

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 13/14TH OCTOBER, 1986

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

Vice-Chairman

Hon'ble Mr L.H.A. Rego

Member(A)

Application Nos. 140 to 142 of 1986

1. S.Kalyanam,
Scientific Asst.'B'
Indian Space Research Organisation,
SRIHARIKOTA
Nellore District(AP) (Applicant in A.No.
140/86)
2. Jagannathan,
Technical Assistant 'C',
Indian Space Research Organisation,
SRIHARIKOTA
Nellore District(AP) (Applicant in A.No.
141/86)
3. P.Anandakrishnan,
Technical Assistant 'B',
Indian Space Research Organisation,
SRIHARIKOTA
Nellore District(AP) (Applicant in A.No.
142/86)

(Shri K.H.Jagadish ... Advocate)

Vs.

1. Indian Space Research Organisation,
I.S.R.O. Head quarters,
'F' Block, Cauvery Bhavan,
District Office Road,
Bangalore-560 009
by its Chairman (Respondent common to
all 3 applicants)
2. Gerold Moses Oliver,
Scientific Asst 'C',
Indian Space Research Organisation,
SRIHARIKOTA,
Nellore District(AP) (Respondent 2
in A.No.
140/86)
3. K.V.S.Sharma,
Scientific Assistant 'C',
Indian Space Research Organisation,
SRIHARIKOTA,
Nellore District(AP) (Respondent 3
in A.No.
140/86)
4. S. Rama Rao,
Scientific Asst.'C',
Indian Space Research Organisation,
SRIHARIKOTA, Nellore District(AP) (Respondent 4
in A.No.
140/86)

5. G.K.Mani,
Engineer S.B.,
Indian Space Research Organisation,
SRIHARIKOTA,
Nellore District, A.P. (Respondent 2 in
A.No. 141/86)
6. P.Nageshwar Rao,
Technical Asst. 'C',
I.S.R.O. SRIHARIKOTA,
Nellore District, A.P. (Respondent 2 in
A.No. 142/86)
7. S.P.Muthu Pandiyan,
Technical Asst. 'C',
I.S.R.O., SRIHARIKOTA,
Nellore District (AP) (Respondent 3 in
A.No. 142/86)

(Shri M.S.Padmarajaiah, Advocate)

The application has come up for hearing before
Court today, Vice-Chairman made the following:

O R D E R

As the questions that arise for determination in
these cases are either common or inter-connected, we
propose to dispose of them by a common order.

2. These are transferred applications received from
the High Court of Karnataka under Section 29 of the
Administrative Tribunals Act of 1985 ('the Act').
3. An organisation known as the Indian Space Research
Organisation(ISRO) is established by the Government of
India for undertaking research and development in the
field of Space, Science and Technology. The ISRO has
naturally employed a large complement of scientific
and technical personnel to achieve the objects of this
establishment. Ever since the establishment of the ISRO
recruitment and conditions of service of scientific and
technical personnel in different grades were regulated

executive orders made by Government from time to time.

4. Evidently on an in depth study of the requirements of ISRO, Government in Office Memorandum No. HQ.ADMN 4/20(3) dated 12-12-1975(Exhibit-A) made detailed ^{for} and elaborate provisions/regulating recruitment and conditions of service of its scientific and technical personnel at different levels from 1-1-1976. On a further examination, Government issued Office Memorandum No. HQ:ADMN:4.20(3) dated 26-8-1976 (Exhibit-B) supplementing the earlier provisions made on 12-12-1975. On the basis of the provisions made by Government in its orders on 12-12-1975 and 26-8-1976 (Exhibits A and B) the competent authorities of ISRO have made various orders from time to time allowing fitments or promotions to various scientific and technical personnel working in ISRO. On 30-9-1977 the applicants presented Writ Petitions Nos. 9956, 9957 and 9958 of 1977 before the High Court challenging the two orders of Government and the consequent orders made thereunder by ISRO to be hereafter referred to as such or the respondent, granting fitments and promotions to others, who are arrayed as respondents 2 to 4 in Writ Petition No. 9956 of 1977, respondent no. 2 in Writ Petition No. 9957/77 and respondents 2 and 3 in Writ Petition No. 9958 of 1977 on diverse grounds.

