

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 461/89
XXXNR.

200

DATE OF DECISION 20th June, 1990

K.Venkata Rao

Applicant (s)

In person

Advocate for the Applicant (s)

Versus

Secretary, Deptt. of Space and others Respondent (s)

Mr. P. V. Madhavan Nambiar

Advocate for the Respondent (s)

Mr. N. N. Sugunapalan, SCGSC

CORAM:

The Hon'ble Mr. S. P. Mukerji, Vice Chairman

The Hon'ble Mr. A. V. Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Mr. S. P. Mukerji, Vice Chairman)

In this application dated 2nd August, 1989 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Engineer 'SC' in the Liquid Propulsion System Centre of the Indian Space Research Organisation (ISRO) under the Department of Space has challenged his non-promotion to Engineer 'SD' grade and has prayed that he should be directly promoted to Engineer 'SD' grade as on 1.1.87. The applicant has also challenged the provision of Screening Committee making its recommendations to the competent authority for candidates to be called for interview as in para 3.1(b) of Appendix A.I order dated February 22, 1988

and also para 4 of the impugned order dated 29th March, 1989 at Appendix A.2 whereby the benefits of lower qualifying service prescribed for first class Engineering Graduates/M.Sc's has been denied (like the applicant) to those who are only Diploma holders or B.Sc's.

2. The brief facts of the case are as follows. The applicant holds a Diploma in Mechanical Engineering. He joined ISRO on 10.5.72 as Technical Assistant and thereafter got promotions as indicated below:

<u>Grade</u>	<u>Date of Effect</u>	<u>Designation</u>
Rs. 210-425	10-05-1972	Tech. Assistant
Rs.470-750	05-05-1973	Tech. Asstt. 'B'
Rs.550-900	01-01-1976	Tech. Asstt. 'C'
Rs.650-1200	01-04-1982	'SB' Engineer
Rs.700-1300	01-01-1985	'SC' Engineer

His next promotion as Engineer 'SD' was due on 1.10.1989 when he had completed ^{about} three years of service as in 'SB' grade and ^{more than} four years of service in 'SC' grade. In accordance with the selection procedure indicated in the Circular dated March 3, 1988 at Annexure A.1 he was considered by the Screening Committee and was screened out as not recommended for being called for interview. The recommendation was accepted by the Director who was the competent authority for appointment. Accordingly he was not called for interview to be conducted by the ^{Review-cum-} Selection Committee. His further grievance is that having been normalised and placed at par with Engineering Graduates and M.Sc's he could not be excluded from the benefits of

the order at Annexure A.2 which prescribes for Engineering Graduates and M.Scs with first class a total of five years of service in 'SB' and 'SC' grades for being considered to be eligible for promotion to 'SD' grade while for him as a Diploma holder the original qualifying service of three years in 'SB' grade and four years in 'SC' grade has been maintained. According to him since he joined the 'SB' grade on 1.4.82 he would be entitled to be promoted to 'SD' grade on 1.1.87. The rejection by the Screening Committee even before he is considered by the Selection Committee is violative of Article 16 of the Constitution and is arbitrary and discriminatory and violative of Article 14 of the Constitution. The Screening Committee by rejecting him had arrogated to themselves the powers of the Selection Committee which cannot proceed as if it were bound by the recommendations of the Screening Committee. He has further argued that he was allowed to cross the Efficiency Bar in the grade of Engineer 'SC' in April, 1989 and therefore there is no reason why the Screening Committee which met in June, 1989 should have screened him out. He has further averred that along with him three Engineering Graduates in 'SC' grade had also been screened out but surprisingly while all of them were later screened in and two of them subsequently selected by the Selection Committee, he along with

22.

other Diploma holders were singled out for being rejected at the screening stage. He has also challenged the preferential treatment given to Degree holders for promotion to Engineer 'SD' grade at Annexure.A.2 as discriminatory. He has referred to certain decisions of the Hon'ble Supreme Court that once persons with different qualifications have been integrated and fused to form one group no preference can be given to one group on the basis of qualifications or experience for further promotion. In other words according to him Diploma holders and Degree holders integrated into a common class as Engineer 'SB' and Engineer 'SC' cannot be further classified on the basis of educational qualifications or length of service for further placement as Engineer 'SD'.

3. The respondents have given a detailed reply delineating the history of the Indian Space Research Organisation and the special needs of the organisation for merit promotion or promotion for outstanding work. They have been particularly referred to the 'category change merit selection scheme' in order to open avenues of further promotions of Diploma holders by opening the doors to posts ^{of} higher categories for the Diploma holders also through a stricter examination-cum-selection scheme. They have, however, referred particularly to the need to have brilliant

and experienced Engineering Graduates and M.Sc's and retain them in the Space Research Organisation, where their experience and skill can be utilised in the high technology field in matters of design, development and innovation. It was found that while other organisations like the Department of Atomic Energy, Defence Research and Development Organisation were recruiting B.Es/M.Sc's directly in 'SC' grade on Rs. 2200-4000, in ISRO their recruitment was at a lower level of 'SB' (2000-3500) or Scientific Assistant (Rs.1640-2900). After careful consideration for three years it was decided that Engineering Graduates/M.Sc's first class may be recruited in 'SB' grade and after one year's satisfactory service instead of three years as before, they should be promoted to the 'SC' grade as in other Departments and promoted to 'SD' grade four years thereafter. Thus the qualifying service for promotion to 'SD' grade was reduced from ^{seven} ~~five~~ years (three years in 'SB' and four years in 'SC') to five years (one year 'SB' and four years 'SC) for B.Es/M.Sc's first class while for Diploma holders the status quo i.e., three years in 'SB' and four years in 'SC' was retained. The respondents have also referred to what is known as Flexible Complementing Scheme followed by them where promotion of Scientists and Engineers from one grade to another is dependent upon not on their seniority or availability of vacancy but on their ^{individual} suitability for promotion after completing the qualifying service

in that grade. The Scientist or Engineer on being found suitable for promotion continues to do the same work but given the higher grade.

Thus for purposes of promotion to higher grade existence of a vacancy or seniority is not necessary. What is necessary is intrinsic quality of performance of the Engineer/Scientist to be assessed by his

xxxxxx peers after he has completed certain number of years in a particular grade. Thus, according to the respondents, a Degree holder

in the 'SC' grade being considered for promotion after five years of

service instead of seven years of service in 'SB' and 'SC' grades combined, /

in any way preempt the chances of promotion of a Diploma holder like

the applicant, who if found suitable after seven years of service

in 'SB' and 'SC' grades continues to be entitled to promotion to the

higher grade. In such a situation the question of inter-se seniority and

the junior superceding the senior to deprive the senior of the legitimate

chances of promotion does not arise. According to the respondents

the applicant as a Diploma holder has not lost anything by the reduction

of qualifying service from seven years to five years for Engineering

Graduates/M.Sc.s. He was eligible to be considered for promotion to

'SD' grade after seven years of service before the impugned order at

Annexure.A.2 was passed and he continues to be so eligible after that

also without any reduction in his chances of promotion by the faster

promotion to the Degree holders.

