

Central Administrative Tribunal , Lucknow Bench,

Lucknow

O.A. No. 275/2005

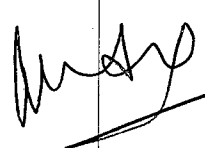
this the 8th day of January, 2007

CORUM:-

Hon'ble Shri A.K. Singh, Member (A)

Hon'ble Shri M. Kanthaiah, Member (J)

1. Shri D.N. Barman aged about 52 years son of late Raghunath Barman posted as ARO, M&C Dte. RDSO, Lucknow.
2. Smt. Santosh Prasad aged about 60 years d/o late H.N. Srivastava, posted as ARO, M&C Dte. RDSO, Lucknow.
3. U.K. Kapoor, aged about 57 years son of late Sant Lal Kapoor, posted as ARO, M&C Dte. RDSO, Lucknow.
4. I.S. Das, aged about 47 years son of late B.C. Das, posted as ARO, M&C Dte. RDSO, Lucknow.
5. Ganga Prasad aged about 45 years son of late Lokmani Pant, posted as ARO, M&C Dte., RDSO, Lucknow.
6. Shri K.K. Bose, aged about 57 years son of late A.K. Bose, posted as ARO, M&C Dte., RDSO, Lucknow
7. Sri Om Prakash aged about 49 years son of late Narayanan Deen, posted as ARO, M&C Dte., RDSO, Lucknow
8. Shri R.K. Nayyar aged about 56 years son of late G.R. Nayyar, posted as ARO, M&C Dte., RDSO, Lucknow
9. Shri V. Muralidharan aged about 59 years son of Shri V. Varadarajan, posted as ARO, M&C Dte., RDSO, Lucknow
10. Shri Suparsh Avasthi aged about 53 years son of late H.K. Avasthi posted as ARO, M&C Dte., RDSO, Lucknow



..Applicants

By Advocate: Shri R.C. Saxena

Versus

1. Union of India, through Secretary, Railway Board,
Rail Bhawan, New Delhi.
2. Director General, RDSO, Manak Nagar, Lucknow

..Respondents

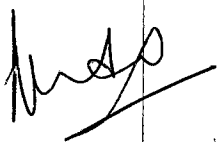
By Advocate: Shri N.K. Agrawal

ORDER

By Hon'ble Shri A.K. Singh, Member (A)

Original Application No. 275 of 2005 have been filed by the applicants Shri D.N. Barman and 09 others (in all 10) against the order No. M&C/Admn./1/30 dated 1.4.2005 by which their request for consideration of their case for promotion to the post of Dy. Director (M&C/CMT) in relaxation of qualification of Engineering / Technology degree as provided in 1985 Rules has been rejected by the respondents.

2. Brief facts of the case are that there are two disciplines namely Metallurgical and Chemical in the Metallurgical and Chemical directorate (M&C) of Research, Design and Standards Organization (RDSO) in the Ministry of Railways. The staffs of two disciplines consist of Junior Research Assistant (JRA), Senior Research Assistant (SRA) and Chief Research Assistant (CRA) (CRA is non existent in Gr.C category w.e.f. 23.7.2001). There is a posting of Assistant Research Officer (ARO) in Group 'B' category. The posts in Group 'A' category include Dy.



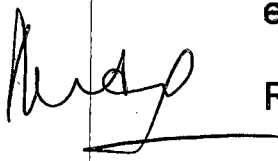
Director, Joint Director, Additional Director (Additional Executive Director) Director (Executive Director). Entry points in Group 'C' are 100% as JRA and 50% as CRA .

3. According to the applicants, they joined RDSO in Group 'C' as Junior Research Assistants (herein to be referred to JRA) ,and were thereafter promoted as Senior Research Assistant (herein to be referred to as SRA) then as Chief Research Assistants (herein to be referred to as CRA) as per the prevailing rules of 1977 with scientific qualifications such as B.Sc, M.Sc, PhD and degree in Engineering/Technology against minimum specified qualifications of B.Sc. degree in science. The channel of promotion as per prevailing rules were (i) from JRA to SRA ,SRA to CRA and CRA to Group 'B' as ARO. According to rules, a Junior Research Assistant had to put in a minimum period of 3 years of service in the grade before being eligible for promotion as Senior Research Assistant. Similarly, a Senior Research Assistant had to put in a minimum of 3 years of service as Senior Research Assistant before being eligible for promotion to the grade of Chief Research Assistant. A Chief Research Assistant on being eligible, is then promoted as Assistant Research Officer in Group 'B'. All of them ,thus, form an integrated class by themselves irrespective of their academic

