

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N~~E~~W~~E~~D~~E~~Hyderabad

O.A. No. 575 of 1987 198xx

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DATE OF DECISION

30/3/1988

Mr. K.T.Sastry

Petitioner

Mr. P.L.Narasimha Sarma

Advocate for the Petitioner(s)

Versus

Union of India rep. by Secretary, Respondent
Dept. of Defence Prodn.&Supplies and another

Mr. N.R.Devaraj, Addl.CCSC Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. K.Madhava Reddy, Chairman

The Hon'ble Mr. B.N.Jayasimha, Vice Chairman

The Hon'ble Mr. D.Surya Rao, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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KMRJ
Chairman

ORIGINAL APPLICATION NO.575 of 1987

(JUDGMENT OF THE TRIBUNAL DELIVERED BY HON'BLE SHRI B.N.JAYASIMHA
VICE-CHAIRMAN)

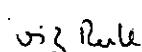
The applicant who is a Deputy Chief Scientific Officer in the Defence Aeronautical Quality Assurance Service (DAQAS) claims in this Original Application the scale of pay of Rs.4500-150-5700 and also for the age of superannuation at 60 years. The facts relating to the case are that the applicant was recruited as a Senior Scientific Officer on 12-10-1966 originally to the service known as Defence Science Service. He was posted in the Directorate of Technical Development and Production (Air) (D T D & P (Air)). The Defence Science Service had three organisations under it, viz., (1) Defence Research and Development Organisation (DRDO); (2) Directorate-General of Inspection (D.G.I.) and (3) Directorate of Technical Development and Production (Air) (D T D & P (Air)). The persons recruited under the Defence Science Service were posted according to the exigency of service in any of these organisations and the persons were also inter-changeable and inter-transferable. All service conditions including pay were regulated by the same set of rules, viz. Defence Science Service Rules. In the year 1979, the Defence Science Service was trifurcated and each of the three

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above organisations became separate services as indicated below:-

1. Defence Research and Development Organisation (DRDO) was reconstituted as Defence Research and Development Service (DRDS)
2. Directorate of Technical Development and Production (Air) (DTD&P(Air)) was reconstituted as Defence Aeronautical Quality Assurance Service (DAQAS) and
3. Directorate General of Inspection (DGI) was reconstituted as Defence Quality Assurance Service (DQAS).

The applicant who was working in the DTD&P (Air) became  Member of DAQAS.

2. When the trifurcation was made, each of the service   rules governing these services had common Rule 12 in DAQAS & DQAS and Rule 13 in DRDS which reads as follows:-

"Other conditions of service:

(1) The conditions of service of the members of the service in respect of matters not expressly provided for in these Rules, shall mutatis mutandis  and subject  to any special orders issued by the Government in respect of the service, be the same as those applicable to officers (Civilians) of corresponding status in similar scientific institutions/organisations under the Government of India."

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3. The Fourth Pay Commission also considered the service conditions relating to these organisations under the Ministry of Defence and in its report submitted on 30-6-1986 recommended new scales of pay which are common to all the new services. The existing pay-scale of Rs.1800-2250 for the post of Deputy Chief Scientific Officer was revised to Rs.4100-5300 and the existing pay-scale of Rs.2000-2500 for the post of Additional Director was revised to Rs.4500-5700. However, the respondents by a separate order increased the scale of pay of officers who are governed by Flexible Complementing Schema, with the result Scientist 'E' and Scientist 'F' in DRDS which correspond to Dy. Chief Scientific Officer and Additional Director in the DAQAS got enhanced pay-scale of Rs.4500-150-5700 and 5100-150-5700-200-6300 respectively whereas their pre-revised pay-scales were only 1800-2250 and 2000-2500. The applicant therefore states that due to the fortuitous circumstances of the service having the rule of flexible complementing, the DRDS employees stood to gain whereas other two services which were all part of the erstwhile Defence Science Service stood at a disadvantage. The applicant contends that not applying the same scales of pay to DAQAS which is also a scientific service is discriminatory and violative of Articles 14 and 15 of the Constitution. However, in view of the Rule 12 (1) of

