

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH;
AT HYDERABAD

ORIGINAL APPLICATION NOS. 118 and 131 of 1997

DATE OF JUDGEMENT: 27th March, 1998

BETWEEN:

OA NO. 118/97

D.VISWANATHA RAJU

.. APPLICANT

AND

1. The Scientific Advisor to Raksha
Rajya Mantri & Director General,
Defence Research and Development Organisation,
Ministry of Defence,
New Delhi,

2. The Director, Naval Science and
Technological Laboratory,
R&D Organisation,
Ministry of Defence,
Govt. of India, Vigyan Nagar,
Visakhapatnam 530 027,

3. The Director (Pers),
Assessment Centre,
Govt. of India,
Ministry of Defence,
Medcalf House,
New Delhi.

.. RESPONDENTS

OA NO. 131/97

1. A.NAGESWARA RAO,
2. D.VISWANATHA RAJU

.. APPLICANTS

AND

1. The Scientific Advisor to Raksha Mantri,
& Director General,
Defence Research & Development Orgn,
Ministry of Defence,
New Delhi,

2. The Director,
Naval Science & Technological Lab,
R&D Organisation,
Ministry of Defence, Vigyannagar,
Visakhapatnam.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.S.Lakshma Reddy in both OAs

COUNSEL FOR THE RESPONDENTS: Mr.K.Ramulu in both the OAs

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.S.Lakshma Reddy, learned counsel for the applicants in both the OAs and Ms.Shama for Mr.K.Ramulu, learned standing counsel for the respondents in both the OAs.

2. The contentions in both the OAs are same so also the relief asked for. Hence both the OAs are disposed of by this common order.

3. In OA 131/97, there are two applicants. Both the applicants in this OA were appointed as Chargemen Gr.I in the scale of pay of Rs.550-750 through appointment letters No.NSTL/003/Estt/CM.I dated 6.5.81 (Annexures I and II to the OA). Their next promotion is to the post of Assistant Foreman. The unit of seniority for the purpose of promotion from Chargeman Gr.I to Assistant Foreman consists of officials in the grade of Chargeman Gr.I in the three Laboratories i.e, NSTL, Visakhapatnam, NPOL, Cochin and NCML, Bombay. The promotion to the post of Assistant Foreman is by selection on the recommendations of the DPC.II. Both the applicants were promoted as Assistant Foremen by the order No.NSTL/053/DPC.II/Estt dated 15.9.84 (Annexures III and IV at pages 17 and 18 to the OA). The second applicant was placed higher in the rank of Assistant Foreman by the DPC-II over the first applicant. The next promotion from the post of Assistant Foreman is to the cadre of Foreman and that too by selection through the DPC.II. While considering the applicants for promotion to the post of Foreman, the combined seniority was altered and

made laboratory wise. Hence both the applicants who were in NSTL were promoted as Foreman by the DPC-II which met on 15.3.90. The second applicant was promoted as Foreman by the order dated 15.3.90 (Annexure V at page 19 to the OA) as he was senior to the first applicant in the cadre of Assistant Foreman and the first applicant was promoted to the post of Foreman by the letter No.NSTL/053/ DPC-II(S&T)/90-2 dated 17.9.90 (Annexure VI at page 20 to the OA) with effect from 17.9.90.

4. S.R.O. 177/95 was promulgated by which the Defence Research & Development Organisation Technical Cadre Recruitment Rules, 1995 (DRTC Rules for short) were brought into effect with effect from 26.8.95. As per Rule 6(2) of the said SRO, all the persons holding the post of JSO, Foreman, Chief Draughtsman and Sr. Scientific Assistants in the pay scale of Rs.2375-3500 shall be placed in the Grade.II of Category III called Technical Officer 'A' in the scale of pay of Rs.2375-3500 Group B Gazetted non-ministerial. The next promotion to the Technical Officer Gr.A under DRTC rules is to the post of Technical Officer-B as per rule 8(1) of the said SRO which is a limited flexible complementing scheme.

5. Both the applicants had completed 5 years of regular service as Technical Officer Gr.A together with equivalent service in Formen grade and hence both were called for assessment for the year 1995-96 by the Assessment Board which met on 28.10.96, 29.10.96 and 30.10.96 for promotion to the Technical Officer Gr.B in accordance with rule 8(1) referred to above. It is stated

