

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.617 of 1996

DATE OF ORDER: 22nd SEPTEMBER, 1998

BETWEEN:

1. The NFC Employees Association rep. by
its General Secretary,
Sri M.Nageswara Rao,

(He) is deleted as per the
Court Orders dated 22.4.96),

2. R.Somaiah,
3. L.B.Sastry,
4. P.Pramila Devi,
5. M.Balaji.

.. APPLICANTS

AND

1. The Staff Relations Officers,
Dept. of Atomic Energy,
Govt. of India, CSM Marg,
Mumbai 400 039,
2. The Chief Executive,
Nuclear Fuel Complex,
ECIL Post, Hyderabad 500 062,
3. The Secretary,
Dept. of Atomic Energy,
CSM Marg, Mumbai 400 039.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.V.Venkateswara Rao

COUNSEL FOR THE RESPONDENTS: Mr.V.RAJESWARA RAO, ADDL.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, Member (Judl.)


JUDGEMENT

(ORDER PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

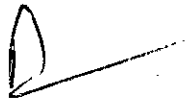
Heard Mr.V.Venkateswara Rao, learned counsel for
the applicants and Mr.V.Rajeswara Rao, learned standing
counsel for the respondents.

2. There are five applicants in this OA. The first applicant was deleted by the order of this Court passed on 22.4.96. Hence there are only 4 applicants in the present OA. The second applicant is Trademan-G, the third applicant is Trademan-D, the fourth applicant is Trademan-C and the last applicant is Trademan-B under R-2. They are aspirants for the post of Scientific Assistant A/B. The brief outline of this case is as follows:-

Nuclear Fuel Complex (NFC) at Hyderabad is a constituent unit of Department of Atomic Energy, Bombay and it was established in early seventies. The organisation is supported by the employees who are in the scientific and technical categories supported by administration and auxiliary staff. Scientific Officers are recruited mostly through Bhabha Atomic Research Centre (BARC), Bombay which is the centralised agency for selection, training and deployment of scientific officers for all the units under DAE. It is stated that norms prescribed by Trombay Council and Trombay Scientific Committee (TC/TSC for short) of BARC are followed for direct recruitment and promotion of scientific and technical staff. The recommendations of TC/TSC are normally followed in all the units of DAE. In terms of the recommendations made by the above bodies, the promotion of scientific and technical categories are governed by a special scheme called "Merit Promotion Scheme" depending on the performance of the employees. The merit promotion scheme is enclosed as Exhibit R-1 to the reply. Promotions are stated to be given from that scheme in the category of Scientific Officers, Supervisors and Technicians. In the normal course, technicians are not promoted to the grade of Scientific Assistants and



Scientific Officers. While this scheme has been in vogue, in order to have skilled staff members and also to motivate the employees to acquire additional qualifications in the sphere of their duties while in service, a revised scheme was introduced during 1984 as recommended by the TC/TSC according to which employees who acquired additional qualification in their respective field of work which ^{was} is useful to the functions of the organisation would be assessed and promoted to the grades to which they are found to be suitable. In order to consider their cases more in the nature of direct recruitment to the another category, norms as prescribed for direct recruitment to such categories would be made applicable. While initially no percentage of marks was prescribed, it was decided in the Trombay Council of BARC that in order of consider the cases of Tradesmen for promotion to Scientific Assistant on acquiring qualification of B.Sc. degree, they should possess a minimum of 55% marks. As per the understanding arrived at between the NFC and the NFC Employees Association in the meeting held on 16.1.92 which is enclosed as Exhibit R-II to the reply, it was agreed to consider the cases of employees with more than 55% marks in any two subjects among the subjects of Mathematics, Physics and Chemistry, for the post of Scientific Assistant/B and those with less than 55% marks for Scientific Assisnat/A. In the meantime, TC/TSC had raised the percentage of marks to 60% while revising the norms, in its meeting held on 27.10.92 which is enclosed as Exhibit R-III to the reply. Based on the clarification furnished by TC/TSC which is enclosed as Exhibit R-IV to the reply, it was decided in NFC to raise the percentage of 60% to consider the cases of