4. As regards provision of Screening Committee at Annexure

A.1 the respondents have stated that it is not as if the Screening Committee is the final authority to decide whether a particular candidate should be called for interview by the Selection Committee or not. The Screening Committee merely passes its recommendations to the appointing /competent authority who may or may not accept the recommendations ^{of that Committee} ~~/regarding~~ who should or should not be called for interview by the Selection Committee. Screening is an integral part of the selection process and applies uniformly to all whether Diploma holders or Degree holders. The question of any discrimination does not arise. In the instant case there were 28 candidates in 'SC' grade eligible for promotion to 'SD' grade for which the Screening Committee 'screened in' 22 and 'screened out' 6 candidates of whom 3 were Engineering Graduates and 3 including the applicant were Diploma holders. The Director of the Organisation who was the competent authority did not accept the recommendations of the Screening Committee ^{in toto} ~~and~~ after consulting the Chairman and Secretary of the Screening Committee allowed 3 Engineering Graduates who had been 'screened out' to be 'screened in' besides the 22 candidates who had been 'screened in' by the Screening Committee itself. These 25 'screened in' candidates as approved by the Director were interviewed by the Select-

(6) and 28.6.89(19) ion Committee on 21.6.1989. Unfortunately for the applicant the competent authority accepted the recommendations of the Screening Committee for screening him out. The respondents have denied any malafides on the part of the Screening Committee or the Director. They have also argued that the fact of the applicant's crossing the Efficiency Bar in April, 1989 cannot entitle him to be considered fit for being interviewed for promotion to 'SD' grade because the criterion for crossing the Efficiency Bar is suitability in 'SC' grade while the Screening Committee considered him for suitability to be promoted to 'SD' grade.

5. The respondents have stated that the fact that Diploma holders like the applicant and Engineering Graduates/M.Sc's were in the same grade of 'SC' does not mean that for all future purposes they should be treated alike irrespective of the demands/ in the higher of service grade. Graduates and Diploma holders stand on different footings and the classification for the purposes of qualifying service for promotion to the higher grade is reasonable and in conformity with the objectives of the higher grades in view. They have denied that the applicant had been ever treated at par with Degree holders and normalised in 'SC' grade. They have cited examples of non-supervisory personnel holding only

I.T.I. Certificates being in the grade of Sr. Technician 'A' in the scale of Rs.2000-3500 which is the same as the that of 'SB' Engineers but they were never equated as Engineers. The respondents have cited various rulings of the Hon'ble Supreme Court ⁱⁿ which classification based on educational qualifications was upheld and ^{the} court rejected "a wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employees.....". They have further explained that Diploma holders and Engineering Graduates though in the same grade are not doing the same work or have the same responsibilities. The Diploma holders are given duties of maintenance/production/workshop types of jobs which do not involve any innovative/development type of ~~space~~ activities whereas the Engineering Graduates with their academic background are deployed on high-tech functions involving design, development innovation. They have referred to the Hon'ble Supreme Court's ruling in Triloknath Khosa's case ^(AIR 1971 SC 1) wherein ~~exclusion~~ of Assistant Engineers with Diploma for promotion as Executive Engineers was upheld as not violative of Articles 14 and 16 of the Constitution. They have stated that the Department is within its right to take into account the availability of persons with higher educational qualifications for manning the

next higher post on promotion in the public interest. They have also referred to another decision of the Hon'ble Supreme Court in Roopchand

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Adlakah's case/SC 309 holding that rules prescribing differential treatment

of Diploma holders and Graduates, by the prescription of different standards of service, experience for the purposes of eligibility for promotion, do not violate Articles 14 and 16 of the Constitution. They have, however, argued that the Diploma holders as a matter of fact have not been debarred from promotion and their existing opportunities for promotion have remained untouched and are better than in other organisations.

6. In the rejoinder the applicant has referred to the decision of the Bangalore Bench in O.A. 240/87 in a similar case wherein it was held that the Screening Committee has only to place its views before the Departmental Promotion Committee and the Director for decision as final arbiters and the Screening Committee cannot have the power to supersede or weed out candidates. The applicant has challenged the O.M. of 22.2.88 (Appendix A.1) as it empowers the competent authority to intervene and on the recommendations of the Screening Committee prevent a weeded out candidate from appearing before the D.P.C. Another judgment of the Bangalore Bench of the Tribunal in O.A.1791/88 (Annexure A.3) has also been cited endorsing the above view. The applicant has tried to make out a case of manipulation by the Screening Committee

by stating that it met not only on 9.6.1989 when it 'screened out' the applicant but also on 22.5.89 and 6.6.89 and in each sitting they came out with different number of 'screened out' candidates by modifying the norms for screening. He has alleged that on the basis of the recommendations of the Screening Committee meeting held on 24.5.1989 the interview was scheduled originally to be held on 15th and 16th June, 1989 and notices ^{were} issued to the members of the Selection Committee. But, these interviews were cancelled, another Screening Committee meeting was held on 6.6.89 which brought out a second list of 'screened in' and 'screened out' candidates but on the direction of the competent authority the Screening Committee met again on 9.6.89 in order to accommodate some 'screened out' candidates and interviews were postponed. The applicant accepts that the recommendations of the Screening Committee 'screening in' 22 candidates and 'screening out' six candidates were placed before the Director LPSC who is the competent authority. The Director cleared 22 cases as recommended by the Screening Committee and after discussions with the Chairman and Secretary of the Screening Committee 'screened in' three more cases out of the six cases not recommended by the Screening Committee and the interviews were scheduled to be held on 21.6.89 but again under pressure of interested parties the interviews for Scientist/Engineer 'SD' was scheduled to be held on 21.6.89 for regular batch candidates and another ^{on} ~~28.6.89~~ for the preferential Graduate Engineers. The three candidates who were 'screened in' by the Director against the recommendations of the Screening Committee were all

Graduate Engineers. The applicant has also referred to the latest guidelines on Departmental Promotion Committee issued by the Government by which all candidates with a grading of 'good' and above are to be appointed in the order of their seniority without reference to the overall grading obtained by them. He has further stated that in the Department of Space people with outstanding contribution in their field of service who are graded outstanding are eligible for merit/jump promotion on the recommendations of the Division Head and accordingly for normal promotion such grading is not relevant. He has reiterated his claim that having been allowed to cross the Efficiency Bar on the basis of strict assessment the decision of the Screening Committee to screen him out at the very threshold of selection process lacks bonafides and is invalid. He has indicated that Graduate Engineers who were working under him at the time of joining in the organisation have been able to be promoted to the next higher grade of Engineer 'SD' because of the impugned O.M of 29.3.89 on the basis of a lower qualifying service. He has argued that because of his being a Diploma holder he has been superseded in spite of his super performance.

7. The respondents 1 to 3 have given a supplementary counter affidavit in great detail. They have distinguished between the new

procedure of the Screening Committee as at Annexure A.1 and the old procedure which had been challenged before the Bangalore Bench of the Tribunal. Under the new procedure at Annexure A.1 the recommendations of the Screening Committee are not final but are ^{to be} placed before the competent authority i.e., the Director of the Centre who gives final decision as to which of the candidates should be interviewed. They have stated that the revised procedure was issued at Annexure A.1 dated 22.2.1988 after considering all the various points made out by the Tribunal. The competent authority has the power to approve or disapprove or modify the recommendations of the Screening Committee and in the instant case the Director after carefully studying all relevant materials screened out the applicant as recommended by the Screening Committee. The revised procedure rectifies the defects pointed out by the Tribunal in O.A. 1791/88. The Department of Space/ISRO is competent to make its rules regarding recruitment and promotion and have been exempted from the purview of the UPSC. The decisive power of the Screening Committee which was not accepted by the Bangalore Bench of the Tribunal has been done away with in the revised procedure in which the Director ^{himself} has to consider and give his final decision on the recommendations of the Screening Committee before the Selection Committee inter-

views the candidates. The judgment of the Tribunal refers to the old procedure prescribed in the O.M. of 30.9.76 for screening which was revised in the O.M. of 22.2.1988 and thus can-not be invoked against the revised procedure.