5. We will first notice the service particulars of the applicants.

6. S. Kalyanam, the applicant in application no. 140/86 with a B.Sc I Class joined ISRO on 3-1-1976 as a Scientific Assistant 'B'.

7. Sriyuths Jagannathan and P.Anandakrishnan applicants in application nos. 141 and 142 of 1986 respectively with the qualification of a Diploma in Mechanical Engineering (LME) joined service as Technical Assistants 'B' on 12-6-1972 and 15-11-1974 respectively.

8. The applicants claim that they have been illegally and unjustly denied the fitments or promotions allowed to others who were working in lower grades as on 12-12-1975 and 1-1-1976 in contravention of Articles 14 and 16 of the Constitution.

9. The ISRO arrayed as respondent No. 1 in all these cases has filed separate but identical statement of objections before the High Court of Karnataka setting out the circumstances that led to the orders made by Government as also the various orders made by it in favour of others. The ISRO has denied that the orders made by Government or by it were illegal and contravene Articles 14 and 16 of the Constitution.

10. All other respondents who have been duly served have remained absent and are unrepresented.

11. We will first examine the challenge to the orders made by Government.

12. Shri K.H.Jagadish, learned counsel for the applicants, strenuously contends that the two orders made by Government in truth and substance conferring unjustified and improper benefits on service personnel holding posts lower to the posts held by the applicants or treating their posts as equivalent to the posts held by the applicants, were irrational, arbitrary and were violative of Article 14 of the Constitution. In support of his contention, Sri Jagadish strongly relies on the rulings of the Supreme Court in E.P.Royappa Vs. State of Tamilnadu (AIR 1974 SC 555); Smt. Maneka Gandhi Vs. Union of India and another (AIR 1978 SC 597) and AJAY HASIA VS. Khalid Mujib Sehravardi (1981)SCC 722.

13. Shri M.S.Padmarajaiah, learned Senior Standing counsel for the Central Government appearing for the respondent refuting the contention of Shri Jagadish, contends that the orders made by Government, had laid down uniform and intelligible norms for reorganising the service structure of the scientific and technical personnel of the Department which on principle and authority, was not irrational, arbitrary and was not violative of Article 14 of the Constitution of India.

14. In order to appreciate the rival contentions urged we consider it necessary to set out the material parts of the two orders. In the Memorandum dated 12.12.1975, Government had stated thus:

"1. An Office Memorandum has issued separately bearing No. HQ:ADMN:4.20(2) dated 1st December, 1975 covering certain matters relating to the principles and procedures to be followed by the ISRO

Centres regarding norms, recruitment, review, promotion, designation and classification of posts, etc., in respect of administrative staff in ISRO. Some of these aspects in so far as the Scientific and Technical staff in ISRO are concerned have been gone into and the following orders issued.

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2.1 In order to remove all ambiguities arising from the usage of different appellations to denote different categories of staff, all staff in ISRO in future will be categorised either as (i) Scientific and Technical, or (ii) Administrative, only, and not otherwise. The categories of staff who will be treated as (a) Scientific and Technical and (b) Administrative, will be as listed out in paragraph 5 of the O.M.No. HQ:ADMN:4.20(2) dated 1st December 1975.

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9. Norms:

9.1 The norms for recruitment of Scientific and Technical personnel will stand revised as indicated in Tables I and II attached to this O.M. These norms will be given effect to with effect from 1st of January 1976 and will have no retrospective effect. They will be referred to as "New Norms".

9.2 The reference to Degree or Diploma in the norms will be treated as First Class or equivalent.

9.3 The existing staff will not be normalised with reference to these new norms. However, the following procedure will be adopted in respect of the existing staff in the categories indicated below. This is in relaxation of para 5.6; however in all future cases para 5.6 will apply strictly.

