

215

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA.15/90

date of decision : 16-12-94

Between

Dr. A. Appa Rao

: Applicant

and

1. Union of India, rep. by
The Secretary, M/o Science and Technology
Anusandhan Bhavan
Rafi Marg, New Delhi

2. Council for Scientific and Industrial
Research, rep. by its Vice-President
CSIR, Anusandhan Bhavan, Rafi Marg,
New Delhi 110001

3. Director General
CSIR, Anusandhan Bhavan
Rafi Marg, New Delhi 1

4. Director
National Geophysical Research Instt.
Uppal Road, Hyderabad 500007

5. Dr. S.M. Naqvi

6. Dr. K. Mallick

7. Dr. N. Krishna Brahman

: Respondents

(R-5 to 7) above are Scientist EII in NGRI, Uppal Road, Hyderabad)

Counsel for the Applicant

: T. Lakshminarayana
Advocate

Counsel for the respondent 1-4

: Chenna Basappa Desai
SC for CSIR

Counsel for R-5 to 7

: G. Ramachandra Rao
Advocate

CORAM

HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. MR. R. RANGARAJAN, MEMBER (ADMN.)

OA No.15/90

J U D G E M E N T

(As per Hon'ble Shri Justice V.Neeladri Rao, Vice-Chairman)

The applicant was appointed on 6-7-1960 as Senior Scientific Assistant in the National Geophysical Research Institute (NGRI) at Hyderabad. He was promoted as Scientist-A on selection on 30-7-63. On completion of five years of service in the post of Scientist-A, he was assessed and promoted to the post of Scientist-B with effect from 30-7-68 as per erstwhile CSIR bye-law 71(b). He was promoted again after assessment to the post of Scientist-C with effect from 30-7-73 under the same bye-law. New Recruitment and Assessment Scheme (for short 'NRAS') had come into existence with effect from 1-2-1981 to all the units under the Council for Scientific and Industrial Research (CSIR), and NGRI is one of the constituents of CSIR. It lays down that six years of continuous service is required to become eligible for promotion to the post of Scientist-EI from the post of Scientist-C. The applicant was considered for the said promotion under NRAS and he was promoted as Scientist-EI with effect from 1-2-81.

2. The promotion from Scientist-EI is to Scientist-EII. Scientist EII is in Grade-IV sub-number (4). The procedure laid down for promotion to Grade IV(4) is as under:

"In each Assessment year (year ending 31st March), all the persons who fulfil the eligible length of service are assessed relatively at one meeting by the Assessment Committee, by interview of the candidates. All the eligible candidates are invited for interview. Their particulars are placed before the Assessment Committee. The Committee can recommend promotion of the suitable candidates only not exceeding the maximum percentage of total eligible candidates in that batch for the grade. For assessment promotion to the Grade IV(4) (Scientist EII), minimum eligible length of service in the Grade IV(3) (Scientist EI) for first chance is 5 years, for second chance is 6 years and for third and final chance, stagnation for one year at the top of the scale.

contd...3.

The maximum percentage of persons who can be promoted in each year's batch in the grade is 50%. The relative ranking of the candidates is based on the performance at the interview. Confidential Reports (in other words, Annual Assessment Reports) and record of work and seniority is not a basis. The list of eligible candidates for interview by the Committee is not on seniority. The recommendations of the Assessment Committee are approved by the Director, NGRI, who is the appointing authority. Promotions are issued to the selected candidates by taking the existing grade post to the higher grade along with the promotee.

The New Recruitment & Assessment Scheme has provision in para 0.7 empowering the DG CSIR to make exceptions to these Rules, if he is convinced that there are unusual or special situations warranting such exceptions.

If a candidate is not promoted in the first chance, but promoted on a second or subsequent chance, the promotion takes effect only from the date he became eligible on subsequent assessment (anniversary date of his appointment). (CSIR circular letter dated 26-5-82 refers)."

Ten Scientists EI including the applicant completed five years of service in the category of Scientist EI within the assessment year ending 31st March, 1986. Except Dr. R. U. M. Rao, the other nine including the applicant appeared before the Expert Assessment Committee which conducted the interviews on 2/3-11-1987. As the relevant rule referred to envisages that only 50% of the candidates who were eligible for consideration in the relevant assessment year have to be promoted to the next promotional scale, Dr. R. N. Singh, Sri B. J. Srivastava, Dr. Y. V. Ramana, Dr. D. C. Mishra and Dr. D. Atchuta Rao who were the first five on the basis of the rankings given by the expert assessment committee were promoted as Scientists EII as per O.M. No. NGRI-7/18/87-Rectt. dated 4-11-87. Dr. S. M. Naqvi (R.5 herein), Dr. K. Mallick (R.6 herein, the applicant and Dr. N. Krishna Brahman (R.7 herein) who got marks lower than the marks obtained by the last of the candidates who were promoted as Scientists EII were asked to re-appear along with Dr. R. U. M. Rao who had not appeared before the committee that met on 2/3-11-87

Handwritten mark

contd...4.

