

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.358/96

Friday, this the 13th day of February, 1998.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

VM Hydrose,
Senior Technician 'A',
Staff Code No.22001,
Amonium Preclorate Experimental Plant,
Indian Space Research Organisation,
Erumathala Post,
Alwaye-5.

- Applicant

By Advocate MrPV Mohanan

Vs

1. The Chairman,
Vikram Sarabhai Space Centre,
Indian Space Research Organisation,
Thiruvananthapuram.
2. The Director,
Vikram Sarabhai Space Centre,
Thiruvananthapuram.
3. Union of India represented by
Secretary to Government,
Department of Space,
New Delhi.

- Respondents

By Advocate Mr CN Radhakrishnan

The application having been heard on 29.1.98, the Tribunal on 13.2.98 delivered the following:

O R D E R

HON'BLE MR SK GHOSAL, ADMINISTRATIVE MEMBER

The applicant is working as a Senior Technician-A at the Amonium Preclorate Experimental Plant (Plant for short), Indian Space Research Organisation (ISRO), Alwaye. He feels

AS

aggrieved by the impugned order at A14 dated 27.9.95 rejecting the applicant's representation for a further consideration of his request for appointment to the post of Technical Assistant-B w.e.f. October, 1980. That order has been passed on behalf of the second respondent, i.e., the Director, Vikram Sarabhai Space Centre, Thiruvananthapuram. He is evidently the competent authority in the respondent Department i.e. the Department of Space, Government of India, in the matter.

2. The basic grievance of the applicant is that he should have been appropriately considered for a Special Review for the post of Technical Assistant-B in 1981 in the manner adopted⁴² for some of his similarly placed colleagues immediately after he acquired the additional qualification of a Diploma in Engineering while working as a Tradesman-F and intimated that fact to the respondent Department on 1.10.1980.

3. The applicant had earlier submitted a detailed representation on 9.10.1993 to the competent authority referring to the judgment of this Bench in O.A. 833/91 in respect of a similarly placed employee. He, however, did not get the relief that he sought in that representation. He, therefore, approached this Tribunal in O.A.1982/93. That O.A. was disposed of by the Tribunal directing the respondent Department to consider the representation made by the applicant on merits. Accordingly, a Special Review was held

20

by the respondent Department. The Review Committee interviewed the applicant on 18.3.94 and assessed his suitability for being appointed to the post of Technical Assistant-B w.e.f. October, 1980. However, the Review Committee did not find him suitable.

4. The applicant has also challenged the finding of the Review Committee on the ground that the Annual Confidential Reports and other Service Records of the applicant as on ²⁹1.10.1980 and 5 years preceding that date had not been carefully considered by the Review Committee. According to the applicant, if those materials were taken into account by the Review Committee, they would have found him suitable for appointment to the post of Technical Assistant-B w.e.f. October, 1980. The applicant has asserted that since even after 1980-81 he kept on getting selected for further promotions in the line of Tradesman and Technician, his suitability had already been established for holding promotional posts and accepted as such by the respondent Department. The Review Committee, the applicant has argued, had no basis, therefore, for arriving at the decision that the applicant was not suitable for appointment to the post of Technical Assistant-B in October, 1980.

5. The applicant has also claimed that he should be given another opportunity for a further Special Review for consideration of his case for appointment to the Technical

Assistant Group-B w.e.f. 1980^{As}. He has urged that under the previous dispensation which was valid at that point of time i.e. in the year 1980-81, the employees who were similarly placed like him and who had acquired a Diploma in Engineering with a second class were eligible for at least two chances for a Special Review.

6. The applicant has finally prayed for the following reliefs:

- i) To call for the records leading to Annexure A14 and set aside the same.
- ii) To declare that the applicant is entitled to be promoted to the category of Technical Assistant 'B' with effect from 1.10.1980 without conducting fresh interview with all consequential benefits including promotion to Technical Assistant 'C' on due date.
- iii) To direct the respondents to promote the applicant to the post of Technical Assistant 'B' with effect from 1.10.1980
- iv) Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice."

7. The respondents in this case, who are all official respondents belonging to the respondent Department, have resisted the reliefs sought by the applicant. It has been contended by the learned counsel for the respondents that the employees in the Tradesmen category were eligible for a Special Review for appointment to the post of Technical Assistant-B on the acquisition of a degree or diploma in Engineering, only if such a degree or diploma was with a 'First Class'. The learned counsel has, however, admitted

29

that in a few cases, such employees who had secured even a second class diploma in Engineering had been^{As 49} considered under a local arrangement. But that was done only at the time of Regular Review. These Regular Reviews could be held three years after an employee entered a particular grade in his line. In the case of the applicant, since he had entered the grade of Tradesman-F in 1979, the regular review of his case was due only in 1982. There could have been no Regular Review in his case in 1981. However, before his case for a Regular Review became ripe in 1982, the respondent Department had issued the circular at Annexure R2 i.e. an O.M. of the respondent Department dated 6.1.1981. That O.M. prescribes only a First Class for a Degree or Diploma in Engineering for the purpose of Special Review. Further, and inter alia, Paragraph 2.9 of that Annexure R-2 prescribes that only one Special Review can be made based on the additional qualification acquired by an employee.

