CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00295/2017

DATED THIS THE 26th DAY OF SEPTEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

V.R.Datchna Moorthy
S/o P.V.Raghavan
Aged 55 years
Working as JSO
O/o ORDAQA (DGAQA-OH)
Bangalore-560 017.
Residing at
No.461, 8th Main, 6th Cross
Viveknagar
Bangalore-560 047. ....Applicant

(By Advocate Shri B.Veerabhadra)

Vs.

1. The Directorate General of Aeronautical Quality Assurance
   Ministry of Defence
   H Block, New Delhi-110 011.

2. The Secretary Defence Production
   Ministry of Defence
   South Block, New Delhi-110 011.

3. The Additional Director General (SZ)
   DGAQA, Ministry of Defence
   Vimanapura Post
   Bangalore-17. …
   Respondents

(By Advocate Sri V.N.Holla, Sr.PC)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

The applicant has filed the present OA seeking the following relief:

i. Call for the relevant records and on perusal

ii. Direct the respondents to provide promotional avenue to those personnel with Diploma Qualification and who is working in the

feeder cadre of JSO to SSO-I functional and non-functional while declaring the provisions of Sl.No.5 in Schedule I of SRO 10 Defence Aeronautical Quality Assurance Service Rules 2017(Annexure-A8) as arbitrary, discriminatory and void for the reasons stated in the OA.

2. According to the applicant, he was initially appointed as Junior Scientific Assistant-II(now redesignated as SA) w.e.f. 03.03.1992 in the respondents organisation. Thereafter, he was promoted as Junior Scientific Assistant-I (JSA-I), Senior Scientific Assistant-G (SSA-G) and now promoted as Junior Scientific Officer(JSO) w.e.f. 01.10.2015. According to the applicant, his next promotional avenues are SSO-II, SSO-I and so on.

3. It is submitted that when the respondents failed to provide the promotional avenues to the cadre of JSO and SSO-II, he approached the Tribunal in OA.No.1649/2000 and his colleagues have also approached the Tribunal in OA.No.616/2004 and the Tribunal had passed orders in the above said OAs vide dtd.23.11.2001(Annexure-A1) and dtd.08.07.2005(Annexure-A2) respectively. Thereafter the respondents issued SRO 132, the Rules which are called as Defence Aeronautical Quality Assurance Service Rules 2005(Annexure-A3). Sl.No.5 of Schedule I of the said Rule inter alia provides that for the post of Senior Scientific Officer Grade I, the method of recruitment is by promotion on selection basis and the grade from which promotion is permissible and the minimum eligibility period prescribed is Senior Scientific Officer Grade II in the pay scale of Rs.8000-13500 with 5 years regular service in the grade. The applicant having entered the grade of Senior Scientific Officer Grade II expected the promotion in the normal course. Thereafter the respondents issued a letter dtd.24.4.2015(Annexure-A4) which provides at Sl.No.5 of Schedule I that for the post of SSO-I will be by promotion on selection basis. Further, it indicates the grade for which

promotion is permissible and the minimum eligibility period prescribed is officers in SSO-II with 4 years regular service in the grade and possessing degree in Engineering or Technology or Metallurgy or Information Technology or Masters Degree in Science (Physics/Chemistry/Maths) or equivalent qualification from a recognized university. Thus, in effect, the personnel possessing Diploma in Engineering or Degree in Science are totally blocked for further promotion as SSO-I which is against the letter and spirit of the order passed by this Tribunal in OA.No.616/2004. Further the respondents issued a letter dtd.21.05.2015(Annexure-A5) conveying the approval to the grant of organized Group A Service Status to Defence Aeronautical Quality Assurance Service which indicates that SSO-II is part and parcel of Organized Group A Engineering Service. But when the respondents effected the revision of service rules thereby blocking the promotional avenue for JSO to SSO-I to those with the qualification of Diploma in Engineering, the applicant's colleagues submitted their representation(Annexure-A6). Thereafter the applicant submitted his representation dtd.31.01.2016(Annexure-A7). Despite the receipt of the said representations, the respondents published SRO 10(Defence Aeronautical Quality Assurance Service Rules 2017) and Sl.No.5 of Schedule I to the said rule.

