

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO.288/2012

Date Of Decision:- 12th July, 2018.

**CORAM:HON'BLE SHRI.ARVIND J. ROHEE, MEMBER (J).
HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).**

**1. National Federation of
Atomic Energy Employees,**

Office at:
Opp. Niyamak Bhavan,
Anushakti Nagar,
Mumbai 400094.
Through its Secretary General
Shri. K.V.Jayaraj,
Working as:
Scientific Assistant "E", BARC
Trombay, Mumbai,
Residing at:
F:133/02, COSMOS CHS,
Sector-7, New Panvel (E),
Navi Mumbai 410206.

2. Atomic Energy Workers' & Staff Union,

Office at:
Old R-5 Shed, BARC, Mumbai 400085.
Through its- General secretary,
'Shri.A.Sreedharan,
Working as: Technician-'G'
Residing at:F-9, Yamuna,
Anushakti Nagar,
Mumbai 400094.

3. Shelendra Kumar Singh,

Working as:
SA/E,EE&I,PP/FRD
BARC, Trombay
Mumbai 400085.
Residing at:B-22/12, Kendriya Vihar,
Sector-11, Kharghar,
Navi Mumbai 410210.

....Applicants

**(Applicant by Advocates Shri. R.G.Walia for
Applicant No.1&2 and Shri. Ashish Mehta for
Applicant No.3.)**

Versus**1. Union of India**

Through its Secretary,
Department of Atomic Energy (DAE),
CSM Marg, Mumbai 400001.

2. The Director,

Bhabha Atomic Research Centre,
Trombay, Mumbai 400085.

3. Trombay Council (TC)/**Trombay Scientific Council (TSC)**

Through- its Secretary,
Bhabha Atomic Research Centre,
Central Complex, Mumbai 400085.

...Respondents

**(Respondents by Advocates Shri. R.R.Shetty &
Shri. S.G.Pillai)**

Reserved On : 22.06.2018.

Pronounced on: 12.07.2018.

ORDER

Per:- R. Vijaykumar, MEMBER (A)

This OA has been filed on 18.04.2012 under Section 19 of the Administrative Tribunals Act, 1985 by the applicants objecting to the new promotion norms promulgated w.e.f. 31.12.2008 and the creation of a new post of Technical Officer with a separate route for promotion. The applicants have sought the following remedies:

"8.1) This Hon'ble Tribunal may be pleased to call for the records which lead to the introduction of the "New Promotional Norms" (Annexure "A-1" and "A-2") for SA and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same;

8.ii) This Hon'ble Tribunal be pleased to order and direct the Respondents to follow the Promotional Norms prevailing/laid down as per Annexure "A-4" for promotion of SA to the post of SO;

8.iii) Cost of this application may be provided for;

"

8.iv) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case."

2. The Applicant had also sought interim relief which was denied. Pleadings were complete as far back as 28.10.2013 but arguments continued. Applicant No.3 sought to change his Advocate on 21.07.2016 which was accepted and the matter proceeded thereafter. Written notes of arguments were also invited on 06.12.2016 and the matter was adjourned for one reason or the other until Applicant No.3 made a

representation to the Principal Bench in MA No.4486/2017 requesting early disposal by that Bench following which a direction was given on 25.04.2018 to this Bench to dispose of the case after final hearing before 27.06.2018. This case has accordingly been heard finally.

3. Reference is also needed to Government of India (Allocation of Business) Rules, 1961 which excludes the purview of the DOP&T from all service matters relating to the Department of Atomic Energy and the need for consultation with the UPSC. These powers are vested in a Trombay Council set up by Government to consider such matters in relation to the Department of Atomic Energy and it is noted in this context, that the promotion norms of 2008 and the revised promotion norms of 2011 were all implemented with the approval of this Council.

4. The Applicants 1 & 2 are Unions representing Scientific Assistants (SA), among other employees, and have filed along with Applicant no.3 who is himself a

Scientific Assistant recruited in 1993 with a Diploma in Engineering. The respondents introduced new promotion norms w.e.f. 31.12.2008 in supersession of older norms for promotion in 31.12.2008 by the creation of the post of Technical Officer. These new norms were in supersession of an older system which has been invogue for considerable time of 50 years, reputedly from the very beginnings of the Department of Atomic Energy when the Department of Space and Department of Atomic Energy were unified. By introduction of this new promotion system, Scientific Assistants need to compulsorily acquire additional qualifications as prescribed for promotion to Technical Officer which then gave them accelerated promotion to an eventual selection and promotion as Scientific Officer. They also conducted exams from 2009 to 2012 prior to filing of this application in which they show that 994 candidates appeared and 408 of them qualified in the Departmental Qualifying Examination following on their basic eligibility. There were protests from the staff and

consequently, discussions were held with the staff Unions following which a Notification No.TC/1(52)/89/2012/24494 dated 26.03.2012 was issued and after reconsideration by the Norms Committee, revised guidelines were issued in Reference No.TC/1(52)/89/2011/56035 dated June, 27th 2011 and were given effect from July 1st, 2011. Under the older system prior to 01.01.2009 the rules specified, inter-alia: (p.101)

"a) Deserving candidates in grades SA (C,D,E,F) can be put up for promotion to equivalent Scientific Officer grade [i.e. SA 'E' to SO (D)] and full jurisdiction should be made by the concerned Division at the time when the case's put up for promotion. Existing criteria for promotion to scientific officer grades will apply, namely, work record of the candidate and aptitude and capability for research and/ or development work , as judged by the Standing Selection Committee during promotion interview. The Standing Selection Committee may however decide to promote the candidate either to scientific officer grade or to NHG in the Technical Stream only i.e. Scientific Assistant grades or to defer the case.

xxx xxx xxx

a) Candidates who acquire additional qualification in the relevant field with prior official permission while in

service, will be considered eligible for promotion to a higher grade subject to fulfilling prescribed ACR grading during the specified previous number of years. The candidate is required to put in minimum of 2 years of service before considered for promotion subject to fulfilling prescribed ACR grading.

xxx xxx xxx

ONLY ONE chance shall be given to personnel or promotion to higher grade based on acquiring additional qualification. Such candidates shall be put up for promotion on the anniversary date of their last promotion falling immediately after their acquiring the additional qualification. In case the candidates cannot be put up for promotion on such date due to reasons such as not having prescribed grading during the previous 3 years and then acquire 3 prescribed grading in subsequent years, they should be treated as special cases and need approval of competent authority. Following will be the criteria for considering cases for promotion on acquiring additional qualification while in service.

| | Additional Qualification | Min. marks to be obtained in the file exam. of additional qualification. | To be considered for promotion to grade |
|-------|---|--|---|
| (i) | S.Sc. | 60% | SA 'B' |
| (ii) | Diploma in Engg. | 60% | SA 'B' |
| (iii) | B.E./B. Tech./AMIE/AMI A/M.Sc./AIC or any other equivalent qualification* | 60% | SO 'C' |

5. In terms of old norms, one chance was being granted to appear in the interview to the candidates on acquiring AQ with requisite percentage of marks. If the candidate is found fit, he was granted the promotion/track change. If he is not found fit during the interview, the candidate is not given the benefit of AQ. Subsequently, the candidate is governed by the applicable promotion norms in the respective cadre, which also had a provision to avail track change/promotion on the basis of his/her performance/contributions through the process of interview by concerned Standing Selection Committee (SSC).

6. Under new norms, the track change from Scientific Assistant to Technical Officer and thereafter, towards Scientific Officer (SO) is possible but requires additional qualifications, passing the proficiency test and then clearing an interview. The new norms now require Scientific Assistant's in Grades-C,D,E and F above the entry Grade SA-'B' to compulsorily acquire prescribed qualification, if not

acquired earlier, with the approval of the competent authority during the course of their service and then to pass a departmental examination for being considered for promotion to the grade of Technical Officer's B,C,D,E. In particular, applicants assail the guidelines for change of track on promotion as implying that promotion of Scientific Assistant to Scientific Officer will essentially be blocked and only Technical Officers will be promoted as Scientific Officer. These guidelines are extracted below as set out in their application:

"2.2.1 All promotion cases are considered for the Next Higher Grade (NHG) as applicable only, except in the cases of candidates acquiring additional educational qualification while in service, where the cases shall be examined as per guidelines mentioned below in Para 2.2.9.

2.2.3 Cases, which do not fulfill the prescribed guidelines but are still considered deserving for being put up for promotion, are treated as special cases. All special cases shall have to be cleared by the competent authority (Trombay Council in case of Bhabha Atomic Research Centre and Apex Body of the Institute / Centre / Unit for all other DAE Units) before the candidate is interviewed by the Standing Selection Committee. For special cases, the relaxation in

the minimum residency period prescribed for promotion is not permissible.

2.2.9 Guidelines for change of track on promotion after acquisition of additional qualification while in service

i. From Scientific Assistant to Technical Officers shall be applicable to the persons in the grades SA (C, D, E, F) who have acquired the prescribed qualification with the approval of competent authority during the course of their service and passed the departmental examination above a threshold. They can be considered for putting up for promotion to grades of Technical Officers (B, C, D, E) respectively. Existing criteria for promotion to Technical Officer grades will apply, namely, work record of the candidate and aptitude and capability for development work, as judged by the Selection Committee during the interview. The Selection Committee may, however, decide to promote the candidate either to Technical Officer grade or to NHG in the Technical Stream only i.e. Scientific Assistant grades or to defer the case.

ii. Promotion or change of track from Draftsmen grades to Technical Officer grades can be considered only if they acquire prescribed additional qualification with the approval of competent authority.

iv. Change of track from SA to TO or from Technician to SA or TO while in service will not be considered without acquiring additional qualification as per the Recruitment norms.

v. All those who acquire additional qualification will have to appear for a departmental examination and those who obtain marks/percentile above a certain threshold would be considered for promotion / track change as per the qualification they have acquired. Those who have scored less than the threshold would be given one more chance for appearing in the departmental examination.

vi. Such candidates who have acquired the additional qualification and cleared the departmental examination above a threshold shall be put up for promotion on the date of their last promotion falling immediately subject to their CR gradings. Only one chance shall be given for appearing in the interview.

vii. Following will be the criteria for considering cases for promotion on acquiring additional qualification while in service.

| Sr. No. | Additional Qualification | Min. marks to be obtained in the exam. of additional qualification as required by the University / Institute for awarding the Degree | To be considered for promotion to grade |
|---------|--------------------------|--|---|
| (i) | B.Sc. | 60% | SA 'B' |
| (ii) | Diploma in Engg. | 60% | SA 'B' |
| (iii) | M.Sc. | 60% | TO 'C' |
| (iv) | AMIE/AMIA/BE /B.Tech | 60% | TO 'C' |

For cases at (i) & (ii) above,

Selection Committees can promote the candidates to grade SA'B' only.

For cases at (iii) & (iv) above, Selection Committees can promote the candidates to one grade lower i.e. to grade TO (B).

viii. Candidates, who after acquiring additional qualification with 60% marks or above and have cleared departmental examination and finally also appeared for promotion interview by the relevant Selection Committee (as per para vi above) and are not found fit for promotion to the eligible grade shall be considered for further promotions in the normal course only as per applicable guidelines, without the benefit of their additional qualification."

7. The other criteria for promotion such as work record, aptitude and capability for developmental work will be assessed by the Selection Committee during the interview and then the Selection Committee would make recommendations for promotion of the applicant to the Technical Officer grade or to the next higher grade in the Scientific Assistant grade itself. Essentially, this implies that Scientific Assistants who have not acquired the additional qualifications at the higher level as required for promotion to

Technical Officer cannot hope to progress beyond the stage under the merit based promotion Scheme of the department and get selected for promotion as Scientific Officer.

8. The applicants in their application, Rejoinder and multiple Sur-Rejoinders and Affidavits have raised the following issues:

(i) That the new norms were introduced suddenly on 31.12.2008 taking effect from January, 1st 2009 all of sudden without any proper notice to the existing Scientific Assistants including the applicants. It requires a tougher and higher grade of qualifications which places fresh hurdles on their path and has resulted in very few promotions. They state that under the revised norms, the Scientific Assistants are subject to a very strong filtration process and even after acquiring the needed additional qualifications, they may not be able to get through the filtration process to become a Scientific Officer.

(ii) In particular, the guidelines for acquiring additional qualifications and the period prescribed for obtaining them and then

seeking a track change to Technical Officer are discriminatory against Sr. Scientific Assistant's including applicant no.3, who will not be able to seek such a track change for promotion as Scientific Officer.

(iii) They argue that no proper scientific study was done before announcing this new scheme and the reasons given are not plausible.

(iv) In this regard, they compare the situation in DAE with the Department of Space which originated along with the respondent department and in which such a scheme has not been introduced and in fact, residency periods have been reduced for Scientific Assistants which has, consequently, boosted their morale. They feel that the same pattern should have been adopted in the present department since it is a sister department.

(v) They claim that Scientific Assistants acquire and many have acquired, vast experience in the work of the department and are doing the same work as the Scientific Officer who are recruited by the department.

