

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE.

Dated the 17th day of March, 1987.

PRESENT

HON'BLE SHRI CH. RAMAKRISHNA RAO MEMBER(J)

AND

HON'BLE SHRI P. SRINIVASAN .. MEMBER(A)

APPLICATION NO. 497 OF 1986 (T)

R.P.Joshi S/o P.K.Joshi,
33 years, Senior Scientific Assistant,
Gas Turbine Research Establishment,
Bangalore ..

Applicant

(Shri M.Narayana Swamy, Advocate)

-vs.-

1. The Union of India
by its Secretary,
Ministry of Defence,
South Block,
New Delhi-110 011.
2. The Scientific Adviser to
the Raksha Mantri, South-
Block, New Delhi-110 011.
3. The Director,
Gas Turbine Research Establishment,
Suranjan Das Road,
Jeevan Bimanagar post,
Bangalore-560 075.

Respondents
(contd...)

4. Sri R.C.Mishra, Major,
Director Grade-II,
Gas Turbine Research Esta-
blishment, Suranjan Das Road,
Bangalore-560 075.
5. Sri N.C.Sasmal, Major,
Scientist "E",
Gas Turbine Research Establish-
ment, Suranjan Das Road,
Bangalore-560 075
6. Sri Issac Natta, Major,
Junior Scientific Officer,
D.R.D.L., Hyderabad.
7. Sri Subodh Joshi, Major,
Junior Scientific Officer,
Agri.Research Unit,
Almora, U.P.
8. Sri D.C.Gupta, Major,
Scientific Officer,
D.E.S.I. DOC, Met Calf House,
DELHI -110 054.
9. Sri K.V.S.Panduranga Rao,
Major, Jr.Scientific Officer,
DLRL, Hyderabad.
10. Sri S.K.Gupta, Major,
Junior Scientific Officer,
D.M.R.L., Hyderabad.
11. Sri R.R.Arjungi, Major,
Junior Scientific Officer,
G.T.R.E. Bangalore-75.
12. Sri K.Gangadhar Rao, Major,
Junior Scientific Officer,
G.T.R.E. Bangalore-75
13. Sri V.Muri Swamy, Major,
Junior Scientific Officer
A.D.E. Bangalore-75
14. Sri P.K.Mallick, Major,
Jr.Scientific Officer,
A.D.E. Bangalore-75.

Respondents
(contd...)

15. Sri Jaderudraiah, Major,
Jr. Scientific Officer,
ADE, Bangalore-75.
16. Sri C. Sanmugam, Major,
Jr. Scientific Officer
G.T.R.E. Bangalore-75
17. Sri A.N. Narasimhan, Major,
Junior Scientific Officer,
A.D.E. Bangalore-75
18. Sri S. Sri Ramu, Major,
Jr. Scientific Officer,
GTRE, Bangalore-75
19. Sri S.N. Chatarjee, ~~Major~~ .. Deleted by Order
dt. 1-9-1986.
20. Sri S.K. Bhatia, Major,
Jr. Scientific Officer,
RPDE (E), Pune.
21. Sri C. Guru Murthy, Major,
Junior Scientific Officer,
C.V.R.D.E., Madras. .. Respondents.

(Shri M. Vasudeva Rao, Addl. Central Govt. Standing
Counsel for respondents 1 to 3).

The application coming on for hearing
this day, Hon'ble Shri P. SRINIVASAN, MEMBER,
made the following:

ORDER

This application is originated as Writ
Petition No. 8304 of 1985 filed before the High
Court of Karnataka, before it was transferred to
this Tribunal under Section 29 of the Administra-
tive Tribunals Act, 1985.