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the DAQAS rules the applicant is entitled to get same scale of pay which is given to the members of the DRDS. According to the rule, the conditions of service of DAQAS should be the same as those applicable to the officers in similar scientific institutions/organisations under the Government of India. DAQAS and DRDS are similar scientific organisations. The applicant also relies on a decision given by the Central Administrative Tribunal, New Delhi in O.A. 77/1986 wherein while dealing with the retirement age, the Tribunal had ~~retirement~~ extended the benefit of 60 years. They are convinced that "the retirement benefit rules of DQAS officers under Rule 12 as quoted above will be governed by the pension and retirement benefit rules applicable to the Defence Research Development Scientists". The applicant made representations seeking these reliefs but to ~~of no aware~~ ^{Quo} ~~aware~~ The applicant therefore filed this application seeking parity in pay scales and age of retirement with that of scientists working in the DRDS.

4. On behalf of the respondents a counter has been filed stating that the applicant was selected through UPSC as Senior Scientific Officer Grade-I in the Directorate of Technical Development and Production (Air) and his selection

was against a post in DTD&P(Air) and his service conditions were governed by the then DSS Rules. The three organisations had their own independent functional entity irrespective of Defence Science Service and it cannot be said that these three organisations were under the fold of erstwhile Defence Science Service. The counter also denies that the posts in these three organisations were interchangeable but ^{states that} the officers governed by the DSS rules only were interchangeable. Soon after the trifurcation of the DSS, three Service Rules were framed for the officers of the three Organisations and they were given three months time for exercising their option to get transferred to the service of their choice and thereafter these officers were not inter-changeable/inter-transferable. The contention of the applicant that his service conditions would remain stable till he retires is not tenable. The service rules are amended by the Government wherever a requirement is felt and no service rule has remained undisturbed. The basic objective of splitting the DSS was to improve their quality and to make them more productive for performing their functions rather than for administrative convenience. After trifurcation, Directorate of Technical Development and Production (Air) and Directorate General of Inspector came under the

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Secretary (Department of Production), of the Department of Defence Production whereas the Defence Research and Development Organisation has come under Scientific Advisor, Department of Defence Research and Development. By the time of the issue of the Gazette of India Extra Ordinary dated 20-3-1987 whereby the pay-scales of Scientific Posts in Scientific Departments / Institutions which have a system of flexible complementing were modified, the applicant was serving in the DTD & P(Air) organisation as well as other organisation, viz. D.G.I. came under the Department of Defence Production and Supplies. The DRDO which had become DRDS was considered as a scientific department/institution having flexible complementing scheme came under the Department of Defence Research and Development. It is stated that the applicant opted to DAQAS at the time of trifurcation. The counter refers to the saving clause, viz. Rule 16 of the DAQAS Rules, 1979, which reads as follows :-

"Saving :- Nothing in these rules shall effect reservations, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard."

It is, therefore, contended that there cannot be a protection of service conditions as claimed by the applicant. The counter goes on to state that the Defence Research and Development Service Rules framed after bifurcation of DSS rules contained the

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element of flexible complementing also and that all the characteristics of flexible complementing are listed vide DST letter no.DST/MS/1(45)/82 dated 14/22-11-1983 and are also incorporated in Rule 8(2) of the DRDS Rules, 1978. The applicant's contention that this scheme only ensures promotion of an officer in the Scientific Service from one grade to the next higher grade after a prescribed period of service irrespective of whether there is a post available or not is denied and it is stated that the scheme among others is based on merit and ability and promotion for the purpose of retention of Scientific / Research personnel at the same place of work for undisturbed continuation of the work / projects undertaken by them. It is contended that the applicant may or may not be aware of the advantages of the flexible complementing when he opted to remain in DAQAS. Relying upon a judgment of the C.A.T., Bangalore Bench, it is sought to be contended that the present application deserves to be dismissed on the ground of laches as the applicant approached this Tribunal after considerable lapse of time and only after seeing the advantages now available by the Department. The applicant had opted himself to remain in DAQAS and got promotions having been considered by the DPC. If he had opted to remain in DRDS he would have gone through the rigours of

