

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

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O.A. No. 259/97
R.A. No. 74/2000
in
O.A. No. 259/97

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DATE OF DECISION 22.12.2000.

H.L. Verma, Petitioner

Mr. R.S. Saluja, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondents

Mr. Vineet Mathur, Advocate for the Respondent (s)



The Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

The Hon'ble Mr. Gopal Singh, Administrative Member

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✓ 1. Whether Reporters of local papers may be allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not ? Yes

3. Whether their Lordships wish to see the fair copy of the Judgement ?

4. Whether it needs to be circulated to other Benches of the Tribunal ?

Gopal Singh
(Gopal Singh)
Adm. Member

B.S. Raikote
(B.S. Raikote)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 22.11.2000

1. O.A. No. 259/97

2. M.A. No. 74/2000

in

O.A. No. 259/1997

H.L. Verma, SOSB, Production Section, Heavy Water Plant, Rawat Bhata, son of Shri G.R. Verma, aged 37 years, resident of 9/36 A, Heavy Water Plant Colony, Rawatbhata.

... Applicant.

versus

1. The Union of India through the Chief Secretary, O.Y.C (Old Yacht Club) Building, C.S.M. Marg, Mumbai - 39.
2. The Chief Executive Officer, Heavy Water Board, 5th Floor, Vikram Sarabhai Bhawan, Anushakti Nagar, Mumbai.
3. The Administrative Officer, Heavy Water Plant, Rawatbhata.

... Respondents.

Mr. R.S. Saluja, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

The applicant, who was promoted from SA (D) to SO (SB) vide order dated 31.08.95, has filed this application, contending that he should be promoted on the post of SO (SC) instead of SO (SB). Therefore, the applicant has now prayed for quashing of Annexures A/1, A/1(a) and A/1(b) with a further direction to the respondents to promote the applicant as SO(SC). The further relief of the applicant is to direct the respondents to effect applicant's proper fixation by releasing one advance lower and upper increments.

2. It is stated in the application that the applicant earlier was working as SA (D) and with the permission of the department, he acquired qualification of AMIE, and on the basis of this qualification, the applicant was entitled to be promoted as SO (SC), but not SO (SB). The applicant stated that he appeared in the interview on 28.03.95 and he was orally informed that he would be promoted as SO(SC). In those circumstances, he made representation to the respondents and ultimately, the respondents issued the impugned order vide Annexure A/1(b) dated 27.06.95. The applicant stated that the Annexure A/1 is illegal and not in accordance with the law and the same may be set aside by issuing necessary direction as prayed for in the application. The applicant further stated that in earlier occasion, the persons who were working as SA(D) were directly promoted as SO(SC). The present post to which the applicant is promoted, is equivalent to the post he was already holding, namely SO(SB). In fact, SO(SB) is only a redesignation to the post of SA(D). Therefore, in effect it is not a promotion at all, and the applicant should have been promoted to the post of SO (SC).

3. By filing counter, the respondents have denied the case of the applicant. It is the case of the respondents that in the department, there is "Merit Promotion Scheme" for the Scientific and Technical employees, which is distinct and different. They stated that Dr. H.J. Bhabha, the founder of the Indian Nuclear Programme, had a scheme of nurturing the young Scientists and Engineers of this country for the purpose of self-reliance. It is only to implement these ideas, "Merit Promotion Scheme" was formulated for the Scientific and technical personnel of the department, and this system is working for more than four decades. For the purpose of implementation of this Scheme, guidelines have been formulated. For the assessment of the candidates for the purpose of promotion, number of years of service, the concerned person has been put in, and the relevance and excellence of the contents of the work carried out by such individual is taken into account

both on account of self-assessment and also on the basis of the annual confidential report and performance of the individual. An oral interview before a Standing Selection Committee also has been conducted. The important feature of the promotion under the "Merit Promotion Scheme" is that such promotion is given without/being ^{there} any vacancy, and it is not vacancy-based promotion. We think it appropriate to extract that part of the reply as under:-

"The notable feature of the Scheme is that promotions are given without there being a vacancy. In other words, it is not vacancy based. Under this Scheme, the Scientific Assistants are moving from Scientific Assistant Grade 'A' to 'B', 'C' & 'D' and so on and the Scientific Officers are moving from Scientific Officer 'SB' grade to 'C', 'D', 'E' and so on."