8. The respondents answered and met the allegation of manipulation in the meetings of the Screening Committee and postpone^{ment of} the interviews. They have clarified that the Screening Committee ~~xx~~ met on 24th May, 6th June and 9th June, 1989. In the meeting of 24th May ~~and 6th June~~ the screening of the candidates for promotion from 'SB' to 'SC' was finalised whereas the screening for promotion from 'SC' to 'SD' was/ taken up on 6.6.89 and finalised on 9.6.89. They have denied that in each sitting the Screening Committee came out with different names against the norms of screening. They have also denied that the Screening Committee's recommendation of 24.5.1989 was approved by the competent authority and the dates of the interviews by the Selection Committee was fixed. On the other hand they have stated that the list for promotion from 'SC' to 'SD' grade could be final^{-ised} only on 9.6.89 and since the members of the Selection Committee and the candidates being called for interview had to be given sufficient time, the interview already fixed for 15th and 17th of June, 1989 had to be postponed. They have further

denied that postponement was in order to 'screen-in' some 'screened out' candidates. ⁶ The list of the 'screened in' candidates for promotion from 'SC' to 'SD' grade was finalised ^{by the Director} _{only} on 14.6.89. The respondents have conceded that the recommendations of the Screening Committee to 'screen-in' 22 and 'screen out' six candidates were placed before the Director, LPSC who cleared the 22 cases recommended by the Screening Committee, but of six cases not recommended, the Director cleared three cases on 14.6.89 after discussions with the Chairman and Secretary of the Screening Committee. For these reasons the interview was fixed on 28.6.89 to give them some time for preparation. The respondents have categorically stated that of the 25 cases cleared for interview on 9.6.89 ⁽²²⁾ ₆ and 14.6.89 ⁽³⁾ ₆ candidates for normal review for promotion were considered on 21.6.89 and the remaining 19 candidates falling under fitment/placement category were taken up by the Selection Committee on 28.6.89. Thus the allegation that the competent authority yielded ^{to} _{the} pressure of interested parties and held interviews for regular batch candidates on 21.6.89 and for the favoured three candidates on 28.6.89 is totally false. They have argued that if the interview was postponed to accommodate three favoured candidates ^{only} _{they} should have been interviewed on 28.6.89 but as a matter of fact these three candidates were interviewed along with others on the

same day. They have further clarified that the Screening is done not on the basis of academic qualifications but on the work done by the individual, his A.C.R. assessment, recommendations of the Heads of the Units and technical reports and papers generated by them. Against the allegation of the application about bias against Diploma holders, it has been stated that of the 28 candidates screened for promotion from 'SC' to 'SD', 8 were Diploma holders of whom 5 were 'screened in'. They have reiterated that in the Department of Space/ISRO unlike in other departments promotion of scientific/technical staff is not based on seniority or availability of vacancies but the flexible complementing scheme, which is concerned with the intrinsic quality and the performance of individual candidates. Accordingly, the guidelines applicable to other departments where promotion is subject to existence of a ^{any} vacancy are not strictly applicable to ISRO. Even under this scheme promotion to the higher grades irrespective of the vacancy or seniority has to be based on proven and demonstrated qualities and a mere good (B+) grading may not entitle a candidate for automatic promotion. In that light the absence of adverse remarks by itself cannot entitle a candidate to promotion. Referring to the individual case of the applicant who is a Diploma holder, the respondents have stated that in a span of 13 years he was promoted four times and has risen from Group 'C' to Group 'A' post. In ISRO the

Selection Committee on a total assessment of candidates recommends whether a particular candidate is suitable for promotion from the eligible date or from a future date within six months. Since each case of Scientist/Engineer is independent by itself no comparison ^{between} of two candidates is necessary.

We have heard the arguments of the applicant and the learned counsel for the respondents. At the request of the applicant he was allowed to submit written arguments with a copy to the learned counsel for the respondents, who also submitted written arguments in reply to the same. The applicant thereafter submitted a supplementary written arguments. These also have been gone into by us.

The applicant is aggrieved on two main counts. Firstly he is aggrieved by the fact that after he ~~had~~ completed seven years of service in 'SB' ^{and 'SC'} grades and became eligible for promotion to 'SD' grade he was screened out at the threshold by the Screening Committee in accordance with the procedure laid down in the impugned order dated February 22, 1988 at Appendix A.1. Consequentially he could not be considered by the Review Committee (Selection Committee). His other main grievance is that by para 4 of the O.M. of 29th March, 1989 (Appx. A.2) the benefit of 5 year of qualifying service in 'SB' and 'SC' grades combined made available to Engineering Graduates and M.Scs first class

was denied to him as a Diploma holder.

So far as the applicant's grievance regarding his being 'screened out' at the threshold by the Screening Committee is concerned he has relied upon two judgments of the Bangalore Bench of the Tribunal, one dated 8.12.87 in O.A.240/87 at Annexure A.2 and the other dated 14.2.89 in O.A.1791/88 at Annexure A.3. We have gone through these judgments and find that these judgments are related to the screening made under the old procedure as laid down in the O.M. dated 30.9.76 (Annexure A.9). In accordance with this procedure the screening was to be done by a panel of Scientists or Area Boards "and their views on those screened out should be submitted to the appropriate Review Committee. The latter should consider whether any of the persons screened out should be interviewed. The recommendations of the Review Committee in this regard should put up to the Director for orders."

The Bangalore Bench of the Tribunal in both these cases found that

the Screening Committee excluded certain candidates for being interviewed as not fit to be interviewed i.e., screened them out without placing their recommendations before the Review Committee and the Director for final decision, ^{and} the DPC on their part considered only those candidates for selection who had been 'screened-in' without considering those who had thus been screened out. The Tribunal found that the DPC/Selection

Committee is not bound by the recommendations of the Screening Committee regarding screened out candidates unless the recommendations of the Screening Committee are considered by the D.P.C. and the Director. The cases of the applicants were sent for further consideration by the D.P.C and the Director. In the instant case before us, the applicant's selection was considered not by the old procedure as laid down in the O.M. of 1976 but by the revised procedure as laid down in the O.M. of 22.2.88 (Appendix A.1). The relevant extracts regarding screening of candidates from that O.M. are as follows:

"3.Screening:

3.1.Procedure of Screening:

(a) Screening is to ensure that the candidates presented to the Selection Committee for assessment are those who prima facie appear to possess the necessary minimum merit demonstrated through accomplishments to their credit in their area of work during the period under Review. Since the Selection procedure for S&T staff is based on the principle of peer review, the Screening process is also aimed at ensuring that the persons recommended have more or less the same level of technical proficiency and competence expected of the Scientists/Engineers to discharge their responsibilities in the higher grade. The Screening Committee will consider each case carefully and objectively and make suitable recommendations after examining the work report of each individual, ACR assessment, recommendation of the Divisional/Unit Head and papers/technical reports, if any generated by the person concerned.

(b) The Screening Committee will categorise the persons as those 'Screened in', ie., those who could be considered by the Selection Committee, and those 'Screened out' that is those not recommended by them for being considered further by the Selection Committee. These These recommendations are considered by the competent authority as indicated in Annexure-I for appropriate decisions."



"3.2. Reconsideration of cases not recommended in Screening process:

Where the competent authority, on consideration of the recommendations of the Screening Committee decides that the candidate does not qualify for consideration for promotion by the Selection Committee, his/her case will be placed before the Screening Committee after one year. The Screening procedure as laid down above will be repeated."

The competent authority referred to at Appx.A.1 is the Centre Director/ Unit Head. The change brought about in the revised procedure is that the recommendations of the Screening Committee which were to be considered both by the Review Committee/Selection Committee and the Director, are now to be considered only by the competent authority who is also the appointing authority i.e., the Director. It is the Director L.P.S.C. who is also to consider the recommendations of the Review Committee/Selection Committee for final promotion.