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the Assessment Board and proved himself of his merit to come to equivalent level of DCSO. When the evaluation and elevation process remained different and when it suited him in the matter of promotion, he has come to the Tribunal only when the pay scales became different. The applicant had no grievance when the conditions of promotions were altered but he is aggrieved only when different scales are made applicable to different services. *It is denied that there is any violation of Articles 14 and 16 of the Constitution.* The nature of work handled by the applicant being in DAQAS is inspection oriented whereas nature of work in DRDS is research oriented. The similarity of the DRDS and DAQAS disappears when one is having flexible complementing and the other one is not having flexible complementing and *flexible* one is research oriented and the other one is inspection oriented. In regard to age of superannuation it is contended that the age was increased to 60 years in the case of DRDO officials by issue of special orders by the Government and therefore Rule 12(1) of the DAQAS Rules is not attracted. In any event the applicant *never* represented to any of the respondents pleading for extension of the age of superannuation and had approached this Tribunal without exhausting remedies. It is contended that there is a great difference

between the concept of Departmental Promotion Committee and the concept of Assessment as provided in the DRDS Rules which distinction is as under:-

(a) The zone of consideration in the case of DPC is very limited. As per the instructions of the Government of India issued from time to time, and also contained in Appendix 29 of the Civil Services Regulations, only a limited number of eligible candidates in proportion to the available vacancies is considered by the DPC but in the case of assessment of Scientists there is no such restrictions on the number of candidates to be considered. Under the provisions contained in Rule 8(2)(d) of the said DRDS Rules any number of eligible Scientists in DRDO can be called for assessment.

(b) The DPC is held only on the basis of vacancies available and the officers approved for promotion by the DPC are transferred to different places where the vacancies in the higher posts are available in order to avail of promotion. But the concept of assessment is not based on vacancies. The assessment scheme under the said DRDS Rules is benefitted by the principle of flexible complementing as specifically provided under Rule 8(2)(f) of the said DRDS Rules. Under this scheme, the Scientists promoted from one grade to another are as far as possible granted in-situ promotion in the same establishment/Lab. For this purpose, the required number of posts in the grade are upgraded under the powers of the Director General Defence Research and Development within the budgetary ceiling sanctioned for that establishment/Lab. In other words, all these Scientists who are found fit for promotion by the Assessment Board, are given in situ promotions by upgrading vacancies in accordance with the provisions contained in DRDS Rules explained above.

(c) In the case of DPC, merit cum seniority is generally the basis for consideration by DPC but in the case of assessment process, merit is the main consideration. The maximum weightage is given to individual's merit or accomplishments in the particular grade as assessed by the Assessment Board under Rule 8(2) of the DRDS Rules. The seniority is given less weightage as the concept of assessment of Scientists is totally selection and merit oriented.

(d) The element of interview in the case of DPC is not mandatory. But in the case of assessment the interview of the concerned scientists plays a vital role in assessing their suitability for promotion to the next higher grade.

(e) In the case of DPC, the grading in the ACRs and seniority is a major criteria for consideration for promotion. But in the case of assessment the ACR gradings are mainly used to decide eligibility of the Scientists. The ACRs and Seniority are considered by the Assessment Board for deciding the fitness of the Scientists for promotion to the next higher grade.

(f) In the DPC supersession is allowed among the Scientists found fit for promotion based on their ACR grading. However, in the assessment under flexible complimenting scheme inter-se seniority is maintained among the candidates found fit for promotion irrespective of their ACR gradings.

5. We have heard the learned Counsel for the applicant Shri P.L.Narasimha Sarma and the learned Standing Counsel for the Central Government Shri N.R.Devaraj. We shall first consider the claim of the applicant that the retirement age for the DAQAS also should be 60 years. None of these service

