

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.167/01

Date of Decision: 30.9.2004

A.U. Kokani.

Applicant

Shri R.G. Walia .

Advocate for Applicant/s

Versus

Union of India & Ors .

Respondents


Shri V.S. Masurkar. Advocate for Respondents

CORAM

HON'BLE SHRI A.K. AGARWAL.  
HON'BLE SHRI MUZAFFAR HUSAIN

VICE CHAIRMAN  
MEMBER (J)

1. To be referred to the Report or not x
2. Whether it needs to be circulated to other Benches of the Tribunal? x
3. Library. ✓

  
(MUZAFFAR HUSAIN)  
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 167/01

THIS THE 30<sup>th</sup> DAY OF SEPTEMBER, 2004

CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN  
HON'BLE SHRI MUZAFFAR HUSAIN .. MEMBER (J)

Arun U. Kokani,  
an adult, Indian Inhabitant  
of Mumbai, Occupation: Service  
residing at 1/35/4660, New Tilak  
Nagar, Chembur, Mumbai-400 089. ... Applicant

By Advocate Shri G.S. Walia.

Versus

1. The Secretary,  
Government of India,  
Mantralaya of Information &  
Technology, Mantralaya,  
Mumbai-400 032.
2. The Director General,  
S.T.Q.C. Directorate,  
Electronics Niketan, 6000  
Complex, Lodi Road,  
New Delhi-110 003.
3. The Director, S.R.T.L. (W),  
Andheri (East), Mumbai,  
Plot No.F-718 M.I.D.C.,  
Opp. Seepz, Andheri (East),  
Mumbai-400 093.
4. Shri Makarand V. Deshpande,  
an adult, Indian inhabitant,  
Occupation Service, residing  
at S.R.T.L. (W), Andheri (East),  
Plot No.F-718, M.I.D.G.,  
Opp. SEEPZ, Andheri (East),  
Mumbai-400 93. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R  
Hon'ble Shri Muzaffar Husain. Member (J)

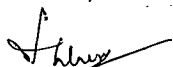
The applicant in this OA is aggrieved by  
non-promotion to the post of Scientist-C though his  
juniors have been promoted. He has sought for the  
following relief:



...2.

- a) The Hon'ble Tribunal be pleased to direct the opponents to give applicant next higher promotion as "Scientist-C" immediately w.e.f. 01.01.2000 with all the benefits.
- b) The Hon'ble Tribunal will direct the opponents to consider the case of applicant for his promotion as Scientist-C from his category from which opponent No.4 has been promoted.
- c) The Hon'ble Tribunal will direct the Opponents to give an opportunity to the applicant by calling him for departmental promotion by considering his merits and seniority.
- d) The Hon'ble Tribunal will direct the Opponent not to damage the seniority of the applicant at the time of giving the promotion.
- e) Any other reliefs as this Hon'ble Tribunal may deem fit and proper and necessary in the interest of justice.

2. The facts leading to filing of this OA are as follows: The applicant was appointed as Scientific Assistant 'A' in the E.R.T.L. (West) Andheri, Mumbai on 17.4.1986. He worked on probation period upto 17.4.1987 and was confirmed as such on 01.4.1988. He was appointed as Scientific Assistant-B from 25.7.1989 and was promoted as Scientific Officer-B with effect from 01.10.1993 and from 01.01.1997 he was promoted as Scientist/Engineer 'SC' and his designation has been changed as Scientist-B with effect from 08.12.1998. He completed four years continuously on the post of Scientist-B. His service record is crystal clear no chargesheet, memo nor even the oral warning given to the applicant, but he has not been promoted to the next higher post of Scientist-C. The applicant personally requested the respondents to consider his case for



promotion, but no reply has been received. The letter containing select list is put on the notice board on 20.01.2001. After going through the contents of said notice, the applicant found that Respondent No.4 has been promoted to the grade of Scientist-C, whereas Respondents 3 and 4 are juniors to him and the applicant has not been promoted. The act of the respondents is illegal, malafide and deserves to be rejected. The applicant approached the respondents vide letter dated 29.1.2001 which was received by the respondents on the same date but the applicant has not received any positive reply to that letter. It is also stated that though he is eligible for promotion to the post of Scientist-C from 01.01.2000, he has not been given the promotion. The applicant has worked for continuously for more than four years in the post and he is senior most from his category, hence this OA.