Handwritten signature

218

-4-

Dr.M.S.Bhalla, Dr.B.K.Verma, Dr.S.V.S.Sarma, Sri V.M.Maru and Dr.U.Raval who completed five years of service as Scientist-EI within the assessment year ending 31-3-87 were also asked to appear alongwith applicant and others. While it was first assesment for the ~~last~~ five referred to above, it was second assessment for the applicant, R5 to R7 and Dr.R.U.M.Rao. The relevant rule envisages that if one cannot get promotion at the time of consideration on completion of five years of service in the lower cadre, he can be considered on completion of six years of service in that lower cadre for promotion for the post of in Grade-IV(4). Accordingly the applicant and others referred to were directed to appear for interview before the expert assessment committee which was convened for the assessment year ending 31-3-87. Even before the date, the said expert assessment committee met in November 1987, R.5 made a representation that as he was a Bhatnagar Awardee he too should have been promoted during the assessment year ending 31-3-86.

3. Para 7 of the NRAS empowers the Director General, CSIR to make exception to the rules as embodied in NRAS if he is convinced that there are unusual or special situations warranting such exception. In exercise of the power under the said para, R.3 instructed R.4 the Director, NGRI to promote the scientists who got Bhatnagar Awards and others who got distinctions like Fellowship of INSA or Indian Academy of Sciences during the assessment year period, over and above 50%, to the next higher post in Grade IV(4). As R.5 and R.6 got Bhatnagar Awards during the assessment period ending 31-3-86, they too were given promotions as Scientist-EII during the assessment period ending 31-3-86.

X

contd...5.

1-1

213

-5-

4. The applicant and R.7 and Mr.V.M.Maru and Dr.S.V.S.Sarma were promoted as Scientist-EII during the assessment year ending 31-3-87. As the applicant and R.7 completed six years of service as Scientist-EI by 1-2-87, they were promoted as Scientist-EII with effect from 1-2-87. As Sri V.M.Maru and Dr.S.V.S.Sarma completed five years as Scientist-EI they were promoted as Scientist-EII with effect from 25-9-86 and 10-4-86 respectively.

5 The applicant submitted representation to R.4 that as he was found qualified for promotion as Scientist-EII even during the assessment year ending 31-3-86 and when R.5 and R.6 were promoted as Scientists-EII during the assessment year ending 31-3-86, even though they were not within the first five, the applicant also should have been promoted as Scientist-EII during the same assessment year ending 31-3-86. When his request was not acceded to by R.4, he made representation to R.3, the Director General, CSIR and also to R.2, CSIR represented by its Vice-President. When his request was rejected this O.A. was filed praying for direction to R.4 to extend all benefits to the applicants on par with R.5 and R.6 duly treating the applicant as Scientist-EII from the same date on which R.5 and R.6 were given promotion and consequently for payment of arrears of pay and allowances from the said date and for any other order that may be deemed fit and proper by this Tribunal.

6. It is manifest from NRAS that the scientists who completed five years of service during the assessment year ending 31st March in the immediate lower cadre have to be considered for promotion to the cadres in Grade-IV(4). Scientist-EII is in Grade-IV(4). The applicant and R.5 to R.7 and six others completed five years in grade Scientist-EI during the assessment year ending 31-3-86. Accordingly all of them were called

contd..6.

B2A

for interview. Except Dr.R.U.M.Rao the other 9 appeared for interview before the expert assessment committee. R.5, R.6, the applicant and R.7 got the rankings 6, 7, 8 and 9 respectively. As the relevant rule envisages that only 50% of the eligible scientists have to be promoted, those who got rankings upto 5 were promoted as Scientists-EII for the assessment year ending 31-3-86. But when R.5 submitted representation that he should have been promoted during the assessment year ending 31-3-86 as he got Bhatnagar Award during the said assessment year, R.3 by invoking para 7 of NRAS which empowers him to relax the rules, passed an order that the scientists who could not get promotion because of the limit of 50% prescribed, should be promoted if they got Bhatnagar Awards or distinctions like Fellowship of INSA or Indian Academy of Sciences during the assessment period. As R5 and R6 got Bhatnagar awards during the relevant period, they were promoted even though they were not within the first five for the assessment year ending 31-3-86.

