

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.696/97

Date of Decision: 28.06.2002

Dr. Das.

Applicant(s)

Shri M.S. Ramamurthy.

Advocate for applicants

Versus

Union of India & another.

.. Respondents

Shri R.R. Shetty.

Advocate for Respondents

CORAM: HON^{BLE} SMT. SHANTA SHASTRY. .. MEMBER (A)
HON^{BLE} SHRI SHANKER RAJU. MEMBER (J)

- (1) To be referred to the Reporter or not? * γ
- (2) Whether it needs to be circulated to other [✓]
Benches of the Tribunal?
- (3) Library ✓

hast
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 696/1997

THIS, THE 28TH DAY OF JUNE, 2002

CORAM: HON'BLE SMT. SHANTA SHASTRY.
HON'BLE SHRI SHANKER RAJU.

MEMBER (A)
MEMBER (J)

Dr. S. Das of Mumbai
Indian Inhabitant, a Central Government
Official of Group 'A' Cadre presently
working as Scientific Officer (SF)
Government of India,
Bhabha Atomic Research Centre,
Theoretical Physics Division,
Trombay, Mumbai-400 085.

.. Applicant

By Advocate Shri M.S. Ramamurthy.

Versus

1. The Union of India,
through the Secretary,
Department of Atomic Energy
Government of India, and
Ex Officio Chairman,
Atomic Energy Commission,
Anushakti Bhavan, C.S.M.,
Marg, Mumbai-400 039.

2. The Director,
Bhabha Atomic Research Centre,
Trombay, Mumbai-400 085.

.. Respondents

By Advocate Shri R.R. Shetty.

O R D E R

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

By this OA, the applicant is seeking promotion to the grade of Scientific Officer (SF) [SO (SF) for short] with effect from 1986 and Scientific Officer (G) from 1989 and a direction to the respondents to grant suitable office premises, man-power, material and support.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 686/1997

THIS, THE 14TH DAY OF JUNE, 2002

CORAM: HON'BLE SMT. SHANTA SHASTRY.
HON'BLE SHRI SHANKAR RAJU
MEMBER (A)
MEMBER (J)

For the purpose of this order, the Commission has taken into consideration the facts and circumstances of the case and the law applicable to the same. The Commission has also taken into consideration the principles of natural justice and the principles of equity. The Commission has also taken into consideration the facts and circumstances of the case and the law applicable to the same.

It is the order of the Commission that the applicant is entitled to the relief sought by him. The Commission has also taken into consideration the facts and circumstances of the case and the law applicable to the same.

The Commission has also taken into consideration the facts and circumstances of the case and the law applicable to the same. The Commission has also taken into consideration the facts and circumstances of the case and the law applicable to the same.

The Commission has also taken into consideration the facts and circumstances of the case and the law applicable to the same. The Commission has also taken into consideration the facts and circumstances of the case and the law applicable to the same.

The Commission has also taken into consideration the facts and circumstances of the case and the law applicable to the same. The Commission has also taken into consideration the facts and circumstances of the case and the law applicable to the same.

O R D E R
Hon'ble Smt. Shanta Shastri, Member (A)

The Commission has also taken into consideration the facts and circumstances of the case and the law applicable to the same. The Commission has also taken into consideration the facts and circumstances of the case and the law applicable to the same.

The Commission has also taken into consideration the facts and circumstances of the case and the law applicable to the same. The Commission has also taken into consideration the facts and circumstances of the case and the law applicable to the same.

2. The applicant joined Bhaba Atomic Research Centre (BARC) as a Group-A officer in the grade of Scientific Officer SC-2 with effect from 01.8.1966. The applicant was promoted to the Scientific Officer SO grade from 01st August, 1974. The applicant obtained M.Sc. degree in 1977 and Ph.D in 1981. he was promoted to Scientific Officer SE with effect from 01.02.1981. Thereafter, the applicant proceeded to England with a Fellowship from Science and Engineering Research Council of United Kingdom. On his return, he was placed in the Neutron Physics Division from Theoretical Physics Division. the applicant was communicated certain drawbacks vide memo dated 20.02.1986. he represented to the Director vide letter dated 06.5.1987. He further received another letter dated 03.9.1986 warning him about using of OIGS envelopes for sending personal communication. The applicant explained the position vide his reply dated 05.9.1986. There were further allegations about his using Government stationery and advice. According to the applicant he got very hostile treatment. he was issued with another memorandum by the Director 15.9.1987 purporting to convey certain adverse remarks for the period from 01.8.1986 to 31.7.1987. In the process, the applicant submits that while he was due for promotion to the grade of SO SF in 1986, he was not granted the same. The applicant addressed various letters seeking help to solve his problems. Thereafter, the applicant was promoted to the grade of SO SF with

effect from 01.02.1991. According to the applicant he ought to have been promoted from 1986 onwards. Again when the applicant was due for promotion after five years to the next grade of SO SG he was actually promoted on 01.8.1999. This was during the pendency of the OA. The applicant, therefore, amended the OA and he has sought promotion to the grade of SO (H). The applicant has prayed as follows:-

