4, ITR Colony, Balasore, PS/Dist-Balasore-756 001.

...Applicants

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry of Defence, Sena Bhawan, New Delhi-110 011
2. Department of Defence Research & Development (DRDO), Ministry of Defence, repted. Through the Secretary-cum-Director General, DRDO &Scneitific Advisor to Rakshya Mantri, DRDO Bhawan, Rajaji Marg, New Delhi-110 005

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3. Director, DRDO, Ministry of Defence, Centre for Personnel Talent Management (CEPTAM), Matcalfe House, New Delhi-110 054

4. Director, Integrated Test Range, Chandipur, At/PO/PS-Chandipur, Dist-Balasore-756 025

5. Sri A.K.Panda, Technical Officer-A

6. Sri SanjivanBodra, Technical Officer-A

7. Sri Loknath Naik, Technical Officer-A

8. Sri Jyoti Ekka, Technical Officer-A

9. Sri RajanKu.Naik(A), Technical Officer-A

10. Sri GayadharSethi, Technical Officer-A

11. Sri K.B.Dasbabu, Technical Officer-A

12. Sri P.S.Senapati, Technical Officer-A

13. Dayanidhi Nayak, Technical Officer-A

14. Sri R.K.Naik(B), Technical Officer-A

15. Sri J.R.Nayak, Technical Officer-A

16. Sri P.K.Mohanty, Technical Officer-A

17. Sri Hemant Kumar Bage, Technical Officer-A

18. Ms.Manaswini Das, Technical Officer-A

19. Sri A.K.Pradhan, Technical Officer-A

20. Sri G.N.Das, Technical Officer-A

All the Respondents from 5 to 20 are presently working as TO-A, in the office of the Director, Integrated Test Range, Chandipur, At/PO/PS-Chandipur, Dist-Balasore-756 025.

...Respondents

By the Advocate(s)-Mr.B.Swain

Mr. B. Swain

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ORDER

A.K.PATNAIK, MEMBER(J)

Applicants of this O.A, four in number, are presently working as Technical Officer-Aunder the administrative control of the Director, Integrated Test Range (ITR) at Balasore in Odisha. They having a common grievance and on being permitted by this Tribunal, have joined together in this Original Application, in which they have sought for the following relief.

- i) To admit the Original Application.
- ii) To quash the selection conducted as per notification dated 18.12.2013(Annex.A/3)
- iii) To quash the result published on 26th June, 2014 for the years, 2012 and 2012 (Annex.A/6 series).
- iv) To direct the Respondents to conduct the fresh assessment by the new Board at least for the years 2012 & 2013.
- iv) To pass any other order/orders as deemed fit and proper in the circumstances of the case for ends of justice.

2. The facts leading to filing of this Original Application in sum and substance are thus: All the four applicants had entered into service in the grade of STA-A. Subsequently, they were promoted to TO-A. There being some anomaly in the 6th CPC recommendations vis-à-vis the recommendations made by the, Ministry of Defence, Government of India, promotions granted earlier to the applicants from ST-C(sic) to TO-A were cancelled, as a result of which Grade Pay Rs.4800/- granted in the promotional post was reduced to Rs.4600/- meant for STA-C. The matter having been challenged, ultimately, the



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same was set at rest by the Chandigarh Bench of this Tribunal affirming the action of the administration in that behalf. In the process, the respondents took a decision to conduct the Special Review Board for the purpose of giving benefits to the persons those who had faced reversion including the persons who had become eligible in the meantime for their promotions to the next higher grade. In the above backdrop, a notification dated 18.09.2013(A/2) was issued by the Respondents in the matter of Special Review Board for the assessment years, 2011, 2012 & 2013. Finally, vide letter dated 10.12.2013(A/3), Respondent No.3 accorded approval for conducting the Special Review Board for the year 2011, 2012 & 2013 at a time, laying down the modalities for conducting the assessment by the Board and fixing the date to 16.1.2014 for conducting the selection by the Board. Consequently, a notification dated 18.12.2013(A/4) was issued by Respondent No.4. According to applicant, all the promotions as indicated in A/1 are to be made as per the prescribed procedure laid down in the guidelines issued by the CEPTAM. As per the prescribed procedure, a person will be eligible to be assessed for next promotion after completion of five years in the lower grade. Cases of persons so eligible will have to be forwarded to the Selection Board every year for consideration and the selection will be made on the basis of suitability and seniority. As provided in Paragraph-6.4 of the selection guidelines, assessment will be made on the basis of viva and ACR, each carrying 50% marks



(A/4).However, in response to notification dated 18.12.2013 issued by Respondent No.4, all the applicants including the Private Respondent Nos. 5 to 20 appeared before the Board on the specific date allotted to them. As per procedure, applicants were allowed to project their achievements within 10 to 15 minutes besides facing the Board.

