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CAT/8/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~
NEW BOMBAY BENCH

~~Q.A.N.~~
T.A. No. 88/86

198

DATE OF DECISION 8.3.1989

S.G.Wadekar Petitioner

Mr.V.G.Rege Advocate for the Petitioner(s)

Versus

Union of India & twenty five Ors. Respondent

Mr.J.D.Desai for Respondents Advocate for the Respondent(s)
No.1 to 3

CORAM :

The Hon'ble Mr. M.B.Mujumdar, Member(J)

The Hon'ble Mr. P.S.Chaudhuri, 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? Yes
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

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr.88/86

S.G.Wadekar,
82 F,
Opp.Railway Station,
Lonawala - 410 401.

.. Applicant

vs.

1. Union of India
2. The Chief of Naval Staff
Naval Headquarters,
New Delhi.
3. The Headquarter,
Western Naval Command,
Bombay
and 23 Others

.. Respondents

Coram: Hon'ble Member(J)Shri M.B.Mujumdar

Hon'ble Member(A)Shri P.S.Chaudhuri

Appearances:

1. Mr.V.G.Rege
Advocate for the
Applicant.
2. Mr.J.D.Desai
Advocate for the
Respondents No.1 to3.

ORAL JUDGMENT
(Per M.B.Mujumdar, Member(J))

Date:8.3.1989

Shri S.G.Wadekar had filed Writ Petition No.629/84 in the High Court of Judicature at Bombay on 2.2.1984 and it is transferred to this Tribunal under Section 29 of the Administrative Tribunals Act.

2. The relevant facts for the purpose of this judgment are these: The applicant is a Science graduate. He was appointed as Demonstrator/Laboratory Assistant with the Naval College of Engineering, INS Shivaji at Lonavala on 12th October,1959. As no promotional avenues were available to a Laboratory Assistant the applicant went on making representations. Ultimately on 27.5.1970 the Chief of Naval Staff(Respondent No.2) prepared and sent draft recruitment/promotion rules for Class III Scientific Staff along with his letter dtd. 27th May,1970. It is mentioned in the letter that the rules would be published in the Gazette of India after

approval by the Government. However, in the letter instruction was given for filling up the vacancies in the grade of Senior Scientific Assistant and Junior Scientific Assistant Gr.I in accordance with these rules. It was pointed out that the posts of Demonstrator/Laboratory Assistant and Laboratory Assistant were sanctioned in INS Shivaji and Dockyard Apprentice School/Naval Aircraft Inspection Service, Cochin and that whenever a vacancy of Junior Scientific Assistant Grade I was to be filled intimation thereof should be sent to the above Establishments for forwarding names and other particulars of eligible candidates. At the end of the letter it is directed that after scrutiny the eligible candidates would be called for oral departmental examination and the names of the successful candidates would be considered by a Class III DPC and a panel for promotion would be prepared accordingly. These draft rules were notified in the Govt. Gazette in or about August, 1975. It may be noted that there are some modifications of the draft rules in the final rules so far as qualification for promotees to the post of Junior Scientific Asstt.Gr.I are concerned.

3. On knowing that certain posts of Junior Scientific Asstt.Gr.I were to be filled up the applicant submitted his first representation on 8.7.1972. As no reply was received to that representation he submitted second representation dtd. 10.10.1973. Thereafter, on 9.2.1980 and 17.9.1982 he submitted further representations. On 24.10.1983 the Chief of the Naval Staff circulated seniority rolls in the grade of Senior Scientific Assistant, Junior Scientific Assistant Gr.I and Laboratory Assistant/Demonstrator for information of all the persons concerned. The seniority roll of Sr.Scientific Asstt. shows that one Shri KPS Patnaik, B.Sc., was appointed as Laboratory Asstt. on 15.9.1969 and he was promoted as Jr.Scientific Asstt.Gr.I probably on officiating basis on 25.9.1972 and made permanent in that

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post on 25.9.1974. He was promoted as Sr.Scientific Asstt. on 13.7.1977. The seniority roll of Jr.Scientific Asstt. shows that one Shri M.Umamaheswara Rao, M.Sc. was directly appointed as Jr.Scientific Asstt. on 22.9.1977. 11 persons below him were also **directly** appointed as Jr.Scientific Asstt. between 1977 to July,1981. The applicant was promoted as Jr.Scientific Asstt. on officiating basis on 15.7.1982.