P.S. - 8

2. The

above that of JSO. As a consequence thereof, separate rules were framed for recruitment and promotion to posts of JSOs. These Rules were called "The Defence Research Development Organisation (Junior Scientific Officer Recruitment) Rules, 1980" (DRDO Rules). The DRDO Rules, did not, in so many words, say that promotion to the post of JSO were to be made only subject-wise. Shri M. ^{however} Narayana Swamy ~~had~~ pointed out ~~further~~ that there was nothing in the DRDO Rules to say that the earlier rules of subject-wise promotion had been repealed or cancelled. On the other hand, in the Annexures to the DRDO Rules, setting out various requirements before promotion could be effected, column 12 dealing with the constitution of DPC for such promotion envisaged that two experts of appropriate rank in the required discipline nominated by the Director General (Research and Development) should be included in the said Committee. According to Sri Narayana Swamy, this requirement clearly indicated that promotions to JSO were still ^{to} be made subject-wise. The Director General (Research and Development), New Delhi, in his letter dated 20-7-1979 (Annexure-W) addressed to the Director, L.R.D.E., Bangalore, had stated that the concept of SP subjects had been

P. S. - V.C.

dis-

dated 20-7-1979 (Annexure-W), whose competence was challenged by the applicant, Shri Vasudev Rao stated that the respondents 1 to 3 had given up the practice of subject-wise promotion to the post of JSO from 1980. He argued that the Scientific Adviser to the Defence Ministry was competent to alter the basis of promotion; therefore the procedure adopted in effecting promotion to the post of JSO by the DPC held in August, 1984 based on a combined seniority list in all the subjects taken together, was perfectly valid and that therefore this application should be dismissed.

5. We have considered the rival contentions very carefully. It is common ground that before 1980, promotions to the posts of JSOs were being made subject-wise and the relevant rules on the subject framed in pursuance of Article 309 of the Constitution appearing at pages 37 and 38 clearly envisage that there would be no inter-subject transfer or promotion. The dispute is mainly as to whether this position which prevailed prior to 1980 had been changed and whether the change so made had the force of law. As we have stated earlier, Shri Narayana Swamy points out that the only evidence of such a change having been brought about appears in Annexure-W i.e., the letter dated 20-7-1979 issued from the office of the Director General,

P. L. K.

Research

Research and Development, New Delhi. The executive authority, according to Shri Narayana Swamy, cannot change the position as it prevailed in the statutory rules. Shri Vasudev Rao contends that the authority was competent to do this. It is also clear that the DRDO Rules do not say one way or the other i.e., whether promotions should be made subject-wise or across subjects. This being so, we have only to examine the legal status of the letter dated 20-7-1979 (Annexure-W). We are clearly of the view, and in this we agree with Shri Narayana Swamy, that the Executive Authority cannot alter a position which prevails according to Statutory Rules notified under Article 309 of the Constitution. An executive authority may only fill up gaps left in the Rules and provide for situations not covered by the Rules, but he cannot alter what is set out in the Rules. As we have stated earlier, the Rules of 1967 clearly contemplated subject-wise promotions. If the authorities thought that it would make for better working to change the basis of promotion laid down in the said Rules, they should have amended the Rules and notified the amended Rules under Article 309 of the Constitution. That has not been done. We are not deciding whether it is better to have subject-wise promotion or otherwise, since that is not within our province. But we are quite clear that the Rules of 1967 contemplate

P. S. V. R.

only

only subject-wise promotion and the DRDO Rules notified in 1980 have not, in terms, repealed this provision. On the other hand, the DRDO Rules can be read consistently with the subject-wise rule of promotion. The impugned letter dated 20-7-1979 (Annexure-W) cannot have the effect of amending the subject-wise rule of promotion notified under Article 309 of the Constitution.

6. In the circumstances, we allow this application and direct the respondents 1 to 3 to re-do the process of promotion completed in August 1984, in accordance with the Rule of subject-wise promotion, as expeditiously as possible. The order effecting promotion on the basis of the recommendation of the DPC which met on the 17th and 18th August, 1984 appearing at Annexures 'S' and 'U' are quashed. However, till the fresh process of promotion in accordance with the Rule of subject-wise promotion is completed, persons already been promoted as JSOs need not be disturbed.

