

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

✓ OA 213/97
Mumbai, this the 31~~st~~ day of July, 2001

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

- | | |
|------------------------|---------------------|
| 1. Radhey Shyam Dubey | 29. P.A. Joseph |
| 2. S.K.Mishra | 30. R.M. Chaudhary |
| 3. M.D. Hashim | 31. K.R. Gunte |
| 4. S. Sharan | 32. Hira Prasad |
| 5. S.K. Savita | 33. Govind Prasad |
| 6. B.B. Singh | 34. M.P. Yadav |
| 7. S. Shyam Sud | 35. G.K. Pandalai |
| 8. V. Prasad | 36. N.B. Naik |
| 9. H. Kumar | 37. D.R. Dale |
| 10. P.R. Patel | 38. R.P. Singh |
| 11. K.P. Kesarwani | 39. A.K. Sow |
| 12. S.P. Sharma | 40. A.K. Srivastava |
| 13. S.K. Karak | 41. V.K. Yadav |
| 14. Sanjay Kumar | 42. J.T. Mehta |
| 15. S.L. Surve | 43. D.S. Ukirde |
| 16. Ramashankar | 44. S.H. Shinde |
| 17. V.P. Gupta | 45. V.N. Dahivelkar |
| 18. K. Narayanan Kutty | 46. Rajeev Saxena |
| 19. Jairam | 47. A.K. Rai |
| 20. S.V. Adsul | 48. Lootan Pandit |
| 21. S.J. Oturkar | 49. R.S. Pawar |
| 22. M.B. Mulik | ...Applicants |

23. J.V. Sanaulare
24. M.P. Pandey
25. R.R. Khuspe
26. Arum Kumar Srivastawa

All Scientific Assistants
(1 to 49) in grades Scientific Assistants (D) Scientific Assistants (E) and Scientific Assistants (F) working in Bhabha Atomic Research Centre at Tarapur.

27. Rajender Singh
28. M.L. Gupta

ADDRESS FOR SERVICE :-
Shri K.R. Yelve,
C/o CAT, Bar Association
3rd Floor, Gulestan Bldg.
Prescot Road, Mumbai -1.

(By Advocate Shri K.R. Yelve)

V E R S U S

1. Union of India : through

The Secretary to the
Govt. of India,
Atomic Energy Commission
Deptt. of Atomic Energy
New Delhi - 110 001.

2. The Chairman
Department of Atomic Energy
Old Yatch Club, C.S.M.Marg
Mumbai - 400 001.

3. The Director
Bhabha Atomic Research Centre
Central Complex, Trombay
Mumbai - 400 085.

...Respondents

(By Advocate Shri B.Ranganathan,
proxy for Shri J.P.Deodhar)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI.

Inaction of the respondents to extend to the applicants also the benefits of the Hon'ble Supreme Courts order dated 26-4-1988, disposing of Civil Appeals No. 808/88 & 809/88 against the orders passed by Hyderabad and Madras Benches of the Tribunal and rejection dated 11-4-1996 of the applicants representation dated 29-9-1995 and 22-3-1996 are under challenge in this OA filed by Radhey Shayam Dubey and 48 Ors. (Originally the application was filed by Shri C.M.Davis and 49 Ors., however, as ^{G. Davis} ~~he~~ got promotion, he requested on 30-4-1998 for deletion of his name as the applicant. Hence it has now become OA filed by Shri Radhey Shyam Dubey and 48 Ors.

2. Heard Shri K.R.Yelve, learned counsel for the applicants and Shri B.Ranganathan, learned proxy counsel for Shri J.P.Deodhar, representing the respondents.