They have stated that keeping in view of these guidelines the Scientific and Technical employees are considered for promotion from time to time based on the prescribed norms. They published outlines of the said Scheme as per extract vide Annexure R/1. Keeping these norms in view, the Scientific Assistants are considered for promotion to the grade of Scientific Officer (SC) or Scientific Officer (SB) etc., as and when they acquire an Engineering degree or M.Sc. degree with first class. Accordingly, the applicant on his acquiring AMIE qualification, was interviewed by the duly constituted Standing Selection Committee in order to assess his suitability for promotion to the grade of Scientific Officer SC or SB, and such Selection Committee did not find him suitable for the grade of SO (SC), but found him suitable for SO (SB). Accordingly, he was promoted as SO (SB) and the applicant assumed the charge of SO (SB) with effect from 01.02.95. Thereafter, the applicant filed a representation vide his letter dated 23.04.95. The said representation was considered and Annexure A/1(b) was issued, stating this position. They stated that the applicant was working as Scientific Assistant 'D' (SA/D), and he has now been promoted to the grade of Scientific Officer/SB (SO/SB), which is a gazetted post and applicant's further future career will depend upon the norms regulating the Scientific Officer. They admitted that the pay scale of SA/D and SO(SB) is identical. They stated that the overtime allowance is not admissible to

the Scientific Officer, being a gazetted officer. Further liveries, such as protective clothing, safety shoes, towels, soaps tumbler etc. are given to the scientific officers also in the Heavy Water Plants. They have also stated that earlier the persons similarly situated, namely Shri N.M. Lohani and Shri N.K. Jain, in the Heavy Water Plant were promoted from the grade of SA/D to SO/SB only. Therefore, the applicant has also been promoted as SO/SB, as per the recommendation of the Selection Committee. They have also stated that the same position has been intimated to the Assistant Director, National Commission for SC/ST, New Delhi, vide Annexure R/2 dated 16.08.96. They have also stated that from the post of SA/D, the persons are considered for promotion to the post of SO/SB and SO/SC simultaneously depend upon their R&D abilities, ACRs and performance in the interview, and there are two different streams, one is 'technical stream' and the other is 'scientific stream'. This policy though found fault with by the C.A.T., Hyderabad Bench, but upheld by the Madras Bench of the C.A.T., and Hon'ble the Supreme Court ultimately confirmed the order of the Madras Bench and consequently, upheld this policy. On the basis of the guidelines and the policy and on the basis of the suitability, the applicant was promoted to the post of SO/SB and his further career advancement will be in the scientific stream only, but not in the technical stream. Therefore, the action of the respondents based on recommendation of the Selection Committee cannot be found fault with or violative of Articles 14 and 16 of the Constitution of India. They also stated that on promotion of the applicant on the present post of SO/SB, the applicant was not entitled to the benefit of Clause III of FR 22. Accordingly, they prayed for dismissal of the application.

4. From the arguments of the learned counsel on both sides and also the pleadings in the case, we have to see whether the applicant was entitled to be promoted as SO/SC instead of SO/SB, as contended by the applicant.

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5. The fact that there is a "Merit Promotion Scheme" in the department is not disputed and cannot be disputed. We have gone through the "Merit Promotion Scheme". From the Scheme, it appears that there are several checks and balances built into the system to ensure that evaluations and recommendations for promotions are done in a systematic and balanced manner. The Scheme provides adopting the system of confidential report, originating from the candidate, assessed by the immediate superior, reviewed and countersigned by the Head of the Division or Director of the Group. There is a provision for assessment and ~~reflects~~ of the work carried out by the officer as well as his individual qualities, according to the Scheme. Keeping in view of these principles, the Standing Screening Committee recommends the case for promotion on the basis of the standards and guidelines prescribed so as to ensure that no deserving person stands overlooked. The Screening Committee consists of immediate Supervisors and balancing Members from other Divisions or Units of the department so as to ensure the uniformity in the entire department. The same method is more or less for promotion to the technical staff. We think it appropriate to extract the norms for promotion of Engineering graduates as laid down in the proceedings of Trombay Council held on 06.03.84, as under:-

Government of India
Bhabha Atomic Research Centre
TC & TSC Section

Ref: TC/1(3)/64/959

March 15, 1984

Sub: Norms for promotion - engineering graduates

Extract of minutes M.4A.4 of the 683rd meeting of the Trombay Council held on March 6, 1984, when Director, BARC & Secretary to Government of India was in the Chair, is reproduced below for information/necessary action:-

The following decisions were taken earlier in respect of persons passing Sections A & B of the AMIE Examination :

1. Since pass in Sections A & B of the AMIE Examination is recognised by the Govt. of India as equivalent to degree in Engineering, those with this qualification and no experience can be considered for appointment in grade SB/SC as found suitable and the salary fixed at the minimum of the grade.
2. In view of the decision at (1) above, those in service who

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pass Sections A & B of the AMIE Examination may be considered for promotion to grade SB or SC as found suitable. Such a chance will, however, be restricted to only once. Such persons as are appointed to grade SB can be considered for promotion to grade SC after two years with 'A' grading as at present."