4. It is contended by the applicant and it appears to be true from the record that ~~the applicant~~^{he} was the seniormost Laboratory Asstt. in the service.

5. The recruitment rules provide that promotion to the post of Jr.Scientific Asstt. should be by promotion failing which by direct recruitment. Still the applicant was promoted only on 15.7.1982 after about 12 persons were directly appointed as Jr.Scientific Asstt. In January,1985 he was promoted as Sr.Scientific Asstt. on adhoc basis. He has retired from that post on 30.6.1985 i.e. more than 1 year and 4 months after the writ petition was filed by him in the High Court.

6. In the Writ Petition the applicant has prayed for cancelling the seniority rolls of Senior Scientific Asstt. and Jr.Scientific Asstt.Gr.I published on 24.10.1983 and for promoting him to the post of Jr.Scientific Asstt. Gr.I w.e.f. 25.9.1972, i.e. the date on which the first vacancy arose after the draft rules were circulated and for further promotion to the post of Sr.Scientific Asstt.

7. Respondents No.1 to 3 have resisted the petition by filing the affidavit of Commodore VG Honnavar, Chief Staff Officer(P&A) Headquarters, Western Naval Command, Bombay. Respondents No.4 to 26 are the persons who were likely to be affected by the decision on the Writ Petition. But they have neither appeared before us nor filed any reply.

8. We have heard Mr.V.G.Rege, the learned advocate for the applicant and Mr.J.D.Desai for Mr. M.I.Sethna, the learned advocate for respondents No.1 to 3. We have also gone through the relevant records carefully.

9. The main grievance of the applicant is that though both the draft and final recruitment rules provided that the promotion to the post of Jr.Scientific Asstt. Gr.I should be by promotion and failing which by direct recruitment, the respondents have filled up these posts only by direct recruitment till he was promoted in 1982. We find substance in this submission. The draft as well as the final recruitment rules provide that promotion to both the posts of Jr.Scientific Asstt. and Sr.Scientific Asstt. should be by promotion failing which by direct recruitment. In the draft rules, the same educational and other qualifications were prescribed for both direct recruits and promotees for the post of Jr.Scientific Asstt. and these were M.Sc. or Degree in Engineering OR B.Sc. or Diploma in Engineering with 2 years' experience. However, in the final recruitment rules of 1975 no educational and other qualifications were prescribed for promotees. In any case, the applicant fulfilled these qualifications and that is why he was promoted in 1982. In his letter dtd. 12.11.1975 the Chief of the Naval Staff had pointed out that the posts of Jr.Scientific Asstt.Gr.I were to be filled up 100% by promotion from Demonstrators or Laboratory Assistants with 3 years service in the grade, subject to qualifying in a departmental oral examination. He has pointed out the same position in his letter dtd. 13th March,1979 by reiterating that the question of resorting to direct recruitment would arise only if the promotion method fails. Admittedly Demonstrators and Laboratory Assistants were available for filling up the post of Jr.Scientific Asstt.Gr.I in 1972 but for want of proper instructions the posts were filled up by direct recruits upto the applicant's promotion on 15.7.1982, as can be seen from the seniority roll

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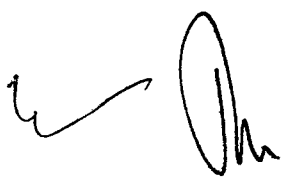
of Jr.Scientific Asstt. circulated along with letter dtd. 24.10.1983. We do not find any justification for this either in the rules or in the reply filed on behalf of respondents no.1 to 3.