3. Grievance of the applicants is that except one interview, no further chance or interview was taken up or conducted for the remaining years. It is the case of the applicants that while they were hopeful that after publication of results for the year 2011, the authorities will conduct the selection for the year 2012 and 2013, but surprisingly, without publishing the result of the 1st year, i.e., 2011, and without conducting separate viva voce for the subsequent years, i.e., 2012 and 2013, the official respondents published the final result on 16.06.2014 by assessing the suitability of all the candidates for three recruitment years. It is the case of the applicants that though the results were published separately for the years, 2011, 2012 and 2013, but the same were published on one date, i.e., 16.06.2014 on the basis of one selection test conducted by the Board.

4. The main thrust of the O.A. is that the official respondents ought to have conducted assessment test in respect of each of the recruitment years, i.e., for the year 2011, 2012 and 2013 on three different spells. Therefore, according to the applicants, selection test conducted for three recruitment years at one go is

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against the laid down procedure because as per the prescribed procedure, the assessment ought to have been made separately for three years on different spells.

5. Official respondents have filed their reply statement opposing the prayer of the applicants. Private Respondents, though noticed, have neither entered appearance nor filed any reply.

6. In the reply filed by the official respondents, it has been stated that all the applicants belong to Defence Research & Development Organization Technical Cadre (DRTC cadre) and their promotion from one grade to the other is governed by DRTC Recruitment Rules, 2000, (in short Rules, 2000) issued vide SRO 296 dated 05.12.2000, as amended from time to time (R/1colly). Under the provisions of sub-rule(1) of rule 6 of the Rules, 2000, promotion from one grade to the next higher grade within DRTC shall be made under the merit based limited flexible complementing system, which is different from the conventional vacancy based promotions systems. Under the rules, employees in each grade, who have rendered requisite eligibility service in the grade as on 1st September of the year of assessment shall be considered for promotion to the next higher grade. Further, the maximum number of employees in a grade, who can be promoted to the next higher grade, shall be as per prescribed percentage of the total eligible employees in that grade at each annual assessment promotions by the Assessment Board as prescribed in DRTC Rules.



7. Respondent-Department have pointed out that on implementation of the 6thCPC Technical Officer A/Technical Officer (TO-A/TO) of DRDO were to be placed in the corresponding revised Grade Pay of Rs.4600/- in PB-2 and accordingly, all the applicants were so placed. However, due to grant of upgraded pre-revised scale of pay of Rs.7450-11500/- in the feeder grade Sr.Technical Assistant 'C', which corresponds to the revised Grade Pay of Rs.4600/- in PB-2 on the basis of 6th CPC's recommendations, it was decided by the departmental authorities to place TO-A/TO in the next higher Grade Pay of Rs.4800 in PB-2 so as to maintain cadre hierarchy& to avoid promotion within the same Grade Pay. With the approval of the Ministry of Defence, this was implemented and the employees who were promoted to the next higher grade of TO-A/TO, carrying the Grade of Pay of Rs.4800 during the assessment year 01.09.2006, 01.09.2007, 01.09.2008, 01.09.2008, 09.09.2009, 01.09.2010, 01.09.2011 and 01.09.2012 were granted the revised Grade of Rs.4800 and arrears were paid to them. This decision was challenged by STAs 'C' (one grade below TO A/TO), who were expecting merger of their post with the higher post of TO-A on account of grant of common grade pay of Rs.4600/- consequent upon the acceptance of recommendations of 6th CPC by the Ministry of Finance. After a number of litigations, the matter was decided by the Chandigarh Bench of this Tribunal vide order dated 13.3.2013 in O.A.No.571/CH/2011. Ultimately, Grade Pay Rs.4800/- that was



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earlier granted was withdrawn, as a result of which, the assessment for promotions made during 2006 to 2012 involving Grade Pay Rs.4800/- had to be reviewed. Consequent upon the withdrawal of the Grade Pay of Rs.4800/- in respect of TO-A/TO and their placement in the Grade Pay Rs.4600/-, which is the upgraded Grade Pay of the feeder grade STA C/TA C, the grade of STA C/TA C were redesignated as TO-A/TO and both the grades had been merged and designated as TO-A/TO in the Grade Pay of Rs.4600/- and classified as Group B Gazetted(Non-Ministerial). While the matter stood thus, review assessment was promulgated by the CEPTAM, New Delhi vide letter dated 09.09.2013(R/8) and the same was published in Daily Order Part-I vide No.265/2013 dated 18.09.2013(A/2) for information of all concerned. Accordingly, a draft eligibility list of the candidates was communicated in order to conduct a review assessment through Special Review Boards for the year 2011 and 2012 and regular assessment for the year 2013. In the said review assessment for the year 2011 and 2012, eligible TO-A/TOs completing a total 05 years residency period in the grade were considered for promotion to the next higher grade of Technical Officer 'B'. Subsequently, approved modalities for conducting review assessment were communicated to all concerned, vide letter dated 10.12.2013(A/3) followed by internal note dated 18.12.2013(A/5). It has been submitted that the Review Assessment Board for promotion to the post of TO 'B' for the years 2011, 2012 and regular