12. It is admitted by both the parties that the Screening Committee finalised their list of 'screened in' candidates and 'screened out' candidates on 9.6.89. They screened in 22 candidates for interview by the Selection Committee and six candidates including the applicant were recommended for being 'screened out'. It is also admitted by both the parties that the commendations of the Screening Committee were placed before the Director who apart from approving 22 candidates for interview reconsidered the cases of six screened out candidates and overruling the Screening Committee directed that three of the six

'screened out' candidates should be 'screened in' and interviewed by the Selection Committee. These three 'screened in' candidates are respondents Nos. 9, 21 and 22. The Director ^{considered the case of} in fact him the applicant also and him after considering his case also retained him in the list of 'screened out' candidates, as recommended by the Screening Committee.

13. Apart from the fact that the judgments of the Bangalore Bench of the Tribunal ^{governing the old procedure} cannot be invoked by the applicant who was him 'screened out' by the revised procedure, the ratio of those judgments also cannot be attracted in favour of the applicant. Those judgments did not question the procedure of screening as prescribed but indicated that the recommendations of the Screening Committee could not be binding on the Selection Committee unless the same is considered by the Selection Committee and the Director as laid down in the O.M. of 30.9.76. In those cases the recommendations of the Screening Committee were not considered by the Review Committee and the Director. In the instant case before us the Review-cum-Selection Committee did not blindly follow the recommendations of the Screening Committee but these recommendations were duly considered by the Director ^{himself} who is the competent authority before the list of him candidates who were to be interviewed was finalised as prescribed in the O.M. at Appendix A.1. Since the final decision as to who

should be interviewed and who should not be, was taken by the appointing authority himself after considering the recommendations of the Screening Committee, it cannot be said that the applicant was unfairly deprived of his right to be considered by the Selection Committee/ The Bangalore Bench of the Tribunal in O.A.1791/88 itself accepted that the screening is an essential part of review and both the stages of screening and review are legal. In every selection process a preliminary screening can be done by shortlisting the candidates for final selection. So long as preliminary screening as in this case is done with the approval of the final selecting authority (Director as in this case) no candidate can have a grievance that his case has gone by default.

14. The selection process can be viewed in another light also. The final selection has to be made by the Director who is bound neither by the recommendations of the Screening Committee nor by the recommendations of the Review Committee. Both these committees are constituted to help the Director firstly in shortlisting the candidates and secondly in handpicking ^{from} the shortlisted candidates. The Director himself could have decided who should be interviewed and who should not be in accordance with certain guidelines. He

may, however, constitute a Screening Committee on whose recommendations he may decide who should be finally interviewed by the Review/Selection Committee. He may accept, reject or modify the recommendations of the Screening Committee. In the instant case the Director modified the recommendations of the Screening Committee and approved three out of six candidates for interview who had been recommended as not fit for being interviewed. The Director considered the case of the applicant also who was one of the rejected candidates and still found him to be unfit for being interviewed. Thus the applicant cannot say that his case has gone by default because of the Screening Committee arrogating to itself the powers of the Selection Committee. This is because the Director himself who is above the Selection Committee and who is competent to accept, reject or modify the ^{not only the Screening Committee but} recommendations ^{of} ~~of~~ the Selection Committee, himself considered the case of the applicant and other candidates rejected by the Screening Committee ^{and} still found the applicant as not fit to be interviewed. Since all the 28 candidates were subjected to the same procedure in-as-much as all their cases for initial screening were considered by the Screening Committee and the final authority i.e., the Director, we do not find any violation

of Articles 14 and 16 of the Constitution in so far as the applicant is concerned.

15. The other main challenge against the Screening Committee posed by the applicant is that he has been discriminated against, being a Diploma holder and because he was involved in the formation of the Staff Benovolent Fund for L.P.S.C. and filing of another O.A.No.278/89 challenging the O.M. of 29.3.1989. After the proceedings of the Screening Committee were shown to us and read out to the applicant, in his supplementary written arguments dated 3.4.90 he has brought out that the guidelines for screening as produced by the respondents themselves at Exbt.R.7 were not followed in 'screening in' respondent No.9 whose last grading was B+ instead of A- while the applicant was screened out even though he had in accordance with the guidelines three A- gradings but was also graded as B+ along with A- in 1987. He has also argued that if his grading for the year 1985 had been taken into account in accordance with the guidelines at Exbt.R.7 he would have been 'screened in' and that the 1985 C.R. was purposely excluded in order to disqualify him. We shall take up the contention of discrimination first. The guidelines dated 8th October, 1988 at Exbt.R.7 states that for promotion from 'SC' to SD' to be followed by the Screening Committee, states that where there are three years' entries, all the three should be of A- level, and where there are

five years' ACRs atleast two should be A- and three B+ but the latest should be A-. In case of the applicant only three years gradings were taken and in case of respondent No.9, five years as follows:

Name	1984	1985	1986	1987	1988
K.Venkata Rao	--	--	A-	B+/A-	A-
H.Balasubramoni	A-	A-	A-/A	A-	B+

In accordance with the guidelines, since Shri Balasubramoni^(R.9) had only B+ grading in last year he was to be screened out as was done by the Screening Committee

Committee but he was 'screened in' by the Director himself. The applicant

Shri Venkata Rao was 'screened out' because in 1987 he had both B+ and

A- gradings. His contention is that if the grading of 1985 had also been

taken into account with four gradings in accordance with the guidelines

he would have more than two A- and less than two B+ gradings and his

latest being A- of 1988 he would have been definitely 'screened in'. He

accepts that he was promoted from 'SB' to 'SC' grade on 1.10.1985 and

the grading of 1985 could not be included for his assessment for promotion

to 'SD' grade because he was in the 'SC' grade in 1985 only for three

months. Thus we see nothing ^{wrong} in the applicant's being assessed on the

basis of the three ACRs, ^{in accordance with the guidelines which he has not challenged.} As regards 'screening in' of Shri Balasubramoni

in spite of his having a B+ grading in the latest year of 1988, we would

advert to the screening procedure as extracted ^{in para 11} above from the O.M. of

22.2.1988. It has been laid down that the Screening Committee will

consider each case after examining the work report of each individual, ✓ ACR assessment, recommendations of the Divisional/Unit Head and papers/ technical reports if any generated by the personnel concerned. Thus the guidelines at Exbt.R.7 are only to cover the procedure for assessing the ACRs. The Screening Committee cannot be expected to ~~do~~ mechanically 'screen' in' and 'screen' out' candidates on the basis of ACRs alone. They have to consider the recommendations of the Divisional Head and other materials before them. The respondents have clearly stated that the recommendations of 'the Divisional Head in respect of the applicant was not as good as in other cases. We have seen these recommendations and find that it is not in very impressive terms. The Head of the Department ~~had~~ stated that though ^{the applicant} ~~they~~ is an enthusiastic young man with lot of ideas he has gone to say that "he would have been better utilised in some other area where there is lot of work. However, his case may be considered for promotion to the next grade as per rules." In other cases the recommendations are positive or in strong terms.

16. Since the Screening Committee consist of four members and is a collective including Engineers/Scientists, the applicant's contention of bias against him because of his being a Diploma holder or involved in litigation with the Department cannot be accepted in absence of any concrete proof of source of bias and the particulars of person being biased

or perversity of recommendations of the Screening Committee. The respondents have stated that out of 8 Diploma holders who were considered by the Screening Committee, 5 had been 'screened in'^{and} ~~there is nothing~~ for this Tribunal, therefore, to question or intervene in the decisions taken by the Screening Committee.