Therefore, they would contend that there should be much simpler norms that could enable them to also become Scientific Officers and the new norms present very grave hurdles in providing such a route for career enhancement. They refer to their original appointment scheme as Scientific Assistants which provided for merit based promotion scheme and which also presented them with the prospect of becoming Scientific Officer. The present change, in their view, is a grave modification and seriously impacts their legitimate expectations for such a career enhancement and therefore, their rights are consequently impacted.

(vi) In support, they have cited an order of the Ministry of Education & Social Welfare which recognizes a Diploma in Engineering in the appropriate discipline plus a total of ten years of technical experience in the appropriate field as equivalent to a Degree of Engineering and refer to an order of Ministry of Communication and IT implementing the orders of Hon'ble High Court of Delhi passed in W.P.(C) No.4879/2014 dated

05.08.2014. They also refer to a judgment of the Hon'ble High Court of Punjab & Haryana in (p.269) in a bunch of Writ Petitions dated 23.12.2009 in which the Circular of 26.05.1977 was upheld in its application.

9. The respondents who have filed their reply, sur-rejoinder and further sur-rejoinder, have asserted that both in terms of Government of India (Allocation of Business) Rules, 1961 and the UPSC (Exemption from Consultation) Regulations, 1958, the Department of Atomic Energy is authorised to independently decide all matters relating to its personnel in terms of Recruitment Rules and appointment including conditions of service of its employees. They state that the Promotional Rules that have been notified have all followed the required procedure and cannot be imputed on this ground and have sanctions of the Competent Authority.

10. They state that BARC is a Premier Multidisciplinary Research and Development Organization under DAE and is engaged in the development of nuclear equipment, medical applications of technology, food

preservation, non-destructive testing and other scientific programmes for the country. Graduate Engineers and Post Graduate Scientists are recruited through a Training School and are involved in Research and Development, a significant number also get promoted from the rank of Scientific Assistant who are engaged for assisting Scientific Officers in Research and Development work to achieve the targets of the Department. The qualification and method of selection for the two categories is entirely different. After the implementation of the 6th Pay Commission when pay scales were merged and fewer slabs were introduced and with the introduction of performance related incentive scheme (PRIS), a need was felt to review the promotion norms to meet the stringent quality control of human resources required for these activities especially since all these categories were governed by the merit promotion scheme. It was in this context, that a new cadre track of Technical Officer was introduced. A further category of Scientific Assistant 'G' was also introduced

to enable higher pay opportunities for those employees who continued in the cadre of Scientific Assistant. The Department had also to take into account the enormous changes in the educational system and vastly increased availability, since commencement of the scheme fifty years ago. A variety of Universities with different standards of education and varying syllabus had come into existence and therefore, in addition to acquiring a higher qualification, a Departmental Qualifying Examination (DQE) was necessary. The additional qualification that Scientific Assistants can obtain included degrees from any recognized University or Institution approved by the AICTE, UGC and Ministry of Human Resources Development subject to clearance from the respective heads of division and only excludes study by distance education mode. The views of the employees' Unions were considered and also incorporated in the final decision. They have stated that even before this application was filed in 2012, from 2009-2012, 994 Scientific Assistants appeared and 408

qualified to be appointed as Technical Officer. They argue that the applicants came before this Tribunal only in the year 2012 and cannot seek to challenge orders of 2008 which are attracted by limitation under section 21 of the A.T. Act. Prior to 1.1.2009, they state that besides the normal channel of promotions for Scientific Assistants, they were also entitled to be considered for track change for promotion as Scientific Officer on acquiring additional qualifications or based on meritorious performance, research contribution and leadership qualities and therefore, this track change was not automatic and went through an interview process where failed candidates who would not become Scientific Officer, would have to be satisfied with the available promotion norms of their respective cadre (S.A.). This continues to be available for the applicants in case they do not meet the requirements that have been posed for moving through the category of Technical Officer and therefore, no injustice have been done to them. The norms have also changed

after the presentation by the applicants which is also noted in reference no.TC/1(52)/89/2011/56035 dt. 7.6.2011. They question the comparison with the Department of Space (DOS) since the number of Scientific and Technical staff working in DAE is far higher than in DOS. Therefore, no reasonable comparisons are possible and the present changes were based on a detailed study report by the Suri Committee appointed by the DAE. They have also stressed the point that prior to 1.1.2009, only one chance was being granted to appear in the interview for candidates who acquired academic qualifications with requisite percentage of marks and the position is now improved in the new promotional norms. They also expressed their opposition to promoting persons as Scientific Officers through multiple channels without requisite qualifications because this would dilute the quality of research work and the present norms for track change is for improving quality of research. They also emphasise that the objectives and policies of DAE and DOS are quite different, although

both come under the charge of the Hon'ble Prime Minister.

11. With reference to the policy impact, respondents also give figures, somewhat different from the application, for the persons who participated in the selection process for Technical Officer as 544 in 2009 to 2012 out of which 230 (40%) are qualified and a majority of these persons succeeded in the interview and became Technical Officers. Therefore, it cannot be contended that the norms had been made so difficult as to deny promotion for Scientific Assistants.

12. Arguing that these norms were part of a policy decision of the Department, they refer to a number of precedent. In **Government of Tamil Nadu vs S.Arumugam**, the Apex Court held that creation of promotional avenue or the manner in which the promotional avenue is created, is purely a decision of policy and cannot be held to be violative of Article 14 and 16 of the Constitution of India. In **State of Andhra Pradesh v. V.C.Subba Rayadu**, the Apex Court held that Courts cannot interfere in matters of policy. On the aspect of their

objective to improve the quality of Scientific Staff and create additional promotional avenue as Technical Officer, they relied upon the Judgment of the Apex Court presided by three Judges in **Prabhod Verma vs State of Uttar Pradesh**, where it was decided that in the process of classification, the State has the power to determine who should be regarded as class for the purpose of Legislature and in relation to a law enacted on a particular subject. The classification would be valid if it satisfies the two tests of reasonable nexus to the object of the Legislature and if there are intelligible differentia distinguishing those that are grouped together from the others. In the present case, a higher qualification of B.Tech/Masters has been set to improve the quality of Scientific Research and therefore, satisfies both these tests. Further, in **Technical Executive (Anti-Pollution) Welfare Association vs Commissioner of Transport Department (1997) 9 SCC 38**, the Apex Court prohibited interference by Courts by embarking on the task of creating

promotional avenues, altering promotional requirements and thereby challenging Legislation or Administrative instructions. In **M.Ramesh v. Mohd. Anwar Ali (2008) 2 SCC (L&S) 630**, the Apex Court held that it would not be safe to test the constitutionality of service rules on the touchstone of fortunes of an individual meaning thereby that merely because some hardship would be caused by the rules, the said rules cannot be struck down. This rules out the consideration set out by applicants that acquiring a degree becomes difficult for persons who have already crossed a particular age. The issue of equivalence is also an administrative decision as held in **Basic Education Board, Uttar Pradesh v. Upendra Rai (2008) 1 SCC (L&S) 771**. They have also referred to **Ramesh Prasad Singh v. State of Bihar (1978) 1 SCC 37**, which laid down that in the absence of Recruitment Rules, an administrative instruction will prevail. They argue that under the Rules, the DAE has a special status independent of UPSC and is permitted to frame its own norms based purely on merit and

therefore, applicants cannot find fault with the norms specified. In **Technical Employees Association of Railways and Anr. V. Ministry of Railways** (2001 SCC (L&S) 89), the Apex Court came down very heavily on the plea of the Employees (Khalasi) opposing prescription of higher qualification for further promotions and that such requirements are not violative of Articles 14 and 16 of the Constitution of India.

13. They also point out that the Scientific Assistants who have already been promoted to the post of Technical Officers between 2009 to 2012, have not been impleaded as parties in the present application and therefore, there is a non-joinder of parties. Therefore, the decisions on promotion by track change relating to them cannot be affected.

14. We have gone through the OA along with Annexures A1 to A6 and rejoinder along with Annexure RJ-A1 filed by applicants. We have also gone through the reply filed by respondents along with Annexures R-1 to R4 and have carefully examined the various

documents annexed in the case.

15. The learned counsel for applicants no.1 and 2 were heard. Counsel for respondent no.3 was again absent and he was directed to file written submissions in this place. We have also heard the learned counsel for the respondents and carefully considered the facts and circumstances, Written Submissions, law points and rival contentions in the case.

16. The respondents have opposed the application on two grounds of limitation and non-joinder of parties. These are basically on account of the fact that the new promotional norms were first introduced in 2008 w.e.f. 01.01.2009 and then revised after discussions with staff w.e.f. 01.07.2011. Therefore, they urge that all promotions that have been done previous to this application cannot be reversed or objected to by the applicants. The candidates who gained benefits in this intervening period have also not been impleaded as respondents and therefore, any plea against them would not be available for relief as there is a clear non-joinder of parties. The arguments of respondents are patently reasonable given the context and any benefits of this order to the Applicants could only be prospective

after date of filing of this application and with reference to the revised promotional norms of 2011. However, since the staff through the Unions have been agitating the matter with the respondents resulting in a revised scheme in 2011, their present application objecting to the scheme itself is not considered affected by limitation.

17. The domain of judicial discretion in the area of policy determination and policy execution is very limited. The respondents have cited a number of judgments that limit the discretion of this Tribunal and that it cannot interfere, by examination of the objectives of policy, the policy itself and the creation of promotional avenues as part of that policy. Further, in the process of classification, it is only cases that violate the principles of classification which could attract the attention of a Court. In the present case, the Department of Atomic Energy, through its Trombay Council, a duly constituted and competent body for the purpose of developing and approving policies in relation to personnel, recruitment and promotion has decided that they need to change recruitment methods set 50 years ago to be in tune with their current requirements

and objectives and the state of education in the country. This state of education refers not only to the greater availability of graduate courses in science and engineering but also to the improvements and upgradation of their syllabi. In the present case, the applicants have alleged that they were expecting career improvements based on old promotional norms which were also available and known to them at the time of their appointment. Therefore, they claim to have had some legitimate expectations in respect of their career progression through the ranks of the Scientific Assistant Cadre and then to become Scientific Officers by track change following the selection process. They have also complained that no notice was given prior to the amendment issued in 2008 and which took effect from 01.01.2009. With regard to the new promotional norms, they have also reservations on the nature of selection which is evidently tougher with the compulsory acquisition of additional qualification and with a departmental qualifying examination. During the later

affidavits and in the written submissions, the applicants filed an order of the Ministry of Human Resource Development in reference No. F.No.11-15/2011-AR(TS.II) dt. 10.07.2012 directing that the Institution of Engineers (India), Kolkata will not make fresh admissions for the fifteen courses of Section A & B examination conducted by them. Accordingly, a review of the programmes was ordered and pending such review, institutions with permanent recognition were directed not to take fresh admissions. This order was modified in Ref. No. F.No.11-15/2011-AR(TS.II) dt. 06.12.2012 by which students who were enrolled up to 31.05.2013 would remain eligible but the recognition for the relevant courses would guide admissions from 01.06.2013 onwards. On this basis, a clarification was sought from the Ministry of Human Resource Development and a reply was obtained in file reference No. F.No.28-2/2015-TS.II/TC dt. 16.12.2015 stating that the Institution of Engineers (India), Kolkata was not an approved Institution and that the Department had already withdrawn the approval

of equivalence and recognition of qualifications vide its OM dated 06.12.2012. In accordance, a subsidiary of respondents, the Nuclear Power Corporation of India Limited, issued letter No. NPCIL/HRP/2(101)2016/27 dt. 01.02.2016 stating that the AMIE qualification shall not be recognised as equivalent to BE/B.Tech for grant of permission for acquiring additional qualifications while in service for change in track. The applicants have alleged that this new circular creates further hurdles for them. We shall consider all these issues in the following paragraphs.

18. The applicants have attempted a comparison with the far more liberalized systems for promotion that they say exist in the Department of Space which was once a sister organization of Department of Atomic Energy. However, as respondents point out, the DAE is a far larger organization in terms of its scientific manpower and therefore, they deny that this kind of comparison bears legitimacy. Comparison of Departments, in any case, is not a valid method of arguing

that requirements for that particular department should be the same in respect of career progression etc. The objectives of the Department guide the need of staff and the qualifications of staff and therefore, neither legacy nor plain comparisons between departments can be feasible administrative criteria. In cases where two persons belonging to different departments had the same nature of work, there may be an argument for granting them similar pay but this is commonly applicable to clerical cadres and this is usually addressed by the Pay Commissions. When it comes to technical and scientific work, the nature of the work may be quite different and therefore, such comparisons have no meaning. Having both the Departments under the Hon'ble Prime Minister, cannot further support the argument that there should be similar career progression in the two Departments since that is only an administrative arrangement. Therefore, the contentions of applicant are not acceptable.

