

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 1380/95

28-7-2001
Date of Decision :

N.B.Kamble Applicant.

Applicant in person Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri R.K.Shetty Advocate for the
Respondents.

CORAM :

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

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

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other ²
Benches of the Tribunal ?
- (iii) Library

D.S.Baweja
(D.S.Baweja)
Member (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1380/95

Dated this the 28th day of July 2000.

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

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

Narayan Bhimrao Kamble,
R/o 'Alankar' Survey No.67/1B,
Plot No.18, Vidyanagar,
Pune.

... Applicant

Applicant in person

V/S.

1. Union of India through
Secretary, Deptt. of Research &
Development Organisation and
Scientific Adviser to defence
Minister And Director general
Research & Development Organisation,
South Block, DHQ P.O.
New Delhi.

2. The Director,
Research & Development
Establishment (Engrs.)
Dighi, Pune.

3. The Director,
Defence Metallurgical
Research Laboratory,
Kanchan Bag, P.O.DMRL,
Hyderabad.

... Respondents

By Advocate Shri R.K.Shetty

..2/-

O R D E R

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

The applicant is serving as Scientist 'C' in Defence Research and Development Establishment (Engrs.), Dighi, Pune w.e.f. 1.7.1985. Upon completion of 7 years of service on 1.7.1992, the applicant was considered for promotion to the next grade as Scientist 'D'. The interview of the applicant was held by the Assessment Board as per letter dated 4.8.1992 at Hyderabad on 15.10.1992. The list of those promoted as a result of this assessment was notified as per letter dated 5.11.1992. However, the name of the applicant did not appear in this list. The applicant contends that several juniors to the applicant have been promoted ignoring the applicant. Not only this, several disqualified Scientists who did not even satisfy the minimum educational qualification as per the Recruitment Rules have been promoted as Scientist 'D'. The applicant has cited the names of some of such Scientists. The applicant represented for his non promotion on 21.7.1995 but the same was rejected as per order dated 10.10.1995. Feeling aggrieved by his non promotion, the present OA. has been filed on 2.11.1995.

2. The applicant has sought the following reliefs :-

(a) The promotion granted to the Scientists who were disqualified be declared as illegal and invalid. Against the vacancy generated there-

by, the applicant be promoted as Scientist 'D' as he satisfies the requirements of qualification and experience as laid down in DRDS-79 Rules.

(b) Financial compensation of Rs.5 lakhs be granted for the humiliation caused to the applicant due to non promotion.

3. The respondents have filed written statement. The applicant has filed one more OA.No.1369/95 wherein he has challenged his non promotion as Scientist 'D' by the Assessment Board of 1990. It is noted that respondents have filed the written statement which is common to both the OAs. In respect of non promotion by the Assessment Board of 1990 as challenged in this OA., the respondents submit that though the applicant was found fit for the assessment interview by the Internal Screening Committee, but the Assessment Board did not consider him fit for promotion based on the performance in the interview and the assessment of the Confidential reports. As regards the considering of the unqualified Scientists, the respondents submit that the same has been done after relaxation of the educational qualification with the approval of the Minister of Defence exercising power under Rule 15 of DRDS-1979 Rules to protect the interest of the affected Scientist till such time separate Defence Research and Technical Service is constituted to cater for the promotion avenues of the unqualified Scientists.

Therefore, the action of the respondents is neither arbitrary nor discriminatory in relaxing the educational qualification.

4. The applicant has filed rejoinder reply. The applicant has not made any counter remarks about his non recommendation by the Assessment Board of 1992. The applicant has brought out that due to consideration of the unqualified Scientists by illegal relaxation of rules by the Assessment Board of 1992, the applicant did not come within the cut off line for the pre determined seats in the merit order as per the marks received by each Scientist. Therefore, the applicant claims one seat in the promotion list by invalidating the promotion of non qualified Scientists.

5. We have heard the applicant in person and Shri R.K.Shetty for the respondents.

6. The applicant has raised two issues in this OA. The first being consideration of the unqualified Scientists by illegal relaxation of rules, whereby the applicant could not come within the cut off line. The other being non recommendation for promotion by the Assessment Board.