4

-4-

qualifications for further promotions to Group 'A' under the promotee's quota. As such the applicants submit that they are entitled to be considered for the post of Dy. Director, Joint Director or any other higher post in the organization on the basis of their seniority and performance. The applicants further submit that the R&P Rules for Group 'C' 1977 (3.12.77) prescribes B.Sc as the minimum qualification for entry to the post of JRA, SRA and CRA. Against this minimum qualification, most of the candidates who were selected in fact possessed higher qualifications such as M.Sc, PhD and also degree in Engineering/ Technology. Rules of 1985 provide 60% quota for direct recruitment, 40% quota for promotion to cadre of Dy. Director from the cadre of Assistant Research Officer. In departure from the earlier rules of 1977, these rules provide for Scientific degree in engineering/technology or equivalent for an Assistant Research Officer to become eligible for the post of Dy. Director (in Grade I). The R&P Rules for JRA, SRA and CRA for Group 'C' were also revised on 6.11.87, replacing Scientific degree as minimum qualification for recruitment to JRA, SRA and CRA by engineering / technology degree or equivalent in case of both the direct recruits as well as promotees.



4. All applicants, who have been promoted to Group 'B' as ARO in the year 2001 in view of their post back ground of recruitment and promotion under Common Recruitment Rules of 1977 , thus from a single class as Group 'B' officers and they cannot be separated on the basis of their holding a scientific degree or an engineering/ technology degree while considering their promotion in Group 'A' cadre (i.e. for the post of Dy. Director). The applicants further submit that to their utter surprise the Executive Director/M&C initiated action for filling up 5 vacant posts of Dy. Director in the Group 'A' by promoting only those Assistants Research Officers in Group 'B' who possessed degree in engineering / technology thereby ignoring the claims of those Assistant Research Officers who possessed Scientific degrees such as B.Sc, M.Sc, and PhD at the time of their recruitment as per R&P Rules 1977. The applicants submitted a representation to them in protest against this decision of the authorities to consider their case for promotion also to the post of Dy. Director on the basis of their long experience of 20 years as well as their excellent performance in the field of their work for which they were rewarded with distinction many a times during the aforesaid period of 20 years. The representations of the applicants were however, rejected by the respondents as per their order dated 1.4.2005 on

Handwritten signature

the ground that since they did not possess a degree in Engineering or Technology as provided under the rules of 1985, they could not be considered for promotion to the post of Dy. Director. Being aggrieved by the decision/ order of the respondents dated 1.4.2005, the applicants have filed the present Original Application before us on the following grounds:-

i) That they have been working in the M&C department for the last 20 years or more and have gained adequate experience which can be taken as a substitute to such additional qualifications i.e. to say possession of degree in engineering / technology before being eligible for consideration for promotion to the post of Dy. Director against the promottee quota of 40%.

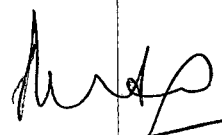
ii) That all the candidates who were promoted to Group 'B' with such scientific degrees as B.Sc, M.Sc and PhD as well as degree in engineering / technology as their basic qualification clearly as per R&P then Rules 1977 in force clearly form a single class. Hence no discrimination can be made within the same class on the basis of any additional qualifications at this stage when they have already put in over 20 years of service and have also been promoted Assistant Research Officer (in Group 'B' cadre) in the same year i.e. 2001.

[Handwritten signature]

iii) That as per recommendations of the Vth Pay Commission, the group 'B' officers of M&C directorate were to be called as Scientific Officers in view of the fact that RDSO was a Scientific Organisation. The applicants submit that they possessed higher scientific qualifications which include M.Sc and PhD degree in the concerned disciplines. Hence, they argue that they have a legal vested right for being considered for promotion to Senior scale posts in the Grade 'A' cadre.

iv) That with B.Sc, M.Sc and PhD degrees as well as with their long experience of over 20 years in the job, they are better equipped to handle superior positions in the Group 'A' cadre than incumbents who merely possess Bachelor's degree in engineering/technology.

v) That they have been awarded certificates of distinction for efficient and meritorious work during their past service of 20 years and above in preference to such engineering graduates.

 vi) That their vested right to be considered for promotion to Senior posts cannot be taken away by mere amendment of rules or by inclusion of additional qualifications in the channel of promotion specially after putting in more than 20 years of service.

vii) That if holding of an engineering degree is made essential for promotion to senior posts in Grade A cadre

it will seriously jeopardize the career prospects of persons who were recruited as per 1977 rules and will consequently deprive them of equitable and just opportunities for promotions in future.

viii) That rejection of their claim for promotion to Senior Scale posts by the respondents is based on complete non application of mind.

