

In the Central Administrative Tribunal, Hyderabad Bench,
Hyderabad.

OA No. 1192/91

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Dt. 16-12-94

Between

G.R. Rajamnuri

Applicant

And

1. Union of India Rep. by
the Secretary, Ministry of
Science & Technology,
New Delhi-500 660
2. Director-General, Council of
Scientific & Industrial Research,
(CSIR) Rafi Marg,
New Delhi-110 001.
3. Director, National
Environmental Engineering
Research Institute
(NEERI) Nagpur.

Respondents

Counsel for the Applicant - Shri T. Jayant

Counsel for the Respondents - Shri C.B. Desai

Coram

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

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

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AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN]

Heard Shri T. Jayant, learned counsel for the applicant and also Shri C.B. Desai, learned standing counsel for the Respondents.

3. This OA was filed praying for a direction to the Respondents to promote the applicant to

- (i) the post of Special Grade Assistant w.e.f. 1-6-78
- (ii) the post of Section Officer(General) w.e.f. March, 1981
- (iii) the post of Administrative Officer w.e.f. the date on which his immediate junior was promoted.

with consequential benefit of arrears of pay and allowances with interest.

2. The applicant passed B.com. examination from Andhra University in 1953. He stood first

in the examination conducted for selection of UDCs in CSIR, Bangalore and then he was ~~then~~

appointed to the said post on 25-7-60. ~~then~~
notification was issued for the posts of Assistants in CSIR. ~~applied for it and~~ The applicant ~~got~~ got 4th rank ~~and~~ and he was appointed as Assistant on 20.1.65.

He was posted at Regional Research Laboratory, Bhuvaneswar. From there he was transferred to NGRI, Hyderabad in August, 1970.

3. A scheme for providing promotional opportunities to the non-gazetted staff in CSIR was introduced as per memo. No. 10(3)/74-PL dt. 27-11-75. Eligible staff have to be considered

for ~~placement~~ in the Special Grade after completion of atleast 11 years of service in the present post. Para 5.4. of the said memo. states that eligible staff will be reviewed in April every

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year. Para 5.6 of the memo. lays down that Special grade post will be treated as personal to the incumbent. Para 5.7 of the said memo. envisages that a duly constituted D.P.C. shall assess suitability of the officials for placement in the special grade on the basis of their

- a) past performance
- b) Qualifying trade test, wherever necessary
- c) Suitability
- d) confidential reports and
- e) seniority.

4. The case of the applicant was also considered for Special grade by the D.P.C. which met on 8-6-77 as by then the applicant completed 11 years of service as Assistant. But he was not found suitable for promotion to the post of Special Grade either by that committee or the D.P.C. which met on 7-6-78.

5. The applicant was confirmed in the post of Assistant with effect from 1.8.71 as per order dated 11-7-77. As all the Assistants who completed 8 years of regular service were eligible for consideration for promotion as Section Officer, the case of the applicant for promotion to the post of Section Officer was considered in 1979. But he was not selected then. Disciplinary proceedings were contemplated against the applicant and a charge memo. dated 12-2-81 was issued to the applicant. In view of the pendency of the disciplinary proceedings on the basis of the charge memo., the case of the applicant for promotion as Section officer was considered by adopting the sealed cover procedure, in 1981-82, 1985, 88 & 1989.

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5. The applicant herein filed OA 511/87 praying for quashing the charge memo. dated 15-6-81. The OA 511/87 was disposed of on 11-11-89 ^{by} directing the Respondents to expedite the enquiry in the disciplinary proceedings. The applicant was exonerated by order dated 16-12-89. It is stated that when the sealed covers were opened, it was found that the D.P.C. which met on 1-3-88 recommended for promotion of the applicant as Section officer and the earlier DPCs found him not fit for promotion as S.O. Then the order dated 20-3-90 was issued promoting the applicant as S.O with effect from 21-3-88 the date on which his junior in that panel was promoted as Section officer. The applicant assumed promotional post on 22-5-90 and the applicant voluntarily retired from service on 1-4-91.

6. One of the contentions raised in this OA is that Shri S.L. Jain, the then Administrative Officer had written adverse to him and as Shri Jain himself was caught red-handed in 1979 when he was receiving ~~the~~ illegal gratification, and hence the ACRs written by Shri S.L. Jain should have been expunged and they should not have been looked into. The ACRs of the applicant from 1972 to 1980 were produced before us. Even the officer who initiated ACRs had not written well in regard to the applicant. Shri S.L. Jain was even the reviewing officer from 1972-77. But as ~~the~~ the ACRs written by the initiating officer against whom the applicant had no complaint ~~/xxx~~ not were favourable to the applicant, the opinion of the D.P.C. which considered the case of the applicant in 1977-78 for the Special Grade ~~do~~ ^{does} not warrant interference.

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6. But as already observed, para 5.5 of the memo. dated 27-11-75 states that the cases of the eligible staff have to be reviewed in every calendar year. As the case of the applicant for Special Grade from 1979 was not considered, it is necessary to give a direction to the Respondents to ~~convene~~ review the D.P.C. for consideration of the case of the applicant for Special Grade 1979 and if his case is going to be recommended, his pay has to be fixed in the Special Grade scale from the relevant date in that year. Of course, if for that year also, he is not going to be found fit for Special Grade Assistant, his case has to be considered till he was promoted as Section Officer or till the year in which he may be found fit for Special Grade whichever is earlier.

