

(91)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD

O.A. No. 834/89

Dt. of Decision 23-3-93.

T.A. No.

Shri M.S. Chordia

Petitioner

Shri G. Mohan Rao

Advocate for
the petitioner.
(s)

Versus

Secretary, Ministry of Defence,
New Delhi.

Respondent.

Shri N.V. Ramana

Advocate for
the Respondent
(s)

CORAM

THE HON'BLE MR. Justice V. Neeladri Rao, Vice-Chairman.

THE HON'BLE MR. R. Balasubramanian, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circuisted to other Benches of the Tribunal?
5. Remarks of Vice-Chairman on Columns 1,2,4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

ns


HVNRJ
VC


HRBS
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
HYDERABAD

OA No. 834/89

Date of judgement: 23-3-93.

Between

M.S. Chordia : Applicant

And

1. Union of India represented by
the Secretary, Ministry of Defence,
Government of India, New Delhi-110011.
2. Scientific Advisor to the Ministry of
Defence, Government of India,
New Delhi.
3. Director Defence Metallurgical Research
Laboratory, Hyderabad-500 238, A.P.

: Respondents

COUNSEL FOR THE APPLICANT : Shri G. Mohan Rao

COUNSEL FOR THE RESPONDENTS : Shri N.V. Ramana

CORAM

Hon'ble Justice Shri V. Neeladri Rao, Vice-Chairman.

Hon'ble Shri R. Balasubramanian, Member (Admn.)

(Judgement of the division bench delivered by Justice
Shri V. Neeladri Rao, Vice-Chairman).

Heard both the counsels.

The applicant was initially appointed as
in DMRL, Hyderabad
Junior Scientific Assistant/in the year 1964. The
applicant's qualification is M.Sc in Geology. The
applicant alleges that basing upon his qualification,
he was allotted metallurgy as his SP subject (Serrated
pyramid subject). He was promoted as Senior Scientific
Assistant on 26-8-72. The applicant was informed that
he had been allotted Chemistry as SP subject. Then

he made various representations requesting for allotment of metallurgy as pyramid subject. When there was no response to his representations, he filed Writ Petition No. 5997/79 before the High Court of Andhra Pradesh praying for issue of writ of Mandamus to the respondents therein to allot him metallurgy as SP subject with all consequential benefits. By an Interim order in W pMP No. 8080/79, the respondents therein were directed to dispose of the representations of the applicant concerning allotment of SP subject. But when the order therein was adverse to the applicant, the applicant filed Writ Petition 9220/81 before the High Court of Andhra Pradesh and it stood transferred to this Tribunal and registered as TA 138/87. By judgement dated 4-2-88 in the said TA, the Bench of this Tribunal passed the following order. The operative portion of the same is as under:

" We, therefore, allow the application. The applicant would be treated as having been allotted the SP subject 'Metallurgy' on his promotion as Senior Scientific Assistant in 1969 with all consequential benefits which would accrue to him as a consequence thereof. If, however due to the long lapse of time and if the applicant had worked all these years with the SP subject Chemistry and consequently it will be difficult for the department to now fit him into the SP subject 'Metallurgy' retrospectively from 1969, then the respondents will review the matter and it is open to the respondents to treat the applicant as having worked as Scientific Assistant with the SP subject Chemistry from 1969. But while doing so, the respondents would work out what are the consequential benefits which would have accrued to the applicant if he had worked as

Scientific Assistant (S.P. Metallurgy) from 1969 and extend all such benefits to the applicant though he is being continued with the SP subject Chemistry. The application is allowed as indicated above but in the circumstances of the case, there will be no order as to costs".

In pursuance of the said judgement, the applicant was allocated rank No. 13-A in the category of Senior Scientific assistant in SP metallurgy. Even before 4-2-88, the date of judgement in TA 138/87, there were promotions from Senior Scientific Assistant to Junior Scientific officer and from that cadre to Scientist B both in SP metallurgy and Chemistry. As the applicant was in Chemistry, his case for promotion to Junior Scientific officer was considered in that discipline and he was promoted to the post of Junior Scientific Officer on 31-5-80 and ^{later} he was promoted to the post of Scientist B on 2-1-86 in Chemistry. It is stated for the respondents that in pursuance of the judgement dated 4-2-88 in TA 138/87, the case of the applicant was reviewed for promotion to the post of Junior Scientific officer by the Review D.P.C. for 1975, January, 1978, and December, 1978 as promotions in that discipline were considered on those dates earlier. The further submission for the respondents is that the applicant was not found fit for promotion in 1975 and he could not be selected in January, 1978 because of the grading and ultimately he was ^{Selected along with} promoted ^{for promotion} in December, 1978 and he was actually promoted on 5-2-79 in SP Metallurgy ^{when} his turn had come.

