

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 536/93 and 538/93.

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DATE OF DECISION

2/9/1994

1. A. M. Yedake, Petitioner in O.A. No. 536/93.
2. M. G. Chavan, Petitioner in O.A. No. 538/93.

Shri M. A. Mahalle,

Advocate for the Petitioners

Versus

Director General R & D,  
Ministry Of Defence,  
New-Delhi.

Respondents in both the O.As.

Shri R. K. Shetty,

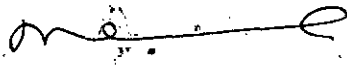
Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M. S. Deshpande, Vice-Chairman.

The Hon'ble Shri R. Rangarajan, Member (A).

1. ~~Whether reporters of local papers may be allowed to see the Judgement?~~
2. To be referred to the Reporter or not? No
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? No

  
(R. RANGARAJAN)  
MEMBER (A).

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 536/93 and 538/93.

1. Shri A. M. Yedake, ... Applicant in  
O.A. No. 536/93.

2. Shri M. G. Chavan ... Applicant in  
O.A. No. 538/93.

Versus

Director General R & D, ... Respondents to:  
Ministry Of Defence,  
New-Delhi. both the O.A.

CORAM :

1. Hon'ble Shri Justice M.S. Deshpande, Vice-Chairman.
2. Hon'ble Shri R. Rangarajan, Member (A).

APPEARANCE :

1. Shri M. A. Mahalle,  
Counsel for the applicants.
2. Shri R. K. Shetty,  
Counsel for the respondents.

JUDGEMENT

DATED : 2/9/1994.

¶ Per. Shri R. Rangarajan, Member (A) ¶.

1. With the consent of both the parties, both the O.As. are being disposed of by a common judgement, as the issues involved in both the cases are identical and the contentions raised in both the O.As. are same.

2. The applicant in O.A. No. 536/93 joined the Naval Chemical and Metallurgical Laboratory on 26.06.1968 as Junior Scientific Assistant Grade-II and was subsequently promoted to the post of Junior Scientific Assistant

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Grade-I on 13.10.1971 and to the post of Senior Scientific Assistant (S.S.A. for short) on 11.11.1978. He was promoted as Junior Scientific Officer (J.S.O. for short) in the scale of Rs. 2000-3500/- with effect from September, 1989 from the post of Senior Scientific Assistant in the grade of Rs. 700-900. The three feeder categories for the post of Junior Scientific Officer are (i) Senior Scientific Assistant (S.S.A) grade Rs. 1640-2900 (ii) Chief Draughtsman grade - Rs. 2000-3200 (iii) Foreman grade Rs. 2375-3500. Due to a arbitration award, 49% of the post mentioned at (i) and (ii) above were up-graded to the scale of Rs. 2375-3500 with effect from 22.09.1982. The applicant was not considered for promotion to the post of Foreman Rs. 2375-3500 i.e. the grade in between Senior Scientific Assistant in the grade of Rs. 1640-2900 and Junior Scientific Officer. He filed an O.A. No. 332 of 1990 in this Bench of the Tribunal and this Tribunal disposed of this O.A. by its order dated 01.04.1992 directing 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 01.01.1988.

3. In O.A. No. 538/93, the applicant joined the Naval Chemical and Metallurgical Laboratory on 09.01.1973 as Junior Scientific Assistant-II. He was promoted to the grade of Junior Scientific Assistant Grade-I on 14.01.1976 and to the grade of Senior Scientific Assistant on 15.03.1989 with a starting pay of Rs. 550/- onwards. He was promoted as Junior Scientific Officer in the scale of Rs. 2000-3500 with effect from September, 1989.



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considered for promotion  
He was also ~~not~~ to the grade of Foreman  
Rs. 2375-3500, the intermediate scale between the  
Senior Scientific Assistant- Rs. 1640-2900 and  
Junior Scientific Officer Rs. 2000-3500. He also  
filed an O.A. No. 747/90 which was disposed of on  
01.04.1992 with a direction to the respondents to  
convene a committee at an early date to reconsider  
the case of the applicant for fitment in the higher  
scale, namely, Rs. 2375-3500 from 01.01.1988.

4. In compliance with the directions in O.A.  
No. 332/90 in the case of applicant in O.A. No. 536/93  
and O.A. No. 747/90 in the case of the applicant in  
O.A. No. 538/93, the cases of promotion to the grade  
of Rs. 2375-3500 with effect from 01.01.1988 was  
reconsidered by the Review Committee and the Review  
Committee has assessed them unfit for grant of higher  
pay scale of Rs. 2375-3500 with effect from 01.01.1988  
vide Annexure 'A' (page-12) of the O.A.

dated 09.08.1992 (Exh. 'A')  
5. Challenging this order, they have filed  
this O.A. for a direction to place the applicants in the  
higher pay scale of Senior Scientific Assistant  
(Rs. 2375-3500) with effect from 01.01.1988 and pay them  
in that grade accordingly, and fix their pay in the  
higher grade of Junior Scientific Officer on that basis.  
They <sup>have</sup> also prayed for arrears in respect of placement in  
the higher pay scale of Senior Scientific Assistant from  
01.01.1988 to 13.09.1989 i.e. till their promotion to  
the grade of Junior Scientific Officer and from that  
date after the refixation in the cadre of Junior  
Scientific Officer and payment of arrears thereon with  
interest at market rate.