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assessment for the year 2013 though held at a time, yet, those were made for each year separately taking into account the relevant APARs and achievements/presentations submitted by each of the candidates for the relevant years. Official respondents have submitted that all the candidates were duly informed in advance regarding the methodology of conducting the Assessment Boards and that having participated in the Assessment Boards as per the notified methodology, now the applicants cannot make a 'U' turn and challenge the same specifically when it was held strictly in accordance with the statutory rules of the cadre in force. Therefore, it has been submitted that the O.A. being devoid of merit is liable to be dismissed.

8. Heard the learned counsel for both the sides and perused the records. We have also perused the rejoinder filed by the applicants as well as the written notes of submission filed by both the sides.

9. In the written notes of submission, it has been pointed out by the applicants that while issuing instructions, it was specifically indicated that the Special Review will be conducted as per the Recruitment Rules circulated under SRO-296(R/1 to the reply statement)which indicates that the candidates shall submit separate work for the each assessment year to consider their suitability whereas the official respondents conducted the assessment in respect of three consecutive years, i.e., 2011, 2012 and



2013 in one interview. Lastly, it has been indicated that once a person is selected for a particular year, he/she shall not be considered for the next year. Therefore, the merit list of each year should have been prepared separately. Applicant has mentioned that Government of India, Ministry of Defence has issued guidelines (A/4) which has been framed with reference to the Recruitment Rules clearly laying down the procedure to be adopted at the time of selection. As per Para-6.4 of the aforesaid guidelines, assessment for promotion to various grades will comprise of interview and APAR which will be given a weightage of 50% each. At the time of assessment, average of last five years will be considered for giving the weightage. Hence, according to applicants, in view of clear instructions available in the guidelines issued by the Government, the Director, ITR, Chandipur has no authority to decide the fate of the applicants for three years basing upon one interview/selection.

10. Regarding the plea of the official respondents that no vacancy was available in the grade of TO-B as per SRO-296 as the prescribed limit was 35% in the grade within over all limits, it has been submitted by the applicants that even if this plea is accepted, official respondents are not free to adopt different procedures beyond what has been provided in the recruitment rules. Once, the department is restricting the promotional avenue by applying the recruitment rules, simultaneously, they cannot conduct the selection departing from the procedure laid down in the recruitment rules.



Hence, the results notified under A/6 series to the O.A. for three years on the basis of one selection is wrong and illegal for which further selection needs to be conducted for the years 2012 and 2013.

11. Official respondents in their written notes of submission have pointed out that although the Assessment Board was held at the same time, but as per point 5(g) of approved modalities, each candidate was assessed for each assessment year in which he was eligible. Further, as per point no.6, the merit list of Special Review Board for the years, 2011, 2012 and Assessment Board 2013 were prepared separately on the basis of Assessment interview mark and APAR mark of the respective year. According to official respondents, modalities were well within the knowledge of the applicants before the commencement of Assessment Board. Since they have not been able to qualify for promotion, they are now challenging the duly approved modalities. It has been submitted that the assessment has been made separately for three years as approved and communicated to all well in advance. Three merit lists have been prepared separately for each year, by taking into account the assessment of interview marks and APR marks of respective year.

12. We have considered the rival submissions and given our anxious thoughts thereto. Annexure A/2 dated 18.09.2013 mentions about the Special Review Board - 2011, 2012 and 2013 in respect of candidates in erstwhile rank of STA-C, TA-C and TO-A, TO. Similarly the annexure A/3 dated 10.12.2013 issued by the Government of

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India, Ministry of Defence reveals Special Review Boards for the year 2011 & 2012 and Assessment Board 2013 for promotions from TO/TO- 'A' to TO 'B' to be started from 16.1.2014. Paragraph-4 of the approved modalities, as per the annexure A/3 mentions as under.

"Assessment Boards-2013 (delayed due to various court cases) are also to be conducted for promotion from TO/TOA-A to TO-B of all eligible candidates as per SRO-296 as amended from time to time".