7. It is contended for the applicant as under:

If it is a case of relaxation it should have been relaxed for all those who were found qualified for otherwise it would be violative of Articles 14 and 16 of the Constitution. When Dr.R.N.Athavale filed O.A.399/87 on the file of this Bench questioning the promotion of Dr.C.P.Gupta, NGRI under NRAS this Bench quashed the proceedings of the expert assessment committee and directed the CSIR to hold fresh assessment/interview/discussion, and then the Director, NGRI promoted Dr.R.N.Athavale the only other candidate who was considered for the relevant assessment year. Thus when for the said assessment year all the scientists qualified were promoted, R.4 should have promoted the applicant and R.7 also when R.5 and R.6 were promoted even though they were not within the first 50% of the candidates who were eligible. That when the Bhatnagar awards conferred on R.5 and R.6 were taken into consideration at the time of assessment, it would be a case of conferring double benefit if the relaxation was given on the basis of the Bhatnagar awards.

contd...7

8. It may be noted that the applicant is not challenging the NRAS or para 7 therein. He had also not prayed for quashing the promotions of R5 and R6 to the post of Scientist-EII during the assessment year ending 31-3-86. It is hence urged for the respondents that it is not open to this Tribunal to go into the merits of the promotions of R.5 and R.6 as Scientists-EII.

9. It is clear that para 7 of NRAS gives power to R.3 to relax the rules if there are unusual or special situations warranting relaxation. Bhatnagar award is one of the prestigious awards conferred upon the scientists who are below 45 years of age. When it is a case of promotion among scientists it cannot be stated that the said conferment of Bhatnagar award is not a special situation which cannot be relied upon for relaxation under para 7 of NRAS. It may be that some of the eminent scientists could not have got Bhatnagar award. But thereby it cannot be stated that it is not such an important award for which special recognition need not be given. The Director General, CSIR because of his experience and eminence could know as to whether any particular award could be treated as prestigious award which requires recognition. Hence when R.3 relaxed the rules in regard to the percentage upto which the promotions could be given in a particular assessment year in case of Bhatnagar awardees and other distinguished scientists it cannot be held as a case of taking extraneous circumstances into consideration for exercising power under para 7 of NRAS. Hence we do not find any ground to hold that the exercise of power by R.3 under para 7 of NRAS for relaxing the percentage in regard to the number of scientists to be promoted in regard to those who acquired Bhatnagar awards during the assessment period is ~~not~~ not proper.

cpntd...8.

10. Article 14 of the Constitution permits classification if it is reasonable and if there is nexus between the classification and the object that is sought to be achieved. It cannot be stated that there is no reasonable classification if the scientists who could not get promotion within the quota are classified as Bhatnagar awardees and those who are not having such awards. As it is a case of classification for consideration for promotion among the scientists it cannot be held that there is no nexus between the classification and the object to be achieved for it is a case of giving recognition to awardees. We do not hence accede to the contention that when it is a case of relaxation it has to be relaxed to all those who have been found suitable during the relevant assessment year.

11. When it was contended for the applicant that the conferment of Bhatnagar award on R.5 and R.6 was also taken into consideration for the purpose of assessment by the assessment committee, R.4 was directed to produce the relevant records and the same were produced. We found that it was placed before the Expert Assessment Committee that R.5 and R.6 were Bhatnagar awardees. It is hence reasonable to presume that the said factum was also taken into consideration in giving rankings to R.5 and R.6. But if R.5 and R.6 got rankings below that of the applicant or R.7 then of course there would have been some force in the contention that there would be infraction of Article 14 of the Constitution that those who got rankings above were not promoted while those who got rankings below were promoted. But as already observed R.5 and R.6 got rankings above that of the applicant and R.7. Hence the claim of the applicant that he should be promoted as Scientist-EI during the assessment year ending 31-3-86 when R.5 and R.6 were promoted though they were not within the first 50%, for otherwise it will be violative of Article 14 of the Constitution has to be negated.

contd...9.

12. But it may be noted that the applicant got ranking higher than the rankings of Sri Maru and Dr.S.V.S.Sharma at the time of assessment for the assessment year ending 31-3-87. But as it is a case of consideration of the case of the applicant for promotion to Scientist-EII on completion of six years of service as Scientist-EI, he was given promotion with effect from 1-2-87 i.e. the date by which he completed six years. But as Sri Maru and Dr.Sharma had become eligible for consideration during the assessment year ending 31-3-87 as they completed five years of service as Scientist-EI during that assessment year, they were given promotion as Scientist-EII with effect from 25-9-86 and 10-4-86 respectively as they completed five years of service as Scientist-EI by those dates.