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6. The respondents submit that they have considered the case of the applicants for promotion to the grade of Senior Scientific Assistant (Rs. 2375-3500) as per the directions given by this Tribunal in O.A. No. 332/90 and 747/90. The post of Senior Scientific Assistant higher scale is to be granted on the basis of seniority subject to rejection of their unfit, from amongst Chief D'man and S.S.As., who have rendered a minimum of three years regular service in the grade. The confidential reports of the applicants in both the O.As for the year 1985, 1986 and 1987 were considered and they were not found fit. The yardstick for promotion is that, an employee should get the grading of 'Good and above' in all the three years. An average report in any one of these years will render them unfit for promotion. As the applicants in both the O.As. have obtained the grading of 'average' for the year 1987, they were found to be unfit for promotion to the post of Senior Scientific Assistant (Rs. 2375-3500) and hence they were not promoted to that grade. They further state that the post of Junior Scientific Officer is a selection post and it is decided on the basis of the consideration of Confidential Reports for five years. As both the applicants had qualified for promotion on that basis to the post of Junior Scientific Officer, they were promoted with effect from September, 1989 to that post. They further state that the promotion is a domain of administration and hence no interference is called for from the Tribunal.

7. In a similar case decided by the Ernakulam Bench of this Tribunal in O.A. No. 41/1991 decided on



30.06.1992 (N. A. Ganapati V/s. Union Of India represented by the Secretary to the Ministry Of Defence and three others) it was held in that case that since the confidential reports of the applicant in that case are without blemish and that on the basis of three A.C.Rs. if the candidate is found unfit for placement in the higher pay scale of Senior Scientific Assistant but at the same time granting him promotion as Junior Scientific Officer on the basis of the 5 A.C.Rs. on the basis of which placement in the higher pay scale was denied is perverse. Since the denial of placement <sup>of the applicant</sup> <sup>which</sup> in the higher pay scale is a non-functional selection grade, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ ~~XXXXXXXXXXXXXXXXXXXX~~ is a perverse action the tribunal directed the respondents to place the applicant in that O.A. in higher pay scale with retrospective effect with all consequential benefits. The relevant portion in that O.A. is reproduced below for perusal :

"It is admitted that while in May 1989 on the basis of three years CR, the applicant was found unfit for promotion as SSA in the scale of Rs. 1640-2900, he was found fit for promotion to the next higher grade of JSO in the scale of Rs. 2375-3500 in September 1989 taking into account five years CR. This appears to us to be anomalous that in the same year one should be found to be unfit for a lower post but fit for the higher post. Further, since the respondents themselves have admitted that the higher pay scale of SSAs was only a non-functional Selection Grade and there was no change of duties and responsibilities between the Ordinary Grade SSAs and Higher Grade SSAs, it is still more anomalous that the applicant who had been holding the post of SSA from

25.03.1980 to September 1989 should be found unfit for appointment as selection Grade SSA with effect from 01.01.1988.

In these circumstances we are fully convinced that the find of the DPC that the applicant is unfit for non-functional Selection Grade of SSA is perverse and cannot be accepted. The contention taken in the communication dated 15.01.1990 at Annexure-G that "since you have already been promoted as JSO in September 1989 you are no more eligible for placement in the higher pay scale of SSA as per the Arbitration Award" is also not only at variance with the contention taken by them in the counter affidavit, but is also unreasonable. The applicant's subsequent promotion as JSO in 1989 does not and cannot disqualify him for promotion to the Selection Grade of the SSA as from 01.01.1988 when admittedly he was working as an SSA and not as JSO."

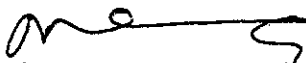
Similar view was also taken by this Tribunal in O.A. No. 668/91.

8. The main contention of the Learned Counsel for the Respondents is that the duties and the responsibilities of the Senior Scientific Assistant (Rs. 2375-3500) and Junior Scientific Officer is different and there is nothing wrong in promoting Senior Scientific Assistant Grade-I directly to the post of Junior Scientific Officer without promoting him for the post of Foreman (Rs. 2375-3500). He compared the promotion of Stenographer who has been denied promotion to the higher scale in the category of stenographer, was found fit for the post of Office Superintendent, as the duties and the responsibilities of the Stenographer and Office Superintendent are

different and a Stenographer found unfit for a higher post in his own category may be found fit for the post of Office Superintendent, which is a different category. This argument does not find favour with us. The post of Junior Scientific Officer is a higher category in the cadre of Junior Scientific Assistant and Senior Scientific Assistant. The Junior Scientific Officer should have enough knowledge of working of the department to control the employees working under him as Junior and Senior Scientific Assistant and Chief Draughtsman. We are not satisfied with the view that the J.S.O. is only an administrative post. It is a technical-cum-administrative post to control the employees in the feeder category and to guide them in their day to day working, both in the scientific work as well as administrative work. Hence, we reject this contention of the respondents.

9. Under the facts and circumstances of the case, we allow these applications in part to the extent of directing the respondents that the applicants should be granted <sup>the</sup> non-functional grade of Rs. 2375-3500 with effect from 01.01.1988 with all consequential benefits and revision of pay and allowances. We also direct that the arrears of pay and allowance be paid to the applicant within a period of three months from the date of communication of this order. Their pay in the higher scale of Junior Scientific Officer will be fixed on that basis and arrears <sup>accrued</sup> ~~acquired~~ if any, because of this fixation, should be paid to them in three months time. In the circumstances of the case, no interest on the arrears can be allowed.

10. There will be no order as to costs.

  
(R. RANGARAJAN)  
MEMBER (A)

  
(M.S. DESHPANDE)  
VICE-CHAIRMAN.