13. The methodology for conducting assessment board as has been prescribed in para-5 reads as under.

- (a) All eligible candidates for Assessment Board-2013 will have to appear in the Assessment Board, as is being done in regular assessment boards. Merit list will be prepared as per existing procedures.
- (b) Special Review Board for the year 2011 and 2012 and Assessment Board - 2013 (delayed due to Court Cases) will be held together.
- (c) All candidates who are now eligible for Assessment for promotion to the grade of TO'B' in the year 2011, 2012, and 2013, will have to appear before the Assessment Boards.
- (d) Since it is a Special Review Board, as one time measure, candidates shall have the option to choose any ONE subject from the subjects for Assessment given in their APARs of the year 2010, 2011, and 2012 . In absence of any communication, the subject for Assessment as given in APAR of the year 2012 shall be considered as subject for Assessment.
- (e) Candidates who wish to choose a subject other than the one indicated in the APAR of

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the year 2012, should inform CEPTAM through the Lab. Director, before the boards are scheduled.

(f) All assessments for the year 2011, 2012 and 2013 shall be conducted in one go (methodology explained below), by the same board and in the subject decided as per para-5(d).

(g) The candidate shall submit a separate work 'BRIEF' for all the assessment years, i.e., 2011, 2012 and 2013 (as applicable). The board will assess the candidates for the assessment year(s) for which he/she is eligible. He/she will first present the work for the earlier assessment year (residency period), and then for subsequent year(s). This is further explained in table below:

Eligibility year	Assessment Procedure
2011	Candidates will be given approximately 10 min. time for presentation of work done for his/her residency period 2006-2011.
2011 & 2012	Candidate will be given approximately 10 min. time for presentation of work done for his/her residency period 2006-2011 and additional 3-4 minutes to elaborate his/her work done during 2011-2012.
2011,12 & 13	Candidate will be given approximately 10 min. time for presentation of work done for his/her residency period 2006-2011 and additional 5-6 minutes to elaborate his/her work done during 2011-2012 and 2012-13.
2012	Candidate will be given approximately 10 min. time for presentation of work done for residency period 2007-2012

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2012 2013	&	Candidate will be given approximately 10 min. time for presentation of work done for the residency period 2007-2012 and additional 3-4 minutes to elaborate his/her work done during 2012-2013 and
2013		Candidates will be approximately 10 min. time for presentation of work done during his/her residency period 2008-2013.

14. Paragraphs-6 and 7 of the modalities are as under.

6. Merit list for each Special Review Board of 2011, 2012 & Assessment Board 2013 will be prepared separately on the basis of the assessment marks and APAR marks as per existing procedure.
7. In case of candidates appearing at assessment boards for more than one year (2011, 2012 and/or 2013), their names shall be removed from the subsequent years' list after the year they are "Recommended for Promotion".

15. On perusal of the modalities as quoted above, it has come to our notice that, Paragraph-5(f) stipulates that "***all assessments for the year 2011, 2012 and 2013 shall be conducted in one go (methodology explained below), by the same board and in the subject decided as per para-5(d)***". Paragraph-5(d), as quoted above, makes a mention that "***since it is a Special Review Board, as one time measure, candidates shall have the option to choose any ONE subject from the subjects for Assessment given in their APARs of the year 2010, 2011, and 2012. In absence of any communication, the subject for Assessment as given in APAR of the year 2012 shall be considered as subject for Assessment***". As regards the eligibility year, applicants, no doubt were eligible for the Special Review Assessment Board 2011 and 2012 and Assessment

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Board 2013. Therefore, in our view the applicants are governed under the Assessment Procedure as indicated against the eligibility year, 2011, 2012 and 2013, (quoted above in the Table). At the cost of repetition we would like to make a mention that Paragraph-5(g) as quoted above, clearly and unambiguously stipulates that ***all assessments for the year 2011, 2012 and 2013 shall be conducted in one go by the same board*** and in the subject decided as per para-5(d). It is also not in dispute that the results were published separately for the years, 2011, 2012 and 2013. However, the applicants did not come out with flying colours. Therefore, it is quite evident that the Special Review Board for the years 2011 and 2012 and the Assessment Board for the year 2013 in which applicants had indisputably opted and chosen ONE subject from the subjects for Assessment given in their APARs of the year 2010, 2011, and 2012. This being the position, we do not find any infirmity in the matter of conducting the Special Review Board for the years 2011 and 2012 and the Assessment Board for the year 2013 at one go by the respondent-department, which in our considered view, is in consonance with the modalities as appended to Annexure-3 dated 10.12.2013. Applicants having acquiesced the tenor of modalities which provided for conducting a Special Review Boards for the years 2011 and 2012 and Assessment Board 2013 for promotions from TO-A to TO-B at one go, they are at this stage, estopped to raise any

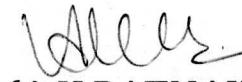


objection in this regard as law of acquiescence operates against them.

16. For the reasons discussed above, we are of the view that applicants have not been able to make out a case for the relief(s) sought for. In the result, the O.A. being devoid of merit is dismissed.

No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)