On the basis of the above, applicants pray for quashing and setting aside the order No. M&C/Admn./1/30 dated 1.4.2005 enclosed as Annexure No. 1 to the Original Application.

5. It will be worthwhile to mention that applicants at the time of oral submissions, withdraw their request for quashing of R&P Rules. Hence this relief prayed for by them in the O.A. is deleted. The applicants however, pray for issue of direction to the respondents to consider all such employees who were recruited prior to coming into being of 1985/1987 Rules for promotion to the post of Dy. Director, CMT without insisting on holding of degree in Engineering/ Technology for the same. The applicants also pray for grant of any other relief which this Hon'ble Tribunal may consider fit, in the circumstances of the case.

6. The respondents on their part have opposed the O.A. They submit that none of the applicants have

completed 8 years of regular service in Group 'B' cadre which is an essential condition of eligibility for promotion to the post of Dy. Director as per R&P Rules, 1985. The Ministry of Railways vide their letter No. E(GP)(2004)1/8 dated 13.9.2004 has issued instructions/guidelines for grouping of Railways/ Production units for the purpose of making adhoc promotion of Group B officers to Group 'A' posts. No grouping of RDSO has, however, has been made with any of the Zonal Railways for the Chemical and Metallurgical Department. Hence, if any adhoc promotion is made in any of the Zonal Railways, RDSO has no concern with that and that the same cannot be treated as a precedent for RDSO also. The adhoc promotions to Senior Scale posts in Chemical and Metallurgical Department in RDSO are to be made within the seniority of Group B officers of RDSO only, as per Railway Board's guidelines dated 13.9.2004 and they cannot be grouped with any other zonal railways for the purpose.. They further submit that in case of regular promotions, only an employee in Group 'B' becomes eligible for consideration to a Senior Scale post after completion of 8 years. It is only in case of regular promotions from Group B to Group A posts that a common inter se seniority list of Group B officers of RDSO and Zonal Railways are however, prepared and not in case of adhoc promotions. They further submit that all

Handwritten signature

the officers of M&C cadre are governed by the Indian Railways including RDSO Chemical and Metallurgical Department (Group 'A' and 'B') (Recruitment), Rules, 1985 framed under Article 309 of the Constitution of India.

7. Column 8 of the Recruitment Rules, prescribe the following qualifications for the post of Dy. Director:-

"Degree in Metallurgical Engineering of a recognized university or equivalent.

OR

Degree in Chemical Technology of a recognized university or equivalent covering any one or more of the following fields:

- a) Petroleum Products
- b) Paints and corrosion prevention
- c) Polymers"

8. Respondents further submit that the qualifications and other conditions of R&P Rules must be fulfilled for promotion to any higher grade post including those falling in Senior Scales under the promotee quota. They submit that as per recruitment rules, 1985, 40% of the vacancies in the higher scale of Dy. Director are to be filled in by promotion and 60% by direct recruitment. Even though the applicants belong to the same Group 'B' post of ARO but as they are not having the requisite academic qualification as prescribed under R&P Rules, 1985, the applicants are not eligible for promotion to the posts of Dy.

Director. They cannot also be considered as eligible candidates for selection to any Group 'A' post. Railway Board vide their letter No. E(RB)-1/2001/27/4 dated 28.9.2001 had clearly stated that :-

"Indian Railways including RDSO Chemical and Metallurgical Department (Group 'A' and 'B') (Recruitment) Rules, 1985, was framed taking into consideration all the facts and circumstances. At this stage, there is no reason as to why the provisions in the rules are to be modified which may have bad effect on the efficiency/administration."

The Railway Board has further stated ,

"as regards adhoc promotions to the Sr. Scale posts, E(GP) branch have not issued any orders relaxing the recruitment of educational qualification as mentioned above. Even for adhoc promotions, the prescribed eligibility conditions are required to be fulfilled."

9. The respondents further submit that column 8 of R&P Rules clearly provides that

"qualifications are relaxable at the discretion of Union Public Service Commission in case of candidates otherwise well qualified."

