

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 298/99

Thursday this the 2nd day of August, 2001.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M.K.Prathapan
Engineer SC
C.M.S. Group, Replace
V.S.S.C., Vattiyoorkavu P.O.
Thiruvananthapuram.

Applicant

[By advocate Mr.S.Gopakumaran Nair]

Versus

1. The Administrative Officer
II (Est), Establishment Section
V.S.S.C., Thiruvananthapuram-22
2. The Director
V.S.S.C., Thiruvananthapuram.
3. The Joint Secretary
DOS/Member (Personnel)
ISRO Council
ISRO Headquarters, Bangalore.

Respondents.

[By advocate Mr.C.N.Radhakrishnan]

The application having been heard on 2nd August, 2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A-1 as arbitrary and unreasonable and to direct the respondents to consider him for promotion to the 'S.D.' Grade in the light of A-2 and A-3.

2. Applicant is an Engineer 'SC' under the respondents. He joined Vikram Sarabhai Space Centre (VSSC) on 2.4.82 with diploma in Mechanical Engineering. Subsequently in October 1993 he acquired B.Tech (Mechanical) Degree in Mechanical Engineering. As per A-2, engineering graduates with four years of service in ISRO is eligible for review for 'SD' grade having

been directly recruited to 'SB'/'SC' grade. As per A-3 it is clarified that B.Tech + 1 year outside service + 3 years in VSSC is eligible for review for 'SD' grade, having completed combined service of 4 years after B.Tech. After obtaining B.Tech. degree in 1993 he has put in 4 1/2 years of service as on January 1998. As such he has fulfilled all the norms required for review for 'SD' grade. He submitted A-4 representation. A-5 is the reply to A-4. A-5 says that the matter has been referred to ISRO Headquarters for clarification. He subsequently submitted A-6 representation. A-1 is the reply to A-6 representation. A-1 is bad in law.

3. Respondents resist the OA contending that the applicant started as Draughtsman-D on 2.4.82. He was promoted as Scientist/Engineer-'SB' on 1.4.90. He was further promoted as Scientist/Engineer-'SC' on 1.7.96. Consideration for next promotion to Scientist/Engineer-'SD' will fall due for the applicant on 1.7.2000. The minimum residency period required for promotion upto 'SC' grade is 3 years and thereafter upto the grade of Scientist/Engineer-'SF' is 4 years service in each grade. The additional qualification of B.Tech. acquired by the applicant in the year 1994 while in service did not accrue any special review benefit as he reached his eligible grade of 'SB' in the normal review itself as on 1.7.90 based on his diploma qualification and thereafter Scientist/Engineer-'SC' from 1.7.96. If he had requested for a special review as on 1.1.95 for Engineer 'SC' Grade in December 1994 based on the additional qualification, his additional qualification of B.Tech. would have been recognized for further career

progression. Instead, he progressed based on his Diploma qualification. He did not avail the opportunity and it amounts to forfeiture of the chance. A-2 deals with induction and career progression of Engineering Graduates/Post Graduates in Engineering etc. for recruitment to posts in ISRO/DOS. As per A-2, for graduates in Engineering and Post Graduates in Science inducted at 'SC' grade, a residency period of 4 years has been prescribed for consideration for their promotion to the next higher grade of Scientist/Engineer-'SD'. Fitment mentioned in A-2 applies only to those who are directly recruited to 'SB'/'SC' grades in the manner mentioned.

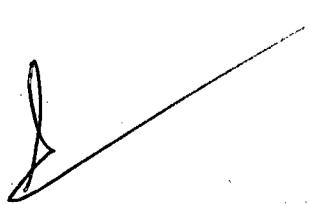
4. A-1 the impugned order says that provisions for considering the service after acquiring Degree in Engineering while in service for career advancement are applicable only in the case of Scientists/Engineers who are recruited in ISRO with those qualifications or who are placed in 'SB' or 'SC' and as the applicant does not come under the purview of the relevant provisions he cannot be considered for promotion based on his B.Tech Degree and experience since its acquisition. It further shows that he is eligible for promotion to the post of Scientist/Engineer-'SD' only from 1.7.2000.

5. A-1 is based on A-2.

6. Learned counsel appearing for the applicant vehemently argued that what is contained in A-2 should be made applicable to the applicant also or should be extended to the applicant also. A-2 states that it is applicable to only those Graduates

in Engineering and Post Graduates in Science recruited at 'SB' level and Post Graduates in Engineering recruited at 'SC' level. Applicant admittedly was not directly recruited at 'SB' level and was not having a degree in Engineering even at the time when he was promoted to 'SB' level. On a plain reading of A-2 it is clearly seen that the applicant is outside the ambit and purview of A-2. The learned counsel appearing for the applicant submitted that there is a discrimination between those who had Engineering Degree at the time of entry at 'SB' level and those who obtained an Engineering Degree subsequently. If there is a discrimination on the basis of that discrimination there should be a challenge against A-2. There is no challenge against A-2 and the applicant is accepting A-2 and praying to extend the benefits available to him also as per A-2. In fact what the applicant seeks is to rewrite A-2 by the Tribunal. Courts and Tribunals can only interpret but cannot rewrite or alter the orders issued by the authorities competent.

7. Respondents have specifically stated in the reply statement that based on the additional qualification the applicant should have requested for a special review and having failed to do so, now he cannot turn round and say that ever since he acquired B.Tech qualification he should be considered for all benefits available under A-2. There is no case for the applicant that he sought for the said review after having obtained B.Tech. Degree in the year 1993.



8. Learned counsel appearing for the applicant submitted that the applicant is relying on para 4 of A-2 in particular. Para 4 of A-2 says that the question of fitment/placement of the existing graduates in Engineering and post graduates in Science recruited at 'SB' level as well as those Post Graduates in Engineering recruited at 'SC' level before 1.1.98 also came up for consideration. The applicant was not recruited as Scientist/Engineer at 'SB' level with Engineering degree qualification. He was also not recruited as a Post Graduate in Engineering at 'SC' level. When he became Engineer 'SC' he was only a Diploma holder. The entire para 4 of A-2 only deals with those who were recruited as Scientist/Engineer 'SB' with degree in Engineering or Post Graduates in Science as basic minimum qualification and Post Graduates in Engineering recruited at 'SC' level. That being so, A-2 has no application to the applicant.

9. In Director, General Rice Research Institution, Cuttak & another Vs. Khetra Mohan Das [AIR 1995 SC 122] it has been held that "merely because one possessed the qualification he cannot claim as a matter of right that he should be fitted into category II Grade T-II-3". A-2 deals with the question of fitment/placement. So in the light of the said ruling, just because the applicant has got Degree in Engineering, that by itself does not confer on him the right to get fitment.

10. So the position is that as A-1 is based on A-2 and A-2 cannot be applied in the case of the applicant, there is no ground to interfere with A-1.

11. Accordingly OA is dismissed. No costs.

Dated 2nd August, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A-1 True copy of the memorandum No.VSSC/EST/F/1(1) dated 18.1.99 issued to the applicant by the Administrative Officer-II(Est).
- A-2 True copy of the memorandum No.VSSC/PGA/CDS/22(85) dated 12.1.98.
- A-3 True copy of the clarification memorandum No.VSSC/PGA/CDS/22(126) dated 22.6.98.
- A-4 True copy of the representation submitted by the applicant to the Establishment Section and Director, VSSC dated 19.1.98.
- A-5 True copy of the reply from the Establishment to ISRO Head Quarters dated 20.4.98.
- A-6 True copy of representation submitted by the petitioner to the Joint Secretary dated 9.4.98.