It is submitted for the applicant that ^{as} he approached the court against refusal of the respondents to allocate to him ^{The respondents had prejudice against} SP metallurgy, and hence, they considered him ^{and so}

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only in December, 1978. In order to substantiate this said contention it was stated that Shri M.N. Murthy who was his junior was promoted in SP metallurgy even in 1975. The learned counsel for the applicant has also drawn our attention to para 8 of the counter wherein it is stated as under:-

" It is submitted that, thus whereas Shri J.G. Kumar continues to reckon seniority in the grade of JSO w.e.f. 1975, the applicant even after consideration of his case for promotion to the post of JSO in SP Subject Chemistry, continues to reckon seniority in the grade of JSO w.e.f. December, 1978 only, and there is no change in the seniority of the applicant. Hence, Shri J.G. Kumar continues to be much senior to the applicant, and the applicant is not yet eligible for consideration for promotion to the post of Scientist 'C' as he has been promoted to the post of Scientist 'B' w.e.f. 2-1-1986, only."

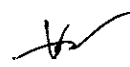
On the basis of the said averment it was urged that while in the counter it is stated that Shri J.G. Kumar was promoted in 1975, the record now produced discloses that Shri J.G. Kumar was promoted only in 1978. Thereby it was argued that the record now produced by the respondents which discloses that the Review D.P.C. reviewed the case of the applicant in 1975, January, 1978 and December, 1978 is now brought into existence in view of this OA.

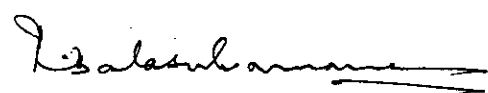
In view of the contentions raised for the applicant, the respondents produced the relevant records. The said record discloses that the Review D.P.C. reviewed the case of the applicant in 1975, January, 1978, and December, 1978. There is nothing to indicate that this record was brought into existence at a later date.

It is true that the said record also discloses that Shri M.N. Murthy who was allocated sl. 18 was considered for promotion in 1975 for the post of Junior Scientific officer in SP Metallurgy, while in view of the judgement in TA 138/87, the applicant was ranked as 13-A, his case for promotion to the post of Junior Scientific officer was considered in December, 1978. If a decision in favour of the applicant was taken in 1975, the case of the application for promotion to the cadre of Junior Scientific officer in Metallurgy would have been considered in 1975 itself. But for consideration for promotion, ACRs have also to be looked into by the Review D.P.C. for purpose of grading. There was no occasion for D.P.C. to compare the ACRs of Shri M.N. Murthy from 1972 to 1974 with those of the applicant for those three years. Of course, for the later years, ACRs of the applicant were compared with those of Shri M.N. Murthy for the purpose of grading in the SP Chemistry and then the applicant was given grading ^{higher} ~~lower~~ than that of Shri M.N. Murthy. On that basis alone it cannot be stated that the D.P.C. had purposely given a lower grade to the applicant for 1975 and ^{January} ~~thereby~~ 1978. It has to be observed at this stage that the applicant has not alleged malafides against the members of D.P.C. Hence even on that ground we cannot ^{accade} ~~see~~ to the contention of the applicant that the Review D.P.C. was prejudiced against the applicant. Hence the ^{Submission} ~~contention~~ of the applicant that he should have been treated as promoted in 1975 or atleast in January, 1978 cannot be accepted. It has now been submitted that there will be common seniority of the JSOs in the various disciplines for promotion to the post of Scientist B. ^{the date of} As his promo-

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tion to the category of Junior Scientific officer is now advanced from 31st May, 1980 to 5th February, 1979, ^{and} if on that basis the applicant gained ⁸ places in the category of Junior Scientific Officer and if an alteration has to be made in regard to his ranking in the post of Scientist B, the same has to be made by the respondents. It means that if the ~~employees~~ ^{juniors (ie those who were provided as JSGs under)} who were promoted along with the ~~applicant~~ ^{went to} to the post of Scientist B with the same grading and ~~if the juniors of the applicant on the basis of seniority were promoted to the post of Junior Scientific officer prior to 1979,~~ the applicant has to be given ranking above those juniors in the same grading in the post of Scientist B. It is also stated that the applicant was promoted to Scientist 'C' category in 1992. Ranking in that cadre also has to be given to the applicant on the basis of the ranking that has to be given in the post of Scientist B, if it requires alteration in pursuance of this judgement. The OA is ordered accordingly with no costs.


(V. Neeladri Rao)
Vice-Chairman


(R. Balasubramanian)
Member (Admn.)

(Open court dictation)

Dated 23rd March, 1993.

 83/3/93 -
Deputy Registrar(J)

NS

- To
1. The Secretary, Ministry of Defence, Union of India, Govt. of India, New Delhi-11.
 2. The Scientific Advisor to the Ministry of Defence, Govt. of India, New Delhi.
 3. The Director Defence Metallurgical Research Laboratory, Hyderabad-238.
 4. One copy to Mr. G. Mohan Rao, Advocate, "MAYA", 3-5-703 New Narayanaguda, Hyderabad.
 5. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT. Hyd.
 6. One spare copy.

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. R. BALASUBRAMANIAN :
MEMBER (ADMN)

AND

THE HON'BLE MR. T. CHANDRASEKHAR
REDDY : MEMBER (JUDL)

DATED: 23-3-1993

~~ORDER~~ JUDGMENT

R.P./C.P/M.A. No.

in

O.A. No. 834/89

T.A. No.

(W.P. No)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm