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that in the assessment, the second applicant was selected and in fact a communication was sent by R-1 to R-2 about the selection of the second applicant by the Assessment Board for the year 1995-96 with effect from 1.9.95. It is further stated by the applicants that the same was withheld by the respondents without assigning any reasons and the same was challenged by the second applicant in OA 118/97. Again the respondents have called the eligible Gr.A Technical officers for the assessment year 1996-97 for which Assessment Board met from 11.2.97 to 14.2.97 at NSTL, Visakhapatnam. R-1 has sent the list of eligible employees in the R-2 Laboratory with five years of regular service in the grade of Technical Officer-A together with equivalent Foreman grade as per the letter at Annexure VII at page 21 to the OA addressed to R-2 to alert the candidates mentioned therein. The first applicant's name figures at Sl.No.45 in that list and the 2nd applicant's name figures at sl.No.30. But the alert letter given by R-2 on the basis of the letter of R-5 dated 29.1.97 did not include the name of both the applicants though it contained 59 other employees. The applicants submit that no reason has been indicated for omission of their names. A review DPC constituted by R-2 at laboratory level had met on 30.1.97. It is further stated that the applicants came to know that the effective date of promotion as Foreman was postponed to 1993 from the earlier dates of 1990. The applicants further submit that no notice was given before shifting the date of promotion to 1993. The applicants further submit that they learnt that the above shifting of the promotion date of Foreman from 1993 to 1990 was done ostensibly in implementation of the decision of the Bangalore Bench of the Central Administrative Tribunal in OA 600/91. It is

also stated by them that the respondents have once effected promotions to the most juniors to the applicants in each lower category and placed them over and above the applicants in the category of Assistant Foreman and Foreman.

6. This OA is filed praying for declaration that the action of the respondents in altering the effective dates of promotion of the applicants in the grade of Assistant Foreman and Foreman with retrospective effect and postponing the effective date of promotion from 1990 to 1993 in the Foremen grade is totally illegal and without jurisdiction and consequently further declare that the action of the respondents in not calling the applicants for promotion to the Technical Officer Gr.B for the assessment year 1996-97 in the assessments to be held from 11.2.97 to 14.2.97 is totally illegal, without jurisdiction and for consequential direction to the respondents to consider the applicants for promotion to Technical Officer.B in the assessment year 1996-97 with all consequential benefits.

7. OA 118/97 was filed by the applicant No.2 in OA 131/97. In this OA, he challenged the deletion of his name for consideration to the post of Technical Officer Gr.B by the assessment Board 1995-96 with effect from 1.1.95 along with the other candidates promoted by the letter dated 26.12.96 by holding the promotion as illegal, without jurisdiction and for consequential direction to the respondents to promote the applicant with effect from 1.9.95 as Technical Officer.B with all consequential benefits including seniority, arrears of pay etc.

8. The above two OAs are filed for not considering the applicants for promotion to the post of Technical Officer.B. In OA 118/97 the applicant No.2 in OA 131/97 prays for promoting him as Technical officer Gr.B with effect from 1.9.95 for the assessment year 1995-96 and in the OA No.131/97, both the applicants pray for promotion as Technical Officer.B for the assessment year 1996-97.

9. A reading of the affidavit clearly indicates that the date of promotion as Foreman was brought down to 1993 from the earlier date of 1990 which caused deletion of their names for consideration for promotion for the year 1996-97 for the applicant in OA 113/97 and for the year 1995-96 for the applicant No.2 even for the year 1995-96. Thus both the OAs which relates to the same relief can be disposed of by a common order and hence both the OAs are combined for pronouncement of the judgement.

10. It is obvious that the postponing of the date of promotion to the post of Foreman now designated as Technical Officer-A for both the applicants is due to revision of the promotion in the lower grades of some of the employees as directed in OA 600/91 dated 6.4.93 on the file of Bangalore Bench of the Tribunal. Shri R.Anbalagan and 25 others jointly filed that OA. The concise facts of the case in OA 600/91 on the file of the Bangalore Bench of the Tribunal are as follows:-

Prior to the 3rd Pay Commission, the Precision Mechanics (Rs.205-380) and Supervisor (Technical) Gr.II (Rs.205-280) were feeder grades for promotion to the post of Chargeman Gr.II. The 3rd Pay Commission granted the pay

scale of Rs.380-560 to the Supervisors (Tech.) Gr.II and Precision Mechanics along with 13 categories of industrial posts, who were earlier carrying a lower pay scale viz. Rs.150-240 and were feeder grades to Precision Mechanics as well as Supervisor Tech. Gr.II. Technical Supervisor Gr.II and Precision Mechanics agitated over the grant of this pay scale of Rs.380-560. The Tech. Supervisor Gr.II were granted the pay scale of Rs.425-700 w.e.f. 1.3.77 and they were redesignated as Chargeman-II w.e.f. 15.12.79. Govt. also decided to grant higher pay scale of Rs.425-700 w.e.f. 1.3.77 to the Precision Mechanics who were appointed/promoted prior to 1.1.73 on the analogy of their equivalence of Technical Supervisor Gr.II. Thereafter, both the Chargemen-II and Precision Mechanics in the pay scale of Rs.425-700 were made eligible for promotion to Chargeman Gr.I vide SRO 246/81 w.e.f. 12.9.81. During August 1981, all industrial trades, including the Precision Mechanics and 13 other categories of industrial employees, having the pay scale of Rs.380-560 were merged together and were designated as Tradesman 'A' with the issue of SRO 221/81 published on 22.8.81. The next line of promotion of Tradesman 'A' was to the grade of Chargeman Gr.II in the pay scale of Rs.425-700 (Pre-revised). Many precision Mechanics who were promoted/appointed after 1.1.73 approached various CAT Benches for grant of higher pay scale of Rs.425-700 and other consequential benefits. The Hyderabad and Bangalore Benches of the Central Administrative Tribunal accepted the plea of the ^{then} applicants and directed the department to grant higher pay scale of Rs.425-700 to all the Precision Mechanics appointed/promoted even after 1.1.73.

