

**Central Administrative Tribunal  
Principal Bench  
New Delhi**

**OA No.3448/2013  
with  
OA No.2635/2014**

Reserved on : 28.02.2019  
Pronounced on : 19.03.2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Mohd. Jamshed, Member (A)**

**OA No.3448/2013**

Harpal Singh Panwar, age 52 years  
S/o late Raghbir Singh,  
R/o 470, Majri Mafi, Mohkampur,  
Dehradun-248005. ... Applicant

(By Mr. S. K. Gupta, Advocate)

Versus

1. Union of India through Secretary,  
Ministry of Defence, South Block,  
New Delhi-110011.
2. Defence Research & Development Organization  
through its Secretary (Director General & SA to RM),  
DRDO Bhawan, Rajaji Marg,  
New Delhi-110005.
3. Chairman,  
Recruitment and Assessment Centre (RAC),  
DRDO, Lucknow Road, Timarpur,  
Delhi-110054.
4. Director (Personnel),  
DRDO Headquarter,  
217, A Block, DRDO Bhawan,  
New Delhi-110011.

5. Director,  
Instrument Research & Development Establishment  
(DRDO), Raipur Road,  
Dehradun-248005.

6. Shri S. S. Sundram,  
D.S., C/o Secretary (DG of DRDO and SA to RM),  
DRDO Bhawan, Rajaji Marg,  
New Delhi. ... Respondents

(By Mr. Hanu Bhaskar, Advocate)

**OA No.2635/2014**

Dr. Maitreyee Nanda W/o B. N. Nanda,  
R/o D-II/93, West Kidwai Nagar,  
New Delhi-110023.  
(Working as Scientist). ... Applicant

(By Mr. S. K. Gupta, Advocate)

Versus

1. Union of India,  
Scientific Adviser to Raksha Mantri  
and Secretary, Department of Defence  
Research and Development Organization  
(DRDO). DRDO Bhawan, Rajaji Marg,  
Metcalfe House, Civil Lines,  
New Delhi-110005.

2. Director,  
Recruitment and Assessment Centre, DRDO,  
Ministry of Defence,  
Lucknow Road, Timarpur,  
Delhi-110054. ... Respondents

(By Mr. Subhash Gosain, Advocate)

## ORDER

**Justice L. Narasimha Reddy, Chairman :**

Common questions of facts and law are involved in these two OAs. Hence, they are disposed of through a common order. The relief claimed in both the OAs is that the action of the respondents in declaring the applicants as unfit for promotion under Flexible Complementing Scheme (FCS) to the post of Scientist 'G' in various years, be set aside, and the respondents be directed to consider their cases afresh for promotion to the post of Scientist 'G', with effect from the date on which their juniors were promoted, and to extend the consequential benefits. The relevant facts are as under.

2. The applicant in OA No.3448/2013 (hereinafter referred to as the first applicant), was appointed as Scientist 'D' in the Defence Research & Development Organisation (DRDO) in the year 1984. Thereafter he was promoted to the post of Scientist 'E', and w.e.f. 01.07.2004, as Scientist 'F'. He acquired the qualification for promotion to the post of Scientist 'G' by the year 2009, but he was not considered in the years 2009, 2010 and 2011. It is also stated that the Recruitment Rules were amended in March, 2012, stipulating that the Internal Selection Committee (ISC) was to have a subject expert, and that in his

case the interviews were conducted with a subject expert from a different specialisation, and was denied promotion. Similar exercise is said to have been repeated in the year 2013. It is under these circumstances that the applicant prayed for the relief of setting aside of SRO 21 dated 23.03.2012, and to quash and set aside the decisions of the respondents wherein he was declared as unfit for promotion to the post of Scientist 'G' in the years 2012 to 2013.

3. The applicant in OA No.2635/2014 (hereinafter referred to as the second applicant), joined the service of the DRDO as Scientist 'B' in the year 1985, and acquired promotions up to Scientist 'F' by 2007. It is stated that she became entitled to be considered for promotion to the post of Scientist 'G' in the year 2013, and that her specialisation was Cryogenics. She contends that in the ISC that was constituted in accordance with the Rules of the year 2012, the subject expert was not from Cryogenics, and she was assessed as unfit for promotion, in the interview conducted on 18.05.2013. The same situation is said to have been repeated in the interview held on 30.06.2014. She challenges the action of the respondents in declaring her as unfit for promotion on the two occasions as illegal and arbitrary.

4. The applicants contend that their services are governed by the Rules framed in the year 1979, and accordingly they are required to be considered for promotion to the post of Scientist 'G' in accordance with the procedure prescribed thereunder. It is also pleaded that even if the amended Rules of 2012 were to be applied, the ISC was to comprise of a subject expert in the subjects of their (applicants') specialisation, and in their cases, no one connected with their fields of specialisation was present in the respective Committees. It is stated that the specialisation of the first applicant is Computer Engineering, and in his case, the so called subject expert was from Physics. As regards the second applicant, it is stated that her specialisation is Cryogenics, and in the ISC, a Professor from the Mechanical Engineering was included.

5. The respondents filed separate counter affidavits in the OAs. The facts pleaded by the applicants up to the stage of their being promoted to the post of Scientist 'F' are not disputed. It is stated that the Recruitment Rules governing the posts of Scientists, i.e., the Defence Research & Development Service Rules, 1979, were amended vide SRO 21 dated 23.03.2012, and the ISCs were constituted in the case of the applicants year after year, strictly in accordance with the Rules.

It is stated that the applicants were found unfit for promotion for the years in question, and that no exception can be taken to the conclusions arrived at by the experts. The plea of the applicants that the experts in their subjects were from different fields of study, is denied.

6. We heard Shri S. K. Gupta, learned counsel for the applicants, and Shri Hanu Bhaskar and Shri Subhash Gosain, learned counsel for the respondents.

7. The applicants joined the service of the DRDO, and acquired promotions up to the level of Scientist 'F'. Till the year 2012, the service conditions were governed by the Rules of 1979. Rule 8 thereof prescribed the manner of maintenance of the Service after it was constituted in the year 1979. The concentration is more on the procedure to be adopted for promotion from one category of Scientists to another. As regards promotion from Scientist 'F' to Scientist 'G', sub-rule (2) thereof reads as under:

“(2)(a) Promotion from one grade to the next higher grade in the service, except to the grade of “Scientist ‘H’ (Outstanding Scientist) or Distinguished Scientist” shall be made under the Flexible Complementing Scheme from amongst the officers possessing the broad educational qualifications as given in Schedule III. Promotion up to the level of

Scientist 'F' shall be made on the basis of evaluation of confidential performance appraisal reports and assessment interview and for Scientist 'F' to 'G' and for Scientist 'G' to "Scientist 'H' (Outstanding Scientist) or Distinguished Scientist" on the basis of the evaluation of confidential performance appraisal reports and assessment by a Peer Committee. The internal Screening Committees constituted as specified in Schedule 1A and 1B, shall review the confidential performance appraisal reports of Scientists 'B' on completion of minimum residency period of three years and of Scientists 'C', 'D' and 'E' on completion of minimum residency period of four years and of Scientist 'F' and Scientist 'G' on completion of minimum residency period of five years and three years respectively as on 30<sup>th</sup> June of the year to which the assessment boards pertain. The Internal Screening Committee shall evolve its own criteria for deciding the eligibility of scientists for consideration by the Assessment Boards and award average marks for the scientists. While deciding eligibility of Scientists for assessment, the Internal Screening Committee shall follow the criteria enumerated below:"

Remaining part of the rule dealt with the periodicity of the convening of the Peer Committee, method of functioning of the Assessment Board, implementation of the recommendations of the Assessment Board, etc. Since those aspects are not immediately relevant for the purpose of these OAs, it is not reproduced.

8. To the extent the rule extracted above concerns the post of Scientist 'G', it is relevant that rule 8 (2) (b) (ii) provided for constitution of a Peer Committee as prescribed in Schedule 1D, for assessing Scientists 'F' who have completed the minimum residency period, and are recommended by the ISC for promotion to the next higher grade, i.e., Scientist 'G'. In Schedule 1D, the composition of the Peer Committee is mentioned as under:

- "(i) Chairman, Recruitment and Assessment Centre, Department of Chairperson Defence Research and Development
- (ii) Secretary, Department of Defence Research and Development Member
- (iii) Any two Secretaries from other Scientific Departments of the Central Government, decided by the Chairperson Member
- (iv) An eminent Scientist or Management Specialist, nominated by the Member Chairperson
- (v) One Distinguished Scientist of Defence Research and Development Organisation, nominated by Director General of Research and Development Member"