17. The applicant in his written arguments has alleged that the Screening Committee met on 24.5.89 and he was 'screened in' but under pressure the Screening Committee met again on 6.6.89 had another screening done and screened in some favourites and screened him out. Under further pressure the Screening Committee met again on 9.6.89 when it was decided to screen out six persons and screen in 22. The respondents 1 to 3 in their written brief have explained that the Screening Committee commenced its first sitting on 24.5.89 and on that very date the date of interview for promotion from 'SC' to 'SD' candidates was fixed as 15th and 16th of June, 1989 as it was expected that the Screening Committee will be able to complete its deliberations in time. However, on 24.5.89 the Committee ~~xxxx~~ finalised the screening of candidates for promotion from 'SB' to 'SC' grade but could not complete the screening for promotion from 'SC' to 'SD' grade as a result of which they met again on 6.6.89. On that very date ~~/a~~ a notice was issued postponing the date of interview under intimation to the Chairman and Members of the

Selection Committee. The screening could be completed on 9.6.89 when the Committee recommended screening in 22 candidates and screening out 6. The Director approved the 22 cases for screening in on that very day and the interview was fixed on 21.6.89 on that ^(9.6.89) day itself. Since the cases of candidates who were 'screened out' could be finalised by the Director on 14.6.89, ^{when} he screened in three more candidates, on 23.6.89 the date of further interview was fixed as 28.6.89. Originally the interview was fixed on 21.6.89 for all the 22 cases but since certain clarifications were needed, only 6 candidates could be interviewed on 21.6.89 and 19 candidates were interviewed on 28.6.89. We have gone through the various papers and are satisfied with the ~~explanation~~ given by the respondents 1 to 3 and reject the ~~allegation~~ of the applicant that there was manipulation in the 'screening in' and 'screening out' of candidates evidenced by the postponement of the dates of interview. If the interview was postponed to favour three Graduates who had been 'screened out' by the Screening Committee but 'screened in' by the Director, there was no reason why the interview of 19 candidates were held on 28.6.89 instead of only three candidates. The allegation of manipulation at the screening stage cannot also be accepted because of the unique manner in which the promotions of Scientists and Engineers are made in the Space Research Organisation under ^{the} Flexible Complement ~~ing~~ Scheme. Under this Scheme there is no rat race or competition amongst a large number of candidates chasing ^a small number of vacancies. Under this Scheme after completion ^{of} the required

number of years service, the performance of the candidates in scientific and engineering field ^{is} assessed by their peers and if they make the grade ^{PM} they are automatically promoted to the next higher grade while doing the same work, irrespective of whether there is a vacancy or not. Thus the promotion of the Graduate Engineers could not have stood in the way of promotion of the applicant as a Diploma holder, had the latter made the grade for such promotion. In that case the promotion would have been automatic and independent of the existence of the other competitors whether Diploma holders or Degree holders. Thus there was no occasion for any one to manipulate the screening and exclude the applicant so that others could be accommodated.

18. The applicant's contention that since he was allowed to cross the Efficiency Bar in April, 1989, therefore, he could not have been screened out 'in June, 1989 is also not very convincing. As the respondents have clearly stated, crossing of Efficiency Bar was for the purpose of ensuring that the applicant was discharging the duties expected of the Engineers in 'SC' grade efficiently. That fact by itself does not and cannot confer on him as an 'SC' Engineer to be entitled to be promoted to the next higher grade of 'SD'. It is the established law that a judicial body cannot sit as a court of appeal in the deliberations and recommendations of a Selection Committee. In Ramgopal V. Union of India and others, 1972 SLR 258, the Hon'ble Supreme Court held that in the absence of

any 'malafide' or violation of rules, the decision of a Selection Committee in recommending the appointments in the order in which they have been made is not open to scrutiny even by the Supreme Court. The same dictum will apply in the matter of 'screening in' and 'screening out' of candidates by the Screening Committee of experts after the same are considered by the final selecting authority (in this case the Director) himself.

19. The second challenge of the applicant is directed against the O.M. of 29.3.89 on the ground of discriminatory qualifying service prescribed between the Engineering Graduates and Diploma holders.

This O.M. ^{itself} was challenged on the same grounds before this Tribunal in O.A. 278/89 which was decided by a Division Bench of this Tribunal on 30.3.90. The challenge was dismissed after discussing the various rulings of the Hon'ble Supreme Court and this Tribunal. A copy of that judgment has been appended by the applicant himself with his supplementary brief dated 3.4.90 at Exbt.33. We can do no better than quoting the following relevant extracts from that learned judgment:

"8. Justification offered by the respondents for this discriminatory treatment in their first reply affidavit reads as follows:-

"It is admitted that the Office memorandum No.HQ:ADMN: 4.20(3)-1 of 29th March, 1989 (Annexure R4) was issued revising the induction and career progression of Engineering Graduates/M.Sc. (I Class) in Indian Space Research Organisation (ISRO/Department of Space (DOS). The compelling need to attract and retain the best talents among the Engineering Graduates/M.Sc. to take up the more complex and challenging jobs for achieving the objectives of the National Space Programme, had been receiving the attention of ISRO/DOS for a long time. (Briefly explained in the introduction). When compared to similar other establishments, ISRO/DOS was offering a lower grade to the Engineering Graduates".

" 9. The Supreme Court recently in Abdul Basheer V. Karunakaran, 1989(2) KLT SC 3 held that where the cadre of officers are effectively treated as equivalent for all material purposes no further distinction can be made between graduates and non graduates. Ordinarily it is for the Government to decide or lay down a policy in the interest of better administrative efficiency, but it is found "to be of no relevance to the object of the measure framed by the Govt. it is always open to the Court to strike down the differentiation as being violative of Art. 14 and 16 of the Constitution."

10. Thus in the case on hand the unilateral revision and reduction of period of experience from three years to one year for promotion of degree holders alone from Engineer SB grade to Engineer SC grade, retaining the three year period for diploma holders can be quashed if the decision is proved to be not relevant to the object sought to be achieved, because it will result in supersession of the applicants and violation of their rights. Of course the required experience can be treated as part of educational qualification underlying a policy formulated on the basis of the recommendations of an expert body. Engineering graduates will get preference and earlier promotion if Annexure A2 is implemented and it would block or at least reduce the chance of further promotion of diploma holders in their line, as contended by them. But if this reduction of period of experience for giving preferential treatment has been effected treating the experience in the concerned service as part of educational qualifications on the basis of the recommendations of an expert body constituted in this behalf or by the Govt. itself, it cannot be assailed by the diploma holders.

"11. The Supreme Court in Roshan Lal Tandon V. Union of India (AIR 1967 SC 1889) held that when direct recruits and promotees were brought into Grade D to form an integrated class, no preference could thereafter be recognised in favour of one of the classes, in the matter of further promotion to Group C as that would amount to discrimination under Article 14 and 16 of the Constitution of India. In a subsequent case, State of Jammy & Kashmir V. Triloki Nath Khosa and others (AIR 1974 SC 1) the Supreme Court explained and mitigated the rigor of the above principle, considering the dispute between the degree holders and the diploma holders and held as follows:

"38. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis or whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical

"evaluation of the basis of classification, for were such an inquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object.

39. Judged from this point of view, it seems to us impossible to accept the respondents's submission that the classification of Assistant Engineers into Degree-holders and Diploma holders rests on any unreal or unreasonable basis. The classification, according to the appellant, was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly correlated to it for higher educational qualifications are at least presumptive evidence of a higher mental equipment."

"12. Justice Madhava Reddy, the Chairman of the Central Administrative Tribunal, as he then was, after discussing the issue at length in the light of various decisions of the Supreme Court, in the case reported in P.N. Kohli V. Union of India and others, ATR 1987(2) CAT 172 held as follows:-

"If prescribing a higher educational qualification for the purpose of promotion to the next category of service is not bad as held in Khosa's case, equally prescribing a longer period of service for those possessing a lesser educational qualification in the matter of promotion and prescribing a qualifying examination in our opinion, cannot be deemed arbitrary and violative of Art. 14 and 126 of the Constitution."