11. It was also decided in view of the many court cases pending in various Benches of the CAT to grant the higher pay scale of Rs.425-700 to all the Precision Mechanics appointed/promoted prior to the issue of SRO 221/81. However, the higher pay scale was treated as personal to them and they were treated as Tradesman-A for all practical purposes except pay and they were made eligible for promotion to the grade of Chargeman Gr.II only. This was challenged by Shri R.Anbalagan who was appointed as Precision Mechanic after 1.1.73 (Rs.380-560) and many others, in the Bangalore Bench of the CAT. They requested for grant of consequential benefits of promotion to the grade of Chargeman Gr.I as provided for in SRO 246/81 (Enclosure I to the reply). The Bangalore Bench of the CAT held that the higher pay scale was granted to all the Precision Mechanics as a class and, therefore, they cannot be deprived of the benefit of SRO 246/81 and directed the department as under:

"We direct that the Department should convene a Review DPC as per the orders then in force and consider the suitability of the applicant for regular appointment as Chargeman Gr.I and above with effect from the date they became eligible, on the lines of the action taken in similarly situated cases in LRDE of Defence Research and Development Organisation, Bangalore. In the absence of separate quotas for the industrial and non-industrial (Technical) categories, there is need for preparation of a combined seniority list of both the categories. Such a seniority list should

be prepared on the basis of rational and objective principles for promotion to the level of Chargeman Gr.I and above in respect of vacancies which arose prior to 28.1.92 and which will be available after 12.9.81 to Precision Mechanics in the scale of Rs.425-700 with three years service."

12. In consultation with the Ministry of Defence (R&D), Ministry of Finance and the Department of Personnel and Training for evolving a rational and objective principle, it was decided to extend the benefit of the judgement of the Bangalore Bench to all similarly placed Precision Mechanics in Defence Research & Development Organisation (DRDO). Accordingly, guidelines for preparing a combined seniority list of Chargeman Gr.II and Precision Mechanics and to conduct review DPCs as ordered by the Bangalore Bench of the CAT was issued vide Govt. of India letter No.16490/RD/Pers-1/741/D(R&D) dated 11.4.74 and R&D HQ letter No.16490/RD/Pers-1, dated 11.4.94 (Enclosures 2 and 3 to the reply).

13. In view of the above, a review DPC-II was held between 12.9.81 and February 1990 by the combined laboratories of NPOL and NSTL and thereafter by NSTL independently for themselves on the basis of the combined seniority list of Chargeman Gr.II and Precision Mechanics.

14. The first applicant was initially appointed as Chargeman Gr.I with effect from 6.5.81 and was promoted to the grade of Assistant Foreman w.e.f. 15.9.84 and then to

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the grade of Foreman w.e.f. 17.9.90. The 2nd applicant was initially appointed as Chargeman Gr.I w.e.f. 24.6.81 and was promoted to the grade of Assistant Foreman w.e.f. 17.9.84 and then to the grade of Foreman w.e.f. 15.3.90. When the review DPC was reviewing the promotion on the basis of the combined seniority of Chargemen and Precision Mechanics, SRO 177 dated 16.8.95 which became effective from 26.8.95 was issued (Enclosure 4 to the reply) whereby the cadre of Foreman in the pay scale of Rs.2375-3500 was recategorised as Technical Officer-A and thereafter for promotion to Technical Officer-B under the limited flexible complementing system. For promotion to the post of Technical Officer-B, the Technical Officer-A should have rendered a minimum of five years regular service in the grade on first September of the year of assessment, including the service rendered by him in the erstwhile post held by him immediately before 26.8.95.