9. The Rules were amended through SRO 21 dated 23.03.2012. An altogether new provision, i.e., clauses (4A) and (4B), were inserted after clause (4). They read as under:

“(4A) “Internal Screening Committee (Main), means the Committee constituted under sub-rule (2) of rule 8 for the purpose of interactions with Scientists ‘F’ for promotion and giving their recommendations to the Peer Committee”;

(4B) “Internal Screening Committee (Preliminary), means the Committee constituted under sub-rule (2) of rule 8 for the purpose of evaluating the performance appraisal reports of Scientists ‘F’ for promotion and giving their recommendations to the Internal Screening Committee (Main)”;

The procedure prescribed therein is exclusively for the purpose of promotion to the post of Scientist ‘G’. In rule 8, the following clauses were inserted:

“(b) in rule 8, in sub-rule (2) in paragraph (b), -

“(ia) after item (i) the following item shall be inserted, namely-

(A) For promotion from Scientist ‘F’ to Scientist ‘G’, Internal Screening Committee (Preliminary) specified under Schedule 1B shall screen Performance Appraisal Reports and award average marks for Scientists ‘F’.

(ib) The internal Screening Committee (Main) specified under Schedule 1B shall interact with the Scientists ‘F’ and make recommendations to Peer Committee”;

(B) In item (ii) for the words “Internal Screening Committee”, the words “Internal Screening Committee (Main)” shall be substituted;

(c) For paragraph (e), the following paragraph shall be substituted, namely-

(e) “Recommendations for promotion of Scientists ‘F’ who have been recommended by the Internal Screening Committee (Main) to Scientist ‘G’, shall be made by the Peer Committee taking into

consideration the merit, achievements, personality, leadership and managerial qualities etc.”;

In Schedule 1B, the composition of the ISC (Preliminary) and (Main) is indicated as under:

**“Internal Screening Committee (Preliminary)**

**Scientist ‘F’**

- (i) Secretary Department of Defence Research and Development or a Chairperson Distinguished Scientist nominated by him.
- (ii) Two Scientists not below the level of Scientist ‘H’ nominated by the Members Secretary, Department of Defence Research and Development

**Internal Screening Committee (Main)**

- (i) Chairman, Recruitment and Assessment Centre or a person having proven knowledge, experience and expertise in any field namely Science or Mathematics or Psychology or Engineering or Technology or Metallurgy, as the case may be, to be nominated by the Central Government
- (ii) Two Scientists not below the level of Scientist ‘H’ nominated by the Secretary, Department of Defence Members Research and Development
- (iii) Two external members (one subject expert and one Management Specialist) nominated by the Members Secretary, Department of Defence Research and Development (*emphasis supplied*)

**Internal Screening Committee to review Performance  
Appraisal Reports of Scientist 'G'**

**Scientist 'G'**

- (i) Secretary, Department of Defence Research and Development or a Chairperson Distinguished Scientist nominated by him
- (ii) Two Scientists not below the level of Distinguished Scientists nominated "Members" by the Secretary, Department of Defence Research and Development

10. From a perusal of the amendments, it becomes clear that a radical change in the procedure for promotion to the post of Scientist 'G' was brought into existence. The Peer Committee contemplated under the unamended Rules is kept intact, and the recommendations to the Peer Committee are required to be made in accordance with the amended procedure. While the ISC (Preliminary) shall screen the Performance Appraisal Reports and average marks for Scientists 'G', the ISC (Main) is required to interact with the Scientists 'F' for the purpose of making recommendations to the Peer Committee.

11. Though the applicants pleaded vehemently that their cases ought to have been processed in accordance with the unamended Rules, we find it difficult to accept the contention. The very purpose of amending the Rules was to ensure high quality in the promotions, and thereby to achieve a superior

degree of performance in the organisation. It is fairly well settled that promotions in any organisations are required to be made in accordance with the rules in force at the relevant point of time, and the employees or officials do not have any vested right to insist that their promotions shall be effected on the basis of the unamended rules.

12. The applicants do not have any grievance as regards the ISCs (Preliminary) that were constituted year after year, when their cases were considered. The objection is only about the ISC (Main), insofar as it relates to clause (iii), to the extent it provides for one 'subject expert' as a Member.

13. In the case of the first applicant, his specialisation is Computer Science, and the expert who was included in the ISC (Main) was from Physics. It is pleaded that an expert of Computer Science should have been included in the Committee. The plea of the respondents is that Computer Science is a branch of study in Physics, and the subject expert who was made part of the ISC (Main) is an accomplished Scientist in Physics.

14. The respondents filed additional affidavits together with the particulars of the subject experts in cases of the

applicants. The subject expert in the ISC (Main) for the year 2012 in the case of the first applicant, was Prof. S. C. Sahasrabudhe, Director, DA-IICT, Gandhinagar (Ex-DD & Head, Electronics & Elect. Engg., IIT, Bombay). In the ISC (Main) for the year 2013, the subject expert was Prof. N. Sitaram, former CC R&D & DS. Their particulars are furnished as under:

<b>Year</b>	<b>Name of expert</b>	<b>Area of Research/Field of Specialization</b>
2012	Prof S.C. Sahasrabudhe, Director, DA-IICT, Gandhinagar. Ex-DD & Head, Electronics & Elect. Engg, IIT Bombay	i) Electronics Communication, ii) Signal Processing, iii) Microprocessor Applications
2013	Prof. N. Sitaram, Former CC R&D & DS	Electronics

It is not denied that Computer Science is a branch of Physics. The expertise and accomplishment of the experts is not doubted at all.

15. As regards the second applicant, the subject expert in the years 2013 and 2014 are as under:

<b>Year</b>	<b>Name of expert</b>	<b>Area of Research/Field of Specialization</b>
2013	Dr. M. K. Sharma, Director, IIMT, Meerut, Ex-Head, Mech Engg. Dept., IIT (Earlier ISM) Dhanbad	i) Mech Engg.; ii) Automobile Engg.; iii) Tribology; iv) Thermal Sciences; v) Metallurgy

2014 Prof. Rajaram Nagappa,  
i) Associate Dir &  
Visiting Prof., National  
Institute of Adv. Studies, i) Aerospace Engg;  
Bangalore. ii) Rocket Propulsion,  
ii) Ex-Project Dir, Solid iii) Explosive Chemistry  
Motors Project, Vikram & Composite Material  
Sarabhai Space Centre.  
iii) Pandalai Memorial  
AR&DB Chair Professor,  
Dept of Aerospace Engg,  
MIT-Anna University

Though the specialization of the second applicant is Cryogenics, it is not disputed that Cryogenics is nothing but a branch of Thermal Engineering. Further, it was only at a later stage that the applicant switched over to Cryogenics, and in her elaborate detailed CV, her emphasis was on Thermal Engineering.

16. Things would have been different altogether had the applicants pleaded and established that the subject experts have put any questions to them in a totally unrelated field. Not even a semblance of allegation is made. In the context of specialisations and super specialities, it is difficult to find experts at the near superlative levels with the micro descriptions. The expert is a multi-faceted personality in the field of study, whereas a research scholar or a Scientist at particular stage may be pursuing a facet thereof with a bit of

pointed study. At the end of the day, even such a newly evolved specialisation has to be handled and guided by the Scientists and experts who are specialised in the branch in a broader sense.

17. The applicants are not able to establish that any difficulty as regards the assessment has taken place. The endeavour of the administration was to ensure an assessment of very high degree for promotion to a superior post, like Scientist 'G'. If they were not selected in certain years, the process cannot be found fault with. The results declared after the assessments made in the year 2013 disclose that Scientists up to the seniority rank of 476 were considered, and out of them, only 114 were selected. Similarly, in the year 2014, Scientists up to the seniority rank of 646 were considered, and only 122 were selected. The seniority number may not depict the exact number of candidates considered, but the fact that quite a large number of Scientists 'F' could not make it to Scientist 'G', is clearly evident.

18. The applicants have since been promoted to the post of Scientist 'G' during the pendency of the OAs. Assuming that a case is made out for re-consideration of their

cases, an abnormal situation would arise, wherein the ISC (Main) would be required to interact with a Scientist 'G' for considering his promotion to that very position. The exercise in this regard cannot be equated to consideration of cases of employees by review DPCs.

19. We do not find any merit in these OAs. They are accordingly dismissed. There shall be no order as to costs.

**( Mohd. Jamshed )**  
**Member (A)**

**( Justice L. Narasimha Reddy )**  
**Chairman**

/as/