9.3.1 Diploma holders/B.Sc.s. in the grade of SA(A)/TA(A) will be automatically promoted to SA(B)/TA(B) grade at the minimum of the scale or at the stage in the new grade which will protect their pay in the existing grade. Their next review to SA(C)/TA(C) grade will be at the end of a period of three years inclusive of the period that they might have spent in SA(A)/TA(A) grade.

9.3.2 Diploma holders/B.Sc.s. who are in the grades of SA(B)/TA(B), SA(C)/TA(C) or SB will be assessed by interview for placement in the grade to which they would be eligible according to the new norms and regularised as follows:

- (a) If they are considered fit for promotion to any higher grade they will be placed at the minimum of the appropriate grade as recommended by the Committee or at the stage in that grade which will protect their pay in their existing grades. Their subsequent review for a higher grade will be on the basis indicated in para 10 below.

- (b) In the case of those who are not considered fit for promotion to any higher grade, their subsequent review will also be on the bases indicated in para 10 below, taking into account also the period of service they have already put in, in their existing grade, but not in any earlier grade.
- (c) In the case of those who do not satisfy the requirements as per new norms for a higher grade on the effective date of these orders, i.e. 1st January 1976, they will be regularised as indicated in (a) and (b) above with effect from the date on which they satisfy the requirements of the new norms.
- (d) Those who possess more than the required number of years of experience for the immediate higher grade but fall short of the number of years required for the next higher grade will be assessed by interview for the immediate higher grade. If found fit and promoted their subsequent review will also be as per para 10 below, but the question whether the additional number of years of experience than what is required for the grade to which they are regularised can be given any credit for the subsequent review will also be decided specifically by the interview committee.

9.3.3 M.Sc.s in the grade SA(B)/TA(B) will be automatically placed in SA(C)/TA(C) and B.E./B.Tech/B.Sc.(Engineering) in the grade SA(C)/TA(C) will be placed in SB grade at the minimum of the scale or at a stage in the new grade which will protect their pay in their earlier grades. Their eligibility for the subsequent review to SC grade will be after three years inclusive of the period of service in SA(B)/TA(B) and SA(C)/TA(C) in the case of M.Sc. and in the grade of SA(C)/TA(C) and SB in the case of a B.E./B.Tech./B.Sc (Engineering).

9.3.4 In the case of Ph.Ds, who are in the grade of SC, they will be placed in the SD grade at the minimum of the scale or at the stage in the SD grade which will protect their pay in the earlier grade. Their subsequent review will be on completion of 4 years inclusive of their service in SC grade.

9.3.5 In respect of DERE (Diploma in Electronics and Radio Engineering) candidates working in Ahmedabad, orders already communicated in ISRO Headquarters Office Order No. HQ:ADMN:4.4. dated 3rd July 1975 will be followed upto 31-12-1975 and the staff already in position would be reviewed thereafter with reference to the revised norms as given in Table I.

10. Review:

The period for normal review of all Scientific and Technical staff will with immediate effect be:

All levels upto SC	-	3 years
From SC to SD, SC to SE and SE to SF levels	-	4 years

The normal review beyond SF will be only after five years. The rule set out in para 5.6 will apply for all reviews hereafter.

11. Changes in norms, if any, in respect of categories not covered by para 9.1 and Tables I and II will issue separately."

that
In the memorandum dated 26 August 1976, clarified the
memorandum dated 12 December 1975 Government has stated thus:

"Reference is invited to Office Memorandum bearing No. HQ.Admn4.20(3) dt. 12th Dec., '75 relating to the principles and procedures to be followed by ISRO Centres regarding norms, recruitment, reviews etc., in respect of Scientific/Technical Staff in ISRO. Clarifications on some of the points arising out of the above office memorandum are given below.

