

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 175/87
T.A. No.

198

DATE OF DECISION 24-4-91

Shri R.H.Dani PetitionerApplicant in person Advocate for the Petitioner(s)

Versus

Union of India & Ors. RespondentMr. P.M.Pradhan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

U.C.Srivastava
(U.C.Srivastava)
Vice-Chairman

(15)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Original Application No. 175/87

Shri R.H. Dani .. Applicant
V/s.

Union of India & Ors. .. Respondents

CORAM: Hon'ble Vice-Chairman, Shri U.C. Srivastava
Hon'ble Member (A) Shri M.Y. Priolkar.

Appearances:

Applicant in person and
Mr. P.M. Pradhan, Advocate
for the respondents.

JUDGEMENT:

Dated: 24-4-1991

(Per Shri U.C. Srivastava, Vice Chairman.)

The applicant who, at the time of filing of this application, was Scientist D, Institute of Armament Technology, Girinagar, Pune, (for short Institute) feeling aggrieved by his non-promotion and thereby supersession by juniors has approached this Tribunal praying for issue of direction to the Respondent No.2 viz. Scientific Advisor to the Ministry of Defence and Director General, Defence Research and Development Organisation, Ministry of Defence, Sena Bhavan, New Delhi, to amend/modify the orders dated 26th November 1984, 4th July 1986 and 22nd January 1987 passed by Respondent No.2 viz. Scientific Advisor on the recommendation of the Respondent No.3 viz. Director, Recruitment and Assessment Centre, Defence Research & Development Organisation, Ministry of Defence in not promoting the applicant. The first order is with reference to the postponement of the Board of 1984 before which the applicant had offered himself for promotion which was not held till in the year 1985. Amendments in the statutory rules were not made

when constitution of the selecting body and certain procedure in the matter of selection was changed. In the selection process of the year 1985-86 the applicant was not selected but the persons who appeared before the other Board were selected and secured more marks than the applicant who was not sent to the Board with reference to which he gave his choice because of his speciality on the ground that the programme has been finalised and his request for speciality had been received some three weeks before the selection. During the pendency of this application the applicant has attained the age of superannuation with the result that now no actual promotion apart from nominal promotion which may bring some financial benefits can be granted to him in case he succeeds in the instant case.

2. The applicant has been working as Scientist - D since the year 1980 in the Institute which admittedly has the charter of imparting advanced training in armament technology to the officers of military and civilian officers of the Defence Ministry. Some of its courses are recognised by the University of Pune for award of post-graduate degree in engineering. The applicant who is a recognised post-graduate teacher of the University of Pune has been teaching Generalised Instrumentation and Armament Instrumentation to the post-graduate courses of the Institute and had published a number of publications.

3. The next higher grade of promotion is Scientist-E which promotion is made in accordance with the statutory rules known as Defence Research and Development Service Rules 1978 framed under Article 309 of the Constitution of India. Rule 8(2)(d) provides that promotions are to be

made on the recommendations of the assessment board and on the basis of interview and annual confidential reports and rule 8(2)(a) provides that the board shall be convened at least once a year or at such intervals as prescribed by the Director General. In the year 1984 although the vacancy was there and the board was to meet in the year 1984, yet the board was not called in that year and according to the applicant he has got very good ACRs and if the Board had been called in that year, he in all eventualities would have got promotion. The respondents have stated that the Union Public Service Commission could not convene the assessment board in the year 1984 in time and in the meantime Government took a policy decision that the recruitment and assessment of scientists and technologists for the Defence Research and Development Organisation would be taken out from the purview of the UPSC from the month of June 1985 and consequently amendments in this behalf had been made in the statutory rule referred to above. The respondents have thus nowhere denied that it was at the instance of Director General that in the year 1984 the Board did not meet but according to them the delay was caused because of the UPSC. In the meantime in the year 1985 rules were amended and the recruitment was taken out of the purview of the Union Public Service Commission and the Board of 1984 met only in the month of August 1985 when the amendment had already come into effect. The applicant had attributed certain malafides and delay in postponement on the Respondent No.3 who himself was a candidate for being considered for promotion to Scientist-E by the assessment board and

in view of the change in the Rules, he got an opportunity of naming the experts who were to sit in the Board. Under the new rules the number of experts is restricted to two and the assessment board may be formed as a whole or establishmentwise and the assessment board can only be formed subjectwise. In 1985 and 1986 the applicant could not succeed and persons who were junior to him in both the selections were selected. The applicant's further grievance in this behalf is that he was not placed before the Armament Board although in fact he belonged to the field nor was he given opportunity to appear for this board. In the year 1986 when the applicant again applied, his prayer was not granted which according to the respondents was due to the fact that the programme had been finalised. The applicant was asked to face the Physics Board, while those who succeeded got boards of their choice. In the year 1985 Dr. Narasimhan was the Chairman of the Board which declared the applicant's failure. For the examination of 1986 which took place only three months thereafter again Dr. Narasimhan was there who has previously rejected him.

