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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
-AT HYDERABAD

ORIGINAL APPLICATION NO.802 of 1999

DATE OF JUDGMENT: APRIL, 2000

BETWEEN:

VSGV PRASADA RAO

.. APPLICANT

AND

1. The Chief of Naval Staff,
Naval Hqrs., Ministry of Defence,
New Delhi,
2. The Director General,
Defence Research & Development Organisation,
Ministry of Defence,
New Delhi,
3. The Flag Officer Commanding-in-Chief,
Eastern Naval Command,
Visakhapatnam,
4. The Admiral Superintendent,
Naval Dockyard,
Visakhapatnam.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.S.LAXMA REDDY

COUNSEL FOR THE RESPONDENTS: Mr.V.RAJESWAR RAO, Adl.CGSC

CORAM:

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

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

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

Heard Mr.S.Laxma Reddy, learned counsel for the applicant and Mr.V.Rajeswara Rao, learned standing counsel for the respondents.

2. The applicant in this OA was initially appointed as Junior Scientific Assistant on 23.11.1976 under R-4. He was promoted as Junior Scientific Officer on 12.7.86. His next promotion is to the post of Senior Scientific Officer
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Grade-I.

3. Earlier, the applicant and two others filed OA No.1181/94 on the file of this Bench which was disposed of on 28.7.97.

4. That OA No. 1181/94 was filed praying for a declaration that the action of R-1 in issuing the impugned proceedings No.10417/R.D./PERS-6/257/D (R&D), dated 28.1.86 and consequential letter issued by R-2 dated 17.3.86 encadring 33 Group 'A' posts with R-3 and also subsequent encadrement of additional posts of Group-A Scientific Officers ~~bo~~ne in the Indian Navy with the DRDO as totally illegal, without jurisdiction, ultravires of powers of R-1 and contrary to the statutory rules framed under SRO 27 dated 31.12.79 and also SRO 8 dated 13.1.79 and for a consequential direction to the respondents to fill up all the posts of Senior Scientific Officer Gr.I and Principal Scientific Officer as per the statutory rules framed under SRO 27 and for a further direction to promote the applicants therein to the Senior Scientific Officer Gr.I with all consequential benefits such as arrears of pay, seniority etc.

5. That OA 1181/94 was disposed of by the following direction:-

"The applicants should be considered for promotion against the vacant posts of Sr.S.O. Gr-I available as on date under the control of Naval Dockyard in

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accordance with the S.R.O.27 dated 31.12.79. If they are found eligible they should be promoted within a period of four months from to-day."

6. In pursuance of the above direction, it is stated that out of 3 applicants in that OA, two were promoted as Senior Scientific Officers Gr.I leaving the applicant herein who is the third applicant in that OA, for want of vacancy.

7. This OA is filed praying for a declaration that the action of the respondents in not considering the applicant herein for promotion to the post of Senior Scientific Officer Gr.I in terms of SRO 27/79 against the existing vacancies earmarked for 25% DPC quota and not promoting him is totally illegal, without jurisdiction and violative of Articles 14 and 16 of the Constitution of India and consequently direct the respondents to consider and promote the applicant against the existing vacant post of Senior Scientific Officer Gr.I with effect from the date of eligibility or the occurrence of the vacancy with all consequential benefits.

8. In the reply affidavit, there is a controversy in regard to the Vth Central Pay Commission's Report wherein it is stated that it ratified the earlier encadrements of 52 Scientific Officers of Navy with DRDO. There is also a controversy in regard to the arrival of the figure of 19 posts sanctioned to Navy for the post of Senior Scientific Officer Gr.I.

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9. The applicant in this OA has brought to our notice the written statement filed on behalf of the respondents in O.A.No.1175/97 on the file of Bombay Bench of the Tribunal (V.K.Karad & 13 others v. Union of India and others) enclosed as Annexure A-IX at page 28 to the OA, stating that 9 posts of Senior Scientific Officer Gr.I are available with the department under R-4 and all those posts are to be filled by promotion of Junior Scientific Officers. If that be the case, then non promotion of the applicant in view of the judgement in the earlier OA i.e, OA 1181/94 is not correct as there are 9 posts for promotion. In that view, the applicant submits that he should also be promoted.

