

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.74/92.

Friday, this the 8th day of April, 1994.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
....

NJ Abraham,
Scientist/Engineer SB,
LPSC, Valiamala,
Trivandrum.

....Applicant

By Advocate Shri MR Rajendran Nair.

Vs.

1. Union of India represented by
Secretary and Chairman,
Department of Space,
Anthariksha Bhavan, New BEL Road,
Bangalore--560 038.
2. The Director,
Liquid Propulsion Systems Centre,
Valiamala, Trivandrum--695 547.
3. The Head, Personnel and General Administrator,
Liquid Propulsion Systems Centre,
Valiamala, Trivandrum--695 547.

....Respondents

By Shri K Karthikeya Panicker, Addl Central Govt Standing Counsel.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

The background of the case is set out as follows in OA
No.513/89:

"The petitioner was appointed as TradesmanA in the
Indian Space Research Organisation (ISRO) in 1968
and was promoted as TradesmanB in 1971. In 1974,
he obtained a Diploma in Mechanical Engineering in
second class and became eligible for promotion as
TMA-B. He appeared before the Selection Committee in
November 1976, but was not selected. In accordance with

contd.

the relevant orders he was entitled to be considered for such promotion again after every one year, i.e. in 1977 and in subsequent years, but he was not called for interview. When his representation did not bear any fruit, he moved the High Court of Kerala in OP 2048/79 and the High Court, by its judgement dated 21st June, 1979, directed the Director, VSSC to dispose of his representation. Since the respondents did not dispose of his representation, the petitioner moved the High Court again in OP 4275 of 1979 and the High Court, by its judgement dated 14.10.80, directed the respondents to inform the petitioner about his right for review with opportunity to move the court again. The petitioner again filed a representation on 26.11.80 for rereview of his case for promotion as Technical Assistant in 1977. Shortly thereafter, on 6th June, 1981, the respondents issued general orders laying down that only First Class Diploma or Degree holders will be considered for review for further promotion. On the basis of this order his representation for rereview was rejected as he did not hold First Class Diploma. On this, the petitioner filed the third petition OP 781/81 before the High Court of Kerala which, by its judgement dated 6.1.82, directed the Department "to review the petitioner's claim for being appointed as Technical Assistant, treating his Second Class Diploma as sufficient qualification, and taking into account his work and performance between 1976 and 1977...". The appeal filed by the respondents against this judgement was dismissed by a Division Bench on 5.7.82. The petitioner was, therefore, interviewed for promotion as TAB in January, 1983 and found suitable by the DPC. After that, on 16th

February, 1983, an order was passed promoting him with effect from 19th January, 1983. This order was challenged by the petitioner in OP 2450/83 with the prayer that the respondents be directed to promote and appoint him as TA-B with effect from 1976. This writ petition was transferred to this Tribunal as TAK 242/87 which was decided on 13.4.89 with the following direction:

"In the facts and circumstances we direct the respondents to get the petitioner's case re-reviewed for promotion as in 1977 by a review DPC by taking into account his performance upto 1977 and not later. If he is found fit for promotion as in 1977 he should be given promotion with effect from the date appropriate for him in 1977 with all consequential benefits of arrears of pay, seniority and consideration for further promotion. If he is not found fit for promotion in 1977 the DPC should consider his fitness for promotion in each of the subsequent years till 1980. He should be promoted with all consequential benefits with effect from the relevant date in the year in which he is found fit for promotion. If he is not found fit for any of these years his promotion with effect from 19th January, 1983 will stand. The petition is disposed of on the above lines. There will be no order as to costs."

In the meantime, during the pendency of that petition, the applicant after selection was promoted as TA-C with effect from 1.4.87. In compliance of the direction of the Tribunal as quoted above, the applicant was called for interview by the review DPC to assess his suitability for promotion to the

contd.

8

post of TAB as in 1977 and was interviewed on 1.8.89 and was later informed vide the impugned order dated 10.8.89 that he was not found fit for promotion as TAB. He was interviewed again on 21.8.89 for promotion in 1978. He came to know that in a similar case of Shri N Natarajan, the respondents themselves had sought a review of the judgement delivered by the Tribunal in that case indicating that it would not at all be realistic to assess a person holding a higher post at present to adjudge his suitability for a lower post as on an anterior date. On that basis, the Tribunal allowed the review application indicating that Shri Natarajan could be given notional promotion with retrospective effect in 1976 when his juniors were promoted to that grade. The applicant's grievance is that this Tribunal in disposing of the transferred petition No.242/87 by its judgement dated 13.4.89 never intended that the applicant should be subjected to an interview by a review DPC as in 1977. Accordingly, he has prayed that because of his being already promoted as TAB and further promoted as TAC, he should be given notional promotion as TAB as in 1977 without any interview."

