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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

DA.1030/92

date of decision : 22-7-93

Between

1. Sreedhar, N
2. P. Prakash Rao
3. Snehalatha Singh
4. Shanta Sarvade
5. K. Nagarajan
6. K. Vidyasagar
7. K. Jhansi Lakshmi
8. V. Chandra Mouly
9. D. Ratnavathi
10. T. Prameela
11. Madhubala Dasaj
12. L. Sarada
13. R. Amarnath Dacha
14. A. Jagadhambal
15. V. Srinivasa Rao
16. R. Ramulu
17. V. Aruna Kumari
18. R. Rukmini
19. Vasanti Palnitkar
20. S.V.V. Singh
21. M.T. John
22. S. Veerachary
23. R. Ramnarayan
24. R. Narayana Rao
25. B. Narasimha
26. S.V. Ramana
27. I. Gururaj
28. S. Ramesh
29. D.R. Rajeswari, and
30. Movva Sivaji

: Applicants

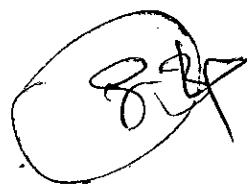
and

1. Union of India, rep. by
The Secretary
Govt. of India
Min. of Defence, South Block
New Delhi 110 011

2. Scientific Advisor
Director General Research &
Development
Defence Research & Development Orgn.
South Block
New Delhi 110 011

3. Director
Defence Research & Development Laboratory
Kanchanbagh
Hyderabad 500 258

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4. Director
Defence Metallurgical Research
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11. Kalash Chandra
Senior Scientific Assistant
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: Respondents

Counsel for the applicants

: N. Ram Mohan Rao
Advocate

Counsel for the respondents

: N.V. Raghava Reddy,
Addl. SC for Central
Government

CORAM :

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

HON. MR. P.T. THIRUVENGADAM, MEMBER (ADMINISTRATION)



Judgement

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

Heard Sri N. Ram Mohan Rao, learned counsel for the applicants and Sri N.V. Raghava Reddy, learned counsel for the respondents.

2. Defence Research and Development Organisation (DRDO) is the research and development wing of the Defence. There are 49 laboratories / establishments under its control. The employees in these laboratories / establishments in the lower cadre can be broadly divided into four categories, viz. Scientific Assistants, Technical Employees, Industrial Workers, and the Employees of Ministerial duties. The Junior Scientific Assistants are of two grades - Grade II and Grade I. Eighty per cent of the Senior Scientific Assistants^(SSA) are promoted from the categories of Junior Scientific Assistants, Chargeman Grade II & Grade I, and Assistant Foreman, and Foreman, ~~and they~~ come under the category of Technical Employees. The Industrial Workers comprise of the employees of Grade E to A and Chargeman. There is no need to refer to the various categories coming under the Ministerial category for disposal of this OA.
3. As per the pay scales recommended by the Third Pay Commission, the Foreman was given a scale of Rs.840-1040, while SSA was given pay scale of Rs.550-900 and the Chief ^{w/h} Draftsman was given pay scale of Rs.700-900. The next promotional avenue for all the three categories is the JSA(Gazetted). The ratio for these three categories is 10:83:7.

4. There was an agitation from the SSAs requesting for the pay scale given to foreman, by stating that they are

30/12/19

(86)

also discharging important duties and ~~are~~ shouldering high responsibilities. The Expert Classification Committee, which was constituted to look into the grievances of the SSAs in regard to this aspect suggested in 1979 a pay scale of Rs.650-1040 for the SSAs. But the same was not accepted by SSAs. As such the matter was referred to the (JCM). Joint Consultative Machinery, But they recorded their disagreement on 22-9-1982. As in such matters the reference ~~has to be made~~ to the Arbitration ~~as it~~ is compulsory, it was referred to an Arbitration Board. The Board passed the award dated 12-8-1985. The important decision as per the said award ~~is~~ that 49% of the SSAs have to be given the upgraded scale of Rs.840-1040 w.e.f. 22-9-1982. The Arbitration Board suggested that 49% of the SSAs have to be given the upgraded scale for the ratio of Foreman and the Assistant Foreman is 49:51. When the said award was not implemented, some of the SSAs filed OA.952/86 on the file of the Principal Bench on 11-3-1986. Pending disposal of the said OA, the Central Government had taken a decision on 11-11-1988 to implement the said award from 1-1-1988.

