

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 432/89

Transfer Application No:

DATE OF DECISION: 29.9.1994

Shri M.K.Sundrani

Petitioner

Advocate for the Petitioners

Versus

Union of India &

Respondent

Shri A.I.Bhatkar.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S.Hegde, Member(J),

The Hon'ble Shri M.R.Kolhatkar, Member(A).

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No. 432/89.

Shri M.K.Sundrani.

.... Applicant.

V/s.

Union of India.

.... Respondent.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearance:-

Applicant present in Person.
Respondents by Shri A.I.Bhatkar.

JUDGMENT :-

(Per Shri M.R.Kolhatkar, Member(A)) Dt. 29.9.1994.

In this Original Application under section 19 of the Administrative Tribunals Act, the applicant challenges his non-promotion in the Defence Research and Development Organisation under the relevant rules from 1986 onwards. The applicant was working as Scientist 'C' in the pay scale of Rs.3000-4500 and he was denied promotion to the post of Scientist 'D' in the pay scale of Rs.3700-5000. The applicant is M.E. in Civil Engineering plus a Diploma in Business Management. The applicant states that he fulfills essential educational qualifications. He also has a good record of service. However, since 1986 when after 5 years of service he became eligible to be considered for promotion to the post of Scientist 'D' although he was called for interview he was not promoted; on the other hand, several Officers who did not even possess essential educational qualifications were considered for promotion by relaxation of qualifications. The applicant has sought several reliefs, some of which are quite general in nature, but the relevant relief with reference to which we have heard the application

is in para 8(k) which is reproduced below:

"To promote the applicant with retrospective effect or at least from the date, Assessment Board 1988 results are applicable (against which this application is made) considering his date of passing Degree in Engineering, long service, seniority, varied experience, higher qualifications, other qualities, performance in job assigned, last 3 ACRs of 1986-88 and to provide justice by rectifying the irregularity done in promoting less qualified persons and for redressal of grievance."

2. The claim of the applicant has been resisted by the Respondents on several grounds. Firstly, it is contended that the application is time barred. Secondly, it is contended that it suffers from the vice of non-joinder of necessary parties. Thirdly, it is stated that the applicant has not exhausted all the remedies open to him. Fourthly, it is contended that the applicant suffers from the vice of plural remedies. On merits, it is contended that the applicant is governed by the D.R.D.S. Rules, 1979. Prior to the coming into force of D.R.D.S. Rules, in the Defence Science Service there was no restriction of qualification for promotion to the post of SSO-I corresponding to Scientist 'C' to the post of Principal Scientific Officer corresponding to Scientist 'D'. Hence a one-time relaxation in educational qualifications be allowed & simultaneously a proposal was initiated in 1981 to constitute a separate service for less qualified Officers for erstwhile DSS, but as this did not materialise, in order to avoid stagnation of such Officers, Government decided in 1986 that till such time as separate service is constituted, such Officers would be assessed for promotion in D.R.D.S. in relaxation of Rules. It is in this context that Officers not possession essential

educational qualifications were considered for promotion).

3. So far as the applicant is concerned, he was considered in terms of Rules, but he could not be promoted on the basis of his assessment. It is also clarified that the system of assessment followed in DRDO is different from conventional system of DPC. eligible In DRDO all individuals (without any restriction like zone of consideration etc.) are considered for promotion on the basis of their record subject to relaxation in educational qualification allowed by the Competent Authority to a class of persons. In this connection, the Respondents have referred to the Judgment of CAT, Madras Bench in OA No.546/88 in the case of Shri P.L.Satya Narayanan V/s. Union of India of which the relevant extract is as below:

"The process of interview (in DRDO) is unique in the sense that it is totally different from the normal interview held for the purpose of recruitment. The object of the interview here is for the purpose of assessing the candidate's work as given in the ACRs and as prepared by him. Each Scientist, who is to be interviewed by the Assessment Board has to submit six copies of the proforma duly filled up, which contains their record of service, field of specialisation, training course attended, awards and other recognition received and list of publications/reports/patents. Besides, a brief report of the work carried out/scientific achievement in the present grade is also to be submitted. There is the specific provision for the conduct of the so called interview even in absentia, from which it is clear that what is contemplated is not an interview in its literal sense, of a formal meeting with, and questioning of, the Scientist."

4. In his rejoinder, the applicant has raised a point that the power to relax the rules is to be invoked only in rare and exceptional cases and only

in consultation with the concerned Ministries and in particular after consultation with the UPSC. According to him, therefore, so long as it is not shown that the relaxation is ~~not~~ made validly, the promotions made by the Respondents in relaxation of educational qualifications must be held to be invalid.

5. The Respondents have stated that the DRDO has been exempted from requirement of prior consultation in 1984 with the UPSC and Department of Personnel and that the approval of Minister of State for Defence has been obtained for relaxation of educational qualifications prescribed in DRDS Rules for promotion upto the level of Sc. 'F' of the affected scientists to whom protection has been accorded during the formation of DRDS, till such time the case for formation of DRIS for them is approved by the Fourth Pay Commission. In this connection, copies of orders dt. 28.1.1986 incorporating approval of the Minister of State for Defence for relaxation has been produced by the Respondents. The contention of the applicant at this stage is that relaxation, if any, given by the Minister of State for Defence has not been published and therefore it is not valid. Secondly, relaxation can be given only in respect of desirable qualifications and not in respect of essential qualifications. Thirdly, the applicant relies on certain case law, especially the decision of the Bombay Bench in T.A. No.521/86 Shri O.P.Gupta's case and decision of New Delhi Bench in Dwivedi's case on certain points. In our view, the case cited by the applicant are not relevant to the main issue arising for determination in the present OA viz. whether the non-promotion of the applicant ^{under} DRDS Rules, 1979 was illegal. The contention of the applicant that the relaxation can be given only of desirable qualification has also

no statutory basis. The relaxation clause also does not envisage that the fact of relaxation under this rule is to be notified/published.

6. As per our direction, the Respondents have also produced the photo copies of the record relating to the Assessment Board for the period from 1984 to 89 plus the ACR file, which we have perused. It is not in dispute that the applicant was actually promoted in 1991 and the main contention of the applicant and the main relief sought by the applicant is to be promoted from 1988 onwards on the ground that some less educationally qualified persons have been promoted.

7. On the basis of the available material we have no hesitation in holding that the applicant was considered for promotion under the rules on the basis of his record. The applicant has no right to promotion, he has only the right to be considered for promotion. There is no illegality attaching to the promotion of less educationally qualified employees who were promoted on the basis of relaxation clause and after considering their record. In any case, their promotion did not in any way stand in the way of the applicant of being considered on the strength of his record for promotion. The yardstick of performance in DRDS are specific to the R & D cadre and no fault can be found with the Rules. The Judgment of the CAT, Madras Bench referred to by us has already made ~~some~~ observations on the same. We therefore, dispose of this OA by passing

the following order:

O R D E R

The Original Application is dismissed as
being devoid of merit. No order as to
costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.S.Hegde

(B.S.HEGDE)
MEMBER (J).

B.