15. Before conducting assessment for the year 1995-96, seniority roll of Technical Officer-A was prepared by R-1 as per the principles of seniority laid down in Rule 6(2)(b) of DRTC Rules (Enclosure 4 to the reply). As the applicant No.1 was holding the post of Foreman with effect from 17.9.90 before commencement of DRTC Rules and was placed as Technical Officer-A, he had rendered more than 5 years of service in the grade. As such he was eligible for assessment for the year 1995-96. Accordingly he was called for the assessment interview on 30.10.96 at NSTL. ~~xxxxxxxx~~ No.2
Similarly, the case of the applicant was also considered for calling for the assessment interview for the year 1995-96 based on the position obtained prior to the review DPC and he appeared for the interview on 29.10.96. When the

matter stood thus, the review DPC completed its job. Because of the review DPC, the position of both the applicants in the grade of Assistant Foreman remained unchanged even after the review DPC at NPOL. But their position in the seniority roll of Assistant Foreman was lowered from the pre-review position to the effect that certain NSTL employees (erstwhile Precision Mechanics in the pay scale of Rs.425-700) became senior to the applicants herein in the grade of Assistant Foreman due to antedation of their promotion in the review DPC at NPOL. Because of this, the promotion of both the applicants herein had to be post-dated in the grade of Foreman. As those proceedings of the review DPC were not approved by the Headquarters, both the applicants were allowed to appear for the assessment for promotion to the grade of Technical Officer-B based on their date of promotion in the grade of Foreman obtained prior to the review DPC. The review DPC proceedings were forwarded to the Headquarters for approval by NSTL. But the review DPC proceedings were not found in order by the Headquarters as promotions to the grade of Foreman were recommended in the excess of the available vacancies on the date of DPCs. Hence they were directed to review the promotion to the grade of Foreman by taking into account only the vacancies available on the date of DPCs and revert the excess Foremen. Therefore, the promotion of the applicants in the grade of Foreman was post-dated to 15.9.93. In view of the postdating of the promotion to the grade of Foreman, both of them became ineligible for consideration for promotion to the grade of Technical Officer-B for the assessment year 1995-96 and also for the assessment year 1996-97.

Review Petition No.36/94 on the file of the Bangalore Bench of the Tribunal praying that the judgement in OA 600/91 needs review as they are not parties in that OA and their rights are infringed if the directions in the OA 600/91 are implemented. But that review petition was dismissed by the order dated 4.1.96 by the Bangalore Bench. In the review judgement it was observed as under:-

"The contention of the review applicant that as he was not a party to the previous proceedings, the earlier decisions of the Tribunal were vitiated and were not binding on him has to be negatived in the context of the law laid down by the Supreme Court in Janardhana's case (1983 SCC (L&S) 467 - A.Janardhana vs. Union of India).

20. In view of the above categorical decision of the Bangalore Bench of the Tribunal in the said review Petition, the applicants cannot now say that the order of the Bangalore Bench of the Tribunal in OA 600/91 is not binding on them. That order has to be implemented for all the laboratories under DRDO. Hence the revision of seniority position of the applicants in the grade of Assistant Foreman/Forman/Technical Officer-A was done by holding the review DPC and ^{hence} the revision of the seniority cannot be held to be violative of their rights. Further the applicants if aggrieved by the order of the Bangalore Bench of the Tribunal in OA 600/91 could have taken appropriate steps for challenging that order ~~in~~ ^{before} an appellate forum in accordance with law. But the applicants had never challenged that order in an appellate forum. Even OA 1484/94 on the file of this Bench was disposed of

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by the order dated 17.10.97 giving certain directions. Even in that OA it was felt that the applicants should have approached the appellate forum for redressal of their grievances. The order in OA 600/91 on the file of the Bangalore Bench has become final and is applicable to the whole cadre of NSTL and the laboratories under the DRDO. The applicants cannot escape the result of the implementation of the judgment in that OA. The respondents had conducted the review DPC in accordance with the directions given in OA 600/91 and on that basis they have brought down the seniority of both the applicants herein to 15.9.93 from their actual date of promotion as Foremen in 1990. When such a revision of seniority was done following the judgement of the Bangalore Bench of the Tribunal in OA 600/91 which has already become final, the applicants cannot question the same in these two OAs and pray for the relief of considering them for promotion to the grade of Technical Officer-B for the assessment year 1995-96 and 1996-97.

21. In view of what is stated above, we find that both the OAs have to be dismissed for want of merit.

22. In view of the foregoing, we are fully satisfied that no injustice has been done to the applicants if they were not considered for promotion to the post of Technical Officer-B for the assessment year 1995-96 and 1996-97. Their names have been omitted from the list for consideration for the Technical Officer-B Grade in accordance with the rules and that deletion of their names cannot be stated as irregular. Hence, both the OAs are

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to be decided on the basis of the revised seniority and that deletion of their names due to revision of their seniority cannot be stated as irregular. Hence, both the OAs are dismissed. No order as to costs.

प्रमाणन गति
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न्यायालय अधिकारी/उप रजिस्ट्रार (न्यायिक)
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