rules make any mention of the age of retirement. By an Office Memorandum No.7(3)/85-D(R&D) of the Government of India, Ministry of Defence, Department of Defence Research & Development dated 24-12-1985 the decision of the President that "Scientific and technical personnel (gazetted) of the Defence Research & Development Service in the grade of Scientist 'E' and above shall retire at the age of 60 years and those in the lower grades for which flexible complementing scheme is applicable shall also retire at the age of 60 years provided they have been promoted to the grades they are holding at the time of attaining the age of 58 years within the preceding 5 years" was issued. Subsequently in O.M.No.7(3)/85-D(R&D) dated 10-2-86 it was decided that all Scientific and technical personnel of the Defence Research & Development Organisation as listed would be in the Appendix 'A' given benefit of superannuation at the age of 60 years. The learned Counsel for the applicant argues that by virtue of Rule 12, this benefit which is given to the DRDS is also applicable to DAQAS and in support he relied on a decision of the Central Administrative Tribunal, New Delhi in O.A.No.77/1986 dated 29-5-1986 in the case of Dr. Ashok Mukerjee Vs. Union of India and others. In that case the issue raised was benefit of added years of service under Rule 30 of the Central Civil Services (Pension)

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Rules, 1972 should be extended to DQAS personnel. The applicant therein had entered service as Senior Scientific Officer in the Defence Science Service in 1961 as a lateral entrant through the U.P.S.C. He was 34 years old. Rule 12(5) of the DRDS Rules provided for giving the benefit of added years of service as admissible under Rule 30 of the CCS (Pension) Rules, 1972. DQAS rules did not have similar provision. The Bench observed that " a harmonious reading of Rule 30 of the CCS (Pension) Rules, Rule 12 of the DQAS Rules and Rule 12(5) of DRDS rules as quoted above makes it crystal clear that the Scientists working in the DQAS will automatically be entitled to the benefits of additional qualifying service to which DRDS Scientists are entitled." Following this Judgment, we are of the view that benefit of 60 years of service which has been given to the members of the DRDS should also be applicable to the personnel of DAQAS. As this condition of service was not expressly provided in the rules and therefore what is not expressly provided would mutatis mutandis be applicable ~~on the basis of above judgment provided no special orders were issued by the Government in respect of any one of these services.~~ No such special order was brought to our notice which would deny the benefit of Rule 12(5) of the DRDS rules to the members of the DAQAS.

6. The next question for consideration is the claim of the applicant for the higher pay-scale which has been given to

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certain posts of the DRDS for which flexible complement scheme is applicable. Under S.R.O. 9(E) dated 20-3-1987 the Ministry of Defence issued under Article 309 of the Constitution amendment to the Civilians in Defence Services (Revised Pay) Rules, 1987. Under these rules the pay of Civilian in the Defence Service to the categories with which we are concerned was revised as below:-

	<u>Present scale(Rs.)</u>	<u>Revised Scale (Rs.)</u>
26.	(a) 1650-75-1800 (b) 1800 (fixed) (c) 1800-100-2000 (d) 1800-100-2000-125/2-2250	4100-125-4850-150-5300
27.	(a) 1500-60-1800-100-2000-125/2-2500 (b) 2000-125/2-2500 (c) 2000-125/2-2250 (d) 2000-125-2500	4500-150-5700

X. SCIENTIFIC POSTS:

(a) 1800-100-2000-125/2-2250	4500-150-5700
(b) 2000-125/2-2500	5100-150-5700-200-6300
(c) 2250-125/2-2750	5900-200-6700 (These scales are applicable to Scientific posts in Scientific Departments/ Institutions which have a system of flexible complementing under the extend orders of Government);

It will be seen from the above that a distinction has been made in giving higher pay scale for Scientific posts which have a system of flexible complementing. The service rules relating to DRDS, DAGAS & DQAS have schedules with lists comprising the categories of posts and

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the pay scales attached to these posts. Shri Sarma argues that no amendment has been issued to the schedules and that any other service conditions not provided in the DQAS service rules but given to any other service, would be extended automatically to the DQAS service. He, therefore, contends that the higher pay scale given to DRDS employees where a flexible complementing scheme is prevailing should also be applied to the officers of the DAQAS. Shri Devaraj, however, argues that under the service rules applicable to the DRDS, the procedure prescribed for promotions contemplates a flexible complementing scheme where/in the case of DAQAS and DQAS, the promotion is by way of DPC and on the availability of the posts. He contends that there is a clear distinction between the two services in the service rules themselves in regard to promotion policy by virtue of the applicability of the flexible complementing scheme. Hence, it cannot be argued that pay scales which are made applicable to posts that have a flexible complementing scheme, should be made applicable to the posts where a flexible complementing scheme is not applicable solely on the ground of interpretation of Rule 12 of the DAQAS Rules.