3. Stated in brief, the facts are that all the applicants are Scientific Assistants (for short SAs) working in Bhabha Atomic Research Centre (BARC), Tarapur, recruited from among Diploma holding engineers and Science graduates SAs get promoted from 'A' to 'B' to 'C' grades. Prior to 1983 SA 'C' had the channel of promotion as Scientific Officer SB to SC to SD, but on 22-9-1993 a new scheme was created by which SA (C) were given supervisory categories of SA (D), (E) & (F). These had the same pay scales of SB, SD and SC and performed the same duties, though SAs were non-gazetted ^{while} ~~and~~ Scientific Officers were gazetted. This classification had created a situation that only favourites were selected for becoming officer, while others had to be satisfied with SA (D). Against this injustice, SAs working in Nuclear Fuel Complex, ECIL PO, Hyderabad obtained an order in their favour from the Hyderabad Bench of the Tribunal on 11-6-1988. ^{However} On 30-7-1987, Madras Bench of the Tribunal, dismissed the application filed by ^{S.A.s} of Kalpakkom. Civil Appeal No. 808/88 from the respondents from Hyderabad and 809/88 from the applicants from Madras, came up before the Supreme Court. During the hearing Addl. Solicitor General had submitted as follows :-

"1. All persons who are promoted to SA (D) post shall be concurrently considered for SO (SC) post when their chance for promotion to SA (E) post comes and if they are found fit, they will be promoted to SO (SC) grade;


2. Similarly, all persons holding the posts of SA (E) will be considered concurrently for promotion to SO (SD) post when their chance for promotion to SA (F) comes ; and

3. In exceptional cases, all those persons holding posts of SA (F) who merit consideration as professionals because of outstanding abilities in the theoretical fields, shall be considered for the post of SO

(SD) and if they are transferred to the SO (SD) posts thereafter they would be having all the promotional facilities available to SO (SD) officers and that.

4. The Government will consider the question of including officers in SA (D) SA (E) and SA (F) Grades amongst the gazetted posts. Keeping the above in view, decision of Madras Bench was upheld and that of Hyderabad Bench was rejected, thus justifying the pleas of the SAs. Still as the respondents did not take any action to grant the benefits, applicants filed a representation, which was rejected by the respondents' letter dated 11-4-1996 stating that the promotion of the individual is determined on the basis of the performance in the interview. According to the applicant, the interview adopted by the respondents is not objective and is only aimed at facilitating favouritism. The grounds taken by the applicants are that equality of opportunity at promotion stage of SA (C) is denied to them and they have to languish in non-gazetted posts through out; no norms for promotion to posts beyond SA (F) are available; comparing SA (C) with Tradesman-G was improper; their service conditions have been altered to their dis-advantage; and in an arbitrary manner some of them are continuing to hold the non-gazetted post of Shift Engineers while supervising the work of the SO (SB)/SO (SC), pointing to their efficiency; and that the present policy causes frustration. In view of the above, the applicants seek abrogation of the orders dated 22-9-1983 and OM dated 14-3-1985, or grant the benefit of the decision of the Hon'ble Apex Court dated 24-8-1988 or give effect to the assurance given by the Addl. Solicitor General before the Hon'ble Supreme Court with all consequential benefits.

4. On behalf of the respondents, it is indicated that the applicants do not have any real grievance. Their plea that the benefits arising from the Hon'ble Supreme Court dated 26-4-1988 had been ignored, was wrong. Respondents have in fact taken note of the judgement as well as the submissions made by the Addl. Solicitor General. The same was also kept in mind while considering the case of according gazetted status to SAs, but it was decided to maintain the status quo. The question granting promotion to SAs as Scientific Officers is also under consideration and as such no grievance now remains to be redressed. It is further pointed out that the application is filed by SAs of different categories without establishing a common cause. A no vacancy based upgradation system of promotion-merit promotion scheme had been introduced by the Deptt. to improve the promotion prospects of the staff. The same ordered through the respondents' letters of 22-9-1983 and 14-3-1983 is sought to be challenged nearly 13 years after and is clearly hit by limitation. The scheme had provided for concurrent promotions both as Officers and as SAs of higher category. This infact is an additional opportunity. By challenging the Scheme the applicants are attempting to come in the way of promotional prospects of other categories of staff like Tradesman, Forman, Draftsman etc. Hon'ble Supreme Court, by their order dated 26-4-1988 in Civil Appeals 808 & 809 of 1988 have, by upholding the decision of the Madras Bench, endorsed the view taken by the respondents and not otherwise as made out by the applicants. And the Apex Court's decision sets




