

Central Administrative Tribunal
Mumbai Bench

OA No.1175/97

Mumbai this the 12th day of June, 2002.

Hon'ble Mrs. Shanta Shastry, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl.)

V.K. Karad and 13 others -Applicants
(By Advocate Shri Ramesh)

-Versus-

Union of India & Others -Respondents,
(By Advocate Shri V.S. Masurkar)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Applicants, who belong to Group B' and 'C' working as Junior Scientific Officers as well as Senior Scientific Officers and Junior Scientific Assistants under respondent No.4 have challenged the action of the respondents, whereby their right of promotion in Group 'A' cadre of Scientific staff in the Indian Navy has been reduced by encadring Group 'A' Scientific Posts in Indian Navy in the Defence Research and Development Service (DRDS, for short) by orders dated 28.1.86 and 24.2.92. They have sought declaring decadring of all Group 'A' posts from DRDS and to restore promotional avenues to the applicant by holding DPC as well as amendment to SRO 27/79 by incorporating SSO-II and DCSO posts.

2. The cadre of Scientific Staff in Indian Navy prior to 28.1.1986 consisted of DCSO, PSO, SSO-I, SSO-II, JSO, SSA, JSA and LA (NG). Their service conditions were modified by SRO-27/79 and SRO 135/79 being the statutory rules framed under Article 309 of the Constitution of India. No provisions existed for filling up sanctioned posts of SSo-II, DCSO in SRO 27/79 prior to encadrement. A move was initiated to encadre Group 'A' posts of the Scientific cadre in the Indian Navy with the DRDS. A total 32 posts in

different categories were encadred, previously occupied either by DRDO or the Indian Navy Scientists. Representations were made by the applicants and it has been observed that the case for encadrement of these staff with the DRDO was taken up and not agreed to.

3. Learned counsel for the applicants stated that no limitation applies to his case as they have a continuing cause of action. They have been stagnating on the present posts and their promotional avenues have been marred by the action of the respondents. By way of an amendment it is stated that they have not been provided with any alternate promotional avenue by this SRO 27/79 and 223 promotions were granted in the Indian Navy itself even to Group 'A' posts. By the present encadrement, which is contrary to the rules, the aforesaid promotion has been curtailed. There were number of vacancies for SSO-II in the Indian Navy but were encadred depriving the applicant at least one promotion in Group 'A'. In this manner staff in SSA and JSA categories would also not be entitled to any further promotion due to the post not getting vacant. Previously they used to get this promotion in Group 'A' in Indian Army. In so far as the decision of the Hyderabad Bench where directions have been issued to finalise the amendment to SRO 27/79 within six months is concerned, it is contended that the same would have no application in the present case and cannot be treated as a judgement in rem as under the existing recruitment rules JSO with graduate qualification cannot get any further promotion and has to retire with the same category. Only a JSO with post graduate qualification is entitled to the next promotion as SSO-I. As the applicants before the Hyderabad Bench were graduate JSO's they cannot get any further promotion in their career. It is further

stated that if the said amendment to the rules is done by the Government the same cannot be used to restrict the right of the Post Graduate JSOs from getting direct promotion as SSO-I as available to them prior to the amendment. It is also stated that the Government as policy is contemplating direct recruitment to SSO-II which will further come in their way of getting promotions because the new direct recruits will not retire in the near future and the applicants who have put in long years of service will have to wait for their turn for promotion only after the said new recruits are further promoted or superannuated.

4. As per SRO 27/79 only 50% of the Group 'A' posts can be encadred with DRDS/DRDO. On the contrary respondents are calculating 50% every time on the available posts. According to them out of the 19 posts of SSO-I only 9 posts can be encadred and the balance 10 are to be made available to the applicants for further promotion.

5. Respondents in their reply denied the contentions and further stated that as a policy decision has been taken by the Government which does not suffer from any mala fide or arbitrariness it cannot be interfered with by this Tribunal. It is stated that all Group 'A' posts of Scientists were part and parcel of the Defence Scientific Service and were controlled by the DRDO and not by the Navy. It is contended that the encadrement was essential to enable Navy to sustain a separate cadre of Scientific Officer due to varying disciplines. They have also stated the percentage of encadrement by stating that promotional avenues are available to the applicants. It is also stated that DRDO opposed encadrement of non-gazetted staff because their JSOs were stagnating for five years.

6. In their sur rejoinder respondents have further stated that as the ban has been lifted and new guidelines have been issued by the DOPT vide OM dated 25.5.98 the entire recruitment rules for these posts have been changed and the same are likely to be approved by the UPSC and DOPT shortly. It is also stated that two JSOs have been granted promotion as SSO-I. It is also stated that similar directions may be issued, as directed by the Hyderabad Bench. It is stated that five SSAs were promoted as JSOs in 1992-93, five have been promoted recently and two JSOs have been promoted as SSO-I.

7. After carefully going through the rival contentions of the parties, we are of the considered view that as a policy decision the Government has taken steps to encadre Group 'A' posts from Navy to DRDO, which does not suffer from any malafide or arbitrariness, as such being a conscious decision in the administrative exigencies for the reasons mentioned in the reply the same cannot be interfered with by this Tribunal. Creation and abolition of posts, which also includes decadrement and encadrement is to be left to the executive authorities and the Government to decide and this Tribunal in a judicial review would not encroach upon their jurisdiction without any malafide being established.

8. In so far as promotional avenues are concerned, having regard to the statement made by the respondents that in pursuance of the guidelines of the Government, modified recruitment rules have been sent for approval to UPSC and DOPT, it cannot be concluded that the respondents have not

taken any steps. Few of the Scientists have been given promotion in relaxation of the rules and, therefore, it cannot be said that applicants lack promotional avenues.

9. However, keeping in view the interest of justice and the question of promotional avenues of the applicants, as the respondents themselves have initiated the process the OA is disposed of with the direction to the respondents to finalise the process of framing/amending the recruitment rules meant for providing promotional avenues to the applicants to the higher posts in Group 'A', within a period of six months from the date of receipt of a copy of this order. OA is disposed of accordingly. No costs.

S. Raju
(Shanker Raju)
Member (J)

Shanta
(Smt. Shanta Shastry)
Member (A)

'San.'

dt 12/6/22
Order/Judgment despatched
to applicant respondent (s)
24/6/22

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