4. It is true that the applicant when he had indicated his choice for Armament Board he should have been placed before the Armament Board. Even if the programme was finalised there was no difficulty in calling one more candidate before the Armament Board. There is no denial of the fact that the approach of every board and way of its marking and assessment cannot be the same as the approach and appreciation of the members of the board

could always be different. One Board can be more lenient and the other can be more strict and on this depends the award of the marks. The justification which has been given by the respondents for not accepting the prayer of the applicant who was not appraised in the first selection of 1985 for another board in 1986 is not convincing. This prayer could have been accepted and the denial of the same cannot be obviously said to be very fair. But nothing can now turn on this. The main question is as to whether the Board of 1984 was wrongly postponed and in case it was so whether the applicant without facing the board can even now be promoted. Under the rules the board necessarily should have been called every year and in the year 1984 the Board ought to have been called. The Director did not suggest that the Board may not be called in the year but because of the delay on the part of the Union Public Service Commission for some reason or other, the applicant obviously could not have been made to suffer and it can be that it is because of the delay he had to suffer. The policy decision and amendment which were made in the year 1985 should not have been the reason for postponing the selection in the year 1984. Promotional vacancy obviously existed in the year 1984 and the applicant was entitled to be considered in accordance with the rules as were prevalent in the year 1984. The amendment so made obviously excluded the Union Public Service Commission to be a participant in the interview and the process of nominating the experts and having more than one board thus made a substantial difference in the selection process. Reference in this connection will be made to the case of Y.V. Ramaiah V. J. Sreenivasa Rao

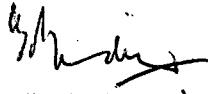
1983(3) SC 385 wherein it was observed that the vacancy which occurred prior to the amended rule will be governed by the old rule and not by the amended rule.

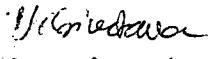
In the case of P. Ganeshwar Rao and Ors. v. State of Andhra Pradesh & Ors 1988 (Supp) SCC 740 and the case of A.A. Calton V. Director of Education & Anr. 1983(3) SCC 33 also similar view was taken. The Supreme again in N.T. Devin Katti V. Karnataka Public Service Commission & Ors. 1990 (1) SCALE 659 observed:

"It is a well accepted principle of construction that a statutory rule or Government Order is expressly or by necessary implication made to have retrospective effect. Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and Government Orders and any amendment of the rules or the Government Orders pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended rules or the amended Government orders issued in exercise of its statutory power either by express provisions or by necessary intendment indicate that amended Rules shall be applicable to the pending selections".

5. The amended rules particularly Rule 81 and clause (e) of sub-rule (2) of rule 8 obviously were prospective in effect and consequently the selection process of the applicant undoubtedly was of the rules of 1984. But this was not done and the applicant was made to wait for the next selection in which the process was changed. The applicant subsequently faced the other interviews and after his

failure when he was made to face the other boards and the amendment has come into force that the applicant has approached the Tribunal. But the relief as claimed by him cannot be granted not only because of the time factor but also because he has attained the age of superannuation. However, in view of the fact that justice has not been done to him the only thing that can be done is for the Government itself to reconsider the matter in proper perspective and consider his case in the light of rules of 1984 and if they find that he was entitled to the promotion in that year the Government can even now grant him a notional promotion and in case the Government decides to do the same this can be done expeditiously say within four months of receipt of this order. The applicant also challenges the validity of the amendment and we are afraid that it is not open for him to challenge the said amendment and that too by means of this application which was filed a few years after the said amendment. The amendments were made in exercise of the powers of the Article 309 of the Constitution of India and the legislature is fully competent to amend the Rules. But for the above observations regarding consideration of applicants case and grant of notional promotion the application is otherwise dismissed with no order as to costs.


(M.Y.Priolkar)
Member(A)


(U.C.Srivastava)
Vice-Chairman