

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

7

O.A. NO: 332/90

199

T.A. NO: -----

DATE OF DECISION 11/4/92

Ashok Malharirao Yedake

Petitioner

Mr. M.A. Mahalle

Advocate for the Petitioners.

Versus

Scientific Advisor to Min. of Defence and one another
Respondent

Mr. M.I. Sethna

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

MD

(U.C. SRIVASTAVA)

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(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.332/90

Ashok Malharirao Yedake,
66, C.G.S.Quarter, Wadala(W),
Bombay - 400 031.

.. Applicant

vs.

1. Scientific Advisor to
the Ministry of Defence &
Director General,
Research and Development,
Ministry of Defence,
Research and Development
Organisation,
B-Wing, Sena Bhavan,
New Delhi - 110 011.

2. Director,
Naval Chemical and
Metallurgical Laboratory,
Naval Dockyard,
Bombay - 400 023.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.M.A.Mahalle, Advocate
for the Applicant.
2. Mr.M.I.Sethna,
Counsel for the
Respondents.

JUDGMENT:

Date: 1.4.92

(Per U.C.Srivastava, Vice-Chairman)

The applicant who joined the Naval Chemical and Metallurgical Laboratory on 26-6-1968 as Junior Scientific Assistant Grade.II was subsequently promoted on 13-10-1971 to the grade of Junior Scientific Assistant Grade I and on 11-11-78 he was promoted to the post of Senior Scientific Assistant(hereafter referred to as SSA for the sake of brevity). The pay scale of SSA is starting from Rs.550/- onwards. From the pleadings of the parties it appears that the applicant was working as Junior Scientific Officer(JSO) in the scale of Rs.2000-3500 with effect from September, 1989 when he was promoted from the lower cadre. There are

three feeder cadres for promotion to the JASO Cadre viz:(i) Senior Scientific Assistant (SSA) - Rs.1640-2900 (ii) Chief Draughtsman Rs.2000-3200 (iii) Foreman Rs.2375-3500. The applicant was in the first feeder cadre. Due to some anomaly in the relevant pay scales, the matter was placed before the Joint Consultative Machinery and the award thereafter was that 49% of each of the post mentioned at (i) and (ii) above to be upgraded in the scale of Rs.2375 - 3500. Thus 49% of the SSAs were upgraded. The Board of Arbitration gave an award on 12th August, 1985 to the effect that Chief D'man and SSAs be granted the pay scale of Rs.840-1040 in addition to the existing pay scale admissible for the two categories, and that the two pay scales should broadly bear the same proportion as was existing at that time between Foreman and Asstt. Foreman i.e. 49% and 51% respectively for the higher and lower pay scales. The Board of Arbitration recommended that the award be made effective retrospectively from 22nd September, 1982. In this connection it may be relevant to point out that in DRDO, the posts of Foreman, Chief D'Man and Senior Scientific Assistant are Group 'C' Non-Gazetted posts and on the recommendations of the Third Central Pay Commission, the posts of Foreman, Chief D'man and SSA were given the pay scales of Rs.840-1040, Rs.700-900 and Rs.550-900 respectively w.e.f. 1-1-73. Ministry of Defence, proposed that Chief D'Man and SSAs should also be granted the pay scale of Rs.840-1040 as had been granted to Foreman. There was disagreement between the staff side and the official side and the matter was referred to a Board of Arbitration (JCM) under the scheme of Joint Consultative Machinery and Compulsory

Arbitration for Central Govt. employees, a reference to which has been made just above.

2. The award was implemented w.e.f. 1st January, 1988. The higher pay scale of Rs.840-1040(w.e.f. 1st January, 1986 revised as Rs.2375-3500) has been treated as non-functional selection grade (with no change in the status of the individuals holding the higher pay scale) to be granted on the basis of 'Seniority subject to rejection of the Unfit', from amongst Chief D'man and SSAs, who have rendered a minimum of three years regular service. No recommendation regarding placement of SSAs and Chief D'man in the higher pay scale was recommended by the Board of Arbitration. That is why a decision was taken that the placement should be done on the basis of seniority subject to rejection of unfit. The applicant's ACR for 85-86 and 87 were considered but the Departmental Promotion Committee did not find the applicant suitable for such upgraded post. In 1989 the Departmental Promotion Committee had considered the ACRs for the period 1984-85, 86, 87 and 88, and the applicant was promoted. The grievance of the applicant is that if he were to be selected for the upgraded post he would have got the higher pay scale, while according to the respondents the applicant cannot be granted the same as he was rejected by the competent DPC which was to determine fitness and suitability for such upgraded post.

3. In this connection the applicant has placed reliance on the decision of Administrative Tribunal Bangalore Bench in C.K.Dharagupta v. The Secretary, Min. of Defence, New Delhi and two others who was also a Junior Scientific Assistant.

4. The respondents have placed reliance on the decision of A.N.Vijayashankar v. The Secretary, M/O Defence and others decided by the Bangalore Bench of the C.A.T. The Bangalore Bench noticed that no recruitment rules have been revised or amended nor any executive orders issued regarding the procedures to be adopted for placing the Senior Scientific Assistants in the upgraded posts. The Bench was also of the opinion that the committee did not assess the ACRs of the applicant in that case properly while considering his case for promotion and as such allowed the application and directed the respondents to convene a committee at an early date to reconsider the case of the applicant for fitment in the higher scale with effect from 1-1-1988. The applicant has made a reference to the decision of the case C.K.Dharagupta v. The Secretary, M/O Defence and two others decided by the Bangalore Bench of the CAT on 14-1-1992 in which a reference has been made about A.N.Vijayshanker's case. The Bench observed in C.K.Gharagupta's case that there is no question of the assessment of comparative merit in the case of non-selection promotion. The application was allowed and the respondents were directed to convene a committee at an early date to reconsider the case of the applicant for fitment in the higher scale with effect from 1-1-1988.

5. In the instant case we also find that the applicant's comparative assessment had been done although it was a case of non selection promotion. The record of the applicant also speaks in his favour

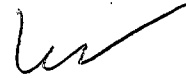
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and it is not known how the DPC came at a particular conclusion after making the comparative study.

Accordingly this application is allowed and the respondents are directed to convene a committee at an early date to reconsider the case of the applicant for fitment in the higher scale with effect from 1-1-1988. If the committee considers him fit for ~~prom~~ placement in the higher scale, he should be given the benefits of arrears of pay from 1-1-1988 and also his pay should be refixed on that basis on his promotion as Junior Scientific Officer. The respondents shall comply with this order within a period of three months from the date of receipt of a copy of this order. There will be no order as to costs.



(M.Y. PRIOLKAR)
Member(A)



(U.C. SRIVASTAVA)
Vice-Chairman

MD