7. It was pleaded for the applicant ~~that in the years~~ 1981, 1982 and 1985 in which he was interviewed for consideration for promotion to the post of Section Officer, he was merely ~~informed~~ ^{informed} about the pendency of the disciplinary proceedings pending against him, and it has to be stated that the D.P.C was biased against the applicant, and as such, the matter has to be reviewed.

8. Office Memorandum No. 2011/1/79/Estt(A) dated 30-1-82 lays down that sealed cover procedure has to be followed if the concerned official was ~~going~~ preliminary investigation or disciplinary enquiry by the date of consideration of the case of the said official for promotion. When the Members of the D.P.C. were conscious ~~of~~ ^{of} the said O.M. it cannot be stated that the Members were biased in view of the pendency of the disciplinary proceedings against the officer. Even in this case, the D.P.C.

which met on 1-3-88 recommended the case of the applicant for promotion as Section Officer even though by then the disciplinary proceedings against him were pending. Further the applicant has come up with such a plea only in the additional affidavit filed on 16-10-94 i.e. at a very belated stage. Thus there is no substance in the above contention.

9. After the applicant was exonerated, he was only given notional promotion with effect from 21-3-88, the date on which his junior was promoted as Section officer. The Apex court held in AIR 1991 SC 2010 (Union of India etc. etc. Appellants v. K.V. Janakiraman etc. etc. - Respondents) that unless the delay in disposal of the disciplinary or criminal case is attributable to the employee or the acquittal is on the ground of benefit of doubt or on account of non-availability of evidence due to the cause attributable to the employee and in such circumstances which indicate that employee was not responsible for such circumstances, the employee has to be paid monetary benefit from the date on which he should have been promoted if the employee is exonerated in the disciplinary proceedings. The Respondents have not placed any circumstances before us which indicate that it is just and proper to deny the monetary benefit to the applicant from the date on which his junior was promoted till the date he assumed charge. But the learned counsel for the Respondents submitted that the question as to whether the applicant should be given the monetary benefit from 21-3-88, the date on which the junior may be left to respondents. But it was promoted as Section Officer, It may be noted that the applicant retired from service voluntarily

even on 1-4-91. Even the order by which the applicant was exonerated in the disciplinary proceedings does not indicate that he is blame-worthy. The negligence on the part of the applicant ~~which~~ was referred to as a case of ~~negli-~~ gence on the part of the scientists and other Members of the staff also. Thus there are no grounds to single him out even on the ground of negligence. It has to be further noted that when the disciplinary proceedings were not ~~com~~^{pleted} even in 1987, ~~when~~^{while} the charge memo. was issued in 1981, the applicant himself filed OA 511/87, praying for quashing charge memo. on the ground of delay. ~~XXXXXX~~. Thus the delay ~~for~~ⁱⁿ enquiry is not attributable to the applicant. Thus when there is no material whereby the applicant has to be denied the monetary benefit from 21-3-88 and as the applicant retired from service more than 3 years back, we feel it not a case where a direction has to be given to the Respondents as submitted for the Respondents, and it is a case where a direction has to be given to the Respondents to pay the monetary benefit to the applicant from 21-3-88, the date from which he was promoted as Section officer which was referred as notional promotion.

10. In the result, the Respondents have to convene a Review D.P.C. for consideration of the case of the applicant for Special Grade in the year 1979 and if it is going to be held that he was not suitable for promotion for 1979, his case has to be considered for every following year till he is found fit for promotion as Special Grade ~~Assistant~~ till 21-3-88 the date on which

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the applicant was promoted as Section Officer.

In case the applicant is found suitable for promotion as Special Grade Assistant in 1979 or ⁱⁿ any of the later years, his pay in the pay scale of Special Grade in that year has to be fixed. Thereafter the pension also has to be re-fixed and the arrears of salary and terminal benefits have to be given, and the applicant ^{for the} has to be given the monetary benefit in the pay scale of Section officer from 21-3-88 till he assumes charge as Section officer.

11. The OA is ordered accordingly. No costs. /

Me

(R. RANGARAJAN)
MEMBER (ADMN.)

V.Rao
(V. NEELADRI RAO)
VICE-CHAIRMAN

Dated the 16th December, 1994
Open court dictation

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Prabhakar
Deputy Registrar(J)CC

To

1. The Secretary, Ministry of Science and Technology, Union of India, New Delhi-660.
2. The Director-General, Council of Scientific & Industrial Research, (CSIR) Rafi Marg, New Delhi-1.
3. The Director, National Environmental Engineering Research Institute (NEERI) Nagpur.
4. One copy to Mr.T.Jayant, Advocate, CAT.Hyd.
5. One copy to Mr.Chenna Basappa Desai, SC for CSIR, CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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post box b105

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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: 16-11-1994

ORDER/JUDGEMTN:

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

in

O.A.No. 1192/91

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.

DVM