5. In pursuance of the decision of the Central Government, the Director Personnel, R&D, suggested that the benefit of upgraded scale had to be given for such of the SSAs who completed three years of service, and who had not been considered unfit, and the 40 Point Roster also had to be made applicable for the same. It is the case of the respondents that the same was approved by the Secretary ~~by~~ the concerned Ministry. As the total number of posts of SSAs at the relevant time was 1677, it was decided that 822 out of them (49% of 1677=822) have to be

4/11/88



given upgraded scale. On 12-6-1989, the first list of 1079 was issued (as some of the SSAs were promoted to the categories of JSAs between 1-1-1988 and 12-6-1989, they were given the benefit of the upgraded scale from 1-1-88 till the date of their promotions and hence the list was ^{for} ~~for~~ more than 822). It had to be made clear even at this stage that the said list of 1079 was prepared by following the 40 Point Roster. The Principal Bench allowed the OA.952/86 on 10-8-1989. It was also inter-alia stated in the said judgement that it is only the Parliament, but not the Government, which had the power to modify the award. There upon the award was placed on the table of Parliament. The Lok Sabha passed a resolution on 13-10-1989 accepting the modifications suggested by the Government that the award had to be implemented from 1-1-1988. Rajya Sabha passed the resolution to that effect on 28-10-1989. Thereupon, the respondents filed an SLP.14911/89 against the order dated 10-8-1989 in OA.952/86 on the file of the Principal Bench. The Supreme Court ordered on 19-1-1990 that if the respondents intend to rely upon the resolutions of Lok Sabha and the Rajya Sabha, it may be a matter for review by the Principal Bench. Then RP.39/90 in OA.952/86 was filed, and the same was rejected on 10-4-1990.

6. OA.244/89 was filed by some of the SSAs before the Madras Bench claiming the upgraded scale from 22-9-1982, on which JCM recorded their disagreement. The date referred to in the above. The same was allowed on 30-4-1992. As against the said order SLP.14920/90 was filed. Pending disposal of the said SLP, the ^{operation} ~~portion~~ of the order dated 30-4-1992 in OA.244/89 of Madras Bench of CAT was suspended.



(888)

7. ^{The} ~~Some of the~~ main grounds on which O.A. 248/89, Madras Bench was allowed are ~~that as the~~ -

- i) Award was not placed before the Parliament before the Expiry of six months from the date of the Award. The Award had ~~to~~ become absolute and the subsequent resolution by the Parliament would not rectify the defect.,
- ii) It was not even brought to the notice of the Parliament that the Award was not placed before them before the expiry of six months from the date of the Award., and
- iii) O.A. 956/86 was ^{was} allowed by the Principal Bench even before the Award was placed on the Table of Parliament, and there is no non-obstante ^{note} ~~clause~~ clause to the effect that the Award is modified notwithstanding the order in O.A. 952/86, and ^{hence} ~~that~~ order dated 10-8-1989 in O.A. 952/86 ~~cannot~~ be held imposed as modified.

8. We feel that ^{that} ~~when such~~ matter is before the Supreme Court and as there are conflicting views, for the Bombay Bench of CAT dismissed O.A. 32/90 on 27-8-1990 wherein the relief was claimed for implementation of the award from 22-9-1982; while the Madras Bench had taken a different view in O.A. 248/89; it is just and proper to pass the following order in regard to the said relief instead of preferring it to a Full Bench :

^{to} If ultimately the Supreme Court holds that the Award had ~~been~~ implemented from 22-9-1982, or ~~some other~~ granting ^{is} the relief in part, the applicants herein also have to be given the said relief. Of course, if the Supreme Court holds that the applicants are entitled to the said relief from 1-1-1988 only, then these OAs in regard to the said relief have to be held as dismissed.

6/10/90

9. In the above view, there is no need to consider whether the stipulated period of six months for placing the issue before the Parliament is directory or mandatory. ~~Need not be considered.~~

10. The other points which are raised for consideration are as to whether the 40 Point Roster should not be followed in providing the relief of upgraded scale as decided in the Award. This point had ^{come up} ~~found~~ consideration before the Bangalore Bench of CAT in OA.458-500/90. It was held by the Bangalore Bench that 40 Point Roster cannot be made applicable for the purpose of giving the benefit of upgraded scale. But it was held that the SC/ST employees who were given the said benefits in invoking the 40 Point Roster and who would not be entitled to the benefit of the upgraded scale in view of the decision given by them, should not be deprived of the benefit of the upgraded scale, which was already given to them. So, it was stated by the Bangalore Bench that all the OC employees who were seniors to the SC/ST employees who are already given that benefit should be given that benefit from 1-1-1988 or the dates on which their respective juniors were given the said benefits, whichever is later.

