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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO.060/01137/2014 Date of order:-March 03, 2016.

Coram: **Hon'ble Mr.SanjeevKaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Nagesh Sharma s/o Shri Mohar Singh Sharma, c/o Semiconductor Laboratory, MOhali-160071 (PB).

.....Applicant.

(Mr. Nagesh Sharma, applicant in person)

Versus

Controller, Semiconductor Laboratory, Sector 72, Mohali-160071 (Punjab).

.....Respondent

(By Advocate : Mr.Ramlal Gupta)

ORDER

Hon'ble Mr.Uday Kumar Varma, Member (A):

Through this Original Application, the applicant has claimed the following relief:-

" Quashing the controller order and up-gradation to grade pay of Rs.4600/- in pay band of 9300-34500(12540+4600) from 1.9.2006 and after promotion to Sr. Technical Assistant on 1.4.2007 grade pay 4800 and all consequent benefits and arrears with interest".

2. This subject matter was also before this Tribunal for adjudication in O.A.No.1228/PB/2013 and was decided on 9.9.2013. The Tribunal had then directed the respondents to take a final decision on the pending legal notice and representation of the applicant. The applicant had subsequently filed contempt petition which was dismissed on 26.2.2014 as the decision on his representation was taken by the

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respondents. Although in his prayer, the applicant has not mentioned which particular order he is referring to in his relief clause, we understand that it has to be an order passed by the respondents on January 13, 2014 (Annexure A-1).

3. The facts of the case briefly are that the applicant was recruited by the erstwhile Semi-Conductor Complex Limited as Technician (trainee) on 27.12.1988 and his services was regularized as Technician-I on 28.12.1990. Thereafter, the applicant was transferred to SCL Gaetec Project at Hyderabad where he joined on 22.5.1992 as Technician-I. He got promoted as Gaetec Project as Technician-II on 1.7.1995 and as Technician-III from 1.1.2000. On completion of his Diploma in Electronics & Telecom Engineering from IETE with 55.64% marks in December, 1993, he applied against the post of Technical Assistant (trainee) and got promoted as Technical Assistant-I on 9.10.2001. Thereafter, he was transferred back to SCL Company on 18.5.2005.

4. The SCL Company which was under the administrative control of Department of Information & Technology, Government of India, was re-structured into a Society namely Semi Conductor Laboratory (SCL Society) as an autonomous body under the Society Registration Act, 1860 on 8.11.2005 and its administrative control was taken over by Department of Space, Government of India. In order to protect the career interests of employees of SCL Company and also to bring the service conditions of the new entity of the SCL Society at par with other units under the Department of Space, a package was prepared by DOS in the form of memorandum No.SCL/HRD/2006/06/30-1 dated 16.6.2006 reflecting therein various

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benefits and concessions, mapping of Industrial Dearness Allowance (IDA) pattern scales held by SCL Co. employees as on 1.9.2006 with CDA pattern pay scale operated in DOS, pay fixation formula, extending DOS career progression norms such as normal DPC reviews under Merit promotion Scheme (MPS), Special Review Scheme (SRS) and category change merit Selection Scheme (CCMSS) of DOS/ISRO by taking into account the service rendered without any break on a regular basis by the employees in the erstwhile SCL Co. prior to 1.9.2006 etc. In order not to adversely affect the employees concerned, some of the pay-scales which did not exist in Department of Space, were also given to some of the employees including the applicant as the scales specific to SCL. This package ensured that on migration of the employees from IDA pattern to CDA pattern, there was a minimum loss of pay for the employees and on the other hand the Society/Government was not saddled with higher outgo on account of such migration from the IDA pattern to the CDA pattern. It was decided to issue the memorandum dated 16.6.2006 to all SCL Company employees who were on its rolls as on 31.8.2006 and seek their willingness or otherwise to continue service in SCL Society. The applicant accordingly opted to continue service in SCL Society on the terms and conditions of memorandum dated 16.6.2006 and was accordingly appointed in the mapped CDA scales in SCL Society with effect from 1.9.2006. The SCL Society itself came into operation w.e.f. 1.9.2006. The applicant was thus appointed as Technical Assistant in SCL in the pre-revised pay-scale which he accepted. As another measure to safe-guard the interest of the employees of the SCL Society, normal DPC reviews of S&T Society under MPS as per DOS/ISRO norms for the first time from 1.1.2007 (for Scientists and Engineers) and from 1.4.2007 (for below Scientists/Engineers

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grades), were also held. The applicant was promoted to the post of Sr. Technical Assistant 'A' in the pre-revised CDA scale of Rs.5500-175-9000 with effect from 1.4.2007. Again, after putting the minimum required residency service of 4 years, the applicant was considered for promotion to the post of Senior Technical Assistant 'B' from 1.1.2011, 1.1.2012 and 1.1.2013. He was promoted to the post of Senior Technical Assistant 'B' in the PB-2 with GP of Rs.4800/- from 1.7.2013 in terms of memorandum dated 16.6.2013 which was also accepted by the applicant and charge of the promoted post was assumed by the applicant from 1.7.2013. However, after the applicant had accepted the above terms, he claimed parity with those selected under special review scheme on acquiring higher qualification in particular with one Shri D.A.Chakravarty essentially on the ground that he was senior to such category of people who were selected under special review scheme on acquiring higher qualification. The applicant found fault with the decision of the respondent's action of treating him and Shri D.A.Chakravarty belonging to two different cadres which are not comparable. On exhausting the remedies of departmental relief, he has now come to the Tribunal.

5. The respondents in the written statement while giving detailed account of the background of the erstwhile SCL Company which was restructured as SCL Society on 1.9.2006 and after describing in detail the various promotions given to the applicant under rules, have contested the claim of the applicant. It is their contention that the applicant and Shri D.A.Chakravarty came from two different cadres which are not comparable. While Shri D.A.Chakravarty belongs to the cadre of Technicians, the applicant belongs to the cadre of Technical Assistant. While the applicant being

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Engineering Diploma holder recruited as per SCL Company norms, was designated as Technical Assistant as a result of mapping, upon restructuring of SCL Company into SCL Society as on 1.9.2006, Shri D.A.Chakravarty was mapped to Technical 'D' as on 1.9.2006 and promoted to Technician E'(GP Rs.2800), upon acquiring additional qualification of Diploma in Engineering in Ist class as per DOS/ISRO norms. It is the contention of the respondents that Shri D.A.Chakravarty was selected as Technical Assistant in DOS/ISRO under special review scheme. Shri Chakravarty being from Technician cadre, cannot be called junior to the applicant who was in Technical Assistant cadre.

6. We have given our thoughtful consideration to the entire matter and have perused the records.

7. The respondents through a Misc. Application has placed before us details regarding career progression of Shri D.A.Chakravarty and the applicant Shri Nagesh Sharma which can be seen from Annexure I of the Misc. Application. They have also produced a note showing the different career path of Shri D.A.Chakravarty and the applicant. They have also filed various circulars of the Department of Space relating to the career progression of the erstwhile SCL Company now known as SCL Society. The claim of the applicant has to be seen in the light of his career path compared to that of Shri D.A.Chakravarty because he has been claiming pay parity with Shri D.A.Chakravarty. His essential claim is grounded on the premise that since he had joined service as Technician I on 28.8.1990 whereas Shri D.A.Chakravarty had joined on 1.3.1993 as Technician II, therefore,

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Shri D.A.Chakravarty was junior to him and at no stage, a junior can be given the pay-scale higher than what he has been availing.

8. It is very helpful to go through this chart. It is seen that the applicant had joined on 28.12.1990 as Technician-I; was promoted as Technician II on 1.7.1995; promoted as Technician III on 1.1.2000. He acquired additional/higher qualification of Diploma in Electrical Engineering in 2nd division in 1994 and B.Sc. in 2nd division in 2000. He got his next promotion on 31.8.2006 as Technical Assistant I in the pay scale of Rs.4620-135-5970-140-8350. He was promoted as STA on 1.4.2007 in the pay scale of Rs.9300-34800-PB-2 Rs.4600/-.

9. Contrasted to his career path, If we see the career progression of Shri D.A.Chakravarty we find that till 1.7.2007, he has been continuously getting pay in the pay scales pay-scale lower than that of the applicant. On 1.7.2007, the applicant was getting a pay of 11020 with grade pay of 4600 in PB-2, whereas Shri D. A. Chakravarty was drawing a pay of 9230 with grade pay of 2800 in PB-1. However, there is a material difference from 1.4.2008, when Shri D.A. Chakravarty is promoted as Technical Assistant under Special Review in terms of DOS/ISRO norms that places him at par with directly recruited Technical Assistants. His pay is fixed in PB-2 at 12540 with grade pay of 4600. It is at this point of time that departure takes place prompting the applicant to stake his claim for the same pay scale and pay grade. It is this up-gradation that the applicant is seeking by virtue of being senior to Shri D.A.Chakravarty

