

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 987 of 1998.

Dated this 02nd the May day of , 2003.

R. K. Saxena, Applicant.

Shri S.P.Saxena

Advocate for the
Applicant.

VERSUS

Union of India & Others,

Respondents.

Shri R.K.Shetty

Advocate for the
Respondents.

CORAM : Hon'ble Shri A.S.Sanghvi - Member (J)
Hon'ble Shri Shankar Prasad - Member (A)

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library.

Sh
(Shankar Prasad)
MEMBER (A).

OS*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this 2nd the *may* day of May, 2003

O.A.987 of 1998

Coram: Hon'ble Mr.A.S.Sanghvi - Member (J)
Hon'ble Mr.Shankar Prasad - Member (A)

R.K.Saxena,
Senior Scientific Assistant,
C.Q.A.(E.E.),Aundh Camp,
Pune.
(By Advocate Shri S.P.Saxena)

- Applicant

Versus

1. Union of India,
through the Secretary,
Ministry of Defence,
DHQ, PO, New Delhi.
2. The Director General of
Quality Assurance,
Ministry of Defence,
South Block,
DHQ PO, New Delhi.
3. The Director,
Directorate of Quality Assurance (E.E.),
Kashmir House, New Delhi.
4. The Controller,
C.Q.A. (E.E.) Aundh Camp,
Pune.
(By Advocate Shri R.K.Shetty) - For the Respondents

O R D E R

By Hon'ble Mr.Shankar Prasad, Member (A) -

Aggrieved by the order dated 25.9.1997 rejecting his representation dated 12.3.1997 and 26.4.1997 the Applicant has preferred the present OA.

2. The case of the Applicant in brief is that he was appointed as a Junior Scientific Assistant Grade I on 2.8.1978⁹ and was promoted as a Senior Scientific Assistant (SSA) w.e.f. 30.4.1984. Subsequent to the decision of a Board of Award 102 posts ^{which higher scale} ~~ought~~ to have been upgraded. The seniority list is a combined seniority list and promotions to the grade of Junior

....2/-

Dr

Scientific Officer is given from this list. This list should have been followed. The Engineering discipline comprises of DGQA(V) & ^{DG Dr} PQA (EE) and their Controllerates CQAE (V) CQAE (EE) & CQAE (FE) respectively. There is one such combined list of 11.11.1983. Five posts have been arbitrarily allotted to CQAE (V) & CQAV (EE). The higher scale has been arbitrarily given to five persons on the basis of this list.

Subsequently three persons junior to him in subsequent list of January, 1993 have been placed in the higher scale as revealed in Gazette Notification 108 issued by Respondents notifying their letter dated 4.5.1994.

2. Even if for argument's sake it is assumed that this is discipline-wise then the Applicant should have been placed in higher grade w.e.f. 25.8.1992 ^{Sn} instead of R.B.K.Pillai as he was senior to him.

^{Sn this is Sn}
Even if it is argued that/Controllerrate-wise and that his Controllerrate has three posts than on the promotion of Shri S.M.Mehta he should have been promoted instead of R.B.K.Pillai. Alternatively when Shri J.P.Saroha was sent on deputation to Department of Standardisation he should have been given the upgraded scale as he was the senior most SSA.

It has further been argued that when as a result of cadre-review an additional post was made available the same was downgraded and one Shri V.S.Mark was promoted. Instead of this,

....3/-

Sn

(b) to direct the Respondent to consider the case of the Applicant for promotion to the post of Junior Scientific

Officer after he is placed in the Senior Scientific Assistant (Higher Scale) post retrospectively and from the date any of his junior is promoted as J.S.O.

It is of importance to note that the said juniors or Shri Mark has not been made a party.

5. The case of the Respondents in brief is that subsequent to the Award, 101 posts in DGQA were ~~upgraded~~ ^{to be placed in} to higher scale w.e.f. 11.1.1988. It was further indicated that Recruitment Rules will be amended in due course. The Directorate allocated these posts Office-wise on prorata basis. The words used in this communication of 6.10.1989 is AHSP-wise. The letter further states that -

"Appointment to SSA (Higher Scale) will be from SSA on the basis of seniority-cum-fitness. Three years' service in the grade of SSA will be required for elevation to SSA (HS) Government orders for reservation on SC/ST will follow."

It was further contended that the promotion in the grade of SSA is made Discipline/Subject-wise. The distribution of 101 posts of SSA was made on pro-rata basis.

....5/-

Am

As this determination of posts was made in November, 1988 the computation cannot be challenged now.

6. The first three seniormost SSA in the Engineering Discipline were placed in higher scale and the Applicant being senior no.4 could not be placed in higher scale. None of his juniors has been placed in higher scale. Shri Saroha has not been sent on deputation to Directorate of Standardisation.

7. The Respondents have further^a stated that Directorate is organised into five directorates which are dealing with technical aspects of re^bspective discipline. Each Directorate is headed by a Technical Directorate. Each directorate has Controllerate and SQAE^c to carry out the assigned job. The contention of the Applicant that for the purpose of this Applciant the two Controllerates of Quality Assurance of Engineering Equipments and Special Vehicles can be combined is not correct. The placement of SSAs in higher scale is done discipline-wise and subject-wise. Each Controllerate maintns its own seniority list. An integrated seniority list is prepared for promotion to Junior Scientific Officer.

8. Rejoinder/Sur-rejoinder have been filed.

9. It was of utomost importance in the instant case to find out if the placement in the higher scale was to have him given Controllerate-wise, Discipline-wise, Subject-wise or otherwise.