the seal of approval to the respondents' action. Hence their reply No. PA/81(1)/87-R-IV/C-312 dated 11-4-1996 to the applicants' representation which clearly spelt out the positive and correct perspective of the scheme in relation to promotional avenues for all concerned. The application, therefore, has no merits and deserved to be dismissed, plead the respondents. With reference to the specific points raised in the application, the respondents point out that those who are selected to be on the gazetted posts discharge higher responsibilities than those in the non-gazetted stream, though they are also given the same emoluments. As such there was no discrimination. Besides, relief given by Hyderabad Bench of the Tribunal has been set aside by the Hon'ble Supreme Court, who have upheld in the same order the decisions given by the Madras Bench of the Tribunal in favour of the respondents and as pointed out earlier, Hon'ble Apex Court has set the seal of approval on respondents' action. The respondents state that the promotions are ordered strictly in accordance with the prescribed procedure and the interview is conducted in a correct, objective and professional manner and no favouritism is shown as alleged by the applicants. There has also been no discrimination or bias either for or against any individual or group of individuals. All the averments to the contrary are incorrect and without any merit and deserve to be rejected, plead the respondents.

m

5. The points raised by them are reiterated by the applicants in their rejoinder. According to them justice has been denied to them by keeping them in non-gazetted posts, while others are permitted to move over to Officers grade -gazetted posts.

6. During oral submissions both S/Shri K.R.Yelve and B.Ranganathan re-affirmed the points already made by them. According to Shri Yelve, the respondents have failed to carry out the instructions of the Supreme Court, issued while disposing on 26-4-1988 Civil Appeals No.808 and 809/1988, Shri Ranganathan argues that nothing remains to be done, as the respondents have already acted in terms of the Court's decision. Infact the Apex Court has approved their earlier action, according to Shri Ranganathan.

7. We have carefully gone through the rival contentions as well as perused the documents brought on record. The moot point in this OA relates to the promotional avenues and status of Scientific/Technical Staff attached to Bhabha Atomic Research Centre, Tarapur. According to the applicants despite being qualified and equipped, their having joined as Scientific Asstts. (SAs) ^{has} ~~have~~ come in the way of their becoming Scientific Officers and attaining gazetted ranks, even though they have been placed in the same scale and perform similar duties and responsibilities. While prior to 1983, it was possible for them to become Scientific Officers, they have been denied the same in terms of Deptt's letter/order No. TC/1/(6)643450 dated 22-9-1983 and OM No. 25/77/83-R dated 14-3-1985. On the other



hand, the respondents assert that the new Scheme had only increased promotional opportunities and opened fresh doors for advancement in the career for the applicants.

8. We observed that till 1983 Scientific Assistants (SS) promotional avenues were from SA (A) to SA (C) through SA (B) and thereafter as Scientific Officer SB, SC & SD, however, with the change over in 1983, the position became that the SAs were placed as SA (D), SA (E) and SA (F) while the change over from Assistants to Officer grade was directed. It is against this that ^{by} the similarly placed Assistants of Nuclear Fuel Complex of Hyderabad filed W.P.No.9431/83 which became TA No. 620/88 and which was decided on 11-6-1987 in the applicants' favour setting aside the Scheme. However, similarly placed Scientific Assistants of Reactor Research Centre, Kalpakkom filed W.P.No. 9599/83 which became TA 788/86 and which was decided by the Madras Bench of the Tribunal on 30-7-1987 upholding the change in the policy brought out in 1983. Civil Appeal No. 808 and 809 of 1988 were filed against the decision of the Hyderabad and Madras Benches of the Tribunal, which was disposed of by the Hon'ble Supreme Court on 26-4-1988. As the said order has been issued after considering the two different judgements from two Co-ordinate Benches of the Tribunal holding diametrically opposite views.

The said decision of the Hon'ble Supreme Court ^{calls for} reproduction in its entirety. The same reads as below

//

After these cases were heard for some time, Shri Kuldip Singh, learned Additional

Solicitor General stated that :-

(i) all persons who are promoted to SA (D) post shall be concurrently considered for SO (SC) post when their chance for promotion to SA (E) post comes and if they are found fit, they will be promoted to SO (SC) trade;

(ii) Similarly, all persons holding posts of SA (E) will be considered concurrently for promotion to SO (SD) post when their chance for promotion to SA (F) comes ; and

(iii) in exceptional cases, all those persons holding posts of SA (F), who merit consideration as professionals because of outstanding abilities in the theoretical fields, shall be considered for the post of SO (SD) and if they are transferred to the SO (SD) posts thereafter, they would be having all the promotional facilities, available to SO (SD) officers.

The learned Additional Solicitor General further stated that the Government will consider the question of including officers in SA (D), SA (E) and SA (F) Grades amongst the gazetted posts.

We record the above statement.

We have carefully gone through the judgments of the Central Administrative Tribunal, Hyderabad Bench in Transfer Application No. 620/86 (W.P.No.9431/83) out of which Civil Appeal No. 808 of 1988 arises, as also the judgment of the Central Administrative Tribunal, Madras Bench in Transfer Application No. 788/86 (W.P.No.9599/83) out of which Civil Appeal No. 809 of 1988 arises. We are of the view that the judgement of the Central Administrative Tribunal, Madras Bench out of which Civil Appeal 809 of 1988 arises should be affirmed. We, therefore, dismiss Civil Appeal No. 809/1988. As consequence of our above decision Civil Appeal No.808/1988 filed against the judgement of the Central Administrative Tribunal, Hyderabad Bench should be allowed. We accordingly allow Civil Appeal No. 808 of 1988 and set aside the judgement against which the said appeal has been filed. There will be no order as to costs."

9. And this has become the law of land on the subject. By the above decision the Supreme Court has upheld the validity of the decision of the Madras Bench of the Tribunal ^{and} repelled the findings of the Hyderabad Bench of the Tribunal. With the result

the validity of the Scheme propounded in 1983 bring about changes in the promotional pattern has been upheld by the Hon'ble Apex Court. In the circumstances, the averment of the applicant in para 4.12 of their OA that the "overall effect of the orders of the Hon'ble Supreme Court was that the pleas of the Scientific Assistants were upheld and that of the Administration were set aside" has no legs to stand on. The Supreme Court ^{has in fact} ~~has~~ ^{were satisfied} upheld the Scheme and obviously with the action taken by the Department till then.

10. The applicants further pointed out that in terms of the averments made by learned Addl. Solicitor General, before the Supreme Court that the Department is expected to make changes in the Scheme is not borne out or by facts. No doubt the Hon'ble Apex Court has recorded the statement of the learned Addl. Solicitor General, but have not made any mention thereafter indicating that their decision was guided by the above averments or that the Government (respondents) in this OA were expected to give effect to the points made by the learned Addl. Solicitor General. Nothing further turns on that. Still it is noticed from the averment of the respondents in the counter that they did consider the question of including the post of Scientific Assistant in certain grades amongst the gazetted, ^{posts} On the lines of the statement made by learned Addl. Solicitor General, ^{but} it was finally concluded that the status quo should be maintained. That being the case. Nothing further is expected to be done by them.

11. The applicants to our mind, have not made

out any case warranting our interference. The application, therefore, fails and is accordingly dismissed.

(GOVINDAN S. TAMPI)
MEMBER (A)

/vikas/

P. (87) -
(S.L. JAIN)
MEMBER (J)