11. It is now vehemently argued for the respondents that the Bangalore Bench had come to the decision without deciding as to whether the conferment of the benefit of the upgraded scale is by way of the promotion, and in any case the Bangalore Bench should not have held that the OC employees who are seniors to such of the SC/ST employees who were given the benefit of the upgraded scale, ^{also have to be given upgraded scale,} when it was held that these SC/STs were not entitled to the same, and in any case

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it should have been ordered that the SC/ST employees who are ^{not} ~~are~~ eligible on the basis of seniority should be deprived of that benefit.

12. ^{Con} ~~A~~ perusal of the order of the Bangalore Bench in OA.458-500/90, it cannot be stated that the Bangalore Bench had not given any finding to the effect that it is not a case of promotion while the benefit of upgraded scale was being given. The Bangalore Bench referred to the judgement of Kerala High Court in 1983 AIR SLJ 67 in A.V. Rajan Vs. Union of India and others and also order of the Jabalpur Bench of CAT and also the ^{earlier} order of Bangalore Bench of CAT, ^{in order to hold} ~~who held~~ that it is not a case of promotion and hence the 40 Point Roster cannot be made applicable. It may be noted that SLPs 7141-83/92 ^{against order dated} ~~of~~ 30-12-91 in OA. Nos 458-500/90 of Bangalore Bench were dismissed on 17-7-1992. But it is stated for the respondents that when it is ^{one of} ~~made~~ dismissal of SLP, the same ^{as} ~~point~~ cannot be held ~~con-~~ ^{conclusively} ~~sequently~~ decided by the Supreme Court and hence it is necessary for this Tribunal to again consider the same.

13. It had to be first noted that it had become necessary for the Government to refer the matter to the Arbitration ^{tion Board} ~~as~~ the Joint Consultative Machinery disagreed in regard to the claim of the SSAs for the higher scale. It is not a case where the Government felt it necessary to have promotional posts. Of course, the Arbitration ^{tion Board} ~~limited~~ the benefit of the upgraded scale to only 49% of the total posts as the proportion of Foreman out of the total posts of Foreman and Assistant Foreman is ~~as~~ to that extent. But it is not the case of the respondents that either the Arbitration ^{tion} ~~held~~ that 49% of the total posts have to be

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upgraded as promotional posts, ^{and} even the Government while taking decision on 11-11-1988 had ~~not~~ stated to the effect. Infact, it is made clear that it is a mere non-functional selection grade. It means that there is neither change in the duties nor any necessity to hold higher responsibilities. In fact, ~~in~~ para-3 of letter No.GIM. Home. Affairs (Department of Personnel & Administrative Reforms) Memo No.22011/5/77 Estt(D), dated 24-7-79, which is as follows ;

"The matter has been examined and it has been decided that the term 'Selection Grade' may be used to denote only the non-functional selection grades which constitute a majority among the Selection Grades at present in vogue. The functional Selection Grades, appointment to which constitutes a promotion involving the assumption of higher duties and responsibilities, may be redesignated either as Grade 'A' or Grade I or as Senior Grade, while the lower grade, where necessary, may be redesignated as Grade 'B' or Grade II or Junior Grade, as the case may be."

~~It~~ makes it clear that non-functional Selection Grade posts cannot be held as promotional posts. Even the Ministry of Defence in No.A/92163/ARB/DGQA/Admn.7B, dated 10-12-1990, clarified, and in our view rightly, that ~~as~~ the conferment of the benefit of higher pay scale to the SSAs in pursuance of the Award is not a promotion to higher grade, ^{and hence the} ~~the~~ SSAs are not entitled to have an option to ~~postpone~~ benefit of higher pay scale to the date of next increment. Even ~~in~~ the Preamble to the Memo dated 24-7-1979, which is as follows :

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"(111) There are a number of promotion grades which are known as Selection Grades. Most of these Selection Grades are non-functional and have been provided with a view to relieving stagnation. Appointment to such Selection Grades does not normally involve assumption of higher responsibilities and consequently no separate Recruitment Rules need be framed for them nor any separate seniority list drawn of

