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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 328/91.

Dt. of Decision : 20-9-94.

- | | |
|-------------------------|--------------------------|
| 1. P. A. Deshpande | 7. G. Poshetti |
| 2. S. Jayraman | 8. T.K. Jagan Mohan |
| 3. Ms. UMA Ramachandran | 9. K. Prahalad Rao |
| 4. Mohammed Kaleemullah | 10. K.Siva Krishna Reddy |
| 5. Shantaram Pandey | 11. M.M. Ahamad |
| 6. Rama Rao Rayani | 12. U.K. Acharyulu |

.. Applicant.

Vs

1. Union of India, rep. by the Secretary,
Ministry of Defence South Block,
New Delhi - 110 011.
2. Scientific Adviser to Raksha Mantri
and Director General Research and
Development, Room No. 137,
South Block, New Delhi-110 011.
3. Director of Personnel, Room No.221,
B-Wing, Sena Bhavan, Defence Research
and Development Organisation,
New Delhi - 110 001.
4. Director Defence Electronic Research Labs,
Chandrayanagutta, Hyderabad-500 005.
5. Chairman, Recruitment Board and Assessment
Committee, RAC Buildings, Lucknow Road,
Timaipur, New Delhi - 110 007.
6. Chairman, Assessment Board, C/o Defence
Research & Development Labs, Kanchanbagh
Hyderabad - 500 258.
7. L.M.Srivatsa
8. D.M. Kumar Singh
9. B. Ramulu
10. M.Lakshminarayana
11. Dadi Siva Raju
12. H.R.Krishnakumar
13. J.Shankar Rao
14. Prakash Chand
15. G.Raghaviah
16. C.Ramprasad
17. M.Sankaram
18. J.Sivkumar
19. N.Rajkumar
20. G.V.Bhaskara Rao

.. Respondents.

Counsel for the Applicants : Mr. Y.Suryanarayana

Counsel for the Respondents : Mr. N.R.Devaraj, Sr.CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

DA.328/91

(As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman)

Heard Sri Y. Suryanarayana, learned counsel for the applicants and Sri N.R. Devaraj, learned counsel for the respondents.

2. All these applicants were working as Scientist 'C' in Defence Electrical & Research Laboratory from 1-7-86. When they completed four years of service in that grade by 30-6-1990, it is not in controversy that they were eligible for consideration for promotion to the post of Scientist 'D' with effect from 1-7-1990 if the DRDS Rules, 1979 rules are applicable. Rule 8(2)(e) of the Said rules lays down that all officers who have completed five years of service in the Grade ^{how to be considered} for assessment for promotion to the next higher grade provided that those who have completed three years regular service in the grade and all the reports ^{in very good} sent ^{to} by them during this period are outstanding, and those who have rendered four years regular service in the grade and all the reports ^{in very good to} ^{during} sent ^{by} them ^{through} that period are very good, shall also be eligible for assessment for promotion to the next higher grade. It is the case of the applicants that all the reports sent by them during the period of four years are very good and hence they are eligible for consideration for promotion to Scientists Grade 'C' as per Rule 8(2)(d) of DRDS Rules, 1979.

3. But the same was amended whereby the ^{flexible} ~~the~~ Complementary Scheme was introduced with effect from

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11-8-1990 and it prescribed different method of assessment. On the basis of that amended Rule the case of the applicants for promotion to Scientist 'D' was considered and they were not given promotion.

4. This OA was filed praying for consideration of the case of the applicants as per DRDS Rule, 1979, prior to the amendment in 1990, for the promotion had to be given effect to from 1-7-1990 and as by that date there was no amendment and as the vacancies in the grade of Scientist D existed as on 1-7-1990.

5. The main contention for the respondents is that as the Assessment Board met in March-April, 1991, the rules which were prevailing as on that date ^{have} ~~has~~ to be followed eventhough promotion ^{have} ~~has~~ to be given effect to from 1-7-1990.

6. The learned counsel for the applicants relied upon 1983 SC 852 (Between Y.V.Rangaiah vs.J.Srinivasa Rao and State of Andhra Pradesh and others) to urge that the rules which were prevailing as on the date of the vacancy and not the rules which were prevailing as on the date of the consideration for promotion for such vacancy have to be followed.

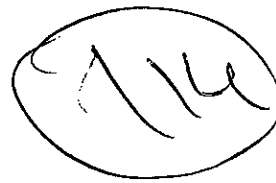
7. There is a ratio ^{in regard to the number of} ~~of~~ the posts in Scientists A,B,C,D, E,F,and G. It is evident from Rule 8(2)(e) of DRDS Rules, 1979 that promotion had to be given effect from the ^{1st} ~~first~~ July of each year. In this case all these applicants earned reports during the four years of service as Scientists 'C' by 30-6-1990 as 'very good' and hence as per rules 8(2)(d) of DRDS Rules they have to be considered for promotion to Grade 'D' on completion of

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four years of service as Scientists 'C' by 30-6-1990. As per the DRDS Rule 8(2)(e), the said promotion had to be given effect from 1-7-1990 irrespective of the actual date ^{of} order of promotion ^{as} such it is reasonable to hold that when vacancies in Scientist Grade 'D' existed as on 1-7-90, ~~and when~~ ^{that} promotion has to be given with effect from the date the vacancies in the said posts existed as on 1-7-1990. In view of the judgement of the Supreme Court ~~case~~ in Rangaiah's case, the rules which were prevailing as on the date of vacancies, have to be followed. Hence, it is urged for the applicants that the respondents had ^{evva} in following the amended rules which had come into effect from 10-8-1990 for consideration of their promotion as Scientists 'D' with effect from 1-7-1990.

