

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 643/94

28.7.99
Date of Decision:

K.B.Krori

Applicant.

Applicant in person.

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri M.I.Sethna along with Shri V.D.Vadhavkar
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Baweja, Member (A)

Hon'ble Shri. S.L.Jain, Member (J)

- (1) To be referred to the Reporter or not? ☒
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ☒

D.S.Baweja
(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 643/94

Dated this the 28th day of July 1999

CORAM: Hon'ble Shri D.S.Baweja, Member (A)
Hon'ble Shri S.L.Jain, Member (J)

Kanan Bihari Krori,
Assistant Research Officer,
Central Water & Power
Research Station,
Pune.

... Applicant

Applicant in person

v/s.

Union of India through

1. The Director,
Central Water and Power Research
Station, Khadakwasla,
Pune.

2. The Secretary to the
Government of India,
Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.

... Respondents

By Advocate Shri M.I.Sethna
along with Shri V.D.Vadhavkar

O R D E R

(Per: Shri D.S.Baweja, Member (A))

This application has been filed seeking relief of directing the respondents to promote the applicant to the post of Research Officer from the date his juniors have been promoted in 1986 with all consequential monetary benefits.

2. The applicant joined in 1956 in the then Central Water and Power Commission. Subsequently, he was promoted as Assistant Research Officer from 17.2.1978. The next promotion is to the post of Research Officer for which the Assistant Research Officer is the feeder grade. The applicant is Intermediate Science passed and submits that as per the 1966 Rules he was entitled for promotion as Research Officer with 5 years' service as Assistant Research Officer as no educational qualification was laid down as additional requirement. However, in 1982 the Recruitment Rules were revised and as per which for departmental promotion as Research Officer, the qualification of Diploma in Engineering or B.Sc has been laid down. The applicant's case is that several Indian Universities treat Diploma in Engineering at par with Inter Science and therefore the Inter Science qualification of the applicant should be treated at par with Diploma in Engineering and accordingly he meets with the educational qualification. The applicant also submits that though he was not having the qualification of degree in Physics or Chemistry as required but he was allowed the scale of Rs.210-425 as recommended by 2nd Pay Commission for the post of Silt Analyst which indicated that the educational qualification of the applicant was treated

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to Degree level. With these submissions, the applicant pleads that he is entitled for promotion as Reserach Officer which was denied to the applicant and his juniors have been promoted. The applicant had made several representations and the last reply received from the department is as per letter dated 3.2.1992. Aggrieved by his non-promotion, the applicant has filed the present OA. on 13.5.1994.

3. The respondents have filed written statement contesting the claim of the applicant. The respondents submit that the Recruitment Rules have been revised w.e.f. 24.7.1982 and the promotion of the applicant as Reserach Officer is to be governed by the rules applicable at the time of promotion. As per these rules, Assistant Reserach Officer is eligible for promotion to the cadre of Reserach Officer provided he has^a Degree in Science or a Diploma in Engineering and has completed 3 years regular service as Assistant Research Officer. The applicant does not meet with the educational qualification laid down and therefore he cannot be considered for promotion as a Reserach Officer. The respondents contest the interpretation of the applicant with regard to Diploma in Engineering being equal to Intermediate Science. The respondents have ^{though} admitted that in 1961 the applicant was allowed higher scale which was applicable to those with Degree in Science or Diploma in Engineering even though he was

only Intermediate Science, ^{but} ~~the~~ same does not imply that his Intermediate Science qualification has been allowed to be equated with Degree in Science or Diploma in Engineering. As regards the plea of the applicant that he was eligible for promotion as Research Officer as per 1966 Rules, the respondents submit that once the 1982 Recruitment Rules have been issued, the 1966 Rules get repealed and applicant cannot get promotion under the 1966 Rules. With these submissions, the respondents plead that there is no merit in the application. The respondents ^{have} ~~also~~ strongly opposed the application as being hopelessly barred by limitation as the applicant is claiming promotion from 1986 by filing the present OA. in 1994 only.

4. The applicant has filed a rejoinder reply reiterating the submissions in the OA. while contesting the averments made by the respondents in the written statement. The applicant has added that the Department of Personnel & Training vide O.M. dated 18.3.1988 has laid down that the formulation or amendment of Recruitment Rules should not adversely affect the existing officers in the feeder grade. But the respondents while ^{Recruitment} laying down 1982 Rules have not kept these guidelines in view and the promotional prospects of the applicant have been ~~severely~~ affected. As regards the limitation, the applicant submits that he has been repeatedly representing the matter through their Association and assurance was given that necessary amendment

to the rules will be done to take care of the interest of the existing ^{Assistant} Research Officers.