10. The issue then for adjudication is whether the grant of superior grade to Shri D.A.Chakravarty could be done without giving



similar benefit to the applicants. The respondents have placed before us relevant circulars which show that under special scheme, the existing employees of the SCL Society were given the option of promotion provided they fulfill certain higher educational qualification. Shri D.A.Chakravarty was promoted as Technical Assistant under Special Review Scheme in SCL Society as per DOS/ISRO norms which is treated equivalent to direct recruitment in terms of circular dated 16.3.2012. It is the contention of the respondents that the review was taken in the light of their circular No.SCL/P&GA/Spl.Rev./2007 dated August 31, 2007 which provides that "As per the orders of DOS/ISRO regarding Special Review of S&T personnel, on acquiring higher qualifications for appointment to the appropriate grade, persons who acquire the qualifications of Degree in Science/Diploma or ITI in First Class, are eligible to be considered for Special Review for Scientific Assistant/Technical Assistant (Rs.5500-9000) or Technician 'A' (Rs.3050-4590) respectively, if selected and recommended by the appropriate committees. Those who acquire the additional qualifications of degree in Science (First Class), Diploma in Engineering (First Class) or ITI while in service will be reviewed on the rationalized dates, i.e. as on April 1 or October 1. The extant orders provide for consideration of additional qualifications only when acquired by putting total efforts while in service in SCL/DOS/ISRO. The candidates will be considered for Special Review provided that not more than 2/3rd of the duration of the course concerned is completed before the date of interview for the initial appointment in SCL/DOS/ISRO. In other words, at least 1/3rd duration of the course should have been completed after appearing for the interview in which he/she was selected for the initial appointment in SWCL/DOS/ISRO.

he/ This provision is without prejudice to their eligibility for the normal



review. The question of special review does not arise if person concerned has already reached the eligible grade appropriate to the additional qualifications. 2. All candidates fulfilling the above criteria in SCL may apply in the prescribed format (copies mailed to Heads of Divisions) for consideration of their additional qualifications, if not already considered and forward the same through the Head of Division concerned, so as to reach Head, P&GA by September 15, 2007".

11. It is clear from the above that the promotion of Shri D.A.Chakravarty as Technical Assistant was made under Special Review and the same was granted to him on account of his having higher and better qualification. The applicant has not contested the claim of the respondent that Shri D.A.Chakravarty was promoted as a consequence of a Special Review on account of his having higher and better qualification. As a matter of fact, the applicant also applied for consideration under Special Review to the post of Scientist/Engineer in SCL Society after acquiring additional qualification, but the DPC did not find him fit for promotion. The challenge of the applicant is neither to the Special promotion of Shri D.A.Chakravarty nor to the circulars that dealt with the Special Review of the employees of the SCL Society in order to ensure their career progression. The sole argument is that he was senior to Shri D.A.Chakravarty and he should have been given the same pay scale. We find this argument unsustainable. We are inclined to agree with the respondents that the career progression of Shri D.A.Chakravarty and the applicant cannot be called identical because even before 2008 on the restructuring of SCL Society, Shri D.A.Chakravarty was designated as Technician II whereas the applicant's designation was that of Technical Assistant I. The respondents claim that the two are not the same post as they do not

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constitute the same stream. In 2007 also, while on 1.4.2007 Shri D.A.Chakravarty was promoted as Technician 'E', the applicant was promoted as Senior Technical Assistant 'A'. So the diversion in their career path as pointed out by the respondents makes sense to us.

12. It is correct that in certain circumstances, the senior employees have been given the benefit of the financial up-gradations granted to their juniors, but such relief is never based exclusively on simple consideration of seniority. In each such case, there are adequate grounds to justify that, mostly if the senior employee has been ignored even after satisfying the criteria & eligibility that entitled his junior to the promotion. The pay parity with the junior has generally been granted when the senior employee has been denied the same in contravention of rules, or on account of delay or mistake on the part of employees, or in some cases on the grounds of equity. The case of the applicant does not fall under any such consideration. Firstly, they are not from the same cadre, secondly, the so called junior employee has been given pay scale on account of a specific scheme formulated by the Department of Space and it has been given because he was having better and higher qualification; thirdly, this promotion was as per rules and not arbitrary; and lastly no principle of equity is violated by the respondents. As a matter of fact, an opportunity to claim such a promotion was also available to the applicant, but since he did not have the basic requirements of qualification, he did not or could not avail of the same. It is, therefore, unfair and unacceptable to raise principle of parity with the pay scale of a junior when this pay-scale has been given under special rules and on account of merit namely better and higher qualification. We are not convinced by the



arguments of the applicant or by perusing the record that there is merit in his claim. The respondents have, therefore, rightly rejected his claim.

13. The applicant has also raised the issue of implementation of DOS memo Nos. E.19012/22/2006-V dated 3.2.2006, 19012/2/2006-V dated 8.9.2006 and 129011/1/2008-Sec.V(1) dated 12.11.2010. The same has been dealt by the respondents in their speaking order. On going through the explanation given by the respondents in the speaking order, we find that the same satisfactorily explains the stand of the respondents on the issues raised by the applicant.

14. In view of the foregoing discussion, we are of the view that the claim of the applicant for grant of higher pay scale as also pay grade at par with D.A.Chakravarty has rightly been rejected by the respondents. We do not find merit in the claim of the applicant and accordingly refrain from interfering in the speaking order passed by the respondents.

15. The OA is accordingly dismissed. No costs.

(UDAY KUMAR VARMA)
MEMBER (A).

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:-March 03 , 2016.

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