3. The respondents filed reply stating that the applicant was appointed as Scientific Assistant-A in E.R.T.L. from 17.4.1986 and confirmed on 01.4.1988. He was promoted as Scientific Assistant-B with effect from 25.7.1989 and Scientific Officer-B with effect from 01.10.1993 and promoted as Scientist/Engineer 'SC' with effect from 01.01.1997 and the designation was changed to Scientist-B in pursuance of Ministry of Personnel & Training OM dated 09.11.1998. The applicant has completed four years in grade of Scientist-B on



<sup>31.12</sup>  
2000. They have also stated that subsequent to the recommendation of pay commission, Ministry of Personnel has reviewed the Flexible Complementary Scheme prevailing in Scientific Departments and an order was issued vide OM dated 09.11.1998 making applicable exclusively for the persons having the qualification mentioned therein. Prior to this, the Scientific Officers Technical Officers having graduation in Engineering / diploma in Engineering / Certificate in ITI were reviewed through the personal policy framed by the then Department of Electronics. The promotion policy for officials having Diploma in Engineering / ITI certificate is under formulation with the Government. The applicant having Diploma in Engineer as per modified FCS, does not fulfil the essential qualification criteria, hence he was not considered for promotion. Respondent No.4 referred by applicant in his OA is graduate engineer and was considered for promotion as per revised promotion policy. Under FCS vacancies are automatically created to the extent necessary in the higher grade and the post vacated in the lower grade are abolished simultaneously. Therefore, seniority is no matter in the Flexible Complementary Scheme except that all the officers, have requisite qualification are considered for promotion under FCS after completing minimum residency period required for the next higher grade. It is further stated that the letter dated 29.01.2001 submitted by the applicant was replied on 15.02.2001.

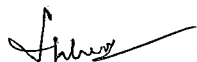
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4. We have heard learned counsel for the applicant as well as respondents and perused the material placed on record.

5. Learned counsel for the applicant contended that the applicant is working with the respondent, he has been promoted as Scientist-B with effect from 01.01.1997 and has been working as Scientist-B since then, but no further promotion till this date. The Respondent NO.4 who is junior to him has been promoted. He worked continuously for four years, <sup>with</sup> his clean record, seniority has not been considered. Principles of natural justice have not been followed. No opportunity has been given to him. Till this date there is no reply to his letter dated 29.01.2001. His promotion has been denied. Learned counsel for the respondent on the other hand contended that the applicant being Diploma in Engineering is not eligible for consideration for promotion in accordance with Ministry of Personnel & Training OM dated 09.11.1998. The respondent No.4 is graduate engineer and was considered for promotion. He was adjudged by duly constituted screening / selection committee and was promoted on his merit. The applicant and Respondent No.4 were considered on equal footing until modification of FCS by the Ministry of Personnel & Training vide their OM dated 09.11.1998. As per that OM



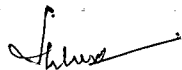
...6.

the applicant was found not fulfilling the required educational criteria, hence, not considered for promotion. Principles of natural justice was strictly observed. The statement of the applicant that his letter dated 29.01.2001 was not replied is not correct. His letter was replied on 15.02.2001.

6. Learned counsel for the applicant has also relied upon the Apex Court decision in the case of P. Mohan Reddy Vs. Charles & Others 2001 (1) SCSLJ 250 wherein it was held -

"Seniority - Amendment in Rules - An employee cannot claim to have a vested right to have a particular position in any grade - But he has the right of his seniority being determined in accordance with the Rules which remained in force at the time when he was borne in the cadre - The question of re-determination of seniority in the cadre on the basis of amended criteria or rules would arise only when the amendment in question is given retrospective effect - Where retrospectivity of the rule is assailed before the Court and the Court upheld the retrospectivity of the rule then the seniority would be redrawn up in accordance with the amended provisions of the employees who are still in the cadre by the date and not those who have already got promotion to some other cadre by that date."