2. PERIOD OF REVIEW

2.1 According to para 9.3.3 of office memorandum dated 12th Dec. '75 Engineering Graduates i.e. B.E/B.Tech/B.Sc. (Engg) in SA(C)/TA(C) grade will be placed in SB grade at the minimum of the scale or at a stage in the new grade which will protect their pay in their earlier grades. Their next review to SC grade will be after 3 years inclusive of the period of service in SA(C)/TA(C) grade. The norms existing prior to issue of the above mentioned office memorandum are no longer applicable and even for the existing personnel, the new norms have to be followed with effect from 1.1.1976.

2.2 Review of the existing personnel in various grades will be conducted only as per procedure laid down in para 10 of office memorandum dated 12th Dec 1975.

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7. COUNTING OF EXPERIENCE FOR REGULARISING THE EXISTING STAFF

Para 9.3 of Office Memorandum dated 12th Dec. 1975 specifies that the existing staff will not be normalised with reference to the new norms, but the procedure laid down in para 9.3.1 to 9.3.5 will be adopted in respect of the existing staff in the categories indicated therein. This was in relaxation of para 5.6 of the above office memorandum where it is laid down that a candidate having qualification and or experience higher than those prescribed and advertised and where he is recruited will be eligible for his next review only after the prescribed number of years and not earlier. It is also laid down in para 9.3 of the office memorandum that in all future cases, para 5.6 will apply strictly.

For the purpose of regularising the existing staff after assessment by interview according to their eligibility as per new norms, only experience in ISRO will be taken into account. However filling up of vacancies in the affected grades during the next 12 months should first be attempted from within the organisation in which case candidates possessing the required number of years of experience including experience outside ISRO will be eligible to appear for selection.

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9. The degree/Diploma holders in SA(A)/TA(A) grade will be automatically promoted to SA(B)/TA(B) grade as per para 9.3.1 of the office memorandum without consideration of the class/division obtained. Review will be based on performance of the individual and not with reference to the division/class obtained in their Degree/Diploma.

10. The stipulation regarding first class or equivalent in para 9.2 of the office memorandum will apply only to the personnel recruited after 1st January 1976.

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15 REVIEW

Para 10 of Office memorandum dt. 12th Dec. 1975 is amended to read as follows:

"The period for normal review of all scientific and technical staff will with immediate effect be"

All levels upto SC	-	3 years
SC to SD, SD to SE &)	-	4 years
SE to SF		

Notwithstanding the above, on the recommendation of the director of the centre concerned, or chairman ISRO in the case of ISRO HQ. Staff in exceptional cases of Scientific and Technical Officers with outstanding performance, the review may be conducted earlier than the normal review period prescribed in para 10 and promotions made before the normal period. Each case will be referred to the ISRO Council for the detailed review and for taking a considerate view regarding the date of promotion. In no case the promotion will be prior to the date of review by the ISRO Council. In respect of Scientific and Technical officers upto and including SD grade, Directors of Centres are authorised to finally decide such exceptional cases subject to a report being submitted by them to the ISRO Council."

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A close and careful examination of the two orders in particular the portions set out in extenso, show that Government had re-organised the service structure of scientific and technical personnel of ISRO from 1.1.1976. From 1.1.1976 Government had stipulated new norms or principles for direct recruitment and

promotions to those working as on that day. In its second order, Government provided certain concessions to personnel working as on 1-1-1976 or made provisions for their fitments into the new grades. Both sides do not dispute that the new norms are at considerable variance with the norms that existed as on 31-12-75, for direct recruitment and promotions in the ISRO.

15. Prior to 1-1-1976 the recruitment and conditions of service of scientific and technical personnel were not regulated either by law made by Parliament or Rules made by the President of India under the proviso to Article 309 of the Constitution and were only regulated by orders made by Government in exercise of its executive powers only. When that was so, Government was competent to regulate the direct recruitments, promotions and fitments in exercise of its executive powers under Article 73 of the Constitution corresponding to Article 162 of the Constitution (vide Nagarajan Vs. State of Mysore A.I.R. 1966 SC 1942.)

16. Whether a department of Government should be reorganised or restructured and if so in what manner the same should be reorganised or restructured is a matter essentially for Government to decide and regulate. This is more true in the case of a scientific department of Government like the ISRO. The reorganisation or restructuring of a Government department necessarily impinges on or calls for restructuring the posts existing or newly created and fitment of the service personnel working as on the date of such reorganisation of that Department of Government. The fitment of service personnel as on the date of reorganisation is a concomitant of the reorganisation of the Department and cannot be normally

avoided at all. If that is so, Government cannot avoid to stipulate norms or principles for such fitments also.

17. What should be the norms or principles for fitment is also essentially for Government to examine and decide. The Courts and Tribunals are ill-equipped to decide on the norms and their details that too in case of a highly scientific and technical department of Government like the ISRO. A Court or a Tribunal cannot examine them as an Appellate Court and reach a different conclusion on all or any of them. The one and the only area that is open to a Court or a Tribunal to examine in such matters is their constitutionality and legality and not their aptness or their wisdom on which there can be more than one view also. We are firmly of the view that the aptness and wisdom of the norms cannot be examined by us. We are also of the view that these conclusions of ours is supported by what is expressed by Eliot Kaplan in his classic treatise 'Law of Civil Service'. On the powers of Courts to review such matters, the learned author at para 6 on pages 120 & 121 of Chapter VI - 'Powers and Functions of personnel agencies' referring to various rulings of American Courts had expressed thus:

"6. Judicial Review of Duties Classification - Review of classification of positions based on determination by the personnel agency of the duties, functions and responsibilities of a position has been limited. The very nature of the function of the personnel agency in determining the title of a position, its allocation to a class, and assignment to a proper salary grade, inherently involves exercise of judgment and discretion to such a degree that the courts have found it difficult, if not well nigh impossible, to weigh the validity of the determination of a personnel agency with respect thereto. The courts have been extremely wary of encroaching on the authority vested peculiarly in the personnel agency in the field of position classification. The courts have wisely refrained from substituting their wisdom or the judgment of the individual judge for that of the agency ostensibly experienced and possessing special knowledge and skill in the administrative practice. While the courts have hesitated in reviewing the determination of the personnel agency in this area of administration of the civil service laws, they have, however, on occasion set aside the determination where it appeared to the court that there was no reasonable or plausible basis for the agency's determination. It has been only in the clearest cases of invalidity that the courts have upset the action of the personnel agency."

We are of the view that this correctly represents the legal position and we are in respectful agreement with the same. With these postulates, we now proceed to examine the challenge of the applicants based on Articles 14 and 16 of the Constitution.

18. The true scope and ambit of Article 14 of the Constitution has been explained by the Supreme Court in a large number of cases. In AIR 1958 Supreme Court 538 (RAMAKRISHNA DALMIA VS. JUSTICE TENDULKAR) and Re: SPECIAL COURTS BILLS CASE (AIR 1979 SC 478) the Supreme Court reviewing all the earlier cases had re-stated the true scope and ambit of Article 14 of the Constitution. The new dimension of Article 14 of the Constitution viz., arbitrariness was the very antithesis of rule of law enshrined in Article 14 of the Constitution evolved by the Supreme Court in E.P. ROYAPPA's case has been elaborated in MANEKA GANDHI and AJAY HASIA'S cases. Article 16 of the Constitution which guarantees equality of opportunity in public service is a facet of Article 14 of the Constitution and therefore the principles that govern that Article equally govern Article 16 are concluded by the Supreme Court. Bearing the principles enunciated in all these cases, we propose to examine the challenge of the applicants based on Articles 14 and 16 of the Constitution.

19. The new norms for fitment of all in-service personnel working as on 1-1-1976 operate uniformly. All the in-service personnel who form a class by themselves are treated alike, within that class itself, no one has been chosen either for a favourable or hostile and discriminatory treatment. We

cannot on principle or authority condemn the orders and the norms stipulated therein as offending Article 14 of the Constitution. With this we must now examine whether the orders and norms violate the new dimension of Article 14 of the Constitution.