The applicant further submits that based on the assurance of his Union, the Rules were amended in 1988, but the same did not redress the grievance of the applicant. He ^{is,} therefore, forced to seek legal remedy after the respondents have rejected his representation as per order dated 3.2.1992.

5. We have heard the applicant in person and Shri M.I.Sethna along with Shri V.D.Vadhavkar, learned counsel for the respondents.

6. The applicant has sought promotion as Research Officer mainly on two grounds. Firstly, that the applicant was entitled for promotion as Research Officer as per the 1966 Rules which did not lay down any educational qualification and the 1982 Rules which laid down the educational qualification had seriously affected the promotion chance of those who were already working as Assistant Research Officers. Secondly, the Diploma in Engineering qualification should be treated as equivalent to Intermediate Science and since the applicant is having the qualification of Intermediate Science, he is entitled to be promoted as Research Officer. Taking the first ground, we are in agreement with the contention of the respondents that once 1982 Rules have been issued, 1966 Rules get repealed until and unless it is provided that

those who are already in service will ^{continue to} be governed by the old rules. Therefore the promotion of the applicant when becomes due has to be governed by the Recruitment Rules applicable at that time. The applicant has claimed promotion as Research Officer from 1986 alleging that the juniors have been promoted and therefore his promotion is to be governed by 1982 Rules. The applicant has made a plea that the guidelines laid down by the Department of Personnel & Training as per O.M. dated 18.3.1988 have not been followed while laying down the Recruitment Rules to ensure that the existing staff in the feeder grade is not adversely affected by the formulation of the Recruitment Rules. Since the Recruitment Rules were revised in 1982, we are unable to comprehend as to how the guidelines laid down in 1988 could be made applicable at that time. In any way, we find Recruitment that the applicant has not challenged the 1982 Rules and therefore we cannot go into the validity of the 1982 Rules which are issued under the power as available under Article 309 of the Constitution of India.

7. The second contention raised by the applicant is that Diploma in Engineering is ^{being} treated as equivalent to Intermediate Science for admission to Engineering courses by several Indian Universities. Since the applicant is having the qualification of Intermediate Science, therefore, in the opinion of the applicant he is possessing the required educational qualification

for promotion to Research Officer. We are unable to appreciate as to how this interpretation is being made by the applicant. The applicant has not brought on record any documentary evidence that Diploma in Engineering is considered as equivalent to Intermediate Science by the Universities. On going through the rules, we find that the qualification laid down is Diploma in Engineering and there is no mention with regard to any equivalence of any other educational qualification. We are unable to read this interpretation in the Recruitment Rules that Intermediate Science qualification of the applicant is equal to Diploma in Engineering. The applicant has sought that he is possessing the essential qualification by advancing another argument that in 1961 based on the 2nd Pay Commission recommendations, the applicant was allowed the higher scale which was meant for Diploma in Engineering or Degree in Science inspite of the fact that the applicant was possessing only Intermediate Science. This fact is not denied by the respondents. The respondents have however explained the reasons why the higher grade was allowed to the applicant. Respondents have contested the claim of the applicant that by allowing the higher grade, the Intermediate Science of the applicant was treated equal to Degree in Science. We are in agreement with the contention of the respondents. Mere allowing the higher scale on certain considerations, does not mean that the educational qualification of the applicant was treated equal to that

of Degree in Science. The applicant has also not produced any documentary proof to show that the respondents had conveyed to the applicant that his educational qualification would be at par with that of possessing Degree in Science. With these vague submissions, we are unable to find any merit in the claim of the applicant that he possesses the required qualification for promotion to the post of Research Officer.

8. The learned counsel for the respondents brought to our notice that similar issue for promotion to the post of Research Officer had been agitated through OA.NO.752/93 which was dismissed as per the order dated 1.10.1997. On going through this order, we find that the issue examined in this order is the same as raised by the applicant through the present OA. In this case also, the applicant was Intermediate Science and wanted to be promoted as Research Officer in relaxation of rules. When this order was brought to the notice of the applicant, the applicant sought to make out the case that the issue raised in the present OA. is different from the issue gone into in OA.NO.752/93. We are not persuaded to accept this argument. Even if there is some difference in pleadings, we are of the opinion that the ratio of what is held in OA.NO. 752/93 applies to the present case. The grounds advanced by the applicant which as per the applicant distinguishes his case from OA.No. 752/93 in support of his relief have been already gone into by us above and we do not find merit in any of them. (u)

9. In the result of the above, we find no merit in the OA. and the same is dismissed accordingly. No order as to costs.

S.L. Jain
(S.L.JAIN)
MEMBER (J)

D.S. Baweja
(D.S.BAWEJA)
MEMBER (A)

mrj.