promotion of persons acquiring higher qualifications either B.Sc. Degree or diploma in any of the engineering courses with effect from February 1995. When the NFC Employees Association ~~have~~ resisted such a move, it was agreed in a meeting held on 20.5.95 of NFC Management with NFC Employees Association, to consider all the pending cases as on 1.2.95 as per the earlier arrangement as a one time measure and it was made clear to the NFC Employees Association that from August 1995 onwards no relaxation of percentage of marks ~~will~~^{would} be made, thus, strictly adhering to the norms prescribed. A copy of the minutes of the meeting held on 20.5.95 is at Exhibit R-V to the reply. It is stated that from ^uAgusut 1995 onwards, the cases of persons who fulfilled the requirement, i.e, possessing 60% marks in B.Sc. or Diploma in Engineering alone ~~are~~^{were} considered for promotion. The applicants and other unions took up this case with the Department and it was decided by the Department that 60% marks in respect of the additional qualification ~~will~~^{would} not be changed. The respondents submit that promotions are presently being considered as per the norms laid down and the applicants 2 to 5 who do not possess 60% marks, cannot be considered for promotion to the category of Scientific Assistants.

3. The applicants submitted a representation on 10.1.96 for promoting them to the post of Scientific Assistant A/B on acquiring additional qualification by reducing the percentage of marks. That representation was disposed of by the impugned order No.1/4/95-IR&W/Vol.I/22, dated 22.1.96 (Annexure A-2 at page 20 to the OA) rejecting their request. It was decided that the existing norms need

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not be changed.

4. The applicants had filed this OA praying for a direction to R-2 herein to consider the cases of the applicants 2 to 5 herein for promotion to the post of Scientific Assistant A/B under merit promotion scheme in terms of agreement arrived at between the management and the Employees Association on 16.1.92 with effect from August 1995 and promote them to the said post with all consequential benefits such as seniority, arrears of pay and allowances etc. by quashing the impugned letter No. 1/4/95-IR&W/Vol.1/22, dated 22.1.96.

5. A reply has been filed in this OA. The facts as enumerated above are not controverted. The respondents admit that they have ^{at} reached an agreement on 16.1.92 in regard to the deletion of 55% marks clause for recognition for higher qualification for B.Sc graduates for promoting them as SA A/B. The said agreement is at Exhibit R-II to the reply. The relevant portion reads as below:-

"13. Deletion of 55% marks clause for recognition for higher qualification for B.Sc. Graduates:

DAE did not agree with the proposal as the stipulation of 55% marks for Science Graduates was made in accordance with the decision of Trombay Council. However, it was stated by the Management as discussed in the meeting held on 1/1/92 and agreed to by NFCEA, persons with more than 55% marks with any two subjects out of the three (Physics,

Mathematics and Chemistry) can be considered for SA'B' and those with less than 55% marks for SA'A'."

As per the above deliberations, the Management had agreed to consider for promotion to the post of SA/B for those who have passed B.Sc. examination with 55% marks in any of the two subjects out of the 3, namely, Physics, Mathematics and Chemistry, and those with less than 55% marks for SA/A. That was continued till the issue of the letter of DAE dated 3.11.92 wherein the minimum percentage of marks fixed as 60% in B.Sc. examination for consideration for promotion to the post of SA/B. The respondents submit that DAE is a nodal authority to decide the eligibility condition for consideration under merit promotion scheme. When they have decided to fix 60% marks in B.Sc. for promotion to the post of SA/A and SA/B by letter dated 3.11.92, the respondent-authorities have no right to differ from that condition. Hence they submit that the said percentage has to be agreed to. ^{adher}

6. If R-2 is not the final authority to decide the question of eligibility condition, then when a demand was put forth by the union in the year 1992 that demand should have been forwarded to the DAE for consideration and inform R-2 regarding final decision. Instead of doing that, they entered into an agreement with the union which is extracted above. Hence R-2 had tied up himself in implementing the order which may not be in accordance with the decision of DAE. In any case, R-2 had to follow the agreement reached with NFEEA to maintain harmonious industrial relations.

