

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 522/97 & 541/97

THIS THE 20TH DAY OF FEBRUARY, 2002

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry MEMBER (A)

O.A. NO. 522/1997

1. T.D. Garad,
Senior Technical Assistant,
Office of the Director, Armament
Research & Development Establishment
Pashan, Pune-411 021.
2. A.M. Barve,
Senior Technical Assistant,
High Energy Material Research
Laboratory, Pashan,
Pune-411 021.
3. M.L. Lonkar,
Senior Technical Assistant,
High Energy Material Research
Laboratory, Pashan,
Pune-411 021.
4. H.B. Thigale,
Senior Technical Assiostant,
Vehicle Research & Development
Establishment.Ahmednagar-414006...Applicants

By Advocate Shri S.P. Saxena.

Versus

1. The Union of India
through the Secretary,
Minisitry of Defence DHQ PO,
New Delhi-110 011.
2. The Scientific Advisor &
Director General, Research
Development Organisation,
Ministry of Defence, Sena Bhavan,
New Delhi-110 011.
3. The Director,
High Energy Material Research
Laboratory, Pashan,
Pune-411 021.
4. The Director,
Vehicle Research & Development
Establishment, Ahmednagar 414 006.

5. B.B. Sarkar,
Senior Technical Assistant,
D.I.P.A.S., Lucknow Road,
New Delhi-110 054.
6. M. Suryanarayana,
Sr. Technical Assistant,
N.S.T.L. Vigyan Nagar,
Visakhapatnam-530 027.
7. The Director,
A.R.D.E., Pashan,
Pune-411 021. . . Respondents

By Advocate Shri R.R. Shetty for Shri R.K. Shetty,
for Respondents 1 to 4

O.A. NO. 541/1997

1. M.Y. Nene
Senior Technical Assistant,
A.R.D.E., Pashan,
Pune-411 021.
2. S.C. Bharamgude,
Senior Technical Assistant,
A.R.D.E., Pashan,
Pune-411 021.
3. A.V. Suryanvanshi,
Senior Technical Assistant,
A.R.D.E., Pashan,
Pune-411 021.
4. C.M. Unni,
Senior Technical Assistant,
A.R.D.E., pashan,
Pune-411 021.
5. R.S. Kshirsagar,
Senior Technical Assistant,
A.R.D.E., Pashan,
Pune-411 021.
6. S.D. Sonkamle,
Senior Technical Assistant,
A.R.D.E., Pashan,
Pune-411 021.
7. S.V. Bam,
Senior Technical Assistant,
A.R.D.E., Pashan,
Pune-411 021.
8. C.B. Shetti.
Senior Technical Assistant,
A.R.D.E., Pashan,
Pune-411 021.

9. C.H. Patil,
Senior Technical Assistant,
A.R.D.E., Pashan,
Pune-411 021.
10. V.P. Koli,
Senior Technical Assistant,
A.R.D.E., Pashan,
Pune-411 021.
11. D.B. Vetal,
Senior Technical Assistant,
A.R.D.E., Pashan,
Pune-411 021. Applicants

By Advocate Shri S.P. Saxena.

Versus

1. The Union of India,
Through the Secretary,
Ministry of Defence,
DHQ PO, New Delhi-110 011.
2. The Director General,
Research & Development Organisation,
Ministry of Defence, DHQ PO,
New Delhi-110 011.
3. The Director,
Armament Research & Development
Establishment, Pashan,
Pune-411 021.
4. Shri K. Ashokan,
Senior Technical Assistant,
C.V.R.D.E, Avadi,
Madras-54. Respondents

By Advocate Shri R.R. Shetty for Shri R.K. Shetty for
Respondents 1 to 3.

O R D E R

Hon'ble Smt. Shanta Shastray. Member (A)

Both the OAs were heard together as they involve common issue, facts and also similar prayer, also the advocates are same. We therefore, proceed to dispose of the same by a common order. The brief facts in these OAs are given below:

O.A. NO. 522/97

1. In this OA there are four applicants. The question is of seniority. The applicants are aggrieved that they have been placed below respondents No.5 and 6 in the seniority list of the Senior Scientific Assistant (SSA) grade. They have therefore, prayed to declare that the applicants are senior to the Respondents No.5 and 6 and to include their names above the names of the Respondents 5 and 6 in the seniority list of SSA dated 15.9.94 and to hold that they are entitled for being placed in the higher scale of pay of the SSA of Rs.2375-3500 with effect from 29.01.1991. They have further sought that they should be redesignated as Technical Officer Grade-A from the date the Defence Research and Technical Cadre Rules (DRTC Rules) have come into force and to grant them arrears of difference of pay and allowances arising out of directions, with all consequential benefits.

2. According to the applicants, a DPC was held on 15.9.87 to consider promotion of applicants No.1 to 3 to the post of SSA. Applicant No.4 was directly recruited as SSA by the Selection Committee on interview/selection basis on 15.9.87. He had joined the post of SSA with effect from 18.11.87. The selection was held as per the recruitment rules of 1968. These recruitment rules were revised vide SRO No.221 dated 14.8.1987. As per the

earlier recruitment rules, the ratio between the direct recruits and promotees was 1:2. By the revised recruitment rules, the ratio was changed to 80% to be by promotion of the JSA grade-I and 20% by promotion of Artists etc., failing which by direct recruitment, thus all the posts of STA were to be filled on the basis of promotion. The new recruitment rules were effective from 29.8.1987.

3. There was an arbitration award given in 1985. However, the implementation was with effect from 1988. As per this award 49% of the total posts of SSAs were to be given higher scale of Rs.2375-3500, whereas the rest of the 51% were to get the same scale of Rs.1640-2900 which they were already drawing.

4. Against this background Respondent No.5 was directly appointed as SSA by a selection committee which met on 27.3.1987. The Respondent No.5, however, joined on 29.01.1988. According to the applicants since he joined much later than the applicants, who were promoted on 15.9.1987 his seniority should be reckoned from the date of his joining and therefore, the applicant must be placed above Respondent No.5. However, a seniority list was issued by the respondents on 15.9.1994 wherein the applicants have been shown below Respondent No.5. According to the applicants this seniority list is not prepared properly. Respondent No.5 has been given

higher position unduly. In terms of the Arbitration award of 12.8.1985 a letter was issued on 22.8.1995 placing 128 SSA in the scale of Rs.2375-3500, applicants were overlooked. A further list was issued on 07.3.1994 placing 216 persons in the higher pay scale and placing Respondent No.6 above the applicants. It is contended by the applicants that the seniority list is not according to the recruitment rules of 1968 nor is it according to DOP&T OM dated 06.02.1989. The list is faulty, further the placement was only by way of upgradation and not by way of promotion.

5. The applicants further submit that the Respondent No.1 issued the DRTC Rules, 1985 superseding all the earlier rules published in the gazette making it effective from 1995. In the restructuring, the applicants i.e. SSAs were redesignated as STA in the Group-C post, but those who were already placed in the higher scale of SSA were redesignated as Technical Officer Grade-A which is a group-B post carrying same pay scale of Rs.2375-3500. Thus, the applicants were deprived even of their status.

6. The applicants have argued that since Respondent No.5 was selected directly on 15.9.87, he joined on 29.01.1988, his selection should have been as per revised recruitment rules of 1987 effective from 29.8.1987 i.e. he could not have been recruited

directly according to the recruitment rules, there is only provision for promotion. Secondly, according to the Ministry of Home Affairs (DPAR) OM dated 06.6.1978, it has been clarified that if the selected candidates join after a period of nine months, they will have their seniority depressed vis-a-vis others, who join within the prescribed period. Since Respondent No.5 joined beyond the period of nine months of his selection his seniority should have been depressed.

7. The applicants, being aggrieved, made a representation to the respondents, however, the same was rejected vide letter dated 10th April, 1996. It was stated therein that the representation of the STAs namely S/Shri SV Shaligram, RR Bhagwat and DS Bhutkar were examined at the Headquarters and it is stated that the seniority of these individuals in the grade of SSA has correctly been determined following the principle of rotation of vacancies based on the quota of vacancies reserved for Direct Recruits and Promotees respectively in Recruitment Rules and therefore, the grant of the higher pay scale to these individuals does not arise.

8. The respondents claim that their action is entirely in order. It has been explained in written reply that the Respondents 5 and 6 joined late because of delay in police verification, they were not responsible nor was it their fault. In terms of the OM

dated 06.6.1978 of the Ministry of Home Affairs, the period of nine months has to be calculated from the date of first offer of appointment and not from the date of selection and therefore, there was no question of depressing the seniority of Respondents 5 and 6. Respondent No.5 was selected in the meeting held on 15.3.1987 and therefore also he is senior to the applicants.

9. That apart, the respondents submit that a seniority list of the SSA was issued in 1991 as well as in 1994. In both these seniority lists the applicants were shown junior to Respondents 5 & 6, thus the cause of action arose in 1991; whereas the subject OA has been filed in 1997. Thus, the OA is barred by limitation. Granting of the prayer of the applicants would only unsettle the settled seniority position since last five years. It will create unprecedented havoc. The respondents state that even the Supreme Court has repeatedly asserted that settled seniority position should not be unsettled after a long lapse of time.

10. The respondents have further explained that according to the recruitment rules 1968, 1/3rd of the posts were to be filled by direct recruitment and 2/3rd by promotion. Though the selection board had met on 15.9.1987 it was for the vacancies arisen prior to the coming into effect of SRO 221/1987 whereby the

recruitment rules were revised with effect from 29.8.1987. Therefore, the respondents have correctly applied the principle of rotation of vacancies between direct recruits and promotees.

11: Therefore, according to the respondents, the applicants having been placed below Respondents 5 and 6 right from 1991 onwards, the applicants cannot now agitate the issue having failed to raise the issue within the limitation period.

O.A. NO. 541/1997

12. There are eleven applicants in this OA, who have challenged the placement of Respondent No.4 above them in the seniority list of 15.9.1994 and the letter dated 22.8.1995 placing respondent No.5 in the higher pay scale of Rs.2375-3500 and rejecting the representation of the applicants vide letter dated 10.4.1996. In this case, the applicants were promoted by DPC held on 15.3.1988. Respondent No.4 was appointed as direct recruit by the Selection Committee Meeting held on 15.7.1986 according to the recruitment rules of 1968. Respondent No.4 joined on 23.4.1988 but was placed in the higher scale of Rs.2375-3500 with effect from 23.4.1991. The applicants represented on 03.7.1996, however, their representation was rejected.

13. The arguments put forth by both the applicants as well as by the respondents are similar to the arguments in OA 522/97. However, it was stated by the respondents that between 15.7.1986 when the Respondent No.4 was selected upto 15.3.1988 when the applicants were promoted, there are more than 400 persons who had joined. The applicants thus, are claiming supersession of 400 persons after more than five years. They have also not made them parties. Thus, the application suffers from non-joinder of essential parties. The respondents have given a list of such persons at Exhibit R-1. Though the applicants claim that they do not know about the seniority list of 1991 even going by seniority list of 15.9.94, the applicants have challenged it after two years eight months, thus even on that basis the application is barred by limitation. The name of the Respondent No.4 was placed higher than that of the applicants even in the seniority list of 1991. The applicants had not challenged it during the period of limitation at the relevant time, therefore, according to the respondents, the application deserves to be dismissed.

14. We have heard the learned counsel for the applicants as well as the respondents in both these OAs and have given careful consideration to the arguments advanced on both the sides. It is seen that the respondents had published the seniority list of SSAs

(Senior Technical Assistants) on 10th June, 1991 initially. The seniority list are published every year. In this list of 1991 the applicants were shown below Respondents 5 and 6 in OA 522/97 and below Respondent No. 4 in OA No. 541/97. The applicants did not challenge this even after the seniority list of 15.9.94 was published. The applicants kept representing against non-promotion, which was replied to on 10.4.1996.

15. As rightly pointed out by the respondents, the settled position of seniority cannot be unsettled after a long lapse of time. In this case, the seniority had been settled way back in June, 1991 itself. It cannot therefore, be unsettled after a period of six years. This proposition laid down by the Supreme Court in the case of K.R. Mudgai & Ors vs. R.P. Singh & Ors 1986(4)SCC 531. There are several other judgments of the Supreme Court also which held that settled position of seniority cannot be unsettled after a long lapse of time. Therefore, also the OAS fail.

16. In regard to the individual promotions of Respondents 5 and 6 in OA 522/97 and Respondent No. 4 in OA 541/97 we are satisfied with the explanation given by the respondents. The respondents have also produced copies of the relevant correspondence relating to the of appointment of Respondents 5 in OA 522/97 which corroborates the explanation of the respondents.

...12.

we agree that the period of nine months has to be reckoned from the date of the first offer of appointment made and not from the date of selection.

14. In view of the reasons recorded above both the OAS are dismissed on the ground of limitation as well as on merits.

(SMT. SHANTA SHASTRY)
MEMBER (A)

(S.L. JAIN)
MEMBER (A)

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