6. From the above guidelines, it is clear that the person may be promoted either to SO/SB or SO/SC, as found suitable. From this, it follows that no person has got the right to be promoted from the post of Scientific Assistant/D to Scientific Officer SB or SC. Whether a person to be promoted to the post of SO/SB or SO/SC would necessarily depend upon the suitability as assessed by the Selection Committee. Keeping in view the above guidelines only, the Selection Committee interviewed the applicant and ultimately recommended for his promotion to the post of SO/SB. Zerox copies of the proceedings of the Committee are made available for our perusal and we have perused the same. The proceedings indicate that the applicant was recommended for promotion to the post of SO/SB, keeping in view of the entire service records pertaining to the candidate and his suitability. It is also stated that regarding the candidates belonging to SC/ST candidates, relaxed standards were adopted for assessment. The applicant belongs to SC category, and the proceedings indicate that such relaxed standards also applied in the case of the applicant. Ultimately, the Committee recommended on the basis of candidate(s) record of service, ability to shoulder higher responsibility, guidance/leadership to group of persons working under him, professional competence and skill in the field of specialisation and aptitude and bent of mind for scientific and original R & D work. This kind of assessment is possible only by the Experts constituted for that purpose, and if such Expert Committee found the applicant suitable for promotion only to SO/SB, it is not possible for us to substitute our judgement. The applicant except saying that he should have been promoted to the post of SO/SC instead of SO/SB, has not demonstrated on what basis. As we have already noticed above, the basis for such promotion is as to the suitability as assessed by the Committee. Therefore, we do not find any

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merit in this application.

7. Moreover, Hon'ble the Supreme Court in Civil Appeal No. 803 of 1988 confirmed the judgement/order of the C.A.T., Madras Bench in T.A. No. 788/86 (Writ Petition No. 9599/83), reversing the judgement/order of the C.A.T, Hyderabad Bench in T.A. No. 620/86 (Writ Petition No. 9431/83), on the basis of the statement made by the learned Additional Solicitor General, as under:-

"(i) All persons who are promoted to SA(D) post shall be concurrently considered for SO(SC) post when their chance for promotion to SA(E) post comes and if they are found fit, they will be promoted to SO(SC) Grade;

(ii) similarly, all persons holding posts of SA(E) will be considered concurrently for promotion to SO(SD) post when their chance for promotion to SA(F) comes; and

(iii) in exceptional cases, all those persons holding post of SA(F), who merit consideration as professionals because of outstanding abilities in the theoretical fields, shall be considered for the post of SO(SD) and if they are transferred to the SO(SD) posts thereafter, they would be having all the promotional facilities available to SO(SD) officers.

The learned Additional Solicitor General further stated that the Government will consider the question of including officers in SA(D), SA(E) and SA(F) Grades amongst the gazetted posts."

8. From the statement of the learned Additional Solicitor General, which is accepted by Hon'ble the Supreme Court, it is clear that all the persons, who were promoted to SA(D) would be considered for promotion concurrently for SO(SC), if they are found fit, according to their chance and suitability. In the instant case, the Selection Committee recommended the applicant for promotion to SO/SB on the basis of his suitability and that is in accordance with the law declared by Hon'ble the Supreme Court. If that is so, only because some other persons were promoted to from SA(D) to SO(SC), cannot be a basis for him to contend that the applicant should also be promoted as SO(SC). Whether a particular person is eligible to be promoted for SO/SB or SO/SC, it is for the Selection Committee to decide and in the instant case, the Committee has recommended ~~as well~~ the applicant for promotion to the

post of SO/SB and the same cannot be violative of Articles of 14 and 16 of the Constitution of India.

9. Moreover, in view of the judgement of this Tribunal in OA No. 291/98, decided on 07.04.2000, the applicant also would not be entitled to the benefit under F.R. 22(III) on his promotion to SO/SB. This Tribunal has held in that case that, the applicants on their promotion to the post of SO/SB would not be entitled to fixation of their pay under F.R. 22(I) (a)(i) since the scale of pay of both the posts is identical. In view of this law declared by this Tribunal, applicant's case for fixation under F.R. 22(III) also cannot be accepted. Since the policy of the selection vide letter No. TC/1(3)/54/959 dated 15.03.84 is produced before us, the M.A. No. 74/2000 for calling for such policy/^{document} from the department does not survive and the same is liable to be dismissed.

10. For the above reasons, we pass the order as under:-

"Application is dismissed. Consequently, the M.A. No. 74/2000 also is dismissed. But in the circumstances, without costs."

Gopal Singh
(GOPAL SINGH)
Adm. Member

JK
(JUSTICE B.S. RAIKOTE)
Vice Chairman

CVR.

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Re: copy
Part II

Copy sent to
Vidya TIC 26/10/2010
Date 10-1-2010
Counsel for Appellant

Part II and III destroyed
in my presence on 32/10/2010
under the supervision of
Section Officer (R) as per
order dated 10/11/2010

Section Officer (Record)

APR
Vidya TIC
10/11/2010