7. When the recruitment norms for scientific and technical grades were revised by BARC and informed to R-2 by letter dated 3.11.92 fixing the minimum of 60% marks in B.Sc. for promotion to the grade of Scientific Assistant A/B, then the respondents should have immediately discussed this issue with the union and revised the agreement earlier entered into as per the letter dated ^{31.1.92} ~~3.11.92~~. But for some unknown reasons that was not done. The next meeting with NFCEA was held only on 20.5.95. It is not understood why it took so much time to hold the meeting after issue of the letter dated ^{3.11.92} ~~3.11.92~~ issued by BARC revising the norms under merit promotion scheme. In any case, NFC management and NFC Employees Association on 20.5.95 deliberated in regard to relaxation of percentage of marks for higher qualification and decided that from August 1995 onwards no relaxation in marks will be given thus strictly adhering to the norms prescribed. It was also decided that NFC Employees Association who had already taken up the matter with DC to get this issue sorted by August 1995 in their own interest. NFC Employees Association further requested the Chief Executive, NFC to take up this matter with DAE for quick resolution. The minutes arrived at in the meeting held on 20.5.95 are at Exhibit R-V to the reply which reads as below:-

"Relaxation of percentage of marks in higher qualifications:


General Secretary, NFC EA requested to consider the cases of employees with more than 55% marks in any two subjects out of three (Physics, Mathematics and

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Chemistry) for promotion to the grade of SA'B' and those with less than 55% marks for SA'A' as decided in the meeting held on 16.01.1992. These persons have been screened out from the February '95 promotion interviews.

Chief Executive informed that as per the decision of Trombay Council, those who got 60% marks were only to be considered for promotion on the basis of higher technical qualifications. After detailed discussions, CE agreed to consider those who got less than 60% marks for promotion w.e.f. February 1995 as a one time measure in view of the plea made by NFCEA that requirement of 60% of marks were not made known to them. CE further informed that from August '95 onwards no relaxation in percentage of marks will be made thus strictly adhering to the norms prescribed. NFCEA who has already taken up the matter with DC should get this issue sorted out by August 1995 in their own interest. NFCEA further requested CE, NFC to take up this matter with DAE on their behalf for quicker resolution."

8. The learned counsel for the respondents submit that earlier on 16.1.92, R-2 entered into an agreement with the Union and that was honoured. With the same Union, another meeting was held on 20.5.95 and relaxation in percentage marks was reviewed and a decision had been taken. This decision had already been extracted above. In view of the above, the applicants cannot ask for adherence to the memo of understanding reached on 16.1.92 when that memo was replaced by memo dated 20.5.95 with the same



Union. The respondents are adhering to the eligible conditions for promotion in accordance with the memo dated 20.5.95. Accordingly upto February 1995 the old agreement reached on 31.1.92 will be valid and thereafter 60% of marks is insisted upon. Hence the applicants have no case to agitate.

9. A reading of the agreement reached on 20.5.95 indicates that the Employees Union were not aware of increase in the percentage of marks to 60% till then. In view of that, it appears that the Union had agreed that higher percentage of marks should be insisted upon only after ~~some~~ ^{a certain} cut off date. It is stated for the respondents that the cut off date was fixed as February 1995 as a one time measure in view of the plea made by NFCEA that the requirement of 60% marks was not known to them earlier. But it also stated in the minutes, that the Chief Executive further informed that from August 1995 onwards no relaxation in percentage of marks ~~will~~ ^{would} be made thus strictly adhering to the norms prescribed. Hence a reading of the minutes leads us to believe that the cut off date is fixed upto the end of August 1995 and those who fulfilled the conditions as stipulated in the letter dated ~~31.1.92~~ ^{31.1.92} upto the end of August 1995 will be promoted without insisting on 60% of marks as per the later order.

10. Hence in view of what is stated above, R-2 has to consider the case of the applicants herein for promotion to the post of Scientific Assistant A/B if they ~~had~~ ^{had} acquired qualification required as per the letter dated 31.1.92 by the end of August 1995. After the end of August 1995, new

norms should be followed.

11. The respondents have raised other contentions which, in our opinion, are not very relevant. They appear to state that the NFCEA is not a recognised Association and agreement reached is not binding on them. But it is not known on what basis such a statement is made. If it is not a recognised union, it is not understood why they held meetings with them in 1992 and 1995. Hence this contention has to be rejected.

12. Though the respondents state that the recommendations of TC/TSC, BARC are final, it is not understood why they had entered ^{into} a dialogue with the Union in 1992 and came to certain conclusion for consideration for promotion. If they ^{were} ~~are~~ governed by the recommendations of TC/TSC BARC they could have easily directed the Union then and there itself to communicate with the BARC to arrive at a satisfactory solution. Instead of that, they entered into an agreement with them in the year January 1992 and May 1995. The agreement reached with the Union has to be implemented to maintain harmonious industrial relations. Once an agreement has been arrived at, the respondents cannot easily get out of that agreement unless there are compelling circumstances to revise them. Even to ^{revise} that, it is essential that a dialogue has to be held with the Union and revised norms have to be fixed. Hence, we are of the opinion that the agreement reached on 31.1.92 and on 20.5.95 are binding on the respondents and they should act accordingly.

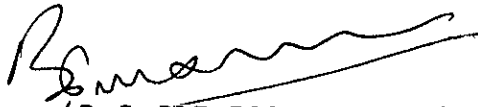
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13. As stated earlier, as per the agreement reached on 20.5.95, the norms for consideration for promotion to the post of Scientific Assistant A/B upto the end of August 1995 will be in accordance with the agreement reached on 31.1.92. After August 1995, new norms of 60% of marks for consideration for promotion to the post of Scientific Assistant A/B under merit promotion scheme have to be followed.

14. In view of what is stated above, following direction is given:-

If the applicants fulfil the conditions as laid down in the letter No.NFC/01/03/92-IR/022 dated 31.1.92 ~~on or~~ before 31.8.95 for consideration for promotion to the post of Scientific Assistant A/B, they ~~should~~ ^{shall} be considered in accordance with the letter dated 31.1.92 and ^{if} found fit they ~~should~~ ^{shall} be promoted as Scientific Assistant A/B in accordance with ~~the~~ ^{rules} rules.


15. With the above direction, the OA is disposed of.
No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
22/9/98


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 22nd September, 1998

vsn


22/9/98
B.S. Jai Parameshwar

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Copy to:

1. The Staff Relations Officers, Dept. Atomic Energy.
2. The Chief Executive, Nuclear Fuel Complex, ECIL Post, Hyderabad.
3. The Secretary, Dept. of Atomic Energy, CSM Marg, Mumbai.
4. One copy to Mr. V. Venkateswara Rao Advocate, CAT, Hyderabad.
5. One copy to Mr. V. Rajeswara Rao, Addl. CGSC, CAT, Hyderabad.
6. One copy to D.R(A), CAT, Hyderabad.
7. One duplicate copy.

YLKR

23/10/98

II COURT

TYPED BY
COMPALED BY

CHECKED BY
APPR VED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI S.S. JAI PARAMESHWAR:
M(J)

DATED: 22/9/98

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

G.A.NO. 617/96

~~ADMITTED AND INTERIM DIRECTIONS
ISSUED~~

~~ALLOWED~~

~~DISPOSED OF WITH DIRECTIONS~~

~~DISMISSED~~

~~DISMISSED AS WITHDRAWN~~

~~ORDERED/REJECTED~~

~~NO ORDER AS TO COSTS.~~

YLKR