10. As already pointed out Shri KPS Patnaik was appointed as Laboratory Asstt. on 15.9.1969, i.e. about 10 years after the applicant was appointed as Laboratory Asstt. But he (Patnaik) was promoted as Jr.Scientific Asstt.Gr.I on 25.9.1972 i.e. about 10 years before the applicant was promoted to such a post. The recruitment/promotion rules stipulate that the post of Jr.Scientific Asstt.Gr.I is a non-selection post. Hence the applicant should have been promoted at the latest on the same date. Therefore we hold that the applicant also deserves to be promoted from the same date i.e. 25.9.1972, as Jr.Scientific Asstt.Gr.I.

11. The applicant was promoted as Sr.Scientific Asstt. in January, 1985. On the contrary his junior Shri KPS Patnaik was promoted as Sr.Scientific Asstt. on 13.7.1977. No doubt the recruitment/promotion rules stipulate that the post of Sr.Scientific Asstt. is a selection post. But as the applicant was promoted to that post in January 1985 he could not have been unsuitable for that post in 1977. Of course as it is a selection post the DPC should have recommended his name for promotion to that post but to direct the respondents to hold a special DPC for considering the case of the applicant alone as in 1977 is bound to cause serious difficulties to the respondents. Hence we propose to direct that the applicant should be promoted as Sr.Scientific Asstt. with effect from 13.7.1977, i.e. the date on which his junior Patnaik was promoted. As we desire that the promotions already made should not be disturbed we feel it necessary to direct that the respondents may create supernumerary posts for accommodating the applicant on the above mentioned dates.

12. Mr.J.D.Desai, the learned advocate for respondents No.1 to 3, mainly urged two points before us. First, according to him, the application suffers from delay and laches. But as already pointed out the applicant was representing right from 1972 and even the respondents had recommended his promotion. In fact it was the delay on the part of the respondents which came in the way of the promotion of the applicant from the appropriate dates. The applicant has filed the Writ Petition in February, 1984 i.e. within less than 4 months from the date on which the seniority rolls of Sr.Scientific Asstt. and Jr.Scientific Asstt. were published. These seniority rolls were on all-India basis and it is only after going through the seniority rolls that the applicant ^{could} ~~can~~ come to know about his seniority and hence we hold that the Writ Petition does not suffer from delay and laches. Secondly, Mr.J.D.Desai submitted that the applicant should not be given his arrears as he has not worked in the higher post. We are not inclined to accept this submission because it was due to the fault of the respondents that the applicant was not promoted from appropriate dates. Hence we reject this submission also.

13. In the result, we pass the following order:-
- (i) Respondents No.1 to 3 are directed to promote the applicant as Jr.Scientific Asstt. Gr.I with effect from 25.9.1972 and as Sr.Scientific Asstt. with effect from 13.7.1977. The respondents No.1 to 3 shall, if necessary, create supernumerary post(s) for accommodating the applicant in the above posts.
- (ii) Respondents No.1 to 3 shall pay arrears on the above basis and in appropriate scales of pay to the applicant. The arrears shall be paid



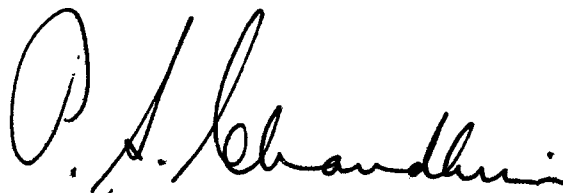
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to the applicant within 4 months from the date of receipt of a copy of this order.

(iii) Respondents No.1 to 3 shall also fix the pension and retirement benefits due to the applicant on the above basis and pay arrears to him within 4 months from the date of receipt of a copy of this order;

(iv) Tr.Application No.88/86(Writ Petition No.629/84) is disposed of on the above lines with no order as to costs.


(P.S.CHAUDHURI)
Member(A)


(M.B.MUJUMDAR)
Member(J)

M.P.No. 896/89
for necessary orders.
fixed on 6/12/89

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23/11/89