As would be clear from paragraph 5 above, the Applicant has himself set out three or four alternative cases depending on whether the promotion is according to these or some other method. Neither the Applicant nor the Respondents have brought the relevant documents on record. The various documents brought on record are as follows:-

(a) Ministry of Defence letter of November, 1967 indicating procedure for allotment of SP Subject to Gazetted/Non-Gazetted Staff for promotion to Gazetted grades in DRDO. It was stated on behalf of the Respondents that the said circular has been filed only to indicate the different subjects or the Directorates into which the Directorate of Quality Assurance is organised.

(b) Copy of the Recruitment Rules for the post of Junior Scientific Officer in the Directorate General of Inspection under Department of Defence Production. This is a different Directorate altogether. The Recruitment Rules to the post of Senior Scientific Assistant in the Directorate General of Quality Assurance Column 13 of the Schedule refers to the constitution of the DPC and the same is as follows:-

- | | | |
|----|---|------------|
| 1. | Technical Director
concerned | - Chairman |
| 2. | Joint Director
(concerned discipline) | - Member |
| 3. | Joint Director
Administration | - Member |
| 4. | Joint Director of Research
& Development/Directorate
of Technical Development and
Production (Air) | - Member |

....7/-

Dr

5. Assistant Director, Directorate
General Quality Assurance
(Administration-10) - Member

(c) It appears from SRO 224 dated 18.9.2000 that Recruitment Rules had been framed for the post of Senior Scientific Assistant (HS) and the^{by} constitution of the DPC has again been stated in Column No.13. The said constitution is as follows:

1. Additional Director^{General} - Chairman
(Quality Assurance)
2. Technical Director - Member
concerned
3. Joint Director from - Member
concerned discipline
4. Any Joint Director - Member
from Administrative
Directorate
5. Joint Director - Member
from another
Directorate
6. Assistant Directorate - Member
(Administration)

The said rules further indicate that the method for recruitment shall be selection from seniority

(d) The Applicant^{by} has filed the SP Roll for Engineering and Vehicle discipline as on 31.10.1987 also in which his name appears at serial no.10.

^{by}
10.(e) The Respondents have filed a SP Roll of Senior Scientific Assistant of 2000 showing separate list in SP Subject No.16 Civil & Structural Engineering and SP Subject No.17

Mechanical/Electrical Engineering Group 'B'. A clear position with regard to this was absolutely necessary for appropriate adjudication of the matter.

10. It is clear from order dated 6.10.1989 that the posts were to be filled up on the basis of seniority-cum-fitness. The same position has subsequently been stated in the recruitment rules also. It was strenuously argued by Shri Saxena, learned counsel for the Applicant that the post has to be filled on the basis of seniority and that administrative instructions could not have been issued in this regard. The Karnataka High Court in the case of Pooswamy M.Vs. Union of India & others, 1978 (2) SLR 334 was considering the question of upgradation of posts of Foreman 'B' to Foreman 'A' in the Railway Workshops and distinguish upgradation of posts from promotion. The said decision is as follows:-

"8. Upgradation of a post in any Govt. Office or establishment presupposes that there is a particular lower grade post and that the same is sought to be converted into a higher grade post in the exigencies of public service. It does not appear from any of the rules or from the scheme of 'upgradation' of a post that a person holding the lower post which is upgraded or converted into a higher post automatically fits into the upgraded post and acquires an indefeasible right to continue in the upgraded post. As to how the upgraded post has to be filled is a matter that can be regulated by the Recruitment Rules and in its absence by executive orders. With the upgradation of the post, the person holding the lower post does not ipso facto become the holder of the upgraded post with a right to continue in the said post. In my view, to concede that with the upgradation of the post the incumbent in the lower post becomes entitled to continue in the upgraded post and that if he is sought to be disturbed, it would amount to

....9/-

Sn

reduction in rank in the absence of express provisions to the contrary may bring about startling results....."

Dr
1211. The Respondents have further indicated that as a result of the issue of these orders, only 101 posts of SSA (HS) were to be allowed and as the existing promotion posts in the higher scale were exactly 101, no further posts were actually created. The Applicant cannot challenge that actual 102 posts ought to have been created for such a long lapse of time.

Dr
12. Even if the Applicant's case is accepted that his juniors have been promoted then as the promotion took place in 1992 or *Dr*
Dr then the cause of action arose at that point of time
1994/ Even if the Applicant had preferred a representation and the same was not being attended to, the Applicant should have preferred the OA within the limitation prescribed under Section 21 of the Administrative Tribunals Act. The Apex Court in Para 20 of its decision in S.S.Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10 held as follows:-

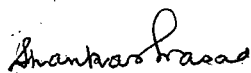
"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

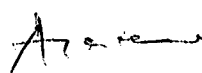
Dr
13. It has to be further noted that even though the Applicant has claimed that his juniors were upgraded, he has chosen not to make anyone of them as parties. In any case if

the Applicant had to be upgraded in preference to others, they had to be joined as parties as the upgradation was on the basis of seniority-cum-merit.

14. It would appear from the above discussions that the Application is hit by delay and laches, limitation and non-joinder of parties. It is clear that if the post was to be filled up on seniority-cum-fitness, then even if juniors had ~~to~~ ^{be him} by-passed ^{by him} on account of his being found unsuitable, the proceedings of such a DPC ought to have been challenged. The same is not the case here.

15. In view of what has been discussed above, the OA is devoid of merit and is accordingly dismissed. There shall be no order as to costs.


(Shankar Prasad)
Member (A)


(A.S. Sanghvi)
Member (J)

mf