2. The Tribunal in the said OA, allowed the application and directed that the case of the applicant be reviewed without interview for promotion as TAB as in 1977. On the recommendation of the Departmental Promotion Committee (DPC), set up in consequence, the applicant was promoted to the post of Technical Assistant 'B' with effect from 1.10.1977. The Tribunal had also directed that if the applicant is found fit for promotion as Technical Assistant 'B', he should be promoted with all consequential benefits. Respondents asked for clarification as to the method to be followed for considering

subsequent promotions since in the meanwhile, applicant had been promoted as Technical Assistant 'C' after DPC review including interview in the normal process on 1.4.87 and as Engineer SB on 1.10.90. His next review for promotion as Engineer SC was also said to be due on 1.7.93. The Tribunal, in MP 416/91 in OA 513/89, however, declared that the matter of how the respondents will consider the applicant for further promotions with retrospective effect is a matter to be entirely decided by the respondents.

3. Applicant is now before us stating that he should have been promoted as Technical Assistant 'C' on 1.10.80, Engineer SB on 1.10.83, Engineer SC on 1.10.86 and Engineer SD on 1.7.90. Respondents in their order dated 19.12.91 had rejected this request stating as follows:

"In the light of the instructions given by the Hon'ble Tribunal, the DPC reviewed and assessed on 18.11.91/5.12.91 the suitability of Sri Abraham for his promotion with retrospective effect from the post of Tech. Asst. B to the post of Tech. Asst. C as on 1.10.80 on the basis of the relevant records and without interview. The Committee did not recommend him for promotion as he was not found fit for promotion. His case was considered again by the DPC for promotion to the post of Tech. Asst. C as on every subsequent year upto 1.4.86 on the basis of the relevant records and without interview and did not recommend the promotion.

In the normal review process held in February 1987 for the 1.4.87 batch, Sri Abraham was promoted as Tech. Asst. 'C' with effect from 1.4.87 as per the normal review guidelines. Thus he became eligible for review for promotion to the post of Engr. 'SB' as on 1.4.90 on completion of 3 years service in Tech. Asst. 'C' grade. Accordingly, the DPC

considered his case on 14.2.90 for promotion to Engr.

SB as on 1.4.90 and on the recommendation of the DPC he was promoted as Engr. SB with effect from 1.10.90. Therefore, as part of the consideration for his retrospective promotion in compliance with the above cited orders of the Hon'ble Tribunal, the DPC assessed his suitability on 18.11.91/5.12.91 for retrospective promotion to Sci/Engr. SB as on 1.4.90 on the basis of the records and without interview and did not recommend the promotion as he was not found fit.

After careful consideration of the above recommendations of the DPC and the relevant records the appointing authority (Director, LPSC) has approved the recommendations of the DPC. As such his promotions as Tech. Asst. 'C' with effect from 1.4.87 and as Engr. SB with effect from 1.10.90 stand good."

4. Applicant has been promoted as Technical Assistant 'B', Technical Assistant 'C' and Engineer SB based on his confidential reports and interview. The dispute is only regarding the dates on which the said promotions have become effective. Applicant alleges that respondents have changed the requirement of CR rating for the purpose of assessing fitness though consideration for further promotions was only on the basis of service records.

5. Respondents in their reply have stated that in compliance of the orders of the Tribunal, applicant had been promoted as Technical Assistant 'C' with effect from 1.10.77 based on the assessment of his CRs without interview. For considering a Technical Assistant 'B' for the post of Technical Assistant 'C', his confidential reports for three years as Technical Assistant 'B' is an essential requirement. Applicant has effectively worked as Technical Assistant 'B' only from 19.1.83

and his CRs prior to 19.1.83 only reflected his work as Tradesman, the nature of work of which is totally different from that of Technical Assistant. Applicant could, therefore, be considered for promotion to the post of Technical Assistant 'C' only on 1.4.86 when he had worked for three years as Technical Assistant 'B'. On 1.4.86, however, he was not found fit by the DPC and was found fit for TA 'C' only from 1.4.87. It was, therefore, illogical for a person who was found unfit for promotion on 1.4.86 to be promoted from 1.10.80. Similarly, applicant was considered for promotion to the post of Engineer SB on 1.4.90 in the normal course, but the DPC found him fit for promotion only from 1.10.90. Here again, being found unfit on 1.4.90, it would be illogical to promote him from an earlier date. Respondents have stated that after the Tribunal gave its decision in MP 416/91 in OA 513/91, they constituted a DPC consisting of senior Scientists of the Centre to assess the suitability of the applicant for higher grades with retrospective effect. We have perused the minutes of the said DPC. In the order dated 12.11.91, the DPC had been directed to review the case of the applicant to assess his suitability for promotion from the post of Technical Assistant 'B' to eligible higher grades with retrospective effect. The DPC was also directed to assess the suitability of the applicant based on his records and without interview wherever retrospective promotions are involved. Pursuant to this direction, the Committee met on 18.11.91 and 5.12.91 and reviewed the case of the applicant. The Committee considered the CRs for the years 1977, 1978 and 1979. It felt:

"All these CRs reflect his work performance and conduct only as a T/Man 'B'. The CRs of a T/Man may be relevant to assess his general traits for his promotion as TA 'B', which is the starting grade in the Technical Assistant category. But a Tradesmans' CRs are not relevant for his promotion from TA 'B' to TA 'C'. The Committee, therefore, does not recommend his promotion to TA 'C' with effect from 1.10.80 considering his CRs for 1977, 1978, 1979. For 1980 and 1981 also he has Tradesmans' CRs. As such the Committee does not recommend his promotion to TA 'C' post as on

1.10.81 or 1.10.82.....Accordingly, Sri Abraham becomes eligible for review for promotion as TA 'C' as on 1.4.86, i.e. on completion of 3 years as TA 'B'. Considering the fact that this review is being done without interview and based only on his CRs, the Committee is of the view that there should be minimum three CRs with general grading as 'Outstanding' for promotionHe has..... 'Outstanding' for 1984 & 1985....he has an 'Outstanding' general grading in 1986, which makes him eligible for promotion as TA 'C' as on 1.4.87 as per the above guidelines....After going through the CRs for the years 1987, 1988 and 1989 the Committee does not find any justification to recommend to postpone his promotion with effect from 1.4.90 as Engr 'SB'."

6. It is clear, therefore, that the request of the applicant to promote him with retrospective effect to the higher grade consequent on his being promoted as Technical Assistant 'B' with retrospective effect as a result of the orders of the Tribunal has been rejected on the ground that he did not have the requisite experience in the lower post for the required three years. It must be remembered that this was a case where the normal method of considering the records and holding an interview had to be modified, as a consequence of the orders of the Tribunal. The DPC was, therefore, well within its powers to devise a suitable procedure which is not arbitrary for judging the suitability of the applicant and the Tribunal cannot interfere with its decision that in the absence of an interview, the applicant should get 'Outstanding' grade for three consecutive years. This view of the DPC cannot be considered arbitrary, unreasonable or mala fide. However, applicant's contention is that he is not to be penalised for not having experience in lower category since his promotion as Technical Assistant 'B' had been delayed only due to the respondents and he had in fact,

contd.

to get his promotion which was rightfully his due from 1977 only through a series of litigations in the High Court and before the Tribunal. His retrospective promotion with effect from 1977 had been ordered only in 1990. Applicant, therefore, had no opportunity, for reasons beyond his control, to acquire experience in various higher categories. Counsel for applicant, therefore, vehemently argued that the suitability of the applicant should be considered on the basis of whatever CRs he had, irrespective of whether the CRs related to his performance in a particular grade or not.

7. Learned Standing Counsel drew our attention to the importance of the work done in the respondent organisation and stated that considering the national importance of the organisation there must be no compromise on quality of personnel. It was absolutely necessary to ensure competence of personnel and since the method of rating is totally functional, the performance in the lower grade is necessary to assess the suitability of a person for the next higher level. Therefore, any notional service cannot be taken into account in judging the suitability of a person for promotion to a sensitive post.

8. Learned Counsel for applicant argued that in this case, applicant has been prevented from getting the necessary experience in the lower grade by the action of the respondents. This lacuna cannot, therefore, be held against the applicant. He also stated that the applicant having been already promoted and his suitability in the higher grade having been established, there was no reason why he should not be promoted retrospectively based on whatever records were available without insisting on experience in the lower post. The nature of post was also such that nothing untoward would happen if such back-dated promotion was given.

9. Learned Standing Counsel cited two cases to support his contentions. In Indian Airlines Corporation vs. Capt. KC Shukla and others, (1993) 1 SCC 17, the question before the Court was the

non-selection of the petitioner (Capt KC Shukla) on the basis of marks obtained in an interview. The Supreme Court held (page 20):

"Adjusting equities in exercise of extraordinary jurisdiction is one thing but assuming the role of selection committee is another. The Court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post. Not that it is powerless to do so and in a case where after removing the illegal part it is found that the officer was not promoted or selected contrary to law it can issue necessary direction."