- (a) that this Hon'ble Tribunal be pleased to direct the Respondents to make available for its perusal the ACRs/personal dossiers of the Applicant and examine them to determine whether the deferment of Applicant's promotion to S.O. (S.F.) and denial of promotion to S.O. (S.G.) till date are justified and pass appropriate orders in regard to the said promotions;
 - (b) that the Respondents be directed if the Tribunal feels satisfied, on examination of the records of performance ACRs and on the basis of the circumstances which were prevailing in his working line from 1986 onwards to ante-date the promotion of the applicant to the grade of S.O. (S.F.) from 1986 onwards and to grant the promotion to S.O. (S.G.) from 1989-1990 or any time thereafter, looking to the time when scientific Officers junior to the Applicant have been promoted to the said S.O. (S.G.) grade.
- C-1 that the provisions in the Merit Promotion Scheme of the DAE which provide for scrutiny of Confidential Report by Standing Screening Committee and with power to make recommendations of the cases of Scientific Officers for promotion on the basis of undisclosed standards and guidelines, be declared bad in law, arbitrary and that it be further declared that the Scientific Officers are entitled to be considered for promotion by the Selection Committee for deciding their claim for promotion one way or the other, without their cases being dropped at the Screening Committee level.

- C-2 that the Hon'ble Tribunal may be pleased to direct the Respondents to promote the Applicant to the next higher grade of Scientific Officer (H)/S.O. (H) from the date that the said promotion ought to have been granted to the Applicant.
- C-3 The Respondents be directed to fix the Applicant at the appropriate level in the Department Commensurate with his credentials (seniority in position) standing, calibre before being dumped into Theoretical Physics Division and to remove the inconsistency in his career.
- C-4 To re-assess his entire service career, especially the period from 1984 onwards and to give parity with his peers who come from same/similar sources/ background and had comparable performance in the Department.
- C-5 To direct appropriate action to be taken against these involved directly or indirectly in undermining applicant's career.
- (c) to direct the Respondents to grant the Applicant all consequential benefits including monetary benefits.
- d) to pass appropriate directions directing the Respondents to stop the campaign of harassment and humiliation of the Applicant.
- (e) to pass appropriate directions directing the Physics Group and Director of BARC to give the Applicant a proper place for working and a programme of work and give him man-power and material backup for the purpose of his carrying on the scientific work assigned to him and/or to carry on the scientific experiments and research, in a free and helpful atmosphere.
- (f) that such other and further order or orders be passed as the nature and circumstances of the case may require.
- (g) that the costs of this Application be provided for.

3. The respondents submit that they have a Merit Promotion Scheme for Scientific personnel to ensure that recommendations for promotion are done in a systematic and balanced manner. There was a system Confidential

Report originating from the candidate assessed by the immediate superior and reviewed and counter signed by the Head of the Division or Director of the Group. On the basis of the Confidential Report, a Standing Screening Committee recommends the cases for promotion on the basis of standards and guidelines prescribed and it is ensured that no deserving person is overlooked. C.R. dossiers are made available to the Screening Committee which comprises of immediate superior and balancing Member from other Division/Unit of the department. based on the recommendations of the Screening Committee, a Selection Committee interviews the individuals and assess the candidates and makes suitable recommendations. The normal promotions of Scientific and Technical personnel in the Department takes place on fixed dates in a year either on 01st February or 01st October in the case of Scientific category. One important aspect of the merit promotion scheme is that seniority of individual officer is not the criteria. It all depends upon completion of length of service and the individual merit.

4. Accordingly, the applicant was promoted from time to time upto the level of S.O. (SE). Now the merit promotion scheme which has been in existence for a long time.

5. The applicant was communicated adverse entries

in his ACR for the period from 01.8.1986 to 31.7.1987 as follows:-

Characteristics	Assessment
co-operativeness	Difficult to work with
Conscientiousness	Tendency to
Apathetic	slipshod or
lazy	

Other adverse remarks / remedial defects were recorded in the C.R that he is unfit for team work and he is unable to do productive work. He was also advised to endeavor to remove his short coming. His attention was also drawn to memorandum dated 20.02.1986 wherein the assessment given by Prof. John Walker University of Birmingham for the period from 01.10.1984 to 31.12.1985 was communicated to him as follows:

Characteristic	Assessment
Cooperativeness	Difficult to work with

According to the respondents, the applicant never completed the assignment given to him. As the applicant has been unable to deliver much by way of constructive

work, he could not be promoted to the grade of SO (F) earlier than 1991. In fact, the respondents pointed out that from May, 1980 onwards, the applicant's work was not related to the divisional activities and he did not complete the work. The short coming pointed out to him continued to persist. Therefore, his further promotion was delayed. The applicant had filed Writ Petition in the High Court for his promotion to the SF, SG grade. Since, however, he was granted the promotion with effect from 01.8.199, he withdrew the petition. One has to fulfil the norms for being promoted to the higher grade. There cannot be any comparison between the applicant and other officers. Promotion to higher grade depends upon the individual performance. Further the promotion to the grade of SO (H) is based on selection and not on mere length of service. He was promoted to the grade of SO (SG) only in 1999. Therefore, it would be too early to consider him for selection to SO (H). The respondents have explained that the case of the applicant had been considered by the Screening Committee while screening 402 eligible officers in that grade. Screening Committee which considered the candidate for promotion consists of eminent Scientists in various super specialties including Physics. It is not necessary that a minimum seven years should have been put in in the feeder grade of SO SF for promotion to the post of SO SG. After due consideration, the applicant could not be promoted then. However, thereafter, he has

been promoted in 1999. He cannot compare his case with those of Shri N.K. Gupta and Shri H.C. Gupta and Pitamber Singh in physics group and 120 others in various other divisions who have fulfilled the requisite criteria for being called for interview by the Selection Committee.

6. The applicant's contention that the system of being screened by a Screening Committee and then being called for interview by the Selection Committee is arbitrary and erratic. There cannot be denial of consideration by Selection Committee or elimination by a Standing Screening Committee in the selection process to higher level of Scientific Officer. The applicant has alleged that he learnt from reliable sources that after his interview to the SO (G) he had rightly deserved and can be promoted to SO (G) in 1996 taking 1991 as the date of promotion to SO (F) but the then Chairman of the Selection Committee had obstructed and he has been using one Dr. S.S. Kapoor who is Member of Screening Committee and who was promoted to SO DS in 1998 with two years extension. The applicant has not been recommended by the Screening Committee. The applicant is one of the Seniormost Scientific Officer and had there been any shortlisting he would come very much within the zone of consideration and ought to have been called for interview by the Selection Committee, instead of being eliminated by the Screening Committee. According to him

Scientific Officer with lesser standing in the same division had been called for interview in June, 1997. Therefore, the entire action of the respondents was arbitrary and illegal. According to him every officer in the zone of consideration has to be considered by the Selection Committee and not by any collateral body. Also the norms ought to have been made known to the individuals in that he is challenging the Screening Committee under the Merit Promotion Scheme.

7. The respondents have also brought to our notice a judgment of this Tribunal in the case of one R.K. Balani Vs. Union of India & Others decided on 08th June, 1995 wherein the applicant was aggrieved that he had not been given promotion from SO SF to SO SG though his juniors have been given promotion. The Tribunal discussed the Merit Promotion Scheme in this judgment and found no fault with the scheme. The applicant has made allegation against Shri B.P. Rastogi as being responsible for the damage to his career. The respondents submitted that Dr. Rastogi was his immediate superior and had valued his work under proper perspective. In any case, the applicant had not made him as party. The applicant had also made allegations against Dr. Kapoor. Again Dr. Kapoor also had not been made a party to this OA. Therefore, his allegations cannot be considered.

8. We have heard the learned counsel for the applicant as well as for the respondents. We now note that the earlier prayers of the applicant for promotion to the post of SO SF and SO SG have been granted, though belatedly in 1991 and 1999 respectively. We also note that the respondents have followed the procedure as laid down under the Merit Promotion Scheme which is being implemented by the Organisation for long. The applicant has been promoted based on his performance from time to time under the same scheme. Having been promoted under the Merit Promotion Scheme, which provides for a Screening Committee, he cannot now challenge a procedure which has been accepted and also the applicant has accepted his promotion which were made as per this very procedure. We therefore, cannot accept the contention in regard to his being eliminated by the Screening Committee for promotion to the post of SO SG. The promotions are to take effect only from the date of recommendations of Selection Committee. Therefore, there cannot be retrospective effect. We have perused ACR record of the applicant as well as the other relevant records concerning his promotion. We are satisfied that the respondents have considered the applicant duly for promotion and it is only based on his performance that he could not be promoted earlier than the date on which he was promoted to SO SF and SO SG. We therefore, cannot find any fault with the respondents for not promoting the applicant on an earlier date as prayed for by him.

9. The post of SO (H) being a selection post, it goes without saying that the applicant will have to fulfil the requisite norms before he could be considered for promotion. He cannot claim promotion by right, he can only be considered as and when it is due. Had there been any malafides the applicant could not have been promoted even in 1991 and 1999. The respondents have been fair, they gave him every opportunity to improve himself. We therefore do not want to give any direction in this matter except that the respondents shall consider him for promotion as Scientific Officer (H) in due course as per rules. In the circumstances, the application fails and is dismissed without any order as to costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

Shanta S

(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan