

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.275/2013

**Order reserved on: 25.09.2018
Order pronounced on: 26.09.2018**

Between:

R. Prahlada Chary, S/o. late Venkateshwarlu,
Age 45 years, Occ: T/G NFC, Hyderabad,
E.C. No. 5678, ZFP, R/o. B14/5, DAE Colony,
ECIL, Hyderabad.

... Applicant

And

1. Union of India, rep. by its
Secretary,
Department of Atomic Energy,
BARC, CSM Marg, Mumbai.
2. The Chief Executive,
Nuclear Fuel Complex, Hyderabad.
3. The Administrative Officer-III,
Nuclear Fuel Complex, Hyderabad.

... Respondents

Counsel for the Applicant ... Smt. Shoba N.

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

Hon'ble Mr. Swarup Kumar Mishra ... ***Member (Judl.)***

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA is filed seeking a direction to the respondents to consider the case of applicant for promotion as Scientific Assistant /B (SA/B) on the basis of acquisition of additional qualification in view of the revised promotion policy norms dt. 7.4.1992.

2. Brief facts of the case are that the applicant joined as CAT-II Trainee at Nagpur on 18.02.1986 and based on his performance, he was posted as Tradesman B on 31.01.1987. Thereafter, he grew in the career up to the stage of

Technician G. The respondents organization has a merit promotion scheme under which those who acquire additional qualification of Degree or Diploma are entitled for promotion on merit basis which is decided by a selection committee constituted for the purpose. The applicant states that after training, he was posted as Tradesman B instead of Tradesman C though he was eligible to be posted as Tradesman C. The applicant further claims that albeit he had acquired additional qualification of Diploma in Electrical and Electronics Engineering in 2002, he was not given the post of SA/B. Hence, the OA.

3. The applicant contends that as per the Clause 2.2.10 – Guidelines for promotion – deferred cases, in cases of deferment by standing selection committees for the first time, the cases can be put up again in the following year. In cases of candidates deferred twice or more times by standing selection committees their cases can be put up again only after a lapse of two years after each such deferment. He contends that he was given one opportunity, but he could not get through. The applicant also states that the applicants in OA Nos. 847/95, 149/2007 & Batch, 429/2009 & 457/2009 were redesignated to SA/B from the date of promotion as SA/A. Hence, he made a representation on 06.11.2006 requesting to promote him as SA/B but the respondents rejected the same vide proceedings dated 17.12.2012 stating as under:

“(1) The candidature of Shri Chary on acquiring Additional Qualification was considered for promotion w.e.f. 01.02.2003 by the Departmental Selection Committee in its meeting held on 28.04.2003 found him ‘UNFIT’ for the post of SA/B. The fact has been informed to him vide letter No. NFC/PAR.II/2-2003/06/368, dt. 17.11.2006. As per the Merit Promotion Scheme, only one chance is given for consideration for promotion on acquiring Additional Qualification.

(2) The Order dt. 06.08.2007, quoted in his letter, of the Hon’ble Tribunal passed in OA Nos. 149/2007 & batch relates to the re-designation of Scientific Assistants as SA/B who were promoted/ appointed as SA/A on or after 01.02.1992 and is not applicable for the categories of Technicians.

(3) As Shri Chary accepted the appointment and terms thereof to the post of Technician/B, his request for re-designation as Technician/ C instead of Technician/B from date of initial appointment cannot be accepted at this juncture."

The applicant claims that if the selection committee did not find him fit, they should issue a speaking order giving reasons for such non selection. Therefore, the rejection is arbitrary and illegal.

4. The respondents in their reply statement contend that additional qualification does not mean that the promotion would be automatic. Officials who acquire additional qualification are subject to screening/ interview by an appropriate Selection Committee. The applicant was accordingly considered by the selection committee, which found him unfit. Only one chance is allowed for consideration to promotion on the basis of additional qualification as per the norms existing in 2002. The respondents also rebut the claim of the applicant that he should have been inducted as Tradesman C instead of Tradesman B by stating that the applicant was inducted as Tradesman C based on performance during training. The applicant has been duly promoted over a period of time up to the level of Technician G on 01.07.2011. Therefore, the respondents do not have any bias against the applicant. The respondents claim that the OAs cited by the applicant relate to giving the grade of SA/B instead of SA/A to the applicants who were found suitable for promotion as SA/A w.e.f. 01.02.1992, on par with their juniors. In case of the applicant, he was not found suitable for promotion even to the grade of SA/A. Hence, reference to the said OAs is irrelevant in the case of the applicant.

5. Heard learned counsel for both sides and perused the documents.

6. Learned counsel for the applicant has drawn the attention to the order of this Tribunal in OA 457/2009, dt. 29.04.2010 that a second opportunity be given

to the applicant therein for appearing before the selection committee. Learned counsel for the respondents has retorted stating that the applicant was not even promoted as SA/A and therefore, the question of redesignation as SA/B does not arise. Counsel for the respondents has cited a judgment of the Hon'ble Supreme Court in ***State of Haryana & ors Vs. Ram Kumar Mann***, reported in **1997 (3) SCC 321**, which states as under:

“..Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf...”

..A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right...”

7. As seen from the records and the arguments of the learned counsel, it is evident that the applicant has appeared before the Selection Committee, but was not found fit on merit. The applicant has got promotions in the respondent organization over the years. The respondent organization has been fair to him in this regard. Even after acquiring additional qualification, he was allowed to appear before the Selection Committee as per rules. Having not been found fit based on merit in the first instance under the merit promotion scheme, the applicant is requesting for a second chance. In this regard, learned counsel for the applicant has pointed out that this Tribunal has ordered the respondents to give a chance to some other persons to appear before the selection committee. However, the circumstances and facts of the cases referred to by the learned counsel are different when compared with the present case. Moreover, the rules provide for only one opportunity to appear before the selection committee. Hon'ble Supreme Court observations given hereunder do not permit rule violation:

The Hon'ble Supreme Court observation in **T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544** held that “*Action in respect of matters covered by rules should be regulated by rules*”. Again in **Seighal's case (1992) (1) supp 1 SCC 304** the Hon'ble Supreme Court has stated that “*Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.*” In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held “*the court cannot de hors rules*” Further the Hon'ble Supreme Court observation relevant to this case is the one held in R. Kuppuswamy and anr vs UOI and ors 1991 (2) ATJ 355 (Hyderabad) dt 31.7.1990 wherein it was stated that “*Executive instructions do not amount to amendment of Recruitment rules and therefore they have no legal validity* ” The supremacy of the statutory rules over the executive instruction was elaborated by the Hon'ble Supreme Court in UOI vs Somasundaram Viswanath (1988) 3 JT 724.

In view of the foregoing, we have no other go but to reject the applicant's contention.

8. OA is therefore dismissed. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 26th day of September, 2018

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