

**Central Administrative Tribunal , Lucknow Bench,**

**Lucknow**

**O.A. No. 245/2006**

this the 8<sup>th</sup> day of February, 2007

**CORUM:-**

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

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

1. S.K. Gupta aged about 59 years son of late Shri H.K. Gupta resident of C-11/2, Manak Nagar, Lucknow.
2. C.M. Vishwakarma, aged about 57 years son of late Sri P.L. Vishwakarma, resident of B-177/2, RDSO Colony, Manak Nagar, Lucknow.
3. B.L. Jatav, aged about 44 years son of Sri S.R. Jatav, resident of B-104/1, RDSO Colony, Manak Nagar, Lucknow.
4. Chandra Baishya, aged about 48 years son of Sri R. Baishya, resident of C-2-137 B, Sector H, LDA Colony, Kanpur Road, Lucknow.

..Applicants

By Advocate: Shri Praveen Kumar

Versus

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

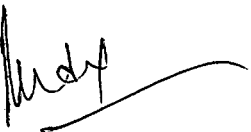
..Respondents

By Advocate: Shri N.K. Agrawal

**ORDER**

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

O.A. No. 245/2006 has been filed by Sri S.K.Gupta and 3 others against the order dated 7.2.2006 passed



by respondent No.2, namely, Director General, RDSO, Manak Nagar, Lucknow rejecting their prayer for grant of promotion to them to the post of Dy. Director (M&C). The applicants have claimed the following reliefs in the O.A. that respondents be directed :-

- i) to promote the applicants to the next higher post of Dy. Director (M&C) with all consequential benefits, including seniority w.e.f. 1.1.96 on the post of Assistant Research Officer in the grade of Rs. 7500-12000/- to them.
- ii) to consider their case for promotion to the post on the basis of existing R&P Rules with all consequential benefits.
- iii) to grant any other relief which this Hon'ble Tribunal deems just and proper in the circumstances of the case.

2. The short points involved in the O.A. are:- (i) whether the applicants are entitled to seniority w.e.f. 1.1.96 or w.e.f. 23.7.2001 as assigned to them by the respondents and (ii) and if they are assigned seniority w.e.f. 1.1.96, will they become eligible for regular promotion to the post of Dy. Director as they will be completing 8 years of service on the post of Assistant Research Officer.

3. Another prayer from the applicants is, as they fulfill the necessary requirement of a degree in Engineering/Technology as provided in Rules of 1985 and are also covered by 40% quota restrictions for

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promotion to the post of Dy. Director, their cases should be considered according to 1985 rules by separating them from others who do not possess a degree in Engineering/Technology. Some all these points raised by the applicants are exhaustively dealt with in the order dated 8.1.2007 of this Tribunal in O.A. No. 275 of 2005. The relevant extract of the same is being reproduced here below, which answers clearly some of the important points raised by the applicants in this O.A.:-

".....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

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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 appear 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 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)

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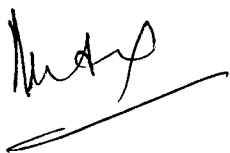
SLR 454 that a continuous long experience in service can be a substitute to higher qualification. To quote the relevant extract of the judgment:-

"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



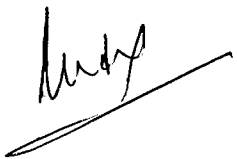
aforementioned qualifications as per law laid down by the Apex Court in the case of A.S. Parimar Vs. State of Haryana referred to above. In the third place, all the employees in the Group B cadre of Assistant Research Officer were initially recruited as per the same rules i.e. 1977 Rules and have been 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."

4. As regards, the point relating to seniority, we find from the above judgment of this Tribunal that all those who were appointed on the post of JRA, SRA and CRA under Rules of 1977 are to be taken as one integrated class. Therefore, their promotions have to be considered together and that there can be no question of any discrimination between employees of the same class in such matters of promotion. Thus, this findings of the Tribunal in an identical matter in order dated 8.1.2007 passed in O.A. 275 of 2005 answers many of the points raised by the applicants in this case and also acts as a beacon light to resolve some of the issues raised by the applicants in this O.A. 245/2006.