7. Taking the first issue, it is noted that though the applicant has given the names of some of the Scientists who are alleged to be not having the minimum educational qualification

1

but they have not been made as a party. The respondents have explained the special circumstances under which the power of relaxation of the educational qualification under Rule 15 of DRDS Rules, 1979 has been exercised with the approval of Minister of Defence. The applicant contends that the power of relaxation cannot be exercised at the expense of well qualified Scientists and therefore relaxation granted is illegal and invalid. With these facts, the Scientists who have been promoted after relaxation of the educational qualification are necessary party. No adverse order can be passed against them without giving them opportunity. The applicant cannot challenge their promotion without making them party. Looking from another angle also, this ground of the applicant is without substance. It is noted that the applicant has not brought out any details of the vacancies. The respondents in para 11 of the reply have stated that under Flexible Complementing Scheme 100% promotion are in-situ, and the concept of availability of vacancy is not applicable. In view of this, we fail to understand as to how ^{the} prospect of promotion of the applicant ^{was} affected by the relaxation of the qualification. If the applicant was graded 'fit' by the Assessment Board, he would have been promoted in-situ in respect of the availability of the vacancy. Therefore, the promotion of the alleged unqualified Scientist is not material to the fitness of the application for promotion. Therefore, looking from this angle, the plea of the applicant that the promotion of the unqualified Scientists be treated as illegal and invalid is more

of a public interest litigation as the interest of the applicant is not affected by the same. Therefore, this relief deserves to be rejected.

8. The second relief prayed for is the grant of promotion to the applicant as Scientist 'D'. First we find that the OA. filed for this relief is barred by limitation. The applicant is challenging his non promotion in the result of Assessment Board of 1992 as per order dated 5.11.1992. The present OA. has been filed on 2.11.1995, i.e. after a period of 3 years. It is noted that the applicant represented against the same on 21.7.1995 & 27.9.1995. The respondents have replied these representations as per letter dated 10.10.1995. The OA. has been filed thereafter stating that the same is filed within the limitation period as per Section 21 of the A.T.Act,1983. This contention of the applicant is not acceptable. The cause of action arose in November, 1992 and the delay in filing the OA. has to be explained with reference to the same submitting a late representation after a lapse of almost 3 years and getting the reply for the same will not extend the period of the limitation. Even after taking the point of limitation by the respondents, the applicant has not filed any application seeking the condonation of delay. Thus, there is no explanation leave aside satisfactory explanation for the delay in challenging his non promotion. The limitation stares in the eyes and the same cannot be brushed aside. In this connection, we refer to the judgements of Hon'ble Supreme Court

in the case of Jagdish Lal vs. State of Haryana, JT 1997 (1) SC 387 and Prafulla Kumar Swami vs. Prakesh Chandra Misra & Ors., 1993 SCC (L&S) 960.

9. Even on merits, the applicant has not made any case. The respondents have stated that the Assessment Board did not find the applicant fit for promotion. The applicant in the rejoinder reply has not contested the same with any cogent material that the Assessment Board was in error in overlooking the applicant. The applicant only has stated that in view of the consideration of the unqualified Scientist, the applicant could not come within the cut off marks as per the pre-determined vacancies. The respondents have made available the proceedings of the Assessment Board. As per the Recruitment Rules, the Assessment Board has to assess the candidate based on the performance in the interview and on the review of the confidential record and declare the candidate 'fit' or 'unfit' for promotion. We note from the proceedings that the Assessment Board has allotted marks for the interview and the confidential reports and those securing total marks upto a certain level have been declared 'fit' for promotion without any reference to the availability of the vacancies. The applicant has not received the required marks for being declared 'fit' for promotion. The applicant is not alone in the list but a large number of Scientists had not been found fit. To assess the suitability of a candidate for promotion is within the domain of the expert Promotion Committee. Such an assessment cannot be

under scrutiny in a judicial review. However, such an assessment if challenged on being tainted by malafides, in violation of the statutory rules and due to the constitution of the committee being not as per rules, then judicial scrutiny may be warranted if adequate material to support these infirmities is brought on the record. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of Dalpat Aba saheb Solunke & Ors. vs. Dr.B.S.Mahajan & Ors., 1990 SCC (L&S) 80. In para 12 their Lordships have held as under :-

"It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."

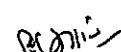
This is not the situation in the present case. The applicant has not taken any of such grounds to challenge his non promotion. The only ground taken by the applicant is that because of consideration of the unqualified Scientists, the

applicant, has been over-looked for promotion. In the light of these observations and what is held by the Hon'ble Supreme Court, we are unable to find any merit in this ground also.

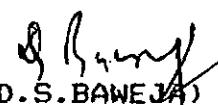
10. The relief of grant of compensation for humiliation cause to the applicant on account of non promotion, does not survive in view of our findings above. In any way, such a claim is not maintainable before the Tribunal in terms of Rule 14 of A.T.Act,1985 as held by Hon'ble Supreme Court in the case of H.Mukerjee vs. S.K.Bhargava, 1996 SCC (L&S) 1045.

11. M.P.Nos.725/99 and 723/99 do not survive in view of the findings above and are dismissed accordingly.

12. In the result, the OA. is barred by limitation and is also without any merit. The same is dismissed accordingly. No order as to costs.


(S.L.JAIN)

MEMBER (J)


(D.S.BAWEJA)

MEMBER (A)

mrj.