8. The learned counsel for the respondent Department has then ~~stated~~^{As 49} pointed out that more importantly and irrespective of the legal validity of the claim of the applicant for a Special Review which, the respondent Department has maintained, did not exist even in terms of the first enabling circular issued in this behalf in 1975 at Annexure R1, in obedience to the order of the Tribunal in O.A.

49

1982/93, the respondent Department had ^{in fact 42} organised a Special Review for the applicant. According to him, the other issues pertaining to his eligibility for consideration for a Special Review, thus became immaterial. The learned counsel for the respondent Department has next pointed out that the Review Committee, which assessed the suitability of the applicant, did not, however, find the applicant suitable. He has finally argued that considering these circumstances surrounding the case and the fact that the Review Committee comprised of highly qualified and unbiased Scientists and Technologists, there is no scope for any further judicial intervention in the matter.

9. We have gone through the pleadings and other materials placed before us in this case and heard the learned counsel appearing for the parties.

10. The applicant has essentially claimed his rights in terms of the Office Memorandum (OM) dated 12.12.75 issued by the respondent Department, i.e. ISRO, ⁴²at (R1). Career opportunities for Scientific and Technical staff in ISRO inter alia were delineated there. It was enjoined under that OM specifically that a normal Review of Scientific and Technical staff w.e.f. 1.1.76 should be held for the purpose of appointment to certain posts for the employees, subject to the norms laid down therein being satisfied by such

42

employees.

11. We observe that R1 specifically states that these normal Reviews will be due every three years for categories of personnel, to which the applicant belongs (Para 10 of R1). We similarly observe that the norm for recruitment for the posts of TA(B) in the category of Scientific and Technical staff, as distinct from Tradesmen, the latter category being the category to which the applicant belongs, clearly specifies that the reference to diploma in Engineering for the purpose of the said recruitment will be treated as a First Class Diploma (Para 9.2 read with Table V of R1).

12. The applicant, however, has referred to certain cases, where Tradesmen with a second class diploma in Engineering were appointed by the respondent Department to the post of Technical Assistant-B (TA-B). During the stage of hearing, the learned counsel for the applicant brought to our notice further that in 1976 the norm was relaxed through another order of the same Department to a degree or diploma in Engineering with second class. However, he has not been able to establish whether the said relaxation in the prescribed norm from a first class diploma to a second class diploma was also made specifically applicable for recruitment to the

29

post of TA(B).

13. He has also urged that though the 1975 O.M.(R1) does not specifically prescribe special Reviews, as distinct from normal Reviews, Special Reviews were indeed conducted shortly after the concerned employee acquired the requisite qualification like a degree or diploma in Engineering. He has therefore pleaded that his case should similarly have been taken up for a Special Review immediately after he reported the acquisition of qualification of a second class Diploma in Engineering, i.e. in October, 1980.


14. We notice in this connection that the respondent Department (ISRO) even in the subsequent O.M. dated 6.1.81 at R2 while referring to the existing instructions, declares that when an employee acquired the requisite qualification his case should normally have been taken up for consideration only at the time of his next Review and not on ad hoc basis under those instructions. In fact, it clearly states that no Special Review was contemplated till then to consider an additional qualification acquired by an employee under the existing orders.

15. We note that for the first time, the said O.M. R2, ⁴⁹ also available ⁴⁹ at (A4), prescribes that a Special Review for consideration of an additional qualification for the purpose of appointment to certain posts could be taken up and that it would not be treated as a normal promotional Review

29

(paragraph 2.3 of R2). It reiterates that for the purpose of Special Review the norm for appointment would still be a first class degree or diploma in Engineering(paragraphs 2.4 and 2.5 of R2). The said OM at R2 also lays down that only one special review will be made on acquisition of the additional qualification(paragraph 2.9 of R2).

16. In O.A.No.1982/93 the Tribunal had passed an order dated 10.12.93 to the effect that the applicant in this case who was also the applicant therein may file a supplementary or comprehensive representation to the respondents therein, who are also the respondents in this O.A.with only a slight change in the order which the respondents have appeared in the array, and further directed there that the first respondent therein, who is the second respondent in the present O.A., should consider such a representation within a certain time limit. It is evident from Annexure A2 which is signed by the second respondent and is dated 12.5.94, that in obedience to the said order of the Tribunal, whether a Special Review was specifically or legally warranted in terms of that order or not, the applicant was actually called for an interview as a part of the Special Review for appointment to the post of Technical Assistant-B on 18.3.94. The Committee constituted for the purpose of the Special Review for the applicant met on that date to consider his case. But he was not found fit for appointment to the post of Technical



Assistant-B as on 1.10.80 by the said Committee.

17. In the light of the above developments which have already taken place in this case, it is not particularly ~~as~~ ^{useful} for us to enter into a discussion as to whether the applicant was legally eligible for a Special Review for the purpose of appointment to the post of TA(B) either in the light of the provisions of R1 or those of R2. Since such a Special Review has actually been conducted by the respondent Department in compliance with the order that the Tribunal passed earlier in O.A. 1982/93 irrespective of his legal eligibility or otherwise even in terms of that order of the Tribunal, what remains for us to consider at this stage is (a) whether the applicant can legally claim that he is entitled to be considered for a second time for a similar Special Review, and (b) whether the Review Committee which conducted the Special Review on 8.3.1994 and found the applicant unsuitable for appointment to the post of TA(B) w.e.f. October, 1980, was justified in arriving at that assessment.

18. On the first point at (a) above, we do not consider it necessary to deal with this particular claim of the applicant again at length. We have already examined the relevant provisions in detail and observed that the 1975 order, i.e. R1, did not even contemplate a Special Review.

49

Even if some Special Reviews had been held as part of a local arrangement at the level of the Director of an Institute under ISRO, no legal right can be said to have accrued to the applicant on account of any such action on the part of any such officer. More importantly, we have also noted that under R2 i.e. the O.M. issued in January, 1981, it was specifically laid down that only one Special Review in the context of acquisition of additional qualification was permitted for the employees acquiring such qualification. The applicant having reported the acquisition of the additional qualification of a second class diploma in Engineering only in October, 1980 could not possibly be granted the right flowing from any action, which is not supported by the ⁴⁸ specific administrative instructions ~~permitted~~ ⁴⁸ permitting ⁴⁸ a Special Review to be held between October, 1980 and the beginning of January, 1981 i.e., till the issue of R2. We, therefore, hold that the applicant was not eligible for a second Special Review i.e. another Special Review after the January, 1981 O.M. at R2 came into force.

19. Regarding the justification for the Review Committee, which conducted the Special Review for the applicant on 18.3.94 in the context of the acquisition of the second ⁴⁸ class diploma in Engineering by the applicant in October, 1980, in arriving at an assessment that the applicant was not suitable for being appointed to the higher post of

⁴⁸

Technical Assistant-B (TA(B) w.e.f. October, 1980, we have gone through the papers relating to the proceedings of that Review Committee. It is not denied that the Review Committee comprised of highly qualified Scientists and Technologists. The mere fact that for the years immediately preceding the year 1980-81, the applicant had received the over-all assessment of 'good' for certain years and 'very good' for a few years or the fact that subsequently the applicant was considered suitable for further promotions in the line of Tradaesmen and Techniciaans, does not establish his suitability conclusively for the purpose of appointment to the different cadre of Technical Assistants and for the post of TA(B). The Tribunal cannot question the assessment made by the evidently sound ^{and 49} technically competent Review Committee of the suitability or otherwise of the applicant for the purpose of appointment to TA(B) in the absence of specific allegations of malafide. Any such review of the decision of the Review Committee by the Tribunal, as a part of the process of Judicial Review, according to us, is not at all called for in the circumstances of the case. We, therefore, hold that the decision of the Review Committee which undertook the Special Review of the applicant on 18.3.94 to assess the suitability of the applicant for appointment to the post of Technical Assistant-B w.e.f.

↙

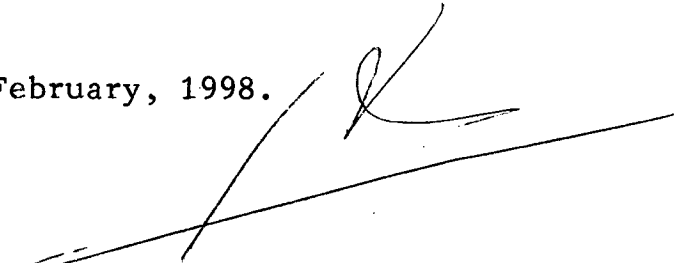
October, 1980 does not warrant any interference by us.

20. In the result, the application is dismissed. There shall be no order as to costs.

Dated, the 13th February, 1998.



(SK GHOSAL)
ADMINISTRATIVE MEMBER



(AM SIVADAS)
JUDICIAL MEMBER

trs/12298