5. As regards the date of determination of their seniority, we find that the post of Chief Research Assistant was merged in the post of Assistant Research Officer w.e.f. 1.1.96 in the pay scale of Rs. 7500-12000/-. The applicants were regularly promoted to the post of Assistant Research Officer in the pay scale of Rs. 7500-12000 on 20.2.2002 on the recommendations of a



departmental promotion committee and in accordance with rules. The applicants submit that on the merger of the post of Chief Research Assistant with that of Assistant Research Officer on 1.1.96, they have been continuously working on the aforesaid post since then and as there was no material change in nature, duties, responsibilities and functions of the two posts, they were entitled to seniority w.e.f. 1.1.96. If this position is accepted, they will be completing 8 years of experience on the post of Assistant Research Officer (in Group 'B' Cadre) w.e.f. 1.1.96 and will thus become eligible for promotion to the post of Dy. Director (in Group 'A') in M&C Directorate of RDSO.

6. The respondents oppose the O.A. and contest the arguments advanced by the applicants. They submit that in para 2 of the Railway Board's letter dated 23.7.2001, it has been clearly provided:-

"2. With the allotment of group scale of Rs. 7500-12000 to the category of Chief Research Assistant, the category Chief Research Assistant stands merged with the existing posts of Assistant Research Officer in the M&C Directorate. Placement of the present incumbents of the post of Chief Research Assistants in the Group 'B' scale of Rs. 7500-12000/- will be subject to the fulfillment of promotion norms including medical test prescribed for promotion from the post of Chief Research Assistant to the post of Assistant Research Officer in M&C Directorate."

7. On the basis of the above instructions, and on conducting the DPC, 55 Research Assistants (CRAs) of



M&C Dte. in RDSO including the applicants were promoted to the revised grade of Rs. 7500-12000/- for Assistant Research officer (Group 'B' gazetted) vide order dated 20.2.2002. They also submit that the pay of these research employees were fixed on proforma/ notional basis in the scale of Rs. 7500-12000/- w.e.f. 1.1.96 while the actual pay was allowed to them w.e.f. 20.2.2002 when they were actually promoted from Group 'C' to Group 'B', gazetted.

8. Against the above order of the respondents, the applicants filed an Original Application 239 of 2003 before this Tribunal to quash the impugned order of the respondents and to allow them the benefit of Group "B" status and revised pay scale of Rs. 7500-12000/- w.e.f. 1.1.96 instead of 20.2.2002 along with arrears of salary and 12% interest thereon. The Tribunal decided O.A. 239 of 2003 (I.S. Gupta and others Vs. UOI and others) vide their order dated 8.9.2004. The relevant extract of this judgment can be reproduced here below:-

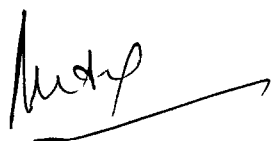
.....It would be quite in-consonance with the principle of equality, reasonableness and rationality visualized by Article 14 of the Constitution to grant Group "B" status and pay, w.e.f. 23.7.2001 i.e. the date of merger of the post of CRA with that of ARO to those CRAs who were in position as on 23.07.2001 and proforma fixation w.e.f. 01.01.1996 or the date of actual promotion to the post of CRA which ever is later, subject, of course, to fulfillment promotion norms....

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.....The respondents are directed to give Group 'B' status and actual pay of ARO to those incumbents of CRA as on 23.7.2001 who satisfy the promotion norms laid down in Railway Board's letter dated 8.1.2002 and proforma fixation of pay to all such incumbents of the post of CRA as on 1.1.1996 as satisfy the promotion norms laid down in railway Board's letter dated 8.1.2002 notwithstanding that any of such incumbents of the post of CRA came to be retired on superannuation between 1.1.96 and 23.7.2001.....

9. Since this Tribunal vide their above order have allowed Group 'B' status to CRAs only w.e.f. 23.7.2001 and there is no ambiguity in this regard the residency period of the applicants in Group 'B' for next promotion will be counted with effect from 23.7.2001 only and when counted from this date, they have still not completed 8 years of regular service as Assistant Research Officer which is a mandatory requirement in R&P Rules of 1985. Hence, they are not eligible for promotion to the cadre of Dy. Director. Accordingly, they pray for dismissal of the Original Application No. 245 of 2006, as devoid of any merit.