7. The short question for consideration in this case is that whether the applicant is entitled for promotion on the basis of the seniority or educational qualification as per FCS. In this case, it is not disputed that the applicant was promoted as Scientist / Engineer 'SC' in grade Rs.2200-4000 with effect from



...7.

01.01.1997. The designation of post of Scientist/Engineer was changed to Scientist-B in pursuance of OM dated 09.11.1998. It is also not disputed that the applicant has completed four years service in grade of Scientist-B on 31.12.2000. the case of the applicant is that though he is eligible for promotion as Scientist-C as he has completed four years service on 01.01.2000, but he has not been given promotion. Whereas the applicant has worked continuously for four years and his junior Respondent No.4 has been promoted. The stand of the respondents is that the applicant was not considered for promotion since he was not fulfilling the educational qualification criteria applicable for higher grade as per OM dated 09.11.1998. Since he possesses the qualification of Diploma in Engineering is not eligible for consideration for promotion under FCS. The OM has been placed on record as Annexure A1 to the written statement which makes applicable the scheme exclusively for the persons having qualification mentioned below:

- a) who possess academic qualification of at least Master's Degree in Natural / Agricultural Sciences or Bachelor's Degree in Engineering / Technology / medicine, and
- b) Working in those capacities, use or create Scientific knowledge and Engineering and Technological principles, i.e. persons with Scientific or Technological Training who are engaged in professional work on S & T activities, high level administrators and personnel who plan, direct or coordinate the execution of S & T activities."

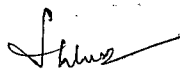
8. Learned counsel for the applicant contended

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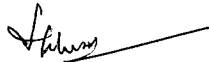


that the Ministry of Personnel & Training has not reviewed the FCS prevailing in Scientific departments. He has further contended that as per OM dated 09.11.1998 the FCS which cannot be applicable where criteria is specified vide OM dated 09.11.1998 are not fulfilled. Learned counsel for the respondents refuted the contention and submitted that the Notification dated 09.11.1998 made applicable to all Scientific and Technological Group-A gazetted post serving in various scientific departments, now known as Ministry of Information & Technology governed by recruitment rules / instructions, copy of the same is available at Exhibit-I. It is very clear from the provision contained in para 3 (b) that of G.S.R. "No person other than a person possessing the educational qualification of atleast a Master's Degree in Natural / Agricultural Sciences or a Bachelor's Degree in Engineering or Technology or Medicine, shall be eligible for in situ promotion under the Flexible Complementing Scheme". Thus, it appears that Department Electronics now known as Information & Technology is also recognised as Scientific and Technology department to continue with the FCS with Group-A. Scientific & Technological employees vide DOPT Notification dated 09.11.1998 (GSR 660 (E)) referred on Swmysnews March 1999 at Sl. No.54. Thus, it appears that the applicant was not having the requisite qualification prescribed by OM dated 09.11.1998 which has reviewed FCS available in Scientific Departments. Promotions according to FCS

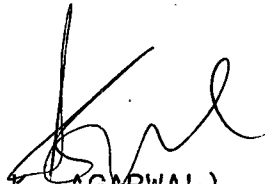


were made according to educational qualification and were not based on seniority, hence promotion of Respondent No.4 was in order and applicant has no right to make his grievance against him. So far as the representation of applicant dated 29.01.2000 is concerned, it is seen that it has been replied by the respondents vide letter dated 26.6.2001 Exhibit R2.

9. Thus, the applicant had not made out any case for our interference. The OA being devoid of merit, fails and dismissed accordingly. No order as to costs.



(MUZAFFAR HUSAIN)  
MEMBER (J)



(A.K. AGARWAL)  
VICE CHAIRMAN

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