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7. Before dealing with these rival contentions, it would be necessary to lay down certain facts which are not disputed. The applicant had opted for the DAQAS service at the time of trifurcation in 1978-79 without demur. He is not questioning the trifurcation of the D.S.S. into 3 services nor is he questioning the vires of the DAQAS Rules. He is also not seeking extension of the flexible complementing scheme to the members of the DAQAS. It is the case of the applicant that the DRDS is a similar Scientific Organisation under the Govt. of India as the DAQAS and DQAS as all the three have their roots from one service, viz., D.S.S. and also since all the service rules governing the three services describe them all as Scientific Services. An attempt was made by the respondents to contend that the D.A.Q.A.S. and D.Q.A.S. are not similar scientific organisations as the D.R.D.S., as the former are inspection organisations while the latter is a Scientific Organisation. A distinction was also sought to be made on the ground that the Defence Research & Development Service

comes under the control of the Scientific Adviser, Ministry of Defence, whereas the D.A.Q.A.S. and D.Q.A.S. come under the Secretary, Department of Defence Production in the Ministry of Personnel.

In our view, these factors will not render the D.A.Q.A.S. and D.Q.A.S. non-scientific organisations in view of the fact that the rules themselves describe these services as Scientific services.

It is contended for the petitioner that by virtue of Rule 12 of the D.A.Q.A.S. Rules the conditions of service of employees of the DRDS., in regard to pay scales extended to employees of the D.A.Q.A.S.

Rule 12, however, does not lay down that all the conditions of service of the members of the D.A.Q.A.S. will mutatis mutandis be the same as those applicable to the officers (Civilians) of D.R.O.S. A reading of Rule 12 will show that the applicability of the conditions of service of the former to employees of

the latter is subject to two conditions:-

- (1) Conditions of service of members of the DAQAS shall be the same as conditions of service of members of DRDS (or other similar scientific Institution/Organisation) except in so far as the conditions of service are expressly provided in the service rules of the DAQAS.
- (2) Conditions of service of members of the DAQAS shall be the same as conditions of service of members of DRDS (or other similar scientific Institution/Organisation), but subject to any special orders of the Government.

The second condition for the applicability of Rule 12 does not arise as no special order has been brought to our notice denying the applicant the benefit of any service rule available to DRDS employees or specifically extending the benefit of the pay scales of DRDS employees to DAQAS employees.

The question is whether the first condition referred to above applies i.e., whether conditions of service of members of the DAQAS in regard to pay is expressly provided for in the DAQAS service rules. If expressly provided, then the conditions of service of members of the D.R.D.S. relating to pay ~~cannot be~~ cannot be

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extended to DAQAS employees. Schedule I to the DAQAS Rules 1979 contains the names or designations of the posts forming a part of the DAQAS as also the cadre strength (viz., number of posts) and the scale of pay of each post. Similarly Schedule I to the DRDS Rules 1978 contains similar particulars including particulars regarding pay. Thus, the condition of service relating to pay is specifically provided for in the respective rules. The fact that the corresponding posts in the two services carried identical scales of pay till the implementation of the IVth Pay Commission recommendations is a different matter and will not detract from the fact that the pay scales are provided for in the respective rules and, as such, conditions of service vis-a-vis pay is provided for in the Rules. The scales of pay of Civilians in Defence Service of the Central Government have been amended by the Civilians in Defence Services (Revised Pay) Rules 1986 as further amended by the Civilians in Defence Services (Revised

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Pay) Amendment Rules 1987. By virtue of these Revised Pay Rules issued under Article 309 of the Constitution the existing scales of pay of employees as mentioned in Col.3 of the Schedule-I were revised to the scale mentioned in Col.4 vide Rule 4 of the Revised Pay Rules. The applicant who was in the scale of Rs.1800-100-2000-125/2*2250 scale was re-fixed in the scale of Rs.4100-125-4850-150-5300 by virtue of entry 26 of the (Revised Pay) Amendment Rules 1987. This was not the last word on the subject. By virtue of Item-X of the Amendment Rules, Scientific Posts in the scale of Rs.1800-100-2000-125/2/2250 were given the revised scale of Rs.4500-150-5700. But this scale was not extended to all posts but only to Scientific posts in Scientific Departments/Institutions which have Flexible Complementing System. Admittedly Scientists in the DAQAS do not have the Flexible Complementing System of promotions whereas this system is available in the D.R.D.S. The Civilians in