10. Applicants and respondents duly represented by their counsels were heard in person on 8.1.2007. The applicants were represented by Sri Praveen Kumar and respondents by Sri N.K. Agrawal. On their oral submissions, they have only reiterated their submissions as above.



11. As regards the question of seniority, we find that on abolition of the post of Chief Research Assistant and merger of the same into the post of Assistant Research Officer, the applicants continued to officiate on the post of Assistant Research officer w.e.f. 1.1.96 and continued as such till 20.2.2002 when they were regularly promoted to the post of Assistant Research Officer Group 'B' in the pay scale of Rs. 7500-12000 in accordance with rules and the recommendations of the DPC. According to the respondents, the relevant date of seniority of the applicants should be reckoned from this date i.e. 20.2.2002 as they were regularly promoted to the post of Assistant Research officer only w.e.f. this date. Hence, they cannot be given seniority w.e.f. 1.1.96. We are unable to accept this argument. The principles enunciated by the Hon'ble Supreme Court of India in the case of **The Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra, [ Reported in JT 1990 (2) SC 264] and [1990 (2) SLJ 40 (SC)]** can be reproduced herebelow:-

"11.5 (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

[The corollary of the above rule is that where initial appointment is only adhoc and not according to rules and made as a stop gap arrangement, the officiation in



such post cannot be taken into account for considering the seniority.]

- (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post, uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.
- (C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.
- (D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.
- (E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.
- (F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.
- (G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

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- (H) If the quota rule is prescribed by an executive instructions, and is not followed continuously for a number of years, the inference is that the executive instructions has ceased to remain operative.
- (I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.
- (J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinized for finding out any possible error. It is not in the interest of service to unsettle a settled position.

12. The case of the applicants in the present O.A. is squarely covered by criterion 'B' of para 11.5 of the aforesaid decision of the Hon'ble Apex Court which clearly states that "If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted". In view of this settled position of law, the applicant will be entitled to notional seniority along with others similarly placed w.e.f. 1.1.96 only and not from any other date.

13. As regards the 2<sup>nd</sup> point raised by the applicants, we find that R&P Rules provide for 8 years of actual experience in the cadre of Assistant Research Officer in

Group 'B' cadre before an incumbent in that cadre becomes eligible for promotion to the post of Dy. Director (M&C). The experience of 8 years, as stipulated in the aforesaid rules means the "actual" experience of 8 years and not "notional" in the cadre of Assistant Research Officer, thus, have to put in an actual/physical experience of 8 years of service in that cadre i.e. (Group 'B'). In this case, even if the applicant are given notional seniority w.e.f. 1.1.96, they have not completed actual /physical experience of service of 8 years in the grade of Assistant Research officer. Their actual date of promotion, according to Rule is 20.2.2002. But even if we take into account the findings of this Tribunal vide their order dated 8.9.2004 in O.A. 239 of 2003, they are allowed Group B status only w.e.f. 23.7.2001. As such they have not gained the actual/physical experience of 8 years in the cadre of Assistant Research Officer. Their actual experience of service in that cadre will work out to slightly over 5 years only. They will not, therefore, be eligible for promotion to the post of Deputy Director (in Gr. A) on a substantive/regular basis. The O.A. is accordingly partly allowed on the limited question of granting notional seniority of the applicants in the cadre of Assistant Research officer w.e.f. 1.1.96. The respondents are accordingly directed to allow the applicants as well as other similarly placed



persons a notional seniority w.e.f. 1.1.96 in the cadre of Assistant Research Officer. This will be purely on a notional basis. The applicants will not be eligible for regular/substantive promotion to the post of Dy. Director as they fall short of actual experience of 8 years on the post of Assistant Research Officer, as discussed above.

14. In consequence, the O.A. is partly allowed to the extent indicated above. No costs.

  
Member (J)

8-2-07

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Member (A)