Ministry of Railways are therefore, not empowered to relax these essential qualifications as prescribed under Recruitment Rules, 1985. The respondents further submit that as per para 5 of the Recruitment Rules, 1985, "the relaxation in the educational qualification cannot be given without prior consultation with the UPSC as provided in the R&P Rules. The applicants have also not impleaded UPSC as a party in the O.A. even though is the

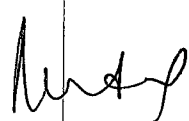
[Handwritten signature]

sole authority for approval as well as change in the R&P Rules. It also has the powers to give relaxation in any of the conditions of the R&P Rules."

10. As the applicants have withdrawn their objection to the maintainability of R&P Rules, they will not like to make any further submissions in this regard. On the basis of above, the respondents submits that the O.A. No. 275 of 2005 is devoid of any merit and deserves to be dismissed. Accordingly, they pray for the dismissal of the O.A. 275 of 2005.

11. Both the applicants and respondents were heard in person through their respective counsels on 14.12.2006. In their oral submissions, they only reiterated their arguments as above.

12. We have given our thoughtful consideration to the submissions made on behalf of the applicants as well as respondents in support of their respective case.

 13. We find that the issue involved in the present case relates to promotions of Group 'B' officers to Group 'A' in RDSO which is governed by the Indian Railways including RDSO Chemical and Metallurgical Department

(Group 'A' and 'B') (Recruitment), Rules, 1985 framed under Article 309 of the Constitution of India. As per the aforesaid Rules, 40% of the vacancies in Gr. A are to be filled in by promotion and the remaining 60% by direct recruitment. As per column 8 of R&P rules, 1965 is equally applicable to both the categories, an incumbent is required to fulfill the following qualifications for being eligible either for promotion or for direct recruitment:-

(1) "Degree in Metallurgical Engineering of a recognized university or equivalent.

OR

(2) Degree in Chemical Technology of a recognized university or equivalent covering any one or more of the following fields:

- a) Petroleum Products
- b) Paints and corrosion prevention
- c) Polymers"

14. The Railway Board functions as independent Ministry under the Government of India and is competent to take an appropriate policy decision in such matters. It is a trite law that policy decisions of the Government cannot be interfered with by the courts unless they are arbitrary or malafide or perverse. There is nothing in the submissions of the applicants to show whether the policy decision taken by the Railway Board are, in any manner, arbitrary, malafide or perverse so as to warrant interference by this Tribunal or any other court. The main submission of

Handwritten signature

the applicants is that when they entered into the service, no such condition stipulating possession of a degree in engineering/ technology was provided in the then 1977 Rules. These conditions have been adopted later in the 1985/1987 Rules and hence this bar should not be applied to them in their promotion to Senior Scale Gr. 'A' posts. This argument of the applicants does not hold water in light of the Apex Court decision in the case of **T.R. Kothandaraman Vs. Tamil Nadu Water Supply & Drainage Board** reported in 1994 (7) SLR (SC) and in the case of **Roshan Lal Tandon Vs. Union of India and others** reported 1967 SLR 832 (SC) wherein the Hon'ble Supreme Court of India has enunciated the following principles :-

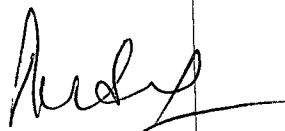
"The employees have no indefeasible right to claim for promotion to a higher grade to which qualification could be prescribed and there is no guarantee that those rules framed by the Govt. in that behalf would always be favourable to them. It is permissible for the Govt. to prescribe appropriate qualifications in the matter of appointment or promotion to different posts."

In the case of **State of Madhya Pradesh and Others Vs. Shyam Pardhi** reported in 1996(1) SLR 66 (SC), Hon'ble Apex Court has reiterated the same point and held that:-

"It is now an admitted fact across the Bar that the respondents had not possessed the prerequisite qualification, namely 10 +2 with Physics, Chemistry and Biology as subjects. The Rules specifically provide that qualifications as a condition for appointment to the post of ANM. Since prescribed

qualifications had not been satisfied, the initial selection to undergo training as per se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of respondents. The question of violation of the principles of natural justice does not arise."