19. The applicants have contended that the Suri Committee which recommended change

in promotional norms was appointed only a few weeks before the decision was taken in 2008. However, as pointed out by the respondents, the need for revision in promotional norms arose as early as the recommendations of the Sixth Pay Commission which merged various pay scales and even introduced the PRIS for merit based incentive promotions. They have also pointed out to the enormous change in educational systems across the country. There have been many more Universities set up by Government and by private entities with differing standards of education although all these are recognized in some fashion. The syllabi for courses in science and engineering have also changed vastly with the growth of knowledge and applications in science and technology. These changes have applied across the Board as we know to the kind of subjects that are taught even at the Higher Secondary Level to the Undergraduate Level and then at the Masters Level. Therefore, there was an evident and pressing need for altering the requirements for entry and promotion at different grades of service

within the research and development wings of the respondents and it so happened, that this came about 50 years later from the establishment of the institution, in 2008. The applicants have cited some judgments by which Diploma holders with ten years' service are treated as equivalent to graduates but these are in the totally different context of the Department of Education and have no evident relevance to the present situation nor have the applicants underlined any issues that bear relevance except to cite these judgments as precedents in this case. Since the contexts are different, we are unable to accept them as judicial precedents that bind this Tribunal.

20. The applicant No. 3 has made a useful comparison between the old promotional norms and the new promotional norms. The old promotional norms for Scientific Assistant had two channels for enabling track change and selection-cum-promotion as Scientific Officer. The first channel was for seeking permission to obtain an Additional Qualification (AQ) and once the required

percentage was obtained in these AQs, the Scientific Assistant would be considered for promotion through departmental interviews. The second channel was for Senior Scientific Assistants to be considered for promotion by interview based on their experience, meritorious performance, remarkable contribution and leadership quality but without acquiring additional qualifications. The second channel has been abolished although, as respondents state, an additional promotional level of SA-G Grade has been introduced. The first channel has also been retained in a different form. Permission to acquire AQ will be conditional on an A1 APAR over the last three years and after obtaining and passing the AQ within six years and obtaining a minimum of 60% marks, the Scientific Assistant will be eligible for appearing in the DQE written examination and after passing this examination with 60% marks, and with minimum A1 APAR for the previous three years, he would be subject to an interview and if he passes, the Scientific Assistant would be selected and promoted for

a track change as Technical Officer. Thereafter, he has to progress on the Technical Officer Cadre track and after one year departmental training, followed by passing relevant exams and interview, he would be allowed a track change by selection-cum-promotion as Scientific Officer.

21. From the above, we note that the new system is certainly tougher and is evidently aimed at ensuring that candidates for the post of Scientific Officer fulfil certain pre-conditions necessary to perform in that post. These are policy issues and this Tribunal sees no scope for interference in the selection process determined by the Competent Authority, which has set out this policy document, and that decides how quality has to be assessed for the post desired by the Applicant for Scientific Officer or, for that matter, the Technical Officer. A comparison with the previous norms shows that those who acquired additional qualifications earlier were straightaway subject to an interview. In comparison, the Scientific Assistants are now compelled to perform well

before applying for permission to acquire additional qualifications. Once they acquire these qualifications with a certain standard of results, they are subject to a departmental qualifying examination. The respondents have explained the need for DQE because the syllabus and quality of education varies from college to college across the country. Therefore, a uniform and fair system of assessment is required to compare different categories of qualified candidates who have gained degrees in a variety of such institutions, all recognized by the concerned Governmental authority. For persons qualifying in this exam, the process continues with an interview that focuses on the performance of the applicants and inclination towards research and development. Therefore, the selection process now is evidently much more objective than the previous norms which were completely qualitative by depending entirely on a single interview process which could be open to allegations of bias and mala fide, with needless disputes and also the scope for

unsuccessful candidates to get demoralised because of their real or imagined perceptions of bias. The new norms further introduce one more layer of one-year training which enables the standardization of the quality of persons called for interview and standardization of the level of information that was fed to them during that process of one-year training. It is, therefore, quite apparent that the new promotional norms are far superior to the old ones and correspond to similar evolution in the patterns of examination-cum-recruitment in different Selection Boards across the country including the UPSC, SSC, State PSC, etc.

22. The applicants have also challenged the lack of notice given to them. However, it is observed from the promotional norms that persons with three A1 APARs were to be considered for permission to acquire additional qualifications and they had six years to obtain such qualifications. These qualifications included AMIE which is a part time engineering degree which was de-recognized only for admissions made after

01.06.2013 which is five years after the new promotional norms were introduced in end-2008. This four and half year period for getting admission into an AMIE course, appears to be adequate notice period for the Applicants, especially diploma holders, to obtain additional qualifications and therefore, the lack of notice cannot be considered a defect in the notification of the new promotional norms. In any case, the Competent Authority which administers the system has the exclusive privilege to devise new systems in accordance with their needs and requirements and perhaps, it was opportune to do so when the Sixth Pay Commission caused substantial changes in the grades of staff and scales of pay.

23. A more basic issue is whether the legitimate expectations of the applicants have been affected by the notification of revised promotional norms whereby no opportunities were open to Scientific Assistants who did not make the grade by virtue of obtaining A1 APARs or those who did not have or acquire additional qualifications

as specified for following the only available track change route of becoming Technical Officers. At the time of recruitment, such a Scheme was available. In place of the removal of the Scheme, the respondents appeared to have granted a salve by way of an additional pay grade called Scientific Assistant-G. Scientific Assistants who do not succeed in moving to the track of Technical Officer can then only hope to become Scientific Assistant-G and not Scientific Officer. In the previous system, Scientific Assistants could hope to be considered for selection-cum-promotion as Scientific Officer based on shortlisting and selection through an interview that looked into various aspects of their work and their contribution to research and development as well as leadership quality. In this regard, it is settled law that there is no right to promotion but only a right to be considered for promotion for persons in the feeder category. Further, a distinction needs to be made between hopes and expectations and legitimate expectations, the latter is

testable and enforceable in a court of law. In the present case, the Applicants certainly knew of the possibilities of rising in the ranks and getting selected as Scientific Officer. However, they were evidently also aware that this was not an automatic process but depended on their performance on the job on various parameters and on the knowledge that they had gained over the years including by acquiring additional qualifications. Therefore, the goal of becoming Scientific Officer for these entrants was conditional on their efforts in different directions. In the present case, we note, as respondents mention, that the old norms were introduced more than 50 years ago. The situation at that time found a small educated and suitably qualified pool when capable individuals were perhaps not able to obtain a graduate degree in engineering or post graduate degree in science. Therefore, diplomates in engineering could aspire to much higher levels in any organization. As respondents state, the situation has changed drastically today and it is clearly their policy decision

to introduce changes that reflect the character of education in the nation and the availability of educational opportunities and graduates of this kind. They have, it appears, raised the bar while reducing the subjective character of the selection process with the claimed objective of achieving quality goals in human resources at their command in crucial posts. The Applicants may argue that this change makes it difficult for them to meet the requirements and causes much dismay and hardship but they would necessarily have to abide by the changes introduced with the objectives set for policy. The alternative would then be to abandon the policy objective merely on the grounds that the Respondents should facilitate the selection of the Applicants, without any efforts on their part to rise up to the changed situation and the expectations of the employer. Therefore, expectations based on the persons' hopes at the time of entering service have to be co-related to the needs of the departments as they evolve and a candidate has to comprehend such needs and

improve not only his qualifications but also his basic theoretical and practical understanding of the subject so that he can contribute at a higher level in the organization. To sit back and not improve qualifications or academic capabilities but simply devote time to doing work as allotted would not reflect very creditably on the leadership and motivational quality of the individual. In this regard, respondents have cited the decision of Hon'ble **Apex Court in Technical Employees Association of Railways and Anr. Vs. Ministry of Railways (supra)** which held that a prescription of higher qualification for promotion did not violate Article 14 & 16 of the Constitution and further, in **M. Ramesh Vs. Mohd. Anwar Ali (Supra)** that merely because some hardship would be caused by the rules, the said rules cannot be struck down. From the above discussion, it is clear that the expectations of the Applicants while entering service were hedged with conditions and a selection process that has, however, toughened over time and especially with the new promotional

norms. As the decision of the Apex Court lays down, there is no vested right that was formed and therefore, no legitimate expectations could be said to have been created. To reiterate, the Applicants have a right to be considered but they would need to prepare themselves for the eventual result and cannot rest their careers on faint hopes.

24. There is, however, a degree of hardship that could be caused to a less than an average employee in this cadre, who had hoped to work hard and then retire in a higher promotional cadre with corresponding pension. The inability to secure an AMIE degree and the need, therefore, to take leave for two to four years and attend courses full time to secure additional qualifications can be a considerable burden for many applicants. Many of them could also have been married by that time or even be old and have family responsibilities, and would, therefore, face hardship at different levels in their families. This Application by the Unions and an individual reflect their anxieties of such a nature. However, an application of this

kind before this Tribunal can only be decided from the stand point of statute, rules and natural justice and not from the aspect of sympathy and morale or equity, which are constituent elements that have to be considered by any administration as part of its policy development. We do not wish to make any observations on this course but to emphasise that in terms of a judicial examination of the contentions of the applicant, they have no merits that can sustain their pleas for relief.

25. In the circumstances, this application is dismissed as lacking in merits and without any order as to costs.

(R. Vijaykumar)
Member (A)

(A. J. Rohee)
Member (J)

srp/amit/Bala/Ram.