"13. The Supreme court very recently in Roopchand Adlakha and others V. Delhi Development Authority and others, AIR 1989 SC 309 endorsed the above view of the Central Administrative Tribunal and held as follows:-

"The idea of equality in the matter of promotion can be predicated only when the candidates for promotion are drawn from the same source. If the differences in the qualification has a reasonable relation to the nature of duties and responsibilities, that go with and are attendant upon the promotional-post, the more advantageous treatment of those who possess higher technical qualifications can be legitimised on the doctrine of the classification. There may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against another. Whether the classification is reasonable or not must, therefore, necessarily depend upon facts of each case and the circumstances obtaining at the relevant time."

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"In Triloki Nath's case diploma-holders were not considered eligible for promotion to the higher post. Hence, in the present case, the possession of a diploma, by itself and without more, does not confer eligibility. Diploma for

"purposes of promotion, is not considered equivalent to the degree. This is the point of distinction in the situations in the two cases. If Diploma holders - of course on the justification of the job requirements and in the interest of maintaining a certain quality of technical expertise in the cadre - could validly be excluded from the eligibility for promotion to the higher cadre, it does not necessarily follow as an inevitable corollary that the choice of the recruitment policy is limited only two choices, namely, either to consider them "eligible" or "not eligible". State, consistent with the requirements of the promotional-posts and in the interest of the efficiency of the service, is not precluded from conferring eligibility on Diploma holders conditioning it by other requirements which may, as here, include certain quantum of service - experience."

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"This does not prevent the State from formulating a policy which prescribes as an essential part of the conditions for the very eligibility that the candidate must have a particular qualification plus a stipulated quantum of service-experience. It is stated that on the basis of the "Vaish Committee" report, the authorities considered the infusion of higher academic and technical quality in the personnel requirements in the relevant cadres of Engineering Services necessary. These are essentially matters of policy. Unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one of judicial-restraint. The prescriptions may be somewhat cumbersome or produce some hardship in their application in some individual cases; but they cannot be struck down as unreasonable, capricious or arbitrary. The High Court, in our opinion, was not justified in striking down the Rules as violative of Arts. 14 and 16."

"14. Again the Supreme Court observed in a case reported in State of Andhra Pradesh and another V. V.Sadanandan and others etc., AIR 1989 SC 2060, as follows:-

"It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive. As already stated, the question of filling up of posts by persons belonging to other local categories or zones is a matter of administrative necessity and exigency. When the Rules provide for such transfers being effected and when the transfers are not assailed on the ground of arbitrariness or discrimination, the policy of transfer adopted by the Government cannot be struck down by Tribunals or Courts of Law."

"15. The law is now very clear. When the employer on the basis of the requirements after considering the recommendations of the expert committee makes a change in the policy of selection by prescribing educational qualification with experience presumably connected with the qualification in the particular branch or category, the Court or the Tribunal shall not sit in judgment over such decisions which are being taken having regard to the nature of the job requirements and necessity at the relevant time of selection in the particular establishment.

" 16. In this background the problem that arises for consideration is whether the decision of the respondent in having reduced the review period of three years experience to one year for promotion to Engineer SC grade from Engineer SB grade to the degree holders, retaining the same period of three years for getting promotion to diploma holders, is sustainable especially when degree holders and diploma holders were equated in Engineer SB grade?

" 17. The respondents in the counter affidavit after explaining the importance of maintaining very high standard in the matter of absorption of engineers in ISRO, stated that the department had a thorough look at the induction levels of Scientists/Engineers whose brain power is the most critical element in the successful design, development, fabrication and utilisation of the technology in the relevant area of Space Science for nature development. So having regard to the special nature of the establishment, high degree of proficiency, creativity and managerial skill is required on the part of the employees to execute the complex jobs for obtaining the achievable targets on research and development in ISRO. Hence, according to the respondents, the organisation had by the impugned O.M. only revised the norms for induction of Engineering Degree holders/M.Scs after detailed deliberations to meet the requirements for the rapid development of the Space Science Programme.

" 18. In the second additional counter affidavit filed by the respondents they have referred to the suggestions of Late Dr.Homi Bhabha and Dr. Vikram Sarabhai 'to reorganise the scientific and technical personnel pattern and growth' in this organisation. They have also produced Annexure R-6 and R-7 Office Memorandum dated 28th May, 1986 dealing with the proposal to bring about changes in the finance procedure, personnel policy, procurement management system etc. and the yearwise break up of Scientists/Engineers recruited in SB, SC and SD grades respectively. It was further stated that an expert committee was appointed in November, 1985 by the Chairman of ISRO for examining in detail about the appointments to various posts and framing respective qualifications. The Committee had suggested that the engineering graduates could be given a review from SB to SC within two years instead of three years. It was after considering the issue at various levels that they have decided to appoint the Engineering Graduates/Post Graduates in Science, to SB grade and review them for promotion to SC grade after one year of satisfactory service and after five years in SB/SC grade to SD grade.

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"19. At the time of hearing before the close of the arguments the learned Central Govt. counsel placed before us two 'confidential' documents viz.(i) Report of the Committee appointed by the Chairman, ISRO to review the ISRO norms and career opportunities for S&T staff dated 21.7.86 and (2) The statement containing the consensus arrived at the "Centre Directors" of ISRO, on the induction of engineering graduates in ISRO/DOS Centres/Units. The relevant portions from the former read as follows:-

"However, keeping in view the fact that in most of the Organisations, Engineering graduates are appointed at the level of SC, it is felt that the present review period of 3 years from SB to SC for Engineering graduates may be brought down to two year."

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"The recommendation is also consistent with the philosophy of Dr. Bhabha and Dr. Sarabhai who felt that Scientists and Engineers should be given some opportunities as other services (at least upto a certain level), so that the organisation will be in a position to attract good Scientists and Engineers and retain them by rewarding their good work. However, the Committee recommends stricter reviews beyond SF grade".

The following portions from the latter document is also relevant:-

" The matter has been under consideration for quite sometime. The issue came up in the ISRO Council also. The Committee headed by Shri N. Pant was appointed to look into the entire issue of career opportunities of the Scientific and Technical staff. The Committee after consideration of all aspects, recommended that the review period of Engineering graduates taken at SB level may be reduced from 3 years to 2 years. This was considered and the matter again came up in various discussions. There was a strong feeling that we should take immediate steps to improve the career prospects of the Engineering graduates and M.Sc's to attract better talents. The issue was studied in depth after collecting the details from various similar/comparable Organisation".

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"In the light of the above, the matter was further considered by Chairman, ISRO in consultation with senior officers and it has been decided to go in for Option 1. In brief, the career progression of M.Sc's (and equivalent)/Engg. graduates (1st Class) in ISRO/DOS will be as follows:

<u>Induction</u>	at SB
+1	SC
+5	SD
+9	SE
+13	SF "

The applicants' counsel was also given facilities to go through these documents and make his submissions.

"20. After careful consideration of these documents in the light of the principles laid down by the Supreme Court we are of the view that there is no force in the argument of the applicants that the norms laid down in Annexure A-2 dated 29.3.89 for promotion from SB grade to Engineer SC grade, SD grade are violative of their Fundamental Rights.