4. Applicant further submits that the action of the respondents in providing the provision at Sl.No.5 of Schedule I of the Recruitment Rules(Annexure-A8) is arbitrary, discriminatory and violative of Article 14 and 16 of Constitution of India. The Hon'ble Apex Court in *CSIR vs. KGS Bhat AIR 1989 SC 72* and in several other catena of cases including *AN Sehgal Vs. Raje Ram Sheoran 1991 SCW 1246, Dr.Ms.O.Z.Hussain Vs. Union of India AR 1990 SC 311* and in *Kamalakar Vs.Union of India 1999 SCC L&S 919*

held that *'Avenues and facilities for promotion to the higher services to the less privileged members of the subordinate service would inculcate in them dedication to excel their latent capabilities to man the cadre posts. …… The chances of promotion would also enable a promote to imbue involvement in the performance of the duties, obviate frustration and eliminate proclivity to corrupt practices lest one would tend to become corrupt, solven and mediocre and a dead wood.*

5. He further submits that for getting the MACP, one has to remain in the same grade for a period of 10 years to get the next grade, whereas if the promotional avenue is provided, one would be entitled to come within the zone of consideration to the next grade on completion of 4 years' service. In case one retires after 4 years before completion of 10 years if he/she is not provided with the promotional avenue, he/she would be deprived of the legitimate benefit on par with his/her colleagues. Hence, the action of the respondents is against the provisions of Article 14, 16 of the Constitution of India.

6. The respondents have filed their reply statement wherein they submit that the applicant was recruited to the post of Junior Scientific Assistant-II on 03.03.1992 with his educational qualification of Diploma in Electronics. Thereafter, he was promoted to the post of Junior Scientific Assistant-I, Senior Scientific Assistant (G) and to the post of Junior Scientific Officer(Group 'B' Gazetted) w.e.f. 01.10.2015.

7. The DAQAS was incepted by way of trifurcation of Defence Science Service in 1979(Annexure-R1). As per the Service Rules for DAQAS notified first in 1979, for promotion to the post of Senior Scientific Officer Grade-II, the eligibility criteria was prescribed as Junior Scientific Officer with 3 years'

regular service in the grade and possessing degree in Engineering/Masters degree in Science or equivalent qualification. The DAQAS Rules were revised in the year 2005 in consultation with DoP&T and UPSC whereby the requirement of possessing the aforesaid educational qualification of Service Rules of 1979 was removed. Later, the Service Rules of 2005 were amended as Defence Aeronautical Quality Assurance Service Amendment Rules, 2007 notified vide SRO 45 dtd.02.08.2007(Annexure-R2). As per the amended Service Rules of 2007, the entries in Schedule-I against post at Sl.No.5 i.e. Senior Scientific Officer Grade-I were substituted and possessing degree in Engineering or Technology or Metallurgy or Masters Degree in Science or equivalent qualifications was included as eligibility criteria for promotion to the post of Senior Scientific Officer Grade-I. The DAQAS was recognised as an Organised Central Group 'A' Service with the approval of the Cabinet conveyed vide letter dtd.21.5.2015. As per the decision of the Cabinet, induction through direct recruitment in DAQAS at the level of Junior Time Scale(i.e. post of Senior Scientific Officer Grade-II) is to be made through UPSC Engineering Service Examination. The DAQAS Service Rules were amended as Defence Aeronautical Quality Assurance Service Rules, 2017 notified on 25.02.2017 vide SRO 10 dtd.03.02.2017(Annexure-R3). The Service Rules, so far as it relates to educational qualification for direct recruits at the level of SSO-II, was amended in consultation with UPSC and prescribed in Schedule-III as per the requirement for UPSC Engineering Service Examination. Besides, possessing the aforesaid educational qualification for promotion to the post of SSO-I, the eligibility criteria of earlier Service Rules of 2007 have also been retained. For promotion from Junior Scientific Officer to Scientific Officer Grade-II, the eligibility criteria on educational qualification on previous service rules of 2005 has also been

retained in the revised rules of 2017 at Sl.No.6 of schedule 1 as ‘Diploma in Engineering or Degree in Science’. Thus as far as promotions to the post of SSO-II and SSO-I are concerned, the revised Service Rules, 2017 do not affect any of the existing employees. The applicant with his educational qualification of Diploma in Electronics was not eligible for promotion to the post of Senior Scientific Officer Gr.I even at the time of his joining the service. As the educational qualification for promotion to the post of SSO Gr.I was notified in the amendment of Service Rules vide SRO 45 dtd.2.8.2007, the same is a settled issue now. Challenging this provision at this stage is violation of Section 21 of the AT Act, 1985.

8. The respondents further submit that the eligibility service for promotion from the post of JSO to the post of SSO-II prescribed under Service Rules of 1979 was Junior Scientific Officer with 3 years’ regular service in the grade and possessing degree in Engineering/Masters Degree in Science or equivalent qualification. With this it is clear that the applicant with his educational qualification of Diploma in Electronics was not eligible for promotion even to the post of SSO-II and thereby his further promotion from the post of SSO-II to SSO-I was out of question. And when some of the Group ‘B’ employees had filed OA.616/2004 before this Tribunal, revision of the Service Rules for DAQAS was already at advance stage and as advised by DoPT, action was being taken to amend recruitment rules for the post of SSO-II against the quota, which would provide promotional avenues for B.Sc/Diploma qualified JSOs and that a reference dtd.5.7.2005 was already made to UPSC to this effect. The Tribunal had disposed of the OA with direction to the respondents to ensure that all such steps are taken in the time limit of four months to seek concurrence from UPSC and to notify the amended Recruitment Rules, if such concurrence was granted. In

compliance of the Tribunal's order, the DAQAS Service Rules were revised vide SRO 132 dtd.06.12.2005 and thereby the requirement of possessing the higher educational qualification of degree in engineering/technology or Masters Degree in Science was removed. However, keeping in view the requirement of the service and advice of the DoPT, the requirement of possessing the higher educational qualification was made an eligibility criteria for further promotion from SSO-II to SSO-I vide SRO 45 dtd.02.08.2007. Thus the applicant became eligible for promotion to the post of SSO-II but not for further promotion to SSO-I as he does not meet the educational qualification prescribed in above SRO. The applicant has already got two promotions i.e SSA(G) and JSO. With his educational qualification of Diploma in Mechanical Engineering, he is also eligible for promotion to the next post of SSO-II(Group-A). Thus he has had adequate promotional avenues in his service and his apprehension of not having an opportunity for promotion to the post of SSO-I that too when he is still to be promoted to its feeder i.e. SSO-II is too much for the asking. In the revised Service Rules of 2017, so far it relates to promotion from SSO-II to SSO-I, the provision of pre-revised service rules of 2005 as was amended vide SRO 45 dtd.02.08.2007 was retained. Hence, it is grossly displaced and incorrect that revision of the service rule in 2017 has blocked the promotional avenue for the applicant as with his educational qualification of Diploma in Mechanical Engineering, he was not eligible for promotion to the post of SSO-I even at the time of his joining the service. The eligibility criteria of possessing degree in Engineering or Technology or Metallurgy or Masters Degree in Science or equivalent qualifications for promotion to the post of SSO-I existed in the Service Rules of 2007 which has been retained in the Service Rules of 2017. Thus as far as promotion to the post of SSO-I is

concerned, no new provision has been added in respect of the existing incumbents. The respondents submit that the contention of the applicant that grant of financial upgradation under MACP will be less beneficial to him as he would have to remain in the same grade for 10 years whereas he would be in the zone of promotion to the post of SSO-I after completion of 4 years of regular service is untenable. Though it would not be appropriate to compare benefits of financial upgradation under MACP Scheme with the normal promotion as both are governed by separate set of rules, but the fact remains that having directly recruited in the grade of JSA-II in the year 1992, he has received 3 promotions i.e. JSA-I, SSA(G) and JSO. Regarding the contention that the eligibility criteria prescribed for promotion to the post of SSO-I is discrimination of promotees vis-à-vis direct recruitment is also not tenable as all promotees who otherwise possess the prescribed educational qualification are eligible for promotion to the post of SSO-I along with direct recruits. Hence, the OA being devoid of any merit is liable to be dismissed.

9. The applicant has filed written arguments note wherein he submits that the respondents have failed to take cognizance of order dtd.26.05.1977 issued by the Min. of Education and Social Welfare which envisages that the Diploma in Engineering in appropriate discipline plus total 10 years technical experience in their appropriate fields is equivalent to degree in engineering which would be considered valid for the purpose of selection to Gazetted Post and services under the Central/State Governments(Annexure-A9). He further submits that the action of the respondents is against the order dtd.23.11.2001 passed by this Tribunal in OA.No.1649/2000 and also dtd.08.07.2005 in OA.616/2004. In pursuance thereof the respondents issued SRO-132. For having extended the benefit the respondents at later stage cannot and is not empowered to withdraw the benefit. The action of

the respondents is against the service law. The main contention of the respondents that at the time of entry of the applicant the promotional channel was not available hence they are not affected is untenable as, if that contention is to be accepted, then the condition of appointment that the service rules amended from time to time is applicable will be a futile exercise. The applicant having put in more than 10 years experience after his Diploma is deemed to be Graduate in Engineering and the impugned recruitment rules do not provide for the provision which is equivalent to Degree in Engineering. He has produced a copy of the OM dtd.11.02.2015 wherein the decision conveyed in order dtd.27.12.2007 was cancelled and the Govt. of India instructions dtd.26.05.1977 is made applicable(Annexure-A10). The Govt. of India having extended benefit cannot take away such benefit by its own Ministry under its umbrella.

10. The respondents have filed additional reply statement reiterating the submissions already made in the reply.

11. We have heard the Learned Counsel for both the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and the reply statements.

12. We have gone through the main contentions of the applicant and replies of the respondents in detail. It is clear that the applicant was not entitled for further promotion from SSO-II to SO-I even under the earlier rules. The DAQAS service rules were revised vide SRO 132 dtd.06.12.2005 enabling persons like the applicant to at least get promoted to SSO-II. The other contentions regarding absence of promotional avenues to promotees and other points do not have any merit and therefore are liable to be dismissed.

13. However, along with the written arguments note, the applicant has submitted an order dtd.26.05.1977 issued by the then Ministry of Education & Social Welfare, Govt. of India wherein it is mentioned that the Govt. of India have decided to recognise the Diploma in Engineering in appropriate discipline plus total 10 years of Technical experience in the appropriate fields is equivalent to Degree in Engineering. This has also been confirmed by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in OA.No.2651/2012 relating to the Dept. of Telecommunications vide its order dtd.26.04.2013. The same was challenged before the Hon'ble High Court of Delhi in WP(C).No.4879/2014 but failed with the Hon'ble High Court of Delhi also taking the same view that in the absence of any contradictory evidence, it is to be considered that the order dtd.26.05.1977 is still valid. The respondents in their reply to the rejoinder have reiterated that for scientific and technical posts, higher educational qualifications need to be insisted upon and it is the prerogative of the employer since the duration of study and the subjects covered, training etc. is more elaborate and enlarged in Graduate Engineering course compared to the Diploma course. They have also reiterated that when the DAQAS service rules were revised in 2017, the rules have been notified with due approval of DoP&T and UPSC and in this OA since neither DoP&T nor UPSC is a respondent, their views would not be available.

14. Having considered the above aspects and accepting that the prescription of educational qualifications is the prerogative of the employers based on the requirements of the employer, it is to be admitted that when Govt. of India itself had taken a stand earlier that the Diploma holders with 10 years of technical experience would be considered as equivalent to a person with Graduation in Engineering and contrary evidence to the validity of the order

has not been brought in, the availability of the promotional avenues to persons who are already serving the department in similar capacities at the lower level should not be denied. We, therefore, order that the case of the applicant should be examined and processed for enabling him to be considered for further promotion to SSO-I. The respondents are at liberty to bring in necessary amendments to the service rules taking note of this position.

15. The OA is accordingly allowed with the above observation. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

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Annexures referred to by the applicant in OA.No.170/00295/2017

Annexure A1: Order dt.23.11.2001 in OA.1649/2000
Annexure A2: Order dt.08.07.2005 in OA.616/2004
Annexure A3: SRO 132
Annexure A4: Letter dt.24.04.2015 along with draft RR
Annexure A5: Letter dt.21.05.2015-approval to the grant of Organised Group A Service Status
Annexure A6: Representation of Colleagues
Annexure A7: Representation dt.31.01.2016
Annexure A8: SRO 10 – Defence Aeronautical Quality Assurance Service Rules 2017

Annexures with reply statement:

Annexure-R1: Notification dtd.08.02.1979 incepting DAQAS
Annexure-R2: SRO 45 dtd.02.08.2007
Annexure-R3: SRO 10 dtd.03.02.2017
Annexure-R4: SRO 132 dtd.06.12.2005
Annexure-R5: OM No.AB.14017/48/2010-Estt.(RR) dtd.31.12.2010

Annexures with written arguments note filed by the applicant:

Annexure-A9: Order dtd.26.05.1977
Annexure-A10: OM dtd.11.02.2015

Annexures with additional reply statement:

-NIL-

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