15. Hence in the normal course, there is nothing wrong on the part of the respondents in laying emphasis on fulfillment of the prescribed qualifications for promotion to the post of Dy. Director as discussed above. However, there is also considerable merit in the submissions of the applicants that when they entered the service, the possession of graduate degree in engineering/ technology was not considered essential as per in pre 1985 Rules for either recruitment or promotion to the post of JRA, SRA and CRA. The 1985 rules prescribing these academic qualifications came into force later w.e.f.1985 for group 'A' posts as mentioned above and as per 1987 Rules, in case of recruitment as well as promotion to the posts of JRA, SRC, CRA./ ARO. The applicants were duly considered and promoted to all senior positions in the Gr. C cadre such as SRA and CRA(now converted into the post of ARO). Even though, as per 1987 Rules, the possession of a degree in engineering/ technology was made essential under the 1987 Rules, they remained unaffected by the same in the matter of promotion to Senior position in the



Gr. C cadre. They were also subsequently considered for promotion and also promoted to the post of Assistant Research Officer in Gr. B cadre during the year 2001, without insisting on the aforesaid qualifications. It does not appeal to reason why respondents insist on this qualification in case of promotion to the post of Dy. Director from the Gr. B cadre of Assistant Research Officer. It is our considered view while Railways may be justified to some extent in insisting on these academic qualifications in case of any regular promotions, we are unable to understand their insistence on the same while considering the case for adhoc promotion from Group B post of Assistant Research Officer to Gr. A post of Dy. Director specially when none of the incumbent in the Grade of ARO fulfill all the conditions of eligibility as per 1985 Rules which inter-alia provide for 8 years of experience in the Gr. B cadre which none of the candidates in the grade of Assistant Research officer possess. If the rules are to be relaxed in one case, then why not in other cases too? In the second place, it has been held by the Apex Court in the case of A.S. Parimar Vs. State of Haryana reported in 1984 (1) SLR 454 that a continuous long experience in service can be a substitute to higher qualification. To quote the relevant extract of the judgment:-


"Departmental experience and long experience is a substitute of higher qualification, and a combination

of them in certain percentage is desirable in public service."

The Hon'ble Apex Court has further held that:-

"The administration has now realized that experienced persons are better performer and debarring them from promotion will make the department ineffective and inefficient and therefore, they have initiated action accordingly to remove the qualification bar by amending the Rules, which is in final stage."

16. In the instant case, the applicants have a long experience of 20 years of service and above and have good track record of service and that is why they have been promoted to all junior grades in Group 'C' and 'B' despite the fact that they did not possess graduate degrees in engineering or technology as required under the 1985 Rules and they have been awarded with certificates of merit in their long years of service extending to over 20 years and hence we are of the opinion that while considering the promotion of Assistant Research Officer to the post of Dy. Director on purely adhoc basis, the long years of service of 20 years of efficient service should be considered as a substitute to the aforementioned qualifications as per law laid down by the Apex Court in the case of A.S. Parimar Vs. State of Haryana referred to above. In the third place, all the employees in the Group B cadre of Assistant Research Officer were initially recruited as per the same rules i.e. 1977 Rules and have been

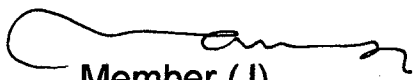
Handwritten signature

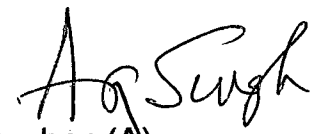
promoted to senior position in Gr. C. and Grade B, on the basis of the academic qualifications as prescribed under the rules, and have put in a total service of over 20 years together and hence in our considered view, they are to be considered as one integrated class of promotee employees. Any discrimination on the basis of academic qualification, at this stage will be violative of Article 14 and 16(1) of the Constitution of India, as they have to be considered as similarly placed on the basis of facts discussed above. It is a trite law that promotees who constitute a single class, cannot be further classified arbitrarily as the same will create a different category within the same category. We rely on the decision of the Hon'ble Supreme Court of India in the case of Triloki Nath Vs. State of J&K reported in 1993 (1) SLR 64 wherein the Apex Court has enunciated the principle that where a class of officers which have been integrated into one unit and a single class on promotion from different categories without reference to entry level qualification, no discrimination thereafter can be made between them on the basis of any other qualifications, in the matter of pay, promotions etc.

17. On the basis of the above, we find ^{no} ~~any~~ merits in respondents' insisting on holding of a degree in

Engineering/Technology as a pre-condition for consideration of officiating/ adhoc promotion to the grade of Dy. Director in case of applicants. This position will, however, materially change while considering promotions on a regular basis as in that case, the rules of promotion will have to be applied strictly. In view of the above mentioned reasons, we quash and set aside the order No.M&C/Admn./1/30 dated 1.4.2005 and direct the respondents to consider the case of the applicants also while deciding officiating/ adhoc promotion to the post of Dy. Director from the grade of Assistant Research Officer in view of the detailed reasons recorded above.

18. In consequence, the O.A. is partly allowed with consequential benefits in favour of the applicants without any order as to costs.


Member (J)
8.1.07
HLS/-


Member (A)