8. It was urged for the respondents that when as per Rule 8(2)(a) of DRDS Rules, 1979 the ³ Assessment Board, shall be convened atleast once a year or at such intervals as may be prescribed by the Director General, The rules which were prevailing on the date on which the Board meets should be made applicable. But when the Supreme Court held in Rangaiah's case that the date on which the process is initiated is not the criterion, and it is only the date on which the vacancy existed is relevant for consideration as to whether the amended ~~or~~ pre-amended rule had to be applied, The said contention for the respondents had to be negatived.

9. But the learned counsel for the respondents relied upon ~~the~~ K. Jagadeesan vs. Govt. of India & others case (ATR 1988(2)CAT186(HB)) to urge that the power to make



rule under Proviso of Article 309 of the Constitution, they may not affect or ^{impair} ~~improve~~ vested rights; ^{but} the amendment cannot be challenged on the ground that chances of promotion are affected.

10. The question for consideration in this case is as to whether the vacancy existed in the grade of Scientist D prior to 10-8-1990, the date of amendment. It is not the case of the respondents that vacancies in the grade of Scientists-D did not exist as on 1-7-1990. The applicants have not challenged the amended rule which had come into effect from 10-8-1990. The case of the applicants is that they have to be considered on the basis of the pre-amended rules as the vacancies existed ^{even before} ~~by~~ the date of the amendment. Hence, the decision in Jagadisan case has no bearing for consideration of this OA.

11. Hence, we find that the respondents erred in following the amended rule which had come into effect from 10-8-1990 in regard to consideration of the case of the applicants for promotion to the Grade of Scientists-D, which promotion had to be given with effect from 1-7-1990. As such the respondents are directed to follow the DRDS Rules, 1979 before they were amended in August, 1990, for consideration of the case of the applicants for promotion to the posts of Scientists-D, which promotion have to be given from 1-7-1990.

12. In para 12 (page 16 of the reply) filed by Sri K. Swaminathan, ^{Director DLR,} on behalf of the respondents, it was alleged that "moreover, even by taking 30th June, 1990 as the cut off date for the assessment board 1990 (though not admitted), suitability for assessment under pre-amended

TO

1. The Secretary, Union of India,
Ministry of Defence, South Block, New Delhi-11.
2. The Scientific Adviser to Raksha Mantri and Director General
Research and Development, R.No. 137, South Block,
New Delhi-11.
3. The Director of Personnel, R.N.221, B-Wing, Sena Bhavan,
Defence Research and Development Organisation,
New Delhi-1.
4. The Director Defence Electronic Research Labs,
Chandrayanagutta, Hyderabad-5.
5. The Chairman, Recruitment Board and Assessment Committee,
RAC Buildings, Lucknow Road, Timaiapur, New Delhi-7.
6. The Chairman, Assessment Board, C/o Defence Research
and Development Labs, Kanchanbagh, Hyderabad-258.
7. One copy to Mr.Y.Suryanarayana, Advocate, CAT.Hyd.
8. One copy to Mr.N.R.Devraj, Sr.CGSC. CAT.Hyd.
9. One copy to Library, CAT.Hyd.
10. One spare copy.

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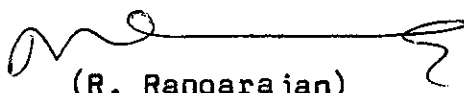
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rules was also required to be made with reference to rule 8(2)(d). All the applicants are not eligible under pre-amended rules also on the basis of their records of service." Thus when Sri K. Swaminathan, the Director, DLRL, had already expressed his opinion in regard to the performance of the applicants as per their service records and when such assessment has to be made by Assessment Board, it is just and proper to direct that Sri K. Swaminathan should not be on the Board for consideration of the case of the applicants for promotion to Scientists-D in pursuance of this order.

13. In the result, the respondents are directed to consider the case of the applicants for promotion to the posts of Scientists-D, which promotion had to be given from 1-7-1990 in case the applicants are promoted, in accordance with DRDS Rules, 1979 prior to 1990 amendment. Sri K. Swaminathan, Director of DLRL, who filed reply affidavit in this OA should not be in the Assessment Board. The applicants will be entitled to the monetary benefits from 1-7-1990 and also the seniority from 1-7-1990 in case they are promoted./


14. The OA is ordered accordingly. No costs.


(R. Rangarajan)
Member (Admn.)


(V. Neeladri Rao)
Vice Chairman

Dated : September 20, 94
Dictated in Open Court

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Deputy Registrar (D) Co

AND

✓
THE HON'BLE MR. A. RANGARAJAN : M(ADM)

DATED: 20-9 - 1994

~~ORDER~~ JUDGMENT

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

C. A. No. 328 | 91 in

(T. A. No.

(W. P. NO)

Admitted and Interim directions
Issued.

No spare copy

Allowed.

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected

No order as to costs.

pvm