The promotions of the applicant, Sri V.M.Maru and Dr.S.V.S.Sarma from 1-2-87, 25-9-86 and 10-4-86 were given as the rule enjoins that the promotion has to be given on completion of fifth year or sixth year as the case may be if the scientist is within the first 50% of the candidates to be considered for the relevant assessment year.

13. The learned counsel for the applicant urged that there is an anomaly when the applicant who got promotion as Scientist-EI earlier to the dates of promotion of Sri V.M.Maru and Dr.S.V.S.Sarma at the time of assessment for consideration for promotion as Scientist-EII was given promotion as Scientist-EII with effect from 1-2-87, a date later to 25-9-86, the date of promotion of Sri Maru and 10-4-86, the date of promotion of Dr.Sarma and hence the applicant should have been given promotion as Scientist-EII at least with effect from 10-4-86 the date from which Dr.S.V.S.Sarma got promotion.

✓

contd..10.

14. But the learned counsel for the Respondents 1 to 4 submitted as under in regard to the above contention for the applicant:

(i) The applicant had not even alternatively prayed that he should be given promotion as Scientist-EII from 10-4-86, the date from which Dr. Sarma was given promotion to the said cadre. It was not even so stated by the applicant in any of his representations to R4, R3 and R2. It was not even so urged on the date on which adjournment was taken for the applicant for looking into the rule position. Hence the applicant cannot be permitted to come up with this contention at this belated stage and the Tribunal cannot consider the same, as relief to that effect was not prayed for.

(ii) There is no concept of seniority in regard to the scientists who were considered for promotion. The eligibility for consideration is only on the basis of completion of eligibility period in regard to each scientist and those who completed the eligibility period during the assessment year are eligible for consideration by that assessment year. When a scientist could not get promotion in the earlier assessment year due to the limit in extent of promotion, the said scientist is eligible for consideration in the next assessment year or on reaching the maximum of the grade in the lower cadre and when promotion is given he is given promotion from the date on which he completed the year in the later assessment year or one year after he reached the maximum of the grade in the lower cadre.

(iii) When the dates of promotion of the applicant and Sri Maru and Dr. Sarma to the post of Scientist-EII are in accordance with the NRAS, the validity of the dates of promotion of the applicant and the other two cannot be challenged.

X

P. P. A.

225

(iv) When there is no seniority list of scientists, there cannot be any plea of senior scientist getting promotion from a date later than the date of promotion of the junior.

15. It is true that the applicant had not challenged the NRAS scheme. But thereby he cannot be debarred from raising the plea of anomaly if there is such an anomaly in order to urge that the anomaly could be set right by invoking para 7 of the Scheme whereby R3 can relax the rules if special situations warrant such relaxation.

16. The procedure for promotion of scientists to Grade-IV(4) which includes promotion to Scientist-EII, envisages that all scientists who completed five years of service in the immediate lower cadre during the relevant assessment year (assessment year ends on 31st March) have to be called for interview for consideration for promotion to the posts in Grade IV(4) during the relevant assessment year. But only 50% of the candidates who completed five years of service in the immediate lower grade in that assessment year have to be promoted. Hence the remaining scientists even though found suitable cannot get promotion in that assessment year. They are to be considered only in the next assessment year. If they are going to be included in the first 50% they have to be given promotion with effect from the date when they complete sixth year during that assessment year. It may lead to anomaly in implementation of the above provision.

17. To illustrate, assume that 10 scientists, A to J completed five years of service as scientist-EI during the assessment year ending 31-3-90. Assume that all of them are eminent scientists and all of them were found suitable and as only 50% of them only have to be promoted, A, B, C, D & E got promotion for the assessment year ending 31-3-90. Assume that there is only one scientist X who completed five years

of service as Scientist-EI during the assessment year ending 31-3-91. Then the scientists F, G, H, I, J and the scientist X who completed 5 years of service have been assessed for the assessment year ending 31-3-91 and the Scientists F, G & H have been given promotion as Scientist-EII in the assessment year ending 31-3-91. Assume that in that assessment year Scientists I and J were placed above the scientist X.

Even then the scientists I & J cannot be considered for promotion if they had not reached the maximum of the grade of Scientist-EI for assessment year ending 31-3-92 even though the Scientist X has to be considered for promotion for the assessment year ending 31-3-92. Thus for no fault of Scientists I & J they cannot be considered for promotion for the assessment year ending 31-3-92 even though they were promoted as Scientist-EI prior to the date of promotion of Scientist X as Scientist-EI and even though I and J were found more meritorious than X, ^{where as} ~~when~~ X can be considered for promotion during the assessment year 31-3-92. Of course, that anomaly had not arisen in this case, but it is referred to in order to highlight that in implementation of NRAS anomalies may arise.