Indravati
17.3.87
MEMBER(J)

P. S. S. 17/3/87
MEMBER(A)

discarded for promotion to posts of JSOs. This was a simple letter by one authority to another and it cannot operate to alter statutory rules notified under Article 309 of the Constitution, which clearly contemplated such subject-wise promotion. In view of this, Shri Narayana Swamy contended, the promotions that had been recommended by the DPC held in August, 1984 should be struck down as invalid because the procedure followed was to consider persons from the feeder cadres viz., Senior Scientific Assistant, Foreman and Chief Draftsman included in a combined seniority list covering all the subjects. According to the applicant, this procedure was not only against the Rules, but it had affected him adversely. The applicant was a Senior Scientific Assistant allotted to Flight Science, which was one of the serrated subjects and if he had been considered for promotion in the order of seniority along with other persons in the feeder cadres working in the same subject, to posts of JSOs in Flight Science, his chances would have been better.

4. Shri M. Vasudev Rao, learned Counsel for respondents 1 to 3, strongly disputed the contentions of Shri Narayanaswamy. Relying on the letter



dated

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 11-6-87

REVIEW APPLICATION NO. 38/87
IN APPLICATION NO. 497/86(T)

Applicant

U.O.I. by Secy, M/o Defence & 2 Ors v/s Shri R.P. Joshi & 17 Ors

To

1. The Secretary
Ministry of Defence
South Block
New Delhi - 110 001
2. The Scientific Adviser
to Raksha Mantri
South Block
New Delhi - 110 011
3. The Director
Gas Turbine Research Establishment
Suranjanadas Road
Jeevan Bhimnagar Post
Bangalore - 560 075
4. Shri M. Vasudeva Rao
Addl Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001
5. Shri R.P. Joshi
Senior Scientific Officer
G.T.R.E.
Suranjanadas Road
Bangalore - 560 075
6. Shri R.C. Mishra
Director Grade - II
G.T.R.E.
Suranjanadas Road
Bangalore - 560 075
7. Shri N.C. Sasmal
Scientist 'E'
G.T.R.E.
Suranjanadas Road
Bangalore - 560 075
8. Shri Isaac Natta
Junior Scientific Officer
D.R.D.L.
Hyderabad
9. Shri Subodh Joshi
Junior Scientific Officer
Agricultural Research Unit
Almora, Uttar Pradesh
10. Shri D.C. Gupta
Scientific Officer
D.E.S.I. DOC,
Met Calf House
Delhi - 110 054
11. Shri K.V.S. Panduranga Rao
Junior Scientific Officer
D.L.R.L.
Hyderabad
12. Shri S.K. Gupta
Junior Scientific Officer
D.M.R.L.
Hyderabad

Ch. 1
File No. 497/86

13. Shri R.R. Arjungi
Junior Scientific Officer
G.T.R.E.
Bangalore - 560 075

14. Shri K. Gangadhar Rao
Junior Scientific Officer
G.T.R.E.
Suranjanadas Road
Bangalore - 560 075

15. Shri V. Muri Swamy
Junior Scientific Officer
A.D.E.
Bangalore - 560 075

16. Shri P.K. Mallick
Junior Scientific Officer
A.D.E.
Bangalore - 560 075

17. Shri Jaderudraiah
Junior Scientific Officer
A.D.E.
Bangalore - 560 075

18. Shri C. Sanmugam
Junior Scientific Officer
G.T.R.E.
Suranjanadas Road
Bangalore - 560 075

19. Shri A.N. Narasimhan
Junior Scientific Officer
A.D.E.
Bangalore - 560 075

20. Shri S. Sri Ramu
Junior Scientific Officer
G.T.R.E.
Suranjanadas Road
Bangalore - 560 075

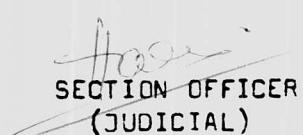
21. Shri S.K. Bhatia
Junior Scientific Officer
RPDE(E), Pune

22. Shri C. Guru Murthy
Junior Scientific Officer
C.V.R.D.E.
Madras

* * * *

SUBJECT : SENDING COPIES OF ORDER PASSED BY THE BENCH IN
REVIEW APPLICATION NO. 38/87

Please find enclosed herewith the copy of the Order passed by this Tribunal
in the above said Application on 2-6-87.


SECTION OFFICER
(JUDICIAL)

Encl : As above

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE SECOND DAY OF JUNE, 1987

Present : Hon'ble Justice Shri K.S. Puttaswamy

... Vice-Chairman

Hon'ble Shri P. Srinivasan

.. Member (A)

REVIEW APPLICATION NO. 38/87

Union of India by
its Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 011.

The Scientific Adviser,
to Raksha Mantri,
South Block,
New Delhi - 110 011.

The Director,
Gas Turbine Research Establishment,
Suranjandas Road,
Jeevan Bimanagar Post,
Bangalore-560 075.

... Applicants

(Shri M. Vasudeva Rao ... Advocate)

V.

R.P. Joshi,
S.S.O.,
G.T.R.E.,
Bangalore.

R.C. Mishra,
Director Grade II,
G.T.R.E.,
Suranjandas Road,
Bangalore-75.

Issac Natta, N.C.Sasmal, Scientist E,
Junior Scientific Officer,
D.F.D.L. Hyderabad.

Subodh Joshi,
Junior Scientific Officer,
Agri. Research Unit,
Almora (U.P.)

D.C. Gupta,
Scientific Officer,
D.E.S.I. Doc,
Met Calf House,
New Delhi-110 054.

K.V.S. Panduranga Rao,
Jr. Scientific Officer,
DLRL, Hyderabad.



S.K. Gipta,
Junior Scientific Officer,
D.M.P.L. Hyderabad.

R.R. Arjungi,
Junior Scientific Officer,
G.T.R.E., Bangalore-75.

K. Gangadhar Rao,
Junior Scientific Officer,
G.T.R.E.,
Bangalore-75.

V. Muri Swamy,
Junior Scientific Officer,
A.D.E.,
Bangalore-75.

P.K. Mallick, Jr. Scientific Officer,
A.D.E., Bangalore.

Jaderudraish,
Junior Scientific Officer,
A.D.E.,
Bangalore-75.

C. Sanmugam,
Jr. Scientific Officer,
G.T.R.E.,
Bangalore-75.

A. N. Narasimhan,
Junior Scientific Officer,
A.D.E.,
Bangalore-75.

S. Sri Ramu,
Junior Scientific Officer,
G.T.R.E.,
Bangalore-75.

S.K. Batia,
Jr. Scientific Officer,
RPDE (E),
Pune.

C. Guru Murthy,
Jr. Scientific Officer,
C.V.R.B.E.,
Madras.

... Respondents.

This Review Application came up before this Tribunal
today, for admission. Hon'ble Vice-Chairman made the following:

O R D E R

In this application made under Section 22(3)(f) of the Adminis-
trative Tribunals Act, 1985 (the Act) the applicants have sought
for a review of an order made on 17th March 1987 in A No.497/1986 by a

Division Bench of this Tribunal consisting of one of us
Shri P. Srinivasan, (AM) and Shri Ch. Ramakrishna Rao (JM).

2. The applicants in this review application were Respondents 1 to 3 and Respondent No.1 herein was the applicant in A No.497/86 which was a transferred application received from the High Court of Karnataka.

3. In Application No.497/86 Respondent 1 had challenged his non-promotion and promotion of others arrayed as respondents No.4 to 21 to the post of Junior Scientific Officer (JSO) principally on the ground that The Defence Research and Development Organisation (Junior Scientific Officers) Recruitment Rules 1980 (DRDO Rules) had not altered the position for making promotion prior to their promulgation. On an examination of the same, this Tribunal speaking through one of us Sri P. Srinivasan (AM) had expressed its view and had granted relief to Respondent No.1 as indicated in its order.

4. In this review application, the applicants are asking us to reexamine that very view and take a different view. We will assume, that the view canvassed by the applicants for the various reasons urged by them before us is also the better view. But then also, that will not constitute an apparent error to justify us to review the earlier order made by this Tribunal as if we are a court of appeal. From this it follows that this application for review cannot be admitted. We, therefore, reject this application for review without waiting for service of notices in pursuance of the earlier order on 22.4.1987.

True Copy -

[Signature]
SECTION OFFICER 1116
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Sd/- *[Signature]* Sd/- *[Signature]*
VICE CHAIRMAN *[Signature]* MEMBER (A) *[Signature]*