

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : 'GULE STAN' BUILDING
6, PRESCOT ROAD, MUMBAI - 600 001

ORIGINAL APPLICATION No.318/1993

TUESDAY, THIS THE 29TH DAY OF JUNE, 1999

SHRI JUSTICE S. VENKATARAMAN .. VICE CHAIRMAN
SHRI S.K. GHOSAL .. MEMBER (A)

Shri C.R. Ramachandran Nair,
S/o Late Shri E.S. Raman Pillai,
aged about 52 years,
Scientist 'D',
Institute of Armanent Technology,
Girinagar, Pune,
r/a P/234/4, IAT Quarters,
Girinagar, Pune-411 025. ..

Applicant

(By Advocate Smt. Nagarkatty)

Vs.

1. The Union of India, through
the Secretary, Ministry of Defence,
Defence Research & Development
Organisation, Government of India,
South Block, New Delhi - 110 011.
2. Director General, Research & Development,
Government of India, Ministry of Defence,
H.Q.R&D ORGanisation HQ P.O.
New Delhi - 110 011.
3. The Director & Dean,
Institute of Armanent Technology,
Sinhagad Road, Girinagar,
Pune - 411 025. ..

Respondents

(By Standing Counsel Shri S.S. Karkera)

O R D E R

Shri S.K. Ghosal, Member (A) :

The applicant was originally appointed as a

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Senior Scientific Officer (SSO) Gr.I in the Military College of Telecom Engineering. After a protracted correspondence between the applicant and the competent authorities, the request of the applicant that he should be deemed to have joined the Defence Science Service (later on redesignated as Defence Research & Development ~~Service & Organisation~~) was considered. The competent authority, vide their letter dated 9.10.1984 ordered the transfer of the applicant to an R&D organisation treating him finally as belonging to the latter service. The applicant was thereafter promoted to the post of Scientist 'D' with effect from 1.7.1980⁴⁹ based on the recommendation of the Assessment Board held in April, 1986.

2. The grievance of the applicant is that he was not promoted when a Review DPC was held in 1989 to Scientist 'E'. The essence of his case is that had he been promoted earlier to the post of Scientist 'D', not retrospectively, but actually, with effect from 1.7.1980, he would have become eligible for consideration for next promotion to Scientist 'E' in 1985 based on his actual performance ~~as~~⁴⁹ Scientist 'D' from 1980 itself. But, when he was actually considered for promotion to that post in 1989, his performance was compared with the performance of his colleagues who had a longer stint as Scientist 'D', whereas he was obliged to function at the level of

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Scientist 'C' for a longer period and at the level of Scientist 'D' effectively only from 1985. The applicant therefore, has sought the following reliefs:-

- 1) the decision of the Assessment Boards for the years 1989, 1990 and 1991 be quashed ~~and~~ as discriminatory and against principles of natural justice;
- 2) the Respondents be directed to convene a fresh Review Assessment Board to assess the applicant's suitability for promotion to Scientist Grade E and Grade F.
- 3) the applicant be promoted to Grade E and F retrospectively from the date on which he has become due for promotions;
- 4) to direct the Respondents to pay arrears of salary and other financial benefits with retrospective effect from the date on which he is promoted to the respective grades.
- 5) any other in the interest of justice be passed.

3. The Respondents have pointed out that after the applicant was promoted to the cadre of Scientist Grade 'D', he was considered for promotion to Scientist Grade 'E' and was not found fit for such promotion. The Assessment Board had taken into account his performance for the years 1985, 86, 87 and upto 1988. Since the applicant did not make the grade on a comparative basis, his case was not recommended for promotion. The Respondents have further stated that subsequently the applicant was promoted to Scientist Grade 'E' in 1992 when the Assessment Board found him fit for promotion to that category.

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4. As we have noted above the basis for the claim made on behalf of the applicant is that he actually could function as a Scientist Gr. 'D' only with effect from 1985 and not from 1980 and therefore the facilities for performing satisfactorily at the level of Scientist Gr. 'D' were actually made available to him only from 1985; thereby his relative performance as a Scientist Gr. 'D' suffered vis-a-vis the performance of his colleagues who had the better facilities as Scientist Gr. 'D' for a much longer period. What the applicant, therefore, has sought for in effect is that there should have been a presumption in the Assessment Board that had the better facilities available to a Scientist Gr. 'D' were actually made available to the applicant with effect from 1980, his performance would have been, if not better, at least equal to similarly placed Scientists Gr. 'D'. He should have been given the benefit of having worked as a Scientist Gr. 'D' actually from the notional date and his performance at that level should then have been compared with that of his colleagues. He should have been deemed to have actually worked with a certain level of performance in that category right from 1980. But, we observe, that would have meant that his performance also should have been assessed on a notional basis.

We find that such an exercise on the part of the Assessment Board would have been patently infeasible. It would have been difficult for any Assessment Board to be

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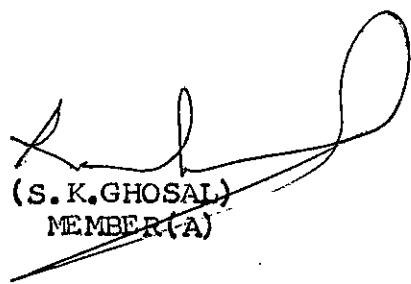
called upon to make an assessment of the performance of the applicant at the level of Scientist Grade 'D' presuming that since notionally he had been promoted with effect from 1980, the performance should also be assessed on a notional basis. Since such an assessment is contingent upon a presumption of performance and not actual performance on the part of the applicant, we are not convinced that such a dispensation can be ordered. In that view of the matter, we cannot find fault with the decision taken by the Respondents to assess his performance at Scientist Grade 'D' level only with reference to the actual performance that he has turned out in that category. It is not denied that based on that performance his case was not found suitable in the first instance and that it was only in 1992 that the Assessment Board, based on the same criteria, found him suitable for promotion to Scientist Grade 'E'.

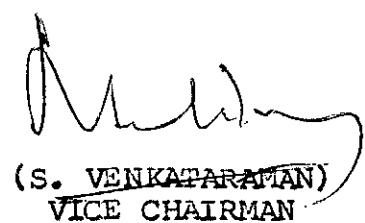
5. We do not find any infirmity or irregularity in the procedure followed by the Respondents in ordering such a promotion in 1992. For the above reasons, we do not find it necessary to intervene with the decision taken by the Respondents.

6. In the event, the application fails and the

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same is dismissed. No costs.


(S.K.GHOSAL)
MEMBER(A)


(S. VENKATARAMAN)
VICE CHAIRMAN

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