18. The anomaly which had arisen in this case can be stated as under:

While the applicant was promoted as Scientist-EII with effect from 1-2-87, Sri Maru and Dr.Sarma got promotion as Scientist-EII on 25-9-86 and 10-4-86 respectively. At the time of assessment during the assessment year ending 31-3-1987, the applicant was placed above Sri Maru and Dr.Sarma. As the relevant rule enjoins that promotion has to be given from the date on which the scientist completed 5th/6th year in the lower cadre, if he is within the first 50% during the assessment year in which he completed 5th or 6th year as the case may ^{be}, the possibility of a scientist who was considered

P. 12

for the earlier assessment year but who was given promotion in the later assessment year getting promotion from a date later than the date of promotion of the scientist who was considered in the later year for the first time and when he got promotion in that year itself. It so happened in this case. It has to be held that it is a case of anomaly for one who was eligible for consideration and found fit for the earlier assessment year is given promotion from a date later than the date of promotion of the scientist who was considered for the first time in the later year and who was placed below the scientist who was considered and found fit in the earlier assessment year.

19. It is true that there is no concept of seniority for the purpose of promotion in the units under CSIR. Each scientist is considered on the basis of completion of eligibility period during the relevant assessment year. It is not a case where some of the scientists who completed the eligibility period during the assessment year are not being considered for promotion by prescribing any rule of zone of consideration.

20. Further, even the ranking given at the time of assessment is not taken as basis for fixing date of promotion. All those who are within the first 50% during the relevant assessment year are given promotion from the respective dates on which they completed the eligibility period in the immediate lower cadre. Hence even though Dr.Sarma was placed below Sri Maru, Dr.Sarma was given promotion as Scientist-EII with effect from 10-4-86 the date on which he completed five years of service as Scientist-EI and Sri Maru was given promotion as Scientist-EII with effect from 25-9-86 only. It can then be stated that the ranking is being given only in order to consider as to whether the particular scientist comes within

the first 50%. Then only he can get promotion and if he comes within latter 50% then he cannot get promotion. But if one is within first 50%, the date from which he gets promotion is from the date on which he completed five years of service in the lower cadre and hence even though he got ranking higher than the rankings of the others within first 50%, he may get promotion from a date later to the date of promotion of those who were ranked below. But when there is no concept of seniority and when promotion is one of time bound promotion for those who are within the first 50% it cannot be stated that there is any arbitrariness when one who is having higher ranking is given promotion from a date later than the date of promotion of the junior. In one respect it can be held as combination of seniority and ranking. Ranking is considered in order to determine as to whether the scientists are within the first 50% and the seniority, if it is so held, on the basis of date of promotion to the lower cadre. Then the promotion has to be given on the basis of said seniority. Thus the seniority is having significance to that limited extent in regard to the promotions as per NRAS.

21. If the date of entry into service is criterion for fixing seniority, one who enters into the cadre earlier to the date on which another enters into that cadre, is generally referred to as senior to the latter. The seniority is one of importance in service jurisprudence. Senior, if eligible, is having a right for consideration of his case for promotion earlier or atleast at the same time at which his junior is being considered for promotion. The applicant in this case got promotion as Scientist-EII on 1-2-87 while Sri Maru and Dr. Sarma got the promotion to the said post on 25-9-86 and 10-4-86 respectively. On the basis of their entry into the

where the applicant could not get promotion for the assessment year ending 31-3-86 on the ground that he was not meritorious.

529

-15-

grade of Scientist-EI the applicant has to be held as senior to Sri Maru and Dr.Sarma. Further when the cut off date for the assessment year is 31st March, the applicant was considered for the first time for promotion as Scientist-EII during the assessment year ending 31-3-86 while Sri Maru and Dr.Sarma were considered for promotion as Scientist-EII for the first time in the assessment year ending 31-3-87. It is not a case where the applicant could not get promotion for the assessment year ending 31-3-86 on the ground that he was not meritorious. He could not get promotion in that year as still more meritorious scientists were available in that year and as there was limit for promotion i.e. 50% of those who were eligible for consideration for that year. Assume that scientists A, B, C & D were eligible for consideration in that particular assessment year and even though all of them were found fit, A and B alone could have been promoted for that assessment year if they were within the first 50%. But assume that C and D were not eligible for consideration for the assessment year in which A and B alone were eligible, then A alone would have been promoted in that assessment year if he was placed above B. Thus the promotion of B in a particular year does not depend upon his merit; but it depends upon the number of scientists eligible for consideration for promotion in that assessment year. Same thing happened in regard to the applicant. Assume that 16 scientists were eligible for consideration for promotion as Scientist-EII during the assessment year ending 31-3-1986 and hence the 8 candidates upto 8th rank would have got promotion in the assessment year ending 31-3-86. As applicant got 8th rank, he would have got promotion in that assessment year. But there were only 10 eligible scientists during that year and as he got only the 8th rank, he could not get promotion in that assessment

~~XXXXXX~~

contd..16.