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the incumbents placed in these Selection Grade posts. Recently in pursuance of the instructions contained in decision No.(65) above numerous Selection Grades of this category have been created in the various Group 'C' and 'D' cadres with a view to relieving stagnation."

is to the effect that as the appointment to non-functional Selection Grades does not normally involve assumption of higher responsibilities, there is no need to have separate recruitment rules ^{is also no need} and they ~~are~~ to have separate seniority list in regard to those who are placed in non-functional selection grade posts. It is admitted for the respondents that in view of the above provision, separate seniority list in regard to such of the SSAs who are given the benefit of upgraded scale is not prepared. It is also stated for the respondents that even after ^{It is} ~~these~~ upgraded scale is introduced, the relevant Recruitment Rules in regard to the promotion to the category of JSs is not amended and the existing rules ^{are eligible for promotion} that SSAs having five years service, is allowed to continue. Thus, it is not a case where after introduction of this upgraded scale, the SSAs drawing the upgraded scale alone are eligible for promotion to the post of JSs. When thus it is a mere case of non-functional Selection Grade in conferring benefit of the upgraded scale and even when the relevant executive instructions show that it is not a case of promotion, we feel that there are no grounds to hold a view different from the view taken by the Kerala High Court and CAT Benches of Jabalpur and Bangalore, when it was stated by the latter that it is not a case of promotion.

14. Para 4 of GIMF (Dept. of Expdr) Memo No.7(21)-E³III (A)/74 dated the 10-1-1977, which is as under :

"The Scheme of reservations for candidates belonging to Scheduled Castes and Scheduled

10/10/77

Tribes will apply in making appointments to the Selection Grades as enunciated above. The percentage of reservation and other principles to be followed will be the same as applicable to cases of promotion by selection to Groups 'C' and 'D' posts (vide orders contained in paragraph 2B (b) of the M.H.A. O.M.1/12/67-Estt.C dated the 11th July, 1968, as amended from time to time). However, the zone of consideration and the system of grading will be as indicated in sub paragraphs (a)(b) and (c) of the paragraph 1(ix)."

states that 40 Point Roster had to be made applicable to cases of selection to Selection Grade to Group 'C' and 'D' posts which are non-functional. Of course, the word 'Promotion' is also referred to in the context. But when once it is a case of non-functional Selection Grade, the same cannot be referred to as promotion even as per DM AIR dated 24-7-1979. Supreme Court held in 1990 SC 1607 in the Direct Recruit Class-II Engg. Officers' Association and others Vs. State of Maharashtra and others, that the mere ^{reference} ~~rephrase~~ of the word 'Promotion' in relevant rules (Rule 8(i) of 1960 Rules in regard to Engineers in Maharashtra State) is not conclusive and the question whether in fact it is a case of promotion or not is a matter for consideration ^{by} ~~for~~ referring ^{all} ~~it~~ to the relevant rules. In service jurisprudence, the question of promotion will arise in a case where the employee had to assume higher duties and assume higher responsibilities. Even in fact letter dated 12-7-1979 also made a distinction between the functional and non-functional Selection Grade and the former is treated as one of promotion~~s~~ while the latter is treated as not a case of promotion. It is clear even from the PC No.A/92163/ARB/GGQA/Adm-7B dated 10-12-1990 of the Ministry of Defence that a question of promotion does not

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arise when it is mere upgradation of scale, and not a case of conferment of higher scale or grade on promotion, ~~at~~ At best it can be stated that the reference to the word 'Promotion' in para-4 of the letter 10-1-1977 is not appropriate. ^{than} ~~Anyhow,~~ the question that had to be considered is as to whether the principle of reservation can be made applicable ~~even~~ in a case of conferment of mere upgraded scale, ~~and~~ when it is not a case of promotion. The Constitution permits reservation in the case of appointment. As per the latest judgement of Supreme Court, the reservation cannot be made in case of promotion. But of course, the existing rules of reservation in promotion are not disturbed. Be that as it may, the learned standing counsel had not brought to the notice of this Bench ~~to~~ any provision of the Constitution which permits the introduction of reservation even in case of conferment of the benefit of upgraded scale. The Kerala High Court ^{held} ~~also~~ in Rajan case ~~held~~ that the principle of reservation cannot be introduced when merely upgraded scale is given. Thus with due respects, we agree with the findings of the Bangalore Bench in OA.458-500/90 that the 40 Point Roster should not be made applicable in giving a benefit of the upgraded scale prescribed by the Award.