20. We must remind ourselves that on the new norms there can be more than one opinion. We will even assume that the applicants or this Tribunal would have evolved a better or more satisfactory norms than the one evolved by Government. But, that without an iota of doubt will not make the norms evolved by Government as arbitrary, irrational and unconscionable.

21. We have very carefully read and analysed the norms stipulated by Government in its orders and every one of the elaborate criticisms made by Shri Jagadish on every one of them.

22. Even after giving our very earnest and anxious consideration to every one of the norms and the criticisms mounted on every one of them by Shri Jagadish, we are clearly of the view that none of them suffer from irrationality and arbitrariness. We must not also forget that the norms have been evolved with due regard to the requirements of the Department. We are of the view that a casual or a careful analysis of them does not lead us to hold that they are irrational and arbitrary as to attract the vice of the new dimension of Article 14 of the Constitution.

23. On the foregoing discussion, we see no merit in the challenge of the applicants to the two orders of Government based on Article 14 of the Constitution and we reject the same.

24. With this we now pass on to examine the individual grievances of the applicants in their order.

APPLICATION NO. 140/1986

25-1 We have set out the service particulars of this applicant (Vide: Para 6).

25-2 At the hearing Shri Jagadish highlighted the grievance of the applicant against Gerald Moses Oliver who is respondent - 2 in Application No. 140 of 1986. We will therefore deal with his case only.

25-3. Respondent-2 who is a B.Sc. II Class joined service in ISRO on 17-1-1974 as SA(A) in the timescale of pay of Rs. 425-700. From 1-1-1976 the post held by respondent-2 has been treated as SA(B) which post the applicant held ever since he joined service. On and from 1-4-1977 respondent-2 has been promoted as SA(C).

25-4 We have earlier upheld the validity of the two orders of Government and the provisions contained therein for their fitment. When the provisions for fitments are held to be valid, the actual fitments of those working as on 1-1-1976 with due regard to their qualifications and other relevant factors must necessarily be held to be valid.

25-5 The fact that the applicant was a B.Sc. I Class and was working as SA(B) and that respondent no. 2 was a B.Sc II class and was working as SA(A) are not sufficient to hold that the fitment of the latter suffers from the vice of Article 14 or any other illegality.

25-6 The promotion of respondent-2 from 1-4-77 as SA(C)

is an independent and separate act by itself. The same was done on a consideration of his suitability. We cannot therefore, condemn the same either on principle or authority.

25-7 On the foregoing discussion, it follows that the individual challenge of the applicant in A.No. 140 of 1986 against the fitment and promotion of respondent-2 calls for our rejection. We, therefore, reject the same.

APPLICATIONS NOS. 141 & 142/1986.

26-1 We have earlier set out the service particulars of these applicants.

26-2 S.P. Muthu Pandiyan respondent-3 in A.No. 142/86 with qualification of LME II Class joined service on 6-1-1974, as TA(A) in the timescale of pay of Rs. 425-700. From 1-1-1976 this respondent has been fitted as TA(B). He has been promoted as TA(C) from 1-10-1976.

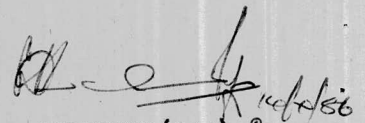
26-3 Every one of the grounds urged in A.140 of 1986 against respondent-2 in that case were urged against the fitment and promotion of respondent-3 in these cases also. We are of the view that the very reasons on which we have rejected them equally hold good for rejecting the challenge of the applicants in these cases also against respondent-3. We, therefore reject the challenge of the applicants in these cases also.

27. All the applicants and the other respondents have been promoted from time to time with some differences in dates. For 10 years or even more, the different arrangements made by ISRO in the case of its different service personnel have

stood by without any disruption or hitch. When that is so, we are of the view that the same should not be disturbed at this belated stage on any technical or procedural violations assuming there are any such.

28. On the foregoing discussion, we hold that all these applications are liable to be dismissed. We, therefore dismiss these applications. But, in the circumstances of the cases, we direct the parties to bear their own costs.


VICE CHAIRMAN


MEMBER (AM) (R)

bsg/np/sr