P.S. Dr

year. Thus in the way in which NRAS rules were formulated the question of getting promotion in a particular year does not necessarily depend upon relevant merit and it depends upon the number of scientists eligible for consideration for promotion in that relevant assessment year.

22. The applicant when he could not get promotion in the earlier assessment year was considered for promotion alongwith the remaining who were eligible in the earlier assessment year and also alongwith those who had become eligible for the first time in that later assessment year. Sri Maru and Dr.Sarma are those who were eligible for consideration for the first time in the assessment year ending 31-3-87. On the basis of the rankings given during that assessment year, the applicant can be held as more meritorious than Sri Maru and Dr.Sarma. Thus even though the applicant was senior to Sri Maru and Dr.Sarma in the immediate lower category viz. Scientist-EI and he was also found more meritorious than Sri Maru and Dr.Sarma, when all of them alongwith others were considered at a time by the expert assessment committee for promotion as Scientist-EII, it has to be held as an anomaly when the applicant was given promotion from 1-2-87 while Sri Maru and Dr.Sarma were given promotion with effect from 25-9-86 and 10-4-86 respectively.

23. It is a case of anomaly which had arisen on the basis of implementation of the rules formulated as NRAS scheme. There may not be any ground to challenge the said scheme on the ground that it is arbitrary. But can it be stated that the anomaly cannot be set right when anomaly arises in implementation of the rules which cannot be held as arbitrary,

There are various instances where in fixing the pay in accordance with the Fundamental Rules, the pay of the senior is

✓

contd...17.

230

2108 ✓

231

found to be less than the pay of the junior either when such fixation was made or due to revision of payscales or on the basis of promotion, even when the pay of the senior was higher or equal to the pay of the junior in the pre-revised scales or in the immediate lower post. It is held that it will be arbitrary if such a senior is not given pay equal to the pay of the junior. Hence stepping up is being ordered in such cases in order to ensure that the senior gets atleast the same pay from the date the junior gets on the basis of revision of pay on promotion. If such a principle is followed in the case of anomaly in fixing the date from which promotion has to be given as per NRAS rules, it would be a case of setting right the anomaly for otherwise the fixation of such a date for a senior who is considered more meritorious from a date later than the date of promotion of the junior who is found to be less meritorious will be subject to challenge under Article 14 of the Constitution.

24. It had become necessary for the Supreme Court to consider the case of anomaly in fixing the date of promotion of a senior, promoted to I.P.S. when the same was found to be a later date than that of his junior. The relevant rule for fixation of seniority is that a State officer who was working in the senior post by the date of his inclusion in the select list for IPS had to be given promotion from that date even though his regular appointment on promotion to IPS was from a later date. Of course if a State Officer whose name was included in the list of IPS had not worked in the senior post by the date of his regular appointment as IPS officer on promotion, his seniority for IPS has to be fixed only from that

contd..18.

0118V

282

date. This Bench held that it would be a case of anomaly when senior who was not posted to the senior post before the date of his promotion, was given promotion from a date later than the date from which the junior was given promotion when that junior was working in the senior post uninterruptedly from a date earlier to the date of his regular promotion to IPS. The date of regular promotion to IPS of the senior was evidently earlier to the date of the regular promotion of the junior to IPS. It was held by this Bench that the said anomaly can be set right by giving promotion to the senior from the date on which his junior was promoted. The said order of the Bench was affirmed by the Supreme Court in 1994(1) SLR 524 (M.V.Krishna Rao Vs. UOI). It was affirmed as the relaxation in regard to seniority rules could be given by the Central Government in consultation with the State Government in exercise of the powers under the All India Services (Conditions of Service--Residuary Matters) Rules, 1960. Thus even though it is a case of power of relaxation to be exercised by the Central Government, a direction was given by this Bench to set right the anomaly as there is no other way of setting it right and their lordships of the Supreme Court affirmed it. It is thus clear from the above judgement of the Supreme Court that if an anomaly arises whereby the senior is given promotion from a date later than the date of promotion of the junior, and when such anomaly arises in implementation of the relevant rules, it can be set right by giving a direction by the Tribunal when the concerned authority has the power to relax the rules under special circumstances.

contd..19.

282

25. As already observed, R3 is having power to relax the rules as provided under NRAS scheme if there are unusual or special situations. There is an anomaly in fixing the date of promotion of scientist X as Scientist-EII from a date later to the date of promotion of Scientist Y as Scientist-EII when Scientist Y had become Scientist-EI from a date later to that of Scientist X and when that Scientist X was considered to be more meritorious to Scientist Y at the time of consideration for promotion and it has to be held as unusual or special situation in regard to which the rule in regard to the date of promotion has to be relaxed by invoking para 7 of NRAS. As the date of promotion of a promotee to IPS was preponed to the date of promotion of his junior, when there was an anomaly, for such preponing can be done in exercise of the power under the All India Services (Conditions of Service--Residuary Matters) Rules, 1960, we feel that a direction can be given by this Bench to R4 to prepone the date of promotion of the applicant to 10-4-86, the date from which Dr.Sharma was given promotion as Scientist-EII for such relaxation can be made by R3 by invoking para 7.

26. It is true that the applicant had not claimed specifically the above relief as an alternative relief. But he prayed that this tribunal may pass such order as it deems fit. Further the applicant claimed promotion as Scientist-EII with effect from 1-2-86. If on the basis of the pleadings this Tribunal is going to hold that the applicant is entitled to promotion from a date later than 1-2-86 then it can be held that it is a part of the main relief claimed, and in any case as the applicant prayed that he may be given such relief as it may be deemed fit it will be within the purview of this Tribunal to give such relief as it may deem fit, if the main relief prayed for cannot be granted.

contd..20.

27. The applicant specifically pleaded that while he was

27. The applicant specifically pleaded

234

27. The applicant specifically pleaded that while he was given promotion with effect from 1-2-87, Sri Maru and Dr.Sharma who were considered for promotion later and who were ranked below him were given promotions with effect from earlier dates i.e. 24-9-86 and 10-4-86 respectively. Hence it cannot be stated that there was no plea in regard to the anomaly.

28. It may be noted that while this application was filed through a junior counsel viz. Shri T.Lakshmi Narayana, one of the senior most counsel, Shri Y.Suryanarayana was engaged at the time of arguments. He is such a senior counsel who is having voluminous work in the State Admn. Tribunal and also in the High Court. And in fact a number of adjournments were taken even after this matter was heard in part so as to secure the presence of the senior counsel for completion of arguments. We feel that it is not proper to deprive the applicant a benefit to which he is entitled to as per his pleadings, merely because the relief on the basis of that plea was not claimed as specific alternative relief and that it is merely claimed that this Tribunal may pass such order as it may deem fit.

29. It has to be further noticed that the applicant is a scientist. As such he may not be familiar with regard to the interpretation of various rules. But when, according to him, he had a genuine grievance he made a representation to R4, the Director. The then Director, NGRI in fact submitted to R3 that the applicant should be given promotion from 1-4-86. But when the said submission was not approved by R3 and also by R1, the applicant had again made representation to R3 and R2. Being a scientist and not well-versed in regard to the interpretation of the rules, the applicant may not have projected his plea in regard to the anomaly in the proper

progr

234

perspective. It has to be further seen that even in a case where alternative relief has to be asked for, one may not come up with the such alternative relief under the apprehension, it may be a mistaken apprehension, that the court/tribunal may feel that the applicant may not be particular in regard to the main relief which will be larger relief and he is mainly interested in regard to alternative relief which is lesser relief. Hence when at the first instance, the learned counsel mainly put forward his arguments with regard to main relief and when after taking adjournment if it is felt that there may not be good chance of succeeding in regard to the main relief, it is not unusual to come up with arguments in regard to alternative relief. Hence merely because the learned senior counsel has not advanced any argument in regard to the relief on the basis of anomaly at the time of arguments earlier, it cannot be stated that he cannot be permitted to argue the same at the time of later arguments. Of course if one comes up with a fact at a belated stage, reliance cannot be placed upon it by holding it as an after-thought. But when it is a case of argument on the basis of the rules or admitted facts, the argument though advanced at a later stage has to be considered in the same way as if it was urged at the first instance.

30. When it is a case of continuing right, this Tribunal is granting the monetary benefit from one year prior to the date of filing the O.A. In such cases, the O.As. are not being dismissed on the bar of limitation that is, when the O.A. is not filed within one year from the date on which the cause of action had arisen, or within one and half years from the date on which the representation is made, if the representation was made within a reasonable time from the date on which the cause of action had arisen and if it is not disposed of.

contd...22.

P 29

Hence the plea for R1 to R4 that this O.A. has to be dismissed on the bar of limitation has to be negated.

31. It was pleaded for R1 to R4 that CSIR is a Society and it is not a State coming within the purview of the Constitution. The said contention was not argued and hence we are not adverting to the same for disposal of this O.A.

32. It may be noted that while R7 was given ranking immediately below that of the applicant at the time of assessment for the assessment year ending 31-3-86, R7 was again given ranking immediately below that of the applicant and above that of Sri Maru and Dr. Sharma at the time of assessment for the assessment year ending 31-3-87. We feel that instead of again driving R7 to come up with an O.A. praying for relief on the basis of his continued right it is just and proper to direct, in this O.A., to pre-pone the date of promotion of R7 also with effect from 10-4-86 but limiting the monetary benefits in regard to him from the date of this order.

33. 1994 SCC(L&S) 737 (LIC of India Vs. Asha Ramchandra Ambekar (Mrs.) and anr.) and AIR 1966 SC 529 (The Martin Burn Ltd. Vs. The Corpn. of Calcutta) are relied upon for the respondents. It is held in 1994 SCC(L&S) 737 that "the High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. The courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, should never be done." We held that there was an anomaly in application of the rules as per NRAS. We further observed that para 7 of NRAS empowers the D.G., CSIR to relax the rules in case of unusual or special situations. So we held that the only way of setting right the anomaly is by exercising the power under para 7 of NRAS. We also referred to the judgment of the Supreme Court wherein the judgment of this Bench wherein such a direction was given when

contd...23.

prg

To

1. The Secretary, Union of India,
Ministry of Science and Technology,
Anusandhan Bhavan, Rafi Marg, New Delhi.
2. The Vice President, Council for Scientific and
Industrial Research, CSIR,
Anusandhan Bhavan, Rafi Marg, New Delhi-1.
3. The Director General, CSIR, Anusandhan Bhavan,
Rafi Marg, New Delhi-1.
4. The Director, National Geophysical Research Institute,
Uppal Road, Hyderabad-7.
5. One copy to Mr.T.Lakshminarayana, Advocate, CAT.Hyd.
6. One copy to Mr.Chenna Basappa Desai, SC for CSIR.CAT.Hyd.
7. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
8. One copy to Library, CAT.Hyd.
9. One spare copy.

pvm Mr. Dr. N. Krishna Brahmam, Scientist - EIT
N.G.R.I. Uppal Road, Hyderabad (R-7)
(copy sent by post on 23/2/95)

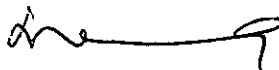
22/2/95
23/2/95

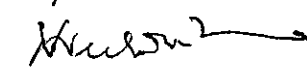
the Central Government in consultation with the State Government has the power to relax, was affirmed. Thus, the direction given by us is not in contravention of NRAS scheme.

34. In AIR 1966 SC 529 it was held that it is not for the court to make valuation and it is for the concerned authority to revalue. But when we held that the only way in which the anomaly referred to, can be set right is as per the direction given which should have been given in invoking para 7 of NRAS. As the concerned authority has not invoked the power conferred under para 7 of NRAS even after representation is made by the applicant and as the only direction that can be given in such matter for setting right the anomaly is as per the direction given herein and in order to avoid the further delay in the matter and as in similar case a direction was given by this Tribunal and as it was affirmed by their lordships of the Supreme Court as referred to supra, it cannot be stated that the direction given by us is contrary to the observations made by the Supreme Court in AIR 1966 SC 529.

35. In the result, R4 is directed to prepone the dates of promotion of the applicant and R7 as Scientist-EII to 10-4-86. The monetary benefits in regard to the applicant have to be given with effect from 1-1-89 (this O.A. was filed on 1-1-90) and R7 has to be given monetary benefits with effect from the date of this order.


36. The O.A. is ordered accordingly. No costs./


(R. Rangarajan)
Member/Admn.


(V. Neeladri Rao)
Vice-Chairman

Dated: the 16th day of December, 1994.

mhb/


23-12-94
Deputy Registrar (S) CC

822/

TYPED BY

CHECKED BY

COMPARED 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.RANGARAJAN : M(ADMIN)

DATED: 16 - 12 - 1994

ORDER/JUDGMENT:

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

in

O.A.No. 15/90

T.A.No. (w.p.)

Admitted and Interim directions
issued.

Allowed..

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

no spare copy