15. It was next argued that while holding that the reservation cannot be made applicable for giving this benefit, the Bangalore Bench ^{erred} ~~offered~~ in holding that the SC/ST employees who had already given that benefit should not be deprived. The view taken by the Bangalore Bench is that the benefit was given in view of the decision that was

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taken at the higher levels, and the SC/ST employees are not responsible for the same. Anyhow, the decision of the Bangalore Bench in regard to the SC/ST employees impleaded in these OAs had become final, for the SLPS thereon were dismissed. Then if we are going to hold that SC/ST employees should be deprived of the benefit which is already extended then the case of senior SC/ST employees who are within the jurisdiction of this Hyderabad Bench will not have that benefit while their counterparts within the jurisdiction of Bangalore Bench will have that benefit. Further, the posts of SSA are transferable. Infact, some of the SC/ST respondents impleaded in OA.458-500/90 were actually working in Delhi/Hyderabad/Visakhapatnam by the date of filing of this ~~1706~~ OAs as is evident from the address⁻² of R-17 to R-22, R-24 and 25 who are SC/ST employees. Thus, even some of the SC/ST employees who are ^{now} working in Hyderabad ~~now~~ also get that benefit. It will be one of discrimination if it is going to be held that some of the SC/ST employees should be given that benefit while others should not be given that benefit. Further, it cannot be stated that the view taken by the ~~Bombay~~ ^{Bangalore} Bench is palpably erroneous, and at best it may be stated that there is a possibility of having two views. In such a case, it is proper to ~~follow~~ ^{follow} of the view which was already taken by one of the Benches of CAT whereby there will not be any discrimination, instead of referring it to a Full Bench. Hence, the contention for the respondents even in regard to this aspect is negatived.

16. It will be arbitrary, ~~that~~ if a junior is given a benefit without providing such a benefit to the seniors. Hence, the Bangalore Bench rightly held that all the OC SSAs

To

1. The Secretary, Union of India, Ministry of Defence,
South Block, New Delhi-11.
2. The Scientific Advisor, Director General
Research & Development, Defence Research & Development Orgn.,
South Block, New Delhi-11.
3. The Director, Defence Research & Development Laboratory
Kanchanbagh, Hyderabad-258.
4. The Director, Defence Metallurgical Research Laboratory
Kanbhanbagh, Hyderabad-258.
5. One copy to Mr. N. Rammohan Rao, Advocate, CAT. Hyd.
6. One copy to Mr. N. V. Raghava Reddy, Addl. CGSC. CAT. Hyd.
7. One copy to Library, CAT. Hyd.
8. One spare copy.

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who are seniors to such of the SC/ST employees who are already given this benefit, have also to be given that benefit if they are found fit, and if ~~it is necessary~~, the posts more than 822 under the category of SSAs have to be upgraded. Similar ^{has} order ~~have~~ to be passed in this OA also. But we ~~will~~ make it clear that increase in regard to the number of posts for giving benefit of upgraded scale may be temporary and hence after the benefit of the upgraded scale is extended to all those seniors referred to, ^{and hence} the ~~question of~~ gradual reduction in view of promotion to the category of JSAs resignations etc. may arise. Ofcourse, it is a matter that is left to the respondents either to gradually reduce the number or to keep the temporary increase of the figure as constant.

17. In the result, the applicants have to be given the upgraded scale from 1-1-1988 or from the dates on which their respective juniors are given that benefit whichever is later with all consequential benefits including monetary relief. Further, if ultimately the Supreme Court holds that the benefit of the upgraded scale had to be given from 22-9-1982 or if the Supreme Court gives any partial relief these applicants also had to be given the same relief. But if xx the Supreme Court upholds the case of the respondents that the benefit had to be given from 1-1-1988 ^{only}, this OA in regard to the above relief stands dismissed.

18. Time for compliance is four months from the date of receipt of this order.

19. The OA is ordered accordingly. No costs.

P. T. Thiruvengadam
(P.T. Thiruvengadam)
Member (Admn)

V. Neeladri Rao
(V. Neeladri Rao)
Vice-Chairman

Dated : July 22, 93
Dictated in the Open Court

8/7/93
Deputy Registrar (C)

14th 10/7

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. A. B. GORTHY : MEMBER (A)

AND

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

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M (A)

Dated: 22 7 -1993

~~ORDER~~ JUDGMENT:

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

in

O.A.No.

T.A.No.

1030/92

(W.P.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered

No order as to costs