[Emphasis supplied]

In Union of India and others vs. SL Dutta and another, AIR 1991 SC 363, the question before the Court was the change of policy in promotions and the consequential reduction of promotion chances for certain feeder categories. The Supreme Court held:

"As has been laid down more than once by this Court, the Court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable material in the fixing of policy are of a highly technical or scientific nature."

10. Learned Counsel for applicant brought to the attention of the Tribunal that in an order dated 17.2.1994, the Vikram Sarabhai Space Centre (which is a sister organisation, but not a party in this OA), had given retrospective promotion to one Shri MM Yusaph. In that case, Shri Yusaph had been promoted from the post of Technical Assistant 'C' to the post of Engineer SB on 1.4.91. On reconsideration, based on the same OA 513/89 on which the applicant before us is claiming relief, Shri Yusaph's date of promotion was revised retrospectively as 1.10.89. However, an examination of this order shows that the

contd.

applicant before us cannot get any support from it for the point that notional service can be considered for promotion. In the said case of Shri Yusaph, it is seen that he had been promoted by the Departmental Promotion Committee based on interview and records as Technical Assistant 'C' with effect from 1.10.85. The request for postponing this date was rejected by the Departmental Promotion Committee. On 1.10.89, the date on which retrospective promotion to Scientist/Engineer SB was ordered, there were already four years of actual service in the lower grade which was available for evaluation by the DPC. A perusal of the affidavit filed by respondents 1 to 3 clearly shows that no notional service of Shri Yusaph has been taken into account while granting retrospective promotion. To quote from the order (Annexure VI):-

"....the case of Shri Yusaph has been considered by the respective DPC for promotion on notional basis to the post of Scientist/Engineer SB with effect from 1.10.1988. The Committee, which met on 27.12.1993, after careful and thorough examination and analysis of the ACRs for the years 1985 to 1988 along with other relevant service records in line with the orders of the Hon'ble CAT in the above OA and keeping in view the grading for various attributes in the Confidential Reports, over all gradings and the work output as reflected therein has concluded that the case of Shri Yusaph does not merit recommendation for promotion to the grade of Scientist/Engineer SB with retrospective effect from 1.10.1988....The records and ACRs in respect of Shri Yusaph from 1986 and upto 1989 were scrutinised thoroughly and considering the overall gradings from 1986 to 1989 including the various attributes and keeping in view the totality of work output and performance as evaluated and reflected in the ACRs up to 1989, the Committee concluded that Shri MM Yusaph's case does merit recommendation for notional

contd.

promotion to the post of Scientist/Engineer SB with retrospective effect from 1.10.1989 and recommended accordingly."

It may be mentioned here that during the period from 1985-89 Shri Yusaph was working as Technical Assistant 'C' and, therefore, the ACRs considered related to his work experience in the lower grade of Technical Assistant 'C'.

10. There is considerable force in the argument that the promotional policy laid down by respondents should not normally be interfered with by the Tribunal. The post in question is technical in nature. Even according to the applicant, the work of Technical Assistant involves the responsibility of 'realising PS2 liquid stage control components, responsibility of fabrication coordination with External Fabrication Wing of Proto Fabrication Facility, preparation of material list and supply of materials to the fabricator etc'. When this is the type of work involved, the Tribunal cannot find fault with the respondents for insisting on a minimum work experience in the lower grade for promotion to higher grade. We, therefore, find that the Departmental Promotion Committee constituted by the respondents in pursuance of the orders of this Tribunal is in order and has discharged its duties properly. We see no reason to interfere with the recommendations of the Departmental Promotion Committee and in interfering with the orders that have been issued as a consequence.

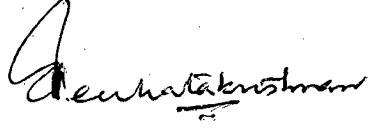
11. It is, no doubt, unfortunate that the applicant has, through no fault of his, been denied the opportunity to work in higher grades and thereby qualify for promotions earlier. A peculiar set of circumstances had brought this about, as seen from the facts of the case set out above. But can the remedy for this be the waiver of the requirement of higher grade experience for promotion? We have given anxious thought to this. The remedy should not be worse than the disease and here private interest should give way to public interest. This does

contd.

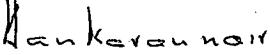
not appear to be an injury which can be cured by waving the judicial wand. Larger public interest cannot suffer by reaching redress based on sympathy for the applicant. We must concede that we cannot legally put the clock back, much as we might wish we could. We would, however, expect the respondents to examine how they could suitably compensate the applicant, particularly in view of the 'Outstanding' grades he has obtained in the years 1984, 1985 and 1986.

12. In the result, the application is dismissed. There is no order as to costs.

Dated the 8th April, 1994.


PV VENKATAKRISHNAN

ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN