

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.92/98

Date of Decision: 3.05.2002

M.G. Pednekar & Ors.

Applicant(s)

Shri V.S. Masurkar with Shri K.R. Yelwe. Advocate for
applicants

Versus

Union of India & others. Respondents

Shri R.R. Shetty. Advocate for Respondents

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

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

Shanta 8
(SMT. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 92/98
THIS THE 3rd DAY OF APRIL, 2002

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

1. M.G. Pednekar,
B-2 201, Arvind Apts,
Rajpark Kharighon Parsile
Kalra, Thane-400 605.
2. G. Jaiswar,
549 A.K. Gopalan Nagar,
60 Fool Road, Mahin (E)
Dharavi, Mumbai-400 017.
3. V.T. Sawant
Pratibimb Cooperative
Housing Society Ltd.,
C-11 Plot No. R H 159
MIDC, Dombivali,
4. V.D. Sadamate,
5, Shindu New Mardala,
BARC Colony,
Mumbai-400 088.
5. R.S. Tiwari,
28 Pumba A/nagar
Mumbai-400 094. Applicants

All are working in the Fire Service of the
BARC, Mumbai.

By Advocate Shri V.S. Masurkar with Shri K.R. Yelwe

Versus

1. Union of India
through the Secretary to the
Government of India,
Department of Atomic Energy,
C.S. Marg, Mumbai.
2. The Chairman
Atomic Energy Regulatory Board,
Vikram Sarabhai Bhavan
4th Floor, North Wing,
Anushakti Nagar,
Mumbai-400 091.
3. The director,
Bhabha Atomic Research Centre,
Central Complex,
North Site, Trombay,
Mumbai-400 085.

4. The Director
Chemical Engineering Division,
BARC, Trombay,
Mumbai-400 085.

5. The Controller,
BARC, Trombay,
Mumbai-400 085. .. Respondents

By Advocate Shri R.R. Shetty.

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

The applicant in the present OA belong to the Fire Service of the Bhabha Atomic Research Centre. They are aggrieved by the inaction on the part of the respondents in extending the benefit of orders issued on 27th October, 1993 with regard to recategorisation of Fire Service Personnel from Auxiliary to Scientific 3/ Technical categories with effect from 01.5.1983.

2. The respondents vide their order No. PA-(17)/CST/76-R-3 dated 27th October, 1983 have categorized the fire service personnel as scientific/ technical personnel. They have rationalised the dates of increments as 01st May or 01st November as applicable to the technical categories vide order dated 07th May, 1984 indicating that the fire service personnel have been brought on par with the scientific/ technical personnel in the matter of their service conditions. Since they have been categorised as scientific/ technical personnel, they are entitled to the benefits of time bound promotion, merit promotion in service training, deputation to various training courses etc. These

facilities have not been extended to the fire service personnel so far.

3. The applicants submit that they have been representing to respondents for extending the various benefits as are admissible to the technical/ scientific staff, but the respondents have not taken any cognizance of the representation. It is stated further that the post of fireman is a base line category in the fire service section and the fireman holding necessary driving licence is appointed to the post of Driver-cum-Operator. The post of leading fireman (Rs. 1200-1800), Sub-Officer (Rs. 1400-2300) and Station Officer are filled by issuing notification, advertisement unlike in the case of scientific and technical personnel. The post of leading fireman and above are to be filled by promotion as in the case of scientific and technical personnel. The applicants so far have not been given the benefit of merit promotion. According to the merit promotion scheme for the technical staff, the tradesman category is getting their promotion after an eligibility period of 3 to 6 years, whereas in the case of Fireman-A to Fireman-B the eligibility period is 7 to 10 years from Fireman-B to Fireman-C and from leading fireman-A to leading fireman-B the eligibility period is between 7 to 10 years and for leading foreman-B to leading fireman-C/ Sub-Officer only those who have completed the sub

officer's course are eligible. The applicants submit that the fireman recruited in 1962 or thereabout are still working as fireman without any promotion. In the case of the scientific and technical personnel, they have been held eligible for periodical higher pay scale without any merit, whereas for fireman and driver cum operator such upgradation to higher pay scale is restricted to A, B & C grades only. Leading fireman post are offered only to those who joined with SSC qualification. In the fire section, before 1983 even non-matriculates were appointed as fireman by converting them as technical in 1983. Those who joined as fireman without matriculate qualification have been denied the post of leading fireman, whereas though the minimum qualification fixed for Tradesman-A is also SSC, they are getting merit promotion continuously over those who have joined as non-matriculates. The applicants also have expressed concern that the respondents have not framed any recruitment rules for any of the post in BARC under Article 309 of the Constitution of India. In respect of the fire section staff instead of declaring it as technical staff nor have the department framed any promotional norms while creating promotion post in the case of technical staff. The respondents have fixed norms which are altered at their whims and fancies, this has led to arbitrary and illegal promotions.

4. The applicants are therefore praying that a

direction may be issued to the respondents to implement the order dated 27.10.1983 and 01.5.1983 granting the applicants all benefits admissible to scientific/technical staff with effect from the date from which they have been recategorised as technical/ scientific staff and also to promote them with all consequential benefits including arrears of pay, pay fixation and seniority. The applicants have also sought a direction to the respondents to frame promotion norms on par with those of other technical staff for the fire section personnel within a period of six months from the date of the order of the Tribunal. The applicants have also prayed to file the joint application.

5. The respondents have filed their written statement. They have taken the preliminary objection that the applicants are challenging the alleged non implementation of the order dated 27.10.1983 in the year 1998 i.e. 15 years after the issue of the said orders. Therefore, the application is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 and deserves to be dismissed on that ground alone. The applicants have filed an MP for condonation of delay but they have failed to advance any sufficient justification for the delay in approaching the Tribunal so belatedly.

6. Also according to the respondents, the Driver-cumOperator cannot join along with other fireman

as they are differently constituted. The respondents submit that the order dated 27.10.1983 has been duly implemented and a non vacancy based merit promotion scheme is being followed for the post in the categories of fire service personnel along with vacancy based scheme. From the post of Fireman- A to Fireman-B and Fireman-B to Fireman-C a non vacancy based merit promotion scheme is followed. Thereafter, vacancy based promotion scheme subject to fulfilling of required eligibility criteria is followed for promotion from the post of Fireman-C to Leading Fireman-A or leading fireman-B as the case may be. Again from Fireman-A to leading fireman-B, leading fireman-B to leading fireman-C a non vacancy based merit promotion scheme is followed. However, from leading fireman-C to the post of Sub-Officer-A, vacancy based scheme is followed. From Sub-officer-A to Sub-Officer B and Sub Officer B to Sub Officer C non vacancy based merit promotion is followed. Thus merit promotion scheme is being followed in respect of fire service personnel.

7. The respondents contend that the applicants are claiming for framing of fresh recruitment norms which is exclusive business of the executive and not for the courts, it is a policy matter.

8. The fire service personnel were recategorised from Auxiliary to Scientific/ Technical staff with

effect from 01.5.1983 vide office order dated 27.10.1983. Accordingly their dates of increments were rationalised as 01st May or 01 November as the case may be as in the case of other technical staff. The recruitment and promotion norms for appointment/promotion of fire service personnel had already been laid down by the respondents in the year 1983 and they are still in force and as per the said norms two types of promotions are given to fire service personnel as already explained above. The respondents have also given the factual position of the fire service section staff existing in BARC, Mumbai and have stated that the information as given by the applicants is not correct. According to this position, the respondents have already initiated action to get the remaining posts sanctioned by the DAE. The vacancies have accrued on account of death/ retirement/ resignation/ promotion in different categories are being filled up. According to the respondents all the maintenance staff are on call to attend to emergency if any. There is no short fall in deploying the fire service staff and the safety norms are not violated.

9. The respondents have also denied that no promotional avenues have been opened to the fire service personnel since establishment of the fire service station in BARC. The respondents submit that the applicants No.2 to 5 have already been promoted to the

higher grade. The applicant No.2 to Fireman-B, Applicant No.3 & 5 to fireman -C, Applicant No.5 Driver-cum-Operator-B in their existing category under the merit promotion scheme in accordance with the existing promotion norms laid down by the BARC. As far as applicant No.1 is concerned, though his case was considered for promotion by the Screening Committee from time to time, as he did not meet the requisite norm, he was not promoted along with others to Fireman-B.

10. The respondents have also denied that the applicants have been deprived of being deputed for various fire fighting training course. In fact, suitable persons from fire service personnel are deputed for undergoing different courses conducted by the National Fire Service College, Nagpur from time to time. However, only a limited staff can be relieved at a time from duty to undergo training course as minimum staff strength is required to be maintained in order to attend to emergency duty.

11. The respondents have also contended that the nature of duties of fire service staff and that of other scientific/technical staff are totally different and cannot be compared. All the facilities as applicable to the applicant are provided and representations from the applicants are examined by the competent authority taking into consideration the qualification of the

personnel, the nature of duties involved and are replied properly. The minimum qualification required for recruitment and the nature of duties of the fire service personnel vis-a-vis other scientific and technical staff in BARC are different. The recruitment and promotion norms also vary between scientific and technical staff. The respondents have also denied that any firemen recruited in 1962 or thereabout are still working as fireman without any promotion as alleged by the applicants.

12. The respondents have also explained that it is true that after the recategorisation of fire service personnel to technical category, the minimum qualification for appointment of fireman is SCC pass. Those who were appointed prior to 01.5.1983, though did not possess the requisite SSC pass qualification, they are still continued in service. Only those who have passed SSC or equivalent examination can be considered for appointment as leading fireman. As far as merit promotion of Tradesman category is concerned, the promotion norms for both with SSC and without SSC qualification are the same. However, at present only the prescribed qualification are considered for appointment in the Tradesman category. The respondents have denied that the promotional posts are filled by issuing advertisement/ notification.

13. In regard to the framing of recruitment rules under Article 309 of the Constitution, the respondents submit that the Department of Atomic Energy is exempted from the purview of UPSC for all posts and the department is empowered to frame its own norms/rules based on functional requirement.

14. The respondents have reiterated that they have conferred all the benefits as admissible to the fireman after being categorized as scientific/ technical personnel vide order dated 27.10.1983.

15. The respondents have also produced a judgment of Jodhpur Bench of this Tribunal in the matter of Rajasthan Anushakti Karmachari Union, Phase-II and Basant Rao Maratha Vs. Union of India & another in OA No.356/95. In this case the prayer was for a direction to the respondents to give promotional opportunity to fireman, leading fireman and sub-officers within a period of 3 to 4 years on par with other technical staff i.e. Tradesman and scientific assistants. The OA was dismissed holding that the applicants cannot compare their case with other technical and scientific staff who are more qualified and whose promotions are regulated as per their performance in the scientific field. Each individual promotional channel has got its own parameters and guidelines. Therefore, the promotion chances are also different from channel to channel.

There is no discrimination so far as promotional avenues are concerned. The Tribunal, however, suggested that the management may consider the aspect of granting next higher scale to a candidate in his own line after a reasonable period say 7 to 9 years if the promotion is not given within the aforesaid period. However, no directions were given to grant promotion to the applicants within a period of 3 to 5 years.

16. We have heard the learned counsel for the applicants as well as the respondents. The main grievance of the applicants is that though they have been treated on par with scientific/ technical personnel, the benefits which are extended to scientific/ technical personnel have not been extended to the applicants even after passage of nearly 14 years from the date of issue of the orders of the recategorisation. We however find that the respondents have acted on the orders dated 27.10.1983 by rationalising the dates of increments to 01st May, or 01st November. The respondents have also made applicable the merit promotion scheme upto a certain level and they are also following the vacancy based promotion scheme, except for applicant No.1, others were promoted under the merit promotion scheme. It cannot therefore be said that the respondents have failed to implement the orders of 27.10.1983. The respondents have rightly pointed out that there is a difference in

the qualification and the nature of duties in respect of technical/ scientific personnel as compared to those of fireman. The applicants cannot compare themselves with such technical staff. The respondents have also satisfactorily explained that there are promotion norms framed for the fire service personnel and the respondents are following both the merit promotion scheme as well as vacancy based promotion scheme in respect of the applicants. Ofcourse, the respondents cannot promote some one who does not fulfil the requirements as per the recruitment norms. The BARC is definitely exempted from consultation with the UPSC. It is independent to frame its own rules.

17. It is also settled by the judgment of the Jodhpur Bench in OA No.356/95 that the applicants cannot compare themselves with scientific/ technical personnel and the judgment also considered it reasonable if promotions can be made available to the applicants over 7 to 9 years. The applicants in this case, themselves admitted that in their case the eligibility period is 7 to 10 years. Therefore, it cannot be said that it is unreasonable.

18. We are satisfied that the respondents have implemented the orders dated 27.10.1983 and have granted promotions to the applicants to fulfil the requirement barring applicant No.1 who could not be cleared by

Screening Committee on account of his non fulfilment of the requirement. They have also provided rationalisation of increment dates. We therefore, do not find any substance in the OA and accordingly dismiss the same without any order as to costs.

Shanta S

(SMT. SHANTA SHAstry)
MEMBER (A)

S.L. Jain
(S.L. JAIN)
MEMBER (J)

Gajan