21. The respondents have studied the matter in depth by constituting an expert committee and after discussing the issue at various levels including 'Centre Directors' of ISRO ~~etc~~ they had decided to issue Annexure A2. Thus it was only after a consensus was arrived at the highest level about the fixation of qualification for selection and promotion that they had issued the impugned O.M. Whether this is conducive to the better administrative efficiency of the organisation or whether this would produce the desired effect or not are all matters for the respondents to decide. However, we are of the view that we cannot sit in judgment over the decisions rendered by the respondents on the basis of the recommendations of the expert body constituted in this behalf.

22. After bestowing our dispassionate consideration of the matter we find ourselves left with no other alternative, but to dismiss this application and we do so. There will be no order as to costs."

We respectfully agree in 'toto' with the finding that the Department was fully justified and within its rights to prescribe different qualifying service on the basis of educational and professional qualifications and that the O.M. of 29.3.89 (Appendix A.3) cannot be faulted on grounds of violation of constitutional rights. The applicant has not produced any viable material to persuade us to differ from the aforesaid finding with which we respectfully agree.

19. In his written brief dated 3.3.90 the applicant has invoked

the judgment of the Supreme Court in N.Abdul Basheer and others Vs. K.K.Karunakaran and others, 1989(2) L.L.J. 67, a copy of which is at Exbt.26. In that judgment the Supreme Court struck down ~~O~~ promotion ^{fixed} quotas ~~between~~ between graduate Preventive Officers and non-graduate Preventive Officers for promotion as IIInd Grade Excise Inspectors as violative of Articles 14 and 16 of the Constitution. We are afraid, the ruling of the Supreme Court ~~xxxxxx~~ in that case cannot be applied to the case before us. The ratio ~~decidendi~~ in Abdul Basheer's case was that when graduates and non-graduates are fused in the same cadre and they are equally eligible for promotion to the next higher grade, their promotions cannot be further restricted by prescribing a quota between graduates and non-graduates. This ruling does not, however, preclude prescription of different eligibility criteria between graduates and non-graduates ^{for promotion}. What it states is that once the graduates and non-graduates are eligible ~~for promotion~~ no quota can be fixed between eligible graduates and eligible non-graduates. The Supreme Court in the aforesaid judgment itself maintained different eligibility criteria between two feeder categories, ^{sub categories in the same} in the following terms:

"Reference was also made to State of Jammu and Kashmir V. Triloki Nath Khosa & Ors. (1974-I LLJ-121) but it was held there that having regard to the object of achieving administrative efficiency in the Engineering Service it was a just qualification to maintain a distinction between Assistant Engineers who were degree holders and those who were merely diploma holders. In S.L.Sachdev & Anr. V. Union of India & Ors. (1981) (I) SCR 971, again the discrimination between UDCs drawn from Audit offices and other UDCs in the matter of the eligibility qualification for promotion was justified on the basis that the one enjoyed greater experience and that the distinction based on length of service was directly related to the object of the classification."

20. The sum and substance of the various rulings is that while for promotion from a feeder category different eligibility criteria can be prescribed / depending upon the educational or professional qualifications, for different sub categories therein
experience etc, between two eligible categories belonging to the common feeder cadre, a differential promotion quota for them once they are made eligible cannot be fixed. Since in the instant case before us no quotas between Degree holders and Diploma holders for promotion to 'SD' grade have been fixed but the Diploma holders for eligibility have to put in 2 years of additional qualifying service than the Degree holders, the aforesaid rulings of the Supreme Court and others, fully support the case of respondent 1 to 3 in so far as the order dated 29.3.89 is concerned. In that light the claim of the applicant to be considered for promotion or for actual promotion with effect from 1.1.87 on completion of 5 years of service in the lower grades like an Engineering Graduate is also not tenable.

21. In his supplementary brief dated 3rd April, 1990 the applicant has raised a number of other minor points which apart from being not very convincing cannot also be given much weightage as they were not taken up in the main application. His argument that in his case the grading for at least four years including that of 1985 should have been taken into account and that dual grading for one year should have been

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overlooked cannot be accepted, ^{because} as we have indicated above, ~~the~~ grading

in the ACR was not the determining factor in his being 'screened out'.

Besides, having worked in 'SC' grade only for three months in 1985 his

ACR for the whole of 1985 would not have been very relevant. In case

of Shri Arunan the ACR for 1989 was taken into account as he had

worked in that grade for more than ten months when the Review

Committee considered him. The applicant's argument about Shri Arunan

and Shri Kuttan cannot be entertained as they have not been impleaded

as respondents. His argument that the interview was held on 28.6.89

when the Screening Committee finalised its recommendations on 26.6.89

has not much relevance about the merits of his case. The notice for

holding the interview on 28.6.89 was issued on 23.6.89 and if any candidate

had any grievance about short notice it was for that candidate and not

for the applicant to raise this point. The applicant was never called

for interview. The argument about his seniority being overlooked has

already been dealt with by us on the ground that the promotion under

the Flexible Complementing Scheme has nothing to do with the seniority

and that promotion of ^{his} junior or senior did not affect the promotion of

the applicant. If he had been found to be meritorious enough by the

Screening Committee and the Director, he would have been promoted

irrespective of the vacancy or seniority. His grievance about his promo-

tion to 'SC' grade being from 1.10.85 instead of 1.4.85 and that he had

been discriminated against in his promotion to 'SB' grade on 1.4.82 cannot be accepted at this stage, for his non-promotion to 'SD' grade. If he had grievance about his earlier promotion he should have challenged the same in a competent forum and got them set aside. Likewise his plea that in O.A. 278/89 this Bench of the Tribunal gave a wrong decision because the counsel for the applicants did not have full opportunity to argue the case also cannot be accepted. If the counsel was not given full opportunity, the remedy lay in getting the judgment reviewed or appealed against.

22. The applicant has referred to still another judgment of the Bombay High Court in Suresh and others V. Maharashtra State Electricity Board and others, 1990(1) LLJ-1, a copy of which has been placed at Exbt.34 with the supplementary written arguments of the applicant. He has argued that in that judgment the plea of 'en masse' relaxation had been rejected and accordingly the respondents 1 to 3 in his case could not have relaxed the provision of seven years of services to five years 'en masse' for all Graduate Engineers. We have gone through the judgment of the Bombay High Court and find, that like the ruling of the Supreme Court in Basheer's case this judgment not only is not helpful to the applicant but goes against him in favour of respondents 1 to 3. In the applicant's case before us, there was no question of any relaxation given

to the Graduate Engineers. The impugned order dated 29.3.89 at Appendix A.2 does not give any relaxation of the qualifying service but enunciates a policy decision prescribing five years of qualifying service for Engineering Graduates/M.Sc.s. Apart from that, the judgment of the Bombay High Court clearly upholds different eligibility criterion for ~~Graduates~~ and Diploma holders who were in the same seniority list of Assistant Shift Engineers. In that case the applicants were Degree holders who along with Diploma holders were in the same Seniority List of Assistant Shift Engineers. Their next promotion was to the grade of Assistant Superintendents for which a minimum of ten years of experience for Diploma holders and six years of experience for Degree holders had been prescribed. Some Assistant Shift Engineers who were respondents 3 to 29 were Diploma holders and were senior to the applicants and because of their seniority they were promoted as Assistant Superintendents even though they had not completed ten years of service. The respondents took the plea that even though they were not eligible for promotion, the department had relaxed the eligibility criterion of ten years of service for them. The High Court held that relaxation can be only in accordance with the rules, in individual deserving cases and indiscriminate relaxation for all the Diploma holders merely on the basis of their seniority is not warranted. It held that a differential length of qualifying service between Diploma holder and Degree holders for eligibility is legal and the promotion of the Diploma holders who had not completed ten years of service is liable to be quashed. The Degree holders were given notional promotion

from the date the Diploma holders were promoted including benefits of higher pay.

23. In the facts and circumstances, we see no merit in the application and dismiss the same without any order as to costs.

Amicus
(A.V. HARIDASAN)
JUDICIAL MEMBER

20/6/90

S. Mukerji
(S.P. MUKERJI)
VICE CHAIRMAN

20th June, 1990.

ksn.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

R.A No.85/90 in

O.A. No.

461/89

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DATE OF DECISION

31.1.1991

K.Venkata Rao

Applicant (s)

Mr M.R Rajendran Nair

Advocate for the Applicant (s)

Versus

Union of India represented through
the Secretary, Department of Space

Respondent (s)

Mr.N.N.Sugunapalan

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. A. V. HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

We have heard the learned counsel for both the parties on this review application which pertains to our detailed judgment dated 20th June 1990 rendered in O.A 461/89. The main ground taken in the review application is that we had erroneously ~~had~~ the impression vide page 18 of our judgment that the Bangalore Bench of the Tribunal in their judgment dated 8.12.87 in O.A 240/87 and the judgment dated 14.2.89 in O.A 1791/88 had found fault with the old screening procedure laid down in the O.M of 30.9.76 and not with the revised procedure dated 22.2.88. In our judgment it was indicated that in accordance with the old procedure, the screening was to be done by the Screening Committee and their views on those screened out should be submitted to the appropriate Review-cum-Selection Committee. The latter should consider whether any of the persons screened out by

the Screening Committee should be interviewed and the recommendations of the Review Committee in this regard should be put up to the Director for orders. The judgment also indicated that by the revised procedure the recommendations of the Screening Committee were to be considered only by the competent authority, i.e., the Director. It was also indicated in the judgment that "the Bangalore Bench of the Tribunal in both these cases found that contrary to the prescribed procedure the Screening Committee excluded certain candidates for being interviewed as not fit to be interviewed ~~and~~ ^{that is} screened them out without placing their recommendations before the Review Committee and the Director for final decision and the DPC on their part considered only those candidates for selection who had been 'screened-in' without considering those who had thus been screened out. The Tribunal found that the DPC/Selection Committee is not bound by the recommendations of the Screening Committee regarding screened out candidates unless the recommendations of the Screening Committee are considered by the D.P.C. and the Director". In our judgment we found that "the applicant's selection was considered not by the old ^{in the O.M. of 1976 but by the revised procedure as laid down in} procedure as laid down in the O.M. of 22.2.88".

2. It may be noted that the first judgment of the Bangalore Bench dated 8.12.87 was delivered before the new procedure was promulgated on 22.2.88. Thus the question of the first judgment ^{being} related to the revised procedure does not arise. In the second case (O.A 1791/88) before the Bangalore Bench, the prescribed revised procedure was neither at issue nor questioned. Para 13 of our judgment, as quoted below, makes it abundantly clear why the two judgments of the Bangalore Bench

cannot be invoked to fault the selection procedure adopted in case of the applicant before us:-

"13. Apart from the fact that the judgments of the Bangalore Bench of the Tribunal governing the old procedure cannot be invoked by the applicant who was 'screened out' by the revised procedure, the ratio of those judgments also cannot be attracted in favour of the applicant. Those judgments did not question the procedure of screening as prescribed but indicated that the recommendations of the Screening Committee could not be binding on the Selection Committee unless the same is considered by the Selection Committee and the Director as laid down in the O.M. of 30.9.76. In those cases the recommendations of the Screening Committee were not considered by the Review Committee and the Director. In the instant case before us the Review-cum-Selection Committee did not blindly follow the recommendations of the Screening Committee but these recommendations were duly considered by the Director himself who is the competent authority before the list of candidates who were to be interviewed was finalised as prescribed in the O.M. at Appendix A.1. Since the final decision as to who should be interviewed and who should not be, was taken by the appointing authority himself after considering the recommendations of the Screening Committee, it cannot be said that the applicant was unfairly deprived of his right to be considered by the Selection Committee by an incompetent authority. The Bangalore Bench of the Tribunal in O.A.1791/88 itself accepted that the screening is an essential part of review(Selection) and both the stages of screening and review are legal. In every selection process a preliminary screening can be done by shortlisting the candidates for final selection. So long as preliminary screening as in this case is done with the approval of the final selecting authority(Director as in this case) no candidate can have a grievance that his case has gone by default."

As a matter of fact the enunciating ^{ed} principle that the recommendations of the Screening Committee could not be binding on the Selection Committee/Director has been found to be fully satisfied in the applicant's case. This is further clarified in the following extracts ^{from} our judgment:-

"The selection process can be viewed in another light also. The final selection has to be made by the Director who is bound neither by the recommendations of the Screening Committee nor by the recommendations of the Review Committee. Both these committees are constituted to help the Director firstly in shortlisting the candidates and secondly in handpicking from the shortlisted candidates.

The Director himself could have decided who should be interviewed and who should not be in accordance with certain guidelines. He may, however, constitute a Screening Committee on whose recommendations he may decide who should be finally interviewed by the Review/Selection Committee. He may accept, reject or modify the recommendations of the Screening Committee. In the instant case the Director modified the recommendations of the Screening Committee and approved three out of six candidates for interview who had been recommended as not fit for being interviewed. Thus the applicant cannot say that his case has gone by default because of the Screening Committee arrogating to itself the powers of the Selection Committee. This is because the Director himself who is above the Selection Committee and who is competent to accept, reject or modify the recommendations of not only the Screening Committee but the Selection Committee, himself considered the case of the applicant and other candidates rejected by the Screening Committee and still found the applicant as not fit to be interviewed"

In the above circumstances, it cannot be said that the applicant's case was not considered correctly in the light of the two decisions of the Bangalore Bench of the Tribunal.

3. As regards the other ground taken by the applicant that the guidelines issued by the Government of India entitled the applicant to get his confidential entries in the lower grade for two years to complete the span of five years to be considered, this has been fully dealt with in para 15 of our judgment. If the applicant does not agree with the analysis of this Bench, the remedy lies in appeal and not in review.

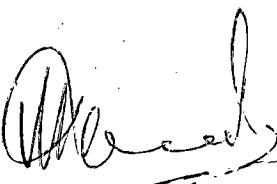
4. The third contention of the applicant is that we have not taken into account his plea that his C.Rs have been tampered with. We find that neither in the main application nor in the rejoinder has he made any averment. Such an averment has been made only in the written arguments and that also in a bland manner. If the applicant

has any grievance about the manner in which his C.Rs have been recorded, he should have got them corrected or modified or set aside by a separate application and cannot introduce such pleas through written arguments after the pleadings are completed.

5. The other contentions of the applicant that his grading for 1985 should have been taken into account and dual grading for one year should have been overlooked has been dealt with in para 21 of our judgment. Relevant extracts from which are quoted below:-

"In his supplementary brief dated 3rd April, 1990 the applicant has raised a number of other minor points which apart from being not very convincing cannot also be given much weightage as they were not taken up in the main application. His argument that in his case the grading for at least four years including that of 1985 should have been taken into account and that dual grading for one year should have been overlooked cannot be accepted because as we have indicated above, grading in the ACR was not the determining factor in his being 'screened out'. Besides, having worked in 'SC' grade only for three months in 1985 his ACR for the whole of 1985 would not have been very relevant. In case of Shri Arunan the ACR for 1989 was taken into account as he had worked in that grade for more than ten months when the Review Committee considered him. The applicant's argument about Shri Arunan and Shri Kuttan cannot be entertained as they have not been impleaded as respondents."

6. In the above facts and circumstances, we do not see any force in the review application and dismiss the same.


(A.V. Haridasan)
Judicial Member

31.6.91


(S.P. Mukerji)
Vice-Chairman

31.6.91