11. The learned counsel for the respondents admit that there are 9 posts of Senior Scientific Officer. But those posts are to be filled in accordance with SRO 27/79 according to which only 25% of the posts can be filled by promotion from Junior Scientific Officers. As that 25% works out to 2.25 only, two posts can be filled by promotion. Those two posts had already been filled by promoting the two applicants in OA 1181/94 in pursuance of the direction given in that OA. Hence the applicant herein cannot ask for promotion against those 9 posts.

11. From the above submission of both the parties, it is evident that both the parties agree that there are 9 posts of Senior Scientific Officer Gr.I which are to be filled in accordance with SRO 27/79. It is also an admitted fact that the vacancies are to be filled as per

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the Recruitment Rules in accordance with SRO 27/79. Hence it is not necessary to further consider the controversy mentioned in para 8 supra, as that controversy is left open for consideration in future if it arises. The only point for consideration is whether the applicant can be promoted against the 9 posts in accordance with SRO 27/79.

12. The respondents have filed SRO 27/79 as Annexure R-2 which was issued on 31.12.79. As per that SRO, (i) 25% of the vacancies in the cadre of Senior Scientific Officers Gr.I are to be filled by promotion failing which by transfer on deputation; (ii) 25% by transfer on deputation/transfer, failing which by direct recruitment and (iii) 50% by direct recruitment.

13. As per the above Recruitment Rules, the submission of the respondents is that only 2.25 posts can be filled by promotion and as 0.25 is less than 0.5, only two posts can be filled by promotion and that too by the two applicants in OA 1184/94 and they were promoted accordingly and the applicant could not be promoted as he being the junior in his seniority and availability of vacancies were only two.

14. It is further added by the learned standing counsel for the respondents that 50% of the vacancies are to be filled by direct recruitment. That would mean, 4.5 posts are to be filled by direct recruitment. Hence the fraction of 0.5 is to be upgraded as 1 and 5 posts are to be filled by direct recruitment. By the above submission of the respondents, it transpires that 5 posts should be

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filled by direct recruitment, two posts by promotion and two posts by transfer on deputation/transfer failing which by direct recruitment.

15. The above submission of the respondents, no doubt, is in ^{only as per} ~~regard to~~ the mathematical formula. But in a situation where a departmental employee possessing the required qualification is available and he is craving for promotion due to his long experience and there is stagnation in this cadre, whether a slight modification can be made to the above mathematical formula as read by the respondents, is a point for consideration.

16. In our opinion, some consideration is to be shown to the serving employees in promotion vis-a-vis direct recruitment. The direct recruits assumes right in the Department only on their appointment. When there is a stagnation in the cadre of Junior Scientific Officer and some relief can be given to a serving employee for promotion to the higher grade and that weightage has to be utilised to give some benefit to the serving employee who possesses the required qualification and long experience and is stagnating for want of posts. In that view, it is opined that the fraction of 0.25 by promotion failing which by transfer on deputation, should be added together and given to the employees due for promotion. In that way, number of employees to be given promotion will be 2.5 instead of 2.25 and that fraction of 0.5 should be rounded off to 3. If that is done, the distribution of 9 posts as per the Recruitment Rules will be 3 by promotion, two by transfer on deputation/transfer, failing which by direct

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recruitment and 4 by direct recruitment. The above distribution, in our opinion, will be equitable in the facts and circumstances of this case. As only two applicants in OA 1181/94 were promoted, the applicant herein if he is next candidate for consideration for promotion to the post of Senior Scientific Officer Gr.I and fulfills all the conditions required for promotion, then he should also be considered for promotion as Senior Scientific Officer Gr.I in accordance with the rules. The above view of ours is also in consonance with the view expressed by R-4 in his letter dated 9.10.98 (Annexure-IV at page 17 to the OA) addressed to R-3.

17. In the result, following direction is given:-


against 9 posts
The number of posts to be filled by promotion should be treated as 3 and the number of posts to be filled by transfer on deputation/transfer, failing which by direct recruitment should be treated as two and the direct recruitment as 4. With the above distribution, if the applicant's case comes, as per his seniority, within the three vacancies earmarked for Senior Scientific Officer Gr.I by promotion and he fulfills the other conditions required, then his case should be considered for promotion as Senior Scientific Officer Gr.I and if found fit, he should be promoted as Senior Scientific Officer Gr.I.

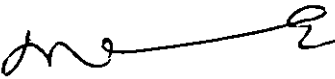
18. Time for compliance is three months from the date of receipt of a copy of this order.

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[Signature]

19. The OA is ordered accordingly. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
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(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 10th APRIL , 2000

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