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Defence Revised (Pay Rules) 1986 and the Revised (Pay Rules) Amendment Rule 1987 are statutory rules and are deemed to have substituted the pay scales prescribed in the Schedules to the DAQAS and DRDS rules to the extent mentioned in Items 26 and X referred to above, in so far as the applicant ^{and other members of these services are} concerned. The effect of the Revised Pay rules is that the condition of service in relation to pay of a DAQAS and DRDS employee drawing a pre-revised pay of Rs.1800-100-125/2/2250 stands altered to Rs.4100-125-4850-150-5300 and Rs.4500-150-5700 respectively. This difference has arisen due to different systems of promotion prevailing in the two services. The method of promotion in the DAQAS is by means of selection by a Departmental Promotion Committee vide Rule 8 read with Schedule 2 of the said rules. Rule 8 of the DRDS rules, however, provides for the Flexible Complementing Scheme in regard to Scientists Groups C, D & E. This scheme broadly envisaged that promotion

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would not be on the basis of availability of vacancies.

All Scientists eligible for promotion would come up

for assessment. Promotion of Scientists from one

grade to another would be in situ in the establishment/

Lab i.e., the Post is upgraded leaving the Scientist

to continue to perform the same job. Further, the

method of assessment and weightage to be given to

seniority etc.; under the Flexible Complementing Scheme

differs from the D.P.C. method of promotion. Thus,

the condition of service regarding promotion under

the DAQAS rules and the DRDS rules is specifically pro-

vided for. The rules having specifically provided for

the method of promotion have also linked the fixation

of pay with reference to the method of promotion. This

Civilian ^{as}
Linkage is available as a consequence of the Defence

Services (Revised Pay) Rules 1986 and 1987 which have

amended the pay structure provided in the schedules

to DAQAS and DRDS rules. It is, therefore, not open

to an employee of the DAQAS to claim that the conditions

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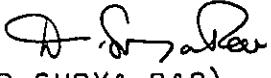
of service relating to promotion and pay as provided for in the DRDS rules viz., Flexible Complementing Scheme. Rule 12 of the DAQAS rules would not permit extension of these conditions of service of DRDS employees as the DAQAS rules specifically provides therefor. It is only if the DAQAS rules are silent regarding the method of promotion that the Flexible Complementing Scheme and consequently pay scales attached to post governed by such a scheme can be extended to the members of the said service. Rule 12 of the DAQAS rules cannot, therefore, be relied on by the applicant to claim that he is entitled to extension of the Flexible Complementing Scheme relating to promotion as in the case of his counter-parts in the DRDS and consequently a higher scale of pay.

In the result our findings are:--

- (i) The claim of the applicant that he is entitled to the age of retirement fixed for the DRDS viz., 60 years is allowed.
- (ii) The claim of the applicant for the enhanced pay scale of Rs.4500-150-Rs.5700 applicable to

Scientist 'E' in the DRDS is negatived.

There will be no order as to costs.


(D. SURYA RAO)

Member (Judl.)


(B.N. JAYASIMHA)

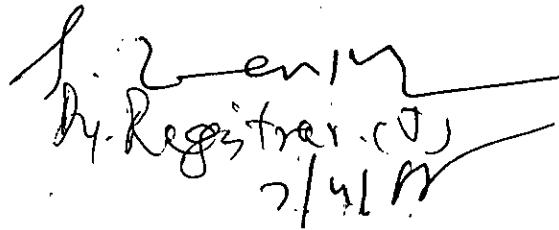
Vice Chairman


(K. MADHAVA REDDY)

Chairman

Dated: 30th March, 1988